File No. 101225

Committee Item No. 9
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Sub-Committee **Date:** July 20, 2011

Board of Supervisors Meeting **Date** _____

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Completed by: Victor Young **Date:** July 15, 2011
Completed by: Victor Young **Date:** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

FILE NO. 101225 RESOLUTION NO.

[Landfill Disposal and Facilitation Agreements – Recology San Francisco]

Resolution approving a ten-year Landfill Disposal Agreement and Facilitation Agreement with Recology San Francisco under Charter Section 9.118.

WHEREAS, The California Department of Resources Recycling and Recovery requires that the City have a plan for 15 years of landfill disposal capacity; and

WHEREAS, The Department of the Environment estimates that the City will exhaust its landfill disposal capacity under the current agreement with Waste Management of Alameda County, Inc., by 2014 or 2015; and

WHEREAS, The Department of the Environment issued a Request for Proposals for Landfill Disposal Capacity on February 9, 2009, and subsequently selected Recology San Francisco as the highest qualified scorer under the Request for Proposals; and

WHEREAS, A copy of the proposed Landfill Disposal Agreement and Facilitation Agreement are on file with the Clerk of the Board of Supervisors in File No. 101225 and are hereby declared to be a part of this Resolution as if set forth fully herein; and

WHEREAS, Under the Landfill Disposal Agreement, Recology San Francisco ("Recology") would grant the City, upon expiration of the current agreement, the right to deposit at Recology's landfill all solid waste collected in the City until December 31, 2025, or until 5 million tons have been deposited; and

WHEREAS, The City would in turn designate Recology's landfill as the exclusive site for disposal of solid waste collected in the City; and

WHEREAS, The City would not be required to pay for the right to deposit solid waste at the landfill, but would authorize Recology to charge waste haulers "tipping fees" specified in the Agreement; and

WHEREAS, Under the Facilitation Agreement, Recology would agree to specific limits on transportation costs in connection with rail transportation of solid waste collected in the City; and

WHEREAS, The City would in turn provide Recology with assurances regarding reimbursement of Recology's costs to develop the contemplated rail transport system through the fees Recology is allowed to charge waste haulers and the rates that waste haulers are permitted to charge customers;

WHEREAS, San Francisco Charter Section 9.118 requires the Board of Supervisors to approve contracts having a term of more than 10 years; now, therefore, be it

RESOLVED, That the Board of Supervisors under Charter Section 9.118 approves the Landfill Disposal Agreement and Facilitation Agreement for terms exceeding 10 years; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the Department of the Environment to execute agreements in substantially the form of the Landfill Disposal Agreement and Facilitation Agreement on file with the Clerk of the Board of Supervisors; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the Department of the Environment to enter into any additions, amendments, or other modifications to the Landfill Disposal Agreement and Facilitation Agreement (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits, appendices, or ancillary agreements) that the Director, in consultation with the City Attorney, determines to be in the best interest of the City, do not materially increase the obligations or liabilities of the City or materially decrease the public benefits accruing to the City, and are necessary or advisable to complete the transactions contemplated and to effectuate the

purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of any such documents; and, be it

FURTHER RESOLVED, That the Board of Supervisors approves and ratifies all prior actions taken by the officials, employees, and agents of the Department of the Environment and the City with respect to the Landfill Disposal Agreement and Facilitation Agreement.

Item 9 File 10-1225 *(continued from April 20, 2011)*	**Department(s):** Department of the Environment (DOE) Port

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the Department of the Environment (DOE) to execute a new Landfill Disposal Agreement with Recology San Francisco (Recology) which, beginning in 2015 and extending for a term of up to ten years, would (a) designate Recology's Ostrom Road Landfill in Yuba County, California, as the City's exclusive landfill site, and (b) allow for the deposit of up to 5,000,000 tons of solid waste collected in San Francisco into that landfill.

- The proposed resolution would also approve an amendment to an existing Facilitation Agreement (the Amended Facilitation Agreement) between DOE and Recology which governs the consolidation of refuse collected in the City and transportation of that refuse to the City's designated landfill site. The proposed amendment would require Recology to (a) transport refuse to the City's new designated landfill site in Yuba County (instead of the current designated landfill site in Livermore, California), and (b) transport such refuse primarily by rail, instead of through the current exclusive trucking method.

Key Points

- Refuse collection in the City is governed by the City's Refuse Collection and Disposal Ordinance of 1932, as previously approved by the voters of San Francisco, which requires that only permitted refuse haulers collect and transport refuse "through the streets of the City and County of San Francisco." The ordinance created 97 permanent permits, which, due to a number of acquisitions since the ordinance was approved, are currently all owned by Recology. Therefore, the Refuse Collection and Disposal Ordinance of 1932 has resulted in Recology becoming the exclusive and permanent refuse collector without Recology ever having gone through the City's normal competitive bidding process.

- The only portion of the refuse collection and disposal process subject to competitive bidding has been the award of the landfill site where the City's refuse is finally disposed. Under an existing Landfill Disposal Agreement with Waste Management of Alameda County (Waste Management), Waste Management's Altamont Landfill site in Livermore, California is the City's current designated landfill site, which allows for the deposit of up to 15,000,000 tons of refuse in that landfill site.

- The Department of the Environment (DOE) anticipates that the 15,000,000 ton capacity of the City's current landfill site in Livermore, California will be exhausted by 2015, at which time the existing Landfill Disposal Agreement with Waste Management would expire. The DOE is now requesting, after having conducted a competitive bid process, that a new Landfill Disposal Agreement between the DOE and Recology be awarded to Recology in order to permit the deposit of up to 5,000,000 tons of solid waste collected in San Francisco into Recology's Ostrom Road Landfill site in Yuba County, California, over a term of up to ten years beginning in 2015.

- According to Mr. David Assmann, Deputy Director of the Department of the Environment, in order to control the transport and handling of refuse in San Francisco by Recology, DOE previously entered into an existing Facilitation Agreement, without a competitive bidding process, which required Recology to consolidate collected refuse at its transfer station in San Francisco, then transport such refuse to Waste

Management's Altamont Landfill site in Livermore, California, the City's present designated landfill site. The term of the existing Facilitation Agreement with Recology will expire simultaneously when the existing Landfill Disposal Agreement with Waste Management is anticipated to expire in 2015.

- In order to provide continued control over the transport and handling of City's refuse by Recology, the proposed resolution would approve an amendment to the existing Facilitation Agreement (the Amended Facilitation Agreement) with Recology, to begin upon the expiration of the existing Facilitation Agreement which is currently anticipated to occur in 2015, to require Recology to (a) continue consolidating collected refuse at its transfer station in San Francisco, and (b) transport the consolidated refuse from Recology's transfer station to Recology's Ostrom Road Landfill site (the City's proposed new designated landfill site) by a combination of truck and rail.

- Mr. Assmann noted that neither the existing Facilitation Agreement nor the proposed Amended Facilitation Agreement were competitively bid because under the City's Refuse Collection and Disposal Ordinance of 1932, Recology is the City's only permitted waste hauler, and, as such, Recology is the only firm authorized to (a) transport refuse "through the streets of the City and County of San Francisco," and (b) transport refuse from Recology's transfer station in San Francisco, "through the streets of the City and County of San Francisco." Recology's transfer station is located near Candlestick Park.

Fiscal Impacts

- The proposed two Agreements, the Amended Facilitation Agreement and the new Landfill Disposal Agreement, include two fees which would be payable to Recology (a) a tipping fee for the deposit of waste into Recology's Ostrom Road Landfill, and (b) a rail transport fee to cover the cost of transporting waste over rail rather than by truck. Under the proposed two Agreements, these fees (and the inflationary adjustments to such fees which are included in the existing Facilitation Agreement and Landfill Disposal Agreement) would be incorporated into the rate setting process which is used to determine the rates for refuse collection paid by San Francisco residents and businesses which receive refuse collection services from Recology. The proposed two Agreements are anticipated to increase refuse collection rates by 3.0 percent for the first year of the Agreements, such that the monthly rates paid by a single family residence with a 32-gallon waste container would increase by $0.82 from $27.55 to $28.37, a 3.0 percent increase, and the monthly rates paid by a business for the collection of two cubic yards of waste would increase by $14.82, from $494.01 to $508.83, a 3.0 percent increase.

- The Budget and Legislative Analyst notes that unlike water rates charged by the Public Utilities Commission, which are subject to disapproval of the Board of Supervisors, neither residential nor commercial refuse collection rates are subject to Board of Supervisors approval. Under the City's Refuse Collection and Disposal Ordinance of 1932, residential refuse collection rates are subject to approval by the Director of Public Works, but if such rates are appealed, then such rates are subject to approval by the City's Rate Board which is composed of the City Administrator, the Controller, and the Director of the Public Utilities Commission. Collection rates, paid by San Francisco businesses, are not subject to approval by the Director of Public Works, the City's Rate Board, or by the Board of Supervisors.

Regarding refuse collection services provided by Recology to City-owned facilities, the City's waste collection costs are anticipated to increase by 3.0 percent, or, $186,500 for the first year, from the City's current annual refuse collection cost of, $6,216,900 to $6,403,400.

Policy Alternatives

- As discussed above, the City's Refuse Collection and Disposal Ordinance of 1932 has resulted in Recology becoming the City's permanent and exclusive refuse collection firm, without Recology ever having undergone the City's normal competitive bidding process. The Budget and Legislative Analyst notes that it may be advantageous for a City to have the collection of refuse provided exclusively by a single firm. However, the Budget and Legislative Analyst believes that such a firm should be selected through the City's normal competitive bidding process. Therefore, a policy alternative for consideration by the Board of Supervisors includes submitting a proposition to the voters to (a) repeal the City's existing Refuse Collection and Disposal Ordinance of 1932, such that future refuse collection and transportation services would be required to be awarded by the City under the City's normal competitive process, and (b) require that refuse collection rates for both residential and commercial services be subject to Board of Supervisors approval.

- As also discussed above, the existing Facilitation Agreement and proposed Amended Facilitation Agreement were not subject to the City's normal competitive bidding process because, according to Mr. Assmann, (a) under the Refuse Collection and Disposal Ordinance of 1932, only Recology can transport refuse "through the streets of the City and County of San Francisco," and (b) transport of refuse from Recology's transfer station, which is located in San Francisco near Candlestick Park, requires travelling "through the streets of the City and County of San Francisco." However, the Budget and Legislative Analyst was unable to identify any portion of the Refuse Collection and Disposal Ordinance of 1932 which governs the transport of refuse which does not occur "through the streets of the City and County of San Francisco." Therefore, it may be possible for a second firm, other than Recology, to transport refuse after it has been collected by Recology, if that second firm's transfer station was either outside the City limits or was located near marine or rail facilities, such that refuse from the transfer station to the City's designated landfill could avoid being transported "through the streets of the City and County of San Francisco." Therefore, the Budget and Legislative Analyst advised that the DOE should analyze the potential costs and benefits of using Recology to continue collecting refuse, but using a second separate firm to provide refuse transportation services which avoids transporting refuse "through the streets of the City and County of San Francisco."

Recommendations

- Although the proposed Landfill Disposal Agreement was subject to the City's normal competitive bidding process, the transportation and the collection of the City's refuse have never been subject to the City's normal competitive bidding process. Therefore, approval of the proposed resolution is a policy matter for the Board of Supervisors.

