



NEW BUSINESS



## STAFF REPORT

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**To:** SBWMA Board Members  
**From:** Cliff Feldman, Recycling Programs Manager  
Kevin McCarthy, Executive Director  
**Date:** March 25, 2010 Board of Director's Meeting  
**Subject:** Resolution Approving the License Agreement with Recology San Mateo County for use of the Shoreway Recycling and Disposal Center (Shoreway Environmental Center)

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### Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2010-10 attached hereto authorizing the following action:

1. Approve the License Agreement between the SBWMA and Recology San Mateo County for use of the Shoreway Recycling and Disposal Center.
2. The Executive Director is hereby authorized and directed to execute the License Agreement substantially in the form presented to this meeting (Exhibit A), with such non-substantive additions, clarifications and other changes he deems necessary or advisable after consultation with the Authority's Legal Counsel.

### Analysis

The corporation yard operations associated with the franchised collection services provided to the Member Agencies by Republic Services is located at the Shoreway Recycling and Disposal Center (referred to as Shoreway Center in the License Agreement and to be renamed the Shoreway Environmental Center on January 1, 2011). Since the Shoreway Center has historically been occupied in its entirety by one company, there has never been a reason to formalize use of the facility in the form of a License Agreement. The new collection services provided by Recology San Mateo County (RSMC) commencing on January 1, 2011 will require the company to use several of the Shoreway Center buildings (e.g., Administration Building, Vehicle and Container Maintenance Buildings), as specified in the Collection Services RFP and subsequent Member Agency Franchise Agreements with RSMC.

The License Agreement is the legal document formalizing the company's and SBWMA's rights and obligations with regard to RSMC operations on-site. The key provisions in the License Agreement include insurance, indemnification, parking, utilities, water quality protection, facility improvements and corporate guaranty. The term shall coincide with the term of the Member Agencies Franchise Agreements (i.e., January 1, 2011 through December 31, 2020). The company will be required to compensate the SBWMA the sum of \$1.00 per year for use of the Shoreway Center.

### Background

Since the Shoreway Center has historically been occupied in its entirety by one company, there has never been a reason to formalize use of the facility in the form of a License Agreement. The new collection services provided by RSMC commencing on January 1, 2011 will require the company to use several of the buildings at the Shoreway Environmental Center (e.g., Administration Building, Vehicle and Container Maintenance Buildings).

The Collection Services request for proposals (RFP) issued on November 2, 2007 contemplated a scenario whereby one contractor would be selected and authorized to use the Shoreway Center for its base of corporation yard operations. RSMC was one of four companies that submitted a proposal in response to the Collection Services RFP. On August 28, 2008, the SBWMA Board of Director's voted unanimously in favor of the recommendation that RSMC be selected as the future collection services provider for each Member Agency. The SBWMA, Member Agencies and RSMC subsequently negotiated Franchise Agreements that were approved and executed by most Member Agencies between August 2009 and March 2010.

It is anticipated that all twelve Member Agencies will execute Franchise Agreements with RSMC that are predicated on the company using the Shoreway Center as its base of operations. As of the date of this staff report, a total of ten Member Agencies have executed, or are in the process of signing Franchise Agreements with the company (i.e., Atherton, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, City of San Mateo, County of San Mateo, and West Bay Sanitary District).

### **Fiscal Impact**

The License Agreement formalizes costs to the SBWMA to provide needed upgrades to the Shoreway Center to modernize the information technology infrastructure in the Administration Building and improve traffic flow in the transfer station and truck parking area. The SBWMA will contribute an amount not to exceed \$71,000 for these upgrades and funding for this purpose is already included in our five year capital budget with the expenses primarily following in FY1011. In addition, the SBWMA is committing to share the cost of needed off site parking with the company in an amount not to exceed \$1,800.00 per month for the term of the agreement and \$14,400 for the anticipated disruption in parking for the first six months of 2011 due to construction at the transfer station building.

#### **Attachments:**

Resolution 2010-10



## **RESOLUTION NO. 2010-10**

### **RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING A LICENSE AGREEMENT WITH RECOLOGY SAN MATEO COUNTY FOR USE OF THE SHOREWAY RECYCLING AND DISPOSAL CENTER**

**WHEREAS**, The Authority is a joint powers agency organized under the Joint Exercise of Powers Act by cities and other local government agencies in San Mateo County (the "Member Agencies"), each of which oversees the collection of solid waste, plant materials and recyclable materials within its jurisdiction; and

**WHEREAS**, The Authority owns and oversees the operation of the Shoreway Recycling and Disposal Center in San Carlos ("Shoreway Center"). The collection services and recycling and material recovery operations conducted at the Shoreway Center are an integral component of each of the Member Agencies' Source Reduction and Recycling Elements, which have in turn been incorporated into San Mateo County's Integrated Waste Management Plan; and

**WHEREAS**, On November 1, 2007, the Authority issued a Request for Proposals for a qualified contractor to provide Collection Services to the Member Agencies commencing on January 1, 2011; and

**WHEREAS**, Recology San Mateo County (RSMC) submitted a Proposal which, in the judgment of the staff of the Authority, represented the greatest value to the Authority, its Member Agencies and their residents and businesses; and

