

Report to Committee: Request for Proposals Process

Background

In 2002, the City negotiated and executed a 5-year contract extension with Minneapolis Refuse, Inc. (MRI) for the organized collection of approximately one half of the residential garbage, recycling, yard wastes and problem materials (metals) generated in the City. This was a negotiated agreement, extending previously negotiated agreements for organized collection that have been in place between MRI and the City since 1971. The MRI contract has never been competitively offered. MRI provides the collection service in the contracted half of the City, while the City provides disposal, billing, public education, and customer service functions City-wide and also collection functions in the non-contracted portion of the City.

In April, 2006, the City issued a Request for Proposals (RFP) for organized collection services in the contracted portion of the City. The RFP process was challenged in Hennepin County District Court by MRI.

Organized Collection Planning Process

On December 1, 2006, in response to an order from Hennepin County District Court that the City follow the solid waste organized collection process outlined in Minnesota Statutes Section 115A.94, the City Council adopted a Resolution of Intent to organize residential solid waste collection and invited the participation of interested persons licensed to operate solid waste collection services in planning and establishing the organized collection system for one half of the City's residential dwelling units. Three planning meetings were held and comments were received regarding possible contracting methods for organized solid waste collection in the contracted half of the city. Meetings with interested licensed haulers and other interested parties occurred on February 20, 22 and March 8, 2007, at varying places and times to accommodate diverse schedules of potentially interested parties.

In May, 2007, the City ended the initial planning period specified by the Organized Collection Statute in Minnesota Statutes Section 115A.94 Subd. 4 (c), and began the 90-day discussion period required by the Organized Collection Statute (Minnesota Statutes 115A.94 Subd. 4 (d)), with licensed haulers who had expressed interest in potential organized solid waste collection arrangements. Also in May, the Council adopted Organized Collection Goals, which were used to evaluate the proposed collection methods during the discussion period, and upon conclusion of the 90-day discussion period. These goals were:

1. Maintain or exceed the current high level of customer satisfaction for solid waste and recycling services.
2. Provide solid waste and recycling collection services in the most cost-effective manner possible, while meeting Clean City objectives.
3. Recognize the need for a comprehensive waste collection program that meets the unique physical and demographic challenges of a core urban city.

4. Protect the health and safety of City residents and visitors by minimizing disruption of collection services due to natural events, labor disputes or Incidents of National Significance, or change of haulers.
5. Comply with City policies on Small and Minority Owned Businesses, Living Wage and Domestic Partner Benefits, and anti-discrimination requirements.

90-Day Discussion Process

Pursuant to the Organized Collection Statute (Minnesota Statutes 115A.94 Subd. 4 (d)), after completion of the planning process the City conducted a 90-day discussion period regarding possible solid waste organized collection arrangements with licensed haulers who expressed interest in participating with the City in this process during the initial planning and comment period. All parties, including all licensed haulers in Minneapolis, four labor unions, and other haulers in the metro area were sent a copy of the planning process summary and notified that they must express interest prior to closure of the planning period if they wished to be included in the 90-day discussion period.

To open the discussion, staff presented the following possible organized collection arrangements for the contracted half of the city:

- A. Negotiate with all interested haulers to determine if an agreement can be reached with a majority of the haulers who have expressed interest as to an organized collection arrangement.
- B. Issue a Request for Proposals for contracted solid waste services for the entire contracted half of the City to be served under one contract, using the evaluation criteria adopted by the City Council on May 11, 2007. Evaluate all proposals submitted, including any submitted by Minneapolis Refuse, Inc. (MRI) or by any collector licensed in the City that has expressed an interest. The Evaluation Criteria adopted by the Council is found in Exhibit C.
- C. Negotiate a new contract with MRI, the current contractor.
- D. Issue a Request for Proposals for contracted solid waste services for the contracted half of the City to be divided into multiple segments and served through individual contracts, with the RFP being evaluated based on the evaluation criteria identified. Evaluate all proposals submitted, including any submitted by MRI or by any collector licensed in the City that has expressed an interest.
- E. Include Labor Peace provisions in all contract requirements.

Meeting participants were also given the opportunity to suggest other possible organized collection arrangements. No meeting participant suggested a significant variation from the potential arrangements outlined above.

After five meetings in the "Discussion" portion of the process (each meeting was approximately two hours and the meeting dates were: June 12, June 26, July 17, July 31, and August 22), no consensus was achieved among the various interested parties who

participated in the discussions of possible organized collection arrangements.

Staff Recommendation at conclusion of 115.A.94 process

The statute states that if the City is unable to agree on an organized collection arrangement with a majority of the licensed collectors who have expressed interest, or upon expiration of the 90 days, the City may propose implementation of an alternate method of organizing collection. Such an alternate method could include a negotiated or bid contract, or other means of providing services, using one or more collectors or an organization of collectors.

It was the recommendation of City staff that the City adopt Option D. Staff recommended that the City issue a Request for Proposals for contracted solid waste services for the contracted half of the City, and that these services should be divided into multiple segments and served through individual contracts. Staff believed that this option best met the City's goals and the requirements of the Organized Collection Statute.

Staff believed that this option provided a competitive contracting process (which benefits the City and its residential solid waste customers), while at the same time minimizing potential displacement of haulers (which is a criterion of the Organized Collection Statute). Under Option D, the City could choose to award some, all, or none of the multiple collection segments to MRI, assuming MRI responded to the RFP and proposed to serve some or all segments. It would allow other licensed haulers in the City a fair chance to compete to provide City services. It would also encourage all haulers to offer their best price, best service, and best equipment as a starting point for negotiations with the City on its next collection contract.

Findings of Fact: 115.A.94 Process

On December 7, 2007 The Minneapolis City Council adopted Findings that determined that the City was unable to agree on an organized collection arrangement with a majority of the licensed collectors who have expressed interest, and that the City should proceed with the alternate method of issuing a multiple segment Request for Proposals. Those Findings are detailed in Appendix 1 of this report.

The Request for Proposals

On June 19, 2008 the City mailed a Request for Proposals to twenty one companies who had participated in the 115A.94 process. Thirteen of these companies were M.R.I. shareholders, one was M.R. I. Proposals were required to be submitted no later than July 18, 2008 at 4:00 p.m. A pre-proposal conference was held on July 11, 2008, to answer questions that proposers submitted and to provide clarification on the "Labor Peace" provisions of the RFP.

