

# BOARD OF DIRECTORS MEETING

THURSDAY, JUNE 28, 2012 at 1:00 p.m.



Simple. Smart. Green.

Shoreway Environmental Center, Community Room  
225 Shoreway Road, San Carlos, CA 94070

## 1. Roll Call CTO 1:04 PM

Agency	Present	Absent	Agency	Present	Absent
Atherton	X		Menlo Park	X	
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo	X	
Foster City	X		County of San Mateo	X	
Hillsborough	X		West Bay Sanitary District	X	

2. **Adjourn to Closed Session** - pursuant to Government Code Section Govt. Code Sec. 54957.6: Conference with Labor Negotiator: Unrepresented employees- (All employees); pursuant to Government Code Section 54957: Public Employee Performance Evaluation: Executive Director; pursuant to Government Code Section 54956.9(b): Conference with Legal Counsel - anticipated litigation – one case.

The Regular Portion of the meeting was called to order at 2:42 PM

## 3. Report from Closed Session

Legal Counsel Jean Savaree reported that the Board had authorized the retention of an independent investigator to investigate the claims brought by one employee.

## 4. Public Comment

Persons wishing to address the Board on matters NOT on the posted agenda may do so.

Each speaker is limited to two minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting.

If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time.

None

## 5. Approval of Consent Calendar:

Consent Calendar item(s) are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Board, staff or public request specific items be removed for separate action. *Items removed from the Consent Calendar will be moved to the end of the agenda for separate discussion.*

- A. Adopt the May 24, 2012 BOD Meeting Minutes
  - B. Resolution Approving a Contract with Aaronson, Dickerson, Cohn & Lanzone for Legal Counsel Services for FY 2013
  - C. Resolution Approving Contract with the City of San Carlos for Accounting and Financial Services for FY 2013
  - D. Resolution Approving Contract Extension with Zanker Road for Processing of Construction
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- and Demolition Debris
- E. Resolution Approving Property Insurance Policy Renewal Approval
- F. Receipt of Recology and SBR Monthly Reports
- G. Resolution Approving Third Amendment to the Executive Director’s Employment Agreement

Vice Chair Nava requested Agenda item 5G removed from consent.

Member Doughty made a motion to approve Consent Calendar items A through F. Member Gibbons seconded the motion.

Voice Vote: All in Favor

Discussion of item 5G:

Vice Chair Nava made a motion that the Board continue this item for 90 days, pending the results of the independent investigation. Member Moura seconded the motion.

Voice Vote: All in Favor

**6. New Business:**

- A. Resolution Adopting FY 2013 Budget

Member Oskoui made a motion to continue this item for 90 days pending the results of the independent investigation.

Chair Porter clarified that the Resolution 2012-16 for continuance is written for 60 days, and that Member Oskoui’s motion was to extend that to 90 days.

Member Oskoui stated that his continuance would be for 60 to 90 days.

Member Moura seconded the motion.

Roll Call Vote: 12-0-0-0

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

- B. Review of Unrestricted Cash Reserve Policy

Executive Director McCarthy noted that this agenda item was meant to begin a conversation about whether the agency should modify its cash reserve policy. He noted that there are three specific reserve areas: an operating reserve, a rate stabilization reserve, and an equipment replacement reserve. He pointed out that the only time the Agency has dipped into reserve funds was in 2009 during the commodity revenue market crash, and going forward from a cash flow standpoint, it might make sense to reevaluate these policies.

Member Oskoui asked if this would be outside of the debt covenant ratio policy for the bonds.

Executive Director McCarthy answered that they are related, but we've been using net income to self-fund any new capital projects, and the agency has not issued any new debt. He specifically noted the potential capitol project of replacing the underground storage tanks, stating that he didn't think the agency would have enough cash to self-fund that project.

Vice Chair Nava requested further explanation of the differences between operating reserve and rate stabilization reserve.

Executive Director McCarthy stated that the establishment of these funds goes back to 2002. His understanding of the reserve funds is that the Rate Stabilization fund was set up to support against something that may cause a rate shock, which explains using those funds in 2009. He also added that he believes the operating reserve is for a disruption in service like a strike, but noted that he didn't think there was a clear distinction between the two.

Vice Chair Nava commented that it would be helpful for the Board to understand when the money will be used and why, so that the Board could have a better understanding of what is the right amount of reserve. He asked that any new policy include when the reserves would be used.

Executive Director McCarthy reiterated that the agency should reassess reserves, and suggested a subcommittee of the Board to consider making changes.

Chair Porter asked if it was the desire of the Board to establish this subcommittee. Member Masbad, Vice Chair Nava, and Member Fotu will serve on the subcommittee with Staff Moran and McCarthy. This subcommittee will thoroughly review the policy and bring back a recommendation to the Board.

