

**CITY OF OAKLAND** FILED  
**AGENDA REPORT** OFFICE OF THE CITY CLERK  
OAKLAND

TO: Office of the City Manager  
ATTN: Deborah Edgerly  
FROM: Public Works Agency  
DATE: May 4, 2004

2004 APR 22 PM 3: 16

RE: **RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY FOR \$761,000 IN FUNDING TO PURCHASE CONTAINERS FOR THE RESIDENTIAL FOOD SCRAPS RECYCLING PROGRAM AND DEVELOPMENT OF PUBLIC EDUCATION MATERIALS**

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**SUMMARY**

A resolution has been prepared that authorizes the City Manager to enter into an agreement with the Alameda County Waste Management Authority (ACWMA) to receive \$761,000 in funding for the purchase of residential food scraps recycling program containers and the development of public education materials to be distributed with the food scraps containers. The City will subsequently reimburse Waste Management of Alameda County (WMAC) for the purchase and distribution of the containers. There are approximately 95,125 single-family residences eligible to participate in the program. Implementation of this program supports the City Council goal to reduce by 75% the amount of waste going to landfills by 2010.

This is one of four reports being submitted to the City Council on weekly single stream recycling, weekly yard waste collection and food scraps recycling. The other reports authorize an amendment of the Franchise Agreement with Waste Management of Alameda County to provide weekly recycling services in the Southern part of the City and weekly yard waste and food scraps recycling throughout the City; an agreement with California Waste Solutions for recycling services in the Northern part of the City; and an ordinance to increase garbage rates to pay for weekly single stream recycling, weekly yard waste collection and food scraps recycling.

This agreement is consistent with the following Mayor and City Council goal and objective 2C:

**Develop a Sustainable City:** Implement programs that protect and conserve natural resources.

Staff recommends approval of the resolution.

**FISCAL IMPACT**

The ACWMA will provide the City up to \$8.00 per eligible household (approximately \$761,000) to implement a residential food scraps recycling program (Fund 1710, Organization 30282, Account 54919). The City will contract with WMAC to purchase and deliver the food scraps recycling containers and to assist with the development of educational materials. It is anticipated

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that the funds from the ACWMA will be sufficient to develop all of the public educational materials.

Beginning January 1, 2005, WMAC will implement a residential food scraps recycling program. This will require yard waste to be collected weekly instead of bi-weekly. The garbage bill for single-family residences will increase by \$0.87 per month on July 1, 2004, and by an additional \$0.87 per month on July 1, 2005, to pay for this new service.

## **BACKGROUND**

On October 29, 2002, the City Council passed Resolution No. 77500 C.M.S. to establish a goal of 75% waste reduction going to landfills by 2010. This goal supports the goal established by the ACWMA for waste reduction. On November 4, 2003, the City Council heard a report from the Public Works Agency that recommended the expansion of the yard waste program provided by WMAC to include the recycling of food scraps and soiled paper products. Implementation of a residential food scraps recycling program supports both the City and ACWMA waste reduction goals.

The report also recommended that staff be directed to notify the ACWMA by December 31, 2003, of the City's intent to request \$720,000 in one-time funds for the purchase of food scrap containers and the development of educational materials. Staff notified the ACWMA and in subsequent discussions it was determined that the number of households eligible to participate in the program is approximately 95,125. The ACWMA has revised the City's initial request and has included \$761,000 in its 2004-05 budget for this program.

## **KEY ISSUES AND IMPACTS**

### ACWMA Subsidy Guidelines

The ACWMA provides funding to offset some of the initial program start-up costs for local jurisdictions to begin diverting residential food scraps from the waste stream. The 2000 Waste Characterization Study prepared for the ACWMA showed that 22% (single-family dwellings 17%, multi-family dwellings 5%) of the residential waste stream is comprised of food waste. This is the largest untargeted component of the residential waste stream that can be economically implemented in conjunction with the City's existing yard waste program. Staff expects that the City will be able to divert approximately 10,000 tons of food scraps from the landfill once the program has been fully implemented. This diversion will provide an additional two percent (2%) towards achieving the City Council goal to reduce the amount of material going to landfills by 75% by 2010. The City is currently at 50%.