An evaluation team of the following individuals was established to review the proposals and make a recommendation to Council:

Heidi Hamilton, Deputy Director, Public Works Department
Patrick Born, City Finance Officer, Finance Department
Ellen Velasco-Thompson, Risk Director, Finance Department
David Richfield, Supervisor of Water and Land Rules and Special Projects,
Minnesota State Pollution Control Agency
Susan Young, Director, Solid Waste and Recycling Services, Public
Works Department

The Evaluation Team reviewed the proposals in the light of the Evaluation Criteria determined by the Council, and provided in the RFP and pursuant to Minnesota Statutes 115A.94. Those Criteria included:

- Completeness of information and documented compliance with all RFP requirements.
- Degree of confidence that the health and safety of the City will be protected through the complete and timely collection of solid wastes.
- Demonstrated and documented understanding of and commitment to the Customer Service and Clean City missions of Solid Waste and Recycling Services. Customer service history, contract compliance history in other contracts, history of safe operations under climate and infrastructure (street and alley) conditions similar to Minneapolis, and history of reliability and commitment to day-certain service will be evaluated. Understanding and commitment to the Clean City goal, including examples of Clean City activities in other contract situations will be evaluated.
- Past performance in Residential Collection Contracts.
- Demonstrated capacity to provide year-round collection services in the manner, and within the geographic constraints, of the City of Minneapolis.
- Collection vehicles and equipment, collection experience, operator training practices and previous experience with customers in similar geographic settings will be evaluated. Knowledge of local geographic and demographic conditions and of a clear understanding of the routing and customer service challenges and expectations will be demonstrated.
- Demonstrated understanding of, and commitment to, the City's policies on Small and Minority Owned Businesses, Living Wage and Domestic Partner Benefit policies, and anti-discrimination requirements.
- Net cost to the City. All costs to the City will be included in the evaluation.
- Minimized displacement of haulers
- Maximized efficiency in solid wastes collections

Proposals from Minneapolis Refuse, Inc. and from Aspen Waste Systems were received. The Evaluation Team carefully reviewed both proposals. The Evaluation Team requested and received answers to one round of clarifying information from both proposers. Both proposals were responsive to requirements of the City as stated in the RFP. The proposal by Aspen Waste Services was for one segment of the City; the proposal by Minneapolis Refuse, Inc was for all segments of the City included in the RFP. The proposal from Minneapolis Refuse, Inc gave two pricing proposals; the proposal from Aspen Waste Systems gave a single price proposal. The Aspen price proposal was significantly lower than either Minneapolis Refuse, Inc price

proposal. Both proposals represent cost savings from the current expenditures for contract collection services. The Aspen proposal was a 5 year proposal; one MRI proposal was for 3 years and the other MRI proposal was for an undetermined length. The Aspen proposal provided customer service references that indicated a high degree of satisfaction with Aspen's service level. MRI provided past Minneapolis Customer Service surveys which were not specific to the MRI collection areas, but which indicated that City-wide, customers have had a high degree of satisfaction with solid waste and recycling services. Equipment to be used by Aspen would be significantly newer than equipment to be used by MRI, and the Aspen Equipment maintenance area was observed to be a modern, state-of-the art facility.

The Evaluation Team determined that although the Aspen proposal was more cost-effective than the MRI proposal, in the interest of minimizing displacement of haulers, further discussions and negotiations would be appropriate with both proposers.

In an effort to explore options for maximizing the achievement of the City's organized collection goals, the Council criteria and the minimization of Hauler displacement, the City arranged for meetings with M.R.I and with Aspen, separately, and a joint meeting between the City, Aspen and MRI to discuss alternative proposals within the framework of the RFP. Prior to these meetings staff contacted both proposers to determine their willingness to explore variations on the proposals that had been submitted with the intent of exploring ways that contracts could be executed with both proposers that could lessen the displacement of haulers, provide cost effective services, maximize efficiency in collections, protect the RFP process for the future and meet the remaining goals of the RFP process. For instance, Aspen had submitted a proposal to collect all solid waste fractions only in Zone 4. MRI had submitted a proposal to collect all fractions of wastes in Zones 1, 2, 3 and 4. Aspen indicated a willingness to give up the provision of recycling services in Zone 4 so that MRI could provide more services and displace fewer haulers. MRI was asked for a price that included only Zones 1, 2 and 3, and a price to provide recycling services in Zone 4. Alternatives brought forward by Aspen and/or MRI for discussion included:

1. MRI collects garbage, recycling, yard wastes and problem materials in Zones 1, 2 and 3 and collects source separated recyclables in Zone 4. Aspen collects garbage, yard wastes and problem materials in Zone 4.
2. MRI collects garbage, recycling, yard wastes and problem materials in Zones 1, 3 and 4 and collects source separated recyclables in Zone 2. Aspen collects garbage, yard wastes and problem materials in Zone 2.
3. MRI collects all waste fractions in Zones 1, 2 and 3. Aspen collects all waste fractions in Zone 4. Recycling districts are revised to provide balanced pickup days in Zones I through 3 and in Zone 4.
4. MRI collects all waste fractions in Zones 1, 2 and 3. Aspen collects all waste fractions in Zone 4. Recycling districts are not revised to balance pickup days in any districts.
5. Geographic Zones are modified to "slice" the City vertically to balance the recycling pick up days each week for each hauler.

6. MRI collects all waste fractions from all districts.
7. Aspen collects all waste fractions from all districts.

The discussions resulted in agreement that Options 2, 4 and 5 were not viable options for either hauler. Option 6 was not acceptable to Aspen. Option 7 was not acceptable to MRI. MRI and Aspen were asked to provide their best and final proposals to the City, based on Options 1 and 3; each hauler also provided a proposal for Option 6 or 7, respectively. The financial summary of those proposals are presented in Appendix 2. Of particular concern to the City was the \$0.41 per dwelling unit per month "Administrative Surcharge" that MRI stated that they required if they collected less than all four Zones. In a final effort to minimize displacement of haulers, while meeting the other goals of the organized collection system, the City asked MRI to consider a proposal for Zones 1, 2 and 3 that did not include the \$0.41 per dwelling unit per month Administrative Surcharge and requested written assurances that in an effort to minimize the displacement of haulers and settle the dispute between the City and MRI that M.R.I. would not pursue legal action related to Minnesota Statutes 115A.94 and would execute an appropriate written waiver and covenant not to sue. MRI responded that they would forego the \$0.41 per dwelling unit per month administrative fee, but that they would not sign a waiver or provide assurances that they would not pursue further legal action.

City Council conditional action on October 24, 2008

On October 24, 2008, the City Council authorized City staff to negotiate and enter into contracts for collection services:

- a) That the proper City officers be authorized to negotiate and execute a contract with Minneapolis Refuse, Inc. for the collection of garbage, recyclables, problem materials and seasonal yard wastes for approximately 30,780 dwelling units located in the northwest area of the City (Zones 1, 2 and 3) for a five-year term at a rate of \$10.49 per dwelling unit per month;
- b) That the proper City officers be authorized officers to negotiate and execute a contract with Aspen Waste System, Inc. for the collection of garbage, recyclables, problem materials, and seasonal yard waste for approximately 21,566 dwelling units in the southwest area of the city (Zone 4) for a five-year term with a rate of \$9.29 per dwelling unit per month in year 1; \$9.66 per dwelling unit per month in year 2; \$10.05 per dwelling unit per month in year 3; \$10.45 per dwelling unit per month in year 4; and \$10.87 per dwelling unit per month in year 5.

This authorization was conditional:

Further, that the above recommendations be approved upon the condition that Aspen Waste System, Inc. and Minneapolis Refuse, Inc. execute written waivers and covenants not to sue, and further execute written stipulations not of pursue legal actions related to either Minnesota Statutes, Section I 15A.94 or the City's Labor Peace requirement as supported by the Findings of Fact of the Permanent Review Committee. In the event that either party fails to sign such an agreement on or before November 5, 2008, the other party will awarded the solid waste contract

for the currently contracted portion of the City. In the event that neither party fails to sign such an agreement, the City Attorney is directed to draft alternative Findings for adoption by the City Council.