- The Budget and Legislative Analyst recommends that the Board of Supervisors consider submitting a proposition to the voters to (a) repeal the City's existing Refuse Collection and Disposal Ordinance of 1932, such that future refuse collection and transportation services would be required to be awarded by the City under the City's normal competitive bidding process, and (b) require that refuse collection rates for both residential and commercial services be subject to Board of Supervisors approval.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

According to California Public Resources Code Section 41260, all California cities must maintain a "plan" for 15 years of landfill disposal capacity. According to Mr. David Assmann, Deputy Director of the Department of the Environment, a "plan" can include landfill disposal capacity from both (a) executed agreements, and (b) anticipated agreements.

According to the City's Refuse Collection and Disposal Ordinance of 1932, codified in San Francisco Administrative Code Appendix 1, (a) only permitted collectors may transport refuse "through the streets of the City and County of San Francisco", with one permit issued for each of the 97 refuse collection routes in the City, and (b) the residential refuse collection rates[1] charged to residents must be approved by the Director of Public Works, or if such approved rates are appealed by a member of the public, approval must be granted by the City's Rate Board composed of the Director of the Department of Public Works, the Controller, and the Director of the Public Utilities Commission. Prior to the authorization of any residential rate increase, the Director of DPW and (if such a rate increase is appealed by a member of the public) the City's Rate Board must first find that all residential rate increases requested by the authorized permitted collector (Recology) are "just and reasonable." Residential Refuse and Collection rates are not subject to approval by the Board of Supervisors. Further, the City's Refuse Collection and Disposal Ordinance of 1932 is not subject to amendment or repeal by the Board of Supervisors. Only a voter proposition can amend or repeal the City's Refuse Collection and Disposal Ordinance of 1932.

Notably, commercial refuse collection rates, paid by San Francisco businesses, are not subject to approval by the Director of Public Works, the City's Rate Board or by the Board of Supervisors. Such commercial rates are established directly by the presently authorized collector (Recology) without any approval processes by the City. Mr. Assmann noted that under Section 11 of the City's Refuse Collection and Disposal Ordinance of 1932, any disputes regarding commercial refuse collection services, such as the frequency of collection service or the volume collected, are decided by the Director of Public Health. However, the Budget and Legislative Analyst notes that such dispute resolution by the Director of Public Health does not include any authority to approve commercial refuse collection rates.

Section 9.118 of the San Francisco Charter requires any agreement with a term of more than ten years be approved by the Board of Supervisors. The proposed resolution would approve two Agreements, a Landfill Disposal Agreement and an Amended Facilitation Agreement, each with terms beginning in 2015 and extending up to ten years.

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[1] For the purposes of this report, the term "rates" refers to the charges payable to Recology for refuse collection services by residents and businesses which are not established in the subject agreements. The term "fees" refers to charges payable to Recology which are established in the subject agreements, including (a) a "Rail Transportation Fee" which would be incorporated as a just and reasonable cost into the refuse collection rate setting process and ultimately paid by refuse collection customers in San Francisco, and (b) "tipping fees" which are payable by permitted haulers or self-haulers (persons disposing of their own waste, which is permitted under the City's Refuse Collection and Disposal Ordinance of 1932) depositing waste into Recology's Ostrom Road Landfill.

Background

Current refuse collection, transportation, and disposal practices in the City of San Francisco can be divided into three main areas: (1) 97 permits issued by the City which permit the collection and transport of refuse, (2) an existing Facilitation Agreement between the City and Recology which governs the consolidation of refuse collected in the City and transportation of that refuse to the City's designated landfill, and (3) an existing Landfill Disposal Agreement which designates Waste Management's Altamont Landfill site in Livermore, California as the City's exclusive landfill site, and allows for the deposit of up to 15,000,000 tons of solid waste collected in San Francisco into that landfill.

For the purposes of this report, the term "refuse" refers to all types of disposables, including (a) recyclables, (b) compostables, and (c) "solid waste", which is neither recyclable nor compostable, and therefore is deposited into the landfill.

(1) Permits to Collect Refuse

Under the City's Refuse Collection and Disposal Ordinance of 1932, the City of San Francisco was divided into 97 distinct refuse collection routes, and one permit for each route was issued. According to Mr. Assmann, due to a number of business acquisitions since the Refuse Collection and Disposal Ordinance of 1932 was approved, Recology San Francisco (Recology)[2] currently now owns all 97 permits. Such refuse collection permits would not be affected by the proposed resolution.

According to the City's Refuse Collection and Disposal Ordinance of 1932, such permits are permanent and not subject to the City's normal competitive bidding process, and can only be revoked if 20 percent or more of the "householders, business men, apartment house owners, hotel keepers, institutions or residents" within a particular route file a petition that they are not adequately served. Therefore, the City's Refuse Collection and Disposal Ordinance of 1932 has resulted in Recology becoming the exclusive and permanent refuse collector without Recology ever having gone through the City's normal competitive bidding process.

The Refuse Collection and Disposal Ordinance of 1932 also requires all permitted haulers who collect refuse to deposit such refuse as directed by the City. The Facilitation Agreement discussed below requires the permitted refuse haulers (i.e., Recology) to deposit the refuse in Recology's transfer station, which is currently located within the City on Tunnel Road near Candlestick Park.

(2) Facilitation Agreement

According to Mr. Assmann, in order to control the consolidation and transport of City refuse by Recology, DOE previously entered into an existing Facilitation Agreement with Recology, without conducting a competitive bidding process, which became effective on January 2, 1987. The existing Facilitation Agreement requires Recology to consolidate collected refuse at a

[2] For the purposes of this report, "Recology" refers to Recology San Francisco. Recology was previously known as (a) NorCal Waste Systems,(b) Sunset Scavenger, and (c) Golden Gate Disposal.

transfer station, then transport the refuse to Waste Management's Altamont Landfill in Livermore, California, the City's current designated landfill site, as discussed below.

The term of the existing Facilitation Agreement with Recology will expire simultaneously with the existing Landfill Disposal Agreement with Waste Management, which, as discussed below, is anticipated to expire in 2015.

The costs incurred[3] by Recology under the existing Facilitation Agreement for the consolidation and transportation of refuse are incorporated into the rate setting process which is used to determine the rates for refuse collection services paid by San Francisco residents as described in the Background Section above. Notably, the Facilitation Agreement states that the Director of Public Works (if such a rate increase is appealed by a member of the public) and the City's Rate Board must find that all costs incurred by Recology due to the terms of the Facilitation Agreement be considered as "just and reasonable" during any request by Recology to increase residential refuse collection rates. As discussed above, commercial refuse collection rates are established directly by the authorized collector (Recology) without any City approval processes.

The existing Facilitation Agreement also established a Reserve Fund, to be funded by a 1.3 percent surcharge on refuse collection rates. Under the terms of the existing Facilitation Agreement, Recology may withdraw funds from the Reserve Fund, subject to approval by the Director of Public Works, if the revenues from refuse collection rates charged to residents and businesses do not cover Recology's costs of refuse collection and transportation services. According to Mr. Assmann, the Reserve Fund, which has a current balance of approximately $28,500,000 is intended to be drawn down upon in order to temporarily cover increased operating costs which occur (a) after an unforeseen event which causes an increase in collection and transportation costs (for example, the collection and recycling of electronics which was not previously included in the rate setting process), but (b) before the City's rate setting process for residential collection services has approved such new rate increases which incorporate the previously unforeseen costs.

Mr. Assmann noted that the existing Facilitation Agreement was not competitively bid because (a) under the City's Refuse Collection and Disposal Ordinance of 1932, as the only permitted waste hauler, only Recology can transport refuse "through the streets of the City and County of San Francisco," and (b) transport of refuse from Recology's transfer station, which is in the City near Candlestick Park, requires travelling "through the streets of the City and County of San Francisco."

(3) Landfill Disposal Agreement

Subsequent to a competitive negotiation process, the City executed a Landfill Disposal Agreement with Waste Management of Alameda County, Inc. (Waste Management) effective on January 2, 1987 which designates Waste Management's Altamont Landfill in Livermore,

[3] In contrast to the proposed Amended Facilitation Agreement discussed below, the existing Facilitation Agreement with Recology does not expressly include any specific fees payable to Recology. However, the existing Facilitation Agreement does require the Director of Public Works to recommend to the City's Rate Board, that all costs to be incurred by Recology in order for Recology to perform their obligations in the Facilitation Agreement shall be considered "just and reasonable" and therefore should be included in the approved residential refuse collection rates.

California as the City's designated landfill site, and allows for the deposit of up to 15,000,000 tons of the City's refuse in that landfill.

The fees charged to Recology by Waste Management for depositing waste in Waste Management's Altamont Landfill site in Livermore, under the existing Landfill Disposal Agreement, known as "tipping fees," are ultimately paid by San Francisco residents and businesses which receive refuse collection services, directly to Recology. The "tipping fees" as of July 1, 2010, was set at $20.05 per ton[4] of solid waste deposited in the landfill, and are paid to Waste Management by Recology, who is responsible for transporting the City's solid waste to Waste Management's Altamont landfill site under the Facilitation Agreement. According to Mr. Assmann, such tipping fees are one of many factors which determine the overall cost of collecting and disposing refuse in the City, such that tipping fees impact the residential and commercial refuse collection rate setting process described above.

The term of the existing Landfill Disposal Agreement between the City and Waste Management is the earlier of (a) 65 years, or (b) when 15,000,000 tons of solid waste is deposited into the Altamont Landfill site[5]. As of May 31, 2011, approximately 13,271,900 tons of solid waste had been deposited at the landfill, such that 1,728,100 tons of capacity remains. Mr. Assmann estimates that such remaining capacity will be exhausted by 2015.

According to Mr. Assmann, in order to comply with California Public Resources Code Section 41260 which states that all California cities must maintain a "plan" for 15 years of landfill disposal capacity, the Department of the Environment is now requesting approval for a new Landfill Disposal Agreement to replace the existing Landfill Disposal Agreement when the term of the existing Agreement is anticipated to expire in 2015. However, as discussed above, a "plan" for landfill capacity can include both (a) executed agreements, and (b) anticipated agreements.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Department of the Environment to execute (a) an amendment without conducting a competitive bidding process, to the City's existing Facilitation Agreement with Recology which governs the consolidation of refuse collected in the City and the transportation of that refuse to the City's designated landfill site, and (b) the award, based on a competitive bidding process, of a new Landfill Disposal Agreement with Recology San Francisco (Recology) which would designate Recology's Ostrom Road Landfill in Yuba County, California, as the City's exclusive landfill site and allow for the deposit of up to 5,000,000 tons of solid waste into that landfill.

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[4] Tipping fees are paid to Waste Management by Recology based on the number of tons of solid waste disposed at the landfill site and include all governmental fees. As of July 1, 2010, the tipping and governmental fees was $20.05 per ton, however that rate has changed according to cost of living adjustments annually since the inception of the Agreement.

[5] According to Mr. Assmann, the 65 year term of the existing Landfill Agreement was not intended to provide landfill capacity for 65 years, rather, the term was selected to ensure there would be sufficient time for the City to make full use of the 15,000,000 ton landfill capacity.

