



COLLECTION AND RECYCLING PROGRAM SUPPORT AND COMPLIANCE



STAFF REPORT

To: SBWMA Board Members
From: Cliff Feldman, Recycling Programs Manager
Date: January 28, 2016 Board of Directors Meeting
Subject: Consideration of Approval of Final Plan and Recommended Process for Supporting Member Agencies with Future Franchise Agreement Decisions

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2016-09 attached hereto authorizing the following action:

Approval of the Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology San Mateo County (**Exhibit A**)

Analysis

The Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology San Mateo County (Plan) is a "process and approach" plan and not a recommendation of whether or not to extend the current Member Agency Franchise Agreements with Recology San Mateo County (Recology).

Each of the Member Agencies has a Franchise Agreement with Recology which started on January 1, 2011 and ends at midnight on December 31, 2020. The Franchise Agreements state:

- **SECTION 3.02 TERM**

The Term of this Agreement shall begin on the Effective Date and shall end at midnight on December 31, 2020, unless earlier terminated, or extended as provided in Section 3.03. Contractor's obligation to Collect Solid Waste, Targeted Recyclable Materials and Organic Materials shall begin on January 1, 2011 at 12:01 a.m. and shall continue for the remainder of the Term.

- **SECTION 3.03 EXTENSION OF TERM**

During calendar year 2017, the Parties shall meet and confer on the possible extension of the Term.

The contract extension decision period was set for a defined period to allow sufficient time if needed to conduct a competitive procurement process if no contract extension was granted. Given the size and complexity of the service area it was determined that a three-year period (i.e., 2018-2020) was needed to complete a competitive procurement process and transition to a new service provider if appropriate.

The Plan addresses how JPA staff can best support the Member Agencies with this important decision individually and as a whole service area wide. The Plan recognizes that each Member Agency will individually decide whether to extend their Franchise Agreement with Recology and the final scope of services. The prior direction

from the Board and past practice has been for the JPA to help facilitate and manage the process for selection of a franchised collection services provider, negotiate Franchise Agreement contract terms, and to provide overall contract administration support. Staff is committed to continue providing this support if tasked to do so.

The Recology Franchise Agreement extension process outlined in the Plan does not include the potential extension to the Shoreway Operations Agreement which expires on December 31, 2020. The term extension provisions of that Agreement allow the JPA unilateral discretion to extend the Agreement for up to three additional one-year periods on the current terms and conditions. Such current terms and conditions are very financially beneficial to the JPA as has been discussed at several Board meetings.

The active engagement and collaboration between JPA staff, Member Agency staff (including the TAC), Recology and the SBWMA Board is required to effectively implement the Plan in a timely manner. By meeting the Plan milestones in 2016 this will provide Member Agencies sufficient time to schedule their governing body action early enough in 2017 to meet the deadline prescribed in their Franchise Agreement for action on extending said contract or not.

Background

This item was referred to the TAC by the Board of Directors at its May 28, 2015 meeting. The Executive Committee requested that the TAC review a draft Plan and develop a final recommendation for consideration by the Board. A draft Plan was presented at the July 9, 2015 TAC meeting and comments and discussion ensued regarding the Plan. On September 24, 2015, an adhoc subcommittee of the TAC met with SBWMA staff Kevin McCarthy and Cliff Feldman to discuss a revised draft of the Plan which was originally shared at the July 9, 2015 TAC meeting. This adhoc committee consisted of the TAC Chair Afshin Oskoui, City of Belmont; TAC Vice Chair George Rodericks, Town of Atherton; Larry Patterson, City of San Mateo City Manager; Roxanne Murray, City of San Mateo; and Jeff Moneda, Public Works Director, City of Foster City. The Plan presented to this subcommittee was revised to include the feedback from this group and was subsequently approved at the October 8, 2015 TAC meeting. This Plan was then presented to the Board for discussion at the November 19, 2015 Board meeting and staff was given direction to bring this item back to the Board for consideration of approval at the January 28, 2016 Board meeting.

On June 25, 2015 the Board adopted the 2015 Long Range Plan which includes recommendations that may affect the future scope of the Franchise Agreements. On the same date, the Board adopted the FY1516 budget which provides funding for two collection related pilots, use of co-collection vehicles and an every other week garbage collection pilot.

