CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst

SUBJECT: July 7, 2022 Government Audit and Oversight Committee Meeting

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Item 2 **File 22-0642**	**Department:** Mayor's Office of Housing & Community Development (MOHCD)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend Chapter 47 of the Administrative Code to add an enhanced housing preference for veterans of the armed services. Veterans with housing preferences noted in the Code would take priority over non-veterans within each category of housing preferences.

Key Points

- Affordable housing units are assigned by lottery, with applicants in a preference category receiving priority. Chapter 47 housing preference categories include, in order of priority: (1) applicants who have been displaced by Redevelopment Agency projects, (2) applicants displaced by an Ellis Act, owner move-in eviction, fire, or applicants vacating a unit that is no longer income-restricted, (3) applicants living within a half mile or the same Supervisorial District as an affordable housing unit, and (4) applicants who live or work in San Francisco. All of these preference categories have been added by the Board of Supervisors since 2008.

Fiscal Impact

- According to MOHCD, creating a veteran housing preference priority would take approximately 2,640 hours of work, or approximately 1.5 full-time equivalent positions (FTE). Completing the necessary updates to the DAHLIA system could be accomplished by temporary staff, the cost of which would be $300,000 - $400,000.

Policy Consideration

- According to the proposed ordinance, in 2018 approximately 15,648 (or 62.6 percent) of veterans would have incomes between 30 and 80 percent of area median income, making them eligible for most MOHCD affordable housing programs. However, in April 2022, MOHCD completed a review using 2019 Census data that found that 5,750 or 23 percent of San Francisco veterans are in that income bracket. Given the size of the sample, the actual number of eligible veterans may differ from these estimates.
- Because the proposed ordinance creates a veterans housing preference priority, the four existing Chapter 47 housing preference categories must be expanded to eight new preference categories and the ranking system must be altered to accommodate a new hierarchy of veteran and non-veteran housing preference holders. According to MOCHD, adding a veterans preference category is less technically complex and may be accomplished at an approximate cost of $135,000.

Recommendation

- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

Affordable Housing Preferences

Chapter 47 of the Administrative Code governs preferences for MOCHD below market rate rental and ownership housing programs, after applicants meet income and other program eligibility requirements.[1] Affordable housing units are assigned by lottery, with applicants in a preference category receiving priority. Chapter 47 housing preference categories include, in order of priority: (1) applicants who have been displaced by Redevelopment Agency projects, (2) applicants displaced by an Ellis Act, owner move-in eviction, fire, or applicants vacating a unit that is no longer income-restricted, (3) applicants living within a half mile or the same Supervisorial District as an affordable housing unit, and (4) applicants who live or work in San Francisco. All of these preference categories have been added by the Board of Supervisors since 2008.

In addition, MOHCD provides project-based housing preferences for public housing residents that have been relocated during public housing revitalization projects and other renovation projects, Treasure Island residents, and certain projects sponsored by the Office of Community Investment and Infrastructure. Finally, applicants from disaster areas, and first responder and educator participants in the Down Payment Assistance Loan Program receive housing preferences.

DAHLIA Database

MOHCD uses DAHLIA, a custom-built database and housing portal, to manage affordable housing listings and applications. The programming language is obsolete and department is collaborating with the Office of Digital Services to modernize the database and system for listing and applying for affordable housing. The FY 2022-23 – FY 2023-24 annual appropriation ordinance, pending before the Board of Supervisors, funds four new positions to support this effort. The four positions are: (1) a content designer to enhance user experience, (2) a data engineer to create and update data within DAHLIA, (3) a Salesforce Engineer to reduce the workload of application processing by better integrating datasets, and (4) a full stack engineer to re-write the database in a modern coding language. The annualized cost of these positions is approximately $900,000 and, according to City Administrator staff, together they support the DAHLIA housing portal, enabling the addition of new programs and new housing preferences.

