



OLD BUSINESS



STAFF REPORT

To: SBWMA Board Members
 From: Kevin McCarthy, Executive Director
 Date: February 25, 2010 Board of Director's Meeting
 Subject: Resolution Recommending SBWMA Member Agencies Approve Use of Used Commercial Bins by Recology San Mateo County

Recommendation

It is recommended that the SBWMA Board of Directors:

1. Approve Resolution No.2010-08 attached hereto recommending Member Agencies approve use of used commercial bins by Recology San Mateo County under their respective new Franchise Collection Agreements.

This recommendation does not change Recology's contractual obligations with Member Agencies under the new Franchise Collection Agreements, except as noted regarding the use of used commercial bins. Further, this recommendation is not contingent upon any Consent to Assignment of current or future Franchise Agreements.

Analysis

Staff noted at the January 21, 2010 special Board meeting and January 28, 2010 regular Board meeting that regardless of whether the Member Agencies approved the Consent to Assignment from Republic Services to Recology, the SBWMA will still be requesting that all Member Agencies approve the use of used commercial bins given the significant financial savings realized. This approval can be handled administratively by each Member Agency and does not require formal governing body action.

Per the attached (see **Attachment B**) executed Purchase Agreement, Recology will purchase from Republic used commercial bins as follows:

- Approximately 9,009 commercial bins in the field or in on-site inventory for an agreed lump sum amount of **\$2,290,167 (excludes sales tax)**.

When compared to the proposed capital cost to purchase new commercial bins of **\$5,740,895** (current cost per Recology) this yields total cost savings over 10-years as follows:

| | |
|-------------------------------------|-------------------------------------|
| Used bin purchase price | \$2,290,167 |
| Sales tax | \$211,840 |
| Used bin refurbishment cost | \$1,351,350 |
| Avoided delivery costs for new bins | (\$215,000) |
| | \$3,638,357 |
| \$5,740,895 - \$3,638,357 = | \$2,102,538 (total bin savings) |
| Interest cost savings | \$639,415 |
| Profit savings | <u>\$220,708</u> |
| Net savings over 10 years equals: | \$2,962,661 |

These savings were originally estimated to be \$3.1 million. This savings assumed sales tax was already reflected in the purchase price of the used commercial bins. Subsequent to the January 28th Board meeting Republic

informed Recology that the purchase price agreed upon needed to be modified so that Recology was paying for the sales tax associated with the transaction; Republic insisted they couldn't support the sale unless Recology paid for the sales tax of \$211,840.

Staff is continuing to work with Republic and Recology on ways to capture some of the other financial and operational benefits previously outlined under a Consent to Assignment scenario including:

- **Early rollout of new residential collection services.**
- Smoother transition to **enhanced commercial recycling outreach efforts.**

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.

On January 28, 2010 the SBWMA Board unanimously approved a recommendation that Member Agencies approve the Consent to Assignment from Republic to Recology subject to a set of conditions. Notably, one of the conditions was that finalizing the assignment will be subject to negotiation of a mutually acceptable definitive agreement between Republic and Recology. The parties were not able to reach mutual agreement.

Fiscal Impact

Approval of this recommendation by the SBWMA Member Agencies will result in cost savings across the entire SBWMA service area estimated at **\$2,962,661 or approximately \$296,266/year** over the 10-year term of the new franchise agreements. These savings will be reflected in the cost forms in each Member Agency franchise agreement.

Attachment:

Resolution No. 2010-08

Executed Purchase Agreement



RESOLUTION NO. 2010-08

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS RECOMMENDING SBWMA MEMBER AGENCIES APPROVE ACQUISITION AND USE OF USED COMMERCIAL BINS BY RECOLOGY SAN MATEO COUNTY

WHEREAS, the Member Agencies of the SBWMA have approved Recology San Mateo County (A California Corporation), here after Recology, as the contractor for their respective Franchise Collection Agreements with service presently scheduled to commence January 1, 2011; and

WHEREAS, the current Franchisee for Collection, Allied Waste Services of San Mateo County (a Delaware LLC), hereafter Allied, has commercial collection bins in the service areas of the Member Agencies; and

WHEREAS, the Member Agencies can receive a substantial cost savings by agreeing to allow Recology to acquire from Allied and use the respective used commercial bins.

