



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** Legal Issues Associated with  
Norcal Amendment

**DATE:** December 13, 2005

Questions have arisen concerning the legal issues associated with the Norcal Amendment.

Since the matter first came to our attention in February 2003, the City Attorney's Office has consistently stated that the City had no legal obligation to enter into such an amendment. Indeed, at different times the legal issues associated with the Norcal Amendment were fully addressed to the Mayor's Office, City Manager's Office and the City Council.

The legal issues associated with the Norcal contract process were as follows:

- In October 2000, questions were raised by Councilmembers as to what the labor peace provisions of the Recycle Plus RFP required. On October 27, 2000, we issued a memorandum which discussed the City's policies regarding prevailing wage, employee retention and labor peace.

Specifically, the memorandum stated that the City cannot request a labor neutrality agreement. This is a matter of federal law. Prior to the December 12, 2000 meeting, CWS provided the City with a labor neutrality agreement. While the City cannot require the agreement, the voluntary provision of such an agreement from CWS addressed the labor peace requirements of the RFP.

- In December 2000, the Council authorized staff to bring back a contract with Norcal. Included in that contract was a provision that Norcal absorb all labor costs without any compensation adjustments. In addition, there was a provision affirmatively stating that the entire agreement between the City and Norcal is contained in the written contract.
- In February 2003, the Mayor's Budget and Policy Director sought additional funding from the Environmental Services Department to cover increased labor costs resulting from labor negotiations between the Teamsters and CWS. City staff was advised unequivocally by our office that additional monies could not be provided without a contract amendment first approved by Council.

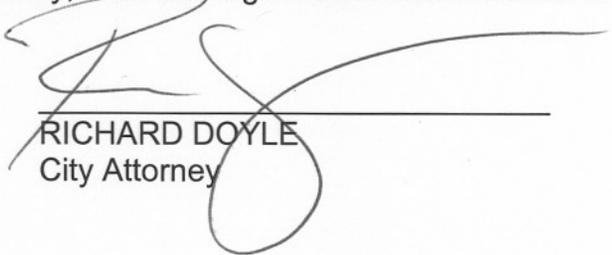
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- In September 2003, representatives from the City Manager's Office and ESD met with members of my staff to discuss a potential proposed contract amendment with Norcal to cover the above noted increased labor costs. Staff was advised that without additional consideration, no such amendment could be processed.
- In Spring of 2004, the Mayor's staff, Manager's staff, and Norcal representatives were advised that no amendment could be processed without additional consideration. Norcal also argued that under the doctrine of "equitable estoppel," it was entitled to additional compensation based on representations from the Mayor's Office in February 2003, that the additional costs would be covered. Norcal did not further this argument after their attorney was advised that the Mayor's Office has no authority to commit the City and that the City Council must ultimately approve any amendment to the contract in order for it to be enforceable against the City.
- On September 21, 2004, the proposed terms of the Second Amendment to the Norcal contract was presented to the City Council. The City Council was advised of the following:
  - That there was no legal obligation on the part of the City to amend the existing contract;
  - That Norcal was solely responsible for the increased labor costs under the existing contract;
  - While the gift of public funds issue was a concern, there was additional consideration proposed as part of the amendment and that the contract achieved a public purpose by preventing a threatened labor disturbance; and
  - That while Norcal made an initial claim that it had relied to its detriment on representations from the Mayor's Office, it was not a very strong claim.

Excerpts from the September 21, 2004 City Council meeting transcript is attached. The transcript confirms that our office was effective in communicating the legal concerns to City staff and City Council. Virtually, all of this legal advice was included within the Council discussion.



RICHARD DOYLE  
City Attorney

cc: Del Borgsdorf

WELL AS BACK IN 2000 WHEN WE WENT  
12 THROUGH THE RFP PROCESS.

>> Councilmember Williams: SO THE CUSTOMERS WON'T BE IMPACTED BY THIS CHANGE  
THAT WE -- IF WE AGREE ON THIS, IF WE VOTE THIS INCREASE IN?

>> THE RATES FOR THE CUSTOMER WOULD NOT CHANGE BY THIS, THIS IS CORRECT.

