



A Public Agency

# COLLECTION AND RECYCLING PROGRAM SUPPORT AND COMPLIANCE

## STAFF REPORT

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**To:** SBWMA Board Members  
**From:** Joe La Mariana, SBWMA Executive Director  
**Date:** May 25, 2017 Board of Directors Meeting  
**Subject:** Update to Proposed Recology Model Franchise Agreement and Compensation Package Activities

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### Recommendation

This staff report is for discussion purposes only and no formal action is requested at this time. Staff anticipates a proposed action item at the June Board meeting to accept the FAX Committee's Draft *Findings & Recommendations Report* and Amended and Restated Model Franchise Agreement.

### Summary

The SBWMA's Ad Hoc Franchise Agreement Extension (FAX) Committee, staff, and consultants have negotiated with Recology of San Mateo County (Recology) representatives since November 2016 to arrive at a mutually-agreeable, Amended and Restated Model Franchise Agreement and cost for Collection Service. The FAX Committee's Draft *Findings and Recommendations Report* and Redlined Model Franchise Agreement were presented and discussed at the April 28, 2017 SBWMA Board of Directors meeting. Key topics were raised by Board Members pertaining to the Recology's cost proposal included:

- Information regarding the relative financial benefits of a 10-year vs. 15-year term.
- Requests for more information to evaluate value proposition posed by Recology's Collection Services cost proposal for rate payers.
- Clarification of Recology's proposed increase in general and administrative (G&A) costs compared to the costs of the current Agreement. These costs currently represent 16% of Recology's 2021 cost proposal, or \$10,465,605.

Between May 1<sup>st</sup> and May 23<sup>rd</sup>, SBWMA staff has conducted numerous informational presentations at Council meetings of all 12 Member Agency's (60+ elected officials) and at workshops (see listing below) to provide a much deeper dive into the proposed financial and contractual terms. It should be noted that Recology's senior management attended and actively participated in the Technical Advisory Committee (TAC) and the City Attorney meetings and many SBWMA Board members also attended these two meetings. More details are provided in the Analysis section of this report.

- The SBWMA's 12 TAC members and agency solid waste staff (May 3<sup>rd</sup>)
- The SBWMA's 12 City Managers (May 11<sup>th</sup>)
- The SBWMA's 12 City Attorneys (May 16<sup>th</sup>)

### Next Steps

- Providing an update to SBWMA Board at the May meeting regarding the remaining process, outstanding negotiation points and/or other issues identified.

- Finalize negotiations with Recology on the Amended & Restated Model Franchise Agreement and Cost of Services proposal to be presented to the SBWMA Board at their June 22<sup>nd</sup> meeting as an action item. (Note: With SBWMA Board approval, the initial contract and change order #1 for HF&H Consultants work will be completed).
- Obtain final legal comments on the Restated & Amended Model Franchise Agreement from all 12 Member Agency's attorneys by June 9<sup>th</sup>. Address and incorporate any issues raised regarding the remaining process, outstanding negotiation points and franchise agreement language.
- Work closely with each Member Agency to obtain "Approval" of the SBWMA findings at their respective council meetings. Assuming SBWMA Board approval on June 22<sup>nd</sup>, Member Agency level approval will occur between July - September 2017.
- Staff and consultants will work closely with each Member Agency to support their negotiations and approval of the 12 individual Franchise Agreements before the end of 2017. (Note: A new change order for HF&H Consultants will be need to support the individual Member Agency negotiations. It is anticipated this these consulting support would be billed back to each Member Agency as an adjustment during the annual Contractor's Compensation Adjustment Application process).

### Analysis

Staff was tasked to negotiate a restated and amended Model Franchise Agreement and cost for services with Recology. During these negotiations, SBWMA staff worked with the FAX committee, consultants and Recology during numerous meetings to develop an Amended & Restated Model Franchise Agreement for collection services for the SBWMA service area.

