



STAFF REPORT

To: SBWMA Board Members
From: Kevin McCarthy, Executive Director
Date: January 28, 2010 Board Meeting
Subject: Resolution Recommending Assignment of the SBWMA Member Agency Franchise Collection Agreements by Republic Services, Inc., to Recology San Mateo County

Recommendation

It is recommended that the SBWMA Board of Directors:

1. Approve the attached Resolution No.2010- 04 attached hereto as **Attachment A** recommending Member Agencies Consent to Assignment of their respective Franchise Collection Agreements with Republic Services to Recology San Mateo County effective July 1, 2010.

Member Agency Consent to Assignment is contingent upon all SBWMA Member Agencies approving this assignment by April 1, 2010.

Member Agency approval of Consent to Assignment also requires prior Consent to Assignment of their respective Franchise Collection Agreements with Allied Waste to Republic Services pursuant to their merger.

Analysis

The proposed transaction for Recology to take over Republic's collection services operations effective July 1, 2010 per the obligations of the existing Member Agency Franchise Collection Agreements fits within the definitions provided for assignment as detailed in Section 12.05 of the Franchise Agreements. Further, staff finds that the previous due diligence work associated with the Collection Services RFP and the final selection process for Norcal/Recology fulfills "satisfactory proof" requirements associated with an entity that is qualified to have the Franchise Collection Agreements assigned to.

There are requirements for Performance Bonds and Guarantees in the existing Franchise Collection Agreements as Exhibits F and G thereto that will have to be updated and modified to provide for Recology becoming the principal party. Otherwise there will be no other changes to the existing Franchise Agreements (except that Recology will have a modified rate review process, as described below). Recology will have to fulfill all contractual obligations of the existing Franchise Collection Agreement through their expiration on December 31, 2010.

At the January 21, 2010 special Board meeting, staff provided a detailed summary of the key terms associated with this proposed assignment and a proposed set of conditions of approval to be required as part of the assignment approval. The key terms are summarized below. The conditions of approval are provided in **Exhibit A** to the attached Resolution.

Summary of Key Terms

- Assignment of all Member Agency Franchise Collection Agreements from Republic Services, Inc. (Republic) to Recology San Mateo County effective July 1, 2010 (the "Assignment Date"). This is contingent upon all Member Agencies approving this assignment by April 1, 2010. **Also assumed is that all Member Agencies have already approved or simultaneously approve the assignment from Allied Waste Services to Republic.**
- Republic will remain the Shoreway facility operator until December 31, 2010.

- Recology will assume Republic's service to customers in County Service Areas currently not included in the county's Franchise Collection Agreement.
- Recology to pay Republic \$3.1 million for their projected (per the approved 2010 collection rate report) profit and corporate overhead for the period July 1, 2010 – December 31, 2010.

\$3.1 million estimated as follows:

2010 full year profit	= \$4.063 million
2010 full year corp. overhead	= <u>\$2.119 million</u>
	\$6.182 million

Half year estimate = \$3.091 million

- Recology to purchase and/or lease certain assets, supplies and parts from Republic as follows:
 - Approximately 9,009 commercial bins in the field or in on-site inventory for an agreed lump sum amount of **\$2,505,167, less \$215,000 for avoided expense of removal. Net cost: \$2,290,167.**
 - All office furniture and fixtures (desks, chairs, file cabinets, conference tables, cubicles, etc.) currently at the Administration building facility for an amount of \$50,000.
 - Truck shop tools (i.e., floor jacks, jack stands, welders, ladders, drill presses, etc.) currently in use in the maintenance shop for an amount of \$95,000.
 - Collection support vehicles (i.e., supervisor trucks, boom trucks, flatbed trucks, forklifts, utility trucks, street sweepers, etc.) as selected by Recology. Amount not to exceed \$177,000.
 - Truck parts inventory (i.e., truck parts, tires, fuel, etc.) as selected by Recology.
 - Lease from Republic all collection vehicles used to support the SBWMA service area from July 1, 2010 through December 31, 2010 for an amount of \$350,000.
- Approval of assignment assumes all Member Agencies approve Recology using used commercial bins for servicing commercial accounts under new collection services Franchise Agreements.
- If this assignment is not approved, the SBWMA will still be requesting that all Member Agencies approve the use of used commercial bins given the financial savings realized. This approval can be handled administratively by each Member Agency.
- Effective as of Assignment Date:
 - Republic will be responsible for all of its balancing account deficits and rate adjustment issues in dispute with SBWMA or pending with SBWMA through June 30, 2010.
 - SBWMA will conduct a standard rate review process for Republic through the end of Republic's service on June 30, 2010.
 - SBWMA will conduct a separate rate review process for Recology for the period of July 1, 2010 through December 31, 2010. Any balancing account issues will be settled per the modified Recology rate review process described below.
- This assignment does not change Recology's contractual obligations with Member Agencies under the new collection services Franchise Agreements, except as noted regarding the use

of used commercial bins and a modified implementation plan.

- Finalizing the Assignment will be subject to negotiation of a mutually acceptable definitive agreement between Republic and Recology. However, the details pertinent to the Member Agencies are outlined herein.

As discussed during the special Board meetings on October 7, 2009 and January 21, 2010 there are certain post term rate review issues that will require resolution. For example, whether there is an assignment from Republic to Recology or not there will likely be workers compensation claims in excess of the assumed reserve amount in the rate projection; such claims tend to climb in the last year of a franchise agreement. Currently, Republic and/or Recology pay workers compensation-related wages, related medical expenses, and benefit continuation expenses (estimated at \$36,000 per year per employee) as incurred. Costs for injuries prior to 12/31/10 may be incurred after 12/31/10. There is no agreed upon methodology in place with Republic regarding compensation for the additional claims. In contrast, there is a proposed methodology with Recology that is described in Exhibit A item 1.B. The current claim reserve for drivers only in the 2010 rate projection is \$804,720.

Benefits of Approval of Assignment

There are a number of significant benefits associated with Recology taking over Republic's existing collection services operations on July 1, 2010, including, but not limited to:

- **Cost savings** across the entire SBWMA service area estimated to be **\$3,740,194 or approximately \$374,019/year** (actual year by year savings will differ as interest cost savings are not the same each year) over the 10-year term of the new franchise agreements. Costs savings come from purchase of used commercial bins and reduced start-up costs (i.e., avoided training and wages due to operating onsite at the Shoreway facility earlier totaling \$200,000; and recycling blitz wage savings totaling \$350,000 due to adjustment to the revenue requirement cap for existing Republic commercial sales program).

Approximately 81% of the total savings or \$3,023,901 comes from the purchase of used commercial bins. Regardless of whether the Assignment is approved, it's critical that all Member Agencies approve of the use of used commercial bins to ensure these cost savings are realized in the new franchise agreements.

- **Early rollout of new residential collection services.** Residential customers will be able to immediately use their new wheeled carts (for solid waste, recycling and organics) once delivered by Recology between mid-September and December 2010; old carts, cans and tubs will be picked up as the new carts are delivered. This means residential customers will be able to begin single stream recycling (commingling all their paper, glass, plastics and metal recyclables) in one wheeled cart after the new carts are delivered. Residents will also be able to get rid of their old carts, cans and tubs much sooner and not have to store the new carts for one to three months before using them.

Service levels for residential collection services will remain the same (i.e., weekly solid waste, biweekly recycling, and biweekly plant materials). Weekly single stream recycling and organics collection will begin January 1, 2011.

- **Smother transition** to new collection services. Eliminates a hard start or cutover (routes, customer service, etc.) from Republic to Recology on January 1, 2011 and allows for a more seamless transition. Examples of this include:

- Training of all drivers, and customer service staff would be more extensive and will remain on-site at Shoreway. This would result in enhanced readiness by all customer service staff to answer calls and respond more efficiently to customer questions and requests. Drivers and mechanics would have more familiarity and confidence in operating on new routes and trucks.
 - All phone and computer systems would be tested earlier and any necessary adjustments would be made as needed.
 - Site operations including all daily procedures, reporting, work flows, would be up and running before new services begin on January 1, 2011.
- **Greater operational cost control** during the last six months of the existing franchise agreements. Recology has agreed to a cost cap, with some exceptions, for this period of July – December 2010. However, if Republic remains in place their services would continue to be carried out via the existing cost plus contract for collection services which means there would be no cost cap. The exceptions relate to potential post term items (e.g., workers compensation claims) and wage related adjustments that also would apply if Republic operated for the full year.
 - Smoother transition to **enhanced commercial recycling outreach efforts** as Recology can fully integrate its recycling blitz for commercial and multi-family residential accounts into existing operations. For example, recycling blitz efforts already scheduled to begin July 1, 2010 would be better coordinated with the delivery of new commercial carts resulting in better education and utilization of new commercial recycling services. Also, the existing commercial recycling routes, recycling coordinators and customer service support will be utilized.

