



**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Motion to authorize the City Manager to execute Amendment 3 to the Waste Management Contract dated June 1, 2004		Meeting Date: November 17, 2008
Department: City Manager	Attachments: Draft Proposed Amendment #3 to Comprehensive Garbage, Recyclables and Yard Debris Collection Contract	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: Tabatha Miller, Finance Director		
Telephone: (206) 439-3150		
Adopted Initiative: Yes No X	Initiative Description: N/A	
PURPOSE/REQUIRED ACTION:		
<p>The purpose of this agenda item is for Council to authorize the City Manager to execute an amendment to the Waste Management contract incorporating commercial recycling.</p>		
BACKGROUND (Include prior Council action & discussion):		
<p>In March 2004, the current Waste Management Collection Contract was executed. Subsequently, two amendments were approved. This third amendment would adjust all commercial garbage rates to match the City's current multi-family rates and include recycling, which is at present a separate billing for commercial garbage customers.</p> <p>Commercial garbage rates in the City would increase by an average of 14.3%, and commercial customers would be able to recycle up to 150% of their garbage volume as part of their new garbage rates.</p> <p>Because the Washington Utilities and Transportation Commission (WUTC) does not regulate recycling, future rate increases, <i>for all services including residential and multi-family</i>, will instead be handled with an annual escalation system that blends inflationary indices applicable to this industry.</p>		
OPTIONS (Including fiscal impacts):		
<ol style="list-style-type: none"> 1. Authorize City Manager to finalize amendment 3 and execute. 2. Do not authorize City Manager to finalize amendment and hold for further action or discussion. 		
Administrative Recommendation: Authorize the City Manager to execute amendment 3 to the Waste Management Contract dated June 1, 2004.		
Committee Recommendation: N/A		
Advisory Board Recommendation: The BEDP reviewed at their September 26, 2008 meeting and passed a motion to support the proposed changes.		
Suggested Motion: A motion to authorize the City Manager to execute amendment 3, which incorporates recycling into the Burien's commercial trash service.		
Submitted by: Tabatha Miller		
Administration 	City Manager 	
Today's Date: November 12, 2008	File Code: R:\CC\Agenda Bill 2008\111708ad-5 Waste Mgmt Amend.docx	

**AMENDMENT NO. 3 TO COMPREHENSIVE GARBAGE, RECYCLABLES AND
YARD DEBRIS COLLECTION CONTRACT**

This Third Amendment to Comprehensive Garbage, Recyclables and Yard Debris Collection Agreement (this "Amendment") is made and entered into as of November __, 2008 (the "Effective Date") by and between Waste Management of Washington, Inc., ("Contractor") and the City of Burien, a municipal corporation of the State of Washington ("City"). The parties shall be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise. Any capitalized terms not otherwise defined herein shall have the definition ascribed to them in the Agreement (as defined below).

RECITALS

- A. The Parties entered into that certain Comprehensive Garbage, Recyclables and Yard Debris Collection Agreement dated as of June 1, 2004, and amended pursuant to that certain Amendment No. 1 effective May 24, 2004 and that certain Amendment No. 2 effective January 4, 2005, to provide for the collection of Garbage, Yard Debris, and Recyclables from Single Family Residences, Multifamily Complexes and Commercial Customers located within the City Service Area (the Comprehensive Garbage, Recyclables and Yard Debris Collection agreement together with the amendments thereto being hereinafter referred to as the "Agreement"); and
- B. The Parties now desire to revise and amend the Agreement, upon the terms and conditions set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent, and warrant as follows:

- 1. **Definitions.** Capitalized terms used herein shall have the meaning set forth in the Agreement, unless otherwise indicated in this Amendment.
- 2. **Addition of New Section 2.2.11.** Commencing as of the Effective Date, the following Section 2.2.11 will be added to the Agreement:

2.2.11 Commercial Recycling Collection

2.2.11.1 Subject Materials

The defined list of Recyclables, as set forth in Section 2.2.2.1, shall be collected from all participating Commercial Customers as part of basic Garbage collection services, without extra charge.

