



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY MANAGER: OFFICE OF SUSTAINABILITY

**File #:** 19-465

Board Meeting Date: 6/4/2019

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Jim Eggemeyer, Director, Office of Sustainability

**Subject:** Amended and Restated Franchise Agreement with Recology San Mateo County

**RECOMMENDATION:**

Adopt a resolution:

- A) Approving the amended and restated franchise agreement between the County of San Mateo and Recology San Mateo County for recyclable materials, organic materials, and solid waste collection services, for the Unincorporated Franchised Area and County Service Area No. 8 (North Fair Oaks) within the SBWMA service area, exclusive of West Bay Sanitary District for an additional 15-year term and will expire on December 31, 2035; and
- B) Authorizing and directing the County Manager or the County Manager's designee to execute the agreement in substantially the form presented at this meeting with such non-substantive additions, clarification and other changes as the County Manager or the County Manager's designee deem necessary or advisable after consultation with County Counsel.

**BACKGROUND:**

California Public Resources Code § 40059 provides that aspects of solid waste handling of local concern include but are not limited to: frequency of collection; means of collection and transportation; level of services; charges and fees; the nature, location, and extent of providing such services; and whether the services are to be provided by means of nonexclusive, partially exclusive, or wholly exclusive franchise, contract, license, or otherwise.

The County of San Mateo is a member of the South Bay Waste Management Authority (SBWMA), a joint powers authority comprised of twelve public agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo, and the West Bay Sanitary District) in San Mateo County. The SBWMA owns and contracts for the operation of the Shoreway Environmental Center that serves jurisdictions that comprise the SBWMA. The SBWMA also manages the debt service related to the facilities. Each member agency has its own franchise agreement with Recology San Mateo County (Recology) for

collection services within their jurisdictions; the SBWMA provides coordinated waste management related staff services to the member agencies including rate review and recycling program services.

In 2007, the SBWMA worked with its member agencies to issue a Request for Proposals (RFP) for both collection services and the Shoreway Environmental Center (transfer station as well as a recyclable materials recovery facility) contract. Recology was selected as the collection contractor. The current County areas within the SBWMA service area are the Unincorporated Franchised Area (County Franchised Area), which is comprised of Burlingame Hills, San Mateo Highlands, Baywood Park (Crystal Springs area of Baywood Park), Harbor Industrial, Devonshire Canyon, Palomar Park, Oak Knoll, Kensington Square, Emerald Lake Hills, Sequoia Tract, Peninsula Golf Club, Trailer Rancho, and County Service Area No. 8 (North Fair Oaks).

The Board of Supervisors approved agreements for these services on October 20, 2009, Resolution No. 070423, and the terms of these agreements are from January 1, 2011 through December 31, 2020. The agreements also specified that during calendar year 2017, the County, SBWMA, and Recology would meet and confer to discuss an extension of the agreement term. This would provide sufficient time to conduct a competitive procurement if no contract extension was granted. To this end, the SBWMA appointed an Ad Hoc Franchise Agreement Extension (FAX) Committee that included SBWMA staff, consultants, and appointed city staff to negotiate with Recology representatives. After negotiations, the FAX Committee developed a newly amended and restated Franchise Agreement. This Agreement is approximately 85 percent unchanged from the current agreement and has been reviewed by both the SBWMA and Recology's legal counsel. At their June 22, 2017 meeting, the SBWMA Board of Directors voted to recommend the Amended and Restated Model Franchise Agreement and costs for the Collection Services to its member agencies. The final step for this process is for 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.

### **DISCUSSION:**

During the SBWMA negotiation process, the FAX Committee, SBWMA staff and the consultants worked closely with Recology to define the cost for service, the rate setting methodology, and produce an Amended and Restated Franchise Agreement. The Office of Sustainability staff has also reviewed the Amended and Restated Franchise Agreement, participated in extensive meetings with SBWMA, outside consultants, County Counsel, and Recology. The amended and restated franchise agreement with Recology before your Board provides the following benefits to the County and its solid waste customers:

- Consistency with existing solid waste, recycling and organics services and no RFP or transition costs or service disruptions,
- Rate-setting predictability-after an initial rate true-up to cost of service levels; rate increases are tied to indexes,
- Competitive rates - SBWMA rates will continue to be in-line with Bay Area communities

### **Term, Compensation, Rates and Service Changes**

Key components of the negotiations are summarized below:

#### **1. Term**

The amended and restated franchise has an additional 15-year term and will expire on December 31, 2035. 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 two to three additional years. A 15-year term, combined with the extended life of the current fleet will allow SBWMA member agencies to benefit from reduced depreciation and interest expenses (approximately \$1.7 million per year).

## 2. Base Contractor Compensation and Customer Collection Rates

The recommended 2021 Base Contractor's Compensation (base cost) is \$65,330,616, which assumes a 15-year term and includes depreciation expense for the replacement collection vehicles in rate year 2020 of the current Agreement. The total base cost includes the contractor's compensation (e.g., wages, benefits, general expenses, depreciation, profit, etc.), agency payments, performance incentives, and disincentives costs. Disposal costs are calculated separately from the contractor's compensation cost component and are a direct pass-through cost.

The **Base Contractor's Compensation** as outlined above would:

- Increase 2.4 percent from 2019 to 2020 (instead of a 7.0 percent reduction built into the current agreement);
- Increase 10.2 percent from 2020 to 2021; and,
- Thereafter, increase according to changes in the selected indices plus service level changes (capped at five percent per calendar year).

