



A Public Agency

# ADMINISTRATION AND FINANCE

## STAFF REPORT

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To: SBWMA Board Members  
From: Joe LaMariana, Executive Director  
John Mangini, Senior Finance Manager  
Date: September 27, 2018 Board of Directors Meeting  
Subject: Resolution Approving Bond Refunding Work Plan

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### Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2018-28 attached hereto authorizing the following action:

**Resolution approving the 2009A Bond Refunding Work Plan by their Earliest Redemption Date (June 1<sup>st</sup>, 2019), Based on Current Favorable Market Rates.**

### Summary

This Work Plan outlines the concept of refunding our 2009 Bonds to take advantage of the current low interest rates and save approximately \$10.7 million over the remaining 16 year life of the 2009 bonds at an estimated one-time transaction cost of approximately \$870,000. These costs of issuance would be added to the new bond and amortized over the 16 year remaining life. There is no extended term relating to this action. This refunding plan does not include funds for new capital projects which may require a future bond issuance when the costs are known and approved.

### Analysis

Present interest rates are much lower than they were in 2009. The lower interest rates on refunding bonds would produce lower debt service payments with aggregate net present value (NPV) savings of approx. \$8.0 million.

The interest rates used to generate the savings estimate in this report are based on a very conservative 90 basis point spread over Aaa/AAA rates, allowing for a 50 basis point credit spread and a 40 basis point alternative minimum tax penalty<sup>1</sup>. NPV savings will depend on how the refunding is structured (which would be determined with the assistance of the Financing Team) and interest rates at the time refunding bonds are sold, but are presently conservatively estimated at approximately \$8.0 million, or 17.7% of the amount of refunding bonds sold, more than 5 times the Government Finance Officers Association's recommended "best practices" 3% minimum NPV savings. NPV savings is a measure of all future debt service savings that have been discounted into a single, present value number.

Refunding savings may be structured to occur up front, or disbursed over time. Savings could be structured to produce an up-front cash infusion sufficient to pay for future Shoreway Environmental Center capital improvements,

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<sup>1</sup> Bonds issued by the SBWMA are private activity bonds and the interest received by investors is subject to their payment of the alternative minimum tax. This cost will be passed on to the SBWMA in the interest rate it pays on its bonds.

and future annual debt service savings would off-set debt service on any future debt would be a prudent strategy. Staff has attached to this report a preliminary refunding analysis that generates \$2.4 million of savings in the first year, and approximately \$485,000 annually thereafter. These savings would be net of all costs associated with issuing refunding bonds. This schedule of savings assumes that the refunding bonds could be closed on **June 1, 2019**. A delay in the closing would decrease the savings. An increase in interest rates between now and June 1, 2019 would also decrease savings. **Table 1** below contains a summary of estimated savings.

**Table 1**

<b>Estimated Savings Summary</b>	
Net Present Value Savings	\$8,031,421
% NPV Savings	17.41%
Total Future Value Savings	\$10,704,506
First Year Savings	\$2,428,238
Average Annual Savings	\$486,839

Staff suggests that refunding bonds be sold only if NPV savings of 5% or more can be achieved. If interest rates were to move high enough between direction to proceed and final approval of the bond sale (expected in April), work would cease and only non-contingent fees would be incurred (see, **FISCAL IMPACT**, below). **Table 2** shows savings and interest rates under three possible scenarios: optimistic, conservative and minimum savings outcomes.

**Table 2**

<b>Optimistic, Conservative &amp; Minimum Savings</b>				
	<b>Net Present Value Savings</b>	<b>Percent Savings</b>	<b>True Interest Cost</b>	<b>Interest Cost Change in Basis Points</b>
<b>Optimistic</b>	\$ 9,761,628	21.22%	3.21%	-40
<b>Conservative</b>	\$ 8,031,421	17.41%	3.61%	No Change
<b>Minimum</b>	\$ 2,346,209	5.03%	5.09%	+148

**Background**

In March 2000, the SBWMA (the "Authority") issued \$20,090,000 tax-exempt revenue bonds to fund the acquisition of its solid waste transfer station, recycling facilities and related equipment from BFI/Allied/Republic. In August 2009, the Authority redeemed those bonds in connection with the financing of improvements to the Shoreway Environmental Center and issued \$53.5 million of bonds (the "2009 Bonds") to finance those improvements. \$44.685 million of the 2009 Bonds remain outstanding today. Please note that Attachment 1's "Bond" figure of \$46,125,000 includes the estimated transactional costs of the refunding process.

The 2009 Bonds were sold during a high interest rate period during the Great Recession of 2008. Interest rates on the 2009 Bonds range from 5% to 6.25%. The 2009 Bonds may not be refinanced prior to June 1, 2019. The 2009 Bonds would be redeemed with the proceeds of the new 2019 Bonds sold after their first optional redemption date, September 1, 2019.

## FUTURE STEPS

If the Board approves the refunding of the 2009 Bonds, the Finance Committee would establish a Finance Team and with staff would issue a request for qualifications (RFQ) for a municipal advisor. The Finance Team would review proposals and make a selection. The municipal advisor would then assist staff to prepare and distribute requests for qualifications for bond counsel, and disclosure counsel. Concurrent with this process, the municipal advisor would prepare a plan of finance which would, at a minimum, address:

- i. Feasible financing structures and a recommendation, including method of sale (private placement, negotiated public sale, competitive public sale), fixed vs. floating rate, and pattern of realized savings;
- ii. the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction and any associated municipal financial products;
- iii. the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction and/or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for SBWMA.

If a negotiated sale or a private placement is recommended by the municipal advisor, the municipal advisor would prepare and distribute a request for underwriting (or placement agent) proposals, assist with their review and make recommendations to the Finance Team. If a competitive sale is recommended, the municipal advisor would implement the sale.

The SBWMA Board would consider and approve the Plan of Finance at the January 24, 2019 meeting.

After the financing team is fully assembled and the Plan of Finance has been approved by the Board, documentation of the refunding would commence. Presentation of the transaction to, and requests for approval of, member agency legislative bodies would take place concurrently with documentation of the transaction. After conclusion of documentation, the transaction, if a publicly offered bond issue, would be submitted for a rating (no rating is required for a private placement). The transaction would be submitted to the Board for approval after documentation is complete and at least eight (8) member agencies have approved the issuance of refunding bonds.

All new issues of debt must be approved by at least eight of our Member Agencies. This approval process is planned to occur from February through May 2019. After a rating is issued (if applicable) and the final bond issue is approved by the Board, bonds would be sold.

A schedule of milestone activities is attached.

## Fiscal Impact

The costs to arrange a refunding typically include professional fees and an underwriting discount that are contingent on the sale of bonds, and a non-contingent rating fee. For special enterprise projects dependent on the sale of goods (such as recycled materials) for revenues or on new technology, an enterprise consultant report that verifies revenue projections and/or the technology may be recommended. The fee for this report is non-contingent. Non-contingent fees would likely fall in the range of \$36,000-\$50,000. If the financing is abandoned, such as due to a rise in interest rates or because fewer than eight (8) member agencies approve the financing, SBWMA could incur these non-contingent costs.

