

**REVISED DRAFT REGULAR BOARD MEETING OF THE
CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
HELD ON JANUARY 27, 2022**

The Regular Board Meeting of the Central Contra Costa Solid Waste Authority's (CCCSWA's) Board of Directors convened exclusively via teleconference participation of a quorum of Board Members in locations not open to the public in compliance with Assembly Bill (AB) 361 and its amendments to California Public Resources Code Section 54953(e), allowing for deviation of teleconference and physical location meeting rules otherwise required by the Ralph M. Brown Act. This meeting had been held during a proclaimed state of emergency, and state and local officials had imposed or recommended measures to promote social distancing, while allowing the public to observe and address the Board after submitting written comments via email to the Board Secretary at Authority@RecycleSmart.org prior to or during the time for public comment at the meeting.

Chair Matt Francois called the meeting to order at 3:00 P.M. on January 27, 2022.

PRESENT: Board Members: Candace Andersen
Newell Arnerich
Gina Dawson*
Matt Francois, Chair
Teresa Gerringier
Inga Miller
Karen Mitchoff
Renee Morgan*
Teresa Onoda
Cindy Silva
Renata Sos, Vice Chair
Amy Worth
*Arrived after Roll Call

ABSENT: None

Staff members present via teleconference: Ken Etherington, Executive Director; Janna McKay, Executive Assistant/Secretary to the Board; Wendy Nelson, Finance/Controller Manager; Judith Silver, Senior Program Manager; Jennifer Faught, Contract Compliance Specialist; Ashley Louisiana, Program Manager; and Deborah L. Miller, CCCSWA Counsel.

1. **CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE**
2. **PUBLIC COMMENT ON ITEMS NOT ON THIS AGENDA**

No written comments were submitted, or oral comments made, by any member of the public.

3. CONSENT ITEMS

- a. Approve Minutes of the Regular Board Meeting on December 9, 2021
- b. Adopt Resolution 2022-01, Approving continued use of teleconferencing for the meetings of all CCCSWA legislative bodies under Assembly Bill 361
- c. Adopt a CCCSWA Employee Compensation Policy

MOTION by Board Member Andersen to approve Consent Items a., b. and c. SECOND by Board Member Miller.

MOTION PASSED unanimously by a Roll Call vote.

4. PRESENTATIONS

- a. Transparency Certificate of Excellence from the Special District Leadership Foundation
Colleen Haley, California Special Districts Association (CSDA)
Jen Faught, Contract Compliance Specialist, RecycleSmart

Jen Faught, Contract Compliance Specialist, reported that RecycleSmart had pursued and had been awarded a Transparency Certificate of Excellence from the CSDA's Special District Leadership Foundation.

COLLEEN HALEY, CSDA, reported that the Central Contra Costa Solid Waste Authority had been a member of the CSDA since 1996. She highlighted the CSDA that had been created as a way for Special Districts and other members to showcase their efforts at transparency to the general public, and noted it required a great deal of staff work to put the information together when applying for a Transparency Certificate of Excellence. She stated the Special District Leadership Foundation was an arm of CSDA, a 501 C3 not-for-profit dedicated to promoting excellence in Special Districts through recognition programs that highlighted and focused on implementation and governance best practices, which was open to all California JPAs as well as cities, counties and other associated members. She described the four programs available for recognition, identified the subjects and criteria involved, emphasized the importance of transparency, and presented the Transparency Certificate of Excellence to the CCCSWA Board of Directors.

Board Members thanked staff for the effort and receipt of the award, verified that presentations to the Board and contracts were routinely placed on the RecycleSmart website after each meeting, and to further transparency requested that all attachments as part of each month's Board packet be posted at the time of distribution of each Board packet.

- b. 2020-2021 Annual Schools Program Report
Ruth Abbe, Schools Program Coordinator, Abbe & Associates

Ms. Faught introduced Ruth Abbe, Amanda Halte and Nancy Deming from Abbe & Associates to present the 2020-2021 Annual Schools Program Report.

RUTH ABBE presented the Annual Report and the progress being made towards the 75 percent waste diversion goal. She recapped the 2020-2021 activities, described how that had been done over Zoom, and highlighted the presentations and assemblies that had been produced along with the training that had occurred.

Ms. Abbe reported that 50 out of 68 schools were at a 50 percent or greater diversion, 20 schools were at 75 percent or greater diversion, and 63 percent measured the diversion rate area-wide, noting that the diversion percentage had decreased somewhat from the prior year given a number of factors related to COVID-19. She expected the percentage to grow this year. She also presented the diversion rates by School District and highlighted the student engagement.

AMANDA HALTE identified the scholarships offered to high school students and stated the application would be on the website soon for the 2022 program. A Student Internship program had doubled this year with 15 students working on projects that could be done with a specific school or joint projects that could benefit multiple schools. She described the multiple ways the Abbe team had been working with passionate students and the results from all those efforts. She reported that Devin Jack, a Foothill Middle school teacher, and Devon Bradley from Miramonte High School had received Leadership in Sustainability Awards at the 13th Annual Leadership in Sustainability with Sustainable Contra Costa. She also commented that despite the pandemic students in Orinda had successfully pursued a polystyrene ban through the Orinda City Council.

Board Member Worth asked if it would be possible that the high school groups, such as the environmental clubs, could work with homeowners to help with awareness and education to address organics recycling.

In response, Ms. Halte explained that students' green teams were brainstorming park cleanups, education on alternative diets that might be better for the environment, group summits to educate on food waste reduction and proper sorting and screenings. She noted that educating the students at school about recycling and diversion would help to educate parents. She also noted that the Schools Team frequently remained in touch with some of the students who were passionate about waste and recycling issues.