Fiscal Impact

There is no specific fiscal impact associated with this item. However, future recommendations by the SBWMA Board and Member Agency decisions regarding an extension to their existing Franchise Agreement(s) will ultimately impact the solid waste collection rates charged to residential and commercial customers.

Attachment(s):

Resolution No. 2016-09

Exhibit A – Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology San Mateo County



RESOLUTION NO. 2016-09

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING THE FINAL PLAN AND RECOMMENDED PROCESS FOR SUPPORTING MEMBER AGENCIES WITH FUTURE FRANCHISE AGREEMENT DECISIONS

WHEREAS, the Authority is a joint powers agency organized under the Joint Exercise of Powers Act by cities and other local government agencies in San Mateo County (the “Member Agencies”), each of which oversees the collection of solid waste, organic materials and recyclable materials within its jurisdiction; and

WHEREAS, the SBWMA’s adopted mission is to cost effectively design, implement and manage innovative waste reduction and recycling programs and facility infrastructure that fulfills our fiduciary responsibilities to our Member Agencies while achieving community environmental and economic goals.

WHEREAS, each of the SBWMA’s Member Agencies has a Franchise Agreement for the collection of solid waste, organic materials and recyclable materials with Recology San Mateo County which started on January 1, 2011 and ends at midnight on December 31, 2020; and,

WHEREAS, the Member Agency’s Franchise Agreements with Recology San Mateo County include provisions that prescribe the term of the Agreement and the timeline to pursue an extension to the Agreement; and,

WHEREAS, the past practice has been for the SBWMA to help its Member Agencies facilitate and manage the process for selection of a franchised collection services provider, negotiate Franchise Agreement contract terms, and to provide overall contract administration support; and,

NOW, THEREFORE BE IT RESOLVED, that the South Bayside Waste Management Authority hereby approves the Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology San Mateo County (**Exhibit A**).

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, 2016**, 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. 2016-09 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on January 28, 2016.

Bill Widmer, Chairperson of SBWMA

ATTEST:

Cyndi Urman, Board Secretary

Exhibit A

Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology San Mateo County

Background

Each of the Member Agencies has a Franchise Agreement (Agreement) with Recology San Mateo County (Recology) which started on January 1, 2011 and ends at midnight on December 31, 2020. The Agreement(s) include the following provisions regarding the term of the Agreement and an extension:

- **SECTION 3.02 TERM**

The Term of this Agreement shall begin on the Effective Date and shall end at midnight on December 31, 2020, unless earlier terminated, or extended as provided in Section 3.03. Contractor's obligation to Collect Solid Waste, Targeted Recyclable Materials and Organic Materials shall begin on January 1, 2011 at 12:01 a.m. and shall continue for the remainder of the Term.

- **SECTION 3.03 EXTENSION OF TERM**

During calendar year 2017, the Parties shall meet and confer on the possible extension of the Term.

The contract extension decision period prescribed in Section 3.03 was set for a defined period to allow sufficient time to conduct a competitive procurement process if no contract extension was granted. It was determined that a three-year period (i.e., 2018-2020) was needed to complete a competitive procurement process and transition to a new service provider, if applicable, given the scope of services, the size and complexity of the service area, and the lead time required.

Key Assumptions

- All Member Agencies, with the support and assistance of the JPA, will enter into negotiations with Recology for a potential extension of their Franchise Agreement beyond 2020. The JPA staff will take the lead in negotiating and drafting the uniform Franchise Agreement amendments that apply across all Member Agencies, including both minor/administrative changes and any major changes resulting from contract negotiations. Further, upon request, the JPA staff can assist individual Member Agencies with negotiating unique Franchise Agreement changes (e.g., if a Member Agency has a specific change in Recology's scope of services unique to their community).
- The JPA Board will appoint an adhoc committee of TAC or designated Member Agency staff to review the Franchise Agreement amendments negotiated by JPA staff prior to such amendments being brought forward to the full Board for consideration. The Board will consider approval of the uniform Franchise Agreement changes and make a recommendation to forward the uniform Franchise Agreements to the individual Member Agency governing bodies who ultimately approve any changes to their individual Franchise Agreements, including any unique scope items requested by the Member Agency.
- The JPA staff will take the lead in preparing rate revenue requirement projections, including different scenarios reflective of potential changes to the Franchise Agreements. JPA staff's work will include building a baseline proforma model that identifies Recology's current compensation vs. their actual operating costs (as provided by Recology). The model will also cover other factors such as pass-through costs (i.e., mainly processing and disposal costs). Future pass-through costs may be affected by changes to contracts with third party vendors (e.g., Republic Ox Mountain landfill), Shoreway capital improvement scenarios (per the Long Range Plan), etc. This baseline model will be provided to the Board prior to the start of formal contract negotiations.