>> Councilmember Williams: I REALLY WANTED TO HAVE YOU SAY THAT, BECAUSE THE  
NUMBERS WE READ, AND SOMETIMES THE WAY NUMBERS ARE, OUR INTERPRETATION MAY NOT  
BE EXACT. THAT'S WHY I WANTED TO HAVE YOU TELL ME TODAY WHAT THOSE  
NUMBERS ARE. THERE'S BEEN A LOT -- I'VE BEEN OUT TO THE -- I'VE BEEN ON THE LINE  
WHERE THEY DO THE RECYCLING. AND EVEN IF -- EVEN IF WE WEREN'T ASKING FOR THE  
INCREASE, THERE'S A -- THE PEOPLE ON THE LINE DESERVE THE INCREASE. I MEAN,  
THEY'VE DONE THE WORK. I MEAN, THEY'VE BEEN WORKING OVER THIS PERIOD OF TIME, IN  
THE HOPES THAT WE WOULD FINALLY GET TO AGREEMENT. SO THEY PUT SOME FAITH IN  
THE CITY, AND NORCAL, THAT AN APPROPRIATE RESOLUTION WOULD BE WORKED OUT. AND SO  
I FEEL GOOD ABOUT SUPPORTING IT. WE OWE IT TO OUR -- THE INDIVIDUALS WHO TAKE  
CARE OF OUR THINGS THAT WE DON'T LIKE TO TAKE CARE OF. AND I CAN IMAGINE WHAT IT  
WOULD BE LIKE IF WE WEREN'T HAVING PICKUPS IN THE COMMUNITY, AND THE POSSIBILITY  
OF THAT OVERFLOWING INTO EVEN COSTING US MORE. SO WE -- I KNOW EVERYTHING  
ISN'T IDEAL ALL THE TIME. AND THAT'S THE WAY LIFE IS. AND WE HAVE TO BE ABLE TO  
-- THAT'S WHY WE'RE HERE TO MAKE JUDGMENTS. YOU KNOW, WE HAVE PROCESSES THAT WE  
HAVE TO LOOK AT. AND IT RESTS ON THIS COUNCIL, EVEN THOUGH THE MAYOR WAS  
OUT NEGOTIATING, THEY HAVE STATED IN THE PAPER THAT HE HAD NO RIGHT TO DO  
THAT. HE CAN NEGOTIATE ALL HE WANTS BUT HE CAN'T APPROVE. IT HAS TO COME TO THE  
BODY TO BE APPROVED. SO I THINK EVEN IF WE HAVE TO DO IT PRIOR TO NOW, WE'D ALL  
CAME TO THE SAME END, THAT THE COUNCIL WILL HAVE TO MAKE THE FINAL DECISION. SO  
TODAY, WE CAN SAY NO, OR TODAY, WE CAN SAY YES. AND FOR ME, THE INDIVIDUALS  
THAT ARE OUT THERE TAKING CARE OF OUR REFUSE, I'M FOR THEM IN THE SENSE THAT  
THEY NEED TO HAVE CONSIDERATION. PLUS, THEY'VE BEEN WORKING CONTINUALLY, WITH  
THE HOPE THAT WE WOULD FIND A SOLUTION. AND I THINK HAVING CONCLUDED THE WORK,  
AND THE -- WE ARRIVED AT A NUMBER THAT I THINK THAT NUMBER OUGHT TO BE  
SUPPORTED. AND I DO SUPPORT IT. THANK YOU.

>> Mayor Gonzales: ALL RIGHT, THANK YOU FORREST. COUNCILMEMBER REED ON  
THE MOTION.

>> Councilmember Reed: THANK YOU MAYOR GONZALES. I DON'T SEE HOW THESE  
COSTS COULD BE UNANTICIPATED COSTS WHEN HALF THE PEOPLE IN THE ROOM SEEM TO HAVE  
KNOWN THAT THERE WAS A PROBLEM BACK WHEN WE WERE FIRST CONSIDERING THE RFP  
AND THE CONTRACTS. BUT ASSUMING THAT THEY WERE UNANTICIPATED COST I'M CURIOUS AS  
TO WHAT THE CONTRACT SAYS ABOUT WHO'S SUPPOSED TO PAY THE UNANTICIPATED  
COST. IT'S MY UNDERSTANDING BASED ON MY READING OF THE CONTRACT, AND I'M NOT AN  
EXPERT ON THIS PARTICULAR CONTRACT, BUT I DON'T SEE ANYTHING IN THERE THAT  
SAYS THAT THE VENDOR HAS THE RIGHT TO COME BACK TO THE CITY FOR ADDITIONAL LABOR  
COSTS. SO I'M JUST CURIOUS IF RICK CAN ENLIGHTEN US ON THAT.