Background

On November 19, 2009 the Board approved a recommendation that all Member Agencies consent to assignment of their respective Franchise Collection Agreements with Allied Waste to Republic Services pursuant to their merger in December 2008. Member Agencies are now separately considering this earlier assignment request. To date, two of the Member Agencies (Foster City and Hillsborough) have approved the assignment consent documents.

On January 21, 2010 at a special Board meeting SBWMA staff presented an overview of the potential assignment from Republic to Recology.

Fiscal Impact

Approval of this assignment by the SBWMA Member Agencies will result in cost savings across the entire SBWMA service area estimated at **\$3,740,194 or approximately \$374,019/year** (actual year by year savings will differ as interest cost savings are not the same each year) over the 10-year term of the new franchise agreements. These adjustments will be reflected in the cost forms in each Member Agency franchise agreement. SBWMA staff estimates that it will have one-time staff and outside consultant costs of \$50,000 to \$100,000 to manage this assignment and the associated rate review work. Recology and Republic have each agreed to cover the SBWMA's additional rate review costs up to an amount not to exceed \$25,000; these costs will be recovered through an adjustment to their compensation during their respective 2010 rate reviews.

Attachment

Resolution No. 2010-04

RESOLUTION NO. **2010-04**

RECOMMENDING ASSIGNMENT OF THE SBWMA MEMBER AGENCY FRANCHISE COLLECTION AGREEMENTS BY REPUBLIC SERVICES, INC. TO RECOLOGY SAN MATEO COUNTY

WHEREAS, in 2000 the South Bayside Waste Management Authority (SBWMA) Member Agencies each entered into respective Franchise Collection Agreements, as subsequently amended, with BFI Waste Systems of North America, Inc. (BFI), now a wholly owned subsidiary of Allied Waste Industries, Inc., a Delaware corporation (Allied), (hereinafter the Franchise Collection Agreement); and

WHEREAS, by an agreement on June 22, 2008, Allied, pursuant to an Agreement and Plan of Merger, merged with Republic Services, Inc., a Delaware corporation (Republic), and effective December 5, 2008, Republic became the surviving corporation and Allied became a wholly owned subsidiary of Republic; and

WHEREAS, by Board of Director action on November 19, 2009, the SBWMA Board approved a recommendation that all Member Agencies assign their respective Franchise Collection Agreements from Allied to Republic, and

WHEREAS, the SBWMA has reviewed the proposed terms of the assignment from Republic to Recology and is satisfied that the assignment from Republic to Recology will be beneficial to the SBWMA and its member entities, and that Consent to Assignment can be issued subject to the conditions of approval attached hereto as **Exhibit A**.

WHEREAS, the SBWMA recommends that each Member Agency Consent to Assignment be contingent upon all Member Agencies of the SBWMA approving consents to assignment on or before April 1, 2010.

NOW, THEREFORE, BE IT RESOLVED that the SBWMA Board recommends that its Member Agencies approve Consent to the Assignment of their respective Franchise Collection Agreements from Republic to Recology subject to the attached conditions of approval **Exhibit A** hereto;

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the this **28th** day of **January, 2010**, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2010-04 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on January 28th, 2010.

ATTEST:

Martha DeBry, Chairperson of SBWMA

Kevin McCarthy, Executive Director

EXHIBIT A
Conditions of Approval to Member Agency Consent to Assignment

The following shall be applicable to the Consent of Assignment:

1. Republic Services, Inc. (Republic) and Recology San Mateo County (Recology) will be subject to a modified rate application process in 2010 as described herein; separate rate reviews to close out Republic through June 30, 2010 and for Recology operations from July 1, 2010 – December 31, 2010. Any balancing accounts to be settled per the process defined in the existing Franchise Collection Agreements.

Republic shall be responsible for all Republic balancing account deficits and rate adjustment issues in dispute with SBWMA or pending with SBWMA as of the Assignment Date (through June 30, 2010). Recology shall cooperate to extent reasonably needed to provide Republic with information to support Republic's applications for rate reimbursement from the SBWMA.

A. REPUBLIC Rate Review (thru 6/30/10)

Compensation shall be adjusted downward for any payment received from Recology for materials (i.e., shop tools, parts, and supplies) that were previously expensed through the franchised collection services or Shoreway facility operations rates.

Republic's compensation shall be adjusted downward, at an amount not to exceed \$25,000, to pay for additional SBWMA rate review work resulting from modifications to the 2010 rate review process for collection services. This adjustment will occur during the closeout of the 2010 rate review for Republic's six months of operations.

The SBWMA and Republic shall meet and confer by March 31, 2010 to review any potential post term related expense issues or other significant potential rate projection variances.

Republic shall be subject to a revised schedule and submittal requirements for 2010 rate reports with agreement reached with the SBWMA on such changes by March 31, 2010. For example, separate rate submittals to close out 2009 and 2010; a 2009 rate report could be submitted on April 30th whereas a 2010 report could be submitted by August 31st. The actual submittal dates are subject to mutual agreement between Republic and the SBWMA.

B. Recology Rate Review (7/1/10-12/31/10)

Recology's allowable costs plus profit to be capped at the 50% of the 2010 HF&H projection. Per Exhibit 13 of the approved 2010 HF&H collection rate report dated November 19, 2009 this projection is \$22.574 million, exclusive of pass through expenses.

Recology's compensation shall be adjusted downward, at an amount not to exceed \$25,000, to pay for additional SBWMA rate review work resulting from modifications to the 2010 rate review process for collection services. This adjustment will occur during the closeout of the 2010 rate review for Recology's six months of operations.

Any excess revenues collected by Recology as determined in the rate review process for the July 1, 2010 through December 31, 2010 period to be used to offset future Member Agency rate increases (i.e., rate year 2012). Any shortfall from the \$22.574 million in allowable cost plus profit up to the cap to applied to Recology's 2012 rate adjustments. Any adjustments will be one time and backed out of the subsequent year's (i.e., 2013) revenue requirement.

The allowable cost plus profit cap shall only be adjusted (up or down) in the 2011 closeout rate review as compared to what is in the 2010 rate projection for: worker compensation claim reserves for injuries from July 1 to December 31, 2010; and changes in CBA wage rates, health and welfare benefit rates, and or potential clerical wage and benefit rates-that may result from possible new labor agreements. Such changes in clerical wage and benefit rates will be for rates only, not any changes in headcount. Additional costs for clerical wage and benefits as identified above will be tracked separately and included in the Member Agencies rate applications for the applicable rate year.

Workers Compensation

Recology and the SBWMA shall agree by April 1, 2010 on a limit to workers compensation payments made per individual claim. Additional costs for worker compensation claim reserves, including benefits continuation payments, as identified above will be tracked separately and included in the annual rate applications for the Member Agencies during a period not to exceed 3 years.

At the end of this tracking period, Recology shall meet with the SBWMA to identify any remaining open claims and determine a final settlement amount based upon an actuarial estimate as provided by Recology's third-party claims adjustor. If both parties can not agree upon the final settlement amount, the SBWMA will engage their own third-party claims adjustor in order to provide a second estimate. If both estimates are within 20% of one another, the difference will be cut in half, resulting in the final settlement amount. If estimates are not within 20% of one another and both parties are not able to reach an agreed upon amount, the matter will be resolved through binding arbitration.

Commercial Recycling Sales Expenses

The SBWMA will remove the commercial recycling sales expenses (wages, benefits and related G&A) for the period of July 1, 2010 through December 31, 2010 from the Shoreway allowable costs plus profits for Republic and add these expenses to the Recology collection allowable costs plus profit cap of \$22.574 million. The commercial recycling sales program will no longer be a contractual obligation of Republic effective July 1, 2010.

2. Recology shall perform all obligations required under the Franchise Collection Agreements from and after the Assignment Date, and shall indemnify, and hold Republic harmless from all claims and liabilities arising from Recology's failure to perform.

Republic shall indemnify and hold harmless Recology from all claims and liabilities arising under the Franchise Collection Agreements prior to the Assignment Date.

3. As part of the Consent to Assignment to be executed by each Member Agency, each Member Agency shall agree that Recology shall not be responsible for any obligations or liabilities of Republic, or any failure by Republic to perform all obligations under the Franchise Collection Agreements, prior to the Assignment Date. Each Member Agency will also agree that Republic shall not be responsible for Recology's failure to perform all obligations required under the Franchise Collection Agreements from and after the Assignment Date.
4. Each Member Agency grants approval of and requires Recology to purchase used commercial bins from Republic and refurbish such bins for use in servicing commercial accounts under their respective new franchise collection agreements.
5. Each Member Agency grants approval of modifications to Recology's implementation plan in their new franchise collection agreement as follows: as new residential carts (for solid waste, recycling and organics) are delivered between mid- September and mid December the resident's old garbage carts or cans, plant material carts and recycling tubs will be removed by Recology prior to the customer's next service day. These carts, cans and tubs shall be properly managed for reuse, recycling and/or disposal. Starting their next service day after receiving the new carts, resident's can begin placing them out for pick-up. Service levels will remain the same (i.e., weekly garbage, biweekly recycling and biweekly plant materials) through December 31, 2010, but single stream recycling will start the next collection day after residents receive their new blue cart. Residential organics will still start January 1, 2011.

