

# REPORT

To the Honorable Mayor and City Council  
From the City Manager

September 8, 2008

## SUBJECT

Agreement between the South Bayside Waste Management Authority, (SBWMA) and the City of San Carlos Related to the Shoreway Recycling and Disposal Center

## RECOMMENDATION

By resolution, approve an agreement between the SBWMA and the City of San Carlos related to the Shoreway Recycling and Disposal Center (SRDC).

## BACKGROUND

The SRDC was initially constructed in 1982 by Browning Ferris Industries (BFI) pursuant to a conditional use permit (CUP) issued by the City of San Carlos. The CUP was conditioned on BFI and San Carlos entering into an agreement providing San Carlos with a "franchise fee" in order to offset impacts from the SRDC's location and operation in San Carlos. BFI signed a contract in 1982 which entitled San Carlos to five percent (5%) of the gate fee revenues received at the SRDC.

The SBWMA, of which Redwood City is a member, purchased the SRDC in 2000. The 1982 contract between San Carlos and BFI expired in 2004, but fees in the amount of 5% of revenues have continued to be paid to the City of San Carlos.

The SBWMA's Joint Exercise of Powers Agreement, as amended and restated in December 2005 (JPA Agreement), calls for (sections 12.6 and 12.7) the City of San Carlos to receive a franchise fee from the operation of SRDC. Due to an oversight in drafting, the JPA Agreement does not specify the exact amount of the fee.

The proposed agreement will provide for the continued payment to the City of San Carlos of 5% of the gate fee revenues earned at the SRDC, the same amount San Carlos has received since the facility opened in 1982. The new agreement makes clear that the fee does not apply to the revenues received by SBWMA from the sale of recyclable materials.

The City Council of San Carlos unanimously approved the agreement at its July 14, 2008 Council meeting while the SBWMA Board approved the agreement on July 24, 2008. Governing bodies of at least eight of the twelve SBWMA member entities must approve this agreement in order for it to become effective.

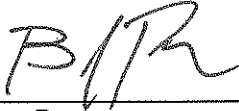
## ALTERNATIVES

If at least eight of the twelve member entities' governing boards do not approve this agreement the SBWMA staff will need to renegotiate this agreement with the City of San Carlos. Should these parties be unable to reach an agreement the absence of such an agreement could cause San Carlos not to issue a conditional use permit for the improvements the SBWMA is planning to make to the SRDC. This in turn could

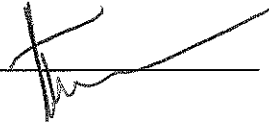
jeopardize the SBWMA's plan for service improvements which include single stream recycling.

**FISCAL IMPACT**

The City of Redwood City's approval of the agreement between the SBWMA and the City of San Carlos will provide for the continued payment of fees in the amount of 5% of gate fee revenue from the SRDC. The dollar amount of the fees will vary each year but the average has been approximately \$1.2 million per year for the last several years, of which 21.1% or \$253,000 is paid by Redwood City ratepayers.



\_\_\_\_\_  
Brian Ponty  
Director of Finance



\_\_\_\_\_  
Peter Ingram  
City Manager

**ATTACHMENTS**

1. Resolution to Approve an Agreement between South Bayside Waste Management Authority and the City of San Carlos
2. Agreement between City of San Carlos and South Bayside Waste Management Authority

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY OF REDWOOD CITY FOR APPROVAL OF AN AGREEMENT BETWEEN THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA) AND THE CITY OF SAN CARLOS RELATED TO THE SHOREWAY RECYCLING AND DISPOSAL CENTER**

**WHEREAS**, the South Bayside Waste Management Agency (SBWMA), of which Redwood City is a member, owns a transfer station and materials recovery facility located in the City of San Carlos known as the Shoreway Recycling and Disposal Center (the SRDC Facility); and

**WHEREAS**, the SBWMA's Joint Exercise of Powers Agreement as amended and restated in December 2005 contemplates that the SBWMA and the City of San Carlos will agree upon the amount of a franchise fee that San Carlos will receive from the operation of the SRDC Facility in order to offset impacts to San Carlos that occur as a result of the Facility being located in San Carlos; and

**WHEREAS**, the SBWMA and the City of San Carlos desire to enter an Agreement setting forth the terms and conditions on which a franchise fee will be paid to San Carlos.

