



## **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD – ELECTED OFFICIALS OR SENIOR MANAGEMENT STAFF?**

[Summary](#) | [Background](#) | [Methodology](#) | [Discussion](#) | [Findings](#) | [Recommendations](#) | [Attachments](#) | [Responses](#)

### **SUMMARY**

The South Bayside Waste Management Authority (SBWMA), also known as Rethink Waste, is a 12-member joint powers authority formed in 1982. Its membership is composed of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, San Mateo County (County), and the West Bay Sanitary District (collectively, Member Agencies). It is governed by a First Amended and Restated Joint Exercise of Powers Agreement (Restated Agreement) executed in 2005.

The mission of SBWMA is to provide cost-effective waste reduction, recycling, and solid waste programs to its Member Agencies and to oversee the Shoreway Environmental Center recycling facility (Shoreway) in San Carlos. It was formed so its Member Agencies could collectively negotiate more favorable rates for waste collection and disposal. SBWMA negotiates with and regulates the waste hauling provider and the operator of Shoreway.

SBWMA's Board of Directors (Board) is composed of one senior management staff member appointed by each Member Agency.

Shoreway was built, at significant cost (approximately \$17 million) in order to comply with state mandated waste stream diversion goals. It receives and processes recyclables, organics and garbage, and houses a new education center. The changes in waste disposal and recycling requirements have been followed by significant cost increases to customers.

In 2011, after Recology replaced Allied Waste as SBWMA's waste hauler and South Bay Recycling (SBR) became the operator of the new Shoreway recycling center, the public expressed concerns about service changes and waste hauling rate increases. An example of a service change is a change in the frequency of recycling pick-up from every other week to once weekly. In addition, there was confusion about the selection process used in selecting a new waste hauler. Much of the public does not fully understand the role of SBWMA in the waste hauler selection process.

Questions have been raised by some Member Agencies as to whether only senior Member Agency management staff should continue to comprise the Board or whether it should be composed of only elected officials from the Member Agencies' governing bodies, e.g. City Council members. As a result, a Blue Ribbon Task Force (Task Force) composed of Member Agencies began meeting in February 2013 to review the SBWMA governance structure. The approval of eight of the twelve Member Agencies is required to make changes to the SBWMA governance structure.

The 2012-2013 San Mateo County Civil Grand Jury (Grand Jury) finds public concern over rate and service changes has prompted a review of SBWMA's governance structure and that SBWMA's organizational structure is a complex issue not well understood by the public. The

Grand Jury further finds that Member Agencies set their own rates that may include a variety of fees and that only customers in the City of San Mateo receive bills that itemize charges. Finally, the Grand Jury finds that elected officials already have sufficient influence in SBWMA's decision making process and there is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

The Grand Jury recommends that the Member Agencies and SBWMA disseminate comprehensive information about SBWMA operations, its franchisees, and rate setting processes to its customers. In addition, it recommends that each Member Agency request that Recology provide detailed billing statements to the customers in the Member Agency's jurisdiction that disclose all fees, including those imposed by the Member Agency. The Grand Jury further recommends that Member Agencies continue the current practice of appointing only senior management staff to the Board in accordance with the Restated Agreement. Finally, the Grand Jury recommends that if the Restated Agreement is amended to change the Board membership to elected officials, then a technical advisory committee consisting of staff with technical experience in waste management be put in place.

## BACKGROUND

SBWMA was formed in 1982 so that its Member Agencies could negotiate more favorable rates for waste collection, transfer, hauling, and disposal.

From 1982 until January 1, 2011, Browning-Ferris Industries (BFI) was the franchise waste hauler for SBWMA. Several years ago, Allied Waste acquired BFI and changed the name. On January 1, 2011, Recology became SBWMA's new franchise waste hauler. Since Recology took over, there have been service changes and rate increases, leading to public concern and the call by some for a change in the composition of the Board from only Member Agencies' senior management staff to only elected officials.

With some Member Agencies questioning who should represent them on the Board, the Grand Jury decided an investigation into SBWMA, its governance, and operations was warranted.

## METHODOLOGY

### Documents

- Report from the City Manager of Redwood City to the City Council of Redwood City dated December 3, 2012
- A letter of invitation from the Redwood City Mayor to Mayors/Directors of the Member Agencies dated December 7, 2012
- SBWMA budget information
- Franchise agreements/contracts ([www.rethinkwaste.org](http://www.rethinkwaste.org))
- San Mateo Daily Journal, Thursday, May 9, 2013
- April 2, 2013, Task Force meeting agenda
- Minutes of Task Force meetings

## Site Tours

- The Grand Jury was given a guided tour of the educational facility at Shoreway

## Interviews

- The Grand Jury conducted interviews with SBWMA staff and Board members, representatives of Recology, South Bay Recycling, a Redwood City Council member representing that city's Utility Committee, and a member of the Task Force.

## DISCUSSION

### SBWMA

SBWMA was formed in 1982 and is now governed by the Restated Agreement. It was established so that Member Agencies collectively could negotiate favorable rates for waste collection, transfer, hauling, and disposal at a disposal site. One of its principal goals is to provide cost effective waste reduction, recycling, and solid waste programs to Member Agencies through franchised services and other recyclers. The goal is being achieved.<sup>1</sup>

Another principal goal is to sustain the minimum 50% diversion of waste from landfills as mandated by California State Law, AB 939.<sup>2</sup> The required diversion percentage will increase to 75% by 2017, which will necessitate additional programs and education for residents and businesses.

According to information provided to the Grand Jury, SBWMA's administrative operations were initially performed by San Carlos staff until the Board hired a day-to-day operations manager in 2006.

BFI built a transfer station in San Carlos in 1984. It collected the waste from its residential and business customers, transferred it into larger trucks at the transfer station, and transported it to the Ox Mountain disposal site in Half Moon Bay. Use of a transfer station was an important change because previously, trucks traveled to Ox Mountain on Highway 92, a narrow and busy roadway. The new transfer station put fewer trucks on the road and resulted in a more efficient operation. BFI/Allied Waste was the contractor for SBWMA since it was established in 1982 until 2011. BFI/Allied Waste was also and still is the owner and operator of the Ox Mountain disposal site.

The Member Agencies of SBWMA issued revenue bonds in 2000 to purchase the transfer station from Allied Waste. At the same time, SBWMA also purchased a recycling facility located adjacent to the transfer station.

The Restated Agreement, adopted in 2005, clarified that Board membership is limited to senior management staff, i.e., the following County, district, city, or town positions or their equivalent:

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<sup>1</sup> The 2008-2009 Grand Jury report "TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority" states that Rethink Waste provides the lowest rates in the Bay Area.

<sup>2</sup> SBWMA website, <http://www.rethinkwaste.org/> (April 14, 2012).

- Manger or assistant manager
- Finance director or assistant finance director
- Public works director or assistant public works director
- Environmental director or assistant environmental director<sup>3</sup>

After hiring SBWMA's manager, the Board developed a model for more efficient waste operations to comply with state law beginning in 2011 and issued requests for proposals (RFPs) from waste haulers and operators of the new recycling facility.

Through the RFP process, waste haulers and recycling facility operators competed for the multi-year contracts and presented their proposals to each of the governing bodies of the Member Agencies. The elected officials of each Member Agency told its Board representative which companies the Board should select. Recology was selected as the waste hauler as a result of this process. SBR was selected to operate the recycling center. Both contracts were for 10 years commencing January 1, 2011

### Shoreway

Shoreway serves as a regional solid waste and recycling plant for the receipt, handling, and transfer of solid waste and recyclables collected from the SBWMA service area, (southern and central San Mateo County as shown on Appendix A). SBWMA owns and manages Shoreway and, as part of the master facility plan, built a state-of-the-art environmental education center in the recycling facility adjacent to the transfer station.

Residential and commercial solid waste and recyclable and organic materials collected by the franchise hauler, Recology, are taken to Shoreway for processing, staging and shipment. In addition, the public can bring material to Shoreway to be recycled or taken to the disposal site. Construction material can also be dropped off for recycling.

Elected officials of the Member Agencies approved construction of a new recycling facility at the transfer facility site in San Carlos so that state-of-the-art equipment could process recyclables as required by law. On January 1, 2011, SBR began operating the Shoreway recycling plant under a 10-year contract with SBWMA. SBWMA adopted the trade name "Rethink Waste." As Rethink Waste, SBWMA has been favorably recognized for its innovative waste reduction, recycling programs, and facility infrastructure.

Some interviewees questioned the need for an education center which was built to educate the public about waste diversion. Schools are given guided tours through the Shoreway facility. Guided tours are also available to other groups and the general public.

Most of the individuals interviewed by the Grand Jury, admittedly involved in the process, thought the education center to be a valuable resource. SBWMA management estimates it costs \$150,000 annually to operate the education center. With 93,000 residential and 10,000 commercial SBWMA customers, the cost of the education center is less than \$1.50 per customer per year.

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<sup>3</sup> Restated Agreement Section 8.1.

## Revenue Sources

SBWMA receives revenue from several sources: Tipping fees from Recology (a charge for the tonnage brought to Shoreway); proceeds from the sale of recycled material; and fees charged for materials brought to Shoreway by the public.

## Collection Rates for Customers

Collection rate increases have been controversial and confusing because most Recology customers do not realize that each Member Agency sets collection rates within its jurisdiction. Rates are different for each Member Agency. For example: a 20-gallon cart in Foster City costs \$11.82 per month but in Hillsborough the same cart costs \$42.40.

There are many reasons for differences in rates among Member Agencies. For example:

- Each Member Agency negotiates its own contract with Recology for the services desired by it within its jurisdiction.
- Member Agencies may select different services. For example, one Member Agency opted to have recyclables picked up weekly rather than bi-weekly.
- Geographic differences in Member Agencies' jurisdictions can affect cost. Some locations are flat (less expensive to service) while some have narrow streets or hills (more expensive to service).
- Member Agencies may add additional fees such as franchise fees, street sweeping fees, vehicle impact fees, and rate stabilization fees.
- As explained below, amounts owing to Allied Waste at the end of its contract varied among Member Agencies.

In 2011, when the contracts with SBR and Recology began and the contract with Allied Waste ended, there was a balance of about \$11 million dollars owed to Allied Waste by the Member Agencies. Allied Waste had a cost plus contract with SBMWA, which meant it calculated costs and added a percentage for profit. Each year as costs continued to rise, Member Agencies owed more to Allied Waste. Some Member Agencies rolled over the balance due to the next year instead of raising rates. When the Allied Waste contract ended, however, these Member Agencies had to pay the remaining balance. Some paid the remaining balance from their own funds, while others raised customer rates. There were different amounts owed by Member Agencies, which also contributed to different rates among Member Agencies.

Another cause for increasing rates is that the Ox Mountain dumping facility increased its rates because less waste was being delivered to it as a result of increases in recycling.<sup>4</sup>

Yet another factor contributing to rate increases after Recology became the waste hauler was the labor contracts negotiated by Allied Waste before its contract ended but which remained binding on Recology. These contracts increased labor costs.

## Rate and Billing Information

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<sup>4</sup> Ox Mountain has fixed operating costs that must be covered irrespective of the amount of waste disposed there. Thus, lower usage can result in a higher per unit cost.

Recology bills the residents and commercial businesses it serves and then pays the Member Agencies their fees. In all Member Agencies except for the City of San Mateo, Recology's billing statement to the customer contains only one charge and does not itemize other city charges. City of San Mateo customers receive an itemized statement showing the following additional city charges: waste, street sweeping, and landfill closure fee. Recology states it does this for the City of San Mateo because the City requested it. Recology can do this for other Member Agencies upon request. Waste collection rates are very complex. Itemizing the bill would remove some of the confusion and mystery from rate charges. During its investigation, the Grand Jury found that most Member Agencies' websites did not give detailed information on collection rates.

## Governance of SBWMA

Since SBWMA was established, there has been discussion by some local lawmakers regarding whether elected officials or Member Agency senior management staff should be on the Board. Currently, only senior management staff serves on the Board.

Section 8.1 of the Restated Agreement states:

The SBWMA shall be governed and administered by a Board composed of one Director from each member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each member must select its Director or the Director's designee alternate from the following positions:

- County, District, City or Town Manager, or the equivalent position
- County, District, City or Town Assistant Manager, or the equivalent position
- Finance Director or Assistant Finance Director, or the equivalent position
- Public Works Director or Assistant Public Works Director, or Environmental Programs Manager, or equivalent position<sup>5</sup>

Since adoption of the Restated Agreement, only senior management staff has served on the Board. The Grand Jury found through its interviews that there might be two reasons for this type of governance:

1. Member Agencies wanted to create a "buffer" between elected officials and waste contractors.
2. Most city councils showed little interest in having their members serve on the Board because waste disposal was not a "hot issue." In 1982, the waste industry was less complex than today - there was one contractor, BFI, which collected the waste and transported it to the disposal site that it operated.

Through its investigation, the Grand Jury discerned two principal questions pertaining to SBWMA governance:

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<sup>5</sup> 2008 San Mateo County Civil Grand Jury report on SBWMA, [http://www.sanmateocourt.org/documents/grand\\_jury/2008/trashtalk.pdf](http://www.sanmateocourt.org/documents/grand_jury/2008/trashtalk.pdf)

1. ***Is there a need to change the governance structure to have only elected officials or a combination of elected officials and senior management staff on the SBWMA Board?***

This question implies that elected officials might be able to provide better oversight and direction than the current Board composed of only senior management staff from a variety of departments. The answer to the question is determined by the level of operational expertise each Member Agency desires its Board representative to possess. If a higher level of expertise is desired, then the Board should be composed of senior management staff; if not, elected officials should be seated on the Board.

2. ***Were elected officials involved in the process that selected Recology as the new franchise waste hauler?***

This question implies that elected officials were not sufficiently involved in the selection of Recology. According to the following abbreviated timeline, however, elected officials were significantly involved with the decision to contract with Recology:

- September 2007 - Member Agencies approved release of the RFP for a waste hauler
- October 2008-February 2009 - Member Agencies approved the SBWMA's recommendation to select Recology
- May-June 2009 - SBWMA staff briefed the governing bodies of Member Agencies on the implications of key contract decision points (e.g., default cart-sizes, optional programs, performance bond)
- June 2009 – The governing bodies of Member Agencies confirmed key contract decisions
- June-July 2009 - Member Agencies commenced review of draft franchise agreements
- August 2009-February 2010 - Member Agencies executed franchise agreements as approved by their governing bodies

In 2005, the Restated Agreement, including the following amendments, was submitted to the Member Agencies for approval:

1. Establishing criteria to insure that only senior management Member Agency staff serves on the Board in lieu of the prior practice that allowed any agency staff appointed by each agency's City Manager, County Manager, or General Manager to serve.
2. Requiring that key Board actions (acquisition of real property, disposal of real property, entering into or amending franchise agreements for operation of facilities, and issuing or refinancing bonds) be authorized by a 2/3 vote of the governing bodies of the Member Agencies in lieu of action solely by the Board.

Legal counsel for SBWMA noted that the transfer of power from the Board to the governing body of the Member Agencies leaves to the elected officials of each Member Agency the most important decisions with the greatest structural and/or financial implications.<sup>6</sup>

At the time the Restated Agreement was under consideration, Belmont suggested that elected officials serve on the Board. In addition, a member of the Board of Supervisors and a member of the state legislature have called for elected officials to comprise the Board. A 2008-2009 Grand Jury report on SBWMA recommended that elected officials comprise the Board. Most recently,

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<sup>6</sup> San Carlos City manager's report to the city council, dated January 28, 2013

Redwood City organized the Task Force to study the feasibility of a structure change for the Board.

There are many models for waste collection boards around the state. Some are composed of elected officials only, some of staff members only, and some are a combination. Most individuals interviewed by the Grand Jury thought the Board should be composed of all elected officials or all senior management staff. They thought a mixed Board would not work as well.

### **Advantages and Disadvantages of Elected Officials Serving on the Board**

The Grand Jury learned during its interviews that elected officials believe their perspective on issues such as collection rates would be more like that of a citizen than the perspective of a professional administrator. Having elected officials on the Board may give the public a sense that there is more direct control over the waste management service. Elected officials may be more proactive regarding informing the public and, given that they may be more sensitive to public scrutiny, they may be more likely to make decisions of which constituents approve.

Elected officials often have other careers and are generally very busy. Their time available to devote to waste management matters could thus be more limited, a disadvantage. Elected officials also have limited and variable terms of office thereby disrupting the continuity of the Board. Interviewees stated that there is a steep learning curve for new Board members. Several interviewees stated that elected officials might have outside pressure or influence from various groups in making their decisions. There also may be a need for more staff at SBWMA to assist elected official Board members, which might increase cost.

### **Advantages and Disadvantages of Staff Serving on the Board**

Senior management staff provides professional management with experience in developing budgets, contracts, and long term planning. They generally have more time to devote to the duties of the Board because service on the Board is part of their “job description” and the time is anticipated and allocated. Many senior management staff members have served on the Board for several years and are very knowledgeable about SBWMA. Senior management staff has less pressure on it from outside influences. Senior management staff is more likely to make a sound business decision rather than a political one. Staff generally looks at the most efficient way to operate SBWMA

A possible disadvantage of senior management staff serving on the Board is inadequate communication between such staff and their governing councils. Interviews suggested that elected officials do not always have the information from the Board they feel they need. This is especially true in connection with setting collection rates.