In support of the City Council action, the City Attorney's Office drafted a Waiver of Claims and Covenant Not To Sue Agreement and provided copies to Minneapolis Refuse, Inc. ("MRI") and Aspen Waste System Inc. ("Aspen") for execution. The Waiver of Claims and Covenant Not To Sue Agreement incorporated a waiver not to sue based upon the Labor Peace provisions contained in City Council Resolution 2007R-454. On November 5, 2008, the City Attorney's Office received an executed Waiver of Claims and Covenant Not To Sue from MRI and also received an executed revised Waiver of Claims and Covenant Not To Sue Agreement from MRI which incorporated changes proposed by the City Attorney's Office. On the same date, the City Attorney's Office received an executed Waiver of Claims and Covenant Not To Sue Agreement from Aspen.

The City Attorney's Office reviewed the revised Waiver of Claims and Covenant Not To Sue Agreement from MRI which adopted the proposed language from the City Attorney's Office in its entirety and concluded that MRI has complied with the City Council direction on October 24, 2008, regarding Minnesota Statutes. Section 115A.94 and the City's Labor Peace requirement.

The City Attorney's Office reviewed the Waiver of Claims and Covenant Not To Sue Agreement from Aspen which did not adopt the proposed language from the City Attorney's Office and concluded that Aspen had complied with the City Council direction on October 24, 2008, regarding Minnesota Statutes. Section 115A.94, but the language proposed by Aspen regarding the Labor Peace requirement contained language substantially and materially different from the document prepared by the City Attorney's Office. The City Attorney's Office concluded that the waiver provided by Aspen was insufficient and did not comply with the requirement of the City Council regarding the City's Labor Peace requirements as contained in City Council Resolution 2007R-454.

Because Aspen Waste System, Inc. did not execute a sufficient waiver that complied with the City's Labor Peace requirement, Minneapolis Refuse Inc should be awarded the solid waste contract for the currently contracted portion of the City.

Based on the foregoing, staff recommends that:

1. The City Council authorize the proper city officials to execute a contract with Minneapolis Refuse Inc. for the collection of garbage, recyclables, problem materials and seasonal yard wastes for approximately, 51,346 dwelling units located in the geographic areas of the city described as zones 1 through 4 for a five year term at a rate of \$10.49 per dwelling unit per month.
2. The City Council adopt these alternative Findings of Fact in accordance with Minnesota Statutes 115A.94 for the City Findings of Fact relating to the Request for Proposals process that:

- a) describe in detail the procedures it used to plan and to attempt implementation of organized collection through an arrangement with collectors who expressed interest; and
- b) evaluate the proposed organized collection method in light of at least the following standards: achieving the stated organized collection goals of the city; minimizing displacement of collectors; ensuring participation of all interested parties in the decision-making process; and maximizing efficiency in solid waste collection.

Based on these statutory requirements, staff recommends that the City Council make the following

ALTERNATIVE FINDINGS OF FACT, Request for Proposals Process:

I. Description of the RFP Process

1. The City engaged in a process as described in Minnesota Statutes 115A.94, which is detailed in Appendix 1, and incorporated by reference.
2. On December 7, 2007 the Minneapolis City Council authorized the issuance of A Request for Proposals for the collection of garbage, recyclables, yard wastes and problem materials for the dwellings in the "contract side" of the City's Organized Collection System.
3. The Permanent Review Committee of the City reviewed the RFP for compliance with City standards for language and for compliance with City Ordinances, resolutions, and format. The Permanent Review Committee approved the RFP for content and framework on December 18, 2007.
4. On June 19, 2008 the RFP was mailed to 31 haulers and parties who had expressed interest in the RFP process. The RFP was also published in Finance and Commerce, and placed on the City's Web site.
5. On June 23, 2008 the Permanent Review Committee prepared findings and reaffirmed language in the RFP concerning "Labor Peace." The findings are attached hereto as Appendix 7 and incorporated herein as if fully set forth. The findings and language was re-confirmed by the City Council on July 11, 2008.
6. On July 11, 2008 a non-mandatory pre-proposal conference was held by the City to clarify the RFP, answer questions posed by potential RFP Proposers, and to distribute the "Labor Peace" language reaffirmed by the City Council.
7. On July 18, 2008, two proposers delivered proposals to the City. These proposers were Minneapolis Refuse, Inc. and Aspen Waste Systems.

II. Description of the RFP Evaluation and Negotiation Process

1. An evaluation team of the following individuals was established to review the proposals and make a recommendation to Council:

Heidi Hamilton, Deputy Director, Public Works Department

Patrick Born, City Finance Officer, Finance Department

Ellen Velasco-Thompson, Risk Director, Finance Department

David Richfield, Supervisor of Water and Land Rules and Special Projects, Minnesota State Pollution Control Agency

Susan Young, Director, Solid Waste and Recycling Services, Public Works Department

Each reviewer received a separate copy of the proposals and was asked to review the documents.

2. The Review Team evaluated the proposals in accordance with the following criteria, as determined by the City Council and provided in the RFP.

- Completeness of information and documented compliance with all RFP requirements.
- Degree of confidence that the health and safety of the City will be protected through the complete and timely collection of solid wastes.
- Demonstrated and documented understanding of and commitment to the Customer Service and Clean City missions of Solid Waste and Recycling Services. Customer service history, contract compliance history in other contracts, history of safe operations under climate and infrastructure (street and alley) conditions similar to Minneapolis, and history of reliability and commitment to day-certain service will be evaluated. Understanding and commitment to the Clean City goal, including examples of Clean City activities in other contract situations will be evaluated.
- Past performance in Residential Collection Contracts.
- Demonstrated capacity to provide year-round collection services in the manner, and within the geographic constraints, of the City of Minneapolis. Collection vehicles and equipment, collection experience, operator training practices and previous experience with customers in similar geographic settings will be evaluated. Knowledge of local geographic and demographic conditions and of a clear understanding of the routing and customer service challenges and expectations will be demonstrated.
- Demonstrated understanding of, and commitment to, the City's policies on Small and Minority Owned Businesses, Living Wage and Domestic Partner Benefit policies, and anti-discrimination requirements.
- Net cost to the City. All costs to the City will be included in the evaluation.

- Minimized displacement of haulers
- Maximized efficiency in solid wastes collections

3.The Review Team met to discuss their evaluations of the proposals on September 10. The Review Team had follow up questions that were posed to the two proposers.

4.The Review Team questions were e-mailed to the proposers and answers were received.

5.The Review Team met on September 26 to review the answers from the proposers to the Review Team's questions and to further review the proposals. Both proposals were responsive to requirements of the City as stated in the RFP. Both proposals were complete and appeared to promise compliance with the requirements of the RFP. Both proposals gave the Review Team confidence that the health and safety of the City would be protected through the complete and timely collection of solid wastes. Both proposals demonstrated and documented understanding of and commitment to the Customer Service and Clean City missions of Solid Waste and Recycling Services. Both proposals demonstrated capacity to provide year-round collection services in the manner, and within the geographic constraints, of the City of Minneapolis. Both proposals demonstrated understanding of, and commitment to, the City's policies on Small and Minority Owned Businesses, Living Wage and Domestic Partner Benefit policies, and anti-discrimination requirements.