NOW, THEREFORE, BE IT RESOLVED, that the SBWMA Board of Directors recommends that the SBWMA Member Agencies administratively approve, under their respective Collection Franchise Agreements for Recology to both acquire and use the used commercial bins of Allied

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 25th day of February, 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. 2010-08 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on February 25, 2010.

ATTEST:

Jim Porter, Chairperson of SBWMA

Cathy Hidalgo, Board Secretary

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is entered into as of February ____, 2010 by and between RECOLOGY SAN MATEO COUNTY, a California Corporation ("Recology"), and BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, dba ALLIED WASTE SERVICES OF SAN MATEO COUNTY, a Delaware Limited Liability Company ("Allied"). As used herein, Recology and Allied are referred to collectively as "Parties" and individually as a "Party."

This Purchase Agreement is made with respect to the following Recitals:

Recitals

WHEREAS, the South Bayside Waste Management Authority, a California joint powers authority, ("SBWMA") has twelve member agencies. Those member agencies are: the cities of Belmont, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos and San Mateo, the towns of Atherton and Hillsborough, the County of San Mateo and the West Bay Sanitary District. These member agencies are referred to collectively herein as the "Member Agencies" and individually as a "Member Agency."

WHEREAS, Allied is the exclusive franchised solid waste and recyclable materials collection company for the Member Agencies pursuant to agreements (the "Collection Agreement(s)") which will all expire on December 31, 2010.

WHEREAS, following a Request for Proposal process administered by the SBWMA to select a new collection company to provide services to the Member Agencies following expiration of the Allied Collection Agreements, the Member Agencies have elected to enter into exclusive agreements with Recology for the collection of solid waste and recyclable materials within their respective jurisdictional boundaries commencing January 1, 2011.

WHEREAS, in connection with the transition from Allied to Recology in the Member Agency jurisdictions, Allied wishes to sell to Recology, and Recology wishes to purchase from Allied, certain assets of Allied effective as of December 31, 2010.

NOW THEREFORE, in consideration of the foregoing Recitals and for the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. Purchase of Certain Assets from Allied.

a. At the Closing (as defined below), Allied shall convey to Recology and Recology shall purchase from Allied, all of Allied's right, title and interest in and to the following assets (collectively, the "Assets"), which Assets are currently used by Allied in performing services under the Collection Agreements:

(1) Commercial Bins. Approximately 9,009 commercial bins in use in the Member Agency jurisdictions or on site inventory at Allied's collection yard at the San Carlos facility (the

“Commercial Bins”), for an agreed lump amount of \$2,290,167, plus applicable sales or use taxes. Allied shall not, and shall not have any obligation to, remove or relocate any of its commercial bins, as this agreed price for Allied’s commercial bins reflects that Recology shall assume responsibility for all such bins in their present locations. Schedule 1 contains Allied’s breakdown of the estimated commercial bin quantity and sizes in use in the Member Agency jurisdictions and at Allied’s San Carlos yard. As of the date hereof and as of the Closing, Allied represents and warrants, and Recology acknowledges, that the commercial bin inventory represents Allied’s best estimate of its current bin inventory which is not the result of an actual count or physical inventory. To avoid the time and expense of a physical inventory count, the Parties have agreed that the payment of \$2,290,167 for Allied’s commercial bins shall not be adjusted upwards or downwards if the actual number of commercial bins differs from Allied’s estimate. Recology shall conduct its own independent investigation and due diligence before the Closing to satisfy itself regarding the accuracy of Allied’s estimate and the purchase price for the Commercial Bins.

(2) Office Furniture. All office furniture and office fixtures (desks, chairs, file cabinets, conference tables, cubicles, bookshelves and counters) currently at the San Carlos facility (the “Office Furniture”) for the amount of \$50,000, plus applicable sales or use taxes . Allied shall allow personnel from Recology access to the facility upon reasonable notice to inspect and itemize this furniture. This excludes computer equipment, other electronics, records, and BFI/Allied/Republic software (i.e., servers, desktops, laptops, monitors, etc.).

(3) Shop Tools. All shop tools (i. e., floor jacks, jack stands, welders, ladders, drill presses, etc.) currently in use by Allied in the San Carlos facility maintenance shop (the “Shop Tools”) for the amount of \$95,000, plus applicable sales or use taxes. Schedule 2 is a correct and complete list of such tools and equipment.

