



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 4, 2020  
**TO:** Christine Daniel, City Manager  
**FROM:** Christine Daniel, Acting Public Works Director  
**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute, With Adjusted Terms, An Extension Of The Collection Service Agreement For Solid Waste Services Executed Between The City Of Emeryville And Waste Management Of Alameda County, Inc., Dated February 1, 2011 For An Additional Ten (10) Years From January 1, 2021 To December 31, 2030**

### RECOMMENDATION

Staff recommends that the City Council approve a resolution authorizing the City Manager to execute an extension of the Collection Service Agreement with Waste Management of Alameda County (WMAC) as described in this report.

### BACKGROUND

The California Integrated Waste Management Act of 1989, along with subsequent additions and amendments codified at California Public Resources Code Section 40000 et seq., determined that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste management within their jurisdictions. Most recently, in 2010, pursuant to City Council Resolution No. 10-204, the City of Emeryville entered into a Collection Service Agreement (Agreement) with WMAC for solid waste services. This Agreement will expire on December 31, 2020 unless it is extended.

Section 5.01.1 of the Agreement provides the City with the option to offer to extend the Agreement for up to two additional five-year periods, provided the City determines that the Contractor (WMAC) has met the minimum waste diversion requirements set forth in Article 13. In early 2019, staff engaged HF&H Consultants, LLC. (HF&H) to conduct a performance and billing review to verify that the terms of the Agreement were being met. That review found that WMAC was in substantial compliance, and the issues that were identified as needing improvement were corrected. On March 19, 2019, City Council approved Resolution No. 19-30, authorizing the City Manager to send notice to WMAC of the intent to exercise the extension of the term of the Agreement for an additional five years, from January 1, 2021 to December 31, 2025. WMAC responded to that notice with several items it wished to discuss as terms of that extension, as well as a proposal to extend the Agreement for a period of ten years rather than five. City staff and WMAC subsequently discussed and agreed on proposed terms for an extended agreement.

On October 15, 2019, City Council approved the following proposed terms as part of a ten-year extension to the Agreement:

- A one-time rate adjustment at the beginning of the extension period.** In order to maintain current levels of service and address cost increases over time, a one-time adjustment in rates was proposed by WMAC to apply at the commencement of the extension period on January 1, 2021. Pursuant to Section 12.09.1 of the Agreement, instead of the otherwise applicable calculation set forth in Exhibit 2 of the Agreement, the January 1, 2021 adjustment is proposed be 3.63%, which is the same as the Refuse Rate Index (RRI) adjustment that will occur on January 1, 2020, plus 6.37%, for a total of 10%. The RRI adjustment calculation in Exhibit 2 would be used for all subsequent years of this Agreement (see item 2 below for discussion of modifications to the RRI). For context, Emeryville's current rates are lower than those in neighboring cities (Albany, Berkeley, Oakland, Piedmont, and San Leandro); the rate for a single-family 32-gallon cart is 27% lower than the next-lowest city's rate and 44% lower than WMAC's lowest rate in the cities it serves. Similarly, for a one-yard bin at a commercial or multi-family property, Emeryville's rates are 14% lower than the lowest neighboring jurisdiction's, and 34% lower than WMAC's lowest rate in these cities. Table 1 shows these rates.

**Table 1 - Comparison of Rates with Neighboring Cities**

City/ Service Provider	Single Family 32- gallon	Commercial/ Multi-Family 1-yard bin; 1Xweek	Commercial/ Multi-Family 3-yard bin; 1Xweek	40 yard bin	Commercial Food Waste Discount
<b>Emeryville WMAC</b>	<b>\$18.92</b>	<b>\$112.67</b>	<b>\$338.01</b>	<b>\$1,133.60</b>	<b>50%</b>
Albany WMAC	\$42.65	\$169.95	\$509.85	\$1,430.00	50%
Berkeley City/Ecology	\$41.49	\$167.07	\$462.36	\$3,386.03	20%
Oakland WMAC	\$47.17	\$230.70	\$549.39	\$1,864.54	25%
Piedmont Republic	\$84.60	\$173.04	\$346.16 (2yd bin)	\$510.97	100%
San Leandro ACI	\$29.91	\$131.15	\$396.53	\$464.24 +\$128.46 ton	96 gal no cost then 20%

\* Source StopWaste Recycling and Solid Waste Collection Report 9-13-18

- Modifications to the annually applied Refuse Rate Index (RRI) to better reflect actual costs.** The RRI is the tool used to annually adjust rates to account for changes in costs. The elements of the RRI calculation in the Agreement are:
  - Labor (Service-Producing Industries)
  - Diesel Fuel
  - Vehicle Replacement
  - Vehicle Maintenance
  - All Other (CPI, Bay Area)

- Disposal

Items c-f of the RRI would be unchanged in this proposal, but the labor calculation would be based on the Teamsters Local 70 collective bargaining agreement rather than Service-Producing Industries. Also, non-union labor would be moved to the “All Other” category of RRI adjustment. In addition, the fuel RRI would be calculated based on Natural Gas Service for Compression rates, since all of the fleet used in Emeryville runs on compressed natural gas.