6.The proposal by Aspen Waste Services was for one segment of the City; the proposal by Minneapolis Refuse, Inc was for all segments of the City included in the RFP. The proposal from Minneapolis Refuse, Inc gave two pricing proposals; the proposal from Aspen Waste Systems gave a single price proposal. The Aspen price proposal was significantly lower than either Minneapolis Refuse, Inc price proposal. Both proposals represent cost savings from the current expenditures for contract collection services. The Aspen proposal was a 5 year proposal; one MRI proposal was for 3 years and the other MRI proposal was for an undetermined length. The Aspen proposal provided customer service references that indicated a high degree of satisfaction with Aspen's service level. MRI provided past Minneapolis Customer Service surveys which were not specific to the MRI collection areas, but which indicated that City-wide, customers have had a high degree of satisfaction with solid waste and recycling services. Equipment to be used by Aspen would be significantly newer than equipment to be used by MRI, and the Aspen Equipment maintenance area was observed to be a modern, state-of-the art facility. The Review Team concluded that there was reason to believe that contracts with both proposers could be achieved that would represent and take advantage of the best of both proposals, and best meet the objectives of Minnesota Statutes 115A.94, the RFP process, and City Council direction.

7.On October 1, 2008, a meeting was held between City staff and Aspen Waste Systems to discuss alternatives to their proposal that would minimize displacement of haulers and meet the objectives of Minnesota Statutes 115A.94, the RFP process, and City Council direction. Detailed notes from this meeting are provided in Appendix 2.

8.On October 1, 2008, a meeting was held between City staff and MM to discuss alternatives to their proposal that would minimize displacement of haulers and meet the

objectives of Minnesota Statutes 115A.94, the RFP process, and City Council direction. Detailed notes from this meeting are provided in Appendix 3.

9. On October 8, 2008, a meeting was held between City staff and MRI to further discuss alternatives to their proposal that would minimize displacement of haulers and meet the objectives of Minnesota Statutes 115A.94, the RFP process, and City Council direction. Detailed notes from this meeting are provided in Appendix 4.

10. On Friday, October 10, at the request of all parties, a meeting was held between City staff, MRI and Aspen to discuss alternatives to their proposals that would minimize displacement of haulers and meet the objectives of Minnesota Statutes 115A.94, the RFP process, and City Council direction. Alternatives brought forward by Aspen and/or MRI for discussion included:

1. MRI collects garbage, recycling, yard wastes and problem materials in Zones 1, 2 and 3 and collects source separated recyclables in Zone 4. Aspen collects garbage, yard wastes and problem materials in Zone 4.
2. MRI collects garbage, recycling, yard wastes and problem materials in Zones 1, 3 and 4 and collects source separated recyclables in Zone 2. Aspen collects garbage, yard wastes and problem materials in Zone 2.
3. MRI collects all waste fractions in Zones 1, 2 and 3. Aspen collects all waste fractions in Zone 4. Recycling districts are revised to provide balanced pickup days in Zones 1 through 3 and in Zone 4.
4. MRI collects all waste fractions in Zones 1, 2 and 3. Aspen collects all waste fractions in Zone 4. Recycling districts are not revised to balance pickup days in any districts.
5. Geographic Zones are modified to "slice" the City vertically to balance the recycling pick up days each week for each hauler.
6. MRI collects all waste fractions from all districts.
7. Aspen collects all waste fractions from all districts.

The discussions resulted in agreement that Options 4 and 5 were not viable options for either hauler. Options 2 and 6 were not acceptable to Aspen. Option 7 was not acceptable to MRI. MRI and Aspen were asked to provide their best and final proposals to the City on Tuesday, October 14, 2008, based on Options 1 and 3. Detailed notes from this meeting are provided in Appendix 5.

11. On October 14, each hauler provided their best offer for Options 1 and 3. Each hauler also provided a proposal for Option 6 or 7, respectively. City staff evaluated these proposals.

12. On October 15 City staff asked MRI if they could make a proposal for Zones 1, 2 and 3 at the same price they offered for all four zones with the award of the contract at that price, which is significantly higher than the price offered by Aspen Waste Services, to settle all legal issues between the parties. MRI agreed to propose for Zones 1, 2 and 3 at the same price they offered for all four zones with the award of the contract at that price however MRI declined to make such an offer if it included a waiver of their claimed right to collect all contracted routes in the City of Minneapolis and other claims.

13. The City Council finds that preservation of the RFP process as an important public policy tool to evaluate service provision, price, customer service levels and price for future solid wastes services contracts.

14. While the City Council finds that preservation of the RFP process is an important public policy tool to evaluate service provision, price, customer service levels and price for future solid waste services contracts, price is not the sole or most important criterion considered by the city in its evaluation process.

15. Customer services and satisfaction is an equally important criterion considered by the City. A major element of customer satisfaction is reliable delivery of service on scheduled collection dates, subject only to adjustment for observation of certain federal holidays.

16. Recognizing that “work stoppages” attributable to strikes, boycotts, picketing or other economic interference will negatively affect customer services and satisfaction and jeopardize the City’s public health and welfare, the City has determined that it is necessary to incorporate its “labor peace” requirements as contained in Resolution 2007-454 in both the RFP and the contract for service between the City and refuse collector and hauler.

17. The inclusion of “labor peace” provisions in municipal contracts is recognized as a legitimate means to protect a city’s proprietary interest.

18. The City Council has concluded that the City has a proprietary interest in the refuse collection and hauling service to be provided by an entity that enters into a contract with the City to provide refuse collection and hauling service and incorporates the Findings of the PRC as contained in Appendix 7 of the Report of the Committee herein.

19. On October 24, 2008, the City Council authorized City staff to negotiate and enter into contracts for collection services:

- a) That the proper City officers be authorized to negotiate and execute a contract with Minneapolis Refuse, Inc. for the collection of garbage, recyclables, problem materials and seasonal yard wastes for approximately 30,780 dwelling units located in the northwest area of the City (Zones 1, 2 and 3) for a five-year term at a rate of \$10.49 per dwelling unit per month;
- b) That the proper City officers be authorized officers to negotiate and execute a

contract with Aspen Waste System, Inc. for the collection of garbage, recyclables, problem materials, and seasonal yard waste for approximately 21,566 dwelling units in the southwest area of the city (Zone 4) for a five-year term with a rate of \$9.29 per dwelling unit per month in year 1; \$9.66 per dwelling unit per month in year 2; \$10.05 per dwelling unit per month in year 3; \$10.45 per dwelling unit per month in year 4; and \$10.87 per dwelling unit per month in year 5.