During this interim period in which new carts are delivered and December 31, 2010 residents can continue to use their existing garbage cans if they have chosen and had delivered to them a new 32-gallon solid waste cart. During this same period all residents have the option of setting out additional recyclables in tubs, bins or boxes if their recycling cart provides insufficient capacity for their recyclables.

6. Republic shall keep all permits current through June 30, 2010.
7. Republic, SBWMA, and Recology shall agree on a final asset list by March 31, 2010.
8. Recology and Republic will work with the SBWMA to define sufficient space, in the Administration Building to enable Republic to continue to manage the Transfer Station operations under Republic's Operations Agreement with the SBWMA until December 31, 2010.
9. By April 1, 2010 Recology shall submit a written commercial sales plan to the SBWMA detailing how the commercial recycling blitz will integrate with the preexisting Republic franchised commercial recycling program to be managed by Recology effective July 1, 2010 and the transition to the new Recology commercial recycling program effective January 1, 2011. The SBWMA and Recology shall agree on a final sales plan by May 1, 2010.

10. Recology shall adjust its capital cost figures in each of the Member Agency's new (i.e., effective January 1, 2011) collection services franchise agreement cost forms to reflect revised commercial bin capital costs. In total (for all Member Agencies) the revised capital cost shall be \$3,426,507 reflective of the following assumptions:

\$2,505,157	Used commercial bin purchase price
<u>\$1,351,350</u>	Commercial bin refurbishment (\$150 each x 9,009 bins)
\$3,856,507	
- \$215,000	for avoided new bin delivery costs
- \$215,000	for avoided used bin recovery costs

\$3,426,507

11. Recology shall adjust downward its implementation cost figures in each of the Member Agency collection services franchise agreement cost forms to reflect cost savings as follows:

\$200,000	Avoided training and wages due to operating onsite at the Shoreway facility earlier
\$350,000	Sales blitz wage savings due to adjustment to revenue requirement cap for existing Republic commercial sales program



STAFF REPORT

To: SBWMA Board Members
From: Kevin McCarthy, Executive Director
Marshall Moran, Finance Manager
Date: January 28, 2010 Board of Director's Meeting
Subject: Mid-Year Review of FY2010 Annual Operating Budget

Recommendation

This staff report is for discussion purposes only and no formal action is requested of the Board. Staff is presenting a draft report for consideration and review. Input will be incorporated into a revised and final staff report for the February 25, 2010 Board meeting. Attached is a budget worksheet providing line item detail for all revenues and expenses.

Analysis

On June 25, 2009 the South Bayside Waste Management Authority (SBWMA) Board of Directors adopted the FY 2010 Operating Budget. As part of the mid-year review, Staff has conducted a thorough analysis of year-to-date revenues and expenditures. Based on the projections detailed below, staff is expecting some required Board action to transfer funds from the rate stabilization fund to address budget variances related to Shoreway operating expenses.

Proposed Adjustments to Budget

As detailed under "Fiscal Impact" we are projecting a \$1,319,996 higher net loss due to significant Shoreway operating budget variances. These variances relate to unbudgeted balancing account (compensation shortfall) payments to Allied for 2006 and 2008 totaling \$1,596,281 and an additional \$459,788 in 2000 bond debt interest payments. These variances are offset somewhat from higher revenues of \$353,499, lower interim operations (shipment and processing of MRF recyclables offsite by Smurfit) expenses of \$627,117, and \$188,561 in lower SBWMA program expenses.

The compensation shortfall payments were \$996,281 for 2006 and \$600,000 for 2008. The \$996,281 was budgeted as a cash flow adjustment to the reserve balance and not as a current operating expense which is where it is being recorded. The \$600,000 payment was not included as an adjustment to our reserve balance.

The bond debt service higher expense is due to accrued interest and early redemption of the 2000 bonds. From a cash flow perspective, these funds came out of Bank of New York (trustee for bond proceeds) accounts and not the SBWMA operating account so this variance does not affect our reserve balances.

Staff is still investigating what if any impact the accounting for the non-current Shoreway operating expenses (i.e., compensation shortfall payments) and the higher interest expense may have on our bond covenants for 2009 and 2010. Relatedly, staff may also recommend that we make a transfer from our rate stabilization reserve.

Staffing and Position Changes

Two staffing changes are expected to be implemented effective March 1, 2010 with Cathy Hidalgo filling the vacant Recycling Coordinator position and Jeannene Minnix Kingston filling the Recycling

Specialist/Board Secretary position currently filled by Cathy. These changes are within the discretion of the Executive Director.

Staff will also be requesting an adjustment in staffing levels to reflect the 0.8 FTE Administration Assistant position becoming a full-time position effective May 1, 2010; this requires Board approval.

Fiscal Impact

The mid-year projections reflect an operating deficit of \$3.695 million due to the Shoreway operating budget variances previously described; this projection is a \$1.319 million higher operating loss than budgeted. The adopted budget assumed use of working capital from bond proceeds to augment cash flow given projected operating deficits.

After the issuance of new debt in August 2009 \$2.8 million in working capital was transferred to the SBWMA's cash reserves along with reimbursement of internal funds previously used by the SBWMA for Shoreway masterplan improvements. The net result is the SBWMA has significantly higher reserve balances than budgeted. Staff will present further details at the Board meeting on our reserve balances and potential transfer of funds to address our operating deficit.

The following tables represent FY 2010 revenues and expenditures, actual receipts and spending through December 31, 2009, and year-end projections.

<u>FY 2010 NET INCOME</u>				
<u>Revenues</u>	<u>FY 2010 Adopted Budget*</u>	<u>FY 2010 Year-to-date Totals</u>	<u>FY 2010 Year End Projections</u>	<u>Variance</u>
Total Revenues	\$36,719,300		\$37,072,799	\$353,499
Total Expenditures	\$39,095,109		\$40,768,604	(\$1,673,495)
Net Gain/(Loss)	(\$2,375,809)		(\$3,695,805)	(\$1,319,996)

Projected revenues are \$353,499 higher than budgeted due to modestly higher tip fee receipts, and commodity revenues. Also, we received a one-time gain of \$197,800 from the sale of the old MRF processing equipment.

<u>FY 2010 REVENUES</u>				
<u>Revenues</u>	<u>FY 2010 Adopted Budget*</u>	<u>FY 2010 Year-to-date Totals</u>	<u>FY 2010 Year End Projections</u>	<u>Variance</u>
Tip Fee Revenues	\$27,937,300	\$13,206,182	\$28,045,328	\$108,028
Commodity Sales Revenues	\$8,661,500	\$4,273,061	\$8,735,841	\$74,341
Interest Income & Other Revenues	\$120,500		\$93,830	(\$26,670)
Non-Operating Receipts*			\$197,800	\$197,800
Total Revenues:	\$36,719,300		\$37,072,799	\$353,499

* Exclusive of non-operating receipts from new debt funding received in September 2009

** Net revenue from the sale of the used MRF processing equipment.

FY 2010 expenditure projections are \$1,673,495 higher than budgeted due to Shoreway operating budget variances. Line item detail within the Shoreway operating budget is provided below.

The SBWMA program budget is \$188,561 lower than budgeted.

<u>FY 2010 EXPENDITURES</u>				
<u>Expenditures</u>	<u>FY 2010 Adopted Budget*</u>	<u>FY 2010 Year-to-date Totals</u>	<u>FY 2010 Year End Projections</u>	<u>Variance</u>
Administrative Expenses	\$1,531,109	\$719,356	\$1,500,548	\$30,561
Contract Compliance & Support	\$875,000	\$352,124	\$895,000	(\$20,000)
Recycling & AB 939 Compliance	\$948,500	\$227,656	\$770,500	\$178,000
Total SBWMA Expenses	\$3,354,609	\$1,299,136	\$3,166,048	\$188,561
Shoreway Operations**	\$35,740,500		\$37,602,518	(\$1,862,099)
Total Expenses:	\$39,095,109		\$40,768,604	(\$1,673,495)
*Exclusive of capital project expenses				
** See breakout of expenses below				

<u>FY 2010 EXPENDITURE DETAIL FOR SHOREWAY OPERATIONS</u>				
<u>Expenditures</u>	<u>FY 2010 Adopted Budget*</u>	<u>FY 2010 Year-to-date Totals</u>	<u>FY 2010 Year End Projections</u>	<u>Variance</u>
Operating Contract	\$27,553,700	\$15,483,955	\$29,513,600	(\$1,959,900)
Interim Operations	\$5,160,800		\$4,533,700	\$627,100
Insurance Shoreway	\$130,000		\$130,000	0
Debt Service Bond Interest (old and new)	\$1,521,600		\$2,045,700	(\$524,100)
Taxes (Property, Possessory Interest)	\$44,000		\$44,000	0
Franchise Fee	\$1,330,400		\$1,335,518	(\$5,118)
Total Shoreway Operations:	\$35,740,500		\$37,602,518	(1,862,018)