### **Task Force Recommendation**

The Daily Journal reported on May 2, 2013, that the Task Force had voted to recommend to the governing boards of the Member Agencies that the Restated Agreement be amended to change



the composition of the Board from senior management staff to an elected official from each governing body.<sup>7</sup> The Task Force also recommended establishment of a technical advisory committee similar to that in place for the County Library joint powers authority.<sup>8</sup> Each of these governing bodies will discuss and vote on the recommendations. The approval of eight of the twelve Member Agencies is required to amend the Restated Agreement.

One member of the Task Force advised the Grand Jury that the reason for the recommended change was that elected officials are required to vote on rate increases predicated on a budget approved by the Board, not the governing boards of the Member Agencies. This Task Force member also stated that the Task Force was of the view that elected officials are more sensitive to “fees” than senior management staff. This Task Force member was, however, unaware that many Member Agencies were including undisclosed fees and charges in waste service bills.

While this argument has some merit, the Grand Jury believes better communication between the Board member and his/her Member Agency can address the concern that the Member Agency does not have sufficient oversight of the SBWMA budget. Further, this concern is outweighed by the enhanced expertise and reduced exposure to outside influences provided by a Board composed of senior management staff. Therefore, after considering the evidence, the Grand Jury finds no compelling reason to change the current SWBMA governance structure from only senior management staff to only elected officials.

## FINDINGS

- F1. One reason behind wanting to change the composition of the Board appears to stem from the public’s concern over rate increases and service changes.
- F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.
- F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.
- F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.
- F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.
- F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.
- F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA’s governance structure in this manner.

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<sup>7</sup> [http://archives.smdailyjournal.com/article\\_preview.php?id=1770056](http://archives.smdailyjournal.com/article_preview.php?id=1770056) (May 13, 2013).

<sup>8</sup> Interview with Task Force member.

## RECOMMENDATIONS

The 2012-2013 San Mateo County Civil Grand Jury recommends that, each *Member Agency of SBWMA* do the following:

- R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.
- R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.
- R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.
- R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.

The Grand Jury recommends that the *SBWMA Board* do the following:

- R5. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process through a variety of media.

## REQUEST FOR RESPONSES

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

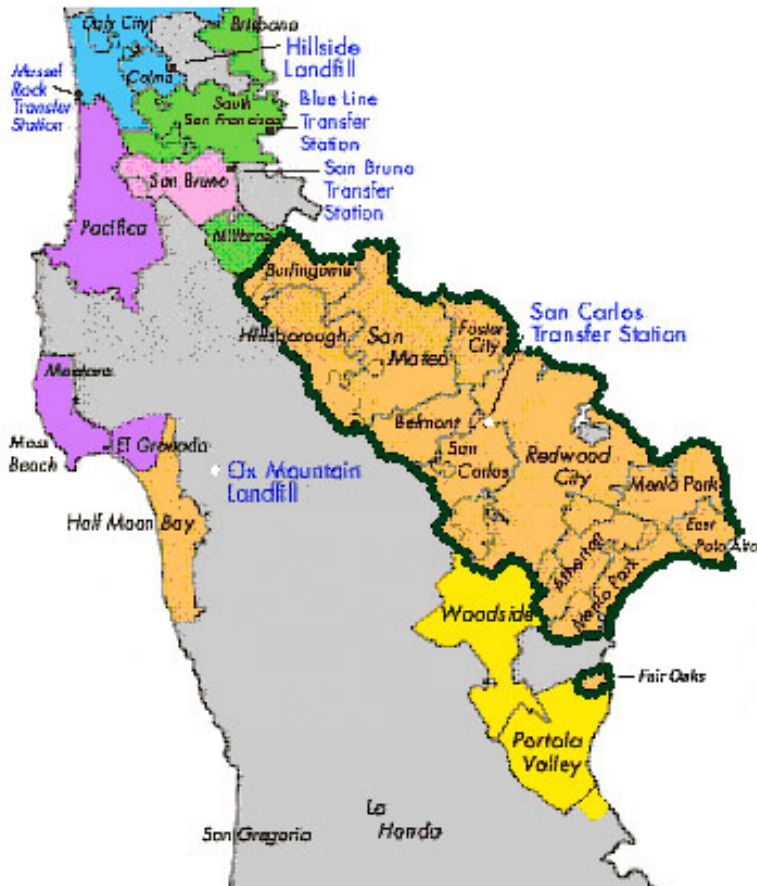
- SBWMA Member Agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, City of San Mateo, San Mateo County, and West Bay Sanitary District)
- South Bayside Waste Management Authority Board of Directors

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

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

APPENDIX A

SBWMA Service Area



Issued: June 17, 2013

# County Manager's Office



## COUNTY OF SAN MATEO

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063-1662  
WEB PAGE ADDRESS: <http://www.smcgov.org>

### BOARD OF SUPERVISORS

DAVE PINE  
CAROLE GROOM  
DON HORSLEY  
WARREN SLOCUM  
ADRIENNE TISSIER

John L. Maltbie  
COUNTY MANAGER/  
CLERK OF THE BOARD

(650) 363-4123  
FAX: (650) 363-1916

September 26, 2013

Hon. Richard C. Livermore  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: South Bayside Waste Management Authority Board-Elected Officials or Senior Management Staff

Dear Hon. Richard C. Livermore,

The responses to the Grand Jury Reports titled: South Bayside Waste Management Authority Board-Elected Officials or Senior Management Staff, was approved by the San Mateo County Board of Supervisors at their regular meeting on September 10, 2013. Attached please find the Board Memo that includes the formal response.

Sincerely,

Shanna Collins  
County Manager's Office



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
County Manager



**Date:** August 8, 2013  
**Board Meeting Date:** September 10, 2013  
**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** John L. Maltbie, County Manager

**Subject:** 2012-13 Grand Jury Response- South Bayside Waste Management Authority Board- Elected Officials or Senior Management Staff

**RECOMMENDATION:**

Approve the Board of Supervisor's response to the 2012-13 Grand Jury report titled: South Bayside Waste Management Authority Board- Elected Officials or Senior Management Staff.

**BACKGROUND:**

On June 20, 2013, the Grand Jury filed a report titled: South Bayside Waste Management Authority Board- Elected Officials or Senior Management Staff. The Board of Supervisors is required to submit comments on the findings and recommendations pertaining to the matters under control of the County of San Mateo within ninety days. The County's response to the report is due to Hon. Richard C. Livermore no later than September 16, 2013.

Acceptance of this report contributes to the Shared Vision 2025 outcome of a Collaborative Community by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

**DISCUSSION:**

**Findings:**

**F1.** One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.

**Response:** Agree

**F2.** The organizational structure of SBWMA is a complex issue that the public does not well understand.

**Response:** Agree

**F3.** The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.

**Response:** Agree

**F4.** Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.

**Response:** Disagree in part. Although customers will have a better understanding of the breakdown of charges, the overall revenue requirements of agencies will not change.

**F5.** Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.

**Response:** Disagree in part. Elected officials are fully briefed on the rate setting process and the elements that compose the rates, and have approval authority over the rates imposed. However, elected officials do not set the tipping fees at Shoreway Environmental Center (Shoreway) nor do they approve South Bayside Waste Management's (SBWMA) agency budget.

**F6.** There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

**Response:** Disagree. The Board of Supervisors approved the Second Amendment to the SBWMA Joint Powers Authority Agreement to define the SBWMA's Board of Directors as being comprised of an elected official from each of the member agencies' governing bodies on July 23, 2013. Through this action, the Board of Supervisors affirmed its desire to appoint elected officials to the SBWMA Board of Directors.

### **Recommendations:**

**R1.** Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.

**Response:** This recommendation will not be implemented by San Mateo County. Dissemination of information regarding SBWMA should be the responsibility of the SBWMA organization and not its member agencies.

**R2.** Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.

**Response:** This recommendation will not be implemented because the information is currently being provided to customers through an alternate means. As part of the rate setting process, notices are sent out to all customers in accordance with Proposition 218 requirements outlining the need for the rate increase and how the revenues generated are spent, including the franchise fee charged by the County. In the case of County Service Area No. 8 (North Fair Oaks area) residential accounts, solid waste fees are collected on the tax bills and are not billed by Recology.

**R3.** Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.

**Response:** This recommendation will not be implemented. The Second Amended SBWMA JPA has been approved by a super majority of member agencies and took effect on July 26, 2013. The SBWMA Board of Directors is now composed of elected officials.

**R4.** If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.

**Response:** This recommendation will not be implemented by San Mateo County. It is the responsibility of the new SBWMA comprised of elected officials to determine whether they feel a Technical Advisory Committee is warranted.

**FISCAL IMPACT:**

There is no Net County Cost associated with approving this report.



Town of Atherton  
Office of the Mayor  
91 Ashfield Road  
Atherton, California 94027  
Phone: (650) 752-0500  
Fax: (650) 614-1212

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September 6, 2013

Grand Jury Foreperson  
c/o Court Executive Office  
400 County Center  
Redwood City, CA 94063-1655

**SUBJECT: GRAND JURY REPORT  
"SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD –  
ELECTED OFFICIALS OR SENIOR MANAGEMENT STAFF?"**

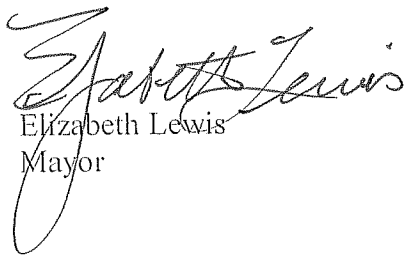
Attention Jury Foreperson:

Attached please find the Town of Atherton's response to the above noted Grand Jury Report. Pursuant to California Penal Code Section 933.05, the response was considered by the City Council at a public meeting on August 21, 2013.

Should you have any questions concerning this response, please contact City Manager George Rodericks at (650) 752-0504.

Sincerely,

**TOWN OF ATHERTON**

  
Elizabeth Lewis  
Mayor



## RESPONSE TO GRAND JURY REPORT

Report Title: *South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff*

Report Date: August 21, 2013

Response by: Town of Atherton

By: Elizabeth Lewis, Mayor

### FINDINGS:

- I (we) agree with the findings numbered: F1, F2, F3, F4, F7
- I (we) disagree wholly or partially with the findings numbered: F5, F6

### RECOMMENDATIONS:

- Recommendations numbered n/a have been implemented.  
(Attach a summary describing implemented actions.)
- Recommendations numbered R1, R2, R4 have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for implementation.)
- Recommendations numbered n/a require further analysis.  
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered R3 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: 9/4/13

Signed: Elizabeth Lewis

## FINDINGS

**F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.**

The Town of Atherton believes that the governing board of the SBWMA be comprised of elected officials in order to better represent the interests of the Member Agency constituents.

**F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.**

As stated, the Town is supportive of changing the composition of the SBWMA Board of Directors to Member Agency elected official representation in an effort to better represents the interests of the Member Agency constituents.

## RECOMMENDATIONS

**R1: Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.**

The Town supports the dissemination of public information to the fullest extent. As the SBWMA creates and distributes information, the Town will further disseminate the information to the Atherton community via its website and electronic media.

**R2: Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.**

The Town supports the continued dissemination of this information in order to allow the public's engagement. The Town's representative will support the preparation of a detailed billing statement as a matter of Board action.

**R3: Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.**

The Town has taken action to appoint a Board composed solely of elected officials.

**R4: If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.**

The Town supports the establishment of such a committee and the Town's representative will so advise the Board.

August 14, 2013



Honorable Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2nd Floor  
Redwood City, CA 94063-1655

Re: Response to Grand Jury Findings and Recommendations – “South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff?”

Honorable Richard C. Livermore:

At its meeting on August 13, 2013, the City Council of the City of Belmont approved the following response to the Grand Jury Report “South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff?”

Grand Jury Findings and Belmont's Responses

**Grand Jury Finding F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.**

*City Response: The City of Belmont agrees that this is one reason, although not the only concern. As far back as 2005, the City of Belmont was a proponent of a governance change as elected officials are directly accountable to the public.*

**Grand Jury Finding F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.**

*City Response: The City partially agrees with this finding. SBWMA's organizational structure is not particularly complex, and is fairly standard for a special district in that it has a Board of Directors, an Executive Director and staff. However, the City does agree that the organizational relationship between the JPA's member agencies and its contractors may be not as well understood by the public.*

**Grand Jury Finding F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.**

*City Response: The City of Belmont does not agree with this finding. The rates and the process of setting fees are no more difficult than it is with other utilities. Similar to its other utilities, City of Belmont conducts annual cost of service reviews and public noticing as required by Proposition 218. Through the Proposition 218 process, solid waste customers are notified of the maximum rate adjustment being considered. Customers may review the information, and are also provided instructions on how to provide public input and testimony.*

Honorable Richard C. Livermore  
August 14, 2013  
Page 2 of 3

**Grand Jury Finding F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.**

*City Response: The City neither agrees nor disagrees with this finding.*

**Grand Jury Finding F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.**

*City Response: The City of Belmont partially agrees with this finding that some key Board actions, including acquisition of real property, disposal or transfer of any interest real property, entering into or amending agreement(s) for the operation of SBWMA owned facilities, issuance of bonds or notes, or the refinance of such bonds or notes, require a two-thirds vote by the Member Agencies per the SBWMA joint powers agreement. However, since elected officials are directly accountable to the public it's more transparent that with a board of elected officials, all member agencies will be represented consistently in directly setting policy and overseeing the budget of SBWMA.*

**Grand Jury Finding F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.**

*City Response: The City of Belmont does not agree with this finding. As previously mentioned, as far back as 2005, the City of Belmont was a proponent of a governance change as elected officials are directly accountable to the public. Additionally, since each agency's professional staff serving on the Board varies widely, with a board of elected officials, all member agencies will be represented consistently at a policy level.*

**Grand Jury Finding F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.**

*City Response: The City of Belmont agrees that a technical advisory committee is needed as part of the governance change.*

#### Grand Jury Recommendations and Belmont's Responses

**Grand Jury Recommendation R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.**

*City Response: The City of Belmont regularly shares updates to the public by using various communication methods at its disposal. This includes providing informational brochures at community events, bill inserts, a dedicated solid waste webpage, social media and City Manager's Weekly Updates.*

Honorable Richard C. Livermore  
August 14, 2013  
Page 3 of 3

**Grand Jury Recommendation R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.**

*City Response: In February 2013, the City of Belmont mailed to its solid waste rate payers a billing insert (see attached) providing information on solid waste rates and what makes up the garbage rates. Additionally, this brochure is available on the City of Belmont and Recology websites. The City has not received many complaints regarding the billing statements and would like the opportunity to further evaluate this recommendation based on community feedback.*

**Grand Jury Recommendation R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.**

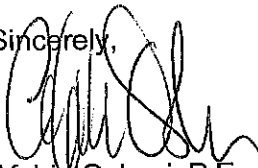
*City Response: The City of Belmont does not agree with this recommendation. As far back as 2005, the City of Belmont was a proponent of a governance change as elected officials are directly accountable to the public.*

**Grand Jury Recommendation R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials; then put in place a technical advisory committee consisting of staff with technical experience in waste management.**

*City Response: The City of Belmont agrees with this recommendation.*

If you have any questions, please contact me at (650) 595-7425.

Sincerely,



Afshin Oskoui, P.E.  
Public Works Director

Attachment

## GARBAGE RATES FREQUENTLY ASKED QUESTIONS (FAQs)

### It seems like my garbage rates are going up every couple of months, why is that?

Rate increases typically occur once a year after the annual review. To ensure there is transparency and an opportunity to review all of the details that go into the rates, the rate review process for the following year begins on July 1<sup>st</sup> of each year. The City Council and public are provided details each year on what factors are effecting the City's specific rates and the reasoning behind any rate increases.

### What's the process to set the garbage rates?

Each year, Recology prepares a rate report that specifies how much revenue it must raise per the terms of the Franchise Agreement to cover the cost of service and fees for the next calendar year. **This report is usually available in September of each year**, and is the first step in the rate setting process. This consists of determining what rate adjustments, if any, are needed and then the Proposition 218 Public Hearing process is initiated.

Through the Proposition 218 process, residents are notified of the maximum rate adjustment being considered. Residents may review the information, and are also provided instructions on how to provide public input and testimony. A public hearing date is set during a City Council meeting to allow the public the opportunity to provide input, and based on the outcome, the Council will consider adoption of the proposed rate adjustments. **Once approved, the new rates are effective as of January 1st of each year.**

### I'm confused, aren't costs and rates the same thing? And who sets what?

Costs and rates are two very different things. Costs include all of the expenses for the collection services, contractors, disposal fees, operations and processing, local and county fees, and others. City reviews all costs, and provides a report that shows the obligation for each class of customer as detailed in the rate application report by Recology.

Once the City has this information, it can then set the rates for the upcoming rate year through the Proposition 218 process.