This authorization was conditional:

Further, that the above recommendations be approved upon the condition that Aspen Waste System, Inc. and Minneapolis Refuse, Inc. execute written waivers and covenants not to sue, and further execute written stipulations not of pursue legal actions related to either Minnesota Statutes, Section I 15A.94 or the City's Labor Peace requirement as supported by the Findings of Fact of the Permanent Review Committee. In the event that either party fails to sign such an agreement on or before November 5, 2008, the other party will awarded the solid waste contract for the currently contracted portion of the City. In the event that neither party fails to sign such an agreement, the City Attorney is directed to draft alternative Findings for adoption by the City Council.

In support of the City Council action, the City Attorney's Office drafted a Waiver of Claims and Covenant Not To Sue Agreement and provided copies to Minneapolis Refuse, Inc. ("MRI") and Aspen Waste System Inc. ("Aspen") for execution. The Waiver of Claims and Covenant Not To Sue Agreement incorporated a waiver not to sue based upon the Labor Peace provisions contained in City Council Resolution 2007R-454. On November 5, 2008, the City Attorney's Office received an executed Waiver of Claims and Covenant Not To Sue from MRI and also received an executed revised Waiver of Claims and Covenant Not To Sue Agreement from MRI which incorporated changes proposed by the City Attorney's Office. On the same date the City Attorney's Office received an executed Waiver of Claims and Covenant Not To Sue Agreement from Aspen.

The City Attorney's Office reviewed the revised Waiver of Claims and Covenant Not To Sue Agreement from MRI which adopted the proposed language from the City Attorney's Office in its entirety and concluded that MRI has complied with the City Council direction on October 24, 2008, regarding Minnesota Statutes. Section 115A.94 and the City's Labor Peace requirement.

The City Attorney's Office reviewed the Waiver of Claims and Covenant Not To Sue Agreement from Aspen which did not adopt the proposed language from the City Attorney's Office and concluded that Aspen has complied with the City Council direction on October 24, 2008, regarding Minnesota Statutes. Section 115A.94, but the language proposed by Aspen regarding the Labor Peace requirement contained language substantially and materially different from the document prepared by the City Attorney's Office. The City Attorney's Office concluded that the waiver provided by Aspen was insufficient and did not comply with the requirement of the City Council regarding the City's Labor Peace requirement- as contained in City Council Resolution 2007R-454.

20. The failure of Aspen Waste Services to execute a sufficient Waiver and Covenant Not To Sue over the City Labor Peace requirement as contained in Resolution 2007-454 and the PRC findings contained in Appendix 7 put the City at risk of increased cost of solid waste collection in the event of a strike, picketing or work stoppage and also increases the risk to public health and safety associated with the disruption of solid waste collection.

21. Because Aspen Waste System, Inc. did not execute a sufficient waiver that complied with the City's Labor Peace requirement, Minneapolis Refuse Inc should be awarded the solid waste contract for the currently contracted portion of the City.

22. The City Council recognizes that minimizing displacement of haulers is a requirement of Minnesota Statutes 115A.94 and finds that awarding Zones 1 through 4 to MRI will fully minimize displacement of workers, comply with the RFP process and meet the evaluation criteria used by the City to evaluate proposals.

23. In order to accomplish the Goals of the City and to comply with Minnesota Statutes 115A.94, the City Council hereby:

1. Directs the proper city officials to execute a contract with Minneapolis Refuse Inc. for the collection of garbage, recyclables, problem materials and seasonal yard wastes for approximately, 5346 dwelling units in Zones 1 through 4 for a five year term at a rate of \$10.49 per dwelling unit per month.
2. Adopts the Alternative Findings of Fact in this document,

APPENDIX 1

Findings of Fact Pursuant to
Minnesota Statutes 115A.94
Adopted by Minneapolis City Council on December 7, 2007

Pursuant to Minnesota Statutes, Section 115A.94, Subd. 4, the City of Minneapolis, finds as follows:

I. Description in detail of the procedures used to plan and to attempt implementation of organized collection through an arrangement with collectors who expressed interest:

1. On December 1, 2006, the Minneapolis City Council adopted a Resolution of Intent after conducting a public hearing regarding organized collection of residential solid waste within the City. Notice of the hearing was published at least two weeks prior to the hearing and notice of the hearing was mailed to persons known by the City to be operating solid waste collection services in the City.

2. The City also solicited the participation of interested parties, including licensed haulers and haulers operating outside the City. Residential customers were asked for their advice through letters to the 81 neighborhood associations within the City, which asked for written comments or offered City staff to attend neighborhood meetings. One letter of comment, and two neighborhood meeting requests were received. Meetings were held with the Holland, and Waite Park Neighborhoods. Those neighborhoods requested information only and did not take a position. The Fulton Neighborhood sent an e-mail comment supporting a competitive process.

3. The City then initiated the 90-day period for development of plans for organized collection, which is required under Minn. Stat. §115A.94, subd. 4(c). The City invited the assistance of all licensed haulers operating as of the date of the Resolution of Intent, and the City hired a facilitator to conduct planning discussion meetings.

4. Meetings with interested licensed haulers and other interested parties occurred on February 20, 22 and March 8, 2007. The meetings were designed to obtain input on possible organized collection plans. The City also solicited comments from its neighborhood associations and offered to attend neighborhood association meetings. The City solicited written comments regarding the planning process from interested parties. A summary of the planning process, dated April 10, 2007, is attached as Exhibit A.

5. Prior to conclusion of the planning process, the City notified all licensed haulers operating with the City, as well as other haulers operating outside the City, and other interested parties of a final opportunity to be placed on the interested party list for the discussion process.

6. On May 11, 2007, the City Council acted to declare a conclusion to the planning process and commencement of the 90-day discussion period required under Minn. Stat. § 115A.94, subd. 4(d).

7. A total of 22 licensed collectors were placed on the interested party list along with four labor unions and representatives of some of the collectors and labor unions. Sixteen of the licensed collectors on the list are constituent parts of MRI. A copy of the final interested party list is attached as Exhibit B.

8. During the 90-day discussion process, the City continued to use a facilitator, Kevin D. Johnson of Lindquist & Vennum, Minneapolis, now of Stoel Rives of Minneapolis, an expert in Organized Collection matters, for meetings with licensed collectors and other interested parties. The City presented possible organized collection arrangements for discussion with the licensed collectors who had expressed interest. The possible organized collection arrangements discussed regarded the half of the City residences that are currently contracted for service with Minneapolis Refuse Inc. (MRI). The possible arrangements were:

A. Negotiate with all licensed collectors operating in the City who have expressed an interest to determine if an agreement can be reached between the City and the licensed collectors who have expressed an interest in participating in an organized collection arrangement.

B. Issue a Request for Proposals for contracted solid waste services for the entire contracted half of the City to be served by one contract, using the evaluation criteria passed by the Council on May 11, 2007. These criteria are found in Exhibit C. Evaluate all proposals submitted, including any submitted by Minneapolis Refuse, Inc. (MRI) or by any collector licensed in the City that has expressed an interest.

C. Negotiate a new contract with MRI, the current contractor.

D. Issue a Request for Proposals for contracted solid waste services for the contracted half of the City to be divided into multiple segments and served through individual contracts, with the RFP being evaluated based on the evaluation criteria identified. Evaluate all proposals submitted, including any submitted by MRI or by any collector licensed in the City that has expressed an interest.