**WHEREAS**, On August 28, 2008, the SBWMA Board of Director's voted unanimously in favor of recommendation that RSMC be selected as the future collection services company for each Member Agency; and

**WHEREAS**, The Member Agencies, acting in coordination with each other and the Authority, are planning to expand the recycling operations within each of their jurisdictions through a variety of measures, including the institution of "single stream" recycling collection provided by RSMC; and

**WHEREAS**, The services provided by RSMC specified in the Member Agency Franchise Agreements are based on the company using the Shoreway Center as its base of corporation yard operations; and

**WHEREAS**, The Authority staff has negotiated with RSMC since August 2009 and has reached an agreement for the company's use of the Shoreway Center for satisfactory price, terms and conditions; and

**WHEREAS**, a copy of the License Agreement with RSMC is attached to this Resolution (Exhibit A).

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Authority as follows:

1. Approve the License Agreement between the SBWMA and Recology San Mateo County for use of the Shoreway Recycling and Disposal Center.
2. The Executive Director is hereby authorized and directed to execute the Agreement substantially in the form presented to this meeting (Exhibit A), with such non-substantive additions, clarifications and other changes he deems necessary or advisable after consultation with the Authority's Legal Counsel.

**PASSED AND ADOPTED** by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the this 25<sup>h</sup> day of March, 2010, by the following vote:

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

I HEREBY CERTIFY that the foregoing Resolution No. 2010-10 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on March 25, 2010.

ATTEST:

\_\_\_\_\_  
Jim Porter, Chairperson of SBWMA

\_\_\_\_\_  
Jeannene Minnix, Board Secretary

## SHOREWAY CENTER LICENSE AGREEMENT

This License Agreement ("Agreement" or "License") is entered into as of \_\_\_\_\_, 2010, by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a public agency (the "Authority"), and RECOLOGY SAN MATEO COUNTY, a California corporation ("Licensee").

### RECITALS:

- A. The Authority is a joint powers authority organized under the California Joint Exercise of Powers Act. Its 12 member agencies are cities and other local governmental agencies in San Mateo County, each of which oversees the collection of solid waste and recyclable materials within its jurisdiction.
- B. The Authority owns and oversees the operation of the Shoreway Recycling and Disposal Center (Shoreway Center) in San Carlos. The Shoreway Center and the property on which it is located (the Property) are shown on Exhibit A, attached hereto and incorporated into this Agreement by this reference.
- C. The Member Agencies have executed or are considering entering into a Franchise Agreement for Collection Services with Licensee, under which the Licensee would, commencing January 1, 2011, collect solid waste, recyclable materials, and organics materials (Franchise Agreement) from within each such Member Agency's jurisdiction and deliver it to the Shoreway Center for recycling or transfer to a landfill for disposal.
- D. The Authority awarded a contract to South Bay Recycling (Shoreway Operator) to operate the Shoreway Center commencing January 1, 2011.
- E. Licensee desires to use a portion of the Property commencing January 1, 2011, in connection with its performance of its Franchise Agreements with Member Agencies.
- F. Authority is willing to allow such use on the following terms and conditions.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Grant of License. Subject to the conditions, covenants and restrictions of this Agreement, the Authority grants to Licensee a license ("License") to use the License Area for the Permitted Use, together with necessary rights of ingress and egress over the Property, commencing January 1, 2011.
2. Term. The term of this Agreement will begin on \_\_\_\_\_ {same as the "as of" date on the first line} and will end on December 31, 2020, unless previously extended by agreement of both parties or terminated by Authority as provided in Section 19.
3. License Area. The License Area comprises two separate portions of the Property:
  - A. Collection Operations Area. This consists of an approximately 276,843 square foot area in the northeast portion of the Property designated "Collection Yard - Collection Operations Area" on Exhibit A and includes structures for maintaining,

repairing and cleaning vehicles and bins, as well as underground fuel tanks and dispensing pumps and the oil/water separator. Licensee will be responsible for maintenance, permits and spill response in this area and shall ensure that all operating permits are current.

B. Administration Area. This consists of approximately 21,131 square feet of office space and adjacent parking area designed "Administration - Collection Operations Area" on Exhibit A.

4. Permitted Uses. Licensee may use the License Area solely for its provision of solid waste, recyclable materials, and organics materials collection services to Member Agencies which have entered into Franchise Agreements with it as provided herein.

Subject to Section 7, Licensee may use the Collection Yard to:

- park collection trucks and supervisory/support vehicles and may permit employees to park their personal vehicles while on duty;
- allow visitors to park their personal vehicles;
- store collection bins and other equipment; and
- wash, maintain, repair, and fuel its vehicles.

Licensee may use the Administration Area for office activities directly and exclusively associated with its provision of collection service to Member Agencies which have entered into Franchise Agreements with it and for employee and visitor parking.

Licensee may not use the License Area for any other purpose or business without obtaining the Authority's prior written consent.

Authority agrees to pay for parking spaces that are made inaccessible in the parking area east of the transfer station during construction that is anticipated to continue through the first six (6) months of 2011. Authority agrees to compensate Licensee for the twenty-four (24) parking spaces that are located in this area and allocated for Licensee's use for an amount not to exceed \$100.00 per month per parking space for each month that the parking spaces are inaccessible to Licensee.