Amended Facilitation Agreement

The existing Facilitation Agreement with Recology requires Recology to (a) operate a transfer station, which is located in San Francisco, and which serves as a temporary holding area for refuse collected within the City and County of San Francisco, and (b) transport the consolidated refuse from the transfer station to Waste Management of Alameda County Inc. (Waste Management's) Altamont Landfill site in Livermore, the City's current designated landfill site.

The proposed Amended Facilitation Agreement would also require Recology to (a) operate a transfer station, which is located in San Francisco, and which serves as a temporary holding area for refuse collected within the City and County of San Francisco, and (b) then transport the consolidated refuse from the transfer station to Recology's Ostrom Road Landfill site in Yuba County, the proposed new designated landfill site (instead of Waste Management's Altamont Landfill), anticipated to be effective as of 2015.

Under the existing Facilitation Agreement, Recology transports the City's solid waste approximately 55 miles to Waste Management's Altamont Landfill by truck. Because Recology's Ostrom Road Landfill in Yuba County is approximately 130 miles from Recology's transfer station, which is located near Candlestick Park, or 75 miles further than Waste Management's Altamont Landfill site, the proposed Amended Facilitation Agreement requires Recology to transport the City's solid waste to the Ostrom Road Landfill in Yuba County using a combination of truck and rail[6].

The Amended Facilitation Agreement would allow Recology to include an additional rail transport fee in future residential rate increase applications to the City's Rate Board[7]. This rail transport fee would be $563 per rail container, which would be adjusted in the future based on (a) an inflation adjustment according to the All-Inclusive Index Less Fuel, (b) adjustments for changes in governmental fees, and (c) adjustments for increases in fuel costs. Mr. Assmann noted that all rail transport would occur through a third party rail hauler over existing rail infrastructure[8].

According to Mr. Assmann, the DOE estimated the environmental impact which would result from transporting refuse an additional 75 miles to Recology's Ostrom Road Landfill in Yuba County instead of Waste Management's Altamont Landfill in Livermore. According to Mr. Assmann, this analysis included the impact of transporting the refuse by (a) biodiesel and liquefied natural gas fueled trucks to Waste Management's Altamont Landfill, and (b) liquefied natural gas powered trucks and diesel powered rail to Recology's Ostrom Road Landfill. As shown in Table 1 below, transportation to Recology's Ostrom Road Landfill site in Yuba

[6] According to Mr. Assmann, solid waste would be transported from the transfer station to Oakland by truck, a distance of approximately 15 miles, then by rail from Oakland into the Ostrom Road Landfill, a distance of approximately 115 miles.

[7] According to Mr. Assmann, the rail fee would also impact commercial refuse collection rates. However, as discussed above, such rates are not subject to approval by the Director of Public Works or the Rate Board.

[8] According to Mr. Assmann, a small rail spur would be constructed by Recology from the existing rail line into the Ostrom Road Landfill. Mr. Assmann noted that the construction cost of such a rail spur is included in the estimated transportation cost of $30.41 shown in Table 3 (column B) below, and because such construction is not a project of the City and County of San Francisco, the project would not be subject to environmental review under the California Environmental Quality Act (CEQA).

County is estimated to generate 1.15 less tons of carbon dioxide than transportation to Waste Management's Altamont Landfill in Livermore.

Table 1: Comparison of Carbon Dioxide Emissions

Landfill	Miles Transported	Transportation Method	Tons of Carbon Dioxide Emitted per Ton of Waste
Recology's Ostrom Road Landfill in Yuba County	130	Truck, Rail	9.4
Waste Management's Altamont Landfill in Livermore	55	Truck Only	10.55
Difference	**75**		**-1.15**

The proposed new Amended Facilitation Agreement would continue to provide for a Reserve Fund, which, as discussed above, can be drawn down by Recology if the revenues from refuse collection rates charged to residents and businesses do not fully cover Recology's cost of refuse collection and transportation services.

A Competitive Bidding Process Has Not Been Conducted by the City for the Proposed Amended Facilitation Agreement With Recology

The DOE did not conduct a competitive bidding process prior to requesting award of the proposed Amended Facilitation Agreement with Recology. According to Mr. Assmann, the Amended Facilitation Agreement was not competitively bid because Recology's transfer station is located in San Francisco, near Candlestick Park, and transportation of the refuse from the Recology transfer station to the new Ostrom Road Landfill would require the transport of refuse "through the streets of the City and County of San Francisco." Under the City's Refuse Collection and Disposal Ordinance of 1932, only permitted haulers can transport refuse "through the streets of the City and County of San Francisco". Since Recology is the only such firm permitted to collect and transport refuse within the City, only Recology has been authorized to provide such services required in the Facilitation Agreement.

Landfill Disposal Agreement

The proposed resolution would also authorize the Department of the Environment to execute a new Landfill Disposal Agreement with Recology which permits the deposit of solid waste collected in San Francisco into Recology's Ostrom Road Landfill site in Yuba County. The term of this Agreement would begin upon the expiration of the existing Altamont Landfill Disposal Agreement with Waste Management, which Mr. Assmann anticipates will expire in 2015. The term of the proposed Landfill Disposal Agreement would terminate the earlier of (a) ten years from the commencement date, or (b) when 5,000,000 tons of solid waste had been deposited into the Ostrom Road Landfill.

Based on the analysis conducted by the City in 2009, the proposed Landfill Disposal Agreement with Recology would increase the tipping fees (including related government fees)[9] charged to permitted haulers[10] or self-haulers (persons disposing of their own waste, which is permitted under the City's Refuse Collection and Disposal Ordinance of 1932), from $18.66 per ton to $28.53, an increase of $9.87 or 52.9 percent (see the Fiscal Analysis Section below for a discussion on how the proposed tipping fees will impact refuse collection rates for customers).

The City Conducted A Competitive Bidding Process For Award of the Proposed New Landfill Disposal Agreement with Recology

Following a series of public hearings in 2007, the Department of the Environment issued a Request for Qualifications (RFQ) to firms providing landfill disposal capacity. According to Mr. Assmann, the RFQ was sent to all landfill companies in California, and responses were due on August 29, 2008. Three firms responded to the RFQ, and subsequent to evaluation of the three submissions, all three firms were determined to be qualified under the terms of the RFQ.

A Request for Proposals (RFP) to provide for landfill disposal capacity was issued on February 9, 2009, and sent out to all three firms that qualified through the Request for Qualifications process discussed above. Three firms submitted responses. However, one firm was disqualified for failing to attend a mandatory pre-bidding conference. The two qualified responses were from Recology and Waste Management. An evaluation panel of three members included (a) Mr. Ed Lee, former City Administrator/current Mayor, (b) Ms. Susan Katchee, Environmental Services Director, City of Oakland, and (c) Mr. David Assmann, Deputy Director, Department of the Environment. The evaluation panel reviewed and scored both proposals and conducted oral interviews using standardized criteria. As shown in Table 2 below, the evaluation panel recommended award of the subject Agreement to Recology, based on receiving 254 points, as compared to 240 points received by Waste Management, out of a total of 300 points.

Table 2: Proposals Scoring Results

Evaluation Category	Maximum Points	Waste Management	Recology
Environmental and Labor Practices	75	58	56
Landfill Capacity	75	57	57
Experience and References	30	30	30
Cost (including Tipping Fees and Transportation Costs)	75	54	74
Oral Interview	45	41	37
Total	**300**	**240**	**254**

[9] As discussed above, "tipping fees" are fees charged by the landfill owner for the deposit of waste into that landfill. Government fees are those fees which are also imposed for landfill deposits by various governmental entities such as the county in which the landfill is located.

[10] Recology is divided into various different subsidiaries, such that the tipping fees imposed on permitted haulers by the proposed Landfill Disposal Agreement would result in Recology's collection subsidiaries paying tipping fees to Recology's landfill subsidiary.

The Budget and Legislative Analyst notes that the largest difference in the RFP scoring between the two firms was cost, such that Recology's proposal was determined to result in significantly lower costs than Waste Management's proposal. According to Mr. Assmann, the increased 75 mile transportation distance between Recology's transfer station in San Francisco to Recology's proposed new Ostrom Road Landfill site in Yuba County, which is 130 miles from Recology's transfer station, instead of the current Waste Management Altamont Landfill, which is 55 miles from Recology's Transfer Station, as well as the proposed use of rail transportation by Recology, were included in the evaluation of proposals received, and are reflected in the scores shown in Table 2 above. Notably, the Evaluation Panel still found that Recology's annual costs were lower than Waste Management's costs.

A notice of intent to award the subject Landfill Disposal Agreement was sent to Recology on September 10, 2009. Waste Management subsequently submitted two formal protests covering a total of ten separate topics of protest, all of which the DOE evaluated and rejected.

The Attachment to this report, provided by the DOE, details Waste Management's objections and the related analysis by the Department of Environment, and provides (a) a summary of each of Waste Management protests, (b) Recology's responses, and (c) DOE's responses. Mr. Assmann noted that Recology's responses were included in the protest response according to advice received from the City Attorney's Office.

FISCAL ANALYSIS

Agreement Fees and Costs

As shown in Table 3 below, the proposed two Agreements with Recology, including the Landfill Disposal Agreement and the Amended Facilitation Agreement, was calculated to result in the cost per ton of solid waste disposal increasing by $21.95 per ton, from $36.99 per ton to $58.94 per ton. According to Mr. Assmann, this increase is the result of solid waste disposal costs of $36.99 per ton being significantly below market rates because the existing rates were originally set in 1987, then adjusted by an inflation factor averaging approximately 1.17 percent. As also shown in Table 3 below, the rejected proposal from Waste Management would have increased costs by $48.13 per ton, from $36.99 per ton to $85.12 per ton.

Table 3: Fees and Costs of the Proposed Agreements

Fee or Cost Category	2009 Rate[11]	Proposed Recology Rate	Increase	Rejected Waste Management Rate	Increase
	A	B	C = B - A	D	E = D - A
Tipping Fees and Government Fees Per Ton	$18.66	$28.53	$9.87	$66.79	$48.13
Transportation Cost Per Ton (under the Proposed Amended Facilitation Agreement)	18.33	30.41	12.08	18.33	0.00
Total Cost Per Ton	**$36.99**	**$58.94**	**$21.95**	**$85.12**	**$48.13**

Mr. Assmann advises that under the terms of the proposed agreements, the Director of Public Works must recommend to the City's Rate Board that all the proposed fees and costs shown in

[11] Table 3 compares the actual rates in 2009 to the two bids that were received and evaluated in 2009. As of July 1, 2010, the Tipping Fees and Government Fees Per Ton were $20.05 and the Transportation Cost Per Ton was unchanged at $18.33 for a Total Cost Per Ton of $38.38.

Table 3 above are "just and reasonable" as it relates to in any requested rate increase application submitted by Recology to the Rate Board. As shown in Table 4 below, based on data provided by Mr. Assmann, the increased costs shown in Table 3 above are estimated to increase residential refuse collection rates charged to residential customers, subject to approval by the Rate Board, by 3.0 percent.

If the proposed Agreements are approved, the average single family residence cost is estimated to increase from $27.55 per month to $28.37 per month, an increase of $.82 per month, or 3.0 percent. As also shown in Table 4 below, the proposal from Waste Management would have increased rates by approximately 6.5 percent, from $27.55 to $29.33, an increase of $1.78 per month.