E. Include Labor Peace provisions in all contract requirements.

9. At the meetings, participants were given the opportunity to suggest other possible organized collection arrangements; however, no significantly different arrangements were presented by the participants.

10. A total of 22 collectors participated in the process. Sixteen of the collectors were part of MRI. As a result, the licensed collectors who were part of MRI constituted a majority of the interested licensed collectors in the City. If those 16 collectors are counted as one then there were 5 interested collectors licensed in the City.

All 16 collectors that were constituent parts of MRI took the position that the City should negotiate solely with MRI, as a single entity, for a new contract within the contracted half of the City.

11. Other collectors took the position that the City should issue some form of a Request for Proposals for the contracted half of the City. Thus, there was no consensus among all the collectors as to a potential organized collection arrangement that would work for all haulers.

12. The City has determined that negotiating a contract solely with MRI, without conducting a competitive Request for Proposals (RFP) process, is contrary to the strong interest of the City to conduct a competitive process before entering into contracts for services to be provided to the City. The City has a particularly strong interest in entering into a competitive process for the residential solid waste collection contract. This is one of the City's larger contracts with very significant impacts on Public Health and Safety and on the City's quality of life and the desirability of the City as a place to live. This desirability has several aspects. One of these is the cost of being a Minneapolis resident. Part of keeping that cost down is minimizing the cost to the City of solid waste collection so that solid waste fees paid by residents can be minimized. Another aspect is the quality of solid waste collection services. Residents want to live in a City that is clean and picked up with minimal interference with residential life. They want a City where public health and safety is protected by prompt and thorough collection and management of solid wastes. A competitive process enables the City to compare pricing and service options in order to meet the City's organized collection goals. The City cannot properly negotiate on these items with a single entity if it has never given other entities a chance to make competing offers on price, modern (or even revolutionary) equipment and higher and better levels of service.

13. The City has not been able to agree upon an organized collection arrangement with a majority of the licensed collectors in the City (if MRI is counted as 16 rather than 1). It is in the City's best interests to implement an organized collection arrangement that a majority of collectors (if MRI is counted as 16) have not agreed to. It is in the best interests of the City to conduct a competitive RFP contracting process for the contracted half of the City, with the proposals being evaluated based on the evaluation criteria identified by the City. One of the evaluation criteria will be minimization of displacement of haulers.

14. By conducting a competitive contracting process through a Request for Proposals, the City is not making a decision for or against contracting with MRI. MRI will be free to submit a proposal or proposals.

15. Any proposals submitted by MRI or any other collector licensed in the City that has expressed an interest will be considered.

II. Evaluate the proposed organized collection method in light of at least the following standards:

a. achieving the stated organized collection goals of the City.

The proposed organized collection method described above achieves the stated goals of the City. The use of a competitive RFP process will help the City accomplish its goal of a cost effective and efficient solid waste collection service. The RFP process will also enable the City to evaluate the ability of potential contractors to provide a high level of service. Further, by identifying in the RFP the stated goals of the City and requiring that each proposer describe how they will help meet the City's goals, the City will be able to evaluate and compare the ability of a variety of potential contractors to ensure that the City's goals can be met. If the City were to negotiate solely with MRI, it would have no independent basis of comparison to form a "first position" for negotiations, no independent data to evaluate positions presented by MRI, no new or independent strategies to improve the level of service or cost-effectiveness of solid waste collection services, and would deprive itself of the potential benefits that haulers other than MRI could provide to the City. Contracting with a single provider, MRI, for more than 30 years has led to a stagnant relationship between MRI and the City such that MRI believes that it is entitled to perpetual contract renewals, and has not provided new or competitive concepts for service improvements or increases in cost-effectiveness to City residents. Each succeeding contract between the City and MRI has contained cost increases to the City, without proposals or provisions to improve services or cost-effectiveness of the services provided. Further a continued sole-negotiator relationship with MRI would fail to illuminate the services provided, or the cost-effectiveness of service with the light of fresh proposals and ideas. The City is essentially a monopoly provider of solid waste management services to its residents, and it has a policy obligation to seek continuous improvement in service delivery, and independent evaluation of the service and monetary value of all of its contractual arrangements in provision of these services.

One of the City's established solid waste and recycling collection program goals is to minimize disruption of collection services due to labor disputes. In big cities around the country there is a history of solid waste collection strikes that have led to localized health crises in cities where such strikes have taken place. The City, as the operator and proprietor of the City's solid waste and recycling collection system, has a strong interest in minimizing the possibility of such work stoppages. The City has a process in place to have the committee responsible for reviewing draft requests for proposal consider the proprietary nature of a City contract and provide for requiring binding arbitration with employees represented by a collective bargaining unit when reasonably necessary under the facts to protect the City's proprietary interests. Uninterrupted solid waste and recycling collection service is a vital City interest and a fundamental goal of its solid waste and recycling collection program.

b. minimizing displacement of collectors.

The proposed organized collection method minimizes displacement of collectors because any waste hauler that has expressed interest in the project could propose on the

contract. With the potential to award a contract to MRI and/or its member haulers minimization or displacement of MRI haulers is achieved.

c. ensuring participation of all interested parties in the decision-making process.

The competitive RFP process will provide all haulers that participated in the Organized Collection process the ability to make a proposal or to join with others to make a proposal, which ensures their participation in the decision-making process. The open process has solicited the interest and participation of more haulers than ever before in the City’s solid wastes collection service procurement processes, indicating that more interested parties than MRI exist in the City. Additionally, the process has allowed Labor Unions and the Central Labor Union Council to participate in decision-making.

d. maximizing efficiency in solid waste collection.

The competitive RFP process will enable the City to evaluate not only pricing options from various haulers, but also the ability to efficiently provide solid waste collection services through discussion of the prior service experience in the City and/or in other jurisdictions. The competitive RFP process will allow the City to benchmark its services and costs of service in the “City” side of operations, providing an independent analysis of City cost-effectiveness and service level. The City has attempted to benchmark its costs and services against other similarly sized cities, but differences in demographics, geography and climate conditions in those cities have not allowed a realistic comparison. The City has not had cost of service information from MRI; it has only known the price that the City was contractually bound to pay MRI. The City will also receive proposals that could explore new methods or opportunities for increasing collection efficiency that could be adapted by the City to improve City efficiency.

APPENDIX 2

Notes of October 1 meeting between
The City of Minneapolis and Aspen Waste Systems

Aspen Waste Meeting Minutes

October 1, 2008

Aspen Waste Services Inc.

Attendees: Bob Kircher, Tom Johnson, Susan Derus, Marv Vikla, Corey Conover, Susan Young, Heidi Hamilton.

City asked Aspen to confirm that they could begin Service on February 1, 2008?
Aspen indicated that all of the truck issues are resolved but that acquiring Zoeller lifts would be a problem so they are investigating alternatives.

The city indicated that alternative cart tippers will be considered as long as it can be demonstrated that the carts will not be damaged. Any proposed alternatives will be tested by the city. The city explained that the cart design will not change and invited Aspen to talk to Otto about the design criteria. The contractor will be expected to dump fifty carts at Pacific so that any issues can be identified. If no issues are identified provisional approval will be granted. Issues will be tracked in the Solid Waste Information System (SWIS) and resolved if/as they come up.