NPV savings are conservatively estimated at \$8.0 million. Depending on a variety of factors, savings could be more, or less, than this estimate. See **ANALYSIS**, above for estimates. If the bonds are successfully sold, all costs

of issuance would be paid from bond proceeds, and there would be no impact, other than debt service savings, on the SBWMA budget.

Refunding bonds cannot close until June 1, 2019 but may be closed any time after this date. Savings will depend on interest rates at the time bonds are sold.

Additional improvements to the Shoreway Environmental Center are now in early planning stages. Based on these discussions, total system upgraded costs are currently being roughly estimated to be in the \$20-30 million range, and, as these capital needs become more clarified during the next 2-3 years, these improvements would require additional financing. Staff estimates that another 2 years of planning and proof-of-concept testing for equipment and processes will be necessary. If the refunding is delayed until these additional projects are ready for financing, the new money financing might be cost-effectively combined with the refunding. However, interest rates may no longer be low enough to make a refunding economic at that time.

**Attachments:**

Resolution 2018-28

- A. Preliminary Sources and Uses of Funds Report
- B. Savings Report
- C. Schedule of Milestone Activities



## RESOLUTION NO. 2018-28

### RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS AUTHORIZING THE RESOLUTION APPROVING THE 2009A BOND REFUNDING WORK PLAN BY THEIR EARLIEST CALL DATE (SEPTEMBER 1, 2019), BASED ON CURRENT FAVORABLE MARKET RATES

WHEREAS, the South Bayside Waste Management Authority (SBWMA) issued bonds in 2009 to complete the Master Plan at the Shoreway Environmental Center, and

WHEREAS, interest rates are currently lower than when the 2009 bonds were issued, and

WHEREAS, September 1, 2019 is the date by which these bonds can be redeemed without penalty, and

WHEREAS, there is a potential savings in interest of \$10.7 million over the remaining life of these bonds, with an estimated net present value of \$8.0 million, and

WHEREAS, time is of the essence to manage the refunding process while interest rates remain low and offer a savings,

**NOW, THEREFORE BE IT RESOLVED** that the South Bayside Waste Management Authority hereby approves the preliminary Refunding Work Plan denoted in the staff report and authorizes the Finance Committee to establish an Agency Finance Team to hire a Municipal Advisor, recommend the Bond Counsel and Disclosure Council for Board approval on November 15, 2018 and recommend a Plan of Finance for Board approval on January 24, 2019.

**PASSED AND ADOPTED** by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 27<sup>th</sup> day of September, 2018, 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. 2018-28 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on September 27, 2018.

ATTEST:

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Cyndi Urman, Board Secretary

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Charlie Bronitsky, Chairperson of SBWMA

South Bayside Waste Management Authority

Solid Waste Revenue Refunding Bonds, Series 2019

Preliminary Sources and Uses of Funds

**SOURCES**

Bonds	46,125,000.00	
Contributed Fund Balances	4,125,362.00	
Reserved	-	
Original Issue Discount	-	
	<hr/>	
Total Sources		50,250,362.00

**USES**

Defeasance Escrow		45,763,285.46
Costs of Issuance		
Bond Counsel	65,000.00	
Financial Advisor	55,000.00	
Trustee & Escrow Agent	6,500.00	
Authority Counsel	10,000.00	
Verification Agent	2,000.00	
Trustee Counsel	1,000.00	
OS Printing & Posting	1,800.00	
Disclosure Counsel	45,000.00	
Contingency	10,000.00	
Rate Consultant	35,000.00	
Rating	40,000.00	
Total		271,300.00
Underwriter's Discount @	1.25%	576,562.50
Debt Service Reserve Fund @	MADS	3,637,693.90
Bond Insurance at	0.00%	-
Rounding	-	<hr/> 1,520.14
Total Uses		50,250,362.00

**South Bayside Waste Management Authority**  
**Solid Waste Revenue Refunding Bonds, Series 2019**

**Savings Report**

Payment Date	Principal	Coupon	Interest	Period Total	Bond Year Service	Prior Bonds Debt Service	Bond Year Savings	Period Savings	NPV Period Savings
9/1/19	-		381,511.73	381,511.73	381,511.73	2,809,750.00	2,428,238.27	2,428,238.27	2,406,587.36
3/1/20			763,023.45	763,023.45				514,351.55	500,715.51
9/1/20	2,110,000	2.540%	763,023.45	2,873,023.45	3,636,046.90	4,124,750.00	488,703.10	(25,648.45)	(24,525.21)
3/1/21			736,226.45	736,226.45				499,936.05	469,555.33
9/1/21	2,165,000	2.660%	736,226.45	2,901,226.45	3,637,452.90	4,122,325.00	484,872.10	(15,063.95)	(13,897.35)
3/1/22			707,431.95	707,431.95				485,418.05	439,875.29
9/1/22	2,220,000	2.750%	707,431.95	2,927,431.95	3,634,863.90	4,120,700.00	485,836.10	418.05	372.10
3/1/23			676,906.95	676,906.95				470,399.30	411,264.90
9/1/23	2,280,000	2.900%	676,906.95	2,956,906.95	3,633,813.90	4,124,612.50	490,798.60	20,399.30	17,518.26
3/1/24			643,846.95	643,846.95				455,421.80	384,158.21
9/1/24	2,350,000	2.990%	643,846.95	2,993,846.95	3,637,693.90	4,123,537.50	485,843.60	30,421.80	25,205.88
3/1/25			608,714.45	608,714.45				440,023.05	358,107.20
9/1/25	2,420,000	3.090%	608,714.45	3,028,714.45	3,637,428.90	4,122,475.00	485,046.10	45,023.05	35,990.94
3/1/26			571,325.45	571,325.45				414,130.80	325,174.51
9/1/26	2,495,000	3.180%	571,325.45	3,066,325.45	3,637,650.90	4,120,912.50	483,261.60	69,130.80	53,317.68
3/1/27			531,654.95	531,654.95				386,613.80	292,885.34
9/1/27	2,570,000	3.260%	531,654.95	3,101,654.95	3,633,309.90	4,121,537.50	488,227.60	101,613.80	75,612.51
3/1/28			489,763.95	489,763.95				357,098.55	261,005.52
9/1/28	2,655,000	3.360%	489,763.95	3,144,763.95	3,634,527.90	4,123,725.00	489,197.10	132,098.55	94,837.55
3/1/29			445,159.95	445,159.95				325,765.05	229,724.56
9/1/29	2,745,000	3.430%	445,159.95	3,190,159.95	3,635,319.90	4,121,850.00	486,530.10	160,765.05	111,356.42
3/1/30			398,083.20	398,083.20				292,216.80	198,815.14
9/1/30	2,840,000	3.472%	398,083.20	3,238,083.20	3,636,166.40	4,120,600.00	484,433.60	192,216.80	128,456.56
3/1/31			348,780.80	348,780.80				259,319.20	170,223.79
9/1/31	2,940,000	3.514%	348,780.80	3,288,780.80	3,637,561.60	4,121,200.00	483,638.40	224,319.20	144,634.77
3/1/32			297,125.00	297,125.00				223,825.00	141,754.06
9/1/32	3,040,000	3.556%	297,125.00	3,337,125.00	3,634,250.00	4,121,900.00	487,650.00	263,825.00	164,120.76
3/1/33			243,073.80	243,073.80				185,476.20	113,333.01
9/1/33	3,150,000	3.598%	243,073.80	3,393,073.80	3,636,147.60	4,122,100.00	485,952.40	300,476.20	180,342.88
3/1/34			186,405.30	186,405.30				144,194.70	85,007.82
9/1/34	3,260,000	3.640%	186,405.30	3,446,405.30	3,632,810.60	4,121,200.00	488,389.40	344,194.70	199,312.45
3/1/35			127,073.30	127,073.30				99,726.70	56,723.41
9/1/35	3,380,000	3.674%	127,073.30	3,507,073.30	3,634,146.60	4,123,600.00	489,453.40	389,726.70	217,736.75
3/1/36			64,982.70	64,982.70				51,717.30	28,381.02
9/1/36	3,505,000	3.708%	64,982.70	3,569,982.70	3,634,965.40	4,123,400.00	488,434.60	436,717.30	235,403.70
<b>Total</b>	<b>46,125,000</b>		<b>16,060,668.93</b>	<b>62,185,668.93</b>	<b>62,185,668.93</b>	<b>72,890,175.00</b>	<b>10,704,506.07</b>	<b>10,704,506.07</b>	<b>8,519,088.64</b>
NIC	3.60038%	using	98.75%						
TIC	3.61480%	using	98.75%						
Bond Yield	3.46003%	using	100.00%						
All-In TIC	3.68900%	using	98.16%						
Average Rate	3.47561%								
Average Life	10.0183	years							
8038 Av. Life	10.0183	years							
Dated			6/1/19						
Delivery			6/1/19						
Gross Savings			10,704,506.07						
Gross NPV Savings			8,519,088.64						
Less DSRF Contribution			(4,125,362.00)						
Less Authority Contribution			-						
Plus New DSRF			3,637,693.90						
Adjusted Gross NPV Savings			8,031,420.54	=	17.41%	of Refunding Bonds at Bond			TIC
Adjusted Gross NPV Savings					18.60%	of Refunded Bonds at Bond			TIC

