

# Mayor and Council Communication

**DATE:** 12/15/20

**M&C FILE NUMBER:** M&C 20-0966

**LOG NAME:** 23WASTEMANAGEMENTCNGINDEXSETTLEMENT

## **SUBJECT**

(ALL) Approval of a Settlement Agreement with Waste Management of Texas, Inc. for Claims Associated with the Cost Adjustment to the Extension and Restatement of the Contract for Collection of Residential Garbage, Refuse and Bulky Waste, Recyclables Certain Commercial Solid Waste, Yard Waste, C&D and Large Brush

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## **RECOMMENDATION:**

It is recommended that the City Council authorize the execution of a settlement agreement with Waste Management of Texas, Inc. for claims associated with the cost adjustment to the Extension and Restatement of the Contract for Collection of Residential Garbage, Refuse and Bulky Waste, Recyclables, Certain Commercial Solid Waste, Yard Waste, C&D and Large Brush, City Secretary Contract No. 28358-E1, as amended.

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## **DISCUSSION:**

The Extension and Restatement of the Contract for Collection of Residential Garbage, Refuse and Bulky Waste, Recyclables, Certain Commercial Solid Waste, Yard Waste, C&D and Large Brush (City Secretary Contract No. 28358-E1, as amended), (Solid Waste Contract) provides for a cost adjustment to the service prices annually in each succeeding year effective on October 1 the anniversary date of each the contract year by the percentage changes in the indexes chosen by the parties by way of the cost adjustment method. The parties chose to use a fuel index as part of the method which originally identified Diesel No.2 as the appropriate index for the cost adjustment. However, the method provided that the diesel index would change to a compressed natural gas (CNG) index on April 1, 2016, the day after the original date Waste Management was to convert its fleet used to perform the services in the Solid Waste Contract to CNG. In July of 2015, the parties extended the deadline for Waste Management to make its fleet conversion and construct its new maintenance facility to June 9, 2017 by written amendment (City Secretary Contract No. 28358-A2E1) to the Solid Waste Contract.

Since the conversion of Waste Management's fleet to CNG in July of 2018 the parties have been in dispute on the 1) application date for the CNG fuel index to first be applied; and 2) the appropriate CNG fuel index to be applied. The City's position is that the CNG fuel index should have first been applied beginning in the FY2019, where the cost adjustment is based on the change in index price from September 2017 to September 2018 and which would mean the City has realized a shortfall of approximately \$2.5 million. Waste Management maintains that because the conversion of the fleet did not occur until mid-contract year July 2018, the CNG fuel index should not apply until the FY2020, where the cost adjustment is based on the change in the applicable index between September 2018 and September 2019.

The Solid Waste Contract references a California Citygate CNG index for illustrative purposes for the cost adjustment switch from diesel to CNG and that the parties must still agree on the correct market index to use for CNG component. The parties were in dispute on which CNG index was most appropriate to apply in the cost adjustment.

The parties have negotiated in good faith a settlement to resolve the dispute on the correct application date of the CNG index to the cost adjustment as well as the appropriate CNG index to be used. Waste Management shall pay the City \$359,983.00 as a service credit for FY2020 (10/1/2019 to 9/30/2020). And Waste Management agrees to use the Texas Citygate Compressed Natural Gas Price index for (i) the FY2021 cost adjustment (i.e., effective 10/1/2020) that will be applied to the current per home rate of \$12.72 and (ii) the remaining annual cost adjustments in the current contract term that ends on March 31, 2023. In addition to the settlement agreement, the parties will enter into an amendment to the Solid Waste Contract to identify the United States Energy Information Administration (EIA) Texas Citygate CNG Index, <https://www.eia.gov/dnav/ng/hist/n3050tx3m.htm>, as the correct index in the cost adjustment method.

A Form 1295 is not required because: This contract will be with a publicly-traded business entity or a wholly-owned subsidiary of a publicly-traded business entity: Waste Management

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## **FISCAL INFORMATION / CERTIFICATION:**

The Director of Finance certifies that upon approval of the above recommendation and execution of the agreement, funds will be deposited into the Solid Waste Fund. The Code Compliance Department (and Financial Management Services) is responsible for the collection and deposit of funds due to the City.

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