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OFFICE OF THE CITY CLERK  
OAKLAND

# CITY OF OAKLAND

## AGENDA REPORT

2008 MAR -6 PM 2: 18  
TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Public Works Agency  
DATE: March 18, 2008

**RE: Resolution Authorizing The City Administrator To Enter Into A Settlement Agreement With Waste Management Of Alameda County (WMAC) To Provide The City Eight Million Two Hundred Thirty Thousand Dollars (\$8,230,000.00) In Additional Services And Customer And City Reimbursements In Lieu Of Liquidated Damages And All Other Claims By The City, And Dismissing Related Pending Litigation Against WMAC, In Connection With The Recycling And Garbage Service Disruption In July 2007**

### SUMMARY

A resolution has been prepared approving a settlement package in lieu of liquidated damages with Waste Management of Alameda County and dismissal of *People ex rel. John A. Russo, City Attorney and City of Oakland, a Municipal Corporation v. Waste Management of Alameda County*. With authorization from Council, staff negotiated a tentative agreement with Waste Management of Alameda County (WMAC) on a package of services and reimbursements in lieu of assessing liquidated damages for the failure of solid waste and recycling collection services throughout Oakland in July 2007, when WMAC locked out its collection and long-haul drivers represented by International Brotherhood of Teamsters Local 70. Dismissal of the litigation is a required condition of the settlement.

### FISCAL IMPACT

The services composing the settlement package are valued by WMAC at \$4,860,800.00. Adding WMAC's billing rebate to residential customers for July 2007 of \$3,032,000.00, the total value of WMAC's compensation to Oakland is valued by WMAC at approximately \$7,893,000.00. Last, WMAC has agreed to pay compensatory damages to the City in the sum of three hundred thirty seven thousand two hundred twenty one dollars (\$337,221.00), to cover the City's out-of-pocket expenses incurred due to the WMAC lockout (See Table 1).

Table 1

	Value
In-lieu Service Package	\$4.86 Million
July Rate Rebate	\$3.03 Million
Compensatory Damages to City	\$0.34 Million
Total	\$8.23 Million

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The attached resolution authorizes the City Administrator or her designee to carry out any financial actions necessary to carry out the intent of the resolution, including accepting and appropriating compensatory damages in the sum of three hundred thirty seven thousand two hundred twenty one dollars (\$337,221.00), to reimburse operating departments for the unanticipated expenses incurred due to the lockout.

## **BACKGROUND**

Through the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Agreement), WMAC is the sole provider of solid waste collection and disposal services in Oakland, for both residential and commercial customers. The Agreement also provides for weekly collection of residential recycling (in one-half of the City) and yard trimmings (with food scraps), and bulky pickup; collection of solid waste, recyclables, and yard trimmings from City facilities, and disposal/recycling of materials delivered by the City to the Davis Street Transfer Station. During the lockout, WMAC failed to provide services meeting the standards of the Agreement, and is therefore subject to the liquidated damages provisions of the Agreement.

Following Council's authorization on October 2, 2007, Public Works Agency staff and the Mayor's Office engaged WMAC in a series of discussions regarding the list of services the City desired in lieu of liquidated damages. Starting with the list of services, as amended by Council in closed session on October 2, 2007, and Council's direction that priority should be given to programs and services that address illegal dumping and beautify the City, staff deliberated with WMAC over the list of items to arrive at the package of programs.

## **KEY ISSUES AND IMPACTS**

The majority of the services agreed upon target illegal dumping and beautification activities for the remaining term of the Franchise Agreement of five years, and others are one-time activities. The services composing the settlement package are as follows:

### **Programs/Services to Reduce Illegal Dumping/Green Oakland**

- Augment City illegal dumping collection services based on Litter Enforcement Officers' punch list
- On-call Bulky Pickup Program for multi-family 5-9 unit buildings
- Amnesty collection days for tires, appliances and mattresses (2 days per year, 2 locations)
- Twice a year on-call Bulky Pickup Program for 1-4 unit residences: 500 second appointments scheduled for current year participants
- Label for inventory purposes City Street Litter containers (1200 containers total, one time)
- 200 yards of finished compost annually

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### **Enhanced Residential Recycling Services**

- Add non-bottled rigid containers (#2, #4 & #5) to residential recycling program
- Curbside household battery collection
- Rate for greenwaste collection at multi-family buildings

### **Promotion / Publicity/ Public Education**

- Consumer Campaigns on waste reduction and Zero Waste (one year)

## **SUSTAINABLE OPPORTUNITIES**

Economic: The settlement package fully reimburses the City for its expenses and provides new services to WMAC customers in Oakland for no additional cost.

Environmental: The settlement package includes improvements to the residential recycling program, education programs for Zero Waste, and donation of finished compost to community projects.

Social Equity: The settlement package includes services aimed at beautification and reduction of illegal dumping should provide added value to the less affluent neighborhoods, and provide all residents with new options for disposal and recycling.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Staff knows of no impacts on the disabled or senior citizen communities.