## Proposed SBWMA Bond Refinancing Schedule

as of September 12, 2018

Task #	Activity/Event	Who *	Due Date	Actual Date	Status
1	Designate Agency Finance Team (FT)	JLM, Finance Committee	9/17/18		in process
2	Prepare Municipal Advisor RFQ (MA)	staff (JM)	9/26/18		in process
	a. Distribute Municipal Advisor RFQ for FT review	FT	10/1/18		
	b. FT comments due on Municipal Advisor RFQ	FT	10/12/18		
	c. Release final RFQ to prospective proposers	staff (JM)	10/15/18		
3	Prepare and distribute Agency Refunding Work Plan	staff	9/20/18		
	a. <b>Approval of Agency Refunding Work Plan</b>	<b>BOARD</b>	<b>9/27/18</b>		
4	Proposals due on Municipal Advisor RFQ (MA)	proposers	10/22/18		
	a. FT selects Municipal Advisor (MA)	FT	10/29/18		
5	Distribute bond & disclosure counsel RFQs (BC, DC)	MA	11/5/18		
	a. Select bond & disclosure counsel	FT	11/12/18		
5	b. <b>Approval of bond &amp; disclosure counsel</b>	<b>BOARD</b>	<b>11/15/18</b>		
6	Meeting to discuss "Plan of Finance"	MA, FT, staff	11/16/18		
7	Distribute Underwriting RFQs	MA, staff	11/16/18		
	a. Select Underwriter	MA, FT, staff	11/30/18		
8	Distribute draft Plan of Finance to FT, Finance Committee (?)	MA, FT, staff	12/7/18		
	Responses on draft Plan of Finance due back (or another meeting?)	FT	12/14/18		
9	Distribute draft Plan of Finance to BOARD	FT, staff	1/4/19		
10	Distribute staff report on Final Plan of Finance in Board Package	FT, staff	1/17/19		
11	<b>Board approval of Plan of Finance, professional services contracts</b>	<b>BOARD</b>	<b>1/24/19</b>		
12	Prepare draft staff reports with resolutions for Member Agencies approval of bond refunding for FT review	MA, BC, staff	1/25/19		
12	a. FT comments due on staff reports	FT	2/1/19		
12	b. Distribute staff reports with resolutions for Member Agencies approval of bond refunding to BOARD	staff	2/4/19		
13	<b>Member Agencies review refunding plan and take legislative approval action</b>	<b>MA, BOARD members, Agency staff, Underwriter</b>	<b>Feb. - May</b>		
14	Select Enterprise Consultant (EC) if recommended by DC, Underwriter	staff	2/1/19		
	a. Enterprise Consultant report submitted	EC	2/22/19		
15	Prepare bond documents	BC, DC	Feb & Mar		
16	Continued updates on market and refunding economics to FT	MA, Underwriter	Feb - May		
17	Bond rating obtained	MA	Apr		
18	Trustee selected	FT	Apr		
19	<b>SBWMA Board approves bond documents, trustee selection</b>	<b>BOARD</b>	<b>5/23/19</b>		
20	Bonds sold	MA, Underwriter	June		
21	Transaction Closing	BC, DC, Underwriter, MA	6/3/19		
22	<b>2009A Bonds Redeemed (Final Step!)</b>	<b>Trustee</b>	<b>9/1/19</b>		

= Board/Elected Bodies action item

## STAFF REPORT

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**To:** SBWMA Board Members  
**From:** Jean B. Savaree, SBWMA Legal Counsel  
**Date:** September 27, 2018 Board of Director's Meeting  
**Subject:** Review and Approve Authority's Response to the San Mateo County Grand Jury Report:  
*South Bayside Waste Management Authority Board: Stakeholder Satisfaction with a Board of Elected Officials*

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### Recommendation

It is recommended that the SBWMA Board of Directors review the draft response to the Grand Jury Report which has been prepared by staff and provide direction, as needed, to finalize the response or, by approval of the attached Resolution, authorize staff to submit this response.

### Background

On July 31, 2018, the San Mateo County Grand Jury issued a report entitled *South Bayside Waste Management Authority Board: Stakeholder Satisfaction with a Board of Elected Officials* (Attachment A). The Report includes a series of findings and recommendations addressed to SBWMA. The questions addressed by the Grand Jury in this report were stated as follows:

- What has been the impact of the South Bayside Waste Management Authority's 2013 transition to a board of elected officials?
- What was the process by which South Bayside Waste Management Authority decided to negotiate exclusively with Recology to extend its waste hauling contract in 2017?