Table 4: Impact on Refuse Collection Rates Paid By San Francisco Single Family Home Owners for 32-Gallon Waste Containers

Row	Cost Calculation	Proposed Recology Agreement	Rejected Waste Management Agreement
A[12]	Increased Cost Per Ton	$21.95	$48.13
B	Estimated Total Tons of Solid Waste Disposed	277,000	277,000
C = A x B	Total Increased Cost	$6,080,150	$13,332,010
D	Current Total Refuse System Cost[13]	$206,000,000	$206,000,000
E = C ÷ D	**Percent Increase**	**3.0%**	**6.5%**
F	Current Single Family Refuse Collection Monthly Cost	$27.55	$27.55
G = E x F	Cost Increase	$0.82	$1.78
H = F + G	**Estimated Increased Monthly Cost**	**$28.37**	**$29.33**

As reflected in Table 4 above, the annual cost for San Francisco's refuse collection, transportation and disposal is approximately $206,000,000. If the proposed Agreements are approved, all refuse collection, transportation and disposal would be the responsibility of Recology. All of these costs are paid by residential and commercial ratepayers.

Under the proposed Landfill Agreement, the term would terminate the earlier of (a) ten years from the commencement date, or (b) when 5,000,000 tons of solid waste had been deposited into the Ostrom Road Landfill. Mr. Assmann estimates the value of the proposed Landfill Agreement is approximately $112,000,000 over the ten-year period. The proposed Facilitation Agreement has the same term as the proposed Landfill Agreement, but there is not a specific value tied to the Facilitation Agreement.

City Costs

All of the costs included in the proposed new Landfill Agreement and the Amended Facilitation Agreement would be incorporated into the rates paid by the City's residential and commercial waste collection customers. Regarding City-owned facilities, the City, as a commercial customer, contracts with Recology to dispose of solid waste generated by City-owned buildings

[12] Increased cost per ton is from Table 3 rows C and E above.

[13] The Current Total Refuse System Cost of $206,000,000 represents the total cost of refuse collection, transportation, and disposal, and is the basis for determining collection rates charged to residential customers.

and facilities. In FY 2010-2011, the City paid Recology approximately $6,216,900[14] to dispose of solid waste from City-owned facilities.

Mr. Assmann notes that increases approved by the Rate Board for residential refuse collection rates have historically also resulted in equivalent increases to commercial refuse collection rates. Therefore, the anticipated one-time 3.0 percent increase in residential refuse collection rates will likely also result in a 3.0 percent increase in commercial refuse collection rates. As a customer of commercial refuse collection services from Recology, the City's waste collection costs are anticipated to increase by 3.0 percent, or, $186,500, from their current annual cost of $6,216,900 to $6,403,400.

Department of the Environment Operating Funds

In addition to the fees and costs under the proposed new Landfill Agreement and the proposed Amended Facilitation Agreement discussed above, a portion of DOE's operating expenditures[15] are also incorporated into the rates paid by the residents and businesses for refuse collection services. Such expenditures are subject to annual appropriation approval to DOE by the Board of Supervisors. According to Mr. Assmann, the annual average amount appropriated by the Board of Supervisors to the Department of the Environment for such operating costs is approximately $7,000,000 per year. Mr. Assmann stated that the proposed Agreements would not increase or decrease the amount available to cover DOE's operating costs.

POLICY ALTERNATIVES

Submit a proposition to the voters to repeal the Refuse Collection and Disposal Ordinance of 1932, such that the collection and transport of refuse would be subject to the City's competitive bidding process.

According to the Refuse Collection and Disposal Ordinance of 1932, codified in San Francisco Administrative Code Appendix 1, there are 97 permits to collect and transport refuse within the City of San Francisco, and only authorized refuse collectors which have permits from the City may transport refuse "through the streets of the City and County of San Francisco." Due to a number of acquisitions since the Refuse Collection and Disposal Ordinance of 1932 was approved, Recology now owns all 97 permits and therefore is the City's designated permanent exclusive refuse collection and transportation firm for the refuse collected in San Francisco.

The Budget and Legislative Analyst notes that, in order to avoid having multiple refuse collection firms operating throughout the City, it may be in the City's best interests to have only one exclusive provider of refuse collection and transportation services. However, such

[14] Based on the FY 2009-2010 payment of approximately $5,750,000, increased by a cost of living adjustment of 8.12 percent on July 1, 2010. According to Mr. Mark Westlund of the DOE, this payment already assumes a discount provided by Recology to the City of approximately $1,500,000.

[15] According to Mr. Assmann, such operating costs include DOE programs for recycling, green building, environmental justice, and long term planning for waste disposal.

exclusive collection and transportation services should be (a) provided by a firm selected through the City's normal competitive bidding process, and (b) provided for only a finite term after which a new competitive bidding process should occur.

The Budget and Legislative Analyst also notes that it is possible that competitive bidding could potentially result in reduced refuse collection rates for residents and businesses in San Francisco. For example, Table 5 below shows that while rates paid by residential refuse collection customers are comparable, commercial refuse collection customer rates in Oakland are significantly lower than the base rates paid by San Francisco businesses. However, according to Mr. Assmann, San Francisco's refuse costs are higher because (a) San Francisco currently diverts 77 percent of refuse from the landfill as compared to Oakland which currently diverts 67 percent from their landfill, partially because San Francisco mandates the collection of organic materials, and (b) San Francisco has higher density and narrower streets which require more-labor intensive practices than Oakland.

Table 5: Comparison of Residential and Published Commercial Refuse Collection Rates (for One Collection Per Week)

Current Rate Type for Once Per Week Collection Service	Oakland	San Francisco	Difference in Cost	Percent
Residential Rates for 32-35 Gallon Containers[16]	$27.68	$27.55	($0.13)	(0.5%)
Commercial Rate for 2 Cubic Yards	$237.75	$494.01	$256.26	107.8%

Therefore, a policy alternative for consideration by the Board of Supervisors includes submitting a proposition to the voters to (a) repeal the City's Refuse Collection and Disposal Ordinance of 1932, such that refuse collection and transportation services would be required to be awarded under the City's normal competitive bidding process, and (b) require that refuse collection rates for both residential and commercial services be subject to Board of Supervisors approval.

Notably, the voters of San Francisco have previously rejected two propositions which would have amended the City's Refuse Collection and Disposal Ordinance of 1932 and allowed for competitive bidding for refuse collection and transportation, including (a) Proposition Z in November of 1993, which was rejected by 76.3 percent of the voters, and (b) Proposition K in November of 1994, which was rejected by 64.5 percent of the voters.

Request that the Department of the Environment analyze the potential costs and benefits of using a firm other than Recology for the transportation of refuse which does not occur "through the streets of the City and County of San Francisco."

The existing Facilitation Agreement with Recology and the proposed Amended Facilitation Agreement with Recology were not subject to a competitive bidding process because, according to Mr. Assmann, (a) under the Refuse Collection and Disposal Ordinance of 1932, only Recology can be authorized to transport refuse "through the streets of the City and County of

[16] Residential collection rates in San Francisco are based on 32-gallon containers while residential collection rates in Oakland are based on 35-gallon containers. Because most of the costs of collection result from labor and vehicle expenses to pick up individual containers, the rates in Oakland and San Francisco are comparable.

San Francisco," and (b) transport of refuse from Recology's transfer station, which is located in San Francisco near Candlestick Park, requires travelling "through the streets of the City and County of San Francisco." However, the Budget and Legislative Analyst was unable to identify any portion of the Refuse Collection and Disposal Ordinance of 1932 which governs the transport of refuse which does not occur "through the streets of the City and County of San Francisco."

Therefore, it may be possible for a second firm, other than Recology, to transport refuse after it has been collected by Recology, if that second firm's transfer station was located either outside the City limits or was located near marine or rail facilities, such that refuse from the transfer station to the City's designated landfill could avoid being transported "through the streets of the City and County of San Francisco." Therefore, the Budget and Legislative Analyst advised that the DOE should analyze the potential costs and benefits of using Recology to continue collecting refuse, but using a second separate firm to provide refuse transportation services if such a firm could avoid transporting refuse "through the streets of the City and County of San Francisco."

The Budget and Finance Committee Continued the Proposed Resolution, Requesting that the Department of the Environment work with the Port to Address Specific Issues

On February 9, 2011, the Budget and Finance Committee continued the proposed resolution to the Call of the Chair and requested that the Department of the Environment work with the Port to examine three potential partnership options: (1) relocating the entire Recology refuse infrastructure for waste, recycling and composting to the Port[17], (2) using the Port as a transfer facility for refuse, without constructing major new facilities at the Port, and (3) barging refuse from Pier 96 to the Port of Oakland. Mr. Brad Benson of the Port advises that Recology currently leases the Port's Pier 96 at an annual cost to Recology of approximately $1,486,000 for recycling activities. As noted above, Recology's waste and compost transfer facility is currently located on Tunnel Avenue adjacent to Candlestick Park.

According to Mr. Assmann, as a result of the various discussions with the Port, DOE retained a consultant, HDR, Inc. at a cost of $30,000, funded with Impound Account revenues, to further evaluate the long-term potential of the first option of consolidating and relocating the entire refuse infrastructure facility to the Port of San Francisco. In addition, Mr. Assmann advises that DOE requested HDR, Inc. to evaluate the economic feasibility of barging recyclables and refuse through the Port of San Francisco. Mr. Assmann advises that HDR, Inc. was retained to conduct both of these studies because this firm had been previously selected through a competitive process conducted by DOE in 2008, and is currently contracted as DOE's ongoing Zero Waste consultant. Mr. Assmann advises that the consultant report on the economic feasibility of barging recyclables and refuse through the Port of San Francisco was completed on April 15, 2011 and transmitted to the Board of Supervisors. This report concluded that due to the (a) existing infrastructure that already exists at the Recology transfer station, and (b) additional

[17] Consistent with City policy, a new Recology Zero Waste Facility for all recyclables, compostables and residual waste materials is planned to open in or before 2020, which is the Department of the Environment's and the Board of Supervisors adopted target date for the City to be at zero waste.

handling costs required for changing between modes of transportation, the costs of using the existing Recology Tunnel Avenue transfer station and combined truck and rail transportation are lower than using the Port of San Francisco to barge recyclables and refuse.

Mr. Mark Westlund of DOE advises that the consultant report on the long-term potential of consolidating and relocating the entire refuse infrastructure to the Port of San Francisco has been significantly expanded and is not yet completed.

In order to enable the City to keep open the option of changing transportation methods should alternative means of transportation, such as barging through the Port of San Francisco, prove to be viable in the future, DOE is submitting amendments to the proposed Amended Facilitation Agreement. These amendments would provide that the City will continue to investigate the financial, operational and environmental aspects of (a) modes of transportation other than or in addition to rail as contemplated in the Agreement, and (b) development by Recology of new facilities at the Port to handle waste, recyclable and other refuse. In accordance with the proposed amendments, no later than the fifth anniversary of this Amended Facilitation Agreement, the City and Recology would meet to consider such transportation alternatives and potential development of new Port facilities and engage in good faith negotiations whether to amend the Agreement to incorporate such transportation alternatives and Port facilities.