## **RECOMMENDATION AND RATIONALE**

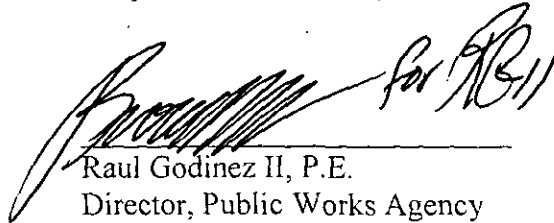
The services composing the settlement package provide value to the City through programs aimed at reducing illegal dumping, beautifying, improving residential recycling, and encouraging waste reduction. In addition to the billing rebate provided to residential customers for the month of July when service was interrupted, Oakland residents will receive the direct benefits of these new services. The ability to test or pilot these services and determine their effectiveness before the termination of the current contract, allows the City the opportunity to better define its needs for the next recycling and garbage franchise negotiations in 2012. The overall value of the package is in an amount commensurate with the upper scale of the liquidated damages estimates calculated by the City based on the Franchise Agreement.

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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the Council endorse above listed package of programs and services valued at \$8.23 as settlement in lieu of liquidated damages and approve the attached Resolution.

Respectfully submitted,

  
\_\_\_\_\_  
Raul Godinez II, P.E.  
Director, Public Works Agency

Reviewed by:  
Brooke A. Levin, Assistant Director  
Department of Facilities & Environment

Reviewed by:  
Susan Katchee, Manager  
Environmental Services Division

Prepared by:  
Becky Dowdakin, Supervisor  
Solid Waste & Recycling Program

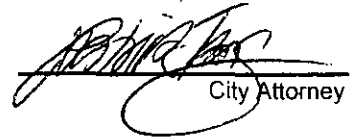
APPROVED AND FORWARDED TO THE  
CITY COUNCIL

  
\_\_\_\_\_  
Office of the City Administrator

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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL

  
City Attorney

2008 MAR -6 PM 2:18

RESOLUTION NO. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH WASTE MANAGEMENT OF ALAMEDA COUNTY (WMAC) TO PROVIDE THE CITY EIGHT MILLION TWO HUNDRED THIRTY THOUSAND DOLLARS (\$8,230,000.00) IN ADDITIONAL SERVICES AND CUSTOMER AND CITY REIMBURSEMENTS IN LIEU OF LIQUIDATED DAMAGES AND ALL OTHER CLAIMS BY THE CITY, AND DISMISSING RELATED PENDING LITIGATION AGAINST WMAC, IN CONNECTION WITH THE RECYCLING AND GARBAGE SERVICE DISRUPTION IN JULY 2007**

**WHEREAS**, the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services between the City of Oakland and Waste Management of Alameda County (WMAC) provides for standards for collection services; and

**WHEREAS**, on July 2, 2007 WMAC locked out its collection and long-haul drivers, represented by International Brotherhood of Teamsters Local 70, which caused collection service disruptions; and

**WHEREAS**, on July 12, 2007 the City Attorney filed a complaint with Alameda County Superior Court for breach of contract and violation of the Municipal Code provisions seeking an injunction; and

**WHEREAS**, on July 26, 2007 an agreement between WMAC and Teamsters Local 70 was reached and the following week collection services were corrected; and

**WHEREAS**, on September 6, 2007, the Public Works Agency (PWA) served WMAC formal notice of the City's intent to assess liquidated damages pursuant to the Franchise Agreement for failure to provide collection services meeting Franchise Agreement standards during the month of July; and

**WHEREAS**, on September 27, 2007, the City was noticed by WMAC that it would provide residential customer rebates for the month of July 2007, to be reflected on the customers October 1, 2007 bill; and

**WHEREAS**, WMAC states that it has provided service credits to Oakland residential customers for the month of July totaling \$3,032,000; and

**WHEREAS**, on October 2, 2007 Council authorized staff to enter discussions with WMAC seeking compensatory damages and additional programs and services in-lieu of liquidated damages; and

**WHEREAS,** WMAC has offered a settlement package of services in the amount of \$4,860,814 over five years and to pay the City compensatory damages in the amount of \$337,221; now, therefore, be it

**RESOLVED:** the City Council authorizes the City Administrator to enter into a settlement agreement with WMAC whereby WMAC provides the City services in the amount of \$4,860,814 over five years and agrees to pay the City within thirty days of the effective date of this resolution compensatory damages in the amount of \$337,221; and be it

**FURTHER RESOLVED:** the City Administrator or her designee is authorized to carry out any financial actions necessary to carry out the intent of this resolution, including accepting and appropriating compensatory damages in the sum of \$337,221, to reimburse operating departments for the unanticipated expenses incurred due to the lockout; and be it

**FURTHER RESOLVED:** the services to be provided the City pursuant to the Settlement Agreement will be incorporated as amendments to WMAC's franchise agreement with the City; and be it

**FURTHER RESOLVED:** the City Attorney shall dismiss the pending litigation filed in regards to this matter; and be it

**FURTHER RESOLVED:** that a copy of this resolution shall be filed with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California