>> City Attorney Doyle: YOU'RE CORRECT, THE CONTRACTOR, OR NORCAL IN THIS CASE,  
IS SOLELY RESPONSIBLE FOR THOSE COSTS UNDER THE CONTRACT. AND SO WHAT'S BEING  
PROPOSED IS AN AMENDMENT TO THAT CONTRACT.

>> Councilmember Reed: THAT RAISES ANOTHER QUESTION. ASSUMES THAT WE WANT TO  
AMEND IT AND HAVE THE MONEY TO PAY NORCAL, HOW DOES THAT AVOID  
THE CONSTITUTIONAL PROHIBITION AGAINST GIFTS?

>> City Attorney Doyle: THE IDEA OR THE ISSUE OF GIFT TO PUBLIC FUNDS IS ONE  
THAT WE WERE INITIALLY CONCERNED ABOUT IN THE CONTEXT OF NO  
ADDITIONAL CONSIDERATION. AND SO WHEN THE PROPOSAL CAME TO CITY STAFF, WE SAT  
DOWN WITH THE NORCAL FOLKS, WE HAVE AN EXCHANGE, AND I THINK IT WAS POINTED OUT  
IN THE MEMO, THEY'RE ADDING AN EXPANSION OF THE E-WASTE PROGRAM, THEY'RE  
ADDING ADDITIONAL BINS FOR UP TO TEN NEIGHBORHOOD CLEANUPS, THEY ARE ADDING SOME  
ADDITIONAL FUNDS FOR A WASTE CHARACTERIZATION STUDY. THE OTHER ISSUE WITH  
RESPECT TO GIFT OF PUBLIC FUNDS, REALLY THE ISSUE THERE IS, DOES IT SERVE  
A PRIVATE PURPOSE AS OPPOSED TO A PUBLIC PURPOSE? AND HERE THE CITY HAS A

VERY, VERY STRONG POLICY ABOUT PREVENTING STRIKES, LABOR STRIKES, PARTICULARLY IN THIS AREA, AND ALSO WORKER RETENTION. AND THIS IS REALLY TO PROMOTE THE WORKER RETENTION REQUIREMENTS. I AM COMFORTABLE THAT IT SERVES A PUBLIC PURPOSE AND PARTICULARLY WITH THE ADDITIONAL CONSIDERATION, THERE WAS ALSO A POTENTIAL CLAIM FROM THE CONTRACTOR THAT THERE MAY HAVE BEEN SOME DETRIMENTAL RELIANCE. I DON'T BELIEVE THAT WOULD BE A NECESSARILY STRONG CLAIM GIVEN THE CONTRACT REQUIREMENTS AND SPECIFIC LANGUAGE BUT NONETHELESS IT WOULD BE A CLAIM. SO I'M COMFORTABLE THAT IT DOESN'T FALL WITHIN THE GIFT OF PUBLIC FUNDS.

>> Councilmember Reed: I HAVE A COUPLE OF OTHER QUESTIONS. I'VE BEEN TOLD THAT THE WORKERS HAVE ALL BEEN PAID, AND I'D BE SURPRISED TO SEE THE TEAMSTERS STILL WORKING IF THEY HADN'T BEEN PAID. THAT WOULD BE UNCHARACTERISTIC. SO I THINK THAT'S PROBABLY ACCURATE. I'VE ALSO BEEN TOLD THAT NORCAL HAS PAID CWS FOR THE EXTRA COST AND THERE ARE CONTRACTS BETWEEN THE TEAMSTERS IN BETWEEN CWS AND NORCAL THAT TAKE CARE OF THIS. IT IS A QUESTION OF WHETHER OR NOT WE WANT TO PAY NORCAL \$11 MILLION FOR THIS UNANTICIPATED COST ASSUMING THAT IT'S UNANTICIPATED. THAT IT'S NOT A QUESTION OF PAYING THE WORKERS BECAUSE THEY HAVE CONTRACTS AND THE TEAMSTERS I'M SURE WILL LOOK AFTER THEIR 13 INTERESTS. SO THAT TO ME IS REALLY THE ISSUE, IS WHY SHOULD WE GIVE \$11 MILLION TO NORCAL WHO SHOULD HAVE ANTICIPATED THIS, THEY'RE IN THE BUSINESS, I THINK IT WAS CLEAR THAT THERE'S A DIFFERENCE BETWEEN THE LONGSHOREMEN AND THE TEAMSTERS. THEY KNEW ABOUT IT VERY EARLY ON AS DID OTHERS. IT'S A RISK I BELIEVE THAT THEY ASSUMED IN THE CONTRACT, BECAUSE THE CONTRACT OTHERWISE WOULD HAVE SAID YOU KNOW, WE KNOW THERE'S THIS PROBLEM. WE'LL SET THAT ASIDE, WE'LL AGREE TO PAY FOR IT OR WE'LL DO SOMETHING. BUT THE CONTRACT'S COMPLETELY SILENT ABOUT IT AND SAYS NO MORE MONEY FOR ANYTHING EXCEPT THE COST OF LIVING INCREASE. SO I JUST THINK IT'S THE WRONG THING TO BE DOING AT THE END OF AN RFP PROCESS IS TO DO SOMETHING LIKE THIS SO I'M NOT GOING TO SUPPORT THE MOTION.