- **The addition of a Contamination notification process and fees for repeat contamination incidents.** WMAC’s contracts for recyclables and compostables require them to maintain very low levels of contamination of these waste streams. The proposed contamination notification and fee process would use inspections or truck-based cameras to identify contamination rates of more than 10% for recyclables and 3% for compostables. The process would include an extensive outreach and education process followed by: (a) formal notices to customers whose bins or carts reflect contamination, (b) an appeal process should customers disagree with the notice, and (c) fees for repeated incidents as shown in Table 2.

**Table 2 – Proposed Contamination Surcharges**

	<b>Commercial/Residential Carts</b>	<b>Commercial/Residential Bins</b>
Incidents 1 and 2	Warning	Warning
Incident 3	\$25	\$75
Incident 4+	\$50	\$100
*If one year passes between incidents, the fee will reset to the Incident 3 level		

- **The addition of language describing the overage fee process (this was added by staff to conform to the contamination fee process discussed above).** WMAC has charged customers for overages since 2012. With the addition of the process for Contamination Fees discussed above, staff proposed and WMAC agreed to add parallel language to the contract for a process for overage fees. The new language, added as Section 6.03.3 of the Agreement, describes the procedures for: a) customer notification, b) correcting errors by WMAC, and c) charging the fees.
- **New tasks related to compliance with SB 1383, Short-Lived Climate Pollutants.** The state’s regulations implementing SB1383 are not yet final so the required tasks may change when the final regulations are adopted, however the requirements listed below are expected to be included. The City engaged HF&H to analyze the proposed regulations for tasks that are likely to be included in the final regulations, and to identify the impacts on the City’s Agreement with WMAC. As a result of that analysis staff proposed the following list of additions to the contract. Subsequent discussions with WMAC modified this list as noted and described further in the Discussion section below.

- Dedicate one new staff position to Emeryville to meet the requirements for a public outreach and education plan as well as a protocol for reporting and records maintenance for the associated field reviews and education activities. (Included in proposed Amendment.)
  - Assist in the identification of Tier 1 and Tier 2 food waste generators. (Included in proposed Amendment.)
  - Purchase and use “Recyclist” or other software to track and monitor the City’s solid waste and diversion programs and outreach efforts, in light of the requirements for outreach and records retention in SB 1383. (Not included due to lack of specifications for software needs at this time.)
  - Assure that container specifications, labeling, and standards described in SB 1383 are met as required. (Deferred to finalization of state regulations for SB 1383.)
- **The extension of the Agreement for ten years.** The ten-year extension was proposed by WMAC in order to fully capture the costs of the new services. That time frame also offers consistency for the City as it ramps up to meet SB 1383 requirements. Section 5.01.1 of the Agreement contemplates up to two five-year extensions; the proposal is to exercise both options now.

## DISCUSSION

Subsequent to the City Council’s approval of terms, staff and WMAC continued to discuss the exact language of the proposed amendment to the 2011 agreement. In those discussions, the requirement to purchase software was removed from the agreement after the parties were unable to agree on the specific needs to be addressed. The issue of container specifications described in SB 1383 was resolved with an agreement that, once the state regulations are clear in terms of requirements, WMAC will provide the City with a cost estimate to replace all carts and bins, in addition to costs for replacement of just lids, taking into account the normal annual costs of cart and lid replacement regularly borne by WMAC. The costs, and thus corresponding rate impacts, for this new requirement are not included in this extension agreement, but will be determined as set forth in Section 21.01, “Agreement Modifications and Changes in Law,” of the Collection Service Agreement.

On November 21, 2019, WMAC introduced a new provision which it has represented is material to its continuation of collection and disposal services. The new provision is intended to address the current climate in the recycling industry which has resulted in the inability, in parts of the country, to recycle various commodities for periods of time. Initially WMAC proposed the following: “Contractor, with notice to City, may temporarily dispose of materials which do not have a commercially viable market.” Subsequent discussions have addressed the specifics of this provision and the proposed language now defines triggers and timelines, as follows:

1. Temporary Disposal of Recyclables. Section 6.08.2.1 is hereby added to the Agreement:

If a category of Recyclables has had a Negative Value for at least three months, and CONTRACTOR does not have the ability to stockpile such material at its processing facility due to permitting or space constraints, then CONTRACTOR may petition the City to either temporarily dispose of such material or, if there is a current market, obtain additional compensation from the City to continue to process and divert. For purposes of this section, material will have a Negative Value if the average price (see table below), plus any applicable CRV, for the most recent three-month period prior to the petition is negative.

CONTRACTOR petitions under this section will include documentation reasonably necessary for the City to verify CONTRACTOR's calculations including verification of CONTRACTOR'S inability to stockpile the material. CONTRACTOR will give City staff at least 10 days' notice in advance of a submitting a petition. The City will then have 60 days after submittal to respond to a properly submitted CONTRACTOR petition. If a CONTRACTOR petition is based on Negatively Valued materials, the City may elect to either permit CONTRACTOR to temporarily dispose of the materials or require that CONTRACTOR continue to process and divert but permit CONTRACTOR to receive additional compensation.