Attachment

Budget Worksheets for Revenues and Expenditures

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
EXPENSE DETAIL BY PROGRAM**

FY 2010 PROJECTION

GENERAL OPERATING EXPENSES BY MAJOR CATEGORY AND SOURCE				
		APPROVED	MID YEAR SPENT	YEAR END PROJECTION
EXPENDITURE SUMMARY		FY 2009-2010	DEC 2009	FY 2009-2010
ADMINISTRATIVE EXPENSES				
520305	ADMINISTRATIVE STAFF	560,764	273,008	563,200
520306	AB 939 PROGRAM STAFF	553,570	227,865	488,600
520328	EMPLOYEE RECRUITMENT/HR SUPPORT	8,000	3,163	8,000
520337	PEO COST (LGS ADMIN FEES)	13,200	6,000	11,250
520312	BOARD COUNSEL	50,000	40,789	75,000
520300	BOARD ADMINISTRATION	12,600	5,050	12,600
520310	ACCOUNTING SERVICES	98,000	49,000	108,000
520334	INFORMATION SYSTEMS	22,500	12,767	22,500
520338	WEBSITE	11,000	5,055	11,000
520301	ANNUAL AUDIT	10,300	2,400	15,000
520701	INSURANCE	22,000	30,223	30,223
520202	BANK FEES	12,000	4,375	12,000
520203	RENT	48,500	23,722	48,500
520204	PRINTING AND POSTAGE	200	77	200
520107	UTILITIES	17,000	6,681	17,000
520905	OFFICE/TENANT IMPROVEMENTS	10,000	553	7,000
520201	OFFICE SUPPLIES	22,500	8,103	17,000
520215	'OFFICE EQUIPMENT COSTS__	12,600	5,957	12,600
520504	PUBLICATIONS & PUBLIC NOTICES	2,000	940	2,000
520501	PROFESSIONAL DUES & MEMBERSHIPS	2,000		2,000
520801	VEHICLE MILEAGE & TOLLS	500	17	500
520105	CELL PHONES	5,000	2,569	5,000
520503	CONFERENCE & MEETINGS	15,000	6,044	12,000
520502	TRAINING	4,375		4,375
520511	SPONSORSHIPS & DONATIONS	12,500	5,000	12,500
522706	COMPUTER PURCHASE	5,000		2,500
TOTAL ADMINISTRATIVE		\$ 1,531,109	\$ 719,356	\$ 1,500,548

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
EXPENSE DETAIL BY PROGRAM**

FY 2010 PROJECTION

GENERAL OPERATING EXPENSES BY MAJOR CATEGORY AND SOURCE				
		APPROVED	MID YEAR SPENT	YEAR END PROJECTION
EXPENDITURE SUMMARY		FY 2009-2010	DEC 2009	FY 2009-2010
CONTRACT COMPLIANCE AND SUPPORT				
520307	RATE REVIEW	180,000	133,824	175,000
		180,000	133,824	175,000
520308 SF017	FACILITY IMPROVEMENT OVERSIGHT	75,000	37,142	75,000
520309	BUSINESS CONSULTANT/HF&H	5,000		5,000
520309 HCM01	CONTRACT MANAGEMENT SUPPORT	10,000	600	10,000
520309 HCN01	CONTRACT NEGOTIATIONS/LEGAL REVIEW	30,000	50,414	60,000
520309 HCS02	COLLECTION RFP RESPONSE REVIEW & ANALYSIS & IMPLEMENTATION	65,000	8,847	65,000
520309 HCS03	COLLECTION SERVICES PUBLIC EDUCATION FOR ROLLOUT	450,000	83,355	450,000
520309 HCS1B	FACILITY RFP RESPONSE REVIEW & ANALYSIS & IMPLEMENTATION	25,000	21,250	25,000
520309 HSHOR	SHOREWAY INVESTIGATIONS	30,000	16,691	30,000
520329	ANNUAL ALLIED PERFORMANCE HEARING	5,000		-
		695,000	218,300	720,000
TOTAL CONTRACT COMPLIANCE & SUPPORT		\$ 875,000	\$ 352,124	\$ 895,000

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
EXPENSE DETAIL BY PROGRAM**

FY 2010 PROJECTION

GENERAL OPERATING EXPENSES BY MAJOR CATEGORY AND SOURCE				
		APPROVED	MID YEAR SPENT	YEAR END PROJECTION
EXPENDITURE SUMMARY		FY 2009-2010	DEC 2009	FY 2009-2010
RECYCLING - AB939 COMPLIANCE				
520311	CIWMB ANNUAL REPORTS	25,000	19,927	25,000
520341	SBWMA ANNUAL REPORT (NEW)	7,500		7,500
520309 HDV01	DIVERSION PROGRAM SUPPORT	20,000		20,000
520604 EVG01	EVENT GIVEAWAYS	15,000		10,000
		67,500	19,927	62,500
520340 LRP01	LONG RANGE PLAN UPDATE	45,000	4,343	35,000
520340 OPRFP	ORGANICS PROCESSING RFP	20,000	2,124	20,000
520340 MPOTR	MASTER PLAN OUTREACH	30,000	9,993	25,000
		95,000	16,460	80,000
520331	LARGE EVENT/VENUE CONSULTING	25,000	4,590	20,000
520342	LARGE EVENT/VENUE RECYCLING SERVICES (NEW)	60,000	1,092	50,000
520608	CLIMATE CHANGE POLICY OPTIONS	20,000	1,281	10,000
520604 COE01	COMMERCIAL RECYCLING TECHNICAL ASSIST	180,000	36,439	125,000
520604 CDRCY	C&D RECYCLING PROGRAM (NEW)	22,000	706	5,000
520604 GREEN	GREEN BUSINESS PROGRAM (NEW)	15,000	1,563	10,000
520604 MF001	MULTI-FAMILY OUTREACH	30,000		10,000
		352,000	45,671	230,000
520604 QNL01	QUARTERLY NEWLESTTER DESIGN/SETUP	40,000	17,276	40,000
520604 QNLPM	QUARTERLY NEWLESTTER PRINTING/MAILING	150,000	73,334	150,000
520604 RES01	RESIDENTIAL OUTREACH PROGRAMS	36,000	13,636	20,000
520604 COMPS	COMPOST GIVEAWAY (NEW)	20,000	312	5,000
520604 HHWYW	HHW/U-WASTE ON-CALL COLLECTION PROGRAM (NEW)	125,000	7,088	125,000
520335	CURBSIDE HOUSEHOLD BATTERY COLLECTION	48,000	27,157.80	48,000
520604 ECE01	ELECTRONIC COLLECTIONS EVENTS	15,000	6,796	10,000
		434,000	145,598	398,000
TOTAL RECYCLING - AB939 COMPLIANCE		\$ 948,500	\$ 227,656	\$ 770,500
		\$ 3,354,609	\$ 1,299,136	\$ 3,166,048

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
EXPENSE DETAIL BY PROGRAM**

FY 2010 PROJECTION

GENERAL OPERATING EXPENSES BY MAJOR CATEGORY AND SOURCE				
		APPROVED	MID YEAR SPENT	YEAR END PROJECTION
EXPENDITURE SUMMARY		FY 2009-2010	DEC 2009	FY 2009-2010
SHOREWAY OPERATIONS				
522701	OPERATING CONTRACT	27,553,700	15,484,000	29,513,600
522708	INTERIM OPERATIONS	5,160,800	1,912,860	4,533,700
520710	INSURANCE SHOREWAY (March 1 Renewal)	130,000		130,000
521104	DEBT SERVICE BOND INTEREST	1,521,600	459,787	2,045,700
520324	SEWER FEES ON PROPERTY TAX BILL	44,000	17,296	44,000
522702	FRANCHISE FEE	1,330,400	651,846	1,335,518
TOTAL SHOREWAY OPERATIONS		\$ 35,740,500	\$ 18,525,789	\$ 37,602,518
TOTAL OPERATING EXPENSES		\$ 39,095,109	\$ 19,824,926	\$ 40,768,566

STAFF REPORT

To: SBWMA Board Members
From: Kevin McCarthy, Executive Director
Date: January 28, 2010 Board of Director's Meeting
Subject: Resolution Approving Contract With Zanker Road For Processing Construction And Demolition (C&D) Materials

Recommendation

It is recommended that the SBWMA Board of Directors:

1. Approve the attached resolution extending the existing C&D processing contract with Zanker Road for four years.

Analysis

Approval of this contract will reflect a new, lower C&D processing rate of \$45 per ton as reflected in the attached contract. Staff researched other C&D options in the Bay area and found limited options and certainly no other more cost effective options. Zanker has also provided consistently high quality services over the past three years under its current contract.