>> Mayor Gonzales: ALL RIGHT, THANK YOU CHUCK. COUNCILMEMBER CHIRCO.

>> Councilmember Chirco: I HAD A QUESTION, I WASN'T HERE AT THE TIME, BUT FROM WHAT I READ, THAT THERE WERE THREE CRITERIA, ONE WAS LOWEST COST TO THE COMMUNITY, LABOR PEACE, AND RETENTION OF CURRENT EMPLOYEES. ARE THOSE THE THREE CRITERIA AS STATED IN THE COUNCIL DIRECTIVE ON THE RFP?

>> Mayor Gonzales: I BELIEVE THAT'S THE CASE BUT -- THOSE WERE THE -- THERE WAS A LONG LIST, BUT JIM YOU'VE GOT THE INFORMATION. SERVICE, QUALITY OF SERVICE AND ALSO WHOLE LIST OF THINGS.

>> Councilmember Chavez: IT WAS REALLY AROUND THE FAIRNESS THAT THE COUNCIL FOCUSED ON, THAT THE RFP BE RELEASED TO THE PUBLIC EARLY, THAT PEOPLE STILL BE ALLOWED TO TALK TO US, THAT THE WEIGHTING AND SCORING OF THE EVALUATION CRITERIA BE PUBLIC AND APPROVED BY THE COUNCIL, AND THEN THIS LIST OF WORKER THINGS. AND THEN THE REST OF IT WAS ON TIMING, LIKE MAKING SURE WE HAD ENOUGH TIME.

>> Councilmember Chirco: SO IT WAS CLEAR IN THE COUNCIL DIRECTIVE THAT THE COUNCIL'S WISHES WERE THERE WOULD BE RETENTION OF EMPLOYEES, AND LABOR PEACE?

>> Mayor Gonzales: CORRECT.

>> Councilmember Chirco: OKAY. SO MY QUESTION TO THE CITY STAFF IS, WAS IT POINTED OUT IN THE RFP PROCESS THAT TWO OF THE THREE CRITERIA OR MAYBE ONE OF THE CRITERIA WAS NOT GOING TO BE MET WITH THE RFP AS PRESENTED? SO IT WASN'T POINTED OUT THAT THERE WAS NO WAY YOU WOULD HAVE LABOR PEACE USING LONGSHOREMEN VS. TEAMSTERS?

>> JIM HOLGERSSON. THE RFP AND THE CONTRACT STIPULATED LABOR PEACE WORKER RETENTION, PREVAILING WAGE WHERE IT APPLIED. AND THE CONTRACTORS WERE OBLIGED TO COMPLY WITH THAT. AND SO THE WORK THAT WE DID WAS TO MAKE SURE THAT THAT DID OCCUR.

>> Mayor Gonzales: TO CLARIFY. IF MY MEMORY SERVES ME CORRECTLY WHEN THE RFP WAS AWARDED THE ISSUE OF JURISDICTION HAD STILL NOT BEEN DETERMINED. AND --

>> Councilmember Chirco: COULD YOU EXPLAIN THAT TO ME?

>> Mayor Gonzales: JURISDICTION BETWEEN WHO WAS GOING TO REPRESENT THE WORKERS AT CWS AND THE LONG SHOREMEN.