[1] Chapter 47 does not pertain to programs or affordable housing units exclusively supported by the Department of Housing and Urban Development, the San Francisco Human Services Agency, the San Francisco Department of Public Health, or the San Francisco Housing Authority

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Chapter 47 of the Administrative Code to add an enhanced housing preference for veterans of the armed services that have a Chapter 47 housing preference. Veterans would take priority over non-veterans within each category of housing preferences.

FISCAL IMPACT

According to information provided by MOHCD, creating a veteran housing preference priority would require 2,640 hours of work, which translates to approximately 1.5 full-time equivalent staff. According to MOHCD, the four new DAHLIA positions will be immediately occupied with other projects but completing the necessary updates to the DAHLIA system could be accomplished by temporary staff.

The cost the DAHLIA job class added in FY 2022-23 (1043 IS Engineer Senior) is $238,433 per year or $114.63 per hour, including salary and benefits. MOHCD provided a cost estimate for the work at $155 per hour. We therefore estimate the implementation cost to be between $300,000 - $400,000.

POLICY CONSIDERATION

Veterans in San Francisco

Based on information from the U.S. Census and Department of Defense, we estimate San Francisco veterans are 3.1 percent of the City's population, or approximately 25,000 people. According to the proposed ordinance, in 2018 approximately 15,648 (or 62.6 percent) of veterans would have incomes between 30 and 80 percent of area median income, making them eligible for most MOHCD affordable housing programs. However, in April 2022, MOHCD completed a review using 2019 Census data that found that 5,750 or 23 percent of San Francisco veterans are in that income bracket, 17 percent of veterans were below 30 percent of area median income (and therefore not eligible for most MOHCD affordable housing units), and the remaining population had incomes higher than 80 percent of area median income. Given the size of the sample, the actual number of eligible veterans may differ from these estimates.

Adding Veteran Housing Preference Without Adding a Preference Hierarchy May Be Less Costly

Because the proposed ordinance creates a veterans housing preference priority, the four existing Chapter 47 housing preference categories must be expanded to eight new preference categories and the ranking system must be altered to accommodate a hierarchy of veteran housing preference holders followed by non-veteran housing preference holders.[2] According to MOCHD, adding a veterans preference category, rather than a priority within existing categories, is less technically complex and may be accomplished at an approximate cost of $135,000. If the Board of Supervisors adopts this change, it should work with MOHCD to determine the appropriate ranking of veterans among the four Chapter 47 housing preferences.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

[2] For example, under the proposed ordinance, displaced tenants who are veterans would take priority over non-veteran displaced tenants, who in turn would take priority over veteran neighborhood preference applicants.

Item 5 **File 22-0600** *(Continued from June 16, 2022)*	**Department:** Office of Contract Administration

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the contract for biosolids production and management services between Lystek International Limited and the City for a term of five years (from July 2022 through June 2027) and initial amount of $16.4 million, with one two-year option to extend through June 2029 for an additional $6.4 million, for a total possible contract duration of seven years and not to exceed amount of $22.8 million.

Key Points

- The City's two wastewater facilities, the Southeast Wastewater Treatment Plant and the Oceanside Wastewater Treatment Plant, produce approximately 60,000 wet tons of "Class B" biosolids per year. These biosolids can be used as a fertilizer to improve soil quality. The proposed contract entails the management and conversion of biosolids. SFPUC has increased conversion of biosolids due a change in state law that effectively eliminates sending biosolids to landfills.
- Since the current contract with Lystek expired and could not be extended, OCA released a new solicitation for the same types of biosolids production and management services in March 2022. Lystek International was the only contractor to submit a bid and will continue to provide the same type of biosolids processing services except with the addition of the SynaGro Central Valley Compost site, which was not a part of the previous contract.