The Contractor shall collect all Recyclables from Commercial Customers that are prepared in a manner similar to that described for Single Family Residential Recyclables in Section 2.2.2.1.

2.2.11.2 Containers

Contractor-supplied Recycling Containers shall be used for collecting Recyclables from Commercial Customers. Recycling Carts shall be distinguished from Yard Debris or Garbage collection and shall include prominent identifying labels that provide directions for the preparation of the materials to be placed in the cart.

At larger businesses, the Contractor may use Detachable Containers or Drop-Box Containers for Recyclables and collection provided that they are distinguished from containers used for Garbage collection and are equipped with prominent identifying labels.

Contractor-owned containers shall be delivered by the Contractor to requesting customers within three (3) days of the customer's initial request.

2.2.11.3 Specific Collection Requirements

Recyclables collection from Commercial Customers shall be offered weekly during the hours and days specified in Section 2.1.4. Collections shall be made on a regular schedule on a consistent day and as close to a consistent time as possible to minimize customer confusion. The Contractor shall collect in alleys where practical, and on streets where no alleys are present. Containers shall be replaced in the same location after emptying.

When providing Recyclable collection to a particular Commercial Customer, the Contractor shall not be required to provide recycling container capacity greater than 150 percent of the customer's garbage collection container size. For example a customer with a two cubic yard Garbage container would be provided up to three and yards of recycling container capacity. Any additional recycling may be fee-based as negotiated between that customer and the Contractor.

3. Amendment and Restatement of Attachment B. Commencing as of the Effective Date, a new Attachment B as attached hereto, shall be adopted setting forth Contractor's Rates and shall supersede and replace Attachment B to the Agreement, in its entirety. Such rates shall be subject to adjustment as provided in the Agreement and in this Amendment. Not less than forty-five (45) days prior to implementation of the rate schedule set forth in new Attachment B, the Contractor shall, on behalf of the City, provide notice of the rate increase to all ratepayers, consistent with the requirements of RCW 35A.21.152. Such notice is a condition precedent to implementation of the above described rate adjustment.

4. Amendment to Section 2.3.5. Commencing as of the Effective Date, the following paragraph shall be added to the end of Section 2.3.5:

"Contractor shall use good faith efforts to provide an outreach program to communicate the changes to the services provided to Commercial Customers and shall work with such customers to increase recycling volumes and reducing garbage volumes."

5. Amendment to Section 3.3. Commencing as of the Effective Date, Section 3.3 of the Agreement will be amended and restated in its entirety as follows:

3.3 Compensation Adjustments

3.3.1 Inflation Adjustment

The Contractor's collection service charges, excluding waste disposal fees, for each level of service shall increase or decrease each year under this Contract by the following formula:

The "Inflation Adjustment Factor" will be based on three indices computed by the United States Department of Labor, Bureau of Labor Statistics. The three indices and their weights are: 1) the second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area, Series ID No. CWURA423SAO, or successor indices, which will have a weight of 42%, 2) the Energy Information Agency annual West Coast Retail Price Series for On-Highway Diesel Fuel, Index No. PADD5, which will have a weight of 8%, and 3) the Employment Compensation Cost Index for Private Industry, in current dollars, December 2005=100, for Trade, Transportation and Utilities, Series ID No. ECU20140000000001 (B,I), which will have a weight of 50%.

The Inflation Adjustment Factor, for the contract year beginning in June 1, 2009, and for each subsequent contract year, will be calculated by taking the weighted average, based on the weights above, of the percentage difference between the three indices' most recent year-end values and the corresponding values for the prior year, and adding the result to 1.0.

This annual Inflation Adjustment Factor will be applied to all rates set forth under the Contract, unless otherwise noted herein

Adjustments to the Contractor's rates will be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) will not be considered when making adjustments.

Rates will be adjusted annually, beginning June 1, 2009. On or by March 15th of each year, starting March 15th 2009, the Contractor shall submit to the City for review and approval a Rate Adjustment Statement calculating the new rates for the next year. Not less than forty-five (45) days prior to June 1st, the Contractor shall, on behalf of the City, provide notice of the rate increase to all ratepayers, consistent with the requirements of RCW 35A.21.152. Such notice is a condition precedent to implementation of the above described rate adjustment.