(4) Parts Inventory. Parts remaining in Allied’s parts inventory (i.e., truck parts, tires, fuel, etc.) at the San Carlos maintenance facility (the “Parts Inventory”) as selected by Recology prior to the Closing. A parts inventory list and pricing will be provided by Allied to Recology by December 24, 2010. The sales price for the parts inventory selected by Recology for purchase shall include the prices listed by Allied for all items selected, plus applicable sales or use taxes.

b. General Terms and Conditions for Sale of Assets. Allied represents and warrants, as of the date hereof and as of the Closing, that it is the sole legal and beneficial owner of, and has good and marketable title to, all the Assets, and that all such assets purchased by Recology shall be conveyed to Recology free of all liens, encumbrances, restrictions on transfer and rights of others. Allied shall afford Recology full opportunity to inspect the condition, utility, operability and quality of all such assets from time to time prior to the Closing, upon reasonable notice and at mutually convenient times, and Recology shall accept all such assets without any warranty or representation from Allied as to their condition, utility, operability, lack of defects and quality. Allied further disclaims all warranties express and implied with respect to all such assets, and in particular disclaims any implied warranty of merchantability and fitness for a particular purpose. Allied shall convey all such assets to Recology, and Recology shall accept all such assets, “AS IS, WHERE IS,” except that Allied shall ensure that the Office Furniture, Shop Tools and Parts Inventory purchased by Recology shall be located and available to

Recology at the San Carlos maintenance facility at the Closing. Except with respect to breaches of the express representations and warranties of Allied set forth in this Purchase Agreement, Recology shall make no claims against Allied regarding such assets, including but not limited to any claims regarding the condition, utility, operability, defect or quality of any such assets, and hereby releases Allied from all such claims, whether known or unknown at the time of signing this Agreement or the Closing. Recology shall pay all applicable state and local sales and use taxes resulting from the purchase of the Assets from Allied pursuant to this Agreement, including any sales or use taxes assessed on the transactions contemplated in this Purchase Agreement after the Closing.

2. Closing. The closing of the purchase and sale of the Assets hereunder (the "Closing") shall take place remotely via electronic exchange of documents and signatures, at 10:00 a.m. PST on Friday, December 31, 2010, or at such other time as the Parties mutually agree.

a. At or prior to the Closing, Allied shall deliver to Recology (i) a Bill of Sale in substantially the form attached hereto as Exhibit A, duly executed by Allied, and (ii) such other documents or instruments as Recology shall reasonably request to consummate or evidence the transactions contemplated hereby.

b. At or prior to the Closing, Recology shall deliver to Allied (i) the purchase price of the Assets to be purchased by Recology, plus all applicable sales or use taxes, payable in U.S. dollars by wire transfer of immediately available funds to a bank account designated by Allied, (ii) a Bill of Sale in substantially the form attached hereto as Exhibit A, duly executed by Recology, and (iii) such other documents or instruments as Allied shall reasonably request to consummate or evidence the transactions contemplated hereby.

c. The obligation of each Party to consummate the transactions contemplated hereby is subject to the satisfaction of the following conditions, each of which may be waived by such Party: (i) such Party shall have received the deliverables required to be delivered to it by the other Party pursuant to subsection 2.a or 2.b above, (ii) the representations and warranties of the other Party set forth herein shall be true and correct as of the date hereof and as of the Closing; and (iii) the other Party shall have duly performed each of the covenants and agreements required to be performed by such Party hereunder on or before the Closing.

3. Dispute Resolution.

Any disputes between the Parties regarding this Agreement shall be resolved by mediation before a neutral agreed upon by the Parties or, failing such agreement, appointed by the San Francisco office of the Judicial Arbitration and Mediation Service (JAMS), and if such mediation is unsuccessful, through binding arbitration conducted before a single arbitrator agreed upon by the Parties or, failing such agreement, appointed by JAMS. Such mediation shall take place in San Francisco or another location mutually agreed by the Parties.

4. General Terms.

(1) Further Assurances. Each Party hereby covenants and agrees that it shall execute and deliver such other documents as may be required to implement any of the provisions of this Agreement.

(2) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

(3) Attorneys Fees and Costs. If any motion, suit, action or proceeding, at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, or is brought in violation of any of the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and expert witness fees and costs. All Parties hereto expressly waive any right to a jury trial as to any such motion, suit, action or proceeding.

(4) Integration and Merger. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(5) Amendment. No change, modification or amendment of this Agreement shall be valid or binding on the Parties unless such change or modification shall be in writing signed by an authorized representative of the Party or Parties against whom the same is sought to be enforced.