As a result of its inquiry, the Grand Jury found that (1) the SBWMA has smoothly transitioned from a board comprised of senior staff to a board comprised of elected officials with little impact on the satisfaction of its stakeholders, including Member Agencies and customers; and (2) SBWMA's exclusive negotiations with Recology to renew and extend franchise agreements in 2017 were required under the existing contracts.

While not a part of the initial investigation, the Grand Jury also found during the investigation that:

- SBWMA has failed to provide annual agency reports on its website for the past three years; and
- the method by which SBWMA provides financial information on its website requires that members of the public already have significant knowledge of SBWMA and its website's layout.

Based on these findings, the Grand Jury recommended that the SBWMA Board adopt policies and procedures to ensure that agency reports and annual financial reports are posted for public availability on the SBWMA website with links from menus available on the website front page. A copy of the Grand Jury Report is attached. (See Attachment A.)

## Proposed Responses to Findings and Recommendations

SBWMA has been asked to respond to the Grand Jury's Findings and Recommendations on or before October 29, 2018. Staff has proposed the following draft responses to the Findings and Recommendations for the Board's review and comment. The proposed responses are underlined for the Board's reference.

### Response to Findings

- Finding F1.** The SBWMA has transitioned from a Board of senior staff to a Board of elected officials while maintaining the satisfaction of its stakeholders, including Member Agencies, SBWMA staff, and customers.  
**Response:** The Respondent agrees with the finding.
- Finding F2.** The customers of SBWMA appear satisfied with the overall quality of service of SBWMA based on reports of staff at Member Agencies, SBWMA staff, and SBWMA Board members.  
**Response:** The Respondent agrees with the finding.
- Finding F3.** The SBWMA has not published annual agency reports on its website for 2015, 2016, or 2017.  
**Response:** The Respondent agrees with the finding.
- Finding F4.** SBWMA does not have an updated dedicated webpage where the public can conveniently find all agency financial documents and reports in one place.  
**Response:** The Respondent agrees with the finding.
- Finding F5.** Negotiations with Recology to renew and extend franchise agreements in 2017 were required under the existing contract.  
**Response:** The Respondent agrees with the finding.

### Response to Recommendations

- Recommendation R1.** Adopt policies and procedures to ensure that annual agency reports and annual financial reports are posted for public availability with links to provide access to such information from menus on the website front page by December 31, 2018.  
**Response:** The recommendation will be implemented by December 31, 2018.
- Recommendation R2.** Post all historical annual agency reports and financial reports to the "Budget & Annual Reports" page of the SBWMA website for public availability by December 31, 2018.  
**Response:** The recommendation will be implemented by December 31, 2018.

### Conclusion

If the Board agrees with these responses, staff requests that the Board approve the attached Resolution directing issuance of a letter to the Honorable V. Raymond Swope as requested in the July 31, 2018 letter from the Grand Jury. That letter will be signed by the Board Chair and then transmitted to Judge Swope prior to the October 29, 2018 response date.

### Attachments:

**Resolution 2018-29**

**Attachment A** - 2018 Grand Jury Report titled: *South Bayside Waste Management Authority Board: Stakeholder Satisfaction with a Board of Elected Officials*



## RESOLUTION NO. 2018-29

### RESOLUTION OF THE BOARD OF DIRECTORS OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY APPROVING A RESPONSE TO THE SAN MATEO COUNTY CIVIL GRAND JURY REPORT OF JULY 31, 2018

RESOLVED by the Board of Directors of the South Bayside Waste Management Authority (SBWMA) that:

WHEREAS, the San Mateo County Civil Grand Jury issued a report dated July 31, 2018 (the Report) regarding SBWMA transition to a board of elected officials and requested a response to the Report within sixty (60) days, and;

WHEREAS, attached hereto as Exhibit A is a letter addressed to the Presiding Judge of the Civil Grand Jury (the Response), and;

WHEREAS, the Response has been reviewed and considered by the SBWMA Board at its meeting in open session on September 27, 2018.

NOW, THEREFORE, BE IT RESOLVED that the Response is approved, and the Board Chair is authorized to send the Response to the Presiding Judge of the Civil Grand Jury.

**PASSED AND ADOPTED** by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on this 27th day of September, 2018 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. 2018-29 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on September 27, 2018.

ATTEST:

\_\_\_\_\_  
Charlie Bronitsky, Chairperson of SBWMA

\_\_\_\_\_  
Cyndi Urman, Board Secretary



## **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD: STAKEHOLDER SATISFACTION WITH A BOARD OF ELECTED OFFICIALS**

### **ISSUE**

What has been the impact of the South Bayside Waste Management Authority's 2013 transition to a board of elected officials? What was the process by which South Bayside Waste Management Authority decided to negotiate exclusively with Recology to extend its waste hauling contract in 2017?

### **SUMMARY**

The South Bayside Waste Management Authority (SBWMA), which uses the trade name "Rethink Waste," is a 12-member joint powers authority formed in 1982 to enable its Member Agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, San Mateo County, and the West Bay Sanitary District) to improve productivity in waste collection, transfer, hauling, and disposal. Following service changes and rate increases in 2011, SBWMA came under public scrutiny with some calling for a change of its governing structure. SBWMA, which was previously governed by technical staff appointees of each Member Agency, modified its governance structure in 2013; now its board consists of elected officials from each of SBWMA's Member Agencies, as appointed by each such agency.

The 2012-2013 San Mateo County Civil Grand Jury investigated the structure of the SBWMA and issued a report in June 2013 concluding, among other things, that if the composition of the SBWMA Board was changed so that it would consist of elected officials, then an advisory committee consisting of staff with technical experience should be created. The 2017-2018 San Mateo County Civil Grand Jury (Grand Jury) investigated SBWMA to see if the transition to a Board of elected officials had impacted stakeholder satisfaction.

SBWMA's Member Agencies each contract directly with Recology for collection of solid waste, recyclables, and compostable materials from homes and businesses. Recology first negotiates a standard franchise agreement for these collection services with SBWMA, which is used as a template for the individual agreements negotiated between Recology and Member Agencies. In 2017, SBWMA and Recology negotiated on an exclusive basis to extend the existing standard waste franchise agreement. This extended standard franchise agreement is currently the basis for negotiations between each of the Member Agencies and Recology. The current Grand Jury investigated SBWMA's negotiation of the extension of Member Agencies' waste hauling contracts with Recology which occurred without opening the process to bids by new companies.

The Grand Jury finds that (1) the SBWMA has transitioned from a board of senior staff to a board of elected officials with little impact on the satisfaction of its stakeholders, including Member Agencies and customers; and (2) SBWMA's exclusive negotiations with Recology to renew and extend franchise agreements in 2017 were required under the existing contracts. While not a part of the initial investigation, the Grand Jury also found during the investigation

that (3) SBWMA has failed to provide annual agency reports on its website for the past three years; and (4) the method by which SBWMA provides financial information on its website requires that members of the public already have significant knowledge of SBWMA and its website's layout.