Authority agrees to share one-half (½) of the cost for off-site parking with Licensee for the anticipated thirty-five (35) additional parking spaces that are needed for Licensee's employee parking based on current estimates. Authority agrees to remit payment to Licensee for an amount not to exceed \$1,800.00 per month for the Term for off-site parking. Authority and Licensee agree to meet annually with the goal of determining if Licensee can accommodate all of its parking needs on-site.

5. License Fee. Licensee shall pay Authority One Dollar (\$1.00) per year as a fee for use of the License Area. The fee is payable on January 1 of each year of the Term, commencing January 1, 2011.

6. Shoreway Operator's and Authority's Use of Property. The Shoreway Operator will have limited rights to use the following portions of the Collection Yard: the fueling facilities

and a bay in the smaller maintenance building. In addition, both the Shoreway Operator and Licensee will share use of the entry/exit access roads and the parking area behind the Transfer Station building. Licensee shall cooperate with the Shoreway Operator to minimize interference with Shoreway Operator's activities. Provisions addressing cooperation by the Shoreway Operator with Licensee's activities are specified in Section 5.05.D and Sections 1.J and 1.L of Attachment 3 to the Shoreway Operator's 2009 agreement with the Authority. If there is a dispute between the Licensee and the Shoreway Operator over the use of the Property, the Authority will make a determination, which will be final and binding on both entities.

The Authority shall have exclusive use of a fenced area within the Collection Yard of approximately 5,000 square feet (approximately 50' x 100'). In addition, the Authority shall have exclusive use of one enclosed office in the administration building (at least fifty (50) square feet) and two parking spaces in front of the building. The Authority will be responsible for furnishing the office; Licensee will be responsible for all utilities including telephone and internet access.

7. Utilities. Licensee shall pay for all utilities including water, electricity, gas, heat, light, communications, and janitorial and building maintenance services provided to the License Area. In cases where there is a single meter, the costs will be allocated as the Licensee and Shoreway Operator may agree. If they are unable to agree, the Authority will make a determination, which shall be final and binding on both entities.

8. Personal Property. Licensee shall provide, at its expense, telephone and other communications equipment, furniture, computers, office supplies and moveable partitions as well as all other personal property as needed for its use of the License Area.

9. Maintenance. Licensee shall keep the License Area, including any improvements located thereon, in safe condition and in good order, condition and repair at all times, at Licensee's sole cost and expense. Licensee shall, at Licensee's sole expense, repair any area damaged by Licensee, its agents, employees, or visitors. Licensee acknowledges that this License imposes no duty on Authority to repair or make improvements to the Property. If Licensee fails to perform Licensee's obligations under this Section, the Authority may enter upon the License Area after twenty-four (24) hours prior notice to Licensee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Licensee's behalf and expense. Licensee shall, upon demand, immediately reimburse the Authority for the cost of such cure together with interest at a rate of 10% per year from the date of the expenditure by the Authority until such reimbursement is received by the Authority. At the expiration or earlier termination of this License, Licensee shall surrender the License Area to the Authority in the same condition as when received, ordinary wear and tear excepted.

10. Water Quality Protection. Licensee shall use oil-water separators furnished by the Authority to collect oil run-off from its trucks at its wash rack and truck maintenance facilities, in drainage systems in and around the vehicle parking areas, to prevent oil contamination of the San Francisco Bay. Licensee shall submit to Authority, for its review and approval, its Spill Prevention Control and Countermeasure Plan (SPCC) and a Storm Water Pollution Prevention Plan (SWPPP), no later than September 1, 2010. Activities delineated in Licensee's SPCC and SWPPP shall be coordinated with the SPCC and SWPPP prepared by the Facility Operator to ensure that spill control and storm water management at the Shoreway Center is managed in compliance with applicable laws and regulations. Authority shall apply for an interim variance from specific testing and approval requirements for underground storage tank (UST) systems storing certain biodiesel blends (i.e., B5-B20) per section 2631.2 of Chapter 16 of Title 23 of the California Code of Regulations by January 1, 2011. Without regulatory approval obtained by



Authority to allow for the continued use of the existing UST systems for a biodiesel blend, the Authority will consider upgrading the UST tanks, allow for an alternative to the UST tanks, or request that the Member Agencies allow Licensee to use an alternative fuel other than that specified for use in the Member Agency Franchise Agreements.

11. Hazardous Materials. In conducting its operations on the Property, Licensee shall at all times comply with all laws, statutes, ordinances, rules, regulations or orders applicable to hazardous materials and pay all costs of such compliance. Licensee shall immediately notify the Authority if Licensee learns of, or has reason to believe that, a release of Hazardous Materials has occurred in, on or about the License Area. The term “release” or “threatened release” when used with respect to Hazardous Materials shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area. Licensee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Licensee or its agents or invitees cause a release of Hazardous Materials, Licensee shall, without cost to the Authority and in accordance with all laws and regulations, return the License Area to the condition immediately prior to the release. In connection therewith, Licensee shall afford the Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Materials.

