

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 JUL -8 PM 7:05

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: July 20, 2004

RE: **RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH CALIFORNIA WASTE SOLUTIONS IN THE AMOUNT OF \$109,405 TO PAY FOR THE CLOSEOUT OF CWS' 1992 RESIDENTIAL RECYCLING AGREEMENT AND FOR BOTH PARTIES TO INDEMNIFY EACH OTHER FOR ANY CLAIMS RESULTING FROM THE PROVISION OF RESIDENTIAL RECYCLING SERVICES FOR THE PERIOD OF SEPTEMBER 9, 1992 THROUGH MAY 4, 2004**

SUMMARY

A resolution has been prepared that authorizes the City Administrator to enter into an agreement with California Waste Solutions (CWS) to settle a claim from the closeout of its Residential Recycling Agreement in the amount of \$109,405. The agreement also provides for both parties to indemnify each other for any claims resulting from the provision of Residential Recycling Services for the period of September 9, 1992 through May 4, 2004. CWS provides weekly single stream residential recycling collection and processing services in the area generally north and west of East 18th Street, Park Boulevard, Lincoln Avenue and Joaquin Miller Road.

Staff recommends approval of the resolution.

FISCAL IMPACT

The City will pay CWS \$109,405 to settle the outstanding claims from the Residential Recycling Agreement for the period of September 9, 1992 through December 31, 1997. There are sufficient funds available in the Public Works Agency budget, Fund 1710, Organization 30282, Account 54919 to pay for the settlement.

BACKGROUND

On May 18, 2004 the City Council heard a report from the Public Works Agency in closed session that recommended settlement of the outstanding claim submitted by CWS in January 1998. At the time the claim was submitted, the Public Works Agency reviewed the information provided by CWS and determined the City owed \$109,405 for miscalculation of a wage pass through (\$83,275); unpaid vacation (\$4,837); reimbursement for curbside bins (\$9,128); and risk/profit sharing deduction (\$12,165). CWS disputed the amounts and the issue remained unsettled. In May 2002 CWS met with former City Manager Robert Bobb who again offered to settle this matter by payment of the \$109,405.

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KEY ISSUES AND IMPACTS

Since 1999 the City has offered to settle this matter with CWS for \$109,405. CWS is now willing to accept the offered amount for the closeout of its 1993-97 agreement. CWS and the City have also agreed to indemnify each other for any claims, demands, actions, causes of actions, and damages either party may have against the other to include a portion of the existing agreement currently in effect between the two parties. The indemnity would cover the period from September 9, 1992 through and including May 4, 2004. The current agreement expires on December 31, 2004.

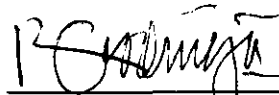
RECOMMENDATION

Staff recommends approval of the proposed settlement with CWS in the amount of \$109,405 and the indemnification for any claims either party may have against the other for the time period specified.

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 ADMINISTRATOR

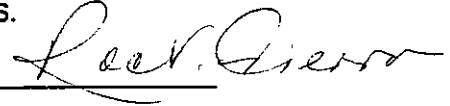
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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____



RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH CALIFORNIA WASTE SOLUTIONS IN THE AMOUNT OF \$109,405 TO PAY FOR THE CLOSEOUT OF CWS' 1992 RESIDENTIAL RECYCLING AGREEMENT AND FOR BOTH PARTIES TO INDEMNIFY EACH OTHER FOR ANY CLAIMS RESULTING FROM THE PROVISION OF RESIDENTIAL RECYCLING SERVICES FOR THE PERIOD OF SEPTEMBER 9, 1992 THROUGH MAY 4, 2004

WHEREAS, the City of Oakland (City) and California Waste Solutions (CWS) entered into and Agreement for Residential Recycling Services for Sector A in the City on September 23, 1992, which expired on December 31, 1997; and

WHEREAS, on June 23, 1997 CWS was assigned by Karl's Recycling Service/Pacific Rim Recycling the Residential Recycling Service Agreement for Sector B in the City dated September 9, 1992, which expired on December 31, 1997; and

WHEREAS, the City and CWS entered into an Agreement for Residential Recycling Services dated July 15, 1997 for the period from January 1, 1998 through December 31, 2004; and

WHEREAS, the aforementioned agreements, as amended, shall collectively be termed "Recycling Agreements"; and

WHEREAS, the City and CWS desire to resolve any and all issues, claims, demands, actions, causes of actions, and damages either party may have against the other relating to or arising out of the Recycling Agreements from September 9, 1992 through and including May 4, 2004; and

WHEREAS, CWS will accept \$109,405 as complete and full satisfaction for any and all outstanding issues, claims, demands, actions, causes of actions, and damages, relating to or arising from the Recycling Agreements from September 9, 1992 through and including May 4, 2004; and

WHEREAS, the City has funds available in the Public Works Agency budget, Fund 1710, Organization 30282, Account 54919 to pay CWS' closeout costs; now, therefore be it

RESOLVED: That the City Administrator is hereby authorized and directed to execute an Agreement with CWS in the amount of \$109,405 to resolve claims made by CWS from the closeout of the Agreements and for both parties to indemnify each other for any claims resulting from the provision of Residential Recycling Services for the period from September 9, 1992 through and including May 4, 2004; and be it

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FURTHER RESOLVED: That the City Administrator is further authorized and directed to take whatever steps may be necessary to effect said resolution of closeout claims.

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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