- Also prior to the start of negotiations, JPA staff with input from the TAC, will prepare a high level analysis of Recology's performance in meeting the Franchise Agreement performance standards and meeting the original goals of the contractor selection process that resulted in the selection of Recology as the service provider. As part of the performance review, Recology will be requested to prepare its own written self-review.
- If applicable, the JPA staff will take the lead in developing and managing a collection services contractor RFP and selection process if directed by the Board. Such a process would be concluded in time to ensure franchised collection service is provided uninterrupted after expiration of the current Franchise Agreements on December 31, 2020.
- The Recology Franchise Agreement extension process outlined in this document does not include the potential extension to the Shoreway Operations Agreement which expires on December 31, 2020. The term extension provisions of that Agreement allow the JPA unilateral discretion to extend the Agreement for up to three additional one-year periods on the current terms and conditions. Such current terms and conditions are very financially beneficial to the JPA as has been discussed at several Board meetings.

Timeline

- Current – Spring 2016 Member Agency governing bodies decide whether to be part of joint effort to negotiate a potential Franchise Agreement extension with Recology. This timeline allows for any Member Agencies that want to conduct any formal community outreach, if so desired, regarding this decision.
- Fall 2015 – Spring 2016 Complete analysis of Recology actual collection costs including building a baseline financial model to use in future projection of collection costs. This work will include identifying any significant variances and how such variances may affect future collection costs.
- Feb. 2016 – June 2016 Analysis of and recommendations for any changes to the scope of collection services based on the results of the two collection pilots per the adopted 2015 Long Range Plan and any cost savings suggestions developed by JPA staff in collaboration with Recology.
- March 2016 Recology completes and submits to JPA and Member Agencies a self-review in meeting the Franchise Agreement performance standards and meeting the original goals of the contractor selection process. This self-review will include suggestions for any cost savings measures and/or future improvements to the current collection services noting that not all of the Long Range Plan collection pilots will be completed yet.
- April 2016 JPA staff completes and submits to the Board its high level review of Recology's performance in meeting the Franchise Agreement standards and meeting the original goals of the contractor selection process.
- April / May 2016 Member Agency governing bodies provide confirmation to the JPA of their intent to participate in the JPA's process to negotiate an extension of their Franchise Agreement with Recology. This commitment to the JPA's process to negotiate an extension with Recology does not preclude Member Agencies from pursuing their own concurrent competitive procurement process (i.e., RFP), nor does it preclude Member Agencies from individually negotiating aspects of their Franchise Agreements separately with Recology.
- Board appoints an adhoc committee of TAC or designated Member Agency staff to review Franchise Agreement amendments negotiated by JPA staff prior to such amendments being brought forward to the full Board for consideration This Board action can happen as early as it's clear (e.g., by April or May) that a majority of the Member Agencies are onboard with pursuing

contract extension talks with Recology.

- Spring – Fall 2016 Contract negotiations take place between the JPA staff and Recology representatives. The final step of this process would be for Recology to submit an overall technical and cost proposal for the entire service area reflective of the agreed upon changes per the negotiations. Once the proposal is reviewed and agreed upon then a final document can be brought to the Board for consideration. (This does not preclude Member Agencies from individually negotiating aspects of their Franchise Agreements separately with Recology.)
- Fall 2016 – Dec. 2016 Completion of future collection cost projections based on negotiated changes to Franchise Agreement scope of services and other factors such as pass through costs.
- Completion of revisions to Franchise Agreements based on negotiated changes with Recology.
- Jan. / February 2017 Board considers and adopts Recology proposal for extension of current Franchise Agreements. This approval would be in the form of a recommendation to Member Agencies to adopt the Recology proposal and the newly revised and amended Franchise Agreements.
- March – Dec. 2017 Individual Member Agencies consider approval of contract extension with Recology.