For purposes of this Agreement, “Hazardous Materials” means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Materials includes, without limitation, any material or substance defined as a “hazardous substance, pollutant or contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) or pursuant to Section 25316 of the California Health and Safety Code; a “hazardous waste” listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids.

12. Compliance with Laws. Licensee, at Licensee’s expense, will at all times comply with all applicable laws, regulations, rules, and orders with respect to Licensee’s use of the Property, including, without limitation, those relating to signage, health, disability accommodation (including the Americans with Disabilities Act), safety, noise, environmental protection, waste disposal, and water and air quality. Licensee will furnish satisfactory evidence of such compliance upon request of the Authority.

13. License Non-assignable. This License is personal to the Licensee and shall not be assigned without the prior written consent of Authority. Any attempt to assign the License without such prior consent shall automatically terminate it. No legal title or leasehold interest in the Property is created or vested in Licensee by the grant of this License.

14. Assumption of Risk/Waiver of Claims.

A. Neither the Authority nor any of its directors, officers, employees or Member Agencies shall be liable for any damage to the property of Licensee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by Licensee.

B. Licensee acknowledges and agrees that it will not be a displaced person at the time this License is terminated or expires by its own terms, and Licensee releases, waives and discharges any and all claims, demands, rights, and causes of action against, and covenants not to sue, the Indemnitees under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from the Authority under federal and state relocation assistance laws.

C. Licensee acknowledges and agrees that the fee payable hereunder does not take into account any potential liability of the Authority for any consequential or incidental damages including, but not limited to, lost profits arising out of damage to or destruction of the Shoreway Center and consequential disruption of Licensee's use of the License Area. The Authority would not be willing to grant this License in the absence of a waiver of liability for consequential and incidental damages due to the acts or omissions of the Authority or its agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully releases, waives and discharges the Indemnitees from any and all claims, demands, and causes of action for consequential and incidental damages (including without limitation, lost profits) arising out of damages to or destruction of the Shoreway Center and agrees that Authority has no duty to rebuild or replace the Shoreway Center in the event of such damage or destruction.

D. In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Licensee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive expiration or termination of this License.

15. Indemnity. Licensee shall defend (with counsel reasonably satisfactory to the Authority), indemnify and hold harmless the Authority, its officers, directors, employees, volunteers and agents (collectively "Indemnitees"), from and against all claims, causes of action, proceedings, losses, damages, liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees and consulting, engineering and construction costs) for loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") arising or

resulting from the use of the Property by Licensee, its agents, employees, contractors, subcontractors, or invitees or Licensee's breach of a provision of this Agreement. The duty of Licensee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Licensee will indemnify and hold harmless Indemnitees from any and all claims, suits or actions regardless of the existence or degree of fault or negligence on the part of Indemnitees, except to the extent the Liability is found by a court to have been caused by the active gross negligence, willful misconduct or criminal act of a particular Indemnitee, it being understood and agreed that any Indemnitee not acting in such a manner shall be entitled to the benefits of this indemnity. This indemnity shall survive expiration or termination of this Agreement.

16. Insurance

A. Types and Amounts of Coverage. Licensee, at Licensee's sole cost and expense, shall procure and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers Compensation and Employer's Liability. Licensee shall maintain Workers Compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Licensee shall maintain Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or disease. Licensee shall not be obligated to carry Workers Compensation insurance if it: (i) qualifies under California Law and continuously complies with all statutory requirements to self-insure against such risks; (ii) furnishes a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) maintains excess Workers Compensation and Employer's Liability coverage.

2. Commercial General Liability and Automobile Liability. Licensee shall maintain commercial general liability insurance and automobile liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by Licensee's use of the License Area. The insurance required by this subsection shall include:

- a. Premises Operations;
- b. Personal Injury Liability with Employment Exclusion deleted;
- c. Owned, Non-Owned, and Hired Motor Vehicles;

3. Property Insurance. Licensee shall arrange for the License Area to be added to the all-risk, first-party property insurance maintained by its parent corporation, Recology Inc. The coverage provided by this policy shall be primary as respects the portion of the License Area designated the Collections Operation Area and the improvements located on that portion.

4. Pollution (Environmental Impairment) Liability. Licensee shall maintain pollution liability insurance coverage of not less than ten million dollars (\$10,000,000) per occurrence covering claims for on-site, under-site, or off-site bodily injury and property damage as a result of pollution conditions arising out of its operations under this License Agreement.

B. Required Endorsements

1. The Commercial General Liability policy shall contain endorsements in substantially the following form:

a. "Thirty (30) days prior written notice shall be given to the South Bayside Waste Management Authority in the event of cancellation, reduction in coverage, or nonrenewal of this policy. Such notice shall be sent to:

South Bayside Waste Management Authority  
610 Elm Street, Suite 202  
San Carlos, CA 94070  
Attention: Executive Director"

b. "The Authority, its officers, employees, and agents are additional insureds on this policy."

c. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Authority, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d. "Inclusion of the Authority as an additional insured shall not affect the Authority's rights as respects any claim, demand, suit or judgment brought or recovered against the Licensee. This policy shall protect Licensee and Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

2. The Automobile Liability policy shall contain the endorsements described in subsections B.1 b, c, and d.

3. The Workers Compensation insurance policy (underlying or excess) shall contain an endorsement waiving the carrier's rights of subrogation against the Authority, its agents, officers and employees.