### If I'm going to be paying more, why should I recycle or compost?

While rates have gone up, the cost of not recycling or composting will result in higher rates. Ox Mountain Landfill is the only landfill in San Mateo County, and is where all of the garbage from the County residents and businesses go.

Once the landfill is full, we will have no choice but to send our garbage out of County, or find some other alternative. Either of these will be costly since it is very expensive to haul garbage to a landfill out of the area. The more we can reduce our waste through recycling and composting, the longer we will keep Ox Mountain open for our garbage.

For more information:

[www.belmont.gov](http://www.belmont.gov)

Belmont Public Works (650) 595-7425

City of Belmont

## INFORMATION ON SOLID WASTE RATES

Even though we all call it the "garbage bill," the rate you pay covers a lot more than just your weekly garbage collection services. This flyer is designed to help explain what makes up your garbage rate, answer some frequently asked questions (FAQs) and provides resources to help you stay updated on what is happening with garbage rates.



Department of Public Works

Tel: 650-595-7425

FOLLOW US ON SOCIAL MEDIA



Find us on  
Facebook

Recology San Mateo County provides collection services for refuse, recyclable materials, and compostable materials under a ten-year franchise agreement with the City which began January 2011. Under the franchise agreement, Recology submits its rate proposal to the City Council for approval annually. Recology's rates are strictly limited, and may not exceed a maximum rate that is based on a set formula provided in the franchise agreement.

Historically, your garbage rate has been tied to the size of your black garbage cart using a progressive rate structure. Using "progressive" rates means that the larger your garbage cart, the more you pay -- so a resident using a 64-gallon cart would pay more than a resident with a 32-gallon cart. However, garbage rates cover much more than just what goes in your black garbage cart.



**And you thought the garbage rate was simple?**



The progressive rate structure has been very successful in encouraging residents to recycle more and downsize their garbage cart size. However, a common misconception is thinking that the "cost to provide service" (the actual cost of the truck, the driver's time, etc., and all the other items listed above) is significantly lower for those with smaller garbage carts.



However, this is simply not true. The size of your black garbage cart has little impact on the cost of all of the other services being provided. In addition, the cost of providing the garbage collection service itself is mostly fixed because the cost for the truck and labor, etc., is all set well in advance. Regardless of the size of the garbage cart, it still requires a driver and truck to collect it; the only expense that changes with the size of the cart is the cost of disposal and processing the materials.

**What do the Rates cover?**

The garbage rates cover the costs for the following items, in most cases:

- Weekly garbage, recycling, and compost collection
- Curbside used battery & cell phone recycling
- Curbside used motor oil & oil filter recycling
- Twice annual bulky item collection
- Disposal fees at the landfill
- Processing fees for recycling
- Processing fees for composting
- Street sweeping
- County and local fees
- Household hazardous waste fees

**GARBAGE RATES FREQUENTLY ASKED QUESTIONS (FAQs)**


**With the new CartSMART services, I down-sized my garbage cart but my rates went up. Why am I paying more for doing the right thing?**

If you down-sized your garbage cart you are in fact paying a lower rate compared to a larger cart size. There are many factors that go into whether garbage rates fluctuate each year. The City sets garbage rates to cover the total cost of collection each year and even doing the right thing has a cost to it. There are fixed costs regardless of cart size that must be paid.

Recycling and composting more does reduce disposal expense at the landfill, but on average these **disposal expenses only comprise 20%-25% of total collection costs**. There remains the cost of collection vehicles coming by your house to service your black, blue and green carts.

**Where does the money for recyclables go?**

The money received from marketing the recyclables is used to help keep the tip fees for solid waste and organics lower than they would otherwise be. This has a positive impact on garbage rates and is why it's important for residents and businesses to recycle.



**Billing & Questions**

Phone: (650) 595-3900  
Email: [Carts@recology.com](mailto:Carts@recology.com)  
Website: [www.recologysanmateocounty.com](http://www.recologysanmateocounty.com)



## The City of Burlingame

501 PRIMROSE ROAD, BURLINGAME, CA 94010-3997  
[www.burlingame.org](http://www.burlingame.org)

ANN KEIGHRAN, MAYOR  
MICHAEL BROWNRIGG, VICE MAYOR  
CATHY BAYLOCK, COUNCILMEMBER  
TERRY NAGEL, COUNCILMEMBER  
JERRY DEAL, COUNCILMEMBER

TEL: (650) 558-7203  
FAX: (650) 342-8386  
EMAIL: [council@burlingame.org](mailto:council@burlingame.org)

August 20, 2013

The Honorable Richard C. Livermore  
Judge of the Superior Court  
C/o Charlen Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

RE: Response to Civil Grand Jury Report: "South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff?"

Dear Judge Livermore:

As per your request, the City of Burlingame hereby addresses each of the findings presented by the Civil Grand Jury of San Mateo County in their 2013 report entitled, "South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff."

- 1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.*

**City Response:** The City of Burlingame agrees with the finding.

- 2. The organizational structure of SBWMA is a complex issue that the public does not well understand.*

**City Response:** The City of Burlingame agrees with the finding.

- 3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.*

**City Response:** The City of Burlingame agrees partially with the finding. As an agency that



does include costs incurred by the City outside the actual collection and disposal services provided under the franchise agreements, the City can explain in understandable terms the additional costs that are included in the rate-setting process. The difficulty comes in explaining the variation in rates across jurisdictions, as other member agencies may incur an entirely different set of costs, or provide for a slightly different mix of services, than those in Burlingame. The difficulty is therefore one of *comparability* of rates (or lack thereof) amongst jurisdictions.

**4. *Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.***

**City Response:** The City agrees partially with the finding. As Recology does not establish rates by customer (each member agency establishes the rates they feel are required to meet the cost of Recology's services for their individual jurisdiction as a whole), the amounts imposed for Recology's services alone would be subject to estimation. And because rates are established by service level (as determined by can size and number) to each customer, these rates would then need to be allocated out between the various services that are included in that rate. However, it would be beneficial to disclose to the customer the various services and providers that are included in the amount charged on their billing statements.

**5. *Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.***

**City Response:** The City agrees partially with the finding. Although major decisions are decided upon by the governing body of each Member Agency, elected officials are not integrally involved in development of these recommendations, which are brought before them from their SBWMA Board representatives. Elected officials could be more responsive to their respective communities if they participated actively in the development of all Board decisions/recommendations.

**6. *There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.***

**City Response:** The City disagrees with the finding. On June 17, 2013, the Burlingame City Council adopted a resolution in support of amending the composition of the SBWMA Board of Directors to one of only elected officials, and appointed Vice Mayor Michael Brownrigg to represent the City of Burlingame on the new board. In concurrence with the Task Force created to analyze the SBWMA governance structure, the City feels that accountability to rate payers might be better achieved by having an elected official from each member agency on the Board.

**7. *A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.***

**City Response:** The City agrees with the finding.

Additionally, the City of Burlingame's responses to the Civil Grand Jury recommendations are as follows:

***R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.***

**City Response:**

The City will consider various ways of providing information about SBWMA and its role in the delivery of solid waste operations and programs to its member agencies. The City will be particularly mindful of this recommendation in the upcoming rate-setting process for solid waste services in calendar year 2014.

***R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.***

**City Response:**

The recommendation has not been implemented in the past because (1) Recology does not establish the rates for each Member Agency and does not retain an established amount of each customer payment; (2) the rates established by each member agency are not built through the addition of the cost of each service to each customer. Rather, the rates are established to provide, for each jurisdiction *as a whole*, the amount sufficient to pay for the waste reduction, recycling and other solid waste programs delivered to all of its customers by all of the service providers utilized by the jurisdiction, and then allocated based on the level of service indicated by each customer.

However, the City believes that every opportunity should be taken to inform the customers of the services that are included in the derivation of their solid waste rates, and will work with Recology to provide such information to its customers, through the quarterly billing statement and other cost-effective means.

***R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.***

**City Response:**

This recommendation will be implemented only if the SBWMA is *not* amended to provide for the board of directors to be comprised of elected officials from each of the member agencies. Amendment of the JPA agreement requires approval by two-thirds (8 of 12) of the member agencies. The City of Burlingame has already stated its preference for elected officials to serve on the SBWMA Board, and appointed Vice Mayor Michael Brownrigg as its representative to the SBWMA Board if the amendment is so approved.

***R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.***

**City Response:** This recommendation is consistent with the suggestion from the Task Force that if and when the new SBWMA Board is formed, the new board should establish and determine the role and duties of a technical advisory committee that would support the Board and be comprised of member agency staff. The City agrees with the recommendation to the extent that members of the advisory committee are knowledgeable about the waste management programs in their respective communities – they need not be waste management experts. A committee consisting of senior management staff with previous service on the SBWMA Board would be instrumental in the success of a new board comprised of elected officials.

This report represents the City of Burlingame's responses to the Civil Grand Jury's finding and recommendations. The report was reviewed and approved by the City Council on Monday, August 19, 2013. For information please contact Carol Augustine, Finance Director/Treasurer at 650-558-7222 or at [caugustine@burlingame.org](mailto:caugustine@burlingame.org).

Thank you,

A handwritten signature in cursive script, reading "Ann Keighran". The signature is written in black ink and is positioned above the printed name and title.

Ann Keighran  
Mayor



## CITY OF EAST PALO ALTO

Ruben Abrica, Mayor  
David Woods, Vice Mayor

Council Members  
Lisa Gauthier  
Laura Martinez  
Larry Moody

City Manager  
Magda A. González

September 4, 2013

Honorable Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

also: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org)

### **Re: June 17, 2013 San Mateo County Civil Grand Jury Report “South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff?”**

Honorable Judge Livermore:

On September 3, 2013, at its duly noticed regular meeting, the City Council of the City of East Palo Alto considered its formal response to the June 17, 2013 San Mateo County Civil Grand Jury Report “South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff?” The following represents the City’s formal response to that Civil Grand Jury Report.

#### **Findings**

*F1.* One reason behind wanting to change the composition of the Board appears to stem from the public’s concern over rate increases and service changes.

*Response 1:* East Palo Alto agrees with this Finding.

*F2.* The organizational structure of SBWMA is a complex issue that the public does not well understand.

*Response 2:* East Palo Alto agrees with this Finding.

*F3.* The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.

*Response 3:* East Palo Alto agrees with this Finding.

*F4.* Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.

**Response 4:** *East Palo Alto agrees with this Finding, but notes that non-commercial customers in East Palo Alto are billed via their property tax bill.*

**F5.** Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.

**Response 5:** *East Palo Alto agrees in part with this Finding.* There are safeguards to ensure Member Agency involvement in major financial issues; however, it is time to evolve to an elected official Board.

**F6.** There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

**Response 6:** *East Palo Alto agrees in part with this Finding.* The City of East Palo Alto has consistently advocated for a Board made up of elected officials, the City acknowledges the good work of its staff and the appointed Board of the SBWMA.

**F7.** A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.

**Response 7:** *East Palo Alto agrees with this Finding.*

### **Recommendations**

Four Recommendations apply to the City of East Palo Alto as a Member Agency.

**R1.** Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.

**Response R1:** The City of East Palo Alto believes this recommendation more appropriately should be made to the SBWMA as an entity and is only secondarily the responsibility of the City, since SBWMA has more knowledge about its operations and the role of the franchisees than does the City. East Palo Alto has regularly, and will continue in conjunction with rate changes, provide information explaining the rate setting process to its customers.

**R2.** Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.

**Response R2:** The City of East Palo Alto agrees with this recommendation and will make the request of Recology within the next 30 days.

**R3.** Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.

**Response R3:** The City of East Palo Alto disagrees with this recommendation. The JPA agreement has been amended and a new Board made up of elected officials has now been formed.

**R4.** If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.

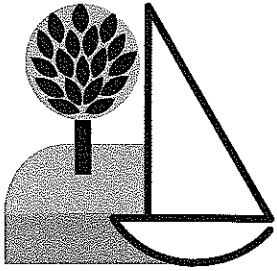
**Response R4:** The City of East Palo Alto agrees with this recommendation.

Should you have any additional questions or require clarification, please do not hesitate to contact me or our City Manager, Magda Gonzalez.

Sincerely,



Ruben Abrica, Mayor



*City of Foster City*

**ESTERO MUNICIPAL IMPROVEMENT DISTRICT**

610 FOSTER CITY BOULEVARD  
FOSTER CITY, CA 94404-2222

August 20, 2013

Honorable Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Subject: RESPONSE TO GRAND JURY REPORT: "SOUTH BAYSIDE WASTE  
MANAGEMENT AUTHORITY (SBWMA) BOARD-ELECTED OFFICIALS OR  
SENIOR MANAGEMENT STAFF"

Dear Judge Livermore:

The City of Foster City is in receipt of the Grand Jury's Report entitled, "South Bayside Waste Management Authority (SBWMA) Board – Elected Officials or Senior Management Staff". Pursuant to your June 17, 2013 directive to respond, the City Council held a public meeting on August 19, 2013, and approved this letter.

In response to the listed "Findings and Recommendations", the City is not in a position to verify the research conducted by the Grand Jury; therefore, our responses should not be interpreted as unconditional agreement on the accuracy of the report, but rather specific only to the information contained in the Grand Jury's report and their stated research.

The City Council's specific responses to the Grand Jury's "Findings" and "Recommendations" in the report are as follows:

**FINDINGS**

**F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.**

*Response: The City agrees with this finding.*

**F2. The organization structure of SBWMA is a complex issue that the public does not well understand.**

*Response: The City does not agree with a portion of this finding. The City finds that the SBWMA's organizational structure is not particularly complex compared to most municipal and governmental organizations. The organization structure is however, not well known to the general public, and therefore may not be well understood.*

**F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.**

*Response: The City does not agree with a portion of this finding. There are many variables that contribute to the rate setting process which can make it difficult to understand. The additional city fees applied by Foster City do not contribute to the complexity of the rate setting process.*

**F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.**

*Response: The City does not have enough information to agree or disagree with this finding.*

**F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.**

*Response: The City does not agree with this finding. On July 15, 2013, the City Council adopted Resolution No. 2013-58 approving the Second Amended and Restated Joint Exercise of Powers Agreement for the SBWMA, specifying a change in the current composition of the Board of Directors from executive level staff from each Member Agency to elected officials from each Member Agency. By this action, the City has determined that the elected officials should have more influence in the decision making process. See attached Resolution.*

**F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.**

*Response: The City does not agree with this finding. See Response to F5.*

**F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.**

Response: The City agrees with this finding. On July 15, 2013 by Minute Order No. 1327, the City Council provided policy direction by recommending the establishment of a Technical Advisory Committee (TAC) that would support the SBWMA Board and be comprised of member agency staff. See attached Minute Order.

## **RECOMMENDATIONS**

### **R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.**

Response: The recommendation has been implemented and will continue to be implemented on an ongoing basis. Education and outreach is a primary objective of the City and the SBWMA. The SBWMA continues to provide information to the public by: (1) providing school group and public tours of the Shoreway Environmental Center, (2) promoting and coordinating community events and recycling programs, via press releases, facebook, twitter, and direct mail pieces, (3) developing a Member Agency Snapshot Report highlighting key recycling and disposal metrics from the previous year, (4) transmitting a bi-monthly electronic news update, (5) issuing an Annual Report summarizing the accomplishments and milestones of the previous year, (6) revamping the website to make it more user friendly and interactive to various stakeholders, (7) hosting a business awards program to recognize businesses that recycle, etc. In addition, the City's website currently provides information about the SBWMA, the hauler, the facility operator, community events and programs, and the City's rates. The City will work with the SBWMA staff and other SBWMA Agencies to more fully educate the public and disseminate even more information to the public about the SBWMA through the life of its contracts.

### **R2. Request that Recology prepare a detailed billing statement for its customers that show all charges imposed by Recology and itemize all fees charged by the Member Agency.**

Response: The recommendation will not be implemented under the current billing method, because the City has not received any complaints from the public pertaining to the itemization (or lack thereof) of fees imposed by the City versus charges imposed by Recology. This issue could be explored more in the future.

### **R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.**

Response: The recommendation will not be implemented because on July 15, 2013, the City Council adopted Resolution No. 2013-58 approving the Second Amended and Restated Joint Exercise of Powers Agreement for the SBWMA, specifying a change in the current composition of the Board of Directors from executive level staff from each Member Agency to elected officials from each Member Agency. Furthermore, by Minute Order No. 1327, the City Council appointed members of the Council to serve as Board Representative and Board Alternate. As of August 1, 2013, all 12 member



agencies had voted approval of the Second Amended and Restated Joint Exercise of Powers Agreement for the SBWMA. Therefore a new Board of Directors, comprised of elected officials will now serve as representatives on the SBWMA Board.

**R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.**

*Response: The recommendation has not yet been implemented, but will likely be implemented in the future. On July 15, 2013 by Minute Order No. 1327, the City Council provided policy direction by recommending the establishment of a Technical Advisory Committee (TAC) that would support the SBWMA Board and be comprised of member agency staff. It will be up to the newly constituted Board of Directors to establish a timeframe for the formation of a TAC.*

The City of Foster City is committed to delivering high quality and cost-effective waste reduction, recycling and environmental education programs for its residents and businesses. To that end, the City recognizes the importance of excellent communication, collaboration and cooperation among the staff, the Board, the contractors and our community to ensure the public's trust. This includes maintaining a high level of transparency that is and will continue to be a primary objective of the City and the SBWMA.