The Grand Jury therefore recommends that the SBWMA Board adopt policies and procedures to ensure that agency reports and annual financial reports are posted for public availability on the SBWMA website with links from menus available on the website front page.

## **DEFINITIONS AND ABBREVIATIONS**

- **2005 Restated Agreement:** The Amended and Restated Joint Exercise of Powers Agreement, executed in 2005, which governed the SBWMA from 2005 to 2013.
- **2013 Restated Agreement:** The Second Amended and Restated Joint Exercise of Powers Agreement, executed in 2013, which has governed the SBWMA from 2013 to the present.
- **Browning-Ferris Industries (BFI):** BFI was the SBWMA waste hauler starting in 1982. In 1999, BFI was acquired by Allied Waste. In 2008, Allied Waste was acquired by Republic Services Group. Local officials continue to refer to the company as BFI and that practice is followed in this Grand Jury report. In 2011, the Member Agencies transferred the collection franchise from BFI to Recology. BFI continues to own and operate the Ox Mountain landfill near Half Moon Bay, where waste from the SBWMA transfer station is disposed.
- **The South Bayside Waste Management Authority Board of Directors (the Board):** Following adoption of the 2013 Restated Agreement, the Board consists of elected officials from Member Agencies, composed of one elected member of the governing body of each Member Agency.
- **The County:** The County of San Mateo.
- **Member Agencies:** Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, San Mateo County, and the West Bay Sanitary District.
- **Shoreway Environmental Center (Shoreway):** Shoreway is the primary recycling facility in the County.
- **South Bay Recycling (SBR):** SBR is the current operator of Shoreway. SBR is a 60 percent owned subsidiary of Recology.
- **South Bayside Waste Management Authority (SBWMA):** SBWMA is a 12-member joint powers authority formed in 1982 by the Member Agencies.
- **Technical Advisory Committee (TAC):** The TAC advises the SBWMA Board and staff by reviewing materials prepared by SBWMA staff regarding programs, contracts, finance, and management and forwards its recommendations to the Board for final decisions

## BACKGROUND<sup>1</sup>

SBWMA is a 12-member joint powers authority that was formed in 1982 so its Member Agencies could collectively achieve benefits with respect to waste collection, transfer, hauling, and disposal that could not otherwise be obtained individually.<sup>2</sup> The SBWMA provides solid waste collection to roughly 60 percent of the residents of San Mateo County.<sup>3</sup> Its service area is shown on Appendix A of this report. SBWMA uses the trade name “Rethink Waste” in communications with the public. As Rethink Waste, SBWMA has been favorably recognized for its innovative waste reduction, recycling programs, and facility infrastructure.<sup>4</sup>

SBWMA negotiates standard terms for franchise agreements between each Member Agency and the waste hauling provider; regulates the waste hauling provider; owns Shoreway Environmental Center (Shoreway), a solid waste transfer plant and recycling center; and oversees Shoreway’s operator. Through its ownership of Shoreway, SBWMA works on behalf of its Member Agencies to divert waste from landfills to other methods of disposal. Since 2000, California state law has required that at least 50 percent of solid waste be diverted from landfills.<sup>5</sup> The statewide goal for diversion percentage will increase to 75 percent by 2020.<sup>6</sup> All Member Agencies comply with the current diversion requirements, but most Member Agencies and SBWMA collectively do not comply with the goal scheduled for 2020.<sup>7</sup>

### SBWMA History

When SBWMA was formed 1982, it selected Browning-Ferris Industries (BFI) as the initial franchise waste hauler for the Member Agencies.

In 2005, the Member Agencies examined the makeup of the Board. The then-mayor of Belmont, Dave Warden, wrote to other Member Agencies that elected officials should be actively involved in choosing the SBWMA executive director and setting policy direction for the SBWMA. Mr. Warden argued that elected officials, not appointed staff, should comprise the Board because “we are the ones who will ultimately be held responsible for any actions taken by the SBWMA.”<sup>8</sup>

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<sup>1</sup> “South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff?” 2012-2013 San Mateo County Civil Grand Jury Report, June 17, 2013, hereafter cited as 2012-2013 Grand Jury Report. Unless otherwise noted, information in this Background section comes from the 2012-2013 Grand Jury Report, accessed June 6, 2018. [http://www.sanmateocourt.org/documents/grand\\_jury/2012/sbwma.pdf](http://www.sanmateocourt.org/documents/grand_jury/2012/sbwma.pdf).

<sup>2</sup> Joe La Mariana, “Agency Assessment,” March 23, 2017, pp 7-9.

<sup>3</sup> Official from SBWMA: interview by Grand Jury.

<sup>4</sup> “Awards,” Rethink Waste website, accessed June 6, 2018. <https://www.rethinkwaste.org/about/about-us/awards>.

<sup>5</sup> Integrated Waste Management Act, California AB 939. See also, “History of California Solid Waste Law, 1985-1989,” CalRecycle, accessed June 6, 2018. <http://www.calrecycle.ca.gov/laws/legislation/calhist/1985to1989.htm>.

<sup>6</sup> “California’s 75 Percent Initiative: Defining the Future,” CalRecycle, accessed June 6, 2018. <http://www.calrecycle.ca.gov/75percent/>.

<sup>7</sup> Official from SBWMA: interview by Grand Jury.

<sup>8</sup> Michelle Durand, “Task Force Recommends Changing Waste Board Makeup,” *The Daily Journal*, May 2, 2013, accessed June 6, 2018. [https://www.smdailyjournal.com/news/local/task-force-recommends-changing-waste-board-makeup/article\\_78e70cee-222a-50ce-835f-29b7ed314119.html](https://www.smdailyjournal.com/news/local/task-force-recommends-changing-waste-board-makeup/article_78e70cee-222a-50ce-835f-29b7ed314119.html).

The Member Agencies did not choose to change the Board to elected officials in 2005, but instead standardized the membership criteria for the SBWMA Board by adopting the 2005 Restated Agreement.<sup>9</sup> Section 8.1 of the 2005 Restated Agreement limited SBWMA Board membership to senior management staff of each Member Agency, i.e., the following positions or their equivalent in each member county, district, city, or town:

- County/City Manager or Assistant County/City Manager
- Finance director or assistant finance director
- Public works director or assistant public works director
- Environmental director or assistant environmental director

On January 1, 2011, Recology replaced BFI as the contracted waste hauler for the Member Agencies. In addition, South Bay Recycling (SBR) became the operator of the Shoreway recycling center. SBR is a 60 percent-owned subsidiary of Recology. With the change in contracted waste hauler, the public experienced changes in services offered and rate increases.<sup>10</sup>