#### C. Resolution Approving Contract for Quarterly Contamination Monitoring for FY 2013

Staff Feldman gave an overview of the staff report, specifically noting that staff is recommending quarterly contamination monitoring be done in two of the four quarters of FY 13.

Executive Director McCarthy added that both the Agency and Recology are finding ways to reduce costs, and in July staff would be coming to the Board with a discussion on contract amendments, and this would be one of the contract amendments.

Member Oskoui asked if the monitoring would happen in consecutive quarters.

Staff Feldman answered that it would be at the discretion of the Board.

Member Doughty asked that the resolution be changed to say two quarters.

Member Fotu asked for pros and cons of only doing it twice.

Executive Director McCarthy answered that staff doesn't see any risk to the agency, with going to monitoring in two of the four quarters.

Staff Feldman added that when you look at it with the overall package of contract amendments it makes sense, and will achieve cost savings to the Agency.

Member Doughty made a motion to approve Resolution 2012-13 provided the language was changed to reflect that the quarterly contamination monitoring would only be done in two of the four quarters of FY13.

Member Fotu seconded the motion.

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Roll Call Vote:  
12-0-0-0

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

D. Resolution Approving Findings from Review of Collection Services and Facility Operations Reports, Tonnage Data and Customer Service Systems

Staff Feldman gave an overview of HF&H’s work on the review of the Contractor’s systems. He noted that HF&H made 26 recommendations, and that adopting the findings would have financial impact in Member Agency’s rate applications because it changes the amounts of liquidated damages and performance incentives and disincentives. He added that staff is recommending excluding the month of January 2011, given the magnitude of the roll out. The fiscal impact of excluding January would be a decrease of \$152,000 overall for all the Agencies. He noted that Exhibit B of the 6D staff report had the break-down for individual agencies.

Staff Feldman then noted that Franchise Agreements don’t specify a system for extrapolating data from the results of this type of audit. So with HF&H, Recology and Staff, we have agreed upon a system with Recology to extrapolate the findings and come to the figures presented here which have been agreed to by Recology. The main discrepancy in the findings is related to the call center, and how calls are entered into the system.

Vice Chair Nava asked staff to go through Exhibit B.

Staff Feldman explained the table. He noted that every year Recology submits their annual report, and the incentives and disincentives are self-reported, which is why the SBWMA wanted to audit this information for the first year of the contract. After explaining Exhibit B, he noted that per the Franchise Agreements performance incentives and disincentives will be paid through the compensation application coming out July 1<sup>st</sup>. Liquidated damages are paid with a check. He added that the Resolution up for approval for this period only will include the liquidated damages, and the performance incentive/disincentive payment in the compensation application. The result is overall reduced impact in Agency rates in the compensation application, because the liquidated damages will partially offset the performance incentives due to the company.

Member Masbad clarified if the Board was excluding January, and the Board does, she questioned who would be owed what.

Staff Feldman answered that it is Staff’s recommendation to exclude January, and added that Exhibit B of the staff report on page 1 table 2 reflects staff recommendation, and notes the payment for each Member Agency.

Executive Director McCarthy added that the performance incentive payment is almost entirely diversion, based on the significant increases in residential diversion, noting that it would be a one-time event. Performance incentives were put into the contract to drive a good roll out, and increase diversion both of which were achieved.

Member Hardy made a motion to approve Resolution 2012-14 as written.

Member Moura seconded the motion.

Roll Call Vote: 12-0-0-0

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

E. Findings from Review of Collection Services and Financial and Accounting Systems

Executive Director McCarthy introduced this item, and Rick Simonson from HF&H Consultants who conducted the work. He noted that the results are much more straight forward than the previous agenda item, and the results don't mean changes in the Franchise Agreements. He noted that there were a few items in the report that needed to be corrected that are already fixed. He added that the report does call for some continuing auditing of transactions between the SBWMA and SBR at a much lower level.

Member Masbad asked based on the attachment, what the final revenue shortfall number would be.

Rick Simonson answered that on page 18 in the agenda packet figure 2-7, there was one change for Recology for the schools, and the number in that figure is the final revenue shortfall number.

Executive Director McCarthy added that many Agencies put revenue in the 2012 rates to cover the estimated revenue shortfall for 2011. He suggested the Board members look at both numbers before going to their councils.

Rick Simonson added that figure 2-7 is the number that Recology will be using in their 2013 rate application.

7. **Old Business:**

A. RSMC Franchise Agreement Operational and Contract Administration Update

No Report

B. SBR Shoreway Operational and Contract Administration Update

No Report

8. **Staff Updates**

a) Update on Recology Commercial Recycling Outreach Efforts

Staff Devincenzi announced that there were extra copies of the AB341 bill inserts available for any Agency that would like them.

b) Recycling and Outreach Programs Update

c) Shoreway Construction Update

d) Update on 2012/2013 Franchise Rate Setting Process

e) Preview of Upcoming Board meetings

9. **Board Member Comments**

10. **Adjourn 3:30 PM**

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