Background

On December 8, 2006 a contract was executed with Zanker Road for a four year term effective January 1, 2007 to December 31, 2010 with an option to extend the contract upon mutual agreement. The starting C&D rate was \$47.50 per ton with an annual CPI adjustment at 90% of the San Francisco-Oakland-San Jose, CA rate. The current rate for 2010 is \$50.62 per ton.

Fiscal Impact

Approval of this contract with Zanker Road is projected to save \$5.62 per ton or \$125,365 per year (projected 2009 C&D diversion of 22,307 tons x \$5.62/ton) in C&D processing costs; these costs are reflected in Shoreway "pass through expenses" that are included in Member Agency collection costs.

Attachments

Resolution 2010-03

Agreement on Construction and Demolition Debris Processing For Recycling and Beneficial Use



RethinkWaste

South Bayside Waste Management Authority

RESOLUTION NO. 2010-03

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING CONTRACT WITH ZANKER ROAD FOR PROCESSING CONSTRUCTION AND DEMOLITION (C&D) MATERIALS

WHEREAS, the South Bayside Waste Management Authority (SBWMA) has had a contract with Zanker Road for the processing of construction and demolition materials (C&D), and

WHEREAS, staff has negotiated a new four (4) year contract (Exhibit A attached), effective February 1, 2010 for Zanker Road to continue to process C&D materials, and

WHEREAS, the SBWMA Board of Directors reviewed the new contract and finds the terms and conditions acceptable and the new contract to be in the best interests of the SBWMA.

NOW, THEREFORE, BE IT RESOLVED by the SBWMA Board of Directors hereby approves the contract, Exhibit A, with Zanker Road and authorizes the Executive Director to execute the contract.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the this 28th day of January, 2010, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2010-03 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on January 28, 2010.

ATTEST:

, Chairperson of SBWMA

Cathy Hidalgo, Board Secretary

1 **AGREEMENT FOR CONSTRUCTION AND DEMOLITION DEBRIS PROCESSING**
2 **FOR RECYCLING AND BENEFICIAL USE**
3 **BETWEEN THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**
4 **AND ZANKER ROAD RESOURCE MANAGEMENT, LTD.**
5

6 This Agreement is entered into by and between the South Bayside Waste
7 Management Authority (SBWMA), a California joint powers authority, and Zanker
8 Road Resource Management, Ltd. (Contractor) a California limited partnership,
9 on February 1, 2010 and sets forth the terms and conditions under which
10 Contractor will accept and process for recycling and beneficial use mixed
11 construction and demolition debris from the Shoreway Recycling and Disposal
12 Center owned by the South Bayside Waste Management Authority (SBWMA)
13 and located at 225 Shoreway Road, San Carlos, California 94070.
14

15 **1. Definitions**
16

17 **A. Construction and Demolition Debris (C&D)**

18 “Construction and Demolition Debris (C&D)” means a mixture of all non-
19 hazardous waste material resulting from construction, remodeling, repair, or
20 demolition activities. Construction and Demolition Debris includes, but is not
21 limited to: soil, brush, logs, concrete, asphalt, brick, ceramics, stucco, plaster,
22 wood, drywall, metals, wall coverings, roofing materials, wires and conduit,
23 carpet, carpet pad, ceiling tiles, windows, doors, fixtures, insulation, fencing,
24 cardboard, and plastic. Individual pieces of Construction and Demolition Debris
25 delivered to Contractor shall not exceed 150 pounds or 8 feet in any two
26 directions. There is no minimum size restriction for individual pieces of
27 Construction and Demolition Debris; however materials cannot be ground or
28 shredded prior to arriving at Contractor’s processing facility.
29

30 **B. Non-Construction and Demolition Debris**

31 “Non-Construction and Demolition Debris” means putrescible waste, food waste,
32 grass clippings, leaves, residential or commercial waste collected in compacting
33 vehicles, waste enclosed in plastic bags, furniture, mattresses, tires, appliances,
34 and individual pieces of Construction and Demolition Debris exceeding 150
35 pounds or 8 feet in any two directions.
36

37 **C. Recyclable Construction and Demolition Debris**

38 “Recyclable Construction and Demolition Debris” means 1) wood such as
39 dimensional lumber, pallets, shake shingles, particle board, plywood, Oriented
40 Strand Board, Medium Density Fiberboard and other manufactured wood
41 products, that are free of lead paint, stain, melamine coating, creosote, arsenic or
42 other chemical treatments; 2) brush and logs; 3) concrete, asphalt, brick, rock,
43 ceramics; 4) soil; 5) metal; 6) drywall; and, 7) cardboard.
44

45 **D. Recycled**

46 “Recycled” means those materials, which would otherwise be Disposed, that
47 have been processed, separated, treated, and/or reconstituted and returned to
48 the economy in the form of raw materials for new, reused, or reconstituted
49 products. For purposes of this Agreement, “Recycled” shall also mean that the

50 material is not reported to the California Integrated Waste Management Board as
51 being either "Disposed" or utilized as "Alternative Daily Cover (ADC.)" Materials
52 Recycled under this Agreement shall not be reported as disposed or ADC at the
53 Contractor's facility or at any other solid waste facility to which the contractor
54 delivers the material after processing. Acceptable end-uses for Recycled
55 materials include, but are not limited to: biomass fuel, manufactured wood
56 products, mulch, compost, engineered soil, agricultural gypsum, gravel, road
57 base, and Beneficial Use at a Landfill.

58
59 **E. Beneficial Use at a Landfill:**

60 "Beneficial Use at a Landfill" means use at a solid waste landfill of materials
61 recovered from Construction and Demolition Debris for: final cover foundation
62 layer, liner operations layer, leachate and landfill gas collection system
63 construction fill, road base, wet weather operations pads and access roads, soil
64 amendments for erosion control and landscaping, or any other legitimate use that
65 is not reported to the California Integrated Waste Management Board as either
66 Alternative Daily Cover (ADC) or Disposal.

67
68 **F. Alternative Daily Cover (ADC)**

69 "Alternative Daily Cover" means cover material other than soils/earthen materials
70 that are placed on the surface of the active face of a solid waste landfill at the
71 end of each operating day to control vectors, fires, odors blowing litter, and
72 scavenging. For purposes of this Agreement, materials recovered from
73 Construction and Demolition Debris shall be considered ADC if their use meets
74 this definition and/or if they are reported to the California Integrated Waste
75 Management Board as ADC, either at the Contractor's facility or at any other
76 solid waste facility to which the Contractor delivers the materials after processing.

77
78 **G. Disposed (Disposal)**

79 "Disposal" means the ultimate disposition of Construction and Demolition Debris
80 at a landfill. Disposal does not include the use of Construction and Demolition
81 Debris as Alternative Daily Cover (ADC) or Beneficial Use at a Landfill, so long
82 as State regulations consider such uses to be diversion for purposes of
83 complying with State diversion requirements. For purposes of this Agreement,
84 C&D shall be considered Disposed if it is reported to the California Integrated
85 Waste Management Board as Disposed, either at the Contractor's facility or at
86 any other solid waste facility to which the Contractor delivers the materials.

87
88 **H. Shoreway Recycling and Disposal Center Operator**

89 "Shoreway Recycling and Disposal Center Operator" means the private entity
90 employed by the SBWMA to operate the Shoreway Recycling and Disposal
91 Center and deliver Construction and Demolition Materials to Contractor. The
92 current Shoreway Recycling and Disposal Center Operator is Allied Waste
93 Systems of San Mateo.

94
95 **I. Hazardous Waste**

96 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely
97 Hazardous Waste, or extremely Hazardous Waste by the State of California in
98 Health and Safety Code §25110.02, §25115, and §25117 or in the future

99 amendments to or recodifications of such statutes or identified and listed as
100 Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant
101 to the Federal Resource Conservation and Recovery Act (42 USC §6901 et
102 seq.), all future amendments thereto, and all rules and regulations promulgated
103 thereunder.
104

105 **J. Universal Waste**

106 “Universal Waste” means all wastes as regulated and defined by Title 22 Article 1
107 Subsections 66273.1 through 66273.9 of the California Code of Regulations.
108 These include, but are not limited to, batteries, fluorescent light bulbs, mercury
109 switches, creosote treated lumber, and E-Waste.
110

111 **K. Accepted Load**

112 “Accepted Load” means a load of SBWMA Construction and demolition debris
113 delivered to Contractor’s facility, which meets the requirements of Section 5 and
114 will be processed by Contractor.
115

116 **L. Held Load**

117 “Held Load” means a load of SBWMA Construction and Demolition Debris
118 delivered to Contractor’s facility, which Contractor believes does not conform to
119 the requirements of Section 5 of this Agreement, and is being kept separate and
120 undisturbed so that it can be inspected by an authorized representative of the
121 SBWMA. Contractor must provide the SBWMA until 5:00 p.m. the day following
122 notification to inspect a Held Load.
123