### Governance Questions

In December 2012, the city council of Redwood City sent letters to the other Member Agencies proposing a blue-ribbon task force to examine the SBWMA’s governance. According to news reports at the time, the Redwood City officials hoped the blue-ribbon task force would “see if [the SBWMA] is being as efficient as possible while its members make hard decisions about rate hikes year after year.”<sup>11</sup> Ultimately, the Member Agencies formed a blue-ribbon task force to study whether the SBWMA governance should be by elected officials. That task force recommended in 2013 that the SBWMA Board shift to elected officials.<sup>12</sup>

In addition to the study by the blue-ribbon task force, the 2012-2013 Grand Jury investigated the SBWMA and issued a report on June 17, 2013. That Grand Jury found: “Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.”<sup>13</sup> The 2012-2013 Grand Jury recommended that the SBWMA retain its Board of senior staff rather than shift to a Board of elected officials. To ensure that a newly constituted Board of elected officials would have access to the expertise of senior staff, the 2012-2013 Grand Jury further recommended that if the Board was shifted to elected officials then a technical advisory group be created composed of senior staff from the Member Agencies (generally, the same group that had previously served as the SBWMA Board).<sup>14</sup>

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<sup>9</sup> The Amended and Restated Joint Exercise of Powers Agreement, executed in 2005, which governed the SBWMA from 2005 to 2013.

<sup>10</sup> Durand, “Task Force Recommends Changing Waste Board Makeup.”

<sup>11</sup> Durand, Michelle, “City Hopes Others Join Waste Agency Probe,” *The Daily Journal*, December 5, 2012, accessed June 6, 2018. [https://www.smdailyjournal.com/news/local/city-hopes-others-join-waste-agency-probe/article\\_a0af09d5-6cd7-560b-bbdd-499681857ce9.html](https://www.smdailyjournal.com/news/local/city-hopes-others-join-waste-agency-probe/article_a0af09d5-6cd7-560b-bbdd-499681857ce9.html).

<sup>12</sup> Durand, “Task Force Recommends Changing Waste Board Makeup.”

<sup>13</sup> 2012-2013 Grand Jury Report.

<sup>14</sup> Ibid.

Effective July 24, 2013, the Member Agencies adopted the 2013 Restated Agreement to govern SBWMA, which modified the Board composition to include one elected member of the governing body of each Member Agency. Section 8.1 of the 2013 Restated Agreement controls the membership of the Board:

The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each Member must select its Director or the Director's designee alternate from the Member agency's elected governing body.<sup>15</sup>

At the first meeting of the new Board of elected officials, the Board created a Technical Advisory Committee (TAC) with the same position qualifications as the previous board.<sup>16</sup> In addition to advising SBWMA staff, the TAC often reviews materials prepared by SBWMA staff regarding programs, contracts, finance, and management and forwards its recommendations to the Board for final decisions.<sup>17</sup> The TAC meets formally four times each year.<sup>18</sup>

The current Grand Jury opened its investigation to determine whether SBWMA had transitioned to a Board of elected officials without negatively impacting stakeholder satisfaction.

The Grand Jury also investigated the process used by SBWMA in deciding to negotiate a contract extension with Recology without soliciting bids from third parties. In 2016, SBWMA commenced negotiations with Recology regarding the terms for extending waste hauling franchise agreements.<sup>19</sup> The current franchise agreements expire on December 31, 2019.<sup>20</sup> Some elected officials at Member Agencies questioned whether SBWMA should have negotiated an extension of the existing waste hauling contracts with Recology rather than opening the process to bids by additional companies.<sup>21</sup>

## **DISCUSSION**

### **IMPACT OF GOVERNANCE CHANGE ON STAKEHOLDER SATISFACTION**

The purpose of changing the make-up of the SBWMA Board was to make it more responsive to customers.<sup>22</sup> To determine whether the Board as reconstituted has been more responsive to customers, the Grand Jury tested for stakeholder satisfaction with SBWMA in three ways:

1. Discussing service satisfaction with SBWMA Board members and TAC members.

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<sup>15</sup> The Amended and Restated Joint Exercise of Powers Agreement, executed in 2013, which governed the SBWMA from 2013 to the present, Section 8.1.

<sup>16</sup> Minutes of the Board of the SBWMA, August 22, 2013, Item 6C. Archived at [https://www.rethinkwaste.org/uploads/media\\_items/092613-full-packet.original.pdf](https://www.rethinkwaste.org/uploads/media_items/092613-full-packet.original.pdf).

<sup>17</sup> Official from SBWMA: interview by Grand Jury.

<sup>18</sup> La Mariana, "Agency Assessment," p.23.

<sup>19</sup> Official from SBWMA: interview by Grand Jury.

<sup>20</sup> Review of all current franchise agreements between Recology and Member Agencies by Grand Jury.

<sup>21</sup> Official from SBWMA: interview by Grand Jury.

<sup>22</sup> Ibid.

2. Reviewing two satisfaction surveys provided by SBWMA, one taken before the change in governance and the other taken after the change in governance.
3. Reading Yelp reviews of Recology in the SBWMA service area.

SBWMA Board members, TAC members, and staff reported high customer satisfaction in interviews with the Grand Jury.<sup>23</sup> While this is not a direct measure of customer satisfaction, the Board members and TAC members are employed by the Member Agencies, not by SBWMA. They reported in Grand Jury interviews that they know about the level of customer satisfaction better than even SBWMA staff or Recology, because they are the people that customers complain to when they are upset. As one member of the Board said, “I’ll know if we get complaints” because he hears from his constituents as a member of a city council when residents have service complaints.<sup>24</sup>

In March 2012, prior to the governance change, SBWMA commissioned Godbe Research to conduct a single-family residential customer satisfaction telephone survey of 2,450 Recology customers in the SBWMA service area. It targeted at least 200 interviews in each of the Member Agencies to ensure that the results reflected opinions of the entire SBWMA service area. The overall margin of error rate for the survey was plus or minus 2.0 percent. When asked their satisfaction with the service provided by Recology, 91.9 percent of respondents reported being either Very Satisfied (72.0 percent) or Somewhat Satisfied (19.9 percent) with the overall quality of service.<sup>25</sup> Thus, customer satisfaction was generally high prior to the governance change.

In 2017, as the SBWMA renegotiated with Recology for the waste hauler contracts, the SBWMA conducted an update of the Godbe Research survey by directly polling officials of the Member Agencies about their satisfaction.<sup>26,27</sup> While not a direct survey of customers, the SBWMA considered its Member Agencies to be both an effective conduit for customer feedback and an important constituency themselves.<sup>28</sup> Officials at the SBWMA expressed their belief that polling Member Agencies would reflect customer satisfaction because, as noted above, customer feedback about SBWMA services is often delivered directly to the Member Agencies.<sup>29</sup> That polling also showed high levels of satisfaction with the Recology collection services, with 82.6 percent of respondents either Extremely Satisfied (47.8 percent) or Moderately Satisfied (34.8 percent).<sup>30</sup> Thus, satisfaction among stakeholders (Member Agencies and arguably customers) was high following the change in governance.