Sincerely,



Pam Frisella  
Mayor  
City of Foster City

Attachments:           Resolution No. 2013-58  
                                  Minute Order No. 1327

RESOLUTION NO. 2013-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY APPROVING THE SECOND AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA)

CITY OF FOSTER CITY

WHEREAS, On December 9, 1999, the SBWMA was formed by a Joint Exercise of Powers (JPA) Agreement among 12 local agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitary District, and the County of San Mateo); and

WHEREAS, the Member Agencies amended the JPA on June 4, 2002, to change the definition of "Fiscal Year"; and

WHEREAS, the Member Agencies first amended and restated the Joint Exercise of Powers Agreement on January 17, 2006 which 1) Established the position of the Executive Director; 2) Specified the Board functions that require Member Agency approval; 3) Clarified member Agency staff positions eligible for Board membership; and 4) Had the Board annually select the Chair; and

WHEREAS, in February 2013, a task force comprised of one elected official from each Member's governing body was formed to examine the SBWMA Board composition and governance structure; and

WHEREAS, on April 24, 2013, the task force recommended that member agencies approve a Second Amended and Restated Joint Exercise of Powers Agreement to modify the composition of the Board from executive level staff from each Member Agency to an Elected Official from each Member Agency.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City does hereby approve the Second Amended and Restated Joint Powers Agreement for the South Bayside Waste Management Authority modifying the composition of the Board as referred to in Attachment 1.

PASSED AND ADOPTED as a Resolution of the City Council of the City of Foster City at the Regular Meeting held on the 15<sup>th</sup> day of July, 2013, by the following vote:

AYES: Councilmembers Bronitsky, Kiesel, Okamoto, Perez and Mayor Frisella

NOES: None

ABSENT: None

ABSTAIN: None

  
PAM FRISELLA, MAYOR

ATTEST:

  
DORIS L. PALMER, CITY CLERK

# MINUTE ORDER

No. 1327

OFFICE OF THE CITY CLERK/  
DISTRICT SECRETARY  
FOSTER CITY, CALIFORNIA

Date: July 17, 2013

Attention: City Council  
Brad Underwood, Public Works Director  
Laura Galli, Associate Civil Engineer

City Council/EMID Board Meeting Date: July 15, 2013

Subject: Second Amended and Restated Joint Exercise of Powers Agreement for the South Bayside Waste Management Authority (SBWMA) – Appoint Members of the Council to Serve as Board Representative and Board Alternate and Provide Policy Direction to Staff

Motion by Vice Mayor Bronitsky, seconded by Councilmember Okamoto, and carried unanimously, 5-0-0, IT WAS ORDERED:

1. Appointing Mayor Frisella to serve as the South Bayside Waste Management Authority (SBWMA) Board Representative and Vice Mayor Bronitsky as the Board Alternate,
2. Recommending the establishment of a technical advisory committee that would support the Board and be comprised of member agency staff, and
3. Recommending that the new SBWMA Board adopt a Code of Conduct.



CITY CLERK/DISTRICT SECRETARY

# MINUTE ORDER

No. 1329

OFFICE OF THE CITY CLERK  
FOSTER CITY, CALIFORNIA

Date: August 20, 2013

Attention: City Council  
James C. Hardy, City Manager  
Brad Underwood, Public Works Director  
Honorable Richard C. Livermore, Judge of the Superior Court

City Council/EMID Board of Directors Meeting Date: August 19, 2013

Subject: Response Letter to the Grand Jury Report Entitled "South Bayside Waste Management Authority (SBWMA) Board - Elected Officials or Senior Management Staff"

Motion by Councilmember Okamoto, seconded by Vice Mayor Bronitsky, and carried unanimously, 5-0-0, IT WAS ORDERED approving the response letter to the Honorable Richard C. Livermore, Judge of the Superior Court, regarding the Grand Jury Report entitled " South Bayside Waste Management Authority (SBWMA) Board - Elected Officials or Senior Management Staff."



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CITY CLERK/DISTRICT SECRETARY



# TOWN OF HILLSBOROUGH

1600 FLORIBUNDA AVENUE

HILLSBOROUGH

CALIFORNIA

94010-6418

August 13, 2013

Hon. Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

RE: June 17, 2013 Grand Jury Report "South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff"

Dear Honorable Judge Livermore:

The Town of Hillsborough respectfully submits its responses to the findings and recommendations contained in the above report:

## **FINDINGS**

- F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.

*The Town agrees with this finding. This is one reason why the Town officials joined the Blue Ribbon Task Force that worked toward changing the composition of the South Bay Waste Management Authority (SBWMA) Board to be composed entirely of elected officials. Elected officials are directly accountable to the public.*

- F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.

*The Town partially agrees with this finding. While SBWMA's organizational structure is not particularly different from most governmental organizations, the Town agrees that it is not well understood by the public.*

- F3. The rates and the process of setting them are difficult to understand because of so many variables, such as added city fees, come into play.

*The Town does not agree with this finding. The rates and the process of setting them are not any more difficult to understand than it is with other utilities. However, the process could be better disseminated to the general public.*

- F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.

*The Town does not have any additional fees not related to garbage collection and believes that the current bills for the Town of Hillsborough residents clearly break down these fees.*

- F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.

*The Town does not agree with this finding. While the elected officials currently approve the franchise agreement and the annual rates, the elected officials are not actually involved in approving higher-level and critical issues such as the SBWMA annual budget, contracts entered into and setting policies. They do not appoint the Executive Director and they do not have a voice in discussions relative to land use decisions and all other issues that eventually contribute to the development of the rates.*

*Member Agencies are currently represented by professional levels of staff that vary widely. A higher level of staff has inherently more influence over the board than a lower-level staff appointee from another agency. With a board of elected officials, all Member Agencies will be equally or consistently represented.*

- F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

*The Town disagrees with this finding. It believes that the ratepayers will be best served having an elected official represent the Town on the Board.*

- F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.

*The Town agrees that such a committee may be useful but defers final decision to the newly formed board.*

## **RECOMMENDATIONS**

- R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.

*The Town routinely disseminates information about waste management information including discussion of SBWMA's operations and the franchise*

*haulers and operators through its notice of rate change and customer calls forwarded by Recology to Town staff. (This service/practice has been encouraged by the Town to better serve the Town residents.) To better inform its residents, the Town developed a "Waste Management" page(s) on its website that include additional information on waste management. The information can be viewed on the Town's website through this link:*

<http://www.hillsborough.net/depts/finance/wm/default.asp>

- R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.

*The Town does not charge any other fees through Recology other than those related to garbage collection and recycling services and the hauler's costs. Recology currently breaks down the bill by month and service type, e.g. 32 gallon; additional organics cart, etc.*

- R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.

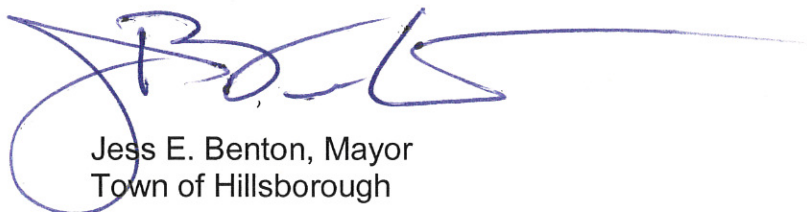
*The Town does not agree with this recommendation. Please refer to the responses to Findings #5 and #6.*

- R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.

*Refer to response to Finding #7.*

The above responses have been approved by the City Council of the Town of Hillsborough at its meeting held on August 12, 2013.

Respectfully submitted,



Jess E. Benton, Mayor  
Town of Hillsborough



CITY COUNCIL

BOB GRASSILLI, MAYOR  
MARK OLBERT, VICE MAYOR  
KAREN CLAPPER  
RON COLLINS  
MATT GROCOTT

CITY OF SAN CARLOS



CITY COUNCIL

600 ELM STREET  
SAN CARLOS, CALIFORNIA 94070

TELEPHONE: (650) 802-4219  
FAX: (650) 595-6719

WEB: [www.cityofsancarlos.org](http://www.cityofsancarlos.org)

July 9, 2013

Honorable Richard C. Livermore  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 8th floor  
Redwood City, CA 94063-1655

JUL 22 2013

Re: Civil Grand Jury Report – SBWMA Board: Elected Officials or Senior Management Staff?

Dear Judge Livermore,

I am writing to you on behalf of the San Carlos City Council. This will serve as the City of San Carlos' formal response to the letter from the Superior Court communicating comments made by the Civil Grand Jury in their report titled "South Bayside Waste Management Authority Board: Elected Officials or Senior Management Staff?" The City Council considered the Civil Grand Jury Report and this letter at a public meeting of the Council and has authorized that it be sent.

In the report from the Civil Grand Jury, 4 recommendations are made to the 12 Member Agencies in the SBWMA, including the City of San Carlos. Here is the City of San Carlos response to the Civil Grand Jury report on this matter:

**Recommendations**

1. Disseminate more information to the public about SBWMA's operations, the role of its franchises, and the rate setting process.

**Response: We agree with the finding.**

**The City of San Carlos regularly shares information about the SBWMA, its Board Meetings and Operations in several ways including the twice a month City Council Newsletter, Quarterly Community Newsletter, City Web Site, Facebook, Twitter and News Releases. These matters also are discussed during each year at City Council meetings open to the public.**

**While the San Carlos City Council has more discussions at its public meetings about the SBWMA and its operations than any other Joint Powers Authority (JPA) that it belongs to, there is always the potential for more information sharing. The City continues to explore more possibilities in this area.**

When the Civil Grand Jury refers to SBWMA and “its franchises”, the City notes that while SBWMA has an agreement with South Bay Recycling LLC to operate the Shoreway Environmental Center, SBWMA does not hold Solid Waste Collection Franchises. The franchise agreements with Recology San Mateo County are held by the Governing Bodies of the 12 SBWMA agencies, not the SBWMA.

2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.  
**Response: We partially agree with the finding.**

The San Carlos City Council recently discussed and considered options for a detailed billing statement. They will further review the issue of a more detailed bill at a future meeting of the City Council. This included a look at:

- City of San Mateo bill mentioned by the Grand Jury which details some charges (Solid Waste, Street Sweeping, Landfill Closure) but not others (Franchise Fees, AB 939, Full Time Staff).
- Breaking out the components of Solid Waste service (Trash Service, Recycling Service, Compost Service, Tonnage) plus the items above.
- A statement could be added to the bill describing all of the services covered in the monthly Solid Waste rate.

The Grand Jury discusses “charges imposed by Recology”. Actually Solid Waste Charges and Rates are set by the 12 SBWMA Member Agencies – not Recology.

3. Continue to appoint only senior management staff to the SBWMA Board as stipulated in the 2005 JPA Amendments.  
**Response: We disagree with the finding.**

The City Council recently discussed this matter in connection with a JPA Amendment proposed by the Task Force formed by Redwood City. While the Council did not adopt the Task Force JPA Amendment, the Council did approve on a 3-2 vote an Alternate JPA Amendment.

The Alternate Amendment provides for an SBWMA Board of Directors with Elected Officials, a Technical Advisory Committee, a Mandatory Code of Conduct for Board Members and a Start Date of January 1, 2014. This amendment addresses concerns about:

1. Needing a Technical Advisory Committee in place to assist with the transition.
2. Mandating the Code of Conduct during renewal and RFP processes that was passed by the SBWMA Board – and opposed by past Elected Officials – in 2006. This Code was designed to avoid issues at several cities around the State which led to the investigation and indictment of elected officials as outlined during the SBWMA RFP design process.

3. **Establishing a more orderly transition date and process to avoid disrupting the 2014 rate setting process which is scheduled to be completed around the time that the Task Force amendment would take effect.**
4. If the Restated Agreement is amended to provide for a Board comprised solely of elected officials, then put in place a Technical Advisory Committee consisting of staff with technical experience in waste management.  
**Response: We agree with the finding.**

**As noted above in our response to Recommendation # 3, the City Council agrees that any change in governance at the SBWMA Board should be accompanied by a Technical Advisory Committee (TAC). A TAC will aid in both the transition from one form of governance to another and would be an ongoing resource for the SBWMA Board of Directors in their deliberations and decisions.**

Sincerely Yours,



Bob Grassilli  
Mayor

Attachment:

Alternate Second Amended and Restated Joint Exercise of Powers Agreement approved by the San Carlos City Council (June 10, 2013)

cc: City Council  
City Manager  
Assistant City Manager  
Public Works Director  
City Attorney

**Approved by San Carlos City Council – 6/10/13**

**Alternate Second Amended and Restated**

**Joint Exercise of Powers Agreement - South Bayside Waste Management Authority**

This ~~First~~ Second Amended and Restated Joint Exercise of Powers Agreement is entered into this day of \_\_\_\_\_, 2013 ~~05~~, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code) relating to the joint exercise of powers among the County of San Mateo and those cities, and towns listed in Exhibit A and B, hereafter collectively called "Agencies."

**Recitals**

A. **WHEREAS** the Agencies heretofore entered into a Joint Exercise of Powers Agreement on December 9, 1999 (the JPA Agreement). The JPA Agreement was first amended on June 4, 2002 to modify the definition of the Fiscal Year. The JPA Agreement was first amended and restated on January 17, 2006 to: 1) Establish the position of Executive Director; 2) Include items that require member agency approval; 3) Clarify member agency staff positions for Board membership; and 4) Have the Board annually select the Chair.

The JPA Agreement was second amended and restated on \_\_\_\_\_, 2013 to 1) modify the composition of the Board of Directors, 2) establish a Code of Conduct for the Board of Directors, 3) establish a Technical Advisory Committee and 4) establish January 1, 2014 as the effective date of these amendments; and

B. **WHEREAS** the Agencies are responsible for the health and safety of the citizens within their geographic boundaries; and

C. **WHEREAS** the Agencies regulate Solid Waste, Recyclable Material, and Plant Material Collection in areas under their jurisdiction and award Franchises for Collection to private organization(s), herein called "Collector(s)"; and

D. **WHEREAS** the Agencies find it in their mutual economic interest to address Solid Waste and Recycling issues on a regional level; and that the costs for planning and implementing Solid Waste and Recycling Programs will be based on a fair and equitable allocation system that considers the relative benefits to each Agency and the additional cost of services provided to each Agency; and

E. **WHEREAS** the Agencies have used and are committed to owning and using certain regional Facilities located in the City of San Carlos, which are part of the San Mateo County Integrated Waste Management Plan, as approved by the California Integrated Waste Management Board; and

F. **WHEREAS** the ownership and use of these regional Solid Waste Facilities provides economic benefits to the ratepayers of the Agencies; and

G. **WHEREAS** the California Integrated Waste Management Act (CIWMA) (California Public Resources Code, §40000 et seq.) requires that the Agencies reduce by fifty (50) percent the amount of Solid Waste they landfill by the end of the year 2000; and

H. **WHEREAS** the CIWMA requires that the Agencies prepare, adopt, and implement source reduction and recycling elements to meet the fifty (50) percent reduction goal; and

I. **WHEREAS** the Agencies intend to coordinate their efforts to produce and share Solid Waste, Recyclable Material and Plant Material reports, including program and operational information derived from the operation of regional Facilities, as required by California Public Resources Code, §40000 et seq.; and

J. **WHEREAS** each Agency has the authority to regulate their Solid Waste, Recyclable Material, and Plant Material stream, including the Collection, Transfer, Transportation, and Processing thereof, and has the authority to establish rates for the conduct of such functions; and

K. **WHEREAS** Solid Waste from each Agency is landfilled at the Ox Mountain Sanitary Landfill located off State Highway 92, approximately two miles east of Half Moon Bay; and

L. **WHEREAS** in the absence of a regional Solid Waste Transfer Facility, Solid Waste Collectors would individually have to travel to Ox Mountain to dispose of Solid Waste, which would increase (a) driving distances and times, (b) the size and cost of the Collection vehicles, (c) traffic and congestion on the highways, and (d) the wear and tear on the highways; altogether which would increase the costs to Solid Waste Collection ratepayers; and

M. **WHEREAS** each Agency has been a member of the South Bayside Waste Management Authority (SBWMA) under a Joint Exercise of Powers Agreement dated December 9, 1999, and has since enjoyed the benefits of such membership, and in accordance with the terms of that agreement has directed its Solid Waste to be Processed at the regional Facility; and

N. **WHEREAS** modifying the method of Solid Waste, Recyclable Material, and Plant Material Collection, Transfer and Transportation Processing and Disposal could cause disruptions in service to the ratepayers; and

O. **WHEREAS** California Government Code §6500 et seq. (Joint Exercise of Powers Act) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities; and

P. **WHEREAS** the Agencies' use of regional Solid Waste, Recyclable Material and Plant Material Collection and Processing Facilities under the SBWMA provides a proven history of economic and environmental benefits to its users; and

Q. **WHEREAS** the parties to this Agreement wish to continue to possess ownership over these regional Solid Waste Facilities; and

R. **WHEREAS** each Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control Facilities and operations for the Collection, Transfer, and Transportation, Processing, and Disposal of Solid Waste, Recyclable Material, and Plant Material generated within its jurisdictional boundaries, as well as to create and issue Franchise agreements for such activities; and

S. **WHEREAS** the Agencies have issued Revenue Bonds to pay for the purchase of these Facilities in March 2000;

**NOW, THEREFORE BE IT RESOLVED** that the Agencies do hereby establish the South Bayside Waste Management Authority for the purpose of owning, financing, administering, and operating regional Facilities and for administering rates for Solid Waste and diversion programs and do hereby agree as follows:

## ARTICLE 1. DEFINITIONS

1.1 **Definitions.** Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit C to this Agreement, which is attached hereto and incorporated by reference.