To qualify for funding from the ACWMA, the City must meet all of the following requirements:

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- The program must target pre- and post-consumer residential food scraps and contaminated paper;
- Submittal of an implementation plan and program materials for ACWMA review and approval;
- A weekly yard waste collection program must be in place;
- Provide the ACWMA with a minimum of one year of route data for garbage and yard waste collection;
- Provide quarterly participation data for one year after the start of the program and at least annually for the following three years;
- Submit a request to the ACWMA to participate in the subsidy program at least six months prior to the fiscal year in which funding is needed; and
- Require that all materials collected be composted at a facility permitted to handle food waste and that the materials cannot be used as alternative daily cover (material used to cover over landfill areas).

#### Weekly Food Scraps Collection

The City must change its existing yard waste collection program from bi-weekly to weekly in order to include food scraps recycling. A separate report has been prepared that authorizes the Fifth Amendment to the Franchise Agreement with WMAC to include weekly yard waste collection to commence on January 1, 2005. Residents will be able to put eligible materials (vegetables, fruit, grain, fish, meat, bones, kitchen grease, paper and cardboard that have been contaminated with food, paper towels, paper plates, paper coffee cups, tissues, wax paper and wax cardboard) directly into their green yard waste cart.

#### Food Scraps Container

As part of the Fifth Amendment to the Franchise Agreement, WMAC is responsible for the purchase and delivery of a food scrap container to each of the 95,125 eligible households. The container will be delivered with the single-stream recycling cart that is also being delivered to single-family dwellings commencing in mid-January 2005. The food scraps container will hold approximately 2.5 gallons of food scraps and can be kept in the kitchen and emptied as necessary into the yard waste recycling cart. Staff has not yet selected a container to be used in this program. WMAC will purchase the containers directly from the manufacturer and will be reimbursed by the City.

#### Public Education Materials

Staff is working with the City Manager's Cultural Arts and Marketing Department to develop educational materials to inform residents about the food scraps recycling program. The materials will be provided in English, Spanish, Chinese and Vietnamese. The educational materials will be delivered with the container. The materials developed by the City must be approved by the ACWMA and acknowledge it as a funder of the residential food scraps program.

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**SUSTAINABLE OPPORTUNITIES**

Economic: Recycling creates opportunities for local market development for recyclables processing as well as secondary materials reuse and remanufacturing.

Environmental: Increased waste reduction saves natural resources, reduces air and water pollution and protects habitat.

Social Equity: Recycling can provide new living wage jobs for the community.

**DISABILITY AND SENIOR CITIZEN ACCESS**

This report does not propose a project or program that impacts disability and senior citizen access.

**RECOMMENDATION**

Staff recommends approval of the agreement with ACWMA to provide funding for the purchase of containers for the residential food scraps recycling program and the development of public education materials.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution.

Respectfully submitted,



**RAUL GODINEZ II, P.E.**

Director, Public Works Agency

Reviewed by:

Brooke A. Levin, Interim

Assistant Director, Public Works Agency

Prepared by:

Harry Schrauth, Interim

Recycling & Solid Waste Programs Supervisor

APPROVED AND FORWARDED  
TO THE CITY COUNCIL:

  
**OFFICE OF THE CITY MANAGER**

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# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_



**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY FOR \$761,000 IN FUNDING TO PURCHASE CONTAINERS FOR THE RESIDENTIAL FOOD SCRAPS RECYCLING PROGRAM AND DEVELOPMENT OF PUBLIC EDUCATION MATERIALS**

**WHEREAS**, the City desires to implement a residential food scraps recycling program in furtherance of its goal to reduce by 75% the amount of waste going to landfills by 2010; and

**WHEREAS**, the Alameda County Waste Management Authority (ACWMA) has developed a Residential Foodwaste Subsidy Program to encourage local jurisdictions to begin diverting residential food scraps from the waste stream by offsetting some of the initial program start-up costs; and

**WHEREAS**, the ACWMA will provide up to \$8.00 per eligible household for the purchase of a food scraps recycling container and development of public education materials; and

**WHEREAS**, the City has identified 95,125 eligible households for a maximum reimbursement amount from the ACWMA of \$761,000; and

**WHEREAS**, the City Council on November 4, 2003 directed the Public Works Agency to request that the ACWMA include said funds in its 2004-05 fiscal year budget and by letter dated December 16, 2003 the City fulfilled this requirement for funding; and