**WHEREAS**, the SBWMA Board of Directors approved the Agreement on July 24, 2008, including a franchise fee of 5% of the gate fee revenues, and is seeking concurrence of two-thirds of the member agencies.

**NOW THEREFORE, BE IT RESOLVED, BY THE COUNCIL OF THE CITY OF REDWOOD CITY, AS FOLLOWS:**

1. That the City of Redwood City adopts the Agreement between the City of San Carlos and the South Bayside Waste Management Authority in connection with the Shoreway Recycling and Disposal Center, attached hereto and incorporated herein as Exhibit 1.

**AGREEMENT**

This Agreement ("Agreement") is entered into as of the 24<sup>th</sup> day of JULY, 2008, by and between the CITY OF SAN CARLOS, a municipal corporation ("City") and the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a joint powers authority established under Government Code Section 6500 *et seq.* ("Authority"), in connection with the Shoreway Recycling and Disposal Center ("SRDC Facility").

**RECITALS**

A. The members of the Authority are City, the cities of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, San Mateo and Redwood City, San Mateo County and the West Bay Sanitary District.

B. The SRDC Facility is a transfer station and materials recovery facility owned by the Authority and located within the City, adjacent to U.S. Highway 101.

C. Municipal solid waste and recyclable materials collected within each of the local government agencies that are members of the Authority are delivered to the SRDC Facility for processing. Recyclable materials are recovered for sale or further processing at off-site facilities and residual wastes are delivered in large transfer trucks to the Ox Mountain Landfill.

D. The SRDC Facility was initially constructed in 1982 by Browning Ferris Industries ("BFI") pursuant to a conditional use permit issued by the City to BFI. The Authority purchased the SRDC Facility in 2000. The Authority now desires to reconstruct, expand, and otherwise improve the SRDC Facility, and as further described in Section 6 of this Agreement, has applied to City for a new conditional use permit ("New CUP") for that purpose.

E. The City and BFI entered into a "Franchise Agreement" in June 1982 which provided that BFI would pay the City five percent (5%) of the Gate Fee Revenues received by BFI for delivery of materials to the Shoreway Facility in order to, among

other things, compensate the City for impacts related to the construction and operation of the SRDC Facility within the City. The Franchise Agreement expired in 2004. Notwithstanding, its expiration, the City has continued to receive five percent (5%) of Gate Fee Revenues received at the SRDC Facility. Moreover, the Authority's Joint Exercise of Powers Agreement, as Amended and Restated in December 2005, provides in relevant part; "Monthly, SBWMA shall distribute to the City of San Carlos from funds received from Contractor (i.e., the operator of the SRDC Facility), one twelfth (1/12th) of the annual franchise fee agreed to by SBWMA and the City of San Carlos for the operation of the Facilities."

F. The purpose of this Agreement is to memorialize the agreement between the City and the Authority referred to in the Amended and Restated Joint Exercise of Powers Agreement described in Recital E, with respect to the franchise fee.

THE PARTIES AGREE AS FOLLOWS:

**1. FRANCHISE FEE**

A. Amount. The Authority shall pay to City an amount equal to five percent (5%) of the Gate Fee Revenue received by the Authority (or by the company which operates the SRDC Facility under contract to the Authority) for the delivery of materials to the SRDC Facility for processing and/or disposal. "Gate Fee Revenue" means funds attributable to the delivery of materials for deposit at the SRDC Facility for transfer and/or processing. Gate Fee Revenue specifically includes all gate fees paid by franchised haulers delivering materials collected within the members of the Authority, as well as gate fees paid by self-haul customers. "Gate Fee Revenue" does not, however, include any sums received by the Authority from the sale of Recyclable Materials or from the operator as liquidated damages or other payments related to inadequate performance by the operator.