Fiscal Impact

- Estimated costs under the proposed contract are approximately $15.1 million for the first five years of the contract (July 2022 through June 2027), and approximately $22 million if the Department exercises the two-year extension option through June 2029. The not to exceed amount includes a 3.7 percent contingency to account for higher than budgeted inflation. Costs will be paid for by SFPUC Wastewater Enterprise funds.
- Under the proposed contract, processing costs have increased approximately 55 percent (from an average of $72 to approximately $112) due to higher chemical and transportation costs. If operating costs do decrease significantly, as indicated by the regional consumer price index, the Department will consider rebidding the contract after 5 years.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Treatment of Wastewater in San Francisco

The City's two wastewater facilities, the Southeast Wastewater Treatment Plant and the Oceanside Wastewater Treatment Plant, produce approximately 60,000 wet tons of "Class B" biosolids per year. These biosolids are used as a fertilizer to improve soil quality. The proposed contract entails the management and conversion of the City's biosolids from "Class B" to "Class A" biosolids. "Class B" biosolids is a designation for treated sewage solids that meets EPA guidelines for use as fertilizer and has undergone treatment to reduce (but not eliminate) pathogens. Class A biosolid products, such as liquid fertilizer or compost, have undergone pathogen elimination and are suitable for sale to a variety of horticultural or agricultural markets. Since 2017, Lystek International, a Canadian waste treatment technology company, has been responsible for the management and conversion of Class B biosolids into Class A. A different contractor, Denali Water Solutions, is responsible for transporting the biosolids to facilities outside of San Francisco after it has been processed at the City's wastewater treatment facilities. The City's contract with Denali Water Solutions LLC is for a three-year term (October 2019 through September 2022) with a not to exceed amount of $8.7 million.

Previous Contract #63001 for Biosolids Beneficial Reuse Services

In March 2017, the Office of Contract Administration (OCA) released a solicitation for reuse services to either convert Class B biosolids into Class A marketable biosolid products or to process biosolids for energy and/or fuel production.[1]

Lystek International submitted a bid and was awarded contract #63001 for the processing and conversion of Class B biosolids into Class A biosolids. In May 2017, the contract was executed with Lystek International for an initial 2-year total period from May 15, 2017 to May 14, 2019 with an initial not-to-exceed amount of $500,000 and one three-year option to extend. The contract has been modified four times, increasing the not-to-exceed amount to $5.7 million and extending the contract term to five years total (from May 2017 to May 14, 2022).

Because the current contract expired on May 14, 2022, OCA issued an emergency Purchase Order to pay for services from May 15, 2022 to July, 1, 2022. Under contract #63001, Lystek operated the Lystek Fairfield Organic Material Recovery Center (OMRC), which received and processed wet

[1] Biosolids, as a byproduct of wastewater treatment, can also be used as a renewable energy resource.

biosolids from the City's two wastewater treatment plants. Exhibit 1 shows the number of tons of biosolids processed at the site from 2019 through 2021.

Exhibit 1: Tons of Biosolids Processed at the Lystek Fairfield Organic Material Recovery Center under Contract 63001

Year	Tons of Biosolids Processed
2018	11,470
2019	15,081
2020	11,458
2021	25,996
2022	14,373
Total	**78,378**

Source: OCA and SFPUC

As shown in Exhibit 1 above, the Lystek Fairfield Organic Material Recovery Center received and processed 78,378 combined tons of biosolids from the Oceanside Wastewater Treatment Plant and the Southeast Wastewater Treatment Plant under the contract with Lystek International. The contract has been used to process larger quantities of material each year as the SFPUC shifts away from sending biosolids to landfills, a practice which Senate Bill 1383 (California's Short-Lived Climate Pollutant Reduction Act) will effectively eliminate (see below).

New Solicitation to Procure Class A Biosolids Production and Management Services

Since the previous contract expired and could not be renewed, OCA released a new solicitation on March 29, 2022 for biosolids production and management services. The solicitation was a low bid solicitation, which means that the contract is awarded based on the lowest price that also meets the minimum requirements. As such, the solicitation was not scored and there were no panel members. Lystek International was the only contractor to submit a bid by the solicitation deadline. OCA staff determined that Lystek International's proposal met the minimum qualifications required by the solicitation and accepted their bid.