124 **M. Rejected Load**

125 “Rejected Load” means a Held Load that the SBWMA has either a) inspected in
126 person or by utilizing photographs provided by Contractor, and agreed that it
127 does not meet the requirements of Section 5 of this Agreement; or b) waived its
128 right to inspect by not performing such an inspection by 5:00 p.m. of the day
129 following notification that the load is being Held.
130

131 **2. Contractor’s Representations and Warranties**
132

133 **A. Legal Status**

134 Contractor represents and warrants that it is a limited partnership duly organized,
135 validly existing, and in good standing under the laws of the State of California
136 and authorized to do business in the State of California. It has the power to own
137 its properties and to carry on its business as now owned and operated and as
138 required by this Agreement.
139

140 **B. Limited Partnership Authorization**

141 Contractor represents and warrants that it has the authority to enter into and
142 perform its obligations under this Agreement. The General Partner of Contractor
143 (or the shareholders, if necessary) have taken all actions required by law, its
144 partnership agreement, or otherwise, to authorize the execution of this
145 Agreement. The person signing this Agreement on behalf of Contractor has
146 authority to do so.
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C. Agreement Will Not Cause Breach

To the best of Contractor's and SBWMA's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement, nor the performance of this Agreement: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which Contractor or SBWMA is a party or by which Contractor or SBWMA or any of its properties or assets are bound, or constitutes a default thereunder.

D. No Litigation

To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending, or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the SBWMA in writing.

E. Ability to Perform

Contractor possesses the business, professional and technical expertise to manage, handle, treat, store, process, and recycle Construction and Demolition Debris, and possesses the equipment, plant, and employee resources required to perform this Agreement.

3. Term

The term of this Agreement shall be for the period commencing February 1, 2010 to January 31, 2014. The parties, if they mutually agree in writing, may extend the tem of this agreement on an annual basis for up to three annual extensions.

4. Exclusive Services

Except as provided below, during the term of this Agreement, the SBWMA shall direct the Shoreway Recycling and Disposal Center Operator to transport all loads of Construction and Demolition Debris generated from the Shoreway Recycling and Disposal Center to be hauled exclusively to Contractor's facilities at 675 and 705 Los Esteros Road in San Jose, California, for processing, recycling, finished product marketing, and disposal of residuals. Contractor shall make available to the SBWMA at least 70 tons per day of Construction and Demolition Debris processing capacity. The SBWMA shall guarantee delivery of at least 35 tons per day (as calculated on a 30 day average) to the Contractor's processing facility, on the terms and conditions specified in this Agreement.

195 **5. Scope of Construction and Demolition Processing Services**
196

197 Contractor agrees to accept, process for recycling, and dispose of residual
198 amounts, all Construction and Demolition Debris received from the SBWMA.
199 Contractor shall process, recycle, market finished products, and dispose of
200 residuals. Contractor shall ensure that, at a minimum, Recyclable Construction
201 and Demolition Debris from the SBWMA are Recycled. Contractor shall ensure
202 that at least 75% by weight of the Construction and Demolition Debris accepted
203 from the SBWMA is Recycled. Contractor shall ensure that at least 50% by
204 weight of the Construction and Demolition Debris accepted from the SBWMA is
205 Recycled to uses other than Beneficial Use at a Landfill. Contractor may dispose
206 of or utilize as ADC any residuals from the SBWMA Construction and Demolition
207 Debris that cannot be Recycled. Such residuals shall not exceed 25% of the
208 inbound weight of accepted SBWMA Construction and Demolition Debris.
209 Contractor may reject SBWMA loads containing more than 5% by weight of Non-
210 Construction and Demolition Debris as defined in this Agreement. Contractor
211 may also reject SBWMA loads containing less than 75% by weight of Recyclable
212 Construction and Demolition Debris as defined in this Agreement. In order to
213 reject an SBWMA load, Contractor must follow the procedures for rejection of
214 loads set forth in Section 7.
215

216 **6. Hours of Operation**
217

218 Contractor's facility shall be open to accept Construction and Demolition Debris
219 from 6:00 a.m. to 5:45 p.m., Monday through Friday, and from 8:00 a.m. to 3:45
220 p.m., Saturday and Sunday. Said facility will be closed Thanksgiving Day,
221 Christmas Day, New Year's Day, and Easter Sunday. In the event the
222 Contractor applies to its regulating agencies for, and is granted, additional
223 permitted receiving hours, Contractor shall make those additional hours available
224 to the SBWMA for delivery of Construction and Demolition Debris.
225

226 **7. Rejection of Loads**
227

228 An SBWMA Construction and Demolition Debris load may be held by Contractor
229 if Contractor believes that it does not conform to the guidelines set forth in
230 Section 5. Contractor may not declare a load to be held until that load has been
231 unloaded from the transfer vehicle so that the entire load may be viewed. If
232 Contractor declares a load to be held, Contractor shall photograph the Held
233 Load, and shall keep the entire Held Load separate from other materials, and
234 undisturbed, until it can be visually inspected by an authorized representative of
235 the SBWMA. Contractor shall inform the SBWMA of the Held Load via e-mail
236 (cdloadproblem@rethinkwaste.org) and telephone (number to be designated by
237 the SBWMA.) The e-mail shall include digital photos of the Held Load. The
238 load's arrival time and date and truck number shall be included in these
239 communications. If the SBWMA does not inspect the load at Contractor's site by
240 5:00 p.m. of the day following notification, Contractor may move the load or
241 combine it with other materials.
242

243 By 5:00 p.m. of the day following notification, the SBWMA will inform Contractor
244 as to whether or not it is in agreement that the Held Load should be Rejected. If
245 the SBWMA finds that the Held Load does conform to the requirements of
246 Section 5, Contractor shall accept the load at the rate for Accepted Loads set
247 forth in Section 10A. If the SBWMA agrees that the load does not conform to the
248 requirements of Section 5, the SBWMA will either 1) authorize Contractor to
249 dispose of the load, and direct the Shoreway Recycling and Disposal Center
250 Operator to pay Contractor the rate for disposing of Rejected Loads as specified
251 in Section 10B or 2) direct the Shoreway Recycling and Disposal Center
252 Operator to remove the Rejected Load from Contractor's facility. Contractor will
253 load the Rejected Load into the Shoreway Recycling and Disposal Center
254 Operator's vehicle and weigh that vehicle as it leaves Contractor's facility. In the
255 event of a dispute as to whether or not a Held Load should be Rejected,
256 Contractor may be required to remove and separately weigh materials from the
257 Held Load to demonstrate that it does not conform to the requirements of Section
258 5. In addition to the other costs provided for herein, if the load is deemed
259 rejected, the SBWMA shall pay for all costs associated with the sorting and re-
260 weighing of the Rejected Load.

261
262 It is the intent of both the SBWMA and Contractor to have no Held Loads or
263 Rejected Loads. Should Held Loads exceed two in a six month period, the
264 SBWMA and Contractor will meet and confer to resolve the issue.
265

266 **8. Hazardous or Universal Waste Materials**

267
268 In the event any SBWMA Construction and Demolition Debris contains any
269 Universal Waste or Hazardous Waste, the SBWMA shall direct Shoreway
270 Recycling and Disposal Center Operator to pay to Contractor any actual,
271 reasonable, and necessary costs incurred by Contractor in handling and
272 disposing of said materials. In disposing of said Hazardous and/or Universal
273 Waste materials, the SBWMA shall be designated as the owner or generator of
274 said Hazardous Waste or Universal Waste. In the event that Shoreway
275 Recycling and Disposal Center Operator does not pay said costs to Contractor
276 within thirty (30) days, the SBWMA shall pay the undisputed portion of said costs
277 directly to Contractor.
278

279 **9. Reporting**

280
281 Contractor shall report monthly the amount of SBWMA Construction and
282 Demolition Debris accepted, Recycled, used as ADC, and Disposed. Contractor
283 shall report monthly the end-uses (e.g. biomass fuel, road base, Beneficial Use
284 at a Landfill, etc.) for each material type Recycled from SBWMA Construction
285 and Demolition Debris at Contractor's facility. For reporting purposes, inbound
286 weights from SBWMA loads may be applied to overall diversion and end-use
287 percentages for mixed Construction and Demolition Debris processing operations
288 at the Contractor's facility. However, if the overall diversion and end-use
289 percentages do not demonstrate compliance with the processing services listed
290 in Section 5, Contractor shall be required to demonstrate compliance in regards

291 to the SBWMA materials by processing the SBWMA's Construction and
292 Demolition Debris separately.

293

294 **10. Rates**

295

296 For the period February 1, 2010 through January 31, 2011, the SBWMA shall
297 direct Shoreway Recycling and Disposal Center Operator to pay to Contractor

298

299 A. The sum of \$45.00 per ton for all SBWMA Construction and Demolition
300 Debris accepted by Contractor for processing.