C. Delivery of Proof of Coverage. Licensee shall furnish the Authority, no later than September 1, 2010, certificates of each policy of insurance required hereunder, in form and substance satisfactory to Authority. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the Authority requests, copies of each policy, together with all endorsements, shall also be promptly delivered to Authority. Renewal certificates will be furnished periodically to Authority to demonstrate maintenance of the required coverages throughout the Term.

D. Other Insurance Requirements.

1. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of *Best's Insurance Reports* of Size Category XV or larger and a rating classification of A or better.

2. Licensee shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Licensee from any obligation under this License. If any claim is made by any third person against the Licensee on account of any occurrence related to this License, the Licensee shall promptly report the facts in writing to the insurance carrier and to the Authority.

3. Licensee shall provide thirty (30) days prior written notice to the Authority in the event of: (i) loss of permission to self insure for Workers Compensation risks; or (ii) cancellation, non-renewal or reduction in coverage of the excess Workers Compensation policy, the automobile liability policy or the property damage policy.

E. Absence of Insurance. If Licensee fails to procure and maintain any insurance required by this License, the Authority may take out and maintain, at Licensee's expense, such insurance as it may deem proper and recover the cost thereof from Licensee.

17. Licensee's Commitments Related to Franchise Agreements. The Franchise Agreements for Collection Services between Member Agencies and Licensee require the Licensee to pay to Authority:

- A. "Gate Fees" for delivering material to the Shoreway Center.
- B. "Excess Contamination Fees" described in Section 6.02 of the Member Agencies Franchise Agreement(s), as well as disincentive payments or other charges for contamination levels of materials delivered to the Shoreway Center exceeding allowable amounts as specified in the franchise agreements.
- C. "Other Fees" that are described in Section 10.05 of the Member Agency Franchise Agreement(s) that are included in customers bills by Licensee on behalf of Member Agencies for various third party provided services such as the Authority's Door-to-Door HHW Collection Service Program with Curbside, Inc. The fees described in the preceding sentence are included as Pass-Through Costs as described in Attachment K section 7 of the Member Agency Franchise Agreements.

Fees remitted to Authority by Licensee on behalf of Member Agencies shall be treated for the purpose of determining Licensee's compensation under the Franchise Agreement(s) as if these fees are paid directly to the Member Agency pursuant to the Franchise Agreement(s).

Licensee agrees to remit payment to Authority for each of these fees by automated clearing house (ACH) transaction or wire transfer within three (3) business days upon receipt of a bill or other demand from Authority. Licensee shall pay to Authority a maximum of once monthly the Excess Contamination Fees and Other Fees described in the preceding subsections 17.B and 17.C. Licensee shall pay to Authority the Gate Fees described in the preceding subsection 17.A a maximum of twice monthly based on payments for: (i) the first (1<sup>st</sup>) through the fifteenth (15<sup>th</sup>) day of each month; and (ii) the sixteenth (16<sup>th</sup>) through the last day of each month. Authority and Licensee agree that the twice monthly payment schedule for Gate Fees described in the preceding sentence shall be implemented commencing April 1, 2011. For the months of January, February and March 2011, Licensee shall remit payment to Authority once per month by ACH or wire transfer within three (3) business days upon receipt of a bill or other demand from Authority.

In addition, the Franchise Agreements include or are expected to include provisions that involve active participation in their administration by the Authority. Examples include: (i) Authority's conduct of a review of Licensee's annual application for adjustment of its compensation; (ii) Authority's conduct of annual evaluations of Licensee's performance as collection contractor; and (iii) public education and outreach activities. Licensee agrees to fully and actively cooperate with Authority to facilitate its accomplishment of all activities contemplated by the Franchise Agreements.

18. Improvements to the License Area. Authority and Licensee agree that improvements to License Area need to be accomplished. Specifically:

- A. Authority and Licensee agree to share equally the cost of all information technology upgrades to the License Area which are needed for Licensee to provide the services specified in the Franchise Agreements. The scope of the upgrades shall be agreed upon in advance by Authority and Licensee. Authority agrees to pay one-half (1/2) of the cost of these upgrades in an amount not to exceed \$33,000 upon receipt of the invoice from Licensee's contractor(s). Licensee's must use qualified licensed contractor(s) that carry workers compensation and general liability insurance and provide in advance of any work, an insurance certificate naming the Authority as an additional insured. Authority shall direct the current occupant to cooperate with Licensee to make the necessary improvements based on a plan submitted by Licensee that ensures no disruption to the current tenants operations. The Authority may post a notice of non-responsibility prior to Licensee's contractor commencing with the specified upgrades to the License Area.
- B. As soon as possible weather permitting, between January 1, 2011 and July 1, 2011, Authority shall authorize Licensee to proceed with painting and striping on the pavement of the Collection Operations Area to improve traffic flow and vehicle safety. Authority shall contribute to Licensee an amount not to exceed \$30,000 for the painting and striping of the Collection Operations Area.
- C. By January 1, 2011, Authority will upgrade the transfer station building northeast corner entrance/exit to include a traffic signal paid for by the Authority in an amount not to exceed \$8,000.