The solicitation for proposed contract 63002 required a minimum capacity of at least 35,000 tons of biosolids per year. In response to the solicitation, Lystek International offered two sites with a total annual capacity of 35,000 tons to meet the requirements for increased capacity. There was no minimum capacity requirement for the previous contract 63001.

Required Increase in Biosolids Processing Capacity due to Senate Bill 1383

SB 1383 is a set of regulations which seek to reduce the amount of organic material being sent to landfill. When biosolids are sent to a landfill, in addition to this being a waste of their nutrients, methane gas, a potent greenhouse gas, is produced. Conversely when used as a fertilizer, the nutrients of the biosolids replace fossil fuel-based fertilizers and have been shown to sequester carbon. For these reasons, the SFPUC transitioned away from any management practices which are not in compliance with SB 1383.

According to OCA staff, when contract 63001 was first procured in 2017, Lystek's biosolids management services represented a much smaller part of PUC's overall biosolids management strategy. However, the passage of SB 1383 in 2016 required the state to take additional steps to reduce methane emissions and meet emissions reduction targets, including reducing organic waste being sent to a landfill by 50 percent of the statewide 2014 level by 2020 and by 75 percent in 2025. As a result of SB 1383, the City has transitioned from sending biosolids to landfill and increased processing of biosolids for other uses.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the contract for biosolids production and management services between Lystek International Limited and the City for a term of five years (from July 2022 through June 2027) and initial amount of $16.4 million, with one two-year option to extend through June 2029 for an additional $6.4 million, for a total possible contract duration of seven years and not to exceed amount of $22.8 million. The resolution was amended in the June 16, 2022 Government Audit and Oversight meeting to correct the not to exceed amount from $22.4 million to $22.8 million.

Proposed Contract #63002 for Class A Biosolids Production and Management Services

The proposed contract 63002 requires the contractor to provide the same type of biosolids processing services as the prior contract 63001 except with the addition of the SynaGro Central Valley Compost site, which was not a part of the previous contract. Additionally, contract 63002 includes a requirement that the contractor's facilities have a minimum annual capacity of 35,000 wet tons. In the previous contract, there was no minimum annual capacity requirement.

The services provided under the contract are to continue to produce Class A biosolids from Class B biosolids received from the Southeast and Oceanside Wastewater Treatment plants. Lystek International would operate two sites under the contract, described below:

- Lystek Fairfield Organic Material Recovery Center (17,500 wet tons)
  - This site, located at the Fairfield-Suisun Sewer District, transforms biosolids received from the treatment plants into a Class A liquid fertilizer product. Lystek then sells the fertilizer to area farmers.
- SynaGro Central Valley Compost facility (17,500 wet tons)
  - The SynaGro site, located in Merced County, utilizes composting technology to create a composted end product that can be used to promote plant growth.

FISCAL IMPACT

According to Appendix B of the proposed contract, the cost to process biosolids at the Lystek Fairfield site is $111.73 per wet ton and is $69.44 per wet ton at the SynaGro compost site. The difference in cost is due to different treatment processes and final products at each site. Specifically, the Lystek Fairfield OMRC utilizes more expensive and complex technology to produce a liquid fertilizer, whereas the SynaGro CVC facility utilizes less costly composting methods. The SynaGro site is further away from Southeast Wastewater Treatment Plant (284 miles) than the Fairfield site (95 miles), resulting in higher transportation costs to the City, which in turn fully offsets the SynaGro site's lower processing costs. According to Appendix C of the proposed contract, costs may be escalated by regional inflation each year.

Exhibit 2 below summarizes the estimated costs of the first year of contract spending.