The additional compensation would be made through the annual adjustments to CONTRACTOR's rates for the applicable customer base generating the materials. Any annual adjustments to the rates resulting from the application of this Section must be finalized no later than October 1st each calendar year and may increase rates by no more than .5% each year. The notice of annual rate increase shall include explanation of any portions of the increase that are attributable to this section. The additional compensation would be calculated as follows: tons of the commodity received since the City's approval of CONTRACTOR's petition (based on most recent composition analysis) x dollar amount by which the commodity's value is negative for such period. Values of the categories of Recyclables will be determined as follows:

<b>Category</b>	<b>Single stream materials</b>	<b>Index/Value</b>
Mixed Paper	Phone books; magazines; gloss inserts and pamphlets; newspaper; mail; uncoated paperboard; uncoated printing; writing and office paper	PPW Mixed Paper #54
Cardboard	Old corrugated containers/cardboard (uncoated)	PPW OCC #11
Aluminum beverage cans	Aluminum cans - empty	SMP for Aluminum Cans (Sorted, Baled, picked up)
Steel/tin cans	Steel and tin cans - empty	SMP for Steel Cans (Sorted, Baled, picked up)
Plastic #1	PET bottles with the symbol #1 - with screw tops only – empty	SMP for PET curbside
Plastic #2 Natural	Natural HDPE bottles with the symbol #2 - empty	SMP for Natural HDPE (baled, picked up)
Plastic #2	Colored HDPE bottles with the	SMP for Colored HDPE

Colored	symbol #2 - empty	(baled, picked up)
Plastic #5	PP plastic bottles and tubs with the symbol #5 - empty	SMP PP post-consumer
Glass	Glass food and beverage containers - brown, clear and green – empty	SMP 3 Mix

If an index above is discontinued, the parties will mutually agree on a replacement index. If City has approved CONTRACTOR's temporary disposal of materials as provided above, then CONTRACTOR will give City monthly updates as to the value for the previous month. If the value becomes positive, on average, for a three-month period, then CONTRACTOR will resume processing and diverting such material beginning with the month following that three-month period."

WMAC provided examples of similar language in their contracts with Yolo County and Nevada County, both of which include fewer details about the implementation of this provision. Newly-negotiated terms proposed here include

- more detailed timelines for action
- specific information about the indexes used to determine the value of each material
- a requirement for public education prior to any rate changes
- the right of the City to determine whether WMAC should dispose of the material or may continue to recycle the material through rate increases for the applicable customer base
- no option for WMAC to refuse to accept materials, as they do in the Nevada County contract.

At the October 15, 2019 meeting, the City Council requested additional information about the plans for public outreach related to the new rates and terms that will be introduced as part of this extension agreement. The current agreement is in effect throughout 2020, giving WMAC and City staff several months to design and implement an outreach program that will involve mailers, flyers, emails, social media posts, presentations at neighborhood meetings, and the inclusion of information at a variety of public meetings in the months surrounding the start date of the extension. The existing agreement provides for substantial public education funding from WMAC, including a base amount of \$10,000 plus CPI and other available funds totaling an additional \$40,000 plus CPI adjustments.

If the proposed contract extension is not approved, City staff will begin a Request for Proposals (RFP) process to identify a provider of solid waste services beginning January 1, 2021.

## **FISCAL IMPACT**

There is no fiscal impact to the City of the proposed extension of the Agreement with WMAC, although there are savings associated with a longer Agreement term. The proposed terms will result in an approximate 3.9% annual increase to customers. At the end of the contract period the rate for single-family customers is estimated to still be lower

than the current lowest rate among our neighbors (proposed \$27.20 per 32-gallon cart; in 2019, the lowest rate among neighboring jurisdictions for this service is \$29.91 in San Leandro).

The fiscal impact to the City of undertaking a solicitation for a new contract to begin January 1, 2021 would involve staff and administrative costs related to the RFP process. Given the complex nature of disposal contracts, the City Manager would recommend that the City retain an experienced consultant to guide the development of an RFP, the selection process and the contract negotiations with the selected vendor. The relatively short time frame to conduct and complete that process before the expiration of the existing Collection Services Agreement would also require focused attention from staff in the Public Works Department as well as the City Manager.

### **STAFF COMMUNICATION WITH THE PUBLIC**

There has not been any public outreach concerning these business terms. Should the Council approve the extension with the terms recommended in this report, including the contamination notification and fee process, extensive public outreach will occur prior to implementation of that aspect of the contract.

### **CONCLUSION**

Staff recommends extending the Agreement with WMAC for ten years for the following reasons: 1) residents and businesses receive reliable service, 2) even with the proposed rate adjustments, Emeryville customers will continue to experience some of the lowest rates in Alameda County, and 3) WMAC is committed to working with the City to meet the requirements of SB 1383 over the term of the extension.

**PREPARED BY:** Nancy Humphrey, Environmental Programs Supervisor

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

### **ATTACHMENTS**

- Draft Resolution
- Amendment to Franchise Agreement for Solid Waste Collection and Diversion Services
- Rate Sheet
- Contamination Notification and Surcharge Protocol