Recology Responds to Budget Analyst's Prior Report

On April 11, 2011, Mr. John Legnitto, Vice President and San Francisco Group Manager for Recology sent a letter to all members of the Board of Supervisors on the Budget Analyst's February 9, 2011 Report on Landfill Disposal and Facilitation Agreements with Recology San Francisco. On page 1 of this letter, Mr. Legnitto advises that Recology "would like to correct certain statements contained in the Report regarding Recology's commercial rates in San Francisco" specifically identifying the Budget and Legislative Analyst statement that "commercial refuse collection customer rates in Oakland are significantly lower than those rates paid by San Francisco businesses" because Recology offers discounts to all commercial customers that separate their recyclables, food and other organic waste. However, the Budget and Legislative Analyst notes that (a) Recology's stated base commercial rates are as reported and San Francisco commercial customers who do not recycle pays these rates, (b) there is a cost to San Francisco businesses to separate and recycle their refuse, (c) Recology does not provide any data on commercial customers rates to DOE to evaluate the amount of discounts provided and the actual commercial rates paid, and (d) even if San Francisco commercial customers all received a 50 percent discount on their commercial base rates, San Francisco's commercial rate would be $247.00 per month, which is still higher than Oakland's stated base rate of $237.75 per month.

In addition, on page 2 Recology states that "competitive bidding does not necessarily result in lower rates." By this statement, Recology acknowledges that it is possible that competitive bidding could result in lower rates. In fact, the Budget and Legislative Analyst acknowledged that "competitive bidding could potentially result in reduced refuse collection rates for residents and businesses in San Francisco", such that the results could only be definitively determined through the utilization of a competitive bidding procedure.

On page 2 Recology also states that "as a matter of historic practice, Recology adjusts commercial rates by the same percentage allowed by (the) City for residential rates", as justification for why Recology believes commercial rates are part of the City's Rate Review Process. However, the Budget and Legislative Analyst correctly notes that there is no requirement that Recology adjust commercial rates by the same percentage allowed by the City for residential rates. Therefore, the Budget and Legislative Analyst reiterates the fact that commercial refuse collection rates, paid by San Francisco businesses, are not subject to approval by the City's Director of Public Works, the City's Rate Board or by the Board of Supervisors.

And finally, on page 3, Recology seems to imply that the Budget and Legislative Analyst is not recommending approval of the proposed Landfill Disposal and Facilitation Agreements with Recology. As shown below, as well as in our earlier February 9, 2011 Budget and Legislative Analyst report, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy decision for the Board of Supervisors.

The Budget and Finance Committee Continued the Proposed Resolution, Requesting the Local Agency Formation Commission (LAFCO) Review

On February 9, 2011, the Budget and Finance Committee also requested that LAFCO review the City's current policies and procedures for selecting refuse collection, transfer, recycling and disposal service providers in comparison with other jurisdictions. In response to this request by the Budget and Finance Committee, Ms. Nancy Miller, Interim Executive Director of LAFCO advises LAFCO issued a Request for Proposal (RFP) and received three proposals from (1) R3 Consulting Group, (2) Rosenow Spevacek Group, Inc, and (3) HDR, Inc. on March 14, 2011. Based on evaluation of the three proposals, LAFCO selected R3 Consulting Group, at a cost not to exceed $27,500.

The R3 Consulting Group initial report was presented to LAFCO at their meeting on April 18, 2011 and forwarded to the Board of Supervisors. This initial report found that of the 71 jurisdictions surveyed, San Francisco is the only jurisdiction that did not have a formal agreement with its service provider and San Francisco is the only jurisdiction that has never conducted a competitive procurement process for collection services, due to the City's 1932 Ordinance. However, the R3 Consulting Group initial report also found that Recology provides one of the most comprehensive services to San Francisco residents and businesses, at similar rates[18], while having the highest calculated rates of waste diversion. Based on these findings, LAFCO requested that R3 Consulting Group expand the scope of their analyses to provide a comparison of fees and free and/or discounted solid waste services received by San Francisco as compared to other jurisdictions, and other issues.

On June 3, 2011, the R3 Consulting Groups Phase II report was presented to LAFCO and forwarded to the Board of Supervisors. The LAFCO R3 Consulting Groups Phase II study compared 13 jurisdictions, including San Francisco, regarding the fees paid directly to cities and

[18]The R3 Consulting Group found that San Francisco's residential rates were similar to the average of jurisdictions surveyed. However, because Recology advised that most commercial customers receive a discount from the published rates, R3 Consulting Groups assumed a 50 percent discount on San Francisco's commercial rates to determine that commercial rates were similar to other jurisdictions.

the free services received by cities. As shown in Attachment II, San Francisco receives $12,465,689 in Impound Account, Vehicle License and Permit fees and $18,755,087 in free and/or discounted services, for a total value of $31,220,776. This total value of $31,220,776 was then compared to Recology's $219,515,497 annual gross revenues from collection operations to calculate a 14.22 percent of fees and services relative to gross revenues. As shown in Attachment II, while the City of Oakland receives more direct revenues primarily from franchise fees and direct City administrative fees, San Francisco receives significantly more free services, and both Oakland and San Francisco receive considerably higher fees and services than any of the other surveyed jurisdictions.

Based on the results of the R3 Consulting Groups Phase II report, when comparing the $31,220,776 total value of the fee revenues and free services that San Francisco receives relative to the total $219,515,497 annual gross revenues that Recology receives, San Francisco's 14.22 percent is significantly lower proportionately than the majority of the jurisdictions surveyed. As shown in Attachment II, all of the surveyed jurisdictions, except Foster City and the City of San Jose, receive higher proportional fee revenues and free services. For example, as shown in Attachment II, the City of Emeryville receives a proportional 34.34 percent and the City of Oakland receives an adjusted 30.75 percent from their refuse collectors, which is proportionately more than twice as much as the 14.22 percent that San Francisco currently receives from Recology.

RECOMMENDATIONS

1. Although the proposed Landfill Disposal Agreement was subject to the City's normal competitive bidding process, because the Landfill Disposal Agreement is the sole portion of the refuse collection, transportation, and disposal process which is subject to the City's normal competitive bidding process, and because the transfer and the collection of the City's refuse through existing permits and the Facilitation Agreement have never been subject to the City's normal competitive bidding process, approval of the proposed resolution is a policy matter for the Board of Supervisors.

2. The Budget and Legislative Analyst recommends that the Board of Supervisors consider submitting a proposition to the voters to (a) repeal the City's existing Refuse Collection and Disposal Ordinance of 1932, such that future refuse collection and transportation services would be required to be awarded by the City under the City's normal competitive bidding process, and (b) require that refuse collection rates for both residential and commercial services be subject to Board of Supervisors approval.

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GAVIN NEWSOM
Mayor

JARED BLUMENFELD
Director

Department of the Environment Response to Protest Filed by Waste Management
November 12, 2009

Waste Management Objection

1) The RFP specified that a proposed per ton tip fee be valid through December 30, 2025, which must represent an all-inclusive rate, including all additional regulatory and other fees. (See Section III C 5 of the RFP). To the extent the contractor tentatively selected for the disposal capacity award does not yet have a fully permitted landfill sufficient to accommodate San Francisco's solid waste, or its proposed landfill is at or exceeds current capacity if it were to include San Francisco's waste, it is unlikely if not impossible that any proposed rate could accurately reflect all costs associated with developing or permitting of a new landfill or landfill expansion, including regulatory or host fees imposed by the host community, which typically occur as part of a permitting process. Thus, to the extent the tentative award was influenced based on proposed pricing, it lacks factual support, and was therefore arbitrary and capricious, and violates the criteria set forth in the RFP.

Recology Response

Permitted Landfill Capacity: In satisfaction of the City's "Request for Qualifications Landfill Disposal Capacity," SF Recycling & Disposal's proposal is based on regional landfill capacity that is immediately available and fully permitted, with sufficient capacity to meet the City's disposal needs through the year 2025 or a maximum of 5,000,000 tons, whichever comes first. Therefore, Waste Management's suggestion that our proposal does not "accurately reflect all costs associated with developing or permitting of a new landfill or landfill expansion" is simply incorrect. The permitting process is already complete, and the analysis of operations, costs, and community impacts that is an ongoing part of that process has been incorporated into our proposal.

Department of the Environment Analysis

Given that Recology has completed the permitting process for the proposed landfill, and has submitted an all inclusive per ton tip fee rate, we find that this objection does not have merit.

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GAVIN NEWSOM
Mayor

JARED BLUMENFELD
Director

Waste Management Objection

2). The selection criteria specified in the RFP include, among other things, (a) permitted and currently planned capacity; (b) permitted annual tonnage; (c) current limits or permit restrictions on use (d) current environmental status of the landfill, and (e) environmental impact on the host community. (See RFP Section IV A 1 and 2). WMAC has a fully permitted landfill with sufficient capacity and approved expansion capacity to accommodate San Francisco's anticipated flow of solid waste. Further, all permits are current, environmental impacts have been fully reviewed and all impacts on the host communities have been evaluated and addressed through mitigation measures or otherwise. To the extent that the tentative award was based on a proposed landfill that is not yet fully permitted, or a landfill that would be at capacity or without sufficient capacity were it to include San Francisco's solid waste, the review and scoring procedures could not have properly found or evaluated the existence of (1) permitted capacity, (2) current limits or permit restrictions on use; (3) current environmental status of the landfill, or (4) environmental impacts on the host community. Indeed, to the extent that any points were awarded based on compliance with these requirements it would be speculation at best. To that end, WMAC protests the tentative award based on the fact that the scoring did not delineate or indicate in anyway the points associated with compliance of those specific criteria listed in RFP Sections IV A 1 and 2, but instead awarded gross points only without an explanation or the transparency necessary to fully evaluate the award. As such, the decision to tentatively award the contract was based on speculation, lacks credibility and factual support because it fails to specify how each identified criteria were evaluated, and as such the evaluation process and its conclusions were arbitrary and capricious and violates the criteria set forth in the RFP..

Recology Response

Permitted Landfill Capacity: In satisfaction of the City's "Request for Qualifications Landfill Disposal Capacity," SF Recycling & Disposal's proposal is based on regional landfill capacity that is immediately available and fully permitted, with sufficient capacity to meet the City's disposal needs through the year 2025 or a maximum of 5,000,000 tons, whichever comes first. Therefore, Waste Management's suggestion that our proposal does not "accurately reflect all costs associated with developing or permitting of a new landfill or landfill expansion" is simply incorrect. The permitting process is already complete, and the analysis of operations, costs, and community impacts that is an ongoing part of that process has been incorporated into our proposal.

Department of the Environment Analysis

Recology has completed the permitting process for the proposed landfill, which has the capacity to meet San Francisco's needs. Scoring was consistent with the specifications outlined in the Request for Proposal, which stated that proposals would be scored on each of the five categories listed, and not broken out by individual criteria. Therefore, we find that this objection does not have merit.