Exhibit 2: Projected Costs for the Lystek's Biosolids Management Contract from July 2022 through June 2029

Year	Lystek OMRC	SynaGro	Projected Tons Processed	Total
1	$1,955,275	$591,629	26,020	$2,546,904
2	2,004,157	969,474	31,121	2,973,631
3	2,054,261	1,020,956	31,494	3,075,217
4	2,105,617	1,074,741	31,872	3,180,359
5	2,158,258	1,130,925	32,255	3,289,183
Subtotal, initial term	*10,277,568*	*4,787,726*	*152,762*	*15,065,294*
6	2,212,214	1,189,608	32,642	3,401,822
7	2,267,520	1,250,891	33,033	3,518,411
Total	**$14,757,301**	**$7,228,225**	**218,437**	**$21,985,526**

Source: Office of Contract Administration

As shown in Exhibit 2, the estimated costs under the proposed contract are approximately $15.1 million for the first five years of the contract (July 2022 through June 2027), and approximately $22 million if the Department exercises the two-year extension option through June 2029. According to OCA staff, the projected costs are only an initial estimate based on the assumption that the downtown City core will return to pre-pandemic population levels and that total tonnage of biosolids will increase 1.2 percent each year of the contract after 2022. The estimates also assume that the costs per ton at each site will increase by 2.5 percent each year based on inflation price adjustments, which are allowed in the contract.

According to Department staff, an estimated 17,500 tons will be sent to the Lystek Fairfield facility and 8,520 tons will be sent to the SynaGro facility during the first year of the contract, and that the tons of biosolids sent to the SynaGro facility will increase by 2.6 percent each year until the final year of the contract when SynaGro will eventually be processing 15,930 tons (from July 2028 – June 2029). Overall, the cost estimate projects that a total of 152,762 tons of biosolids will be processed over the course of the initial 5-year term and an additional 65,675 tons would be processed if the 2-year extension option is exercised, for total tonnage of 218,437 from July 2022 through June 2029. Due to the impact of COVID-related population fluctuations, and uncertainty regarding the number of commuters projected to return to the City over the next few years, OCA cannot provide estimates with certainty.

According to the Department, the remaining $814,474 in the contract's $22.8 million not to exceed amount may be needed as a buffer to account for additional potential price adjustments based on the Consumer Price Index (CPI).

Increase in Costs from Prior Contract 63001

According to the Department, $5,549,668 (out of $5,700,000 available) was spent under the previous contract for biosolids management for the processing of 78,378 tons of biosolids at the Lystek Fairfield OMRC facility for an average cost per wet ton of $70.81.[2]

Under the previous Lystek contract, costs ranged between $70-73.23 per ton to process at the Lystek Fairfield OMRC site, depending on whether the biosolids were sourced from the Oceanside or Southeast treatment plants.[3] Under the proposed contract, processing costs at the Fairfield site have increased approximately 55 percent (from an average of $72 to approximately $112). According to Department staff, the cost increase is due to increase in the costs of several components of the service. Potassium hydroxide, a key part of the Lystek process, has increased from $0.28 to $0.56 per pound, a 100% increase, from January 2022 to June 2022. The price of transporting liquid fertilizer to ranchers, a responsibility of the contractor, has increased by 55% over 2021 rates due to fuel cost increases and a shortage of drivers. Labor costs as well as propane have also increased. These four items, which have increased in cost since 2017, represent the majority of the contractor's per unit processing costs. If operating costs do decrease significantly, as indicated by the regional consumer price index, the Department will consider rebidding the contract after 5 years.

Funding Source

Contract costs will be paid for by SFPUC wastewater rate payers.

RECOMMENDATION

Approve the proposed resolution.

[3] The proposed contract's processing rates are the same for both of the City's wastewater treatment facilities.

Item 6 File 22-0422	Department: Office of Contract Administration (OCA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the Third Amendment to the City's contract with Recology San Francisco, Recology Sunset Scavenger, and Recology Golden Gate (together "Recology"), increasing the not-to-exceed amount by $23,978,000, for a total not to exceed $39,600,000, and extending the term by two years through June 2024.