(6) Notices. Any notice to be sent hereunder shall be sent by email, facsimile or registered United States mail, return receipt requested, addressed to the respective Parties at:

If to Recology:

Mr. Mario Puccinelli, General Manager
Recology San Mateo County
225 Shoreway Rd.
San Carlos, CA 94070
Facsimile: (650) 583-8781
Email: MPuccinelli@recology.com

If to Allied:

Kevin Finn, Area President
Richmond Sanitary Service
3260 Blume Drive
Richmond, CA 94806
Facsimile: (510) 223-1591
Email: KFin@republicservices.com

(7) Authorization. Each Party represents and warrants to the other, as of the date hereof and as of the Closing, that it has all requisite corporate or limited liability company power and authority, that all necessary corporate or limited liability company action has been taken, and that no

consent, authorization or approval of any party (including any governmental authority) is required, for such Party to execute, deliver and perform this Agreement.

(8) No Conflict. Each Party represents and warrants to the other, as of the date hereof and as of the Closing, that its execution, delivery and performance of this Agreement do not and will not result in a violation or breach of, or constitute a default under (with or without notice or lapse of time or both), or give rise to any lien, charge or other encumbrance on any of the Assets pursuant to, any agreement, instrument, permit or other obligation to which such Party is a party or by which it or any of the Assets is bound.

(9) Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all Parties, regardless of whether the signatures of all Parties' designated representatives appear on the same page.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties has caused this Purchase Agreement to be executed on its behalf as of the date first above written.

RECOLOGY SAN MATEO COUNTY

By: _____
Name: _____
Its: _____

BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, dba
ALLIED WASTE SERVICES OF SAN MATEO COUNTY

By: _____
Name: _____
Its: _____

Attachments:

- Exhibit A Bill of Sale
- Schedule 1 Estimated Bin Inventory
- Schedule 2 Shop Tools and Equipment

Exhibit A

BILL OF SALE

This Bill of Sale is entered into as of December ____, 2010 by and between RECOLOGY SAN MATEO COUNTY, a California Corporation ("Recology"), and BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, dba ALLIED WASTE SERVICES OF SAN MATEO COUNTY, a Delaware Limited Liability Company ("Allied"), with reference to that certain Purchase Agreement dated as of February ____, 2010 by and between Recology and Allied. Capitalized terms used but not defined herein have the meanings given to them in the Purchase Agreement.

For good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Allied hereby sells, assigns, transfers, conveys, and delivers all of Allied's right, title and interest in and to the Assets, wherever located, together with all rights belonging or appertaining to the same in any way, to Recology, its successors and assigns, absolutely and forever, free of all liens, encumbrances, restrictions on transfer and rights of others (such transaction, the "Transfer"). Recology hereby accepts the sale, assignment, transfer, conveyance and delivery of Allied's right, title and interest in and to the Assets.

2. Each Party represents and warrants that (i) the representations and warranties of such Party set forth in the Purchase Agreement are true and correct as of the Closing, and (ii) such Party has duly performed each of the covenants and agreements required to be performed by such Party under the Purchase Agreement on or before the Closing.

3. This Bill of Sale is not intended to and does not affect the representations, warranties and covenants made by the Parties in the Purchase Agreement. None of the provisions of this Bill of Sale is intended to provide any rights or remedies to any person other than the Parties and their respective successors and assigns.

4. This Bill of Sale shall be governed and construed in accordance with the laws of the State of California. This Bill of Sale may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all Parties, regardless of whether the signatures of all Parties' designated representatives appear on the same page.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties has caused this Bill of Sale to be executed on its behalf as of the date first above written.

RECOLOGY SAN MATEO COUNTY

By: _____
Name: _____
Its: _____

BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, dba
ALLIED WASTE SERVICES OF SAN MATEO COUNTY

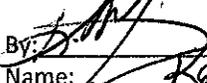
By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, each of the Parties has caused this Purchase Agreement to be executed on its behalf as of the date first above written.

RECOLOGY SAN MATEO COUNTY

By: 
Name: MICHAEL J. SANGIACOMO
Its: PRESIDENT & CEO

BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, dba
ALLIED WASTE SERVICES OF SAN MATEO COUNTY

By: 
Name: Area President
Its: Area President

Attachments:

- Exhibit A Bill of Sale
- Schedule 1 Estimated Bin Inventory
- Schedule 2 Shop Tools and Equipment