19. Authority's Right to Terminate. Authority may terminate this Agreement if Licensee commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after notice from Authority.

Authority may also terminate this Agreement if the Shoreway Center is destroyed, or damaged so severely as to be inoperable and Authority elects, in its sole discretion, not to rebuild or restore it.

Upon termination of the License, Licensee shall remove all of Licensee's personal property from the Property and shall surrender possession of the License Area to Authority, in the same condition as at the commencement of Licensee's use, normal wear and tear excepted. In the event Licensee fails to remove any personal property or repair the License Area, the Authority may, at its sole election, at any time thereafter remove the Licensee's equipment and personal property from the License Area and restore the License Area to its original condition, at Licensee's sole cost and expense. Licensee's obligations in this Section shall survive expiration

or termination of this License.

20. Notices. All notices required or permitted to be given under this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested, by personal delivery, or by overnight courier, to the appropriate address indicated below or at such other place or places as either the Authority or Licensee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed received four (4) days after the date of mailing, one (1) day after transmittal by overnight courier, or immediately upon personal delivery.

To Licensee: Recology San Mateo County  
1356 Marsten Road  
Burlingame, Ca 94010  
Attention: General Manager

Commencing January 1, 2011:  
Recology San Mateo County  
225 Shoreway Road  
San Carlos, CA 94070  
Attention: General Manager

To Authority: South Bayside Waste Management Authority  
610 Elm Street, Suite 202  
San Carlos, CA 94070  
Attention: Executive Director

Day-to-day communications shall be directed to the Authority's Facility Operations Contract Manager (Telephone: (650) 802-3507) and to Licensee's \_\_\_\_\_ (Tel: (\_\_\_\_) \_\_\_\_\_).

21. No Waiver. No waiver of a breach of any obligation of this Agreement by either party shall be implied from any omission by either party to take action on account of such breach. No express waiver shall affect any breach other than the breach specified in the waiver, and the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. A party's consent to or approval of any act by the other party shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent similar acts.

22. Severability. Each provision of this Agreement is intended to be severable. If any term of provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

23. Attorneys' Fees. If any legal proceeding is instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.

24. Governing Law. The rights and obligations of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California as applied to contracts

that are made and performed entirely in California.

25. Effect of Headings. The headings of the sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

26. Integration; Modification. This Agreement constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement, which are not fully expressed in this Agreement. The parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be in writing signed by both parties.

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same agreement.

28. Guaranty. Licensee shall deliver to Authority a Guaranty in the form attached hereto concurrently with the execution of this License Agreement.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the day and year first above written by their duly authorized representatives.

**SOUTH BAYSIDE WASTE MANAGEMENT  
AUTHORITY**

**RECOLOGY SAN MATEO COUNTY**

By: \_\_\_\_\_  
Kevin McCarthy  
Executive Director

By: \_\_\_\_\_  
Micheal J. Sangiacomo  
President and CEO

By: \_\_\_\_\_  
Roxanne L. Frye  
Corporate Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel





## STAFF REPORT

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To: SBWMA Board Members  
From: Marshall Moran, Finance Manager  
Kevin McCarthy, Executive Director  
Date: March 25, 2010 Board of Director's Meeting  
Subject: Quarterly Update on Bond Proforma Key Financial Metrics

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### Recommendation

This staff report is for discussion purposes only and no formal action is requested of the Board of Directors.

Based on this quarterly update analysis staff will be recommending at the April 22, 2010 Board meeting a transfer from reserves of \$3,013,000 to break even and achieve the cash flow projections shown in the Official Statement for sale of the Series 2009A bonds. This is higher than the working capital transfer of \$1.6M shown in the bond proforma (basis of cash flow projections) due to the \$1.9M payment to Allied for prior year underpayment now shown as operating expense (see note below).

### Analysis

Staff has conducted a thorough review of the final bond proforma (dated 8/24/09) projected Shoreway operating (financial) results for 2009-2011. This proforma is reflective of final bond sale results and thus differs slightly from the financial projections included in the Authority's Consultant report in the Official Statement. We reviewed the following information listed below to re-project 2009-2011 results:

- 2010 Shoreway facility rate application report from HF&H
- Allied Waste revenue and tonnage data through December 2009
- Allied projected disposal and processing rates for 2010
- Commodity pricing from Allied and Smurfit through February 2010
- Actual investment rates of return through December 2009
- Other known changes such as the new C&D processing agreement with Zanker Road

### *VARIANCE EXPLANATIONS TO AUGUST 2009 PROJECTION:*

#### Revenue Variance (2009 and 2010)

- Lower public volume is offset by higher commodity prices in 2009
- There is an immaterial net revenue change in 2010 (Lower public tons are offset by slightly higher franchise tons and the new county fee added to the tip fee effective July 1, 2010).