The city stated that there is a need to explore opportunities to minimize displacement of haulers and asked Aspen for ideas about how this might be accomplished.

Aspen indicated that they were willing to make a proposal for whole city at their price as proposed but strategically chose not to in an effort to minimize displacement of haulers. Aspen was concerned about sharing numbers for fear of the numbers being used to cut them out of any share of the contracts.

As an option to further minimize displacement of haulers Aspen suggested that they could contract directly with MRI for recycling or subcontract with individual haulers to do recycling in the Aspen section of the city. Aspen stated that they do not want this negotiating to be used against them (i.e. MRI shows pricing to this advantage)

Aspen stated that they would be willing to consider giving up recycling from their proposal assuming a reasonable price discount.

The city indicated that it has no intent to move to single stream recycling.

The city asked if Aspen had any other ideas about minimizing displacement of haulers. Aspen did not have additional ideas. The city asked whether it would be possible for Aspen to consider hiring MRI employees. Aspen stated they would consider hiring MRI haulers as employees of Aspen.

Aspen asked how many stops per day the city typically has on a route. The city described current operations. The city indicated that customer service is very important. There is a desire that routes are complete by 4 pm and the city should be notified if this will not occur. The city is reluctant to change route days although the city is willing to consider it.

Aspen asked what is involved with problem materials. The city described the city's process including lift gates, dollies, and volume (average/customer/yr).

The city reported that read only access to SWIS would be provided to the contractor as well as basic reports. Telephone communications are common between the city and contractor. The city described the policy for "non-out" carts which includes crews keeping a list of such carts and using discretion based on customer history to determine if the cart will be picked up the next day or the next week if reported by the customer as a "miss." The city stated that routes are set up near each other from day to day, in North to South "day strips."

Notes by Heidi Hamilton

APPENDIX 3

Notes of October 1 meeting between
the City of Minneapolis and MRI

MRI Meeting October 1, 2008 203 City Hall

Attendees: Michael Rothman, Greg Burt, Doug Krueel, Susan Young, Heidi Hamilton.

MRI asked about the RFP evaluation process. The city responded that an evaluation team was established and the proposals were evaluated based on the criteria identified in the RFP. The city indicated a reluctance to go into any detail about the evaluation of the proposals due to data practices confidentiality concerns. The city did indicate that the conclusion of the evaluation team was that there was substantial parity between the two proposals except in the area of price.

The city indicated that we are not anticipating changing zones or route days.
The city indicated there were two items to discuss:

1. What would MRI response be to accepting a contract for Zones 1-3.
2. Ideas for minimizing displacement of haulers.

MRI indicated they would consider a contract for zones 1-3 but cannot say under what terms (cost) because that analysis had not been done.

The city indicated that provision of recycling services in Zone 4 by MRI was suggested by the other hauler as a possible way of minimizing displacement of haulers. This could be done through a contract with the city or a subcontract with Aspen to do recycling for Zone 4.

The city indicated that if a contract with MRI is established that the city would desire that contract to include assurance that MRI would not challenge the city on the RFP process.

MRI indicated they are concerned about not waiving their rights under Minnesota Statute 115A.

The city indicated a desire to reach agreements that closely reflect the base proposals submitted.

Another meeting was set for 8:30 a.m. on Wednesday October 8, 2008 in 203 City Hall.

APPENDIX 4

Notes of October 8 meeting between
The City of Minneapolis and MRI

MRI Meeting Notes October 8, 2008 203 City Hall

Attendees: Jackie Cherryhomes, Greg Burt, Doug Krueh, Corey Conover, Susan Young, Heidi Hamilton.

MRI reported on their activities of the past week including meeting with MRI haulers. MRI stated that they understand that Aspen will be part of the solid waste service delivery in the city. MRI explained that it is difficult to downsize:

30,700 dwelling units proposed for MRI
52,400 dwelling units today
14 hauling companies in MRI which averages approximately 3700 dwelling units per rout/route

MRI indicated that administration cannot be downsized (insurance, bonding, office staff). MRI indicated that having MRI provide recycling in Zone 4 gets complicated because two contractors would be operating in the same space, causing confusion with damage, messes, tags, etc. MRI indicated it is challenging to provide every other week recycling service if Zone 4 is split out from the rest of the city due to the cost of idle trucks and idle employees on the "off" week. MRI stated that if Zone 4 is split off from their work that recycling district boundaries should be changed to even out their work between the two recycling weeks. MRI expressed concern with the staff proposal that Aspen get such a big zone and suggested that Aspen could serve Zone 2 and MRI could do all of the recycling. This suggestion is based on dividing the dwelling unit count by fifteen haulers to determine an appropriate share to offer to Aspen. In this instance, MRI is willing to hold the rate in the proposal for five years.

MRI indicated that they are concerned that Aspen is being given 40% of the area. The current MRI contract limits a single hauler to less than 42%. The city noted that this limit was originally proposed by MRI. MRI indicated that the 40% share feels unfair because Aspen is a large hauler.

The city indicated that the zone map was drawn up to appeal to a variety of hauler sizes and that changing recycling district boundaries has a significant operational effect (uneven collections is operationally challenging).

MRI suggested a meeting with Aspen and the city to try to work through operational issues.

The city indicated that the city's goal is to achieve a recommendation that can be

supported by all parties; including a contract that assures the city MRI will not challenge the city in court again. The city explained that Zone 4 is proposed to be awarded to Aspen because that is the Zone they proposed on. The city agreed to obtain legal advice about sitting down with all three parties; that this was desirable from the city's perspective but the city wanted to ensure compliance with 115A and purchasing law.

The city asked to hear MRI price proposal.

MRI stated that all price proposals were for five years.

If Aspen takes Zone 2, MRI would do recycling for Zone 2 at no added cost. Dwelling unit (DU) cost would apply to DUs in 1, 3 and 4 only.

If MRI only services Zones 1-3 and if the Recycle zones are modified to provide balanced loads each week then the price would be \$10.90/DU/month.

The city noted that one idea discussed during the 115A discussion was farming out individuals between companies. MRI might be able to reduce displacement and spread Administrative costs.

MRI indicated that that could be part of discussion with Aspen: how to pool resources for most efficient delivery.

MRI stated a price to provide recycling in Zone 4 of \$2.79 / DU/month with the price of \$10.90 / DU/month to provide full service in Zone 1-3

If recycling districts are not modified and MRI has to recycle every other week the price would be \$12.52/DU/month

MRI again suggested that the meeting of three parties could be beneficial to achieving greater efficiency.

The city indicated a need to consider carefully how districts could be reconfigured and that the city needed to confer with attorney's office to determine how much of a change to terms of contracts can be made without issuing a new RFP.

The city committed to getting in touch with MRI when the possibility of and schedule for a meeting of all three parties was known.