>> Councilmember Chirco: WASN'T THAT PART OF THE PROPOSAL THAT WAS MADE KNOWN TO THE COUNCIL?

>> Mayor Gonzales: IT WAS KNOWN TO THE COUNCIL THAT LONGSHOREMEN WERE IN THE PACKAGE THAT NORCAL PUT TOGETHER. BUT IT WAS CLEAR -- IT WAS MADE CLEAR TO US IMMEDIATE -- WITHIN DAYS OF THE VOTING OF THAT -- NOT THE CONTRACT BUT THE RFP AWARD, WAS THAT THE -- THERE WAS A JURISDICTIONAL ISSUE THAT WOULD HAVE TO BE RESOLVED AND HAD NOT BEEN RESOLVED AT THE TIME WE AWARDED THE BID.

>> Councilmember Chirco: SO COUNCIL BECAME AWARE OF IT AFTER -- BEFORE OR AFTER?

>> Mayor Gonzales: WITHIN A DAY OR TWO BEFORE THE VOTE.

>> Councilmember Chirco: BEFORE IT WAS VOTED ON?

>> Mayor Gonzales: CORRECT.

>> City Attorney Doyle: COUNCILMEMBER CHIRCO, HOW THE LABOR PEACE PROVISION WAS SATISFIED WAS CWS ENTERED INTO A NEUTRALITY AGREEMENT WHICH ESSENTIALLY SAID WE WILL RECOGNIZE EITHER THE TEAMSTERS OR THE LONG SHORE. THAT WAS HOW THAT WAS RESOLVED. THE CITY DOES NOT GET INVOLVED IN THE COLLECTIVE BARGAINING AGREEMENTS BETWEEN ONE AND THE OTHER. THAT WAS A PRIVATE TRANSACTION AND IT WAS GOING TO BE RESOLVED AT SOME POINT.

>> Councilmember Chirco: THE COUNCIL EXPECTATION WAS THAT THERE WOULD BE LABOR PEACE. THIS WAS -- I DID READ PAT DANDO'S COMMENT IN THE NEWSPAPER. AND THIS IS JUST ONE OF THOSE SITUATIONS WHERE THE DIRECTIVE OF THE COUNCIL WAS LABOR PEACE AND TO ACHIEVE THIS I THINK YOU WOULD HAVE TO BE STAYING WITH THE TEAMSTERS, OTHERWISE YOU WILL NOT HAVE LABOR PEACE. I WILL BE SUPPORTING THIS AND I WOULD LOOK FORWARD TO MORE CLEAR DIRECTION FROM STAFF AS TO WHAT THE COUNCIL'S DIRECTIVES ARE AND WHAT THE CONSEQUENCES OF THE RFP PROPOSAL IS. AND I DON'T THINK THAT'S AN UNREASONABLE EXPECTATION BECAUSE THERE ARE POLITICAL CONSEQUENCES AS WELL AS ECONOMIC CONSEQUENCES. I WILL BE SUPPORTING THIS MOTION, THANK YOU.

>> Mayor Gonzales: THANK YOU JUDY. COUNCILMEMBER YEAGER.