Key Points

- Recology provides collection, processing, and disposal of refuse (recyclables, compostables, and garbage) to commercial and residential customers in the City. In 2020, the Office of Contract Administration (OCA) entered into a contract with Recology for refuse collection at City facilities, for an initial term of seven months, with an option to extend five months, and an amount not to exceed $5,600,000. The contract has since been amended twice, for a total term of one year and seven months and an amount not to exceed $15,622,000. The contract expired June 30, 2022.
- In the City's prior contract with Recology, rates were based on the San Francisco Uniform Commercial Rates, with discounts for recycling and composting. The City's 2020 contract referenced the Uniform Commercial Rates, however, given the anticipated rate setting process to take place this year and thus, the uncertainty around the Uniform Commercial Rates, the proposed Third Amendment no longer references the Uniform Commercial Rates. Instead, it uses the values for the FY 2022-23 Uniform Commercial Rates adjusted by inflation for the first amendment year and allows an escalation by inflation in May 2023 for FY 2023-24 (the second amendment year).

Fiscal Impact

- The proposed Third Amendment would increase the not-to-exceed amount of the contract by $23,978,000, for a total not to exceed $39,600,000. Costs are paid out of each City department budgets and depend on use.

Policy Consideration

- OCA has issued a competitive solicitation for a new refuse collection contract for City departments, with a goal to have a new contract in place by July 2024. The Controller's Office has determined that Recology overcharged customers by $23.4 million above the $101 million settlement agreement approved by the Board of Supervisors and provided a gift to the Friends of the Environment in 2015 and 2019 during the Department of Environment's contract negotiations with Recology.

Recommendations

- Amend the proposed resolution to state that approval is retroactive to July 1, 2022.
- Approve the resolution as amended.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Contract History

Recology provides collection, processing, and disposal of refuse (recyclables, compostables, and garbage) to commercial and residential customers in the City. In November 2020, the Budget and Finance Committee recommended approval of a resolution (File 20-1213) that would have approved a new $62.5 million agreement with Recology through November 2026 to collect refuse from City facilities; however the Board of Supervisors re-referred the item back to that Committee after the U.S. Attorney's Office charged a Recology executive with bribing the former Director of Public Works to raise residential refuse collection rates for Recology's financial benefit. In the interim, the Office of Contract Administration (OCA) entered into a short-term agreement with Recology to continue to collect refuse from City facilities. The original contract was for an initial term of seven months from December 2020 through June 2021, with an option to extend five months through November 2021, and an amount not to exceed $5,600,000. In June 2021, OCA executed the First Amendment to the contract, extending the term by five months through November 2021, and increasing the not-to-exceed amount to $9,900,000. In November 2021, the Board of Supervisors approved the Second Amendment to the contract, extending the term by seven months through June 2022, and increasing the not-to-exceed amount to $15,622,000 (File 21-1083).

As with the City's prior refuse collection agreements with Recology, the current agreement was awarded as a sole source procurement on the basis that Recology is the only entity permitted to collect residential and commercial refuse in the City (see Refuse Collection & Disposal Ordinance discussion below) and therefore uniquely positioned to provide such services to the City.[1] According to the City's Attorney's Office, the City may nevertheless competitively procure refuse collection services. OCA is requesting the current contract with Recology be extended while it conducts a solicitation for a new contract for the City's refuse collection, with plans to have a

[1] In addition to the waste collection contracts, the City has a Landfill Agreement with Recology that is administered by the Department of the Environment. The Landfill Agreement designates Recology's landfill in Vacaville as the exclusive site for the disposal of all solid waste collected in San Francisco and obligates Recology to operate a transfer station in San Francisco to process waste, separate recyclable and compostable material, and consolidate remaining refuse for transport to the landfill. On April 7, 2022, the Department of the Environment Director resigned after allegations were reported that she had solicited donations from Recology before awarding the Landfill Agreement in 2015 and later a Hazardous Waste Agreement in 2019, which are detailed in the Controller's Office April 8, 2022 Public Integrity Review: San Francisco Department of Environment's Relationship with Recology and Lack of Compliance with Ethics Rules.

new contract in place by July 2024 (see Policy Consideration section below). OCA advertised the solicitation in June 2022.