STAFF REPORT

To: SBWMA Board Members
From: Cliff Feldman, Recycling Programs Manager
Date: January 28, 2016 Board of Directors Meeting
Subject: Update on Implementation of Commercial Recycling Hauler Reporting System Ordinance

Recommendation

This staff report is for discussion purposes only and no formal action is requested of the Board of Directors.

Analysis

On October 23, 2014, the SBWMA Board of Directors adopted Ordinance No. 002, the JPA's Commercial Recycling Reporting Ordinance, which became effective on January 1, 2015 requires commercial recycling haulers to report tons collected quarterly. The Q1-2015 report was due on May 1, 2015, Q2 on August 1, Q3 on October 1, and Q4 on February 1, 2016. Staff last provided an update to the Board at the September 24, 2015 Board meeting and will continue to do so quarterly.

Staff continues contacting businesses to register online and begin reporting. Since the last quarterly update to the Board, registrations have increased 45% from 33 businesses registered to the current 48. The active list of businesses that are being contacted to register totals 125. The amount of reports submitted by quarter total 33 for Q1-2015, 25 for Q2 and 27 for Q3. However, it is important to note that in many cases businesses tend to submit reports well after the deadline and only after receiving several notices from staff, thus it is anticipated that more Q3 reports will be forthcoming. (The deadline for Q4-2015 reports is February 1, 2016.) In addition, as businesses are registered, they are requested to provide past quarterly reports to the extent feasible.

We are frequently faced with barriers in obtaining more registrations and will continue to work towards overcoming these barriers. For example, businesses recently contacted to register have simply refused to comply, the parent corporation is unresponsive to requests to provide a clear point of contact responsible for recycling at the local store/business locations, and most commonly the store/business manager or other individual presented as the appropriate contact, is either unavailable or non-responsive. Staff will continue to encourage these businesses to comply and will be requesting the assistance from our Member Agencies to send letters to these potentially non-compliant businesses as we have done in the past.

From the reports provided, the amounts and types of material collected vary and approximately 18,000 tons were reported for Q1-2015, 11,000 tons for Q2, and 11,000 for Q3 (i.e., 40,000 additional tons for Q1-Q3 with several reports still pending and Q4 not included). The largest quantities (in order) of individual material types are mixed construction and demolition debris, dirt/inerts, green/yard waste and cardboard. As predicted, even a small sampling of non-franchised commercial recycling activities provides some insights as to the magnitude of independent recycling occurring in the RethinkWaste service area. As a matter of comparison, the preliminary results for Recology's 2015 commercial recycling totaled of 58,784 tons, and was comprised of 33,542 tons of recyclables and 25,241 tons of organics.

Staff's original diversion projections based on the Q1 reports estimated an additional 26,500 tons of commercial recycling (Table 1) to the diversion figures used in the Long Range Plan. Table 2 provides an update of this diversion estimate based on the information provided to date through Q3-2015 (i.e., an increase of the potential diversion estimate by including 60,000 additional tons).

Table 3 shows an update on projected future diversion through 2020 reflective of the revised baseline forecast in Table 2 plus new diversion expected from recommended Long Range Plan projects. The SBWMA's new forecasted overall diversion rate for 2020 has increased from 70.02% to 72.49%.

Table 1 (based on Q1-2015 projected for entire year)¹

Projected Future Measured Diversion Rate % by Sector with Current Programs 2015-2020								
Sector	Year							
	Actual Results		Projected Results					
	2013	2014	2015	2016	2017	2018	2019	2020
Residential	66.90%	66.48%	66.59%	66.59%	66.59%	66.59%	66.59%	66.59%
Commercial/MFD	29.77%	31.04%	41.06%	43.46%	45.49%	46.87%	48.54%	49.71%
Overall	48.83%	48.90%	52.971%	54.26%	55.34%	56.08%	56.97%	57.59%

Note: Preliminary Commercial Recycling Reporting Ordinance data is included (i.e., 26,500 tons).