>> Councilmember Yeager: YES, THANK YOU. AND JUST TO ECHO A COUPLE OF THE COMMENTS BY COUNCILMEMBER CHIRCO, I SECONDED THE MOTION AND WILL BE SUPPORTING IT. AND FOR MANY OF THE SAME REASONS THAT SHE POINTED OUT, WITH YOU KNOW, VERY CLEAR DIRECTION FROM THE CITY COUNCIL ON WORKER RETENTION AND LABOR PEACE. AND IT'S A COMPLICATED ISSUE AND I APPRECIATED THE INFORMATION WE GOT FROM THE MAYOR AND THE VICE MAYOR AND COUNCILMEMBER CHAVEZ AS WELL AS FROM STAFF SORT OF EXPLAINING THE DIFFERENT PROCESSES. AND I'VE COME TO BELIEVE THAT BECAUSE OF THE JURISDICTIONAL ISSUES, THE LABOR PEACE, THAT THE ABSOLUTE NECESSITY TO GO WITH THE TEAMSTERS, WHICH THEN DID INCREASE THE COST, THE FACT THAT FOR ME, THAT THE MONEY WILL  
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INTO THE WAGES, RATHER THAN TO NORCAL OR CFW IS VERY IMPORTANT TO ME SO IT ISN'T LIKE THOSE COMPANIES ARE MAKING THE PROFITS, THIS GOES TO THE WORKERS AND THAT'S VERY IMPORTANT, THAT THESE DOLLARS DO NOT COME OUT OF THE GENERAL FUND, AND THAT THERE IS NO RATE INCREASE BECAUSE OF IT. SO THAT IS ENOUGH FOR ME TO SUPPORT IT. I DID HAVE A QUESTION, AND I THINK TO THE CITY MANAGER, ALTHOUGH I KNOW THE MAYOR COULD RESPOND IF HE WOULD LIKE. BUT JUST BECAUSE THERE HAS BEEN SO MUCH DISCUSSION ABOUT IT, I MEAN IT'S PRETTY CLEAR THAT NONE OF US INCLUDING THE MAYOR COULD ON OUR OWN MAKE TONIGHT BINDING AGREEMENT WITH ANY OTHER AGENCY OR PERSON THAT WE'RE ALL FREE AGENTS, AND IF WE WANT TO NEGOTIATE WITH SOMEONE ON OUR OWN, AND IF SOME SORT OF AGREEMENT IS MADE, WE CAN ONLY SAY I WILL DO MY BEST TO BRING IT BACK AND SEE IF I CAN GET SUPPORT FROM THE COUNCIL. THAT WOULD BE THE EXTENT OF IT, THAT NONE OF US HAVE ANY ADDITIONAL AUTHORITY THAN THAT. AND RICK, I JUST DIDN'T KNOW IF YOU WANTED TO MAKE A COMMENT TO CONFIRM THAT. BECAUSE AGAIN, THERE SEEMS TO BE SOME DOUBT AS TO WHAT POWERS WE ACTUALLY HAVE IN THIS REGARD.

>> City Attorney Doyle: YES, THAT'S GENERALLY TRUE. THE RESTRICTION ON THE COUNCIL BOTH UNDER THE CHARTER AND YOUR COUNCIL POLICIES IS TO NOT GET INVOLVED IN THE ADMINISTRATIVE AFFAIRS THAT ARE REALLY WITHIN THE DOMAIN OF THE CITY MANAGER, AND SO TYPICALLY, THERE ARE SITUATIONS SUCH AS THIS WHERE IT -- AND IT'S NOT UNCOMMON, IT'S NOT UNIQUE TO THIS ADMINISTRATION, IT'S HAPPENED IN PRIOR MAYORS, WHERE THE MAYOR'S OFFICE GETS INVOLVED IN A CITYWIDE ISSUE, AND WILL NEGOTIATE A PROPOSAL, BUT YOU'RE ABSOLUTELY RIGHT, THAT NOTHING IS BINDING. THERE IS NO AGREEMENT. THE MAYOR'S OFFICE CANNOT BIND THE CITY, NO COUNCIL OFFICE CAN BIND THE CITY, AND UNTIL IT GETS TO THE FULL CITY COUNCIL FOR APPROVAL.

>> Councilmember Yeager: RIGHT, AND I WOULD JUST THINK IF THERE WAS A MAJOR CRISIS CONFRONTING THE CITY TO HAVE THE MAYOR SAY I'M SORRY, I CAN'T TALK TO ANYBODY ABOUT IT BECAUSE I HAVE NO POWER JUST WOULDN'T MAKE A LOT OF SENSE. BUT AGAIN, ALL HE COULD DO IS GO FORWARD AND SEE WHAT HE COULD WORK OUT AND BRING IT BEFORE THE COUNCIL. AND THEN JUST ON THE MEMO ITSELF, JUST MAYBE FOR CLARIFICATION AND SEE IF WE NEED TO CHANGE ANY OF THE RECOMMENDATIONS, AUTHORIZATION TO EXECUTE, I'M WONDERING WHAT AUTHORITY ARE WE GIVING YOU AND DOES ANY OF THIS NEED TO COME BACK TO THE COUNCIL FOR FINAL APPROVAL OR BY APPROVING THIS WE'RE SAYING IT DOES NEED TO COME BACK TO US?