A Grand Jury review of 57 opinions posted on Yelp of the Recology solid waste collection service in the SBWMA service area also showed generally good reviews for service. However, those good reviews for service were tempered somewhat by complaints about the loudness of the garbage trucks, especially with early-morning pickup times.<sup>31</sup> Reading Yelp reviews is by no

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Godbe Research, “Rethink Waste 2012 Residential Customer Satisfaction Survey,” May 15, 2012.

<sup>26</sup> Official from SBWMA: interview by Grand Jury.

<sup>27</sup> “2017 SBWMA Member Agency Input Survey,” shared via email by SBWMA staff on January 22, 2018.

<sup>28</sup> Official from SBWMA: interview by Grand Jury.

<sup>29</sup> Ibid.

<sup>30</sup> “2017 SBWMA Member Agency Input Survey.”

<sup>31</sup> “Recology,” Yelp, accessed June 6, 2018. <https://www.yelp.com/biz/recology-san-carlos-2>.

means a scientific survey, but does generally show that customer satisfaction has continued following the change in governance.

The Grand Jury also directly asked SBWMA staff, elected officials in cities within the SBWMA service area, and senior management staff in cities within the SBWMA service area whether they were satisfied with the change in membership of the Board (including the creation of the TAC).<sup>32</sup> The uniform response in interviews was that the respondents were satisfied with the shift to the Board of elected officials.<sup>33</sup> Reasons given for satisfaction included:

1. The customers of SBWMA are residents of the cities within the SBWMA service area. With the Board being directly accountable to those customers, it holds the SBWMA more accountable for customer satisfaction than it was when the Board was composed of senior staff.<sup>34</sup>
2. The issues requiring attention of the Board are generally strategic policy issues rather than technical or management issues. Elected officials are better suited to setting policy.<sup>35</sup>
3. Creating the TAC ensured that the Board and SBWMA staff continued to have the expertise of senior management staff of cities within the SBWMA service area available as needed.<sup>36</sup>

Finally, one of the primary goals of the contract entered with Recology in 2011 when it replaced BFI as the contract waste hauler for SBWMA was shifting from a “cost-plus” contract (as had been the case with BFI) to a “determined fee” contract (as exists with Recology).<sup>37</sup> This change in contract structure placed on Recology a financial incentive to control costs, and in 2017 SBWMA staff was satisfied that Recology was doing a good job in controlling costs.<sup>38</sup>

While the SBWMA staff expressed satisfaction with the governance change, the Grand Jury did determine through its interviews, that SBWMA staff has had to adjust how it works with the new Board of elected officials.<sup>39</sup> For example, the elected officials have many obligations beyond being a member of the SBWMA and may not have large amounts of time to devote to the SBWMA. Additionally, the elected officials require more education regarding technical issues than the former board because they do not have the subject-matter expertise of the former board members. Explaining technical details to Board members, in addition to supporting both the TAC and the Board, consumes a greater amount of SBWMA staff time.<sup>40</sup>

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<sup>32</sup> Official from SBWMA: interview by Grand Jury.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> A “Cost Plus” contract, also termed a cost reimbursement contract, is a contract where a contractor is paid for its allowed expenses, plus additional payment to allow for a profit. A “Determined Fee” contract, also termed a fixed price contract, sets a specific price for services. With a Cost-Plus contract, increases in the costs of providing services are passed along to the customer. With a Determined Fee contract, increases in the costs of providing services reduce the profit of the contractor. “Cost-plus contract,” Wikipedia, accessed June 6, 2018.

[https://en.wikipedia.org/wiki/Cost-plus\\_contract](https://en.wikipedia.org/wiki/Cost-plus_contract).

<sup>38</sup> Official from SBWMA: interview by Grand Jury.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

Based on the above-referenced surveys, interviews conducted by the Grand Jury, and consideration of Yelp reviews, the Grand Jury believes that the SBWMA, with its new Board of elected officials, seems to have accomplished the goal of having high stakeholder satisfaction following the SBWMA change in governance.

## **PUBLIC REPORTING OF INFORMATION**

Notwithstanding the foregoing, the Grand Jury, comprised of and representative of the public, was not satisfied with SBWMA's reporting of information since the change of governance in 2013.

In the process of conducting its investigation, the Grand Jury discovered that the most recent annual agency report available on SBWMA's website was for the year 2014. When the Grand Jury pointed this out to SBWMA staff, the response was that a staff position at SBWMA had been vacant for much of the time between 2014 and November 2017, with the result that no annual agency report had been created or posted. An email from SBWMA staff in November 2017 indicated that SBWMA looked forward to returning to posting such information for the public.<sup>41</sup> As of May 2018, the most recent annual report posted on the "Budgets & Annual Reports" page of the SBWMA website was still the 2014 report.<sup>42</sup>

The Grand Jury also discovered that the web page providing SBWMA's financial statements to the public had not been updated since 2014. SBWMA staff noted in response to Grand Jury inquiries that the financial information was available on the website as part of the package prepared and posted for Board meetings where the Board was considering financial matters. For example, budgets were presented each year in April and adopted in May or June.<sup>43</sup> Thus, while some financial information was available, only members of the public who knew to look at Board meeting information packages and knew enough about the Board schedule to anticipate which monthly information packages to search had access to it.<sup>44</sup> As of May 2018, the most recent audited financial statements posted to the "Budget & Annual Reports" page on the SBWMA website was the 2013-2014 Audited Financial Statement.<sup>45</sup>

## **WASTE HAULING: WHY DID SBWMA NEGOTIATE EXCLUSIVELY WITH RECOLOGY?**

The Grand Jury reviewed each franchise agreement between Recology and the Member Agencies. The Grand Jury found that each such franchise agreement includes a contract term calling for exclusive negotiations to begin in 2017 regarding renewal of the franchise agreement.<sup>46</sup>

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<sup>41</sup> Official from SBWMA: email message to Grand Jury.

<sup>42</sup> "Budget & Annual Reports," Rethink Waste, accessed June 6, 2018. <https://rethinkwaste.org/about/about-us/budget-annual-reports>.

<sup>43</sup> Official from SBWMA: email message to Grand Jury.

<sup>44</sup> The budget information for the 2017-2018 fiscal year is available, beginning at page 56 of the information package for the SBWMA Board meeting held May 25, 2017. Archived at [https://rethinkwaste.org/uploads/media\\_items/052517-full-packet.original.pdf](https://rethinkwaste.org/uploads/media_items/052517-full-packet.original.pdf).

<sup>45</sup> "Budget & Annual Reports," Rethink Waste, accessed June 6, 2018. <https://rethinkwaste.org/about/about-us/budget-annual-reports>.

<sup>46</sup> Review of all current franchise agreements between Recology and Member Agencies by Grand Jury.