#### Operating Expense (2009 and 2010)

- Lower Allied Operating expense due to lower public tonnage projection as stated in November 2009 update and new payment rate to Allied per the 12/09 HF&H Rate Report
- Higher SBWMA program budget due to timing of new contract rollout shifting more expense into the second half of 2010 in FY 2011

### Operating Expense (2011)

- Additional estimated payments due to Allied for prior year underpayments (\$627k)
- Higher plant material and organic processing expense due to higher tipping fees expected with new processing contract(s)

### Transfers from Reserves (2009 and 2010)

- Due to the reclass of the underpayment to Allied for prior years, the amount needed to transfer from reserves to break even increased by 1.389 million in 2009 and \$0.179 million in 2010

### Ending Reserve Balances (2009-2011)

- The ending reserve balance in 2009 is \$1.5 million higher than projected:
  - Higher revenue - \$146k
  - Lower Operating exp - \$400k
  - Sale of MRF equipment, net - \$190K
  - Higher working capital from bond proceeds in 2009 - \$1.2M (This was shown in 2010 in bond proforma).
  - Lower Beginning Balance than estimated - \$<379k>
- The ending reserve balance in 2010 is \$264k higher than projected
  - Higher Interest income due to interest on bond proceeds not in previous projections
- The ending reserve balance in 2011 is \$1.7M lower than projected
  - Internal funds used for masterplan construction of \$1.2M had not been in the previous cash flow projection
  - Additional prior year payments to Allied - \$627k

### Note:

The bond proforma has been restated for Allied's Balancing account payments for prior years that had been shown as an adjustment to reserves but, to be consistent with financial statements, are now shown as operating expense.

### **Background**

On July 23, 2009 the Board approved a resolution authorizing the issuance of solid waste enterprise revenue bonds Series 2009A (tax-exempt) and Series 2009B (taxable). Staff committed that after the bond sale quarterly updates would be provided on actual financial performance as compared to bond proforma projections.

### **Fiscal Impact**

There is no fiscal impact associated with this item.

### **Attachments:**

A – Variance Analysis of August 2009 Projections vs. November 2009 Projections

### Attachment A

Operating Revenues (\$)	PROJECTION MAR. 2010			PROJECTION August 24, 2009 (Restated)			VARIANCE		
	2009	2010	2011	2009	2010	2011	2009	2010	2011
Franchise Tip Fees	19,710,270	22,644,970	24,159,918	19,624,000	21,839,000	23,119,000	86,270	805,970	1,040,918
Public Tip Fee Revenue	6,076,417	6,425,076	7,088,758	6,698,000	7,510,000	8,323,000	(621,583)	(1,084,924)	(1,234,242)
Public Other	336,000	346,000	357,000	325,000	334,000	344,000	11,000	12,000	13,000
Sales of Recyclable Materials	8,358,000	8,878,000	11,862,000	7,687,000	8,755,000	11,577,000	671,000	123,000	285,000
	34,480,686	38,294,047	43,467,675	34,334,000	38,438,000	43,363,000	146,686	(143,953)	104,675
<b>Operating Expenses Contractor (\$)</b>	<b>PROJECTION MAR. 2010</b>			<b>PROJECTION August 24, 2009 (Restated)</b>			<b>VARIANCE</b>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
	19,143,540	19,616,566	15,889,797	19,431,988	19,846,561	15,548,745	(288,449)	(229,995)	341,052
<b>Total Operating Expense (\$)</b>	<b>PROJECTION MAR. 2010</b>			<b>PROJECTION August 24, 2009 (Restated)</b>			<b>VARIANCE</b>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
	35,793,153	37,240,566	35,524,547	36,123,089	37,053,496	34,690,495	(329,936)	187,070	834,052
<b>Net Operating Revenue (\$)</b>	<b>PROJECTION MAR. 2010</b>			<b>PROJECTION August 24, 2009 (Restated)</b>			<b>VARIANCE</b>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
	(1,312,466)	1,053,481	7,943,128	(1,789,089)	1,384,504	8,672,505	476,623	(331,023)	(729,377)
<b>Net Operating Cash Flow (\$)</b>	<b>PROJECTION MAR. 2010</b>			<b>PROJECTION August 24, 2009 (Original)</b>			<b>VARIANCE</b>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
	959,000	1,225,800	4,874,197	958,158	1,225,789	5,643,970	848	11	(769,772)
<b>Ending Available Balance (Unrestricted)</b>	<b>PROJECTION MAR. 2010</b>			<b>PROJECTION August 24, 2009 (Original)</b>			<b>VARIANCE</b>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
	6,978,525	6,017,559	9,388,106	5,436,011	5,753,300	11,066,969	1,542,514	264,259	(1,678,863)



## STAFF REPORT

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**To:** SBWMA Board Members  
**From:** Marshall Moran, Finance Manager  
Kevin McCarthy, Executive Director  
**Date:** March 25, 2010 Board of Director's Meeting  
**Subject:** Calendar Year 2009 Annual Financial Statements

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### Recommendation

This staff report is for discussion purposes only and no formal action is requested of the Board of Directors. The final Financial Report for Calendar Year 2009 will be considered for approval at the April 22, 2010 Board meeting.