**WHEREAS**, the City is willing and able to comply with the subsidy guidelines and the reporting and funding requirements of the ACWMA; and

**WHEREAS**, the City Council finds that the services provided pursuant to the Agreement authorized hereunder are of a professional, scientific or technical nature and are temporary in nature; and

**WHEREAS**, the City Council finds that this Agreement shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

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ORA/COUNCIL

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**RESOLVED:** That the City Manager is hereby authorized and empowered to execute an Agreement with the Alameda County Waste Management Authority to provide funding in the amount of \$761,000 for the purchase of residential food scraps recycling containers and the development of public education materials, and to approve any subsequent amendments to or extensions of said Agreement including the identification of additional eligible households which would increase the total amount of the Agreement, provided that such agreements and amendments or extensions shall be approved by the City Attorney's Office and shall be filed with the City Clerk's Office; and be it

**FURTHER RESOLVED:** That a copy of the agreement will be on file with the City Clerk's Office and will be approved for form and legality by the Office of the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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ORA/COUNCIL

MAY 4 2004

AGREEMENT BETWEEN  
ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY  
AND  
THE CITY OF OAKLAND

This Agreement, made and entered into this 1st day of July, 2004, by and between The City of Oakland, hereinafter referred to as "Contractor," and the Alameda County Waste Management Authority, hereinafter referred to as "Authority."

WITNESSETH

WHEREAS, the Authority desires to assist (and/or implement) waste reduction efforts in Alameda County; and

WHEREAS, the Contractor proposes (or is) to implement a Residential Food-scrap Collection program as specified in Appendix A and hereinafter referred to as "Program"; and

WHEREAS, Contractor has requested funding from Authority in the amount of up to \$8/single family residence participating in a residential food-scraps collection program for a total of up to \$761,000 in order to (partially) fund "Program"; and

WHEREAS, the Authority has agreed to provide such funding;

NOW, THEREFORE, Authority and Contractor agree as follows:

1. Term.

The term of this Agreement commences on July 1, 2004, and extends through June 30, 2006. The total amount of compensation tendered by Authority to Contractor pursuant to this Agreement shall not exceed \$761,000.

2. Scope of Contractor Services.

Contractor shall implement the program as described in Appendix A of this Agreement attached hereto and hereby incorporated into this Agreement. In signing this Agreement, Authority grants Contractor specific authorization to proceed with work described in Appendix A. All work authorized by this Agreement shall be completed in accordance with the established project schedule as set forth in Appendix A. Contractor shall:

- a. Perform Contractor's duties to the best of Contractor's ability and in accordance with the generally accepted professional and ethical standards of Contractor's profession and community. Contractor agrees to perform Contractor's duties at all times in strict accordance with currently approved methods and practices in Contractor's field and in accordance with the standards required by the Authority. All duties shall be performed and rendered in a competent, efficient, timely and satisfactory manner.
- b. Observe and comply with all general rules and regulations established by Authority.
- c. Observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations.

The Authority recognizes that Contractor's ability to complete the scope of work within the budget and timelines established in this Agreement is necessarily dependent on receiving reasonable, timely and adequate input and review from the Authority. The Agreement also assumes that the Authority's policies, goals, objectives, actions or alternatives will not change in a manner which alters the Scope of Work once it has been initially defined and accepted by the Authority. Should the Scope of Work defined by this

Agreement be expanded or contracted or the schedule be changed, Contractor's compensation shall be adjusted to reflect any additional work or costs. The Authority and Contractor shall negotiate in good faith to determine the adjustment in compensation.

**3. Payment.**

Terms and conditions for payment are described in Appendix B attached hereto and hereby incorporated herein.

**4. Independent Contractor.**

No relationship of employer and employee is created by this Agreement, it being understood that Contractor shall act hereunder as an independent contractor performing the work set forth in Appendix A at all times in strict accordance with currently approved methods and practices in Contractor's field and that the sole interest of Authority is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards of the Authority and those set forth in Appendix A. Likewise, no relationship of employer and employee is created by this Agreement between the Authority and any subcontractor or employee of Contractor.

**5. Benefits and Taxes.**

Except as set forth in Appendix B, Contractor shall not have any claim under this Agreement or otherwise against Authority for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Except as specified in Appendix B, Contractor shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith Contractor shall indemnify and hold Authority harmless from any and all liability that Authority may incur because of Contractor's failure to pay such taxes.