Refuse Collection & Disposal Ordinance

In 1932, voters approved the Refuse Collection and Disposal Ordinance, which requires refuse collection firms to obtain a license for operations and permits to collect residential and commercial refuse within certain areas of the City.[2] The regulations do not apply to refuse collection for City facilities, although all refuse collectors within City limits are required to obtain truck permits and licenses. The 1932 Ordinance created 97 permits for refuse collection, which, due to acquisitions since the 1932 Ordinance was approved, are currently all owned by Recology.[3]

Historically, residential rates were set by the Refuse Rate Board, which consisted of the Public Utilities Commission, City Administrator, and Controller. Rate proposals were evaluated by Public Works during public hearings.

On June 7, 2022 voters approved Proposition F, which made the following changes: (1) restructures the refuse rate-setting process to replace rate hearings before Public Works with a requirement that the Controller, as Refuse Rate Administrator, regularly monitor rates and appear before the Refuse Rate Board to recommend rate adjustments for both residential and non-residential customers; (2) appoint a Ratepayer Representative to replace the Controller on the Refuse Rate Board; (3) require applicants for refuse collection permits to demonstrate their ability to avoid disruptions in service; (4) authorize the Board of Supervisors on recommendation of the Refuse Rate Administrator, Refuse Rate Board, and Mayor to amend the Refuse Ordinance by eight-vote supermajority; and (5) fully codify the Refuse Ordinance in the Health Code (File 22-0052).

The Uniform Commercial Rates for refuse collection, which were the reference rates for the City's 2020 Recology contract, were not regulated prior to the passage of Proposition F but were influenced by the residential rates because of the close proximity of residential and commercial customers. Since 2006, Recology has applied rate increases approved for residential rates to their uniform commercial rates. Historically, uniform commercial rates were typically adjusted each fiscal year. The Refuse Rate Board approved an approximate 5 percent cost of living increase for FY 2022-23 residential refuse collection rates.[4]

Overcharging Customers

In May 2021, the Board of Supervisors approved an ordinance authorizing a settlement agreement with Recology that required Recology to repay customers $94.5 million and pay civil penalties of $7 million related to refuse rate increases in 2017 that were based on inaccurate

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[2] The Director of Public Health issues refuse collection licenses.

[3] Under the 1932 Ordinance, additional permits for refuse collection may only be granted if 20 percent of the customers within a permit area sign a petition stating that they are inadequately served or if the license of the refuse collector is revoked. Licenses for refuse collection operators may be revoked if the Director of Public Health determines that the refuse collection license holder is not providing adequate service or is overcharging for service.

[4] The Cost of Living Adjustment (COLA) is based on increases to costs of labor, health and welfare, pensions, renewable diesel, natural gas fuel, materials, and capital. The COLA may be reduced through ratepayer rebates if Recology does not meet waste reduction targets.

information provided by Recology during the 2017 residential refuse rate setting process and to unlawful gifts to City officials (File 21-0329). The settlement also provided for an approximately 6.8% decrease in commercial rates effective April 2021 as well as a decrease in residential refuse rates.

In May 2022, the Controller's Office issued a Public Integrity Review report finding that Recology had netted $23.4 million in profits over the allowed 9 percent profit margin from 2018 through 2021, even after payment of the $101 million settlement. The report recommends: (1) Recology deposit the excess $23.4 million profits, and any other excess profits found from reviews of prior years, into a balancing account; (2) use the balancing account to offset future rate increases, or to stabilize rates during volatile years; and (3) Recology's rate reports accurately and timely identify when rates exceed or fall below the allowable amount and promptly adjust the balancing account.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Third Amendment to the City's contract with Recology San Francisco, Recology Sunset Scavenger, and Recology Golden Gate (together "Recology")[5] increasing the not-to-exceed contract amount by $23,978,000, for a total not to exceed $39,600,000, and extending the term by two years through June 2024.

Since the existing contract with Recology expired on June 30, 2022, the proposed resolution should be amended to state that approval of the Third Amendment is retroactive.