The attached preliminary report is presented to the Board for review and comments. Based on the preliminary report, staff will be recommending at the April 22, 2010 Board meeting approval to transfer from reserves \$3,013,000 to break even and achieve the cash flow projections shown in the Official Statement for sale of the Series 2009A bonds. This is higher than the working capital transfer of \$1.6M shown in the bond proforma (basis of cash flow projections) due to the \$1.9M payment to Allied for prior year underpayment now shown as operating expense (see note below).

### Analysis

As part of the 2009 Bond Indenture, the SBWMA is required to present unaudited Financial Reports to the rating agencies. These reports are limited to information that is required in the indenture and include the results of the bond covenant requirements.

The financial reports, Table 4 and 5, of the South Bayside Waste Management Authority for calendar year ending December 31, 2009, have been prepared by the City of San Carlos Administrative Services Department and examined by the independent auditing firm of Maze & Associates and SBWMA staff. The firm believes that the financial reports were prepared in conformity with generally accepted accounting principles but are unaudited.

### *Overview Of The Financial Reports*

The Financial Report, Table 4, shows the operating results for calendar 2009. When the bond proforma is restated to conform to the Financial Report, the actual operating results are approximately \$500,000 better than the bond proforma due to several small differences (\$150k higher revenue, \$200k lower disposal, \$190k sale of MRF equipment).

As projected in the bond proforma and allowed in the indenture, transfers from reserves are needed to achieve the bond Break Even covenant. Due to a reclass of Allied prior year payment of \$1.9 million to operating expense offset by higher operating cash flow, the transfer needed is \$1.4 million higher than estimated in the bond proforma.

The estimated unrestricted reserve balance for 2009 is \$1.5 million higher than the bond proforma primarily due to timing of working capital from bond proceeds. The proforma had \$1.2 million working capital in 2010 but it actually was received in 2009. The projected 2010 reserve balance is also slightly higher than the bond proforma by \$250k.

The Financial Report, Table 5, shows that the bond covenants have been achieved. Both the Break Even test and the bond coverage test have exceeded the requirements of the bond indenture.

**Background**

On July 23, 2009 the Board approved a resolution authorizing the issuance of solid waste enterprise revenue bonds Series 2009A (tax-exempt) and Series 2009B (taxable). The bond indenture requires annual financial reporting on a fiscal (audited) and calendar year (unaudited) basis.

**Fiscal Impact**

There is no fiscal impact associated with this item.

**Attachments:**

A – Preliminary Bond Indenture Tables 4 and 5

**TABLE 4**  
**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**  
**UNAUDITED STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**  
**FOR THE YEAR ENDED DECEMBER 31, 2009**  
**PRELIMINARY**

<b>OPERATING REVENUES</b>	
Tip Fee Revenue	26,122,698
Sales of Recyclable	8,357,604
Other	130,119
Total Operating Revenues	34,610,421
<b>OPERATING EXPENSES</b>	
Operation & Administration <sup>(1)</sup>	35,737,805
Franchise Fee-Transfer Station	1,298,472
Taxes	17,179
Total operating expenses	37,053,456
<b>OPERATING INCOME</b>	<b>(2,443,035)</b>
<b>NON-OPERATING REVENUES</b>	
Gain (loss) in sale of capital assets	77,278
Investment Income	258,468
Total Non-operating Revenues	335,746
<b>NET INCOME</b>	<b>(2,107,289)</b>
<b>NON-OPERATING EXPENSES</b>	
Interest-2000 Bond	(518,379)
Total Non-Operating Expenses	(518,379)
<b>MODIFIED CHANGE IN NET ASSET <sup>(2)</sup></b>	<b>(2,625,668)</b>

<sup>(1)</sup> Includes professional services

<sup>(2)</sup> Cash flow from operations plus investment income and less interest expense

Source: Authority

**TABLE 5**  
**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**  
**UNAUDITED CALCULATION OF DEBT SERVICE COVERAGE**  
**FOR THE YEAR ENDED DECEMBER 31, 2009**  
**PRELIMINARY**

	34,610,421
	335,746
Total Revenues (from Table 4)	34,946,167
Additional Revenues transfer - Rate Stabilization Reserve	1,712,020
Additional Revenues transfer (legally available for the payment of debt service) <sup>(3)</sup>	3,010,834
Total Revenues and Additional Revenues	39,669,021
<u>Expenses</u>	
O&M Cost	35,754,984
Debt Services	1,657,565
Subordinate Charges	1,298,472
Total Expenses	38,711,021
Coverage (Total Revenues/Total Expenses) <sup>(1)</sup>	1.02
<b>Breakeven Covenant</b>	<b>958,000</b>
Operating & Non-operating Revenues	34,946,167
<i>plus</i> Additional Revenues Transfer (legally available for the payment of debt service) <sup>(3)</sup>	4,722,854
Total Revenues	39,669,021
<i>less</i> O&M Expenses	35,754,984
<i>equals</i> Net Revenues	3,914,037
Debt Service	1,657,565
<b>Coverage (Net Revenues/Debt Service) Covenant <sup>(2)</sup></b>	<b>2.36</b>
<b>Ending Unreserved Fund Balance</b>	<b>6,978,000</b>
(1) Required to be 1.0 or greater	
(2) Required to be 1.4 or greater	
(3) Additional transfer from legally available cash and investments	
Source: The Authority	