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GAVIN NEWSOM
Mayor

JARED BLUMENFELD
Director

Waste Management Objection

3). The selection criteria specified in the RFP requiring an evaluation of the proposer's ability to minimize and mitigate climate impacts. WMAC's proposed Altamont Landfill and Resource Recovery Facility is the closest landfill to the City and County of San Francisco and would therefore reduce carbon emissions due to travel time and distance as compared to a much more distant landfill. Indeed, to the extent the tentative award was based on a rail-haul proposal, or trucking to a much more distant location, it is doubtful that such a long-distance disposal option would in effect "minimize and mitigate climate impacts" as specified in Section A 1 a of the RFP. Further, the scoring process used by the City did not assign any value to this particular requirement, but provided only gross numbers as part of the evaluation. Consequently, there is no support for the City's assessment that a rail-haul or long truck-haul option reduces carbon emissions over a closer-in option. As such, the City's evaluation and its conclusion lacks credibility or factual support and is therefore arbitrary and capricious and violates the criteria of the RFP.

Recology Response

Transportation of Materials to Site As you know, SF Recycling & Disposal proposes to transport the City's waste to landfill by rail. Waste Management's letter suggests that the environmental and cost impacts of rail transport have not been adequately studied. However, our proposal includes a detailed analysis of these issues and demonstrates the many benefits the City would enjoy from rail transport, including greater fuel efficiency, reduced emissions, reduced carbon footprint, reduced traffic congestion, and improved public safety. Although we have the ability to haul by truck, taking trucks off the road is a far more sustainable approach. Our proposal demonstrates that rail transport is a superior solution.

There is much third-party affirmation of the benefits of rail haul over truck haul. According to the Association of American Railroads, rail transport offers three or more times greater fuel efficiency than truck transport on a ton-mile basis. By rail, one gallon of fuel transports one ton of material over 400 miles. Union Pacific confirms these statistics and has achieved even greater hauling efficiencies with its more advanced locomotives. Waste Management also recognizes the benefits of rail hauling over truck hauling. Its website reports that hauling of waste by rail in Seattle "provides a cost-effective and efficient means of disposing waste." In describing its New York City operations, Waste Management's website calls "rail transportation of solid waste the wave of the future" and notes "with rail there is less traffic and less fumes." The website includes numerous other testimonials to the benefits of waste rail hauling in other communities.

Department of the Environment Analysis

Response: The City did not conclude that a rail-haul or long truck-haul option would reduce carbon emissions more than a closer-in option, and the scoring of the proposals was not based on such a conclusion. Nor did the terms of the RFP require the evaluators to assign a separate value to "minimizing and mitigating climate impacts." (See RFP, Part IV.A.1.) Rather, "minimizing and mitigating climate impacts" was one factor to be considered in scoring "approach and adherence to overarching considerations," and the evaluators properly considered environmental impacts as part of the scoring of the proposals. Therefore, we find that this objection does not have merit.

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Waste Management Objection

4) The selection criteria, and references in the RFP, indicate that the City and County have a strong interest in an environmentally superior disposal option that includes, as referenced, a commitment to minimize climate impacts. To the extent the tentative award of the contract was based on a rail-haul option, the evaluation fails to consider the environmental impacts and in particular the increased carbon footprint associated with (1) stockpiling of solid waste within San Francisco until accumulated amounts can be feasibly rail-hauled to a distant location, including the release of green house gases associated with such storage; (2) the truck trips and associated carbon impact involved with both loading and unloading waste at the rail destination; (3) the environmental impacts associated with the necessary construction of an intermodal rail facility to facilitate rail-haul to distant locations and the associated environmental impacts on the host community for the rail spur; (4) or the effect of San Francisco's commitment to a zero waste position on both the environmental and cost efficiencies associated with rail or distant truck haul. To the extent that there is no documented review or evaluation of these issues, the City's tentative award violates the criteria established in the RFP, and to the extent the award was made without consideration of these issues, it lacks factual support and is thus arbitrary and capricious.

Recology Response

Transportation of Materials to Site As you know, SF Recycling & Disposal proposes to transport the City's waste to landfill by rail. Waste Management's letter suggests that the environmental and cost impacts of rail transport have not been adequately studied. However, our proposal includes a detailed analysis of these issues and demonstrates the many benefits the City would enjoy from rail transport, including greater fuel efficiency, reduced emissions, reduced carbon footprint, reduced traffic congestion, and improved public safety. Although we have the ability to haul by truck, taking trucks off the road is a far more sustainable approach. Our proposal demonstrates that rail transport is a superior solution.

There is much third-party affirmation of the benefits of rail haul over truck haul. According to the Association of American Railroads, rail transport offers three or more times greater fuel efficiency than truck transport on a ton-mile basis. By rail, one gallon of fuel transports one ton of material over 400 miles. Union Pacific confirms these statistics and has achieved even greater hauling efficiencies with its more advanced locomotives. Waste Management also recognizes the benefits of rail hauling over truck hauling. Its website reports that hauling of waste by rail in Seattle "provides a cost-effective and efficient means of disposing waste." In describing its New York City operations, Waste Management's website calls "rail transportation of solid waste the wave of the future" and notes "with rail there is less traffic and less fumes." The website includes numerous other testimonials to the benefits of waste rail hauling in other communities.

Department of the Environment Analysis

Response: The terms of the RFP did not require the evaluators to separately review and evaluate the factors identified by Waste Management in their protest. Rather, "minimizing and mitigating climate impacts" was one factor to be considered in scoring "approach and adherence to overarching considerations," and the evaluators properly considered environmental impacts as part of the scoring of the proposals. (See RFP, Part IV.A.1.) Therefore, we find that this objection does not have merit.

SF Environment
Our home. Our city. Our planet.

GAVIN NEWSOM
Mayor

JARED BLUMENFELD
Director

Waste Management Objection

5) To the extent that the tentative award involves a distant landfill as a current option and an out-of-state landfill as a back-up or ultimate option, the evaluation does not indicate any review or consideration of impacts on host communities. Indeed, long-haul trucking or rail-haul options that involve San Francisco waste being disposed of out of state would necessarily involve and require input from host communities or at the very least evidence that the positions of host communities were considered and evaluated in the selection process. To the extent that no such evaluation occurred, the City's tentative award lacks factual support and is thus arbitrary and capricious and violates the criteria set forth in the RFP.

Department of the Environment Analysis

Response: The evaluators properly considered "environmental and other impacts on host communities" as one factor in scoring "approach and adherence to overarching considerations," as required by the terms of the RFP. (See RFP, Part IV.A.1.) The suggestion that Recology's proposal included out-of-state landfill sites is incorrect. Therefore, we find that this objection does not have merit.

Waste Management Objection

6) For a rail-haul option to be even reasonably cost effective, it must be based on significant waste volumes. To the extent that the evaluation process did not consider San Francisco's goal of "zero waste" on the economics of a rail-haul option, it lacks factual support and is thus arbitrary and capricious and violates the criteria of the RFP. Indeed, to the extent that the economics of a rail-haul option are based on waste collections in other communities in the Bay Area that will then be railed out of state to a distant landfill, the City would need to examine and evaluate the cumulative environmental impacts of such a proposal both in terms of impacts to the City, surrounding Bay Area cities and to the host communities out of state. To the extent that the evaluation process failed to consider fully the ramifications of hauling San Francisco's waste out of state, the tentative award lacks factual support and is thus arbitrary, capricious and violates the criteria of the RFP.

Department of the Environment Analysis

Response: The terms of the RFP did not require the evaluators to review and evaluate the economics of a rail-haul option. Rather, the proposer is responsible for considering those issues in calculating its proposed rates. The evaluators properly considered environmental and other impacts, including local impacts and impacts on host communities, in scoring "approach and adherence to overarching considerations," as required by the terms of the RFP. (See RFP, Part IV.A.1.) The suggestion that Recology's proposal included out-of-state landfill sites is incorrect. Therefore, we find that this objection does not have merit.

SF Environment
Our home. Our city. Our planet.

GAVIN NEWSOM
Mayor

JARED BLUMENFELD
Director

Waste Management Objection

7) The tentative award and evaluation process failed to adequately consider the environmental superiority of WMAC's proposal, and in particular, the fact that it represents a shorter distance traveled (50 miles compared to 130 miles as Ostrom road and considerably more to Winnemuca), does not involve the development of new transportation facilities, will not involve at any juncture an out-of-state option As such, the evaluation and award was arbitrary and capricious and violates the criteria set forth in the RFP.

Department of the Environment Analysis

Response: The evaluators properly considered environmental impacts in scoring "approach and adherence to overarching considerations," as required by the terms of the RFP. (See RFP, Part IV.A.1.) The suggestion that Recology's proposal included out-of-state landfill sites is incorrect. Therefore, we find that this objection does not have merit.

Waste Management Objection

8) The tentative award and evaluation process failed to adequately and properly consider and value the pricing proposed by WMAC, and as such was arbitrary and capricious and violates the criteria set forth in the RFP in that pricing remains consistent as proposed, is not subject to entitlement and development costs associated with the tentative award if that award involves developing new or additional capacity at distant landfills.. As such, the evaluation process and the tentative award was arbitrary and capricious and violates the criteria set forth in the RFP.

Department of the Environment Analysis

Response: The evaluators properly considered "proposed rates, including adherence to tiered rates and any escalator," as required by the terms of the RFP. (See RFP, Part IV.A.4.) The suggestion that Recology's proposal involves developing new or additional capacity is incorrect. Therefore, we find that this objection does not have merit.

Waste Management Objection

9) The tentative award and evaluation process failed to properly consider and value WMAC;s ability to accommodate the City's waste stream in that insufficient points were awarded based on WMAC's already permitted capacity of 11,500 tons per day as weighed against Ostrom Roads 3,000 tons per day, with Ostrom Road apparently having insufficient capacity to accommodate the City's full waste stream on a long-term basis. As such the evaluation process and the tentative award was arbitrary and capricious and violates the criteria set forth in the RFP

SF Environment
Our home. Our city. Our planet.

GAVIN NEWSOM
Mayor

JARED BLUMENFELD
Director

Department of the Environment Analysis

Response: The suggestion that Recology's proposed landfill does not have sufficient capacity to accommodate the City's waste stream is incorrect. Therefore, we find that this objection does not have merit.

Waste Management Objection

10) The tentative award and evaluation process failed to property consider and value the environmental superiority of WMAC's proposal in that it failed to properly recognize that the Altamont Landfill currently generates 8.5 megawatts of power from landfill gas and has a permitted landfill gas to LNG facility, compared to the selected contractor's very limited energy production. As such the evaluation process and tentative award was arbitrary and capricious and violates the criteria set forth in the RFP.

Department of the Environment Analysis

Response: The evaluators properly considered environmental impacts, and "minimizing energy use and highest and best procedures", in scoring "approach and adherence to overarching considerations," as required by the terms of the RFP. (See RFP, Part IV.A.1.) Therefore, we find that this objection does not have merit.

Additional Objection Filed in 2nd Letter

However, WMAC would also note that the selection criteria established in the RFP, and as noted in numeral (2) of WMAC's earlier protest, specified bids for "disposal". However, it appears as though the City and County of San Francisco modified those RFP criteria without notice to all bidders to include transportation and processing options, with only one company having solid waste processing ability in San Francisco, financed by rate payers, and to the exclusion of all other competitors. To the extent another bidder referenced and/or the City considered processing and transportation infrastructure, this was outside the scope of the RFP and, as such, wholly improper.