>> City Attorney Doyle: IF YOU APPROVE IT IT DOESN'T NEED TO COME BACK. SO LONG AS IT'S WITHIN THE PARAMETERS OF THE DIRECTION, YOU'RE GIVING DIRECTION TO THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND FOR THE CITY MANAGER TO EXECUTE. I WOULD NOT BE EXECUTING IT. SO IT WOULDN'T COME BACK UNLESS, FOR SOME REASON, IT'S NOT WITHIN THE PARAMETERS OF THE RECOMMENDATION.

>> Councilmember Yeager: I GUESS I'M NOT SURE WHETHER THERE'S A -- JUST BECAUSE IT IS A CONTROVERSIAL ISSUE IF WE DO WANT IT TO COME BACK TO US JUST TO SEE EXACTLY WHAT THE LANGUAGE MIGHT SAY.

>> City Attorney Doyle: AND CAN YOU DO THAT. YOU CAN JUST DIRECT US TO NEGOTIATE AND COME BACK WITH A FINAL AGREEMENT.

>> Councilmember Yeager: THEN IF THE MAKER OF THE MOTION AGREES TO HAVE IT COME BACK TO THE --

>> Mayor Gonzales: OKAY, SO NOW IT'S NEGOTIATE WITH A MEMO COMING BACK TO US TO EXECUTE. ANYTHING ELSE COUNCILMEMBER YEAGER? VICE MAYOR DANDO.

>> Vice Mayor Dando: I DO HAVE A COUPLE OF QUESTIONS BUT I WANTED TO MAKE JUST A BRIEF COMMENT. IT PROBABLY IS NO SURPRISE TO INDIVIDUALS THAT HAVE BEEN WATCHING THIS DEBATE FOR THE LAST COUPLE OF YEARS, THAT WHEN WE WERE TALKING ABOUT GOING OUT FOR AN RFP, I WAS PROBABLY ONE OF THE MOST SKEPTICAL ABOUT DOING SO. AND I WAS SKEPTICAL QUITE FRANKLY BECAUSE I THOUGHT THE SYSTEM WASN'T BROKEN, WE HAD GOOD SERVICE, AND ALTHOUGH OUR CUSTOMERS, THE COMMUNITY, WILL PROVIDE US A LOT OF SLACK IN SOME AREAS, GARBAGE PICKUP IS NOT ONE OF THEM. IF YOUR GARBAGE ISN'T PICKED UP WE HEAR ABOUT IT. AND WE HEAR ABOUT IT IN VERY LOUD TERMS. SO I WAS REALLY CONCERNED ABOUT JUST CHANGING THINGS WHEN THEY SEEMED TO BE WORKING SO WELL. I WAS ALSO CONCERNED BECAUSE THE PRICE DIFFERENTIAL SEEMED SO GREAT. SO I WAS CONCERNED ABOUT LOW-BALLING. AND THEN COMING BACK AT A LATER TIME. IN ADDITION TO THAT I WAS CONCERNED BECAUSE THE RECYCLE FACILITIES HAVE NOT BEEN ESTABLISHED. SO THE PRECARIOUS POSITION I'M IN TODAY AND THE QUESTION THAT I'M GETTING ASKED MOST OFTEN, IF THOSE WERE YOUR CONCERNS, THEN WHY ARE YOU MOVING FORWARD TODAY WITH THE CORRECT -- TO TRY AND CORRECT THE PROBLEM. AND I'LL TELL YOU, QUITE SIMPLY, THE REASON IS I STILL BELIEVE NO. 1, THAT OUR CUSTOMERS EXPECT THAT THEIR GARBAGE BE PICKED UP. AN QUITE FRANKLY, I CAN REMEMBER A FEW DECADES AGO WHEN THERE WAS UNREST AND GARBAGE WAS NOT PICKED UP, AND IT WAS NOT A PRETTY SIGHT. IT WAS REALLY UNFORTUNATE. AND I DON'T WANT TO SEE OUR COMMUNITY GO THROUGH THAT AGAIN. BUT I ALSO THINK THAT IT'S, WITH THE CITY AUDITOR TAKING A LOOK AT THE NUMBERS AND SAYING IN FACT THAT WE WOULD BE SAVING MONEY, AND AS HAS BEEN SAID BEFORE, EVEN IF WE WERE TO HAVE GONE TO THE NEXT LOWEST BID, WE ARE STILL SAVING MONEY TODAY WITH THIS ADDITIONAL AMENDMENT THAT WE'RE ADDING TO IT. SO THE COMMUNITY IS STILL SAVING MONEY ON