## ARTICLE 2. PURPOSE

2.1 **Purpose.** This Agreement is entered into pursuant to the Act to provide for the exercise of powers as provided therein, and to provide for the joint exercise of certain powers common to the Agencies. The purpose of this Agreement is to provide for the joint ownership, financing, administration, and operation of the Facilities, and for the joint planning, adoption, financing, administration, management, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area. By entering this joint powers authority, the Agencies earn economic benefits not realized when using alternate means of Transferring and Transportation Processing of Solid Waste, Recyclable Material and Plant Materials and Disposal of Solid Waste. Further, the establishment of this joint powers authority provides for the economic viability and utilization requirement of the Facilities.

## ARTICLE 3. CREATION OF AUTHORITY

3.1 **Creation.** Pursuant to the Act, the Agencies hereby create and establish a public entity to be known as the "South Bayside Waste Management Authority" (SBWMA).

3.2 **Separate Entity.** The SBWMA shall be a public entity separate from the Agencies, and separate from the SBTSA.

3.3 **Assets, Rights, and Liabilities.** The assets, rights, debts, liabilities, and obligations of the SBWMA shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies or the SBWMA. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the SBWMA, provided that both the Board and that Agency approve such contract or assumption.

## ARTICLE 4. TERM

4.1 **Effective Date.** This ~~First~~ Second Amended Agreement shall be dated as of, and become effective on January 1, 2014 if it is adopted and executed by eight (8) or more of the ~~the date of its execution by the last of the~~ Founding Members (Effective Date).

4.2 **Term.** This Agreement shall continue at least until December 31, 2019, or such further period of time necessary to repay any revenue bonds issued by the SBWMA, and thereafter shall continue until terminated or dissolved by a vote taken in accordance with Section 10.8 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the SBWMA if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of the SBWMA, including, without limitation, indentures, resolutions, and letter of credit agreements.

## ARTICLE 5. BOUNDARIES

5.1 **Service Area.** The SBWMA shall exercise its powers within its Service Area boundaries, as they may change from time to time. The Service Area shall be the consolidated

boundaries of the Agencies as defined in Exhibit C. If an Agency withdraws from the SBWMA, the boundary of the SBWMA shall be modified to exclude the area of the withdrawing Agency. Such withdrawal and redrawing of boundaries shall not prevent any Facilities from being located outside of the boundary of the SBWMA.

#### **ARTICLE 6. MEMBERSHIP REQUIREMENTS OF SBWMA**

6.1 **Required Powers.** Each Member of the SBWMA must at all times have the following powers:

- a. The authority to grant Solid Waste Collection Franchises.
- b. The authority, commitment, and agreement to direct the flow of Solid Waste, Recycling and Plant Material generated within the Member's respective jurisdiction to those Facilities specified by the SBWMA, except as provided in Sections 2.08 and 2.09 of the Uniform Franchise Agreement, Exhibit D hereto, for a period of time which shall minimally be until December 31, 2019, or such further period of time necessary to repay any revenue bonds issued by the SBWMA.
- c. The authority to set rates sufficient to provide for the financing and operation of the SBWMA Facilities.
- d. The authority, by law, to enter into this Joint Powers Agreement (JPA).

6.2 **Founding Members.** A Founding Member of the SBWMA shall be one who has joined on the formation of the SBWMA December 9, 1999. Founding Members are listed as such in Exhibit A and B hereto.

6.3 **Membership.** A Member shall, on joining the SBWMA, elect whether to be an Equity Member or a Non Equity Member.

- a. An Equity Member shall have all of the rights and liabilities of a Member of the SBWMA. An Equity Member shall be a Founding Member who, on joining, elects to be an Equity Member, and shall include a New Member who agrees to pay the equity equalizing fees and payments imposed as a condition of membership. Only an Equity Member shall have the right to vote on any matter before the Board and on any matter to be voted on by a Member except as provided in Section 6.3(b).
- b. A Non Equity Member shall not be required to pay an equity equalizing payment, and shall not have the rights and liabilities of Equity Members, particularly under Section 15 Withdrawal and Section 16 on Termination of the JPA. The Non Equity Member shall, however, direct its flow of Solid Waste, Recyclable Material, and Plant Material to the Facilities subject to the exception in Exhibit D hereto, and comply with the terms of the JPA with respect to the flow of Solid Waste, Recyclable Material, and Plant Material. The Non Equity Member shall be entitled to participate in Board Meetings and activities, and receive all notices and information. However, it shall not be entitled to vote on any matter before the Board, or on any other matter unless the right to vote is expressly provided for the Non Equity Member.
- c. Exhibit A hereto shall designate Equity Members and Exhibit B shall designate Non Equity Members.

6.4 **All Members.** Equity Members and Non-Equity Members shall, during the term of this Agreement, equally have the right to direct the flow of Solid Waste, Recyclable Material, and Plant Material to the Facilities. With respect to the Uniform Franchise Agreement all Equity and Non-Equity Members shall have the right to participate in Board deliberations and negotiations and to vote on all matters, including rates, that are contained therein.

#### **ARTICLE 7. POWERS**

7.1 **SBWMA Powers.** The SBWMA is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Acquire, construct, finance, refinance, operate, regulate, and maintain Facilities.
- b. Acquire, improve, hold, lease, and dispose of real and personal property of all types.
- c. Enter into agreements to operate Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.
- d. Plan, study, and recommend proper and appropriate Solid Waste Recyclable Material and Plant Material Transfer, Transport and Processing management practices. Research and study issues related to Solid Waste Generation, Collection, Transfer, Processing, Diversion, and Disposal, including but not limited to source reduction, re-use, Recycling, and recovery.
- e. Resolve disputes between the public and any entities providing Solid Waste, Recycling Material, and Plant Material Transfer, Transportation and Processing services.
- f. Plan, design, and implement programs that address CIWMA transfer, processing and diversion requirements.
- g. Educate the public as to Solid Waste, Diversion, and Recycling matters.
- h. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the SBWMA's programs including, but not limited to, Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facility operations and Disposal. Such agreements can be made with any Person, including any Member.
- i. Apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- j. Hire agents and employees.
- k. Sue and be sued in its' own name.
- l. Incur and discharge debts, liabilities, and obligations.
- m. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
- n. Issue and receive loans.
- o. Establish rates and fees at Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.



- p. Require Members to pass-through the cost of the SBWMA's operations to the rates assessed on Facility users.
- q. Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.
- r. Enter into Franchise Agreements for use of the Transfer Station and pay a Franchise fee.
- s. Require Members to direct all of their Solid Waste, Recyclable Materials and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities, except as provided in Exhibit D hereto.

7.1.1 The following powers require the approval of two-thirds of the Members as would be required under Article 17 for an amendment to this JPA Agreement:

- a. Acquisition of real property
- b. Disposal or transfer of any interest in real property
- c. Entering into or amending Franchise Agreements for the operation of the Facilities
- d. Issuance of bonds or notes, or the refinance of such bonds or notes.

### ARTICLE 8. GOVERNANCE

8.1 **Board of Directors.** The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each Member must select its Director or the Director's designee alternate from among the Member agency's elected governing body. ~~following positions:~~

- a. ~~----- County, District, City, or Town Manager or the equivalent position~~
- b. ~~----- County, District, City, or Town Assistant Manager or the equivalent position~~
- c. ~~----- Finance Director or Assistant Finance Director or the equivalent position~~
- d. ~~----- Public Works Director or Assistant Public Works Director or Environmental Programs Manager or the equivalent position.~~

8.2 **Tenure.** Each Director shall hold office from the first meeting of the Board after appointment by the Member until his or her successor is selected by the Member.

8.3 **Compensation.** Directors shall receive no compensation from the SBWMA for serving on the Board. The SBWMA may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

8.4 **Member Mergers.** If any Member merges with another public entity, the successor public entity shall have one (1) Director position on the Board.

8.5 **Chair.** The Board shall annually select a Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who shall serve without compensation at the pleasure of the Board. The duties of the Chair include, but are not limited to the following:

- a. Conducts Board meetings.
- b. Review and set meeting agendas with the Executive Director.
- c. Signs any and all SBWMA official documents.

8.6 **Vice Chair.** The Board shall annually select a Vice Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who serves without compensation at the pleasure of the Board. The Vice Chair shall act in the absence of the Chair, with full powers of the Chair.

8.7 **Finance Director.** The Board shall select, by a vote taken in accordance with Section 10.8 of this Agreement, a Finance Director from one of the Members to be Finance Director for the SBWMA, who serves at the pleasure of the Board. The duties of the Finance Director include, but are not limited to the following, all in accordance with prudent financial management and California law, including but not limited to California Government Code §6505 et seq.:

- a. Reports to the Chair on any and all SBWMA financial matters.
- b. Serves as the SBWMA's treasurer and controller.
- c. Receives and accounts for any and all SBWMA revenues.
- d. Makes any and all SBWMA investments using sound and prudent investment practices.
- e. Disburses and accounts for any and all SBWMA funds.
- f. Issues or causes to be issued all Revenue Bond payments, according to the payment schedule as part of the Revenue Bonds.
- g. Maintains any and all reserves, as may be required by the Revenue Bonds or any other instruments.
- h. Prepares, within one hundred twenty (120) days after the close of each Fiscal Year, an annual financial report reflecting SBWMA financial activity, including activity associated with the operations of the Facilities, whether such operation is performed by the SBWMA directly or is contracted.
- i. Prepares other financial statements and reports for the SBWMA, as needed.
- j. Causes the annual financial report to be audited by an independent Certified Public Accountant (CPA) currently licensed to practice in the State of California.
- k. Presents the audit report, including the associated management letter, to the Board at the first scheduled Board meeting subsequent to the release of the audit report.

8.8 **Other Officers.** The Board may create or eliminate other officers not specifically mentioned in Sections 8.5-8.7 of this Agreement from time to time, as the Board deems necessary, upon majority vote. Such officers shall serve without compensation.

8.9 **Employee Status.** None of the officers, agents, or employees employed or hired by the SBWMA shall by reason thereof become officers, agents, or employees of any Member. The SBWMA may contract with any Member for any services, upon a vote in accordance with Section 10.8 of this Agreement; however, none of the Persons whose services are supplied by a Member shall by reason thereof become an employee of the SBWMA.

8.10 **Executive Director.** The position of Executive Director is created. The Executive Director is appointed by the Board and serves at the will of the Board. The duties of the Executive director include, but are not limited to the following:

- a. Administers any and all meeting agendas, including compliance with noticing requirements and meeting locations, as provided under California Government Code §54950-54962 (Brown Act).
- b. Causes accurate minutes and records to be taken of all meetings in accordance with California law, including but not limited to California Government Code §54957.2 et seq.

- c. Has authority to appoint, remove, promote, demote, supervise, and determine compensation of any and all SBWMA employees in accordance with Board approved salary ranges.
- d. Manages any and all SBWMA contracts or agreements, including but not limited to, the Facilities operating agreement.
- e. Approves any and all SBWMA payments in conformance with Board approved appropriations.
- f. Attends all Board meetings.
- g. Prepares and submits to the Board an annual budget.
- h. Performs such other duties as the Board shall require.

8.10.1 The Executive Director shall be bonded with a corporate surety to be approved by the Board.

8.10.2 The Executive Director shall receive such compensation as the Board shall from time to time determine.

**8.11 Technical Advisory Committee (TAC).** The Technical Advisory Committee (TAC) is created. The Technical Advisory Committee shall include one staff member from each Member Agency. The TAC member will be appointed by the City Manager or Agency Head of each Member Agency. TAC members will bring expertise and experience on Solid Waste franchise, programs and administration to the SBWMA Board of Directors. TAC members may also serve on TAC subcommittees designed to develop franchises, programs and to provide advice to the SBWMA Board of Directors and the SBWMA Executive Director and staff.

**8.12 Code of Conduct.** Members of the SBWMA Board of Directors shall follow a Code of Conduct.

**8.12.1 Effective Dates.** The Code of Conduct will be in effect during the periods of time when the SBWMA is considering whether to extend existing contracts with contractors for Solid Waste Collection and Operation of the Shoreway Transfer Station and Materials Recovery Facility. The Code of Conduct will also be in effect during the time that the SBWMA is considering, developing and carrying out a procurement process for the selection of contractors for these services.

**8.12.2 Ex-Parte Contacts Prohibited.** During the time periods when the Code of Conduct is in effect, SBWMA Board Members (the Board Members) are prohibited from having any verbal or written communications (ex parte contacts) with any Proposer (defined as any entity or individual involved in making a submittal to the SBWMA in response to the RFP process to select a contractor or contractors for the collection, processing, and transfer of solid waste, recyclable materials and/or organic materials) concerning any matter related to the RFP process or Contractor Selection process, except in the course of a legally noticed meeting of the SBWMA Board, or any subcommittee of the Board, or in conjunction with an ex parte contact arranged by and involving SBWMA staff and/or consultants.

8.12.3 Disclosure of Ex Parte Contacts. If any such unauthorized ex parte contact occurs, the Board member shall disclose its occurrence at the next meeting of the SBWMA Board that next follows the said ex parte contact.

**8.12.4 Gifts and Compensation Prohibited (Also applicable to SBWMA Staff Members, TAC Members and Consultants).**

During the periods when the SBWMA is considering whether to extend existing contracts with contractors for Solid Waste Collection and Operation of the Shoreway Transfer Station and Materials Recovery Facility, SBWMA Board Members are prohibited from accepting any gift of any monetary value, or compensation of any kind (as defined under the California Political Reform Act) from a Proposer (defined above in Section 8.12.2). This prohibition shall also apply to SBWMA staff members, TAC Members and consultants.

**8.12.5 Censure and Discipline.**

Any SBWMA Board Member or TAC Member who accepts such a gift or compensation may be subject to censure by the SBWMA Board. Any SBWMA staff member who violates this policy may be subject to discipline including termination of services, and any consultant who violates this policy may be subject to termination of services.

**8.12.6 State and Local Regulations.**

It is understood that this Code of Conduct is in addition to any other applicable state or local regulations that apply to the conduct of the SBWMA Board.

**ARTICLE 9. VACANCIES**

9.1 **Director Vacancies.** Should a vacancy occur on the Board due to the separation from service by a Director from a Member, the person who is acting in the capacity of the former Director with the Member shall temporarily assume the duties of the former Director until such time as the Member appoints a permanent Director. Such temporary Director shall have the full powers and authority of a permanent Director.

9.2 **Officer Vacancies.** Should a vacancy occur among any officer authorized in Article 8 of this Agreement, the Board shall elect a new officer at its next scheduled Board meeting.

**ARTICLE 10. MEETINGS**

10.1 **Regular Meetings.** The Board shall schedule by Resolution regular monthly meetings during each Fiscal Year.

10.2 **Special Meetings.** Special meetings of the Board may be called in accordance with provisions of the California Government Code §54956.

10.3 **Notice of Meetings.** All meetings of the Board shall be held subject to the provisions of California Government Code §54950-54962 (Brown Act) and other applicable laws of the State of California.

10.4 **Meeting Location.** All meetings of the Board must be held within the Service Area at a location determined by the Chair, except that the Board may hold a special meeting outside the Service Area upon an affirmative vote in accordance with Section 10.8 of this Agreement.

10.5 **Minutes.** The Chair shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Chair shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

10.6 **Quorum.** A majority of the Directors shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

10.7 **Voting Rights.** Each Member is entitled to cast one vote on any matter presented to the Board for a vote.

10.8 **Voting Requirement.** The vote of two thirds (2/3) of the Directors present shall constitute the act of the Board, unless otherwise provided in this Agreement.

10.9 **Conduct of Meetings.** Meetings of the Board shall be conducted by the Chair, or in the Chair's absence by the Vice Chair. In the absence of both the Chair and the Vice Chair, meetings shall be conducted by the Director in attendance who represents the largest Member, by population.

#### **ARTICLE 11. BYLAWS**

11.1 **Bylaws.** The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out the SBWMA's purpose.

#### **ARTICLE 12. FUNDING**

12.1 **Debts and Liabilities.** The SBWMA's debts, liabilities, and obligations shall not be debts, liabilities, or obligations of any of the Members, and each Member's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the Members hereto may agree.

12.2 **SBWMA Activities.** Unless otherwise authorized by the Board, all costs associated with SBWMA activities shall be paid by the Facilities' users. The SBWMA shall be solely responsible for determining the amount of any charge to recover these pass-through costs. The Members hereby agree to pass any such charge as approved by the SBWMA, to users as part of the Solid Waste, Recyclable Material, and Plant Material and Transfer and Transport and Processing rate, without reduction, limitation, offset, or adjustment of any kind.