The franchise agreements required renewal negotiations to begin three years before the expiration of the ten-year contract because the SBWMA needed to determine in 2017 whether a renewal was likely. If it determined that renewal was not likely, it would still need two years to negotiate and implement a contract with a new waste hauler.<sup>47</sup> The SBWMA created a negotiation team of TAC members and city managers to assist it in the renegotiation process.<sup>48</sup> The negotiation team first examined whether it had problems with Recology that precluded renewal. The team determined that major constituencies (customers, Board members, SBWMA employees, Member Agencies) had been satisfied with Recology with respect to: (1) the smooth transition from BFI when it became the contract waste hauler, (2) ongoing service, (3) cost containment, and (4) responsiveness. The team recommended negotiating an extension.<sup>49</sup> Recology and the SBWMA team negotiated extensively during the first half of 2017.<sup>50</sup> The SBWMA Board approved the draft standard franchise agreement extension with Recology at a meeting on June 22, 2017. It requested the Member Agencies to negotiate their individual franchise agreement extensions with Recology based on that draft standard franchise agreement.<sup>51</sup>

Each of the Member Agencies began negotiating a franchise agreement with Recology, and late in 2017, the Member Agencies began voting on whether to accept those renewed and extended contracts.<sup>52</sup> Approval of the individual waste hauling contract extensions by 8 of the 12 Member Agencies is required before any of them take effect.<sup>53</sup> As of June 1, 2018, 8 Member Agencies had approved franchise agreement extensions with Recology, ensuring that the contract extensions will take effect.<sup>54</sup>

## FINDINGS

- F1. The SBWMA has transitioned from a Board of senior staff to a Board of elected officials while maintaining the satisfaction of its stakeholders, including Member Agencies, SBWMA staff, and customers.
- F2. The customers of SBWMA appear satisfied with the overall quality of service of SBWMA based on reports of staff at Member Agencies, SBWMA staff, and SBWMA Board members.
- F3. The SBWMA has not published annual agency reports on its website for 2015, 2016, or 2017.
- F4. SBWMA does not have an updated dedicated webpage where the public can conveniently find all agency financial documents and reports in one place.
- F5. Negotiations with Recology to renew and extend franchise agreements in 2017 were required under the existing contracts.

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<sup>47</sup> Official from SBWMA: interview by Grand Jury.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Minutes of the Board of the SBWMA, June 22, 2017, Item 8A. Archived at [https://rethinkwaste.org/uploads/media\\_items/092817-full-packet.original.pdf](https://rethinkwaste.org/uploads/media_items/092817-full-packet.original.pdf).

<sup>52</sup> Official from SBWMA: interview by Grand Jury.

<sup>53</sup> Ibid.

<sup>54</sup> Official from SBWMA: email message to Grand Jury.

## **RECOMMENDATIONS**

The 2017-2018 San Mateo County Civil Grand Jury recommends that the SBWMA Board of Directors do the following:

- R1. Adopt policies and procedures to ensure that annual agency reports and annual financial reports are posted for public availability with links to provide access to such information from menus on the website front page by December 31, 2018.
- R2. Post all historical annual agency reports and financial reports to the “Budget & Annual Reports” page of the SBWMA website for public availability by December 31, 2018.

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code Section 933.05, the Grand Jury requests the following to respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- South Bayside Waste Management Authority Board of Directors to respond no later than 90 days after the date of this Grand Jury Report.

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

## **METHODOLOGY**

### **Interviews**

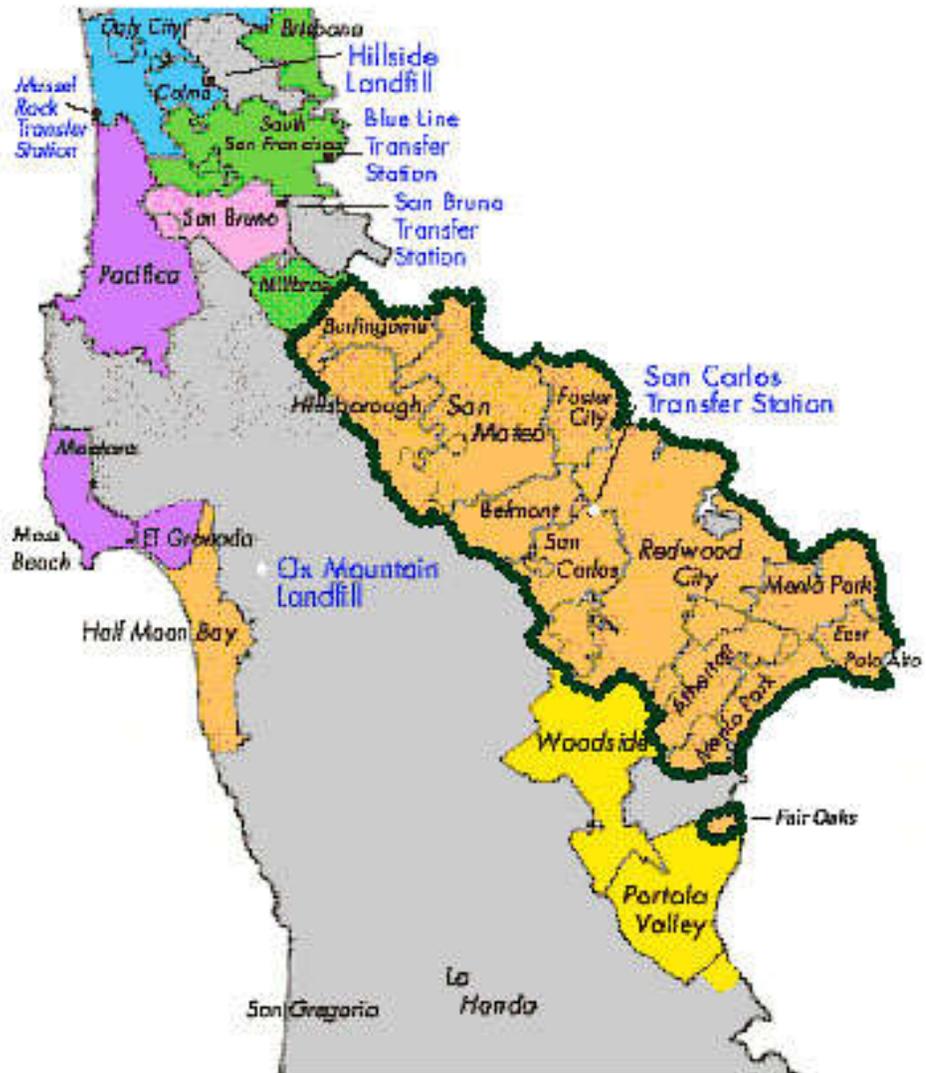
- The Grand Jury conducted interviews with SBWMA staff, Board members (elected officials from cities served by SBWMA), and TAC members (staff from cities served by SBWMA).

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- The Amended and Restated Joint Exercise of Powers Agreement, executed in 2005, which governed the SBWMA from 2005 to 2013.
- The Second Amended and Restated Joint Exercise of Powers Agreement, executed in 2013, which has governed the SBWMA from 2013 to the present.

# APPENDIX A

## SBWMA Service Area



Issued: July 31, 2018