Department of the Environment Analysis

Response: The City did not modify the evaluation and selection criteria set forth in the RFP, and did not consider processing and transportation infrastructure outside the scope of the RFP. Therefore, we find that this objection does not have merit.

APPENDIX C
Comparison of Fees and Services

Comparison of Fees and Services	San Francisco	Belmont	Burlingame	East Palo Alto	Emeryville	Foster City	Hayward	Menlo Park	Oakland	Redwood City	San Carlos	San Jose	San Mateo
Fees Paid Directly to City													
Franchise Fee		$ 539,412	$ 588,541	$ 353,848	$ 668,010	$ 259,001	$ 3,723,975	$ 1,065,924	$ 4,779,816	$ 2,073,636	$ 556,164		$ 558,148
Franchise Extension Fee					$ 25,000								
Impound Account/Balancing Account	$ 11,798,284		$ 67,606										
City Fees/Administrative Fees								$ 52,500	$ 17,413,816	$ 39,876		$ 6,707,657	
Recycling Fees/Program Fees		$ 413,440	$ 147,135	$ 200,000		$ 39,516		$ 52,715	$ 6,800,000	$ 63,804	$ 52,260		$ 862,371
Vehicle License Fees	$ 587,478												
Vehicle Impact Fees		$ 134,852											
Disposal Facility Tax												$ 2,485,964	
R[illegible]License/Permit Fees	$ 79,927												
F[illegible]nance and Billing Review					$ 35,000								
Administrative Enforcement Contribution					$ 150,000						$ 61,556		
Street Sweeping		$ 323,648	$ 75,000	$ 232,536		$ 87,555	$ 688,025				$ 101,596		$ 320,000
Public Education					$ 10,000		$ 20,000		$ 80,000				
Measure D Fees					$ 30,116		$ 452,992		$ 1,274,579				
Rate Stabilization Fee		$ 53,940											
Landfill Closure Fees			$ 205,990										$ 813,444
Total Fees Paid Directly to City	**$ 12,465,689**	**$ 1,465,292**	**$ 1,084,272**	**$ 786,384**	**$ 918,126**	**$ 386,072**	**$ 4,884,992**	**$ 1,171,139**	**$ 30,348,211**	**$ 2,177,316**	**$ 771,576**	**$ 9,193,621**	**$ 2,553,963**
Free Services Received by City													
City Litter Can and Recycling Collection	$ 7,579,386		$ 65,739	$ 3,420	$ 85,000	$ 7,421	$ 290,000	$ 40,119		$ 46,717	$ 2,187	$ 405,060	$ 40,683
City Sponsored and Non-Profit Events		$ 2,938	$ 9,018	$ 4,791	$ 20,000	$ 2,751	$ 50,000	$ 3,826	$ 50,000	$ 7,324	$ 2,591		$ 13,070
City Collection Services	$ 1,506,133	$ 67,624	$ 45,097	$ 119,919	$ 15,000	$ 38,776		$ 17,662	$ 580,000	$ 62,619	$ 41,465		$ 214,908
DPW Collection & Disposal	$ 8,670,253												
Holiday Tree Collection	$ 313,971				$ 15,000		$ 11,154		$ 89,231				
Clean Team Event/Neighborhood Cleanup	$ 176,491	$ 43,588										$ 10,636	
Free Disposal			$ 119,768	$ 27,984	$ 4,000	$ 40,388	$ 80,000	$ 164,516	$ 600,000	$ 206,380	$ 51,412		$ 152,616
Battery Collection	$ 227,449				$ 22,500		$ 5,000		$ 5,000				
Compost Give-a-Ways	$ 47,471				$ 600		$ 2,000		$ 2,000				
CFL Collection					$ 10,000								
Sharps Program	$ 233,933												
Free Collection for Public Schools					$ 2,000								
Total Free Services Received by City	**$ 18,755,087**	**$ 114,150**	**$ 239,622**	**$ 158,114**	**$ 174,100**	**$ 89,336**	**$ 438,154**	**$ 226,123**	**$ 1,326,231**	**$ 323,040**	**$ 97,655**	**$ 415,696**	**$ 421,275**
Total Value of Payments & Services	**$ 31,220,776**	**$ 1,579,442**	**$ 1,323,894**	**$ 942,498**	**$ 1,092,226**	**$ 475,408**	**$ 5,323,146**	**$ 1,397,262**	**$ 31,674,442**	**$ 2,500,356**	**$ 869,231**	**$ 9,609,317**	**$ 2,975,238**
G[illegible]levenue From Collection Op[illegible]rations	**$ 219,515,497**	**$ 5,394,155**	**$ 8,686,950**	**$ 4,639,960**	**$ 3,181,000**	**$ 5,548,318**	**$ 27,521,000**	**$ 9,630,852**	**$ 80,886,000**	**$ 15,951,066**	**$ 6,333,212**	**$ 99,887,184**	**$ 16,506,640**
Fee and Service %	14.22%	29.28%	15.24%	20.31%	34.34%	8.57%	19.34%	14.51%	39.16%	15.68%	13.72%	9.62%	18.02%
Fee and Service % Using Total Value, Net of Recycling Contractor Fees as Base									30.75%				

Recology
WASTE ZERO

April 11, 2011

Members of the Budget and Finance Committee
of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: **Budget Analyst's Report on Landfill Disposal and Facilitation Agreements with Recology San Francisco**

Honorable Members of the Budget and Finance Committee:

At the Budget and Finance Committee (Committee) meeting on February 9, 2011, the Budget and Legislative Analyst presented his report (Report) on the proposed Landfill Disposal and Facilitation Agreements with Recology San Francisco. In anticipation of the forthcoming meeting of the Committee to consider those agreements, we would like to correct certain statements contained in the Report regarding Recology's commercial rates in San Francisco and their inclusion in the rate review process, and draw your attention to certain statements contained in the Report regarding Recology's landfill proposal.

I. The Report Overstates Recology's Commercial Rates

The Report states that "commercial refuse collection customer rates in Oakland are significantly lower than those rates paid by San Francisco businesses" (p. 14). That claim is based on Table 5 of the Report, which states that the monthly commercial rate for a 2 cubic yard garbage container in San Francisco is $494.01, compared to $237.75 in Oakland. However, the $494.01 rate cited by the Budget Analyst does not take into account the recycling discount Recology makes available to all commercial customers in the City. A San Francisco business that separates its recyclables, food and other organic waste from its garbage, as required by the City's Mandatory Recycling and Composting Ordinance, can obtain a discount of up to 75 percent, which, after accounting for a fixed price component, would reduce the $494.01 rate to $142.03. The actual discount will depend on the percentage of the customer's total container volume devoted to recycling and organics containers. For example, a commercial customer that replaces its 2 cubic yard garbage container with a 1 cubic yard recycling container, a 96-gallon garbage container and a 96-gallon organics container will pay only $152.36 for all three containers. Commercial customers can determine the level of discount they are eligible to receive by using an online calculator at sfcollectionrates.com. San Francisco's discounted commercial pricing system, which Recology developed jointly with City officials in 2006, rewards customers for complying with the City's Mandatory Recycling and Composting Ordinance and helps push the City toward its goal of zero waste.

The Budget Analyst speculates that "competitive bidding could potentially result in reduced refuse collection rates for residents and businesses in San Francisco" (p. 14). However, comparing San Francisco's rates to those in other Bay Area cities demonstrates that competitive bidding does not necessarily result in lower rates. As shown above, San Francisco's commercial rates are lower than Oakland's, depending on the service provided. As for residential rates, the Report correctly notes that San Francisco's rate ($27.55) is comparable to that of Oakland ($27.68). It could have gone further to note that San Francisco residential rates are virtually the same as the other two large Bay Area cities, San Jose ($27.50) and Berkeley ($27.56), and are competitive with those in many other local jurisdictions. These numbers confirm that the City's tight regulatory control over rates ensures that City residents and businesses pay rates that compare favorably with those of other Bay Area communities, including many in which the waste contracts are competitively bid.

II. Commercial Rates Are Part of the Rate Review Process

The Report states that, under the 1932 Ordinance, commercial rates are "subject to agreement between the producer and a duly licensed refuse collector." From this the Report concludes that "commercial rates are established directly by [Recology] without any approval processes by the City" (p. 4). The implication is that commercial rates are unregulated and that the collection companies can charge businesses whatever they want. These claims are untrue and inaccurate for the following reasons:

- Residential rates under the existing system are set by the City, not Recology, and as a matter of historic practice, Recology adjusts commercial rates by the same percentage allowed by City for residential rates.

- When applying for residential rate adjustments, Recology presents historic and projected financial data that includes revenue and expenses for both residential and commercial operations. Commercial rate-setting is an integral part of the residential rate-making process because projected net revenue from commercial operations serves to reduce overall company expenses and, therefore, residential rates. The City's long-standing policy, implemented through the rate-making process, has been that commercial revenues should subsidize residential rates.

- The DPW Director and the Rate Board have also historically used the rate hearings to promote both residential and commercial recycling programs. Most recently, DPW and the Department of the Environment have focused on utilizing the rate-setting process to further policy goals enacted by the Board of Supervisors that apply to both residential and commercial customers – in particular, zero waste by 2020 and mandatory recycling and composting.

- The 1932 Ordinance does not foreclose the Board of Supervisors from establishing standards for "agreement[s] between the [commercial] producer and a duly licensed refuse collector." The Mandatory Recycling and Composting Ordinance, enacted in 2009, is an example of such additional regulation.

III. Recology's Landfill Proposal Is The Superior Option

The issue before the Committee is approval of the Landfill Disposal and Facilitation Agreements with Recology San Francisco, not the 1932 Ordinance. Because the Report focuses primarily on issues relating to the 1932 Ordinance, it is easy to overlook that the Budget Analyst seems to agree that Recology's landfill proposal is a better deal for the City than Waste Management's competing proposal. Table 3 of the Report calculates that the all-in cost per ton disposed is $58.94 under Recology's proposal versus $85.12 under Waste Management's, a differential that translates into savings in excess of *$125 million* over the life of the contract. Table 4 states that Waste Management's proposal would result in twice the increase in residential rates when compared to Recology's proposal (6.5% versus 3.0%). Table 1 cites without comment the Department of the Environment's finding that Recology's green rail transport proposal is environmentally superior to Waste Management's green truck transport proposal, producing 1.15 fewer tons of CO_2 per ton of waste. The Report also correctly notes that the proposed Landfill Disposal Agreement was subject to a competitive bidding process (p. 10). Nothing in the Report provides any basis for the City not to approve the Landfill Disposal Agreement.

We look forward to the opportunity to discuss our proposal further at the next Budget and Finance Committee meeting, and would be happy to answer at any time any additional questions you may have about these matters.