Services Provided

The scope of services for the proposed agreement includes the following:

- Collection and processing of refuse (recyclables, compostables, and trash) generated by all City departments within San Francisco city limits
- Refuse bins for both interior and exterior collection
- Identifying opportunities to reduce the level of refuse service and eliminate secondary charges to decrease costs to departments
- Providing reports on recovery rates and non-compliance with proper separation of recyclables, compostables, and trash

City Departments determine the frequency for each site's refuse collection.

Change in Contract Rates

In the City's prior contract with Recology, rates were based on the San Francisco Uniform Commercial Rates, with discounts for recycling and composting. The City's 2020 contract referenced the Uniform Commercial Rates, however, given the anticipated rate setting process to take place this year and thus, the uncertainty around the Uniform Commercial Rates, the proposed Third Amendment no longer references the Uniform Commercial Rates. Instead, it uses

[5] Recology Sunset Scavenger and Recology Golden Gate are collection companies that service different areas of the city. Recology San Francisco is the company that owns the transfer station and recyclables processing facility where collected material is handled.

the values for the FY 2022-23 Uniform Commercial Rates adjusted by inflation for the first amendment year and allows an escalation by regional inflation in May 2023 for FY 2023-24 (the second amendment year).

FISCAL IMPACT

The proposed Third Amendment would increase the not-to-exceed amount of the contract by $23,978,000, for a total not to exceed $39,600,000. Due to the City's return to in-person work starting November 1, 2021, OCA is using the average monthly spend of $807,417 from November 2021 through February 2022 as a baseline for future months, and assumes 4.99 percent annual adjustments in future fiscal years, in line with Recology's commercial rate increase for FY 2022-23. Exhibit 1 below summarizes the expenditures on the existing Recology contract and estimates projected expenditures under the proposed Third Amendment using the average monthly spend of $807,417 and assuming five percent annual escalation.

Exhibit 1: Actual and Projected Contract Expenditures

Current Not-to-Exceed (through June 2022)	$15,622,000
Average Monthly Spend (Nov 2021 – Feb 2022)	807,417
FY 2022-23 (Projected)	$10,173,454
FY 2023-24 (Projected)	10,682,127
Subtotal, Projected Expenditures	*$20,855,581*
Contingency (15% of Projected Expenditures)	3,128,337
Total Actual and Projected Expenditures	**$39,605,918**

Source: OCA

The proposed not-to-exceed amount includes a 15 percent contingency to account for new refuse collection locations, increased collection frequency, and future rate increases that may exceed five percent.

Sources of funding

The revenues to pay for the proposed agreement with Recology would be funded through the individual City departments' annual budgets, as approved by the Board of Supervisors. City departments are responsible for creating purchase orders against the agreement.

POLICY CONSIDERATION

As noted above, OCA has issued a competitive solicitation for a new refuse collection contract for City departments, with a goal to have a new contract in place by July 2024. The award of a new contract may require California Environmental Quality Act (CEQA) review, and any new contractor would need refuse collection vehicle permits and licenses to operate in the City. Under CEQA, the Planning Department would determine if the new contract required an Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report, or Addendum to prior environmental review. The Planning Department estimates that the timeline would be approximately 1-4 months for an exemption, 9-12 months for a Negative Declaration or Mitigated Negative Declaration, 18-24 months for an Environmental Impact Report, or 3-6 months for an Addendum. If a new contract is in place before July 2024, OCA may terminate this contract early.

As noted above, the Controller's Office has determined that Recology overcharged customers by $23.4 million above the $101 million settlement agreement approved by the Board of Supervisors and provided a gifts to the Friends of the Environment in 2015 and 2019 during the Department of Environment's contract negotiations with Recology. The proposed contract extension provides for refuse collection services while options for alternative providers of refuse collection are identified and changes to the service model are evaluated. We therefore recommend approval of the proposed resolution.

RECOMMENDATIONS

1. Amend the proposed resolution to state that approval is retroactive to July 1, 2022.
2. Approve the resolution as amended.