**Customer Collection Rates**, are referred to as the Total Customer Billed Revenue. Total Customer Billed Revenue is comprised of Recology's costs plus Member Agency fees, Disposal and Processing costs, and the SBWMA agency costs. Based on certain reasonable assumptions regarding these costs, the Total Customer Billed Revenue may increase with the new agreement and by including a portion of future depreciation expense in 2020, extending the term of the amended and restated Agreement 15 years instead of ten, and providing a three-year rolling average for the change in customer subscription levels, some of these costs have been mitigated. Staff further notes that actual increases will vary by member agency given the differences between existing collection rates and any reserves that could be applied to offset these increases.

## 3. Amended Service Changes

Residential and commercial customers will not experience any changes to their current collection services. Minor modifications to the Franchise Agreement for residential and commercial services include:

- Mixed Use Buildings: The amended agreement defines a new class of service, referred to as "Mixed Use Buildings." Mixed Use Buildings contain commercial accounts on the ground floor and residential accounts above. The services provided to these customers will also be accordingly split: residential accounts will receive multi-family services and commercial accounts will receive commercial services.
- Below Grade/Pull-Out Relocation Fee: Mixed Use, Multifamily, and Commercial customers with bins located below grade, or in locations that require Recology to pull the bin out to service will incur an additional bin relocation services fee.
- Bulky Item Collection: Residential customers will continue to receive up to two bulky item collection services annually without a charge, within one week of request on their next garbage and recycling day. This service will now be capped at 150 per day for all of the SBWMA (currently requests are at approximately 120 bulky item collections per day), and if

the number of requests exceeds 150 per day, Recology will roll the collection service date to the following collection day week (two weeks from request).

- Abandoned Waste Collection: Member agencies will continue to receive abandoned bulky waste collection services. This service will be capped at 30 pick-ups per day for the SBWMA service areas. If the average number reaches 25 daily events, the SBWMA and Recology will meet to consider solutions such as the addition of collection resources and additional compensation to Recology.
- Reporting: Recology's reporting requirements have been adjusted to streamline data collection and reporting.

## **Summary**

Based on the analysis and review of the proposed franchise agreement, as noted above there are cost savings and benefits gained by continuing with Recology San Mateo County as the collection service provider for the two County service areas within the SBWMA until the year 2035. Staff recommends your Board adopt the resolution.

## **Alternatives**

Alternatives to this would include:

1. Not adopting the resolution. This would require the County to develop and release a Request for Proposal to find a contractor to provide waste and recycling collection services for the county franchised areas within the SBWMA.
2. Provide staff with a different direction. The Board may wish to direct staff to negotiate further on elements of the Franchise Agreement for the county franchised areas. This could increase costs if substantial changes are made for the service areas, and major changes may need to be negotiated at the SBWMA agency wide level for SBWMA approval.

## **ENVIRONMENTAL REVIEW:**

Under CEQA and the Guidelines, the County is a Responsible Agency with respect to the environmental review of the proposed Amended and Restated Franchise Agreement. The County has reviewed the project's potential effects on the environment and has recommended that this project is categorically exempt from the California Quality Act (CEQA) under Guidelines Section 15061 (b) (3) (Common Sense Exemption) which exempts projects that fall within the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Here, the activity of extending the franchise agreement will not have a significant effect on the environment because there will be no change in the operation of solid waste collection services provided to the Member Agencies. Recology will use the same vehicles the Authority is currently using and will provide the same levels of service the Authority is currently providing. Therefore, there is no possibility that the approval of this franchise will cause a significant effect on the environment.

County Counsel has reviewed and approved the Resolution and Agreement as to form.

## **FISCAL IMPACT:**

There is no Net County Cost.

Preliminary garbage collection and disposal compensation costs for each member jurisdiction are calculated annually by SBWMA staff. Annual rate changes are reviewed and approved or modified by the governing body of each member jurisdiction after holding a public hearing. The proposed Recology extension and the amended model Franchise Agreement from the SBWMA, proposes a 2.4 percent compensation cost increase from 2019 to 2020, and a proposed 10.2 percent compensation cost increase from 2020 to 2021 for solid waste collection services. This increase represents approximately 63 percent of the total overall costs to the rate payers. The remaining 37 percent of the costs are for other services (disposal, processing, and SBWMA agency costs).

The proposed compensation costs increase in the model agreement does not include any additional costs for modifying specific Franchise Agreement terms in the County's own negotiations with Recology or aligning the collection rates to actual costs of services for the two County service areas (Unincorporated Franchised Area and County Service Area No. 8 (North Fair Oaks)).

In the upcoming rate years, staff will study the current rate structures and make recommendations to smooth rate increases for the ratepayers while meeting our revenue requirements to meet the Total Customer Billed Revenue rate requirements.

The cost for collection services is funded through customer collection rates and charges. The County receives a five percent franchise fee which is used to fund administration of the agreements and Solid Waste programs in these two service areas.

#### **ATTACHMENTS:**

**Exhibit A:** Amended and Restated Franchise Agreement Between County of San Mateo and Recology San Mateo County for Recyclable Materials, Organic Materials, And Solid Waste Collection Services

#### **Attachments A-T:**

- A Definitions
- B Service Levels of Agency Facilities
- C Community Events
- D Container Specifications
- E-1 Contamination Measurement Methodology - Single Loads
- E-2 Reserved
- F Faithful Performance Bond
- G Guaranty
- H Delinquent Payment Policy
- I Performance Incentives and Disincentives
- J Liquidated Damages
- K Contractor's Compensation and Rate Setting Process
- L Reserved
- M Agency's Franchise Fee and Other Fees
- N Contractor's Compensation and Operating Statistics
- O List of Contractor's Personnel
- P Vehicle Specifications
- Q Additional Services

- R Secretary's Certificate
- S Interest Payment Arrangement Memorandum of Understanding
- T County Specific Requirements