12.3 **SBWMA Records and Accounts.** The Finance Director shall maintain accurate and correct books of account showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers for SBWMA financial transactions.

12.4 **Facilities Records and Accounts.** The Finance Director shall maintain or cause to be maintained accurate and correct books of account of the Facilities' operations showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers.

12.5 **Revenue Bond Payments.** The revenue stream pledged to the Revenue Bonds may in no way be used for any purpose other than to make payment on the indebtedness associated with those bonds. Such revenues are not in any way considered revenues to the Agencies, and may not be used for any other purpose unless and until such Revenue Bonds are defeased or repaid in full.

12.6 **Franchise Fee Payments.** Monthly, SBWMA shall distribute to the City of San Carlos, from funds received from Contractor, one twelfth (1/12th) of the annual franchise fee agreed to by the SBWMA and the City of San Carlos for the operation of the Facilities.

12.7 **Priority of Distribution of Funds Received by SBWMA.** Monthly, the SBWMA shall receive funds from the Contractor of the Facilities under Section 6.04 of the Agreement for the Operation of the South Bayside Waste Management Authority's Transfer Station and Recyclery. The SBWMA shall distribute the funds received in accordance with the following priority:

- a. Debt Service Payments.
- b. Contributions to Reserves.
- c. Management Costs.
- d. Payment of Franchise Fees to the City of San Carlos.
- e. Such other distribution as authorized by the Board.

### **ARTICLE 13. SBWMA ADMINISTRATION POWERS**

13.1 **Assertion of Authority.** The Members shall not engage in any action that would duplicate, circumvent, by-pass, or supersede the SBWMA's powers, as expressed in this Agreement.

13.2 **Facility Operator.** The Members agree that the SBWMA shall have sole authority to operate or contract for the operation of the Facilities, and have sole authority to direct the delivery of all or a portion of each Member's Solid Waste, Recyclable Material, and Plant Material to the Facilities, except as provided in Exhibit D hereto. No Member shall take any action in any manner, inconsistent with the terms of this Agreement.

13.3 **Operating Records.** The SBWMA will cause the Facilities' Contractor to maintain accurate, timely, and complete records of operations at the Facilities, as necessary to comply with any CIWMA or other State requirements, or this Agreement.

13.4 **Operations Reporting.** The SBWMA shall cause the Facilities' Contractor to compile information and report on any of its Facilities operations, in accordance with the CIWMA and this Agreement.

13.5 **Solid Waste Reporting.** The SBWMA shall cause the Facilities' Contractor to compile and report to the CIWMA and other State of California agencies data on Solid Waste accepted at the Facilities, all on behalf of the Members.

13.6 **Require Compliance with Laws.** The SBWMA shall require the Facilities Contractor to operate said Facilities in compliance with all Federal, State, and local laws, Environmental Laws, guidelines, and regulations, as may exist, or as may exist from time to time.

13.7 **Bond Payment Review.** The SBWMA shall at least annually review the Revenue Bond payment history and payment projections to the end of bond repayment.

13.8 **Bond Management.** The SBWMA shall periodically consider defeasing the Revenue Bonds and refinancing any existing debt to the economic benefit of the Members, as market conditions allow.

13.9 **Bond Reserves.** The SBWMA shall maintain at least the minimum reserve fund requirements specified in the Revenue Bond covenants.

13.10 **Asset Reserves.** The SBWMA shall establish and maintain an asset replacement reserve fund at a level at least adequate to finance appropriate and ordinary asset replacement at the Facilities.

13.11 **Annual Inspection.** At least annually, the SBWMA shall inspect or cause to be inspected by a qualified and licensed civil engineer all of its Facilities, including all property, land, equipment, and other items owned by the SBWMA.

13.12 **Attributing Solid Waste.** The SBWMA shall establish a fair and equitable method of attributing Solid Waste, Recyclable Materials, and Plant Materials to the Members that are delivered to the Facilities.

13.13 **Miscellaneous.** The SBWMA may operate programs, conduct analyses, and perform studies from time to time, all in support of the purposes under this Agreement, as the Board so approves.

13.14 **Member Cooperation.** Members agree to cooperate in the accumulation of information supporting goals approved by the Board, as provided in this Agreement.

#### **ARTICLE 14. PENALTIES**

14.1 **Apportionment of Penalties.** Any penalties assessed by regulatory authorities against the SBWMA shall be paid by the SBWMA.

#### **ARTICLE 15. WITHDRAWAL FROM SBWMA**

15.1 **Withdrawal Conditions.** A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

#### **ARTICLE 16. TERMINATION**

16.1 **Termination Requirements.** This Agreement may only be terminated by consent of all Equity Members, and upon full and complete liquidation of all liabilities, including, but not limited to, the Revenue Bonds. Upon the date of termination (hereinafter "Termination Date"), payment of any and all obligations and division of any and all assets of the SBWMA shall be conducted subject to the then-applicable requirements of the law (currently California Government Code §6511 et seq.), pursuant to the following:

- a. In the event of termination of the SBWMA where there is a successor public entity that will conduct all of the activities of the SBWMA and will assume all of its obligations, any and all SBWMA assets and liabilities remaining upon termination of the SBWMA shall be transferred to the successor public agency.

- b. If there is no successor public agency that would conduct the SBWMA's activities, all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Member's ratepayers' total contribution during the Term of this Agreement. A reference to ratepayers' contribution means payment of Collection fees under each jurisdiction's respective Uniform Franchise Agreement.
- c. If there is a successor public agency that would conduct some of the SBWMA's activities, then the Board shall allocate the SBWMA's assets and liabilities between the successor public agency and the Members. In this case, the Members' portion of the allocation shall be allocated based on Section 16.1(b).
- d. In the event the SBWMA is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Members or any successor shall be final.
- e. The obligations of the SBWMA terminate on the Termination Date, and each Member shall pay all amounts owed to the SBWMA prior to that date. In the event of default by a Member with regard to payment of amounts due, the obligation to pay all sums due to the SBWMA shall survive and remain in full force after the Termination Date.
- f. By unanimous agreement of Equity Members, Equity Members may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 16.1.

#### **ARTICLE 17. AMENDMENTS**

17.1 **Amendment Requirements.** Subject to all legal obligations of the SBWMA, this agreement may be amended by one or more supplemental agreements executed by a vote of two-thirds (2/3) of all Equity and Non-Equity Members of the SBWMA.

17.2 **Signature Requirements.** Signatures shall not be required on any effective amendment by those Members, if any, whose Directors did not approve the amendment; however, such Members shall nonetheless be bound by the amendment as if it were approved by all Members.

#### **ARTICLE 18. FILINGS**

18.1 **Filing with Secretary of State.** The Chair shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and 53051.

#### **ARTICLE 19. NOTICES**

19.1 **Notices to Agencies.** All notices to the Agencies shall be deemed to have been given to the Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Agency during usual business hours at the principal office, or to the person apparently in charge of that office.



19.2 **Notices to SBWMA.** All notices to the SBWMA shall be deemed to have been given to the SBWMA when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chair, Vice Chair, and Finance Director of the SBWMA during usual business hours at the principal office, or to the Person apparently in charge of that office.

#### **ARTICLE 20. SUCCESSORS AND ASSIGNMENTS**

20.1 **Assignments.** This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member. No Member may assign any right or obligation hereunder without the written consent of all other Members.

#### **ARTICLE 21. SEVERABILITY**

21.1 **Severability.** If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

#### **ARTICLE 22. ARTICLE HEADINGS**

22.1 **Headings.** All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

**THEREFORE THE AGENCIES LISTED IN EXHIBITS A AND B HERETO AND EXECUTING THIS AGREEMENT BY SIGNING EITHER AS AN EQUITY MEMBER IN EXHIBIT A OR NON EQUITY MEMBER IN EXHIBIT B HEREBY ENTER INTO THIS AGREEMENT.**

**EXHIBIT A  
EQUITY MEMBERS**

TOWN OF ATHERTON

BY: \_\_\_\_\_  
TITLE:

CITY OF BURLINGAME

BY: \_\_\_\_\_  
TITLE:

CITY OF FOSTER CITY

BY: \_\_\_\_\_  
TITLE:

CITY OF MENLO PARK

BY: \_\_\_\_\_  
TITLE:

CITY OF SAN CARLOS

BY: \_\_\_\_\_  
TITLE:

WEST BAY SANITARY DISTRICT

BY: \_\_\_\_\_  
TITLE:

CITY OF BELMONT

BY: \_\_\_\_\_  
TITLE:

CITY OF EAST PALO ALTO

BY: \_\_\_\_\_  
TITLE:

TOWN OF HILLSBOROUGH

BY: \_\_\_\_\_  
TITLE:

CITY OF REDWOOD CITY

BY: \_\_\_\_\_  
TITLE:

CITY OF SAN MATEO

BY: \_\_\_\_\_  
TITLE:

COUNTY OF SAN MATEO

BY: \_\_\_\_\_  
TITLE:

**EXHIBIT B  
NON-EQUITY MEMBERS**

**NONE**

**EXHIBIT C**  
**DEFINITIONS**

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below in this Exhibit C.

**Act**

“Act” means the California Joint Exercise of Powers Act (California Government Code §6500 et. seq.).

**Agency/Agencies**

“Agency/Agencies” means the public entities which are or have been Members of the SBTSA and/or the SBWMA.

**Agreement**

“Agreement” means this joint exercise of powers agreement, as it may be amended from time to time.

**Board**

“Board” means the governing Board of Directors of the SBWMA, comprising one Director from each of the Members, as described in Article 8 of this Agreement.

**Chair**

“Chair” means the SBWMA Chair of the Board, as described in Section 8.5 of this Agreement.

**CIWMA**

“CIWMA” means the California Integrated Waste Management Act of 1989 (California Public Resources Code, §40000 et seq.), and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

**CIWMA Board**

“CIWMA” means the California Integrated Waste Management Board, created under the provisions of the CIWMA, whose duties include implementing the CIWMA.

**Collect/Collection**

“Collect/Collection” means to take physical possession, transport and remove Solid Waste, Recyclable Materials, and Plant Materials within and from the Service Area.

**Collector**

“Collector” means a private organization which holds a franchise from an Agency for Solid Waste Collection.

**Contractor**

“Contractor” shall mean the entity the SBWMA contracts with to operate the Facilities.

**County**

“County” means the County of San Mateo, California.

#### Director

“Director” means the appointed representative from each Member who serves on the governing Board of Directors.

#### Disposal

“Disposal” means the ultimate disposition of Solid Waste received by Collector at a landfill in Full Regulatory Compliance.

#### Diversion

“Diversion” means the separation of materials from the overall Solid Waste stream and whose disposition is for reuse or Recycling and not landfill disposal.

#### Effective Date

“Effective Date” means the effective date of this Agreement, which is December 9, 1999, as provided in Section 4.1.

#### Environmental Laws

“Environmental Laws” means all federal and state statutes; and all county, local, and Agency ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000 et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

#### Executive Director

“Executive Director” means the person appointed by the Board as the executive officer and director of the SBWMA.

#### Facility/Facilities

“Facility/Facilities” means any plant or site, existing or planned, owned or leased, and constructed, maintained, operated, or used for purposes of performing under this Agreement. As of the Effective Date, the Facilities are: the San Carlos Transfer Station and the San Mateo Recyclery, located at 225, 229, and 333 Shoreway Road, in San Carlos, California.

#### Fiscal Year

“Fiscal Year” means the period commencing on each July 1 and ending on the following June 30.

#### Founding Member

“Founding Member” means any one of the public entities listed in Exhibit A and B attached hereto.

#### Franchise

“Franchise” means the special right granted by the Agencies to operate a public utility for Solid Waste Collection and Processing services within the Service Area.

#### Full Regulatory Compliance

“Full Regulatory Compliance” means compliance with all applicable permits for a Facility such that the Contractor will at all times maintain the ability to fully comply with its obligations under this Agreement.

#### Legislation

“Legislation” means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

#### Member

“Member” means any one of the public entities listed in Exhibit A (Equity Members) or Exhibit B (Non Equity Members) attached hereto, and any public entity that becomes a New Member in accordance with Section 6.3 of this Agreement.

#### Person

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

#### Plant Materials

“Plant Materials” means a subset of Recyclable Materials consisting of grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six [6] inches in diameter), and similar organic materials generated at residential commercial, industrial and institutional properties within the Service Area, separated and set out for Collection, processing, and Recycling. Plant Materials does not include materials not normally produced from gardens or landscapes, such as, but not limited to, palm fronds, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes and oil. Diseased plants and trees are also excluded from Plant Materials.

#### Process/Processing

“Process/Processing” means the Recycling, reuse, reformation, reconstituting, or otherwise manipulation of Solid Waste in preparation for its ultimate use or disposal.

#### Rate Year

“Rate Year” means the period commencing on January 1 and ending on the following December 31.

#### Recyclable Materials

“Recyclable Materials” means discarded materials that are re-used, re-manufactured or processed.

#### Recycling

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be re-used, re-manufactured or processed. The Collection, transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

#### Revenue Bonds

“Revenue Bonds” means those certain revenue bonds titled “South Bayside Waste Management Authority (San Mateo County, California) Solid Waste System Revenue Bonds, Series 2000,” and issued in the amount of \$20,090,000 on March 1, 2000.

#### SBWMA

“SBWMA” means the South Bayside Waste Management Authority, a joint powers authority created under Government Code §6500 et seq. by this Agreement.

#### SBTSA

“SBTSA” means the South Bayside Transfer Station Authority, a joint powers authority created in 1982.

#### Service Area

“Service Area” means the collective territory within, and, if applicable, outside the Member’s boundaries with respect to which the Member exercises franchising authority for the Collection of Solid Waste, Recyclable Materials, and Plant Materials which territory is shown on a map on file in the office of the Chair, to which reference is hereby made for the description of said area.

#### Solid Waste

“Solid Waste” means all putrescible and nonputrescible solid, semisolid, and liquid wastes, as defined in California Public Resources Code §40191, as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable Materials, or Plant Materials.

#### Term

“Term” means the period of time specified in Article 4 of this Agreement.

#### Transfer

“Transfer” means the process of transferring Solid Waste from collection vehicles to transfer vehicles.

#### Transport

“Transport” means the transportation of Solid Waste in either collection or transfer vehicles.

#### Uniform Franchise Agreement

“Uniform Franchise Agreement” means the franchise agreement negotiated by the SBWMA with BFI Waste Systems of North America, Inc. or its successor, for the Collection of Solid Waste, Recyclable Materials, and Plant Materials in each Agency, as amended.

## EXHIBIT D

### **Exceptions to the SBWMA power to direct Members' Solid Waste, Recyclable Materials, and Plant Materials to the Facilities.**

The following sections are excerpts from the Uniform Collection Agreement adopted by SBWMA member entities and details the exceptions to the SBWMA's power to direct Members' Solid Waste, Recyclable Materials, and Plant Materials to the Facilities:

**2.07 Scope of Franchise.** Subject to Section 2.08, the Franchise granted to Contractor shall be exclusive for all Solid Waste, residential Recyclable Materials and residential Plant Materials generated in the Service Area, except where otherwise precluded by Federal, State and local laws and regulations or where other current programs provide for Collection and handling of Household Hazardous Waste.

**2.08 Limitations to scope. The Agreement for the Collection, transportation, processing, and Disposal of Solid Waste, residential Recyclable Materials, and residential Plant Materials granted to Contractor shall be exclusive except as to the following materials listed in this Section. The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials and Plant Materials listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from Agency which is otherwise required by law:**

- a. Other recyclers shall maintain the right to charge a fee, to Collect without a fee, to accept donated Recyclable Materials and to pay the service recipient for Recyclable Materials for the Collection of Source Separated Recyclable Materials and Plant Materials from commercial, industrial, multi-family and institutional generators located in the Service Area. For the purposes of this Agreement, Source Separated loads are loads that consist of less than 10% by weight or volume of Solid Waste, whichever is less. It will be the responsibility of Contractor to provide enforcement of this provision. If Contractor can document that other recyclers are servicing Collection Containers that contain less than 90% Source Separated Recyclable Materials or Plant Materials, it shall report the location and the name of the recycler to the Agency and the SBWMA, along with Contractor's evidence of the violation of the exclusiveness of this Agreement.
- b. Solid Waste, Recyclable Materials, and Plant Materials, which are removed from any Premises by the Waste Generator, and which are transported personally by the Owner or occupant of such Premises (or by his or her employees or a contractor whose removal of the Solid Waste, Recyclable Materials and/or Plant Materials are incidental to the service being performed.
- c. Recyclable Materials and Plant Materials which are Source Separated at any Premises by the Waste Generator and donated to youth, civic, or charitable organizations;



- d. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code;
- e. Plant Materials removed from a Premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service and for no additional or separate fee;
- f. Non-putrescible Waste from roll-off/debris boxes;
- g. Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- h. By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and,
- i. Hazardous Waste and Designated Waste regardless of its source.