As part of the SBWMA Board April 28 Board meeting, the FAX Committee's Draft *Findings and Recommendations Report* and Redlined Model Franchise Agreement were provided for discussion and contained the most recent outcome of the negotiation process. There was discussion during the meeting surrounding the proposed term and compensation proposed in the new agreement with Recology. Details on the term and compensation are as follows:

- **Term:** Recology has proposed the option of a 10-year or a 15-year term. After considering the financial benefits of spreading the depreciation cost for a new collection fleet, the FAX committee is recommending a 15-year term. At the end of the current contract, Recology's \$36.3 million collection fleet will be fully depreciated, however, the company has indicated that it can continue to use the vehicles for 2-3 additional years. By agreeing to a 15-year term, and combining the use of the current and new vehicle for a longer term, the Member Agencies will benefit from an ~\$1.7 million per year (3.4%) reduction in depreciation and interest expense when compared to the 10-year option.
- **Compensation:** The FAX committee is recommending an agreement with a 2021 Base Contractor's Compensation of \$65,330,616, which assumes a 15-year term and the inclusion of depreciation expense for the replacement collection vehicles in rate year 2020 of the Current Agreement. Based on these assumptions, the Base Contractor's Compensation will:
  - Increase 2.4% from 2019 to 2020 (instead of a ~7% reduction built into the current Agreement).
  - Increase 10.2% from 2020 to 2021.
  - Adjusts annually, thereafter, per changes in industry indices and service levels changes (capped at 5% increase/year).

## Compensation

- Details on the “meet and confer” provision should have ranges for time and costs included in the agreement so that there cannot be big swings (concerned about change orders).
- Information requested on specifics to how the cost savings from extending the truck fleet are realized as savings.
- Concern about the term “true up”, what is included and how / when a true up occurs.
- Request to ensure the residents will not be charged again for their carts.
- Multiple concerns were raised on Recology’s increase in G&A costs.
- Concern was expressed about the decision to Sole Source a contract worth \$1B.
- Information requested on Member Agency obligations for going out to bid and if the SBWMA has the \$2-3 Million in costs to go out to bid.
- Details requested to confirm Recology’s profit margin is actually 9.5%.
- Suggestion to confirm there is an exit provision in the agreement for non-performance.

## Services

- Concern that the waste characterization audits are being discontinued, and question on what the current contamination rate is and its impact on selling commodities.
- Franchise Agreement, Section 7.13 needs to be expanded to include Member Agency’s in addition to SBWMA.
- Request to understand whether the cap on Bulky Item Collection (BIC) was at the Member Agency level or SBWMA wide, how a Member Agency would know when they are at the BIC limit, and how to plan when getting close to maximum.
- Question on how rates get communicated to the residents, and to make sure that there was coordination between the City, contractor and the SBWMA on rate impacts and process.

1. **Member Agency Workshops:** As previously noted, three workshops were held for Member Agency Staff, Attorneys, City Managers and SBWMA Board Members, to provide much greater detail on the outlined changes to the Model Franchise Agreement and cost for services with Recology. The following outlines the general comments provided:

- Discussion on Bulky Item Collection and Abandoned Waste requesting the SBWMA to be notified and in-turn notify the Member Agencies.
- Concern that all trucks are depreciated by the end of the current Recology contract, and Member Agencies feel depreciation in 2021 should be zero until Recology starts purchasing trucks.
- A request for the negotiation team to put together more information and comparison on G&A costs including other large hauling companies.
- Concern was raised over a 15-year duration for this contract and if this is normal. A request was made to understand how many 15-year contracts are currently in place.

## Background

The Franchise Agreement for Collection Services for Garbage, Recycling and Organic Materials with Recology expires on December 31, 2020. SBWMA member agencies are currently in the seventh year of a ten-year Franchise Agreement for Collection Services for Garbage, Recycling and Organic Materials with Recology. During this time, feedback provided by Board Members, Member Agency staff, and community members surveyed, has consistently established that Recology has provided a high-level of professional competency during the execution of their operations throughout this period, in addition to the intense three-

year pre-service rollout period.