**6. Authority Representative.**

Authority shall appoint a representative or representatives with respect to work to be performed under this Agreement. Authority's representative(s) shall have complete authority to transmit instructions, receive information, and interpret and define Authority's policies consistent with this Agreement. Contractor shall be entitled to rely on representations made by Authority's representative(s) unless otherwise directed in writing by Authority.

**7. Responsibility of Authority.**

The Authority shall provide at its expense such services of its officers and employees and such use of its premises, facilities, supplies and equipment as the Authority reasonably determines is necessary for performance of this Agreement. Contractor shall not use such services, premises, facilities, supplies or equipment for any purpose other than in the performance of Contractor's obligations under this Agreement.

**8. Travel Expenses.**

Contractor shall not be allowed or paid travel expenses except to the extent authorized in Appendix B.

**9. Services to Others.**

Nothing contained in this Agreement shall be construed as limiting the right of Contractor to engage in Contractor's profession separate and apart from this Agreement so long as such activities do not interfere or conflict with the performance by Contractor of the obligations set forth herein and in Appendix A. Interference or conflict will be determined at the sole discretion of the Authority.

**10. Assignment and Subcontracts.**

Nothing contained in this Agreement shall be construed to permit assignment or transfer by Contractor of any rights under this Agreement and such assignment or transfer is expressly prohibited and void. However, with the consent of the Authority given in writing, Contractor is entitled to subcontract such portions of the work to be performed under this Agreement as may be specified by the Authority. Failure to comply with this section shall constitute a material breach of this Agreement.



**11. Retention of Records.**

Until the expiration of five years after the furnishing of any services pursuant to this Agreement, Contractor shall make available to the Authority or any party designated by the Authority, upon written request by Authority, this Agreement, and such books, documents and records of Contractor (and any books, documents, and records of any subcontractor(s)) that are necessary to certify the nature and extent of the reasonable cost of services to Authority.

**12. Conflict of Interest.**

a. The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to a conflict of interest, or that the Contractor has already disclosed all such relevant information.

b. The Contractor agrees that if an actual or potential conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Authority. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Authority to avoid, mitigate, or neutralize the actual or potential conflict. Within 45 days, the Contractor shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the Authority.

c. No officer, member or employee of Authority and no member of the Authority governing body shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither Contractor nor any member of any Contractor's family shall serve on any Authority board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Contractor's operations or authorizes funding to Contractor.

d. Failure to comply with this section shall constitute a material breach of this Agreement.

**13. Discrimination Prohibited.**

Contractor assures that Contractor will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era veteran's status, political affiliation, or any other non-merit factors be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement. Failure to comply with this section shall constitute a material breach of this Agreement.

**14. Rights to Material Produced.**

Authority shall have a royalty-free, exclusive, and irrevocable license to reproduce, publish, use, and to authorize others to do so, all original writings, sound recordings, pictorial reproductions, drawings, computer programs, and other works of similar nature produced in the course of or under this Agreement. Contractor agrees to deliver a reproducible copy of such documents and materials to the Authority on completion of the services required in this Agreement and in accordance with Appendix A. Contractor shall have the right to keep copies of all documents and materials developed under this Agreement. The Contractor shall not be prevented from disclosing or using the documents and materials, or any portion thereof, which: (a) has been previously made available to the public or which is made available by Authority hereafter, or (b) which was already in the Contractor's possession prior to services performed under this Agreement. The Authority recognizes Contractor's need to make reference to this project as a part of the experience qualifications for future work of a similar nature. The Authority, therefore, agrees to allow Contractor to describe this project in its statements of qualifications and related materials. Contractor shall not publish any such material without prior written consent of Authority.

**15. Confidential Information.**

Contractor will hold any confidential information received from Authority and its member agencies in the course of performing this Agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the Agreement or at any time thereafter. Upon expiration of this Agreement, or termination as provided herein, Contractor will return materials which contain any confidential information to Authority. Contractor may keep one copy for its confidential file. For purposes of this paragraph, confidential information is defined as all information disclosed to Contractor which relates to Authority's and its member agencies' past, present, and future activities, as

well as activities under this Agreement, which information is not otherwise of public record under California law. Failure to comply with this section shall constitute a material breach of this Agreement.