¹Table 1 as shown is included in the Board adopted 2015 Long Range Plan document as Table 2.1: Baseline Measured Diversion Rate by Sector with Current Programs 2015-2020.

Table 2 (based on tonnage thru Q3-2015 projected for entire year)

Projected Future Measured Diversion Rate % for 2015-2020								
Sector	Year							
	Actual Results		Projected Results					
	2013	2014	2015	2016	2017	2018	2019	2020
Residential	66.90%	66.48%	66.59%	66.59%	66.59%	67.02%	67.88%	68.22%
Commercial/MFD	29.77%	31.04%	49.55%	51.60%	53.34%	54.52%	55.95%	56.95%
Overall	48.83%	48.90%	56.845%	58.03%	59.02%	59.88%	61.06%	61.78%

Note: Preliminary Commercial Recycling Reporting Ordinance data is included.

Table 3 (projected future diversion through 2020 including new diversion and LRP projects)

Projected Future Measured Diversion Rate % by Sector for 2015-2020								
Sector	Year							
	Actual Results		Projected Results					
	2013	2014	2015	2016	2017	2018	2019	2020
Residential	66.90%	66.48%	66.59%	66.59%	66.59%	71.32%	76.35%	76.60%
Commercial/MFD	29.77%	31.04%	49.55%	51.60%	53.34%	61.96%	69.40%	69.40%
Overall	48.83%	48.90%	56.845%	58.02%	59.02%	65.97%	72.38%	72.49%

Note: Preliminary Commercial Recycling Reporting Ordinance data is included.

In May 2015, per the Board and TAC's direction, staff followed through with our commitment to keep the Member Agencies engaged in our efforts to encourage affected businesses to register and report and we plan to enlist their assistance again in February 2016. Staff will provide a list to the Member Agencies of the businesses in their jurisdiction which need additional encouragement to register. Staff will also provide a sample letter to use with

each Member Agency's letterhead. By working with our Member Agencies, we anticipate similar results as in the past such as additional businesses registering, determining those businesses that do not need to comply and those which the JPA should continue to follow up with.

Staff's efforts to continue reaching out and educating businesses about the Ordinance will be ongoing via additional direct mail letters, phone calls and emails. Staff will also continue to work with our Member Agencies regarding the businesses located in their jurisdictions. However, it is important to note that less than 50% of all identified businesses are located in our Member Agencies. In addition, the list of potentially affected businesses continues to be refined. For example, after contacting some businesses that were initially identified it turns out they are not required to submit reports, and our efforts continue to result in identifying other independent recycling haulers which are then added to the list.

Background

At the October 23, 2014 Board meeting, the Board adopted Ordinance No. 002 – Recycling Reporting Requirements for Commercial Recycling Haulers. The Ordinance will enable RethinkWaste to develop a more complete picture of existing diversion efforts for the commercial sector, since the only diversion information currently available is provided by Recology, the Member Agencies franchised service provider. Based solely on preliminary tonnage data provided by Recology, the commercial diversion rate for 2015 was 33.0%. The actual overall commercial diversion rate is likely much higher once we factor in diversion data from non-franchised haulers.

This SBWMA-wide Ordinance implements reporting requirements for non-franchised commercial recycling haulers (e.g., paper recycling companies, scrap metal haulers, construction and demolition debris haulers, businesses that backhaul recyclables and/or compost materials to distribution centers, etc.) in an effort to begin collecting diversion data that is currently unavailable. The Ordinance became effective on January 1, 2015 and the haulers are required to provide reports quarterly.

Fiscal Impact

There is no fiscal impact associated with this staff update. The approved FY1516 budget includes \$15,000 for stakeholder engagement and encouraging compliance efforts. The Ordinance allows the Executive Director to establish an administrative fee in an amount not to exceed \$150 to cover the SBWMA costs to administer the Ordinance. This administrative fee for 2015 was set at \$125 and is charged to commercial recycling haulers required to register and submit reports. Staff is not recommending increasing this fee for 2016.