This grant to Contractor of an exclusive right and privilege to Collect, transport, or process and dispose of Solid Waste, certain residential Recyclable Materials, and certain residential Plant Materials shall be interpreted to be consistent with state and federal laws, now and during the term of the Agreement, and the scope of this exclusive right shall be limited by applicable state and federal laws with regard to the matters contained in this Agreement. In the event that future interpretations of current law or new laws, regulations, interpretations or trends limit the ability of Agency to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that Agency shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

## **2.09 Additional Services and Modifications to Service.**

2.09.1 **General.** Agency may direct Contractor to perform additional services (including new diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, targeted routing, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which Agency may direct. Contractor shall be entitled to an adjustment in its compensation in accordance with Article 6 for providing such additional or modified services.

2.09.2 **New Diversion Programs.** Contractor shall present, within 30 days of a request to do so by Agency, a proposal to provide additional or expanded diversion services. At a minimum, the proposal shall contain a complete description of the following:

- a. Collection methodology to be employed (equipment, manpower, etc.).
- b. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- c. Labor requirements (number of employees by classification).
- d. Type of materials containers to be utilized.

- e. Provision for program publicity/education/marketing.
- f. Estimate of the tonnage to be diverted and the methodology for determining that diverted tonnage.
- g. Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

**2.09.3 Agency's Right to Permit Others to Provide Services.** Contractor acknowledges and agrees that Agency may permit other Persons besides Contractor to provide additional Solid Waste services not otherwise contemplated under Section 2.07 and 2.08 of this Agreement. If Contractor and Agency cannot agree on terms and conditions of such services in one hundred twenty (120) days from the date when Agency first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that Agency may permit Persons other than Contractor to provide such services.



September 4, 2013

Honorable Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> floor  
Redwood City, CA 94063-1655

Re: ***City of San Mateo Response to San Mateo County Grand Jury Report Entitled "South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff"***

Dear Judge Livermore:

Thank you for the opportunity to review and comment on the above referenced Grand Jury Report filed on June 17, 2013. We are in receipt of the Grand Jury's report entitled "South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff." After reviewing the Report and all available data pertaining to our community, below is the City of San Mateo's response to the findings of the Grand Jury. The San Mateo City Council held a public meeting on September 3, 2013, and approved this response.

## **FINDINGS**

***F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service charges.***

**Response:** The City of San Mateo agrees that one of the reasons behind the proposed change from a senior staff Board of Directors to an elected Board of Directors was recent rate increases. However, the City of San Mateo is confident that the senior staff that have served on the Board of Directors have made every effort to stabilize the rates including an improved franchise agreement that limits the increases in charges permitted by the collection contractor. In fact, the rates in City of San Mateo for collection services in 2014 are not expected to increase at all.

***F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.***

**Response:** Respondent partially agrees with this finding. While the organizational structure is not particularly complex, respondent agrees that the structure is not well understood by the public.

***F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.***

**Response:** Respondent partially agrees with this finding. The process of setting the rates is similar to other utilities; however, information about the process could be more clearly communicated to the public.

***F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.***

**Response:** Respondent agrees with this finding. The City of San Mateo already provides customers with itemized billing statements.

***F5. Elected officials already have sufficient influence in the decision making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.***

**Response:** Respondent agrees that the original Joint Powers Agreement provided an ability to approve major financial and policy decisions. However, the City of San Mateo believes that more transparency and accountability can be provided through appointment of a board of elected officials who are directly answerable to the electorate. Toward this end, the San Mateo City Council has adopted a Resolution supporting an amendment to the SBWMA Joint Powers Agreement to define the board as being comprised of an elected official from each of the Member Agencies' governing bodies.

***F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.***

**Response:** Respondent disagrees with this finding, and believes the ratepayers will be best served by having elected official represent Member Agencies on the Board.

***F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.***

**Response:** Respondent agrees with this finding. Establishment of a technical advisory committee should be the first order of business once an elected board has been seated.

## **RECOMMENDATIONS**

***R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process***

**Response:** The City of San Mateo has implemented this recommendation through the noticing process required for rate increases and through information provided at City Council meetings. However, the City plans to improve and simplify the information provided to the rate payers.



***R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemize all fees charged by the Member Agency.***

**Response:** The City of San Mateo has already implemented this recommendation and currently provides all customers with an itemized billing statements that depicts all charges and fees imposed.

***R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 agreement.***

**Response:** The respondent does not plan to implement this recommendation. Refer to response to Findings F5 and F6.

***R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.***

**Response:** It is the respondent's understanding that this recommendation will be implemented. Refer to response to Finding F7.

The City of San Mateo appreciates this opportunity to respond to the Grand Jury report regarding SBWMA operations and governance.

Sincerely,



David Lim  
Mayor

cc: City Council  
City Manager  
Director of Public Works



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## City Council

August 28, 2013

The Honorable Richard Livermore  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2nd Floor  
Redwood City, CA 94063-1655

Re: Grand Jury Report – “SBWMA Board: Elected Officials or Senior Management Staff?”

Dear Judge Livermore:

The Menlo Park City Council received the above referenced San Mateo County Civil Grand Jury Report in June 2013. The report identifies certain findings and recommendations, and requests that the City Council respond in writing to those findings and recommendations no later than September 16, 2013. At its regular meeting on August 27, 2013, the City Council approved the following response.

**The City of Menlo Park responds to the San Mateo County Civil Grand Jury’s findings as follows:**

F1. One reason behind wanting to change the composition of the Board appears to stem from the public’s concern over rate increases and service changes.

City Response: *The City of Menlo Park agrees with this finding.*

F2. The organizational structure of the SBWMA is a complex issue that the public does not well understand.

City Response: *The City of Menlo Park agrees with this finding.*

F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.

City Response: *The City of Menlo Park partially agrees with this finding. Although the City can explain in understandable terms the additional costs that are included in the rate setting process, the difficulty lies in explaining the variation in rates across jurisdictions, which may be attributed to other agencies incurring different sets of costs and providing for a different mix of services.*

F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.

*City Response: The City of Menlo Park partially agrees with this finding. Each member agency establishes its rates based on what is required to meet the cost of Recology's services for their individual jurisdiction as a whole, making the amounts imposed by Recology's services alone, subject to estimation. Also, since rates are established by service level (based on container size and quantity) to each customer, these rates would need to be distributed between the various services that are included in that rate. However, it may be beneficial to disclose to the customer the various services and providers that are included in the amount shown on their billing statement (i.e. disposal and processing fees collected to help operate the Shoreway Environmental Center, City staff costs to administer Solid Waste programs, the "At Your Door" household hazardous waste collection service provided by the County, etc).*

F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.

*City Response: The City of Menlo Park agrees with this finding.*

F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

*City Response: The City of Menlo Park disagrees with this finding. On July 16, 2013, the Menlo Park City Council adopted a resolution in support of amending the composition of the SBWMA Board of directors, and appointed Council member Catherine Carlton to represent the City of Menlo Park on the new board with Mayor Pro Tem Ray Mueller to serve as the alternate. Although senior management staff are able to provide the institutional knowledge and professional expertise (i.e. developing budgets, contracts, and long-term beneficial planning), having elected officials on the Board may give the public a sense of security that there is more direct control over waste management services.*

F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.

*City Response: The City of Menlo Park agrees with this finding.*

**Additionally, the City of Menlo Park's responses to the Civil Grand Jury recommendations are as follows:**

R1. Disseminate more information to the public about SBWMA's operations, the role of its franchises, and the rate setting process.

*City Response: Currently the City shares information about the SBWMA through its Environmental Programs Recycling and Solid Waste webpage, Facebook and Twitter pages, and issues press releases promoting SBWMA programs and events. Matters*

*related to SBWMA are also discussed as needed at City Council meetings that are open to the public. However, the City will consider additional ways of providing information about SBWMA and its role in the delivery of solid waste operations and programs.*

R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.

*City Response: This recommendation has not been implemented in the past because (1) Recology does not establish the rates for each Member Agency; (2) The rates established by each member agency are not built through the addition of the cost of each service to each customer. Rather, the rates are established to provide, for each jurisdiction as a whole, the amount sufficient to pay for waste reduction, recycling, and other solid waste programs delivered to all of its customer by all of the service providers utilized by the jurisdiction, and then allocated based on each customers level of service.*

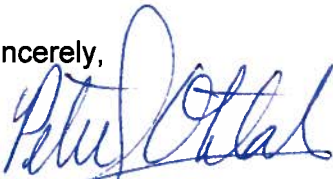
R3. Continue to appoint only senior management staff to the SBWMA Board as stipulated in the 2005 JPA Amendments.

*City Response: The City of Menlo Park has already approved an amendment to the SBWMA for elected officials to serve on the SBWMA Board, and appointed a Council member to serve as its representatives to the SBWMA Board.*

R4. If the Restated Agreement is amended to provide for a Board comprised solely of elected officials, then put in place a Technical Advisory Committee consisting of staff with technical expertise in waste management.

*City Response: The City agrees that any change in governance at the SBWMA Board should be accompanied by a Technical Advisory Committee (TAC). The TAC would be comprised of member agency staff and provide support to the Board in deliberations and decisions.*

Sincerely,



Peter Ohtaki  
Mayor  
City of Menlo Park



Mayor Alicia C. Aguirre  
Vice Mayor Jeffrey Gee

Council Members  
Ian Bain  
Rosanne Foust  
Jeff Ira  
Barbara Pierce  
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July 22, 2013

Hon. Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Grand Jury Report: South Bayside Waste Management Authority (SBWMA) Board-Elected Officials or Senior Management Staff

Dear Judge Livermore:

On behalf of the City Council of Redwood City, I am responding to the above referenced report. At its meeting of July 22, 2013, the City Council approved this response.

Before directly responding to the Grand Jury's findings and recommendations, the Council would like to provide the appropriate context for the discussion of SBWMA governance. This context is framed by three threshold questions which, together, support having elected officials serve on the SBWMA board:

- 1) Is the public trust served by having elected officials overseeing a public agency with revenues of over \$40 million and operating expenses of \$36.5 million annually?

The City Council feels that the public trust is best served by having elected officials, accountable to their respective citizenry, overseeing this public entity, especially one whose actions continue to be a target of close scrutiny by the public and media. SBWMA's budget alone is larger than some cities' general fund budgets, which are of course overseen by elected officials.

- 2) Who is ultimately accountable to the public?

In 2009, the San Mateo County Civil Grand Jury issued a report entitled "Trash Talk: Rethinking the Waste Management RFP Process by the SBWMA"<sup>(1)</sup>. In it, the Grand Jury recommended that elected officials serve on the board. The Grand Jury recommended this based on Finding #2 in its report which stated, "Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA." The City Council agrees with this finding and we feel the time to make this change is now.

<sup>(1)</sup>Trash Talk: Rethinking the Waste Management RFP Process by the SBWMA – 2009, Finding 13, p 16 & Conclusion 2, p. 16

- 3) Do organizational issues, whether real or perceived, persist within the SBWMA and are they further eroding confidence in SBWMA by both elected officials and the public?

The previously mentioned 2009 Grand Jury Report pointed to concerns with the role the Executive Director played in the solid waste collection bidding process, and called into question the conduct of SBWMA management <sup>(2)</sup>. In the last year, there have been headlines in the paper regarding the budget recommendations presented by SBWMA staff, and personnel decisions by the Executive Director have also come under intense public and media scrutiny. Whether or not these issues were grounded is not the only concern in the court of public opinion. What also matters is the way these issues are managed and who is ultimately accountable. It is this Council's view that these issues could have been handled more appropriately, had there been more appropriate oversight at the board level. As a public entity, it is the elected officials who are ultimately accountable.

In summary, stewardship of significant public funds, accountability to the public, and proper oversight of a transparent public agency is what citizens demand from their elected officials. In looking at similar agencies throughout Northern California, the Blue Ribbon Task Force found them all to have elected officials on their respective boards. This is clearly a best practice that, with all due respect, the current Grand Jury apparently overlooked. Based on the above the City Council of Redwood City respectfully disagrees with many of the key findings and recommendations in the Grand Jury Report "South Bayside Waste Management Authority Board – Elected Officials or Senior Management Staff."

Below are the City Council's specific responses to the findings and recommendations in the report.

#### FINDINGS

F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.

*Response: The City agrees with this finding. This is one of several reasons why the composition of the board should be changed. Elected officials are directly accountable to the public.*

F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.

*Response: The City does not agree with a portion of this finding. SBWMA's organizational structure is not particularly complex compared to most municipal and governmental organizations. However, the City does agree that the organizational structure is not well understood by the public.*

<sup>(2)</sup>Trash Talk: Rethinking the Waste Management RFP Process by the SBWMA – 2009, Finding 11 & 12, 13, p 16 & Conclusion 2, p. 16

F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.

*Response: The City does not agree with this finding. The rates and the process of setting fees is no more difficult than it is with other utilities. However, since the board is made up of staff officials, the general public does not pay as much attention to the issue as it does when such matters are determined by those the public holds accountable – elected officials. Therefore the City believes that this finding supports appointing elected officials to the board.*

F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.

*Response: The City does not have enough information to agree or disagree with this finding.*

F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.

*Response: The City does not agree with this finding. Elected officials do not approve the actual budget of the SBWMA, they do not set policy of the SBWMA, they do not appoint the Executive Director, and they do not have a voice in discussions relative to land use decisions. A recent review of SBWMA Board Agendas revealed that a great number of items were clearly higher-level, critical issues more suited for decision making by elected officials. Moreover, the relative professional levels of staff serving on the Board varies widely. For example, a City Manager who sits on the board from one city will inherently have more influence over the board than a lower-level staff appointee from another agency. With a board of elected officials, all member agencies will be represented consistently, on a "level playing field."*

F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.

*Response: The City does not agree with this finding. The previously mentioned 2009 Grand Jury Report recommended that elected officials serve on the board. The Grand Jury recommended this based on its Finding #2 which stated "Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA." Redwood City responded to this recommendation in 2009 that the staff-composed board arrangement should continue but that the City Council may elect to revisit this matter in the future.*

*Since the 2009 report, concerns over the operations and management of SBWMA, whether real or perceived, continue to fall under public scrutiny. As elected officials ultimately responsible for all actions taken by the SBWMA, it is time for elected officials to serve on the board and provide the level of oversight which the public expects and deserves. Furthermore, a recent survey prepared for the Blue Ribbon Task Force of similar types of joint powers authorities (JPAs) revealed that all had boards comprised of elected officials. Those similar JPAs include Alameda*

County Waste Management Authority, Central Contra Costa Solid Waste Authority, Salinas Valley Solid Waste Authority, San Mateo County Library, South Bayside System Authority, and Bay Area Water Suppliers and Conservation Agency (BAWSCA).

F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.

*Response: The City agrees with this finding. The Blue Ribbon Task Force recommended the establishment of a Technical Advisory Committee when an elected board is seated. Redwood City, when approving the governance change amendment, also made a motion to have the new board establish a Technical Advisory Committee.*

### **RECOMMENDATIONS**

R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.

*Response: The City agrees with this recommendation. The City believes that when elected officials serve on the board, they will be better situated to understand the information needs of their constituents, than are the staff now serving. Therefore, this finding supports the governance board being changed to elected officials.*

R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemize all fees charged by the Member Agency.

*Response: The City does not have enough information to respond to this recommendation. The Council has not received a significant number of complaints regarding the billing statements and would like the opportunity to see what information is included in billing statements mentioned in the report. The Council will ask, through the Council's board appointee, to have the new board look into this recommendation.*

R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.

*Response: The City does not agree with this recommendation. See the City's response to Finding #6, above.*

R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.

*Response: The City agrees with this finding. See the City's response to Finding #7, above.*



September 13, 2013

Honorable Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: RESPONSE TO GRAND JURY REPORT: "SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD - ELECTED OFFICIALS OR SENIOR MANAGEMENT STAFF"

Dear Judge Livermore:

The South Bayside Waste Management Authority (SBWMA) is in receipt of the Grand Jury's Report entitled, "South Bayside Waste Management Authority (SBWMA) Board-Elected Officials or Senior Management Staff". Pursuant to your June 17, 2013 directive to respond, the SBWMA Board held a public meeting on September 12, 2013, and approved this letter and the responses included herein.

The SBWMA Board's specific responses to the Grand Jury's "Findings" and "Recommendations" in the report are as follows:

**FINDINGS**

**F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.**

*Response: Respondent agrees with this Finding.*

The public's concern over rate increases has been conveyed by some of the members of the Blue Ribbon Task Force at their meetings and in quotes in newspaper articles. However, the new franchised collection services have been overwhelmingly well-received based on the findings of a statistically significant 2012 Residential Customer Satisfaction Survey. Based on the survey findings, a total of 88.2 percent of the

residents surveyed said they were “very satisfied” and “somewhat satisfied” overall with the CartSMART Recycle, Compost and Garbage collection services, while only 6.4 percent said they were “somewhat dissatisfied” or “very dissatisfied.”

The setting of rates by the SBWMA Member Agencies is a complex issue, of which many factors regularly contribute to the annual adjustments made to the rates charged to residents and businesses. It is important to note that the rates are annually set by each SBWMA Member Agency and therefore vary by jurisdiction. Issues that affect rates include, but are not limited to: the Franchise and other fees charged by each Member Agency, revenue fluctuations, disposal and processing costs, the type and frequency of services, number of commercial businesses in a Member Agency, number of households, the amount of time it takes to service the businesses and households, progressive rate structures, size of lots, number of compost carts allowed per resident with no additional fees, and legacy costs to pay off debt to Allied Waste, among others.