**16. Insurance.**

a. During the life of this Agreement, Contractor shall maintain the following minimum insurance:

1. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.

2. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.

3. Statutory workers' compensation and employer's liability insurance as required by state law. Neither Contractor nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this Agreement.

4. Professional liability insurance. The limit of liability shall be not less than \$1,000,000.

Upon request, Contractor shall submit to Authority certificates of insurance for the policies listed above and list the Authority as an additional loss payee. The certificates shall provide that the insurer give written notice to Authority at least 10 days prior to cancellation of or any material changes in the policy.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify Authority by telephone. Contractor shall promptly submit to Authority a written report, in such form as may be required by Authority of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Contractor's subcontractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of accident and whether any of Authority's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this Agreement.

**17. Indemnification.**

Contractor shall indemnify and hold harmless the Authority, its officers, employees, and agents from and against any and all loss, liability, expense, claim costs (including costs of defense), fines, penalties, consequences, and suits and damages of every kind, nature and description directly or indirectly arising from the negligent or intentional acts, errors, or omissions of Contractor in the performance of this Agreement and Contractor shall pay all claims, damages, judgments, legal costs, adjustors' fees and attorneys' fees and attorneys' fees related thereto.

**18. Drug-Free Workplace.**

Contractor and Contractor's employees shall comply with the Authority's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or work-site used in any manner in connection with performing services pursuant to this Agreement. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or work-site, the Contractor, within five days thereafter, shall notify the Authority. Failure to comply with this section shall constitute a material breach of this Agreement.

**19. Employment Eligibility.**

Persons providing services under this Agreement shall be required to provide the necessary documentation to establish identity and employment eligibility as required by the Immigration Reform and Control Act of 1986. Failure to provide the necessary documentation shall constitute a material breach of this Agreement and will result in the termination of the Agreement as required by the Immigration Reform and Control Act of 1986.

**20. Dispute Resolution.**

The parties shall make a good faith effort to settle any dispute or claim arising under this Agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in California. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any of these dispute resolution processes are involved, each party shall bear its own costs and attorneys fees.

**21. Jurisdiction and Severability.**

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

**22. Notice of Non-Renewal.**

Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Agreement will be retained by Authority from Contractor under a new agreement following expiration or termination of this Agreement. Contractor waives all rights or claims to notice or hearing respecting any failure by Authority to continue to retain all or any such services from Contractor following the expiration or termination of this Agreement.

**23. Termination.**

Either party may terminate this Agreement with or without cause by providing 30 days notice in writing to the other party. The Authority may terminate this Agreement at any time without prior notice in the event that Contractor commits a material breach of the terms of this Agreement. Upon termination, this Agreement shall become of no further force or effect whatsoever and each of the parties hereto shall be relieved and discharged herefrom, subject to payment for acceptable services rendered prior to the expiration of the notice of termination. Notwithstanding the foregoing, the provisions of this Agreement concerning Retention of Records, Rights to Material Produced, Confidential Information, Indemnification, and Jurisdiction and Severability shall survive termination of this Agreement.

**24. Default and Remedies.**

a. Each of the following shall constitute an event of Contractor Default hereunder:

1. Failure to perform any obligation under this Agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the Authority determines the health, welfare, or safety of the public is immediately endangered;

2. Failure to perform any obligation under this Agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach, if the breach is such that the Authority determines that the health, welfare, or safety of the public is not immediately endangered, provided that if the nature of the breach is such that the Authority determines it will reasonably require more than fifteen (15) days to cure, Contractor shall not be in default if Contractor promptly commences the cure and diligently proceeds to completion of the cure; or

3. Without limiting the generality of the foregoing, any Material Breach of any term of this Agreement ("Material Breach" as used in this Agreement shall include, but not be limited to, any failure to comply with the provisions of any section of this Agreement stating that failure to comply with that section shall constitute a material breach of this Agreement).

b. Upon any Contractor Default, Authority shall have the right to immediately suspend or terminate the Agreement, seek specific performance, and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

**25. Litigation.**

If any litigation is commenced between parties to this Agreement concerning any provision hereof or the rights and duties of any person in relation thereto, each party shall bear its own attorneys' fees and costs.

**26. Parties in Interest.**

This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

**27. Amendments Not Valid Without Additional Written Agreement.**

No alteration or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties.