301

302 B. The sum of \$57.50 per ton for any rejected SBWMA loads that the
303 SBWMA authorizes Contractor to dispose of.

304

305 Commencing February 1, 2011 and thereafter on each February 1, this
306 Agreement is in effect, including any extension years, both rates stated above
307 shall be increased by 90% of the change in the value of the All Urban Consumers
308 Index (CPI-U), All Items, for the San Francisco-Oakland-San Jose, CA, Base
309 Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by
310 the U. S. Department of Labor, Bureau of Labor Statistics (or its successor) for
311 the previous December and its value twelve months before.

312

313 In the event that any government agency imposes upon Contractor any
314 additional regulations or fees which result in additional expenses, charges, fees,
315 or taxes to Contractor and which relate specifically to the construction and
316 demolition services provided hereunder, either 1) such expenses, charges, fees
317 or taxes shall be added to the prices on a pro-rata basis, based upon the
318 percentage that the total tonnage of construction and demolition waste being
319 delivered to Contractor pursuant to this Agreement bear to the total tonnage of
320 construction and demolition waste delivered to Contractor's facility from all
321 sources; or, 2) the SBWMA may terminate this Agreement.

322

323 **11. Payment**

324

325 On or before the 10th of each month, Contractor shall send an invoice (showing
326 by date, time, and vehicle identification number the tonnage received and the
327 rate charged) to Shoreway Recycling and Disposal Center Operator for the
328 preceding month. Shoreway Recycling and Disposal Center Operator shall
329 reconcile such invoice to its daily records and pay the undisputed portion of said
330 invoice within thirty (30) days of receipt. Within fifteen (15) days of receipt,
331 Shoreway Recycling and Disposal Center Operator shall inform Contractor and
332 the SBWMA of any disputed amounts and Shoreway Recycling and Disposal
333 Center Operator and Contractor shall act promptly to resolve such disputes.
334 Payment shall be made only by cashier's check, certified check, or by Shoreway
335 Recycling and Disposal Center Operator or SBWMA check. In the event that
336 Shoreway Recycling and Disposal Center Operator does not pay any undisputed
337 invoice within thirty (30) days, the SBWMA shall pay the amounts it reasonably
338 determines are due Contractor directly to Contractor. The above payment

339 provisions will be modified effective January 1, 2011 such that the Contractor
340 shall bill the SBWMA.
341

342 **12. Default and Remedies** 343

344 All provisions of this Agreement to be performed by Contractor are considered
345 material. Each of the following shall constitute an event of default.

- 346 A. Fraud or deceit.
- 347 B. Failure to maintain insurance coverage described herein.
- 348 C. Contractor violation of orders or filings of a regulatory body having a
349 material impact on Contractor's ability to perform its obligations as
350 required by this Agreement.
- 351 D. Failure to perform services as required by this Agreement for two (2)
352 consecutive days or more or for any seven (7) days in a period of 30 days.
- 353 E. Failure of Contractor to provide reports and/or records as provided for in
354 this Agreement.
- 355 F. Any act or omission by Contractor which violates the terms of this
356 Agreement.
- 357 G. Any false or misleading representation of Contractor.
- 358 H. Filing of a voluntary petition for debt relief.
- 359 I. Bankruptcy of Contractor.
- 360 J. Contractor's failure to provide assurance of performance.

361
362 Contractor shall be given 30 days from notification by the SBWMA to cure any
363 default arising under this Agreement.
364

365 In the event of Contractor's failure to cure said default, the SBWMA may, at its
366 option, terminate this Agreement. This right of termination is in addition to any
367 other rights of the SBWMA and the SBWMA's termination of this Agreement shall
368 not constitute an election of remedies. Instead, it shall be in addition to any and
369 all other legal and equitable rights and remedies the SBWMA may have.
370

371 **13. Termination for Cause** 372

373 The SBWMA selected Contractor based on its high landfill diversion levels.
374 These factors are essential to the services the SBWMA shall obtain from
375 Contractor. Therefore, notwithstanding the terms and conditions of Section 12, in
376 any month, should the Recycled fraction of accepted Construction and
377 Demolition Debris fall below 75% or should the fraction of these accepted
378 Construction and Demolition Debris Recycled to end-uses other than Beneficial
379 Use at a Landfill fall below 50%, then Contractor will be found in breach of this
380 Agreement and the SBWMA may terminate the Agreement for cause. In such
381 case, the SBWMA shall notify Contractor in writing of its intent to do so sixty (60)
382 days prior to the intended date of termination. Contractor shall be given thirty
383 (30) days to correct the breach and, if it does, then the termination shall be
384 suspended. A second breach within a twelve-month period may reactivate the
385 termination of the Agreement and such termination shall occur within sixty (60)
386 days of the second breach, without any right by Contractor to correct the breach.
387

388 The SBWMA shall meet and confer with Contractor if Contractor is unable to
389 meet the diversion requirements set forth in Section 5, due to changes in markets
390 for Recycled materials.
391

392 **14. Insurance**

393
394 Insurance policies are to be obtained by Contractor and remain in full force and
395 effect at all times to provide protection against liability for damages which may be
396 imposed for the negligence of Contractor or its employees, agents, or
397 subcontractors including, but not limited to, general liability and automobile
398 liability insurance. Contractor shall also provide liability coverage under
399 California Workers' Compensation laws. The amounts of insurance required are
400 to be established herein. Said amounts shall not be construed to limit
401 Contractor's liability.
402

403 The insurance requirements provided herein may be reduced or waived in writing
404 by the SBWMA Board of Directors, provided the Board of Directors determines
405 that such waiver or reduction does not unreasonably increase the risk of
406 exposure to the SBWMA.
407

408 **A. Workers' Compensation Insurance.** Contractor shall obtain and maintain in
409 full force and effect throughout the entire term of this Agreement full Workers'
410 Compensation Insurance in accord with the provisions and requirements of the
411 Labor Code of the State of California. Endorsements that implement the required
412 coverage shall be filed and maintained with the SBWMA throughout the term of
413 this Agreement.
414

415 **B. Comprehensive General Liability.** Contractor shall obtain and maintain
416 in full force and effect throughout the entire term of this Agreement a Broad Form
417 Comprehensive General Liability (occurrence) policy with a minimum limit of
418 TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION
419 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property
420 damage, with any self-insured retention not exceeding TWO HUNDRED
421 THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect
422 Contractor and the SBWMA from any claim for damages for bodily injury,
423 including accidental death, as well as from any claim for property damage which
424 may arise from operations performed pursuant to this Agreement, whether such
425 operations are by Contractor itself, or by its agents, employees and/or sub-
426 contractors. Copies of the policies or endorsements evidencing the above-
427 required insurance coverage shall be filed with the SBWMA. Endorsements are
428 required to be made a part of all of the following insurance policies required by
429 this Section:
430

- 431 (1) "The SBWMA, its employees, agents, and officers, are hereby
432 added as insured as respects liability arising out of activities
433 performed by or on behalf of Contractor."
434
- 435 (2) "This policy shall be considered primary insurance as respects
436 any other valid collectible insurance the SBWMA may possess

437 including any self-insured retention the SBWMA may have,
438 and any other insurance the SBWMA does possess shall be
439 considered excess insurance and shall not contribute with it."
440

441 (3) "This policy shall act for each insured, as though a separate
442 policy had been written for each. This, however, will not act to
443 increase the limit of liability of the insuring company."
444

445 (4) "Thirty (30) days prior written notice by certified mail, return
446 receipt requested, shall be given to the SBWMA in the event
447 of suspension, cancellation, reduction in coverage or in limits
448 or non-renewal of this policy for whatever reason. Such notice
449 shall be sent to the SBWMA."
450

451 **C. Vehicle Liability.** Contractor shall obtain and maintain in full force and
452 effect throughout the entire term of this Agreement a vehicle liability policy with a
453 minimum limit of TWO MILLION DOLLARS (\$2, 000,000.00) per occurrence for
454 bodily injury and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per
455 occurrence for property damage. Said insurance shall protect Contractor and the
456 SBWMA from any claim for damages for bodily injury, including accidental death,
457 as well as from any claim for property damage which may arise from operation of
458 owned and non-owned vehicles. Copies of the policies or endorsements
459 evidencing the above-required insurance coverage shall be filed with the
460 SBWMA.
461

462 The limits of such insurance coverage, and companies, shall be subject to review
463 and approval by the SBWMA every year and may be increased, subject to
464 Contractor's consent, at that time and match the coverage provided by the
465 SBWMA's own liability insurance policy. The SBWMA shall be included as a
466 named insured on each of the policies, or policy endorsements.
467

468 15. Indemnification

469 **A. Indemnification of the SBWMA.** Contractor shall defend the SBWMA
470 with counsel reasonably acceptable to the SBWMA and indemnify the SBWMA
471 from and against any and all liabilities, costs, claims, and damages which are
472 caused by Contractor's negligence, intentional wrongful acts, or failure to comply
473 with applicable laws and regulations, including but not limited to, liabilities, costs,
474 claims, and damages.
475

476 **B. Indemnification of Contractor.** The SBWMA shall defend Contractor
477 with counsel reasonably acceptable to Contractor and indemnify Contractor from
478 and against any and all liabilities, costs, claims and damages which are caused
479 by the SBWMA's negligence, intentional wrongful acts, or failure to comply with
480 applicable laws and regulations, including but not limited to, liabilities, costs,
481 claims, and damages. The SBWMA shall not offer such indemnification to
482 Contractor for Shoreway Recycling and Disposal Center Operator's negligence
483 or failure to comply with applicable laws and regulations.
484
485
486

487 **16. General Provisions**

488
489 **A. Entire Agreement.** This Agreement represents the full and entire
490 Agreement between the SBWMA and Contractor with respect to the matters
491 covered herein.