The SBWMA Board of Directors approved the Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology (Plan) on April 28, 2016, which recommended a schedule that, if adhered to, was intended to result in negotiating amendments to each member agency's existing Franchise Agreements with Recology by the end of 2016. The timeline for this plan was adjusted to allow the new Executive Director time to address other urgent contractual matters, to establish a new timeline, and to initiate the Recology negotiation meetings, the FAX committee meetings, and all internal SBWMA staff meetings that were necessary for moving the negotiation process forward.

At the SBWMA Board of Directors' (Board) direction, the FAX committee, Staff and consultants have worked closely with Recology since November 2016 holding a special TAC meeting in January and April, ten FAX committee meetings, seven negotiation sessions with Recology (several phone meetings were also held between Recology, HFH Consultants and SBWMA staff) and two additional all-day negotiations sessions to finalize negotiations. During the last six months of the negotiation process, the FAX committee, SBWMA staff and consultants have worked closely with Recology to define the cost for services, the rate setting methodology, and an amended and restated Franchise Agreement.

As part of the SBWMA Board of Directors April 28, 2017 meeting packet, the FAX Committee's Draft Findings and Recommendations Report and Redlined Model Franchise Agreement were provided for discussion and contained the most recent outcome of the negotiation process. Because several negotiation points were still being finalized, detailed financial worksheets were not presented, however there was significant discussion during the meeting surrounding the current term and compensation package for services with Recology.

The final goal of the process is to have the SBWMA Board of Directors approve these documents and for the SBWMA staff to assist to each member agency to coordinate with Recology to finalize the contract language, specific scope of services and the pricing of additional services for their respective agency by December 31, 2017. A RFP process to solicit a new collection services provider will be initiated if less than eight of our 12 member agencies are not formerly in contract with Recology by December 31, 2017.

The negotiated deal to be considered by the Board provides:

- **Consistency with all existing solid waste, recycling and organics services.**
- **No new-service provider transition pitfalls** (i.e., container switch-out, customer service center setup & billing setup, driver route training, hard-rollout a new truck fleet, developing a new rate setting process, and end-of-contract buyouts (e.g. Allied Waste's exit)
- **Rate-setting stability/predictability**-after an initial rate true-up, rate increases are tied to indexes.
- **SBWMA rates will continue to be in-line** with Bay Area communities.
- **Continued cost savings from collection efficiencies** gained by Recology's years of experience.
- **Sharing of future inflation risk by Recology** in their 2021 Cost Proposal.
- **Savings of an estimated \$2-3 million** in avoided RFP and contractor-transition costs.
- **Labor continuity** by continuing with a known company and management team.

### **Fiscal Impact**

There is no direct impact to the SBWMA's FY 17-18 operating budget as all collection system costs are recovered by those ratepayers who directly utilize these services.

Important notes: The proposed SBWMA FY 17-18 Operating Budget has \$450,000 designated to fund a public procurement process (aka "Request for Proposals", or "RFP") if terms, conditions and pricing cannot be satisfactorily reached between the Agency and Recology for collection services after December 31, 2017. If an RFP process initiated, and those costs exceed this budgeted amount, Staff recommends funding the difference from Agency Reserves. If agreement is successfully met, the designated \$450,000 will default into the SBWMA Capital Reserves account.

**Attachments:**

A: SBWMA City Council Meeting Calendar

# May 2017

## Elected Officials Presentations Regarding Franchise Agreement Negotiations

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 *7:00 PM Burlingame *7:00 PM San Mateo	2	3 9:30 to 1:30 Member Agency Workshop *4:00 PM Atherton	4	5	6
7	8 *6:00 PM Hillsborough *7:00 PM San Carlos	9 *7:00 PM Belmont	10 *7:00 PM WBSD	11 *10:30 AM ( Internal ) City Mangers at SM Library	12	13
14	15 *6:30 PM Foster City	16 *9:30 AM SM County 9:30 to 1:30 Legal Review Workshop *7:30 PM East Palo Alto	17	18	19	20
21	22 *7:00 PM Redwood City	23 *7:00 PM Menlo Park	24	25 2-4pm - SBWMA Board Meeting FAX presentation to BOD - Action Item	26	27
28	29	30	31			

\* Confirmed

Revised: 5/5/2017