**28. Entire Agreement.**

This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Authority and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**AUTHORITY:**

By: \_\_\_\_\_  
Karen Smith, Executive Director                      DATE  
Alameda County Waste Management Authority

**APPROVED AS TO FORM:**

By: \_\_\_\_\_                      \_\_\_\_\_  
E. Clement Shute, Jr.                                      DATE  
Authority Counsel

**CONTRACTOR:**

By: \_\_\_\_\_                      \_\_\_\_\_  
Deborah Edgerly                                      DATE  
City Manager, City of Oakland  
Or designee

**Attachments**

- Appendix A -- Scope of Work
- Appendix B -- Contract Payment and Reporting Schedule
- Appendix C - ACWMA Residential Foodwaste Subsidy Guidelines

**Appendix A**  
Scope of Work City of Oakland

**Vision**

The residents of the City of Oakland will have a program to recycle food scraps.

**Plan**

Provide a pail for the in-house consolidation of food scraps. Food scraps will be collected weekly in the greenwaste-recycling cart. Provide educational materials that clearly explain the program need and objective.

**Resources**

The Alameda County Waste Management Authority (Authority) Residential Food Scrap Recycling Program offers funding to its member jurisdictions of up to \$8/single family household that participates in a citywide residential food scrap recycling program. Food scraps, soiled paper and other suitable compostable organic materials are target materials for diversion and are commingled in the same bin with greenwaste for weekly collection. The Authority funding must be used for program materials and monitoring.

**Program Description**

The City of Oakland (contractor) will arrange for its solid waste franchisee, (service provider), to implement a residential food scrap recycling program. The program will target pre- and post-consumer food scraps, soiled paper, and other suitable compostable organic materials. The compostable organics are to be collected in residential greenwaste containers on a weekly basis.

The commingled material will be transferred by the service provider to a designated composting facility permitted to handle such material. The City of Oakland shall designate a composting facility that is suitable to handle organic materials collected through this program. The City of Oakland agrees to abide by the Authority Residential Foodwaste Subsidy Guidelines adopted by the Authority Board April 2003, attached in Appendix C.

**The City of Oakland shall cause to happen the following:**

- Use the funding provided under this contract for the development and implementation of a residential food scraps recycling program.
- Provide a timeline of program activities.
- Provide to the Authority accountings of the funds used under this contract for program components including printing, educational materials, pails, and labor/distribution, per Appendix B.
- Develop and implement a citywide food scraps recycling program as described below:
- Develop, produce, and distribute all publicity and/or promotional materials concerning all aspects of the residential food scraps recycling program. Such materials may include press releases, feature stories, public service announcements, brochures, and product literature.
- The City shall submit all such materials to the designated Authority representative(s) for review and approval before distribution. The materials shall be submitted to the designated Authority representative(s) a minimum of 30 days prior to production and with ample time to make changes without impacting the distribution date. Authority approval of publicity and/or promotional materials may not be unreasonably withheld.
- The turnaround time for Authority review of publicity and/or promotional materials will be approximately 5 business days from receipt.
- Acknowledge the Authority as a funder of the residential food scraps recycling program in all publicity and/or promotional materials. Examples of acknowledgments are shown below:

- *This project made possible by a grant from the Alameda County Waste Management Authority, Source Reduction and Recycling Board.*
- *This project funded by the Alameda County Waste Management Authority.*
- *The (grant recipient) gratefully acknowledges the financial assistance of the Alameda County Waste Management Authority.*
- *This container/equipment purchased through a grant from the Alameda County Waste Management Authority.*

Other acknowledgments may be used upon approval of the Authority. Contact the Authority representative(s) for information about using the Agency's Logo.