Respectfully submitted,

John A. Legnitto
Vice President and San Francisco Group Manager

cc: Members of the Board of Supervisors
Amy L. Brown, Acting Chair, Refuse Collection and Disposal Rate Board
Ben Rosenfeld, Member, Refuse Collection and Disposal Rate Board
Edward M. Harrington, Member, Refuse Collection and Disposal Rate Board
Hope Schmeltzer, Public Member, Local Agency Formation Commission
Leah Pimentel, Alternate Public Member, Local Agency Formation Commission
Nancy Miller, Interim Executive Officer, Local Agency Formation Commission
Harvey Rose, Budget & Legislative Analyst
Melanie Nutter, Director, Department of the Environment
David Assmann, Deputy Director, Department of the Environment
Thomas Owen, Deputy City Attorney

City and County of San Francisco
Department of the Environment
11 Grove Street
San Francisco, California 94102

Landfill Disposal Agreement between
The City and County of San Francisco and
Recology San Francisco

This Landfill Disposal Agreement (this "Agreement") is made this ____ day of _____, 2010, in the City and County of San Francisco, State of California ("San Francisco"), by and between: Recology San Francisco, a California corporation, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Department of the Environment.

Recitals

WHEREAS, the City, Contractor (f/k/a Sanitary Fill Company) and Waste Management of Alameda County, Inc. ("WMAC") (f/k/a Oakland Scavenger Company) are parties to that certain Waste Disposal Agreement dated as of January 2, 1987 (the "Prior Agreement");

WHEREAS, the Prior Agreement provides the City with landfill disposal capacity of up to 15 million tons at WMAC's Altamont landfill, approximately 12.9 million of which had been utilized as of May 31, 2010;

WHEREAS, the City estimated in February 2009 that the remaining landfill disposal capacity under the Prior Agreement would be exhausted by 2014 or 2015, depending on the rate at which residual solid waste is disposed of in San Francisco in the coming years;

WHEREAS, the California Department of Resources Recycling and Recovery (CalRecycle) requires that the City have a plan for 15 years of landfill disposal capacity;

WHEREAS, to meet the CalRecycle requirement, and ensure sufficient landfill disposal capacity following exhaustion of capacity under the Prior Agreement, the City issued a Request for Proposals for Landfill Disposal Capacity ("RFP") on February 9, 2009, and subsequently selected Contractor as the highest qualified scorer pursuant to the RFP;

WHEREAS, Contractor represents and warrants that it, together with its affiliates, is qualified to perform the services required by City as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Definitions.

Definitions contained in this section shall govern the construction of this Agreement.

1.1 "Applicable Laws" means all laws, ordinances, orders, judgments, rules, regulations and interpretations of any federal, state or local governmental entity applicable to operation of the Landfill or Back-Up Landfill.

*Complete copy of document
located in File NO. 101225

1.2 "Beneficial Use Material" means any material, including contaminated soils, that is used for alternative daily cover (as defined in Section 20164 of the California Code of Regulations), landfill construction, erosion control, pad or road building, slope stabilization, other beneficial reuse (as defined in Section 20686 of the California Code of Regulations), or any other use that is not deemed to be "disposal" for purposes of the California Integrated Waste Management Act and the rules and regulations thereunder, *provided, however*, that "Beneficial Use Material" shall not include Source-Separated Recyclable Material or Source-Separated Organic Material.

1.3 "Back-Up Landfill" means the Hay Road Landfill, located at 6426 Hay Road, Vacaville, California, in unincorporated Solano County.

1.4 "Change in Law" means any change in Applicable Law or Permits occurring after the date hereof that is not the result of Contractor's willful or negligent action or omission or violation of Applicable Law or Permits.

1.5 "City Waste" means Solid Waste and/or Beneficial Use Material that is (i) collected in San Francisco by or on behalf of Permitted Haulers or City, (ii) generated in San Francisco and delivered to the Transfer Station by self-haulers, or (iii) residue from the processing of Recyclable Material or Organic Material generated in San Francisco.

1.6 "Commencement Date" means the date, as designated by the City, when all or substantially all the City's Solid Waste is first accepted at the Landfill or Back-Up Landfill, which date may not be later than January 1, 2019.

1.7 "Designated Waste" means any of the following: (i) Hazardous Waste that has been granted a variance from hazardous waste management requirements, (ii) nonhazardous waste that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state, (iii) "universal wastes," as defined in Section 66261.9 of Title 22 of the California Code of Regulations, or (iv) as to the Landfill or Back-Up Landfill, any material that is not permitted to be disposed of or accepted at such landfill under its Permits or Applicable Laws as in effect from time to time.

1.8 "Director" means the Director of the Department of Public Works of the City.

1.9 "Disposal Term" is defined in Section 2.2 hereof.

1.10 "Facilitation Agreement" means that certain Amended and Restated Facilitation Agreement dated as of the date hereof between City and Contractor.

1.11 "Fees" means the following collectively: the Solid Waste Fee, the Organics-Free Waste Fee, and the Beneficial Use Material Fee, each as defined in **Appendix A**, as well as the Excess Disposal Fee and the Carbon Mitigation Fee, each as defined in Section 3.8.

1.12 "Force Majeure" means any (a) act of God, earthquake, fire, flood, storm, epidemic, landslide, lightning, explosion or similar occurrence; (b) act of public enemy, war, terrorism, riot, civil disturbance or disobedience, sabotage or similar occurrence; (c) labor action, strike, picketing, work stoppage, work slowdown, sickout or similar occurrence; (d) order, judgment, injunction, condemnation or other act of any federal, state, county or local

*Complete copy of document located in File No. 101225

LOAD CHECKING PROGRAM

Prepared for

Recology Ostrom Road

Revised
July 2010

Prepared by

Recology

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**Complete copy of document
located in File NO. 101225

Waste Acceptance Control Program Manual

for the City & County of San Francisco
and SF Recycling & Disposal, Inc.

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located in File No. 101225

City and County of San Francisco
Department of the Environment
11 Grove Street
San Francisco, California 94102

Amended and Restated Facilitation Agreement between The City and County of San Francisco and Recology San Francisco

This Amended and Restated Facilitation Agreement (this "Agreement") is made this ____ day of _____, 2010, in the City and County of San Francisco, State of California ("San Francisco"), by and between: Recology San Francisco (f/k/a Sanitary Fill Company), a California corporation, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Department of the Environment.

Recitals

WHEREAS, City and Contractor are parties to that certain Agreement in Facilitation of Waste Disposal Agreement dated January 2, 1987 (the "Prior Facilitation Agreement"), which sets forth certain agreements between the parties regarding use of Contractor's transfer station, Contractor's transport of solid waste from the transfer station to the Altamont landfill, extraordinary expenses arising between rate proceedings, and other matters relating to the Prior Landfill Agreement;

WHEREAS, on February 9, 2009, City issued a Request for Proposals for Landfill Disposal Capacity ("RFP") to accommodate solid waste disposed of in San Francisco following exhaustion of City's existing landfill disposal capacity at the Altamont landfill, and in response, Contractor proposed to provide the desired disposal capacity at the Landfill;

WHEREAS, concurrently herewith, City and Contractor are entering into a Landfill Disposal Agreement regarding disposal of solid waste collected within San Francisco at the Landfill (such agreement, the "Landfill Agreement");

WHEREAS, consistent with its environmental goals and the terms of the RFP, City favors the development of a rail transport option for solid waste collected in San Francisco as a low-cost and environmentally friendly alternative to truck transport;

WHEREAS, Contractor is willing to incur the substantial financial commitments to third parties and capital investment costs necessary to develop such a transport option, provided that Contractor obtains assurances regarding reimbursement of such costs through the fees Contractor is permitted to charge Permitted Haulers for transport services, and the rates Permitted Haulers are permitted to charge customers;

WHEREAS, to induce Contractor to develop such a transport option, City is willing to provide such assurances regarding reimbursement, provided that Contractor makes certain commitments regarding such transport fees;

WHEREAS, City and Contractor wish to amend and restate the Prior Facilitation Agreement to set forth the aforementioned assurances and commitments and the parties' other agreements regarding use of Contractor's transfer station, transport of solid waste to the Landfill, extraordinary expenses arising between rate proceedings, funding of diversion activities, and other matters relating to the Landfill Agreement;

NOW, THEREFORE, the parties agree as follows:

1. Definitions.

Capitalized terms used but not defined herein shall have the meanings given to them in the Landfill Agreement.

1.1 "Applicable Landfill" means the Landfill, Back-Up Landfill or other landfill, as designated pursuant to the Landfill Agreement.

1.2 "Applicable Transfer/Transport Laws" means all laws, ordinances, orders, judgments, rules, regulations and interpretations of any federal, state or local governmental entity with which Contractor or its affiliates are required to comply in operating the Transfer Station or providing Transport Services.

1.3 "Collected Waste" means Solid Waste and/or Beneficial Use Material collected in San Francisco by or on behalf of Permitted Haulers or City.

1.4 "Transfer/Transport Force Majeure" means any (a) act of God, earthquake, fire, flood, storm, epidemic, landslide, lightning, explosion or similar occurrence; (b) act of public enemy, war, terrorism, riot, civil disturbance or disobedience, sabotage or similar occurrence; (c) labor action, strike, picketing, work stoppage, work slowdown, sickout or similar occurrence; (d) order, judgment, injunction, condemnation or other act of any federal, state, county or local court, administrative agency or governmental office or body, not the result of Contractor's willful or negligent action or omission; or (e) act, event or condition affecting Contractor, the Transfer Station or the Applicable Landfill which is beyond the reasonable control of Contractor and is not the result of Contractor's willful or negligent action or omission.

1.5 "Transfer/Transport Permits" means all licenses, permits, approvals and authorizations necessary for Contractor or its affiliates to obtain or maintain in order to operate the Transfer Station or provide Transport Services, and includes all permit conditions and obligations under the same.

1.6 "Rail Hauler" is defined in Section 2 hereof.

1.7 "Rail Transport Fee" is defined in Section 4 hereof.

1.8 "Rail Transport Services" is defined in Section 4 hereof.

1.9 "Reserve Fund" is defined in Section 6 hereof.

1.10 "Transfer Station" means a facility or facilities operated by Contractor in San Francisco that receives and temporarily stores City Waste, that processes Recyclable Material and/or Organic Material the residue of which constitutes City Waste, and/or that transfers City Waste from smaller to larger vehicles for transport to a landfill or other final disposal. The Transfer Station currently consists of the facilities located at 501 Tunnel Avenue and Pier 96, both of which include processing operations that produce residue that is City Waste.

1.11 "Transport Services" is defined in Section 4 hereof.

File No. _____

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: Recology San Francisco	
Please list the names of: (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. See attached page.	
Contractor address: 501 Tunnel Road, San Francsico	
Date that contract was approved:	Amount of contract: Not Applicable
Describe the nature of the contract that was approved: Landfill disposal of non-recycled refuse	
Comments: The contract is for 5 million tons disposal or ten years. There is no set dollar amount; however, if maximum 5 million tons is reached, the contract would be in excess of $120 million. Fees are paid by refuse rate payers, not city funds.	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: bos.legislation@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

Additional information

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor.

(1) Members of the Contractor's Board of Directors:

Michael J. Sangiacomo
Mark R. Lomele

(2) the contractor's chief executive officer, chief financial officer and chief operating officer:

CEO - Michael J. Sangiacomo
CFO - Mark R. Lomele
COO - none

(3) any person who has an ownership of 20 percent or more in the contractor:

Contractor is jointly owned by Sunset Scavenger Company and Golden Gate Disposal & Recycling Company, who are in turn wholly owned by Recology Inc.

(4) any subcontractor listed in the bid or contract:

Union Pacific Railroad

(5) any political committee sponsored or controlled by the contractor:

None