The new collection services franchise agreements with Recology San Mateo County provide the foundation for a more stable and predictable rate structure compared to the old franchise agreements with Allied Waste, as Recology’s compensation adjustments are based almost exclusively on indices (e.g., once the initial collective bargaining agreement labor adjustments are phased out, this significant cost component will also be fixed to CPI) as opposed to the cost-plus adjustments that occurred through the Allied Waste agreements.

It should also be pointed out that rate adjustments based on the new franchise contracts have decreased significantly when comparing 2013 against 2012 and 2012 vs. 2011. Five of twelve Member Agencies had no rate increases in 2013, and one Member Agency opted to increase rates even though it was not required. Starting in 2014, the compensation adjustment for Recology will be largely based on indices as the legacy collective bargaining agreement labor cost adjustments will be completely phased out. This should keep any Recology compensation adjustments at or below CPI.

**F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.**

*Response: Respondent partially agrees with this Finding.*

The organizational structure itself is not complex, and is fairly standard for a special district in that it has a Board of Directors, an Executive Director and staff.

As the SBWMA is neither the franchised collection services provider nor a typical government entity like a city or county, though, it has been challenging to educate the public on the nuances of specifically what the SBMWA is and what it does as a public Agency.

For public outreach purposes, efforts have been made to uniquely brand or identify the Agency separately from Recology or the Shoreway facility operator South Bay

Recycling. However, significant spending would be required to properly measure and identify the level of public knowledge of what the SBWMA does and its unique roles and responsibilities versus the contractors it manages and then to develop an outreach plan to improve residents understanding.

**F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.**

*Response: Respondent agrees with this Finding.*

As stated in the second paragraph of the first Finding, the setting of rates by the SBWMA Member Agencies is a complex issue of which many factors regularly contribute to the annual adjustments.

**F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.**

*Response: Respondent neither agrees nor disagrees with this Finding.*

This is a decision that needs to be made independently by each Member Agency as they are each individually responsible for rate adjustments. While in general the SBWMA is certainly in favor of heightened transparency and educating the public about the cost components of the solid waste rates charged to customers, each Member Agency sets its rates, including any fees included in such rates. Therefore, the SBWMA has a limited role in the final setting of specific rates (e.g., by service level or service sector) as this is a decision solely made by the governing bodies of each individual Member Agency.

**F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.**

*Response: Respondent disagrees with this Finding.*

The revised Board governance enacted on July 24, 2013 now provides for elected officials on the Board of Directors. The change enhances the decision-making process as one elected official from each Member Agency is now directly involved in all major decisions approved by the JPA.

**F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.**

*Response: Respondent disagrees with this Finding.*

Effective July 24, 2013 the SBWMA JPA Agreement was amended to change the composition of the Board of Directors from Member Agency staff to an elected official from each Member Agency.

**F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.**

*Response: Respondent agrees with this Finding.*

The current collection services franchise agreements with Recology between the company and each Member Agency, and the facility operations agreement between the SBWMA and South Bay Recycling (SBR) are both complex contracts and require in-depth insight, understanding and ongoing knowledge of the key contract provisions and the performance of the contractors.

The SBWMA also is a special district focused specifically on solid waste and recycling issues. Thus, it would make sense to retain and leverage the institutional knowledge of the previous Board Members in the form of a technical advisory committee.

On August 22, 2013 the new Board of Directors approved creation of a TAC.

## **RECOMMENDATIONS**

**R5. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process through a variety of media.**

*Response:* The SBWMA, also known as RethinkWaste to the general public, made a major effort to inform the public on who the Agency was, its role, the rate setting process and overall education on the programs and services throughout the rollout of the new franchised collection services in late 2010 and 2011. The SBWMA took the lead in public education on the rollout of the new services and thus a cost effective opportunity was taken advantage of to increase awareness of RethinkWaste. This included numerous community meetings held in each Member Agency, staffing booths at community events to answer questions, as well as outreach materials through the form of bill inserts, mailers and advertisements. In addition, the Agency's website, Rethinkwaste.org, was updated to include this information and social media outreach was initiated through dedicated Facebook and Twitter sites.

In 2012, a dedicated section was added to the RethinkWaste.org website to specifically address residential rates. This includes the following:

- Introduction
- Frequently Asked Questions
- The Daily Journal Editorial



The above-referenced pages can be found at <http://www.rethinkwaste.org/residents/residential-garbage-rates/introduction>.

In addition, in January 2012, the SBWMA launched its School Groups and Public Tour programs at the Shoreway Environmental Center. The tours not only educate attendees on the programs and services, and what happens to the materials once they are collected, but also again on who the Agency is, its role and relationship with Recology, SBR and the Member Agency, as well as rates. Over 5,000 people toured the facility in 2012, and the SBWMA anticipates more will tour the facility in 2013.

Most recently, SBWMA Staff also developed Member Agency specific Snapshot Reports for 2012 that were provided to each Member Agency in April 2013. These snapshot reports provided information on how each Member Agency is doing related to the programs and services available to them, as well as service area wide information, public education and outreach efforts and future projects. Member Agencies were encouraged to share these reports with their communities and SBWMA Staff was available to present them at public meetings upon request.

On August 19, 2013 the SBWMA launched a redesigned website to make it more convenient for the general public to use and learn about the programs, services and the Agency.

In addition, a mobile application is also being developed for a launch late summer/early fall that will further help reach the general public and tech savvy individuals who rely more and more on their smart phones for information.

Other activities planned for fiscal year 2014 include:

- The SBWMA will be developing a website template on solid waste rates that will be shared with each Member Agency.
- The SBWMA Staff is working with the City of Redwood City on developing a pictorial diagram that helps tell the full story of services, rates and the roles of the various entities involved. It is anticipated that this will be ready later this summer/early fall. The SBWMA will work with the Member Agencies on how to further develop and use this new tool over the next fiscal year.
- The SBWMA will be reviewing its site signage at the Shoreway facility to identify new ways to convey operational messages to the public including the fact that the facility is publicly owned.

The SBWMA will continue to look for new and ongoing opportunities to continue educating the public throughout 2013 and beyond about its operations, the role of its franchisees and the rate setting process through a variety of media, including websites, social media, community events, mailers and other outreach opportunities.

In addition, the SBWMA will work closely with the Member Agencies, Recology and SBR in these efforts.

## **COMMENTS**

The SBWMA would like to thank the Grand Jury for its thoughtful and careful report on all the issues it reviewed. We would like to respectfully point out a few clarifications regarding statements made in the report as follows:

### **SUMMARY SECTION OF REPORT**

- The report states the Shoreway facility was built at a cost of approximately \$17 million. While the Shoreway MRF building cost approximately \$17 million there were approximately \$29 million in additional capital improvements including but not limited to the new single stream processing equipment, expanded Transfer Station building, new traffic lanes and scales, new public recycling center, etc.
- The report references the “SBWMA’s waste hauler” but it should be noted that the individual Member Agencies hold contracts with a waste hauler, not the SBWMA.

### **BACKGROUND SECTION OF REPORT**

- The franchise agreements between the Member Agencies and BFI expired on December 31, 2010 and not January 1, 2011.
- The report references the “SBWMA’s new franchise waste hauler” but it should be noted that the individual Member Agencies hold contracts with a waste hauler, not the SBWMA.

### **DISCUSSION SECTION OF REPORT**

- The report references the State diversion requirements increasing to 75% by 2017. This is actually a statewide goal of 75% by 2020, and not a local mandate on cities and counties at this time.
- A statement is made that the SBWMA’s administrative operations were initially performed by City of San Carlos staff which is partially true. Such operations were also performed by contract staff and consultants.
- In September 2006, the SBWMA hired its first Executive Director and not “a day to day operations manager.”
- In 2000 the SBWMA, not its Member Agencies, issued revenue bonds.
- A statement is made that Allied Waste “had a cost plus contract with the SBWMA” which is true as it related to operations of the Shoreway facility only. Allied Waste, formerly BFI, also had separate cost plus contracts (i.e., franchise agreements) with each Member Agency for collection services.
- The report states incorrectly that, “Another cause for increasing rates is that the Ox Mountain dumping facility increased its rates because less waste was being delivered to it as a result of increases in recycling.” Since January 1, 2005, the SBWMA has had a disposal agreement with Ox Mountain based on a fixed price per ton which is annually adjusted by 80% of CPI excepting any pass through costs such as government fees. Another beneficial provision is that the SBWMA has a “most favored nations” status, which means that if a lower rate is charged by Allied to another jurisdiction, this lower rate would apply to the SBWMA. This

Honorable Richard C. Livermore

September 13, 2013

agreement expires on December 31, 2019. However, San Mateo County increased its fees, charged as a pass-through by the landfill, in July 2010.

Please let us know if there are any further matters for response or clarification.

Sincerely,

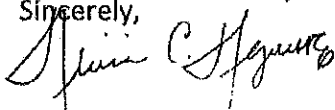
  
Chairperson of the Board of Directors

Finally, the City Council must express our disappointment and frustration with the timing of the Grand Jury's report and the apparent insufficiency of its research and analysis on this issue. In terms of the timing, the Grand Jury decided to look into this matter once a body of elected officials comprised of member agencies decided to analyze it. We undertook this effort because we have serious concerns about the oversight and management of SBWMA that have lingered since the Grand Jury's 2009 report. One perception is that it would appear as if an appointed body of grand jurors was attempting to assume the work of elected officials and intervene on the SBWMA's behalf.

In terms of performing adequate research, the Blue Ribbon Task Force-directed study of similar agencies found that it is common for elected officials to serve on their boards. This is fundamentally a core function of being an elected official. To suggest elected officials are too busy or lack technical knowledge to give policy direction is antithetical to the primary structure of government which is led by elected officials. We devote ourselves to public service and work cooperatively with staff to get the information and analysis we need to make sound public policy decisions. We hold staff accountable for their work and performance and it is time we do the same for SBWMA.

Thank you for allowing us to respond to your report and share our perspective.

Sincerely,



Alicja C. Aguirre.  
Mayor

Cc: Redwood City, City Council  
Robert B. Bell, City Manager



*Serving Our Community Since 1902*

500 Laurel Street, Menlo Park, California 94025-3486 (650) 321-0384 (650)321-4265 FAX

PHIL SCOTT  
District Manager

In reply, please refer to our  
File No.

August 15, 2013

Honorable Richard C. Livermore  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Grand Jury Report: South Bayside Waste Management Authority (SBWMA) Board – Elected Officials or Senior Management Staff

Dear Judge Livermore,

Thank you for your service and efforts to examine the SBWMA. West Bay Sanitary District (District) believes periodic examination of the efficiency and transparency of public operations is useful. Prior to responding to the findings and recommendations, the District Board would like to provide comments regarding the general conclusions of the Grand Jury report.

The District respectfully disagrees with the Grand Jury's overall conclusion regarding the current management and oversight structure of SBWMA. Response to your specific Findings and Recommendations are provided later in the letter.

The District believes the SBWMA Board of Directors should be composed of elected officials. The inherent accountability of elected officials provides a direct link to the "customers" (rate payers) of the solid waste services. While there is no doubt regarding the sincerity of the current "staff" board members, there is no certainty they either live in the service area or pay the rates that have become an increasing issue of concern amongst ratepayers (voters). Elected officials are required to be residents in their respective areas. This rationale was confirmed in the Grand Jury Report of 2008-09 "Trash Talk".

Further, the District Board is disappointed the largest cost centers of the total SBWMA operations were not given greater scrutiny. The District Board encourages a rigorous investigation focused on rate of return on investment and operations efficiency of both the Collection operations (Recology) and the Transfer Center.

The Grand Jury report points to the large public investment made in the transfer station. This raises the question "What is the use rate vs. the capacity of the facility"? And "Is it being used efficiently to bring the promised rate of return when the investment in the facility was first justified"? If yes, then the citizens can be satisfied good decisions were made. If no, what adjustments can be made? What other markets could the facility serve to achieve greater utilization and ROI?

The District responses to the Grand Jury specific Findings and Recommendations are as follows:

### **2012-2013 Grand Jury Report Findings:**

The 2012-2013 San Mateo County Grand Jury found that:

**F1. One reason behind wanting to change the composition of the Board appears to stem from the public's concern over rate increases and service changes.**

The District agrees that there is significant public concern over rate increases and service charges; however we do not believe that the concern is directly tied to composition of the Board.

**F2. The organizational structure of SBWMA is a complex issue that the public does not well understand.**

The District agrees that there is not a clear public understanding of the organizational structure of SBWMA, nor of the elements which drive the costs of service delivery.

**F3. The rates and the process of setting them are difficult to understand because so many variables, such as added city fees, come into play.**

The District is aware of the complex process of establishing rates for types of service to meet unique member-agency requirements in the form of added city fees, client-driven service options and environmental legislation.

**F4. Customers would benefit from receiving itemized billing statements that show charges imposed by Recology and additional fees imposed by the relevant Member Agency.**

The District believes if itemization is deemed desirable, it include both those fees imposed by the applicable Member Agency and those relevant to the SBWMA Shoreway operation. The District believes that it is the obligation of the Member Agency to disclose any additional fees added to the negotiated rate structure. If billing itemization, by Recology, is the agreed upon methodology for each Member Agency, then the applicable fee structure relevant to SBR and SBWMA should be included. Prior to implementation of itemized billing Recology must estimate and report the cost of including itemization in the billing structure.

**F5. Elected officials already have sufficient influence in the decision-making process because the governing body of each Member Agency must approve major decisions such as contracts and rate increases.**

The District can only comment on West Bay Sanitary District as a member Agency where we believe that there is direct communication with the elected officials. Other member agencies may adhere to the same or different means of communication and feedback.

**F6. There is no demonstrable advantage to changing the Board composition from only senior management staff to only elected officials.**

The District disagrees with this finding. The 2008-09 Grand Jury Report "Trash Talk" recommended that elected officials serve on the Board. The Grand Jury stated "Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA." The District believes that changing the Board composition to only elected officials will have an immediately demonstrable advantage of making SBWMA more accountable to the public by having its Board members be directly accountable to the voters. Additionally, not all Senior Staff are equal in rank, experience and accountability.

**F7. A technical advisory committee would be useful to a Board composed solely of elected officials if the Restated Agreement is amended to change SBWMA's governance structure in this manner.**

The District agrees that a technical advisory committee could be useful to either a Board composed solely of elected officials or a Board comprised of Member Agency staff positions which now currently include multi-functional disciplines.

## **2012-2013 Grand Jury Report Recommendations**

The 2012-2013 San Mateo County Civil Grand Jury recommends that, each *Member Agency of SBWMA* do the following:

**R1. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process.**

The District agrees with this recommendation. However we believe that it is the responsibility of SBWMA to provide this information to all member agencies so that each rate-payer, irrespective of geographic boundaries or Member Agency, receives timely, consistent, accurate information.

**R2. Request that Recology prepare a detailed billing statement for its customers that shows all charges imposed by Recology and itemizes all fees charged by the Member Agency.**

The District does not intend to implement a detailed billing statement since it does not include additional fees in its rate structure. The District has not received any complaints regarding the billing statements.

**R3. Continue to appoint only senior management staff to the Board as stipulated in the 2005 Agreement.**

The District has approved an Amended Restated Agreement supporting a SBWMA Board comprised of Elected Officials.

**R4. If the Restated Agreement is amended to provide for a Board composed solely of elected officials, then put in place a technical advisory committee consisting of staff with technical experience in waste management.**

The District believes this recommendation may require further analysis and many technical advisory functions can be performed by existing member agency staff. The District is in the process of assigning its Solid Waste Franchise to San Mateo County and may not need to assign a technical advisory representative to the TAC.

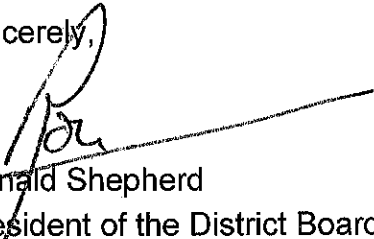
*The Grand Jury recommends that the SBWMA Board do the following:*

**R5. Disseminate more information to the public about SBWMA's operations, the role of its franchisees, and the rate setting process through a variety of media.**

The District believes that public awareness is critical to the understanding of environmental laws, policies and future direction that drive our current and future practices. This responsibility, as part of an environmental education program, rests with SBWMA. So long as West Bay Sanitary District remains a member agency of the SBWMA, the District supports the recommendation to have SBWMA increase its dissemination of information regarding its operation, role of franchisees, and the rate setting process. The District would also expand the information to include cost and productivity data from SBWMA and Recology.

Thank you again for your efforts in this matter and allowing the District to respond to the Grand Jury report and share the District's thoughts and opinions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron', is written over a horizontal line. The signature is stylized and cursive.

Ronald Shepherd  
President of the District Board of the  
West Bay Sanitary District

Cc: West Bay Sanitary District Board  
Phil Scott, District Manager