- Identify a contact person in the City of Oakland who will interact with the designated Authority representative(s) for the development and Authority review of publicity and/or promotional materials concerning the residential food scraps recycling program.
- The City of Oakland will assist and coordinate monitoring and/or auditing of the residential food scraps recycling program to determine program participation. The audit will sample sufficient number of accounts to provide data with a statistical accuracy of a 90% confidence level +/- 3%. Sample data will be forwarded the data to the Authority for analysis. The program shall be monitored quarterly for a period of one year and annually thereafter for two years.
- Coordinate with the Authority regarding residential food scraps recycling program follow-up activities, which may include a survey of the residential participants, audits of the service area to determine contamination/participation, quantities diverted and/or program acceptance or other such activities as are deemed appropriate to assess program implementation.
- Obtain collection route maps, schedules and weight data as needed from the service provider in order to facilitate monitoring of the residential food scraps recycling program.
- Arrange for the service provider to collect and compost (or arrange for composting of) the commingled greenwaste and food scraps under a franchise service agreement with the City of Oakland.
- Secure from the service provider and provide to the Authority weekly and/or monthly historical greenwaste and garbage collection weight data for the year before program start.
- Secure from the service provider and provide to the Authority weekly and/or monthly garbage and greenwaste collection weight data during the first year of the residential food scraps recycling program for comparison to historical data.
- Prepare a final report, which shall be submitted to the Authority no more than 90 days following the one-year anniversary of the program initiation. The final report shall include the following:
  - An estimate of the quantity of organics diverted from the landfill.
  - The location where the compostable organics were processed.
  - A summary of the program implementation.
  - A list of the lessons learned and factors influencing program results.
  - The results of the Authority monitoring program supplied by the Authority.
  - A line by line accounting of the funds disbursed under this contract.

**The Authority** is responsible for the following.

- The Authority will provide support for the residential food scraps recycling program through funding, coordination, program development assistance, review of publicity and/or promotional materials and monitoring assistance to the contractor and/or its designee.

- The Authority retains the right of final approval over all publicity and/or promotional materials produced for and by the contractor for the period of this contract. This right will be exercised with discretion and in cooperation and coordination with the contractor. Approval may not be unreasonably withheld. The approval extends to and includes any prepared press releases, cart hangers, bill inserts, surveys, brochures, magnets, flyers, or other media presentations which promote or report on the City of Oakland residential food scraps recycling program. This does not extend to media interviews.
- Turn around time for approval of publicity and/or promotional materials shall be approximately 5 business days from the time of receipt by the designated Authority representative(s). As of the effective date of this contract, the designated Authority representatives are Brian Mathews and/or Robin Plutchok. The Authority will notify contractor of any change to the designated Authority representative(s).
- The Authority is not responsible for graphics design, lay out, printing, distribution, implementation, processing, monitoring, or coordination of same.
- Authority will assist the City of Oakland monitor the residential foodscraps recycling program by providing technical assistance and the methodology for monitoring participation.
- The Authority shall analyze participation data gathered by the City of Oakland and report results of that analysis to the City for inclusion in the final report.

**Required Program Components:**

1. A Letter from City of Oakland requesting assistance.
2. This contract signed by all parties.
3. The number of single family residences that receive weekly greenwaste services and are targeted by this program. (95,125 residences are targeted as per Harry Schrauth of the City of Oakland in a phone conversation 3-31-04)
4. One year of weekly/monthly historical garbage and greenwaste weight data from the routes targeted by this program.
5. Program must target food scraps and contaminated paper.
6. A monitoring program that is coordinated with the Authority.
7. A pail for food scraps collection for each single-family residence targeted by this program.
8. Publicity and promotional materials that may include:
  - Brochures, decals/stickers, door hangers, flyers, bill inserts.
  - Magnets, cart hangers, coloring books, web-based materials.
  - Press releases, radio announcements, advertisements, marketing tools.

# Appendix B:

## Contract Payment and Reporting Schedule

The Authority and City of Oakland (contractor) agree the following schedule of payment and activities. Funding for this program is based upon the number of single family residences served by a single greenwaste account and the actual cost of developing the program materials. Funding from the Authority for the program is reimbursement for expenses based. The Authority will make an initial payment to initiate the program. The City of Oakland will need to demonstrate "use of funds" for qualified activities to receive additional payments.

Qualifying activities include:

- Purchase of food-scrap pails.
- Development of a food-scrap collection brochure.
- Development of a pail label.
- Distribution of the above materials.

Residential units that share a greenwaste-recycling cart are not eligible for funding.