492
493 **B. Force Majeure.** Neither party shall be in default under this Agreement in
494 the event, and for so long as, it is impossible or extremely impracticable for it to
495 perform its obligations due to any of the following reasons: riots, wars, sabotage,
496 civil disturbances, insurrection, explosion, natural disasters such as floods,
497 earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts and other
498 labor disturbances or other catastrophic events which are beyond the reasonable
499 control of Contractor. Labor unrest, including but not limited to strike, work
500 stoppage or slowdown, sick-out, picketing, or other concerted job action
501 conducted by Contractor's employees or directed at Contractor is not an excuse
502 from performance; provided, however, that labor unrest or job action directed at a
503 third party over whom Contractor has no control, shall excuse performance.
504

505 A party claiming excuse under this Section must (i) have taken reasonable
506 precautions to avoid being affected by the cause, and (ii) notify the other party in
507 writing within 5 days after the occurrence of the event specifying the nature of the
508 event, the expected length of time that the party expects to be prevented from
509 performing, and the steps which the party intends to take to restore its ability to
510 perform.
511

512 **C. Notice Procedures.** All notices, demands, requests, proposals,
513 approvals, consents, and other communications which this Agreement requires,
514 authorizes, or contemplates shall be in writing and shall either be personally
515 delivered to a representative of the Parties at the address below, e-mailed to the
516 e-mail address below, or faxed to the fax number below, or sent via certified mail
517 or Federal Express, or deposited in the United States mail, first class postage
518 prepaid, addressed as follows:

519
520 1.) If to the SBWMA:

521
522 Kevin McCarthy
523 Executive Director
524 South Bayside Waste Management Authority
525 610 Elm Street, Suite 202
526 San Carlos, California 94070
527 E-Mail: KMcCarthy@ReThinkWaste.org
528 Fax: 650-802-3501
529

530 2.) If to Contractor:

531
532 Richard Cristina
533 President
534 Zanker Road Resource Management, Ltd.
535 675 Los Esteros Road
536 San Jose, CA 95134

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E-Mail: Michael@z-best.com
Fax: (408) 263-2393

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered, e-mailed, or faxed, or, if mailed, three calendar days from the date it is deposited in the mail.

D. Independent Contractor. Contractor is an independent contractor and not an officer, agent, servant or employee of the SBWMA. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractor's and sub-contractor, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the SBWMA and Contractor. Neither Contractor nor its officers, employees, agents or subcontractor shall obtain any rights to retirement or other benefits which accrue to SBWMA employees.

E. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof.

F. Waiver or Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.

G. Forum Selection. Contractor and the SBWMA stipulate and agree that any litigation relating to the enforcement or interpretation of this Agreement, arising out of Contractor's performance, or relating in any way to the work, shall be brought in California State Courts in San Mateo County.

H. Court Costs and Attorney Fees. In the event legal action is instituted by either party to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees and actual costs in connection with such action.

I. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document. For purposes of this Agreement, each of the signatories hereto agrees that a facsimile copy of the signature page of the person executing this Agreement shall be effective as an original signature and legally binding and effective as an execution counterpart thereof.

581 IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
582 have affixed their hands on the day and year this Agreement first above written.

583
584
585

South Bayside Waste Management Authority

586 By:

587
588

589 Name: _____
590 Kevin McCarthy

591 Title: Executive Director

592
593

594 Date: _____

595
596

Contractor

598 Zanker Road Resource Management, LTD, a California limited partnership

599
600

By:

601
602

603 Name: _____
604 Richard Cristina

605 Title: Zanker Road Resource Recovery, Inc. General Partner

606
607

608 Date: _____

609
610

Approved as to form:

613
614

615 BY: _____
616 Robert Lanzone

617 Legal Counsel of the Board of Directors

618
619

620 Date: _____

621
622

624 BY: _____
625 Cathy Hidalgo

626 Secretary of the Board of Directors

627
628

629 Date: _____

STAFF REPORT

To: SBWMA Board Members
From: Monica Devincenzi, Recycling Outreach & Sustainability Manager
Date: January 28, 2010 Board of Directors Meeting
Subject: Approval of Updated SBWMA Brand Identification

Recommendation

It is recommended that the SBWMA Board of Directors:

1. Approve the selected new logo, which will replace the existing SBWMA logo on all materials moving forward, including website, press releases, public outreach materials, containers, and facility signage, among others; and
2. Rebrand the Authority as "RethinkWaste" to better align with our mission and services.

Analysis

With the roll out of upcoming new collection services and the Shoreway facility master plan improvements, the Authority's name and logo will be prominently displayed on all advertising, brochures and other educational materials, containers, signage at the future Shoreway Environmental Center and media coverage on our services. This gives the Authority a unique and unparalleled opportunity to strategically brand our name in the communities we serve. Normally, a branding effort is associated with significant costs, however, due to the magnitude of the public outreach campaign being initiated, the branding will occur by default and without any additional costs incurred by the Authority.

A determination on the logo and brand to be used is critical at this time due to key milestones in the transition and public outreach schedule for the upcoming future collection services. Recology of San Mateo County will shortly be placing their cart orders, which will include the Authority's logo. Staff is also working on developing associated outreach materials (graphics/signs for containers, brochures, etc.).

Historically, there have been numerous renditions of the SBWMA's name and logo, including the following:



This has resulted in a brand that is fractured and inconsistent, leading to confusion by customers, the media, community leaders and organizations, and the general public. While the current logo and color scheme have served their purpose, Staff feels strongly that an updated look is needed to better reflect the Authority's future direction. In addition, Staff recommends that moving forward we refer

to the Authority as “RethinkWaste” instead of “SBWMA” as further reflection of our mission and the services we provide. Previous feedback from the Board, the public and Jeffrey/Scott Agency (JSA), the firm recently selected to assist in developing our future services public outreach needs, shows that the name RethinkWaste resonates well with the public and more accurately reflects who we are. However, it is important to note that the agency’s legal name would remain the same: the South Bayside Waste Management Authority. The RethinkWaste name is solely for branding and public education purposes.

With this in mind, Staff requested feedback from the Board in selecting a new logo for the Authority to use on all future items and communications, including website, press releases, public outreach materials, containers and facility signage, among others. The Board was provided four options for a new logo and asked to rank them in order of most preferred to least. Based on Board input, the logos ranked in the following order, from highest to lowest:

1st Place



2nd Place



3rd Place



4th Place



Staff recommends that the top-preferred logo be used moving forward.

In making the determination to brand the Authority RethinkWaste, Staff also considered whether it should be “RethinkWaste.org” similar to the “StopWaste.Org” joint powers authority in the East Bay. However, ultimately, this was not selected after further analysis due to differences between the two agencies. Although comprised of the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board, StopWaste.Org has solely defined itself by its website. It is known primarily as a portal for resources on recycling, resource conservation and sustainability surrounding solid waste and public outreach, with no direct management of the services provided via administration of franchised collection contracts or ownership/management of solid waste-related facilities.

The SBWMA, however, is much more multidimensional with an operations focus given our ownership of the Shoreway facility. In addition, the Authority provides primary contract management support for the collection franchise agreements, develops and manages public education and recycling programs and owns the Shoreway facility – becoming RethinkWaste.org would not accurately reflect these core responsibilities. In addition, San Mateo County has invested heavily in providing a similar resource as StopWaste.Org through its RecycleWorks website and staff, and our two agencies serve complimentary purposes.

Background

As part of the process for selecting a firm to assist Staff with public outreach services, four short-listed firms competed in a Design Competition last year, which required the competing firms to submit concepts and designs for various outreach materials, including a new SBWMA logo. Staff liked elements of the submitted logos from the different firms, and provided this direction to JSA. In

addition, further direction was given to JSA to place emphasis on the RethinkWaste name, and incorporate the colors of green and blue, which are universally recognized as representing the environment/sustainability. It also ties into the colors of the collection carts and containers for the future collection services and the Shoreway facility..

Fiscal Impact

There is no fiscal impact associated with incorporating the new logo and RethinkWaste brand on future outreach efforts and materials.