B. Timing of Payments. Payments will be made monthly, on or before the fifteenth (15th) of each month. If the due date falls on a weekend or holiday, payment shall be due on the first day thereafter on which the City's business office is open. The

payment will be equal to five percent (5%) of the Gate Fee Revenue received by Authority during the calendar month immediately preceding the date payment is due.

C. Future Changes to Operations/Franchise Fee Calculation. Should the means by which charges for delivery of materials to the SRDC Facility materially change such that the franchise fee contemplated in this Agreement is significantly reduced or increased, the parties agree to meet and negotiate with each other in good faith in an effort to modify the franchise fee set forth herein in a fair and equitable manner such that their intent as set forth in this Agreement is achieved.

## **2. TONNAGE REPORTS**

Authority will provide City quarterly with a report, prepared by the company operating the SRDC Facility, showing the total tons of materials delivered to the SRDC Facility. The report will be delivered to City concurrently with its delivery to Authority.

## **3. RECORDS**

Authority will maintain records of its financial affairs as required by California law and the Joint Exercise of Powers Agreement. City, as a member of Authority, is entitled to inspect such records at any time. These records will include accounts of all Gate Fee Revenue received for delivery of materials to the SRDC Facility.

## **4. INSPECTION**

The City may inspect the SRDC Facility during its normal hours of operation.

## **5. INDEMNITY/INSURANCE**

The Authority will require in its contract with any third party for operation of the SRDC Facility that such party (a) indemnify the City to the same extent that it indemnifies the Authority against liability arising out of the operation of the SRDC Facility, and (b) name the City as an additional insured on the policies of liability insurance which the Authority will require such operator to maintain.

**6. LAND USE APPROVAL**

As a local governmental entity, the Authority maintains that it is not subject to City zoning or building regulations with respect to the SRDC Facility and that it is not required to obtain a conditional use permit from City for the planned reconstruction and improvement of the SRDC Facility. City disagrees with this position. Rather than dispute the issue, as a matter of comity and in the spirit of mutual respect and cooperation, the Authority has applied for such a permit. This application is not intended as, and shall not be construed to be, a waiver of the Authority's claim of immunity from City land use jurisdiction.

**7. SOLE OBLIGATION**

The Franchise Fee provided for in this Agreement is the sole financial obligation of Authority to City for the mitigation of impacts resulting from the location and operation of the SRDC Facility in City.

**8. ASSIGNMENT**

Neither party may assign this Agreement, nor any rights arising under it, without the prior written consent of the other party.

**9. BINDING ON SUCCESSORS**

This Agreement shall benefit, and be binding on, the successors in interest to either party, including specifically any successor in the Authority's interest in the SRDC Facility. If City wishes to record a memorandum of this Agreement to further ensure that it will be binding on any third party which purchases the SRDC Facility, the Authority will execute such a memorandum.

**10. EFFECTIVE DATE**

This Agreement shall be effective at such time as it is duly executed by both City and the Authority.

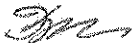
**11. TERM**

This term of this Agreement shall begin as provided in Section 10, and shall remain in force and effect so long as the New CUP is in effect.

**12. NOTICE**

All notices under this Agreement shall be in writing and shall be personally delivered or deposited in the United States mail first class postage prepaid, return receipt requested, addressed as follows:


TO CITY: City of San Carlos  
Attention: City Manager  
600 Elm Street  
San Carlos, CA 94070

TO AUTHORITY: South Bayside Waste Management Authority  
Attention: Executive Director  
610 Elm Street, Suite 202  
San Carlos, CA 94707 94070 

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

*[Signatures on next page]*

CITY OF SAN CARLOS

By: 

Brad Lewis, Mayor

Dated: 7/14-08

Attest: 

Christine Boland, City Clerk

Approved as to Form:



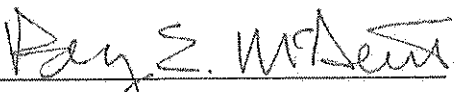
A. Patrick Munoz, Special Counsel

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By:   
Larry Patterson, Chairman

Dated: July 24, 2008

Approved as to Form:



Ray E. McDevitt, Special Counsel