### **Total Contract Amount not to exceed: \$761,000**

1. Initial payment of \$400,000 is due and payable by the Authority to the Contractor when all of the following have been completed:
  - The Agreement to which this Appendix B is attached has been fully executed by all parties and approved by the Authority counsel as to form.
  - All insurance information required by Section 16 of the Agreement to which this Appendix B is attached has been provided and approved
  - Contractor's Federal Taxpayer ID Number Form (substitute IRS Form W-9) has been submitted.
  - Receipt by the Authority of one year of weekly/monthly historical garbage and greenwaste data for the targeted program area.
  - Receipt of an invoice for \$400,000.
2. A payment in the amount up to \$200,000 is due and payable to the Contractor on or after January 1, 2005 and upon completion of the following activities:
  - An implementation plan is developed and given to the Authority that incorporated required program components.
  - The Authority has approved publicity and/or promotional materials.
  - Receipt of an invoice detailing the funds sought from the Authority to cover the cost of implementing the program citywide, up to a total of \$8/household receiving the service. Receipts, invoices, or other suitable documentation may show actual program development costs.
3. A payment in the amount up to \$161,000 is due and payable to the Contractor on or after February 1, 2006 and upon completion of the following activities:
  - An accounting of the funds expended under the contract has been submitted to the Authority that shows the actual cost of program development and implementation. Receipts, invoices, or other suitable documentation may show actual program development costs.
  - Monitoring data required from audits to date has been provided to the Authority.



- Receipt of an invoice for the additional funds sought from the Authority to cover the cost of implementing the program citywide up to a total of \$8/household receiving the service.

***Funding from this contract shall not be used to offset or defray the City of Oakland (contractor) staff time for implementation of the program or monitoring of the program.***

***The Authority may adjust the funding level of this contract downward based upon actual program implementation costs. In the event funds distributed to the City of Oakland (contractor) are not used for program development and implementation, the City of Oakland shall remit remaining funds to the Authority within 60 days of the final report being submitted.***

***Funding from this contract shall not be used for collection, hauling, handling, processing or marketing of diverted food scraps or other compostable organics or for the labor to do the same.***

**With respect to Section 16, 4: Professional Liability Insurance**

**Professional Liability Insurance Coverage requirements is waived for this contract.**

# **Appendix C**

## **Residential Foodwaste Subsidy Guidelines**

# Alameda County Waste Management Authority Residential Foodwaste Subsidy Program

## *Subsidy Guidelines*

The Residential Foodwaste Subsidy Program has been developed with input from member agencies of the Waste Management Authority, waste haulers, recyclers and other interested parties. The program encourages the recycling of food-scrap by placing them in the greenwaste cart with other organics. The purpose is to encourage local jurisdictions and their haulers to begin diverting residential foodscrap from the waste stream by offsetting some of the initial program start-up costs.

In order to achieve the greatest potential for success, jurisdiction-wide programs are recommended for implementation. Pilot programs will not be eligible for subsidy.

### **Program Overview**

The Waste Management Authority will offer qualifying member agencies a one-time subsidy of up to \$8 per household (defined as a residential greenwaste account). Multi-family units are not eligible. The subsidy is designed to cover the purchase and distribution of a collection pail and label, along with printed educational materials about the program. Additional materials remain the responsibility of the local jurisdiction. The subsidy may not be used for staff time or to cover collection and/or processing expenses.

The Residential Foodwaste Subsidy is a modified reimbursement program. Qualifying jurisdictions will receive 60% of the estimated subsidy payment upon execution of a contract with the Authority. Remaining funds will be disbursed upon submission of actual expenses and submission of required reports.

The Authority will assist in the development of public education materials, if requested. Individual jurisdictions may use a graphic artist of their choosing, or access a master contract maintained by the Authority. In either case, the subsidy will not change, and the Authority retains the right of final approval for all materials developed with its funds.

In order to qualify for funding, a jurisdiction must meet all the following requirements:

- New collection programs must target pre and post consumer residential foodscrap and contaminated paper.
- An implementation plan which gives ample time for approval of program materials and schedules follow-up sampling must be submitted.
- Weekly greenwaste collection must be in place.
- A minimum of one year of route data for garbage and greenwaste collection must be provided to prior to program inception.
- The jurisdiction must provide quarterly participation data for one year after inception of a new program and at least annually for three years. A sampling tool provided by the Authority must be used to collect participation data.
- Jurisdictions must make a request in writing to participate in the subsidy program a minimum of 6 months prior to the beginning of the fiscal year in which they desire funding.
- Materials must be composted at a facility permitted to handle foodwaste, and the product cannot be used as alternative daily cover (ADC).

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ORA/COUNCIL