Notes prepared by Heidi Hamilton

APPENDIX 5

Notes of October 10 meeting between
City of Minneapolis, Aspen Waste Systems and MRI

MRI & Aspen Meeting October 10, 2008 203 City Hall

Attendees:

City: Susan Young, Heidi Hamilton, Ruben Vazquez (recording)
MRI: Doug Kruell, Greg Burt, Jackie Cherryhomes
Aspen: Marv Vikla, Tom Johnson, Bob Kircher

City's Goal: Maximize customer service; provide the best cost-effective deal for the City while minimizing displacement of collectors.

The city stated that today's discussion will focus on areas of service and services to provide to the City; we will **not** be discussing money during this meeting.

The city reminded both MRI and Aspen to keep an open mind during these discussions, with the understanding that neither company is going to get 100% of their wishes met. City is willing to explore all options and will do their best to work with all parties to accomplish the City's goals and comply with Minnesota Statutes 115A.94. All interested parties must be willing to work in good faith.

Several options were raised as to how Aspen and MRI could work together to accomplish City's goals and minimize hauler displacement.

- Aspen and MRI could share equipment and employees of recycling services; or Aspen and MRI could switch zones of recycling services.

Issue: Liability issues would need to be considered under this proposal.

- Change Recycling Districts to meet the needs of both MRI and Aspen.

Issue: The City would have a difficult time considering this option due to the high cost the City would incur in changing the current districts. City staff felt that redistricting would require the City to do at least two mailings to its customers to notify them of the change and most likely not all customers would get the message. If all interested parties could agree on this option, Aspen volunteered to pick up some of the costs associated with notification. Aspen indicated that their proposal was based on the assumption that recycling routes would be balanced within their zone. City staff was concerned that it would be very difficult, from a customer perspective, for

the City to change recycling routes.

- Aspen would also be open to the idea of taking on all of zone 4 needs (garbage, problem materials, yard wastes and recycling).
- MRI would take zones 1-3 (solid waste and recycling) while Aspen would take zone 4 (solid waste and recycling).

Issue: If MRI gives up recycling in zone 4, they would need to have their equipment park and employees off during the off week of recycling. This would cause displacement of the collector employees of MRI.

- MRI would take zones 1-3 (solid waste and recycling) and recycling all of zone 4 while Aspen would take zone 4 (garbage, problem materials, and yard wastes only).

This option was the most viable for meeting the needs of all parties. The city indicated that this option would be one the staff would recommend to the City Council.

The city asked both MRI and Aspen to please send updated proposals with their best possible cost numbers based on this agreement to City staff no later than end of business day on Tuesday, October 14th. The recommendation, which will be presented to a joint session of Ways & Means and Transportation & Public Works Committees on Monday, October 20th, will also include all other possible alternatives which have been discussed along with their costs and benefits.

Notes prepared by Ruben Vazquez and Heidi Hamilton

APPENDIX 6
Table of Options Costs

Assumptions:

Zones 1 – 3 contain 30,780 Dwelling Units
Zone 4 contains 21,566 Dwelling Units
Contract(s) for term of 5 years at prices specified by haulers in their proposals.

Option 1: MRI collects garbage, recycling, yard wastes and problem materials in Zones 1, 2 and 3 and collects source separated recyclables in Zone 4. Aspen collects garbage, yard wastes and problem materials in Zone 4

Aspen offer, Zone 4:	\$ 11,213,457
MRI offer, Zones 1, 2, 3:	\$ 20,130,120
MRI offers, recycling, 4	\$ 3,610,148
TOTAL COST OF OFFERS	\$ 34,953,726

Option 3: MRI collects all waste fractions in Zones 1, 2 and 3. Aspen collects all waste fractions in Zone 4. Recycling districts are revised to provide balanced pickup days in Zones 1 through 3 and in Zone 4.

Aspen offer, Zone 4:	\$ 13,022,413
MRI offer, Zones 1, 2, 3	\$ 20,130,120
TOTAL COST OF OFFERS	\$ 33,152,533

Option 6: MRI collects all waste fractions from all districts.

MRI Offer, Zones 1, 2, 3, 4	\$ 32,946,572
-----------------------------	----------------------

Option 7: Aspen collects all waste fractions from all districts.

Aspen Offer, Zones 1, 2, 3, 4:	\$ 31,608,609
--------------------------------	----------------------

APPENDIX 7

Permanent Review Committee findings upon review of the Request for Proposals for Collection of Garbage, Recyclables, Problem Materials and Seasonal Yard Wastes issued by the Department of Public Works, Division of **Solid Waste and Recycling**, dated **June 2008**

As directed by the City Cotincil in Resolution No. 2007-454 (August 31, 2007), the, Permanent Review Committee (PRC) has made the following findings regarding the Request for Proposals (RFP) for the services requested.

- (1) The City is acting like any commercial business or income-producing property owner in attempting to secure refuse collection services. The City wants refuse generated by occupants of residential properties of four or fewer units to be picked up and disposed of efficiently and cost-effectively as would any property owner.
- (2) The City has a vested and proprietary interest in the materials disposed of by owners and occupants of residential units. The City provides the refuse containers and bills the occupant-utility payer for this service (See City Code of Ordinances, Section 225.680. The City also designates the point where solid waste is to be collected. (See City Code of Ordinances, Sections 225.680 and 225.690). The City and the property owner, occupant, utility payer are the owners of materials placed in the City-provided refuse containers. (See City Code of Ordinances, Section 225.590).
- (3) The PRC has analyzed the following factors to arrive at its findings above.
 - (a) The anticipated contract amount to be awarded by the City will exceed \$250,000 per week based upon the number of residential households subject to solid waste and recyclable material collection under the contract(s) to be awarded as a result of the RFP.
 - (b) The anticipated duration of the contract(s) to be awarded by the City will be for a period of at least three and up to five years under the terms of the RFP.
 - (c) While it is difficult to quantify the anticipated adverse financial or economic impact of any disruption of refuse service at any given time or cumulatively over the anticipated duration of the contract(s) for services, the PRC believes it is reasonable to assume the following:
 - (i) taxpayer complaints could overload the City's 311 Call Center and constituent service communication lines maintained by the City;
and

- (ii) negative publicity may affect convention and visitor business; and
 - (iii) demands placed on other City personnel obligated to maintain the health, safety and ambiance of the City will result in stress and affect delivery of other City services.
- (d) While it is plausible that City Department of Public Works employees who collect refuse in the area of the City generally located East of 1-35W could also collect refuse in the remaining segments of the City, under the terms of the collective bargaining agreement covering these City employees, they would be entitled to receive additional compensation with severe financial consequences for the City. The cost to replace the service providers for these remaining segments of the City with City employees or third party contractors, if available, would require the City to borrow funds to finance and pay for the budgetary shortfall the City would experience to locate and pay for replacement labor.
- (e) The risks to the public health and safety associated with a disruption in the collection of garbage are of paramount importance to the City and its residents, visitors and persons who work in the city. A service disruption will not only affect the marketability of the City, but the accumulation of solid waste will result in odors, the attraction of pests, vermin and rodents, and the potential for sickness and disease.

For the reasons and based upon the findings cited above, the PRC recommends that the City Council require that contractors agree to prevent work stoppages except under force majeure circumstances as a condition to entering into an agreement to provide solid waste and recycling services to the City.