3.3.2 Disposal Fee Adjustments

Periodic adjustments will also be made to Contractor collection rates to reflect increases or decreases in King County disposal fees for solid waste. In the event of a change in disposal fees, the disposal fee component of those rates shall be adjusted, based on container content weights previously used by the Contractor's WUTC rate model. The Contractor shall provide supporting data on historical and proposed disposal cost components and container weights to the City at least forty-five (45) days before the disposal fee change is scheduled to take effect. Not less than forty-five (45) days prior to the disposal fee adjustment taking effect, the Contractor shall, on behalf of the City, provide notice of the rate increase to all ratepayers, consistent with the requirements of RCW 35A.21.152. Such notice is a condition precedent to implementation of the above described rate adjustment.

3.3.3 Changes in Disposal or Yard Debris Processing Sites and Processing Fees

Should the Contractor be required by the City or other governmental authority to use disposal or Yard Debris processing sites other than those being used at the initiation of this Contract, or should the Contractor's Yard Debris processing fees increase more than the normal escalation of the index detailed in Section 3.3, the Contractor will submit a detailed proposal for the adjustment of the rates to reflect any additional cost or savings to the Contractor.

3.3.4 Taxes and Fees

If new City, King County, Washington State, or federal taxes, fees or surcharges are imposed or the rates of existing taxes or fees are changed after the execution date of this Contract, Contractor's rates shall be adjusted accordingly.

6. Amendment to 4.1 Liquidated Damages. Commencing as of the Effective Date, Section 4.1 of the Agreement will be amended to include the following:

Failure to deliver recycling cart or recycling drop box container within seven (7) days of request to Commercial Customers commencing upon the effective date of this Amendment No. 3.

Liquidated Damages: \$15.00 Dollars per cart/container per day.

7. Deletion of Attachment C. Commencing as of the Effective Date, Attachment C-Rate Modification Examples is deleted from the Agreement.

8. Full Force and Effect. Except as otherwise provided in this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

9. Counterparts. This Amendment, including a facsimile or photocopy hereof, may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one (1) and the same instrument.

IN WITNESS WHEREOF, the Parties enter into this Amendment as of the date first set forth above.

**WASTE MANAGEMENT OF
WASHINGTON, INC.**

By: _____

Name: _____

Title: _____

CITY OF BURIEN

By: _____

Name: _____

Title: _____

**EXHIBIT B (There is no Exhibit A)
CONTRACTOR RATES**

	Existing	Proposed
	Commercial	New Commercial
	Monthly	Monthly
Service	Rate	Rate
35 gal	\$15.30	\$16.49
64 gal	\$24.90	\$27.07
96 gal	\$31.84	\$35.09
1 Yard - 1x	\$64.73	\$71.75
1 Yard - 2x	\$121.07	\$135.11
1.25 Yard - 1x	\$68.72	\$86.26
1.25 Yard - 2x	\$129.04	\$146.58
1.5 Yard - 1x	\$87.87	\$98.40
1.5 Yard - 2x	\$166.73	\$187.79
1.5 Yard - 3x	\$245.60	\$277.19
2 Yard - 1x	\$109.90	\$123.94
2 Yard - 2x	\$208.70	\$236.78
2 Yard - 3x	\$307.50	\$349.62
3 Yard - 1x	\$161.00	\$182.06
3 Yard - 2x	\$309.20	\$351.32
3 Yard - 3x	\$457.40	\$520.58
4 Yard - 1x	\$196.90	\$224.98
4 Yard - 2x	\$378.90	\$435.06
4 Yard - 3x	\$560.90	\$645.11
4 Yard - 5x	\$924.90	\$1,065.30
6 Yard - 1x	\$271.03	\$313.15
6 Yard - 2x	\$524.97	\$609.21
6 Yard - 3x	\$778.90	\$905.26
8 Yard - 1x	\$341.23	\$397.39
8 Yard - 2x	\$662.77	\$775.09
8 Yard - 3x	\$984.30	\$1,152.78
8 Yard - 4x	\$1,305.83	\$1,530.47