5. ACTION ITEMS

- a. Solid Waste Collection Maximum Rates for Rate Year 8
Adopt Resolution 2022-02, Adopting Maximum Rates for Solid Waste Services for Rate Year 8 (March 1, 2022 through February 28, 2023).**

Executive Director Ken Etherington noted that the process for Rate Year 8 had started in July, with meetings with each member agency in October and November. Draft rates had been presented to the Board in December and this action item would approve those rates, which would become effective March 1, 2022.

ERIK NYLUND, Crowe LLP, highlighted the process that had culminated in December. There had been no changes to the rate adjustment results since then. He recapped the Franchise fee levels and vehicle fee levels, noted the minor adjustments that had previously occurred to vehicle fee amounts for some of the jurisdictions, and summarized the proposed RY8 rate adjustments ranging

from 1.5 percent to 3.88 percent and their impact on the residential 32-gallon carts and 2 cubic yard bins. He also presented the results of the comparative rate survey of neighboring jurisdictions.

In response to Board Member Miller as to how the schools were handled in the contract, the cost of those collections, how and who paid for those costs, and where that information would be located, Mr. Etherington stated he would have to research that information and report back.

Chair Francois referred to a reference in the staff report for a projected revenue shortfall of \$2.5 million before the RY8 rate adjustment, and verified with Mr. Nylund that the RY8 adjustment should cover that shortfall, which was the purpose of the revenue requirement.

It was also clarified that each jurisdiction had a dollar amount it had to meet and could either use reserves or raise rates, which could also include schools.

No written comments were submitted, or oral comments made, by any member of the public.

Board Member Worth suggested it would be helpful that the methodology for the base rate be explained to any member agency that needed it.

MOTION by Board Member Arnerich to Adopt Resolution 2022-02, Adopting Maximum Rates for Solid Waste Services for Rate Year 8 (March 1, 2022 through February 28, 2023). SECOND by Board Member Silva.

MOTION PASSED unanimously by a Roll Call vote.

(Board Member Morgan later advised that she was having technical difficulties and could not access the meeting to vote on this item.)

b. CCCSWA Franchise Contracts

Consider offers from Mt. Diablo Recycling and Allied Waste Systems (Republic Services) relative to recyclables processing, and give direction to staff regarding those offers and/or another procurement approach for future Franchise Agreement(s).

Mr. Etherington explained that the item had been considered by the Board at a workshop in July 2021 and at a Board meeting in September 2021, given that the Republic Services contract would expire in 2027, which included a two-year extension. The Mt. Diablo Recycling (MDR) contract would expire in February 2025, with no extension. He explained that while Republic Services offered garbage collection, recycling, green waste, food waste, and the processing of organics, MDR offered only the processing of recyclables and the Reuse Program. Also, while MDR used to have extensions in its contract, with the settlement and contract amendment in 2019, MDR had removed the extension in that contract. As a result, the contracts no longer coincided. He added that the agency used to get \$55/ton from MDR but we now pay \$64.80 for the recyclables to be processed. He explained that if the Board wanted to pursue a Request for Proposal (RFP) for the recycling processing services and Reuse Program that would have to be ready to pursue by October 2022. If an RFP was pursued, it was unlikely there would be many bidders given that the current providers were local operators and operators from out-of-the-area would likely not be able to offer competitive bids.

Mr. Etherington provided the background and update to the Board's discussion since July when the Board recommended to staff a two-year Franchise Agreement with Mt. Diablo Recycling for recyclables processing including the Reuse Program. The extended term for two years would be the same terms, conditions and price, as the current contract. At the September meeting the Board had sought additional information from Republic Services.

Mr. Etherington presented a comparison of other operators of similar adjacent jurisdictions where MDR's rate was significantly lower than what other agencies were paying. He reported that staff had met with Republic Services to receive cost estimates to perform services and had received a verbal cost of \$145/ton for recycling processing plus \$50/ton for transportation, for a total of \$195/ton. For reuse services, Republic had estimated a \$2 million annual cost where the current cost with MDR was \$1.1 million annually. He highlighted the available options to accept the MDR contract from the September meeting, take no action, or provide direction for a possible RFP, and sought direction from the Board.

Mr. Etherington verified, when asked, that the agency currently paid \$64.80/ton and a 3 percent increase would become effective March 1, 2022 for a \$66 plus per ton rate. Both companies offered a 75 percent benefit if the recycling market went over \$60/ton where the agency would get 75 percent of that value. Republic Services had offered \$145/ton plus \$50/ton for transportation compared to MDR's current \$64.80. He explained that the agency processed 43,000 tons a year which would mean a difference of \$5.6 million above what was currently being paid with the Republic offer. The current Reuse Program was at \$1.1 million and the Republic proposal involved \$2 million but Republic would need additional real estate and that total could require adjustment.

Vice Chair Sos verified that the comparable with other agencies had shown a range of \$106 to \$157/ton without knowing the details of the contracts, for just the recycling processing.

Board Member Arnerich stated he could not support a contract extension with a company that had threatened the agency with a termination of services or with a default and he would rather go back to Republic Services for a seven- or ten-year extension and see what that would cost given his understanding that there would be a competitive market. He did not support the contract with MDR, suggested there was time, and wanted to pursue a contract with Republic and get a fully capitalized proposal to take the agency into the future. If that did not work, the Board could go out to bid for a new contract.

Board Member Miller noted that the contract had been negotiated in 2014, and with the current impacts of SB 1383 and other legislation she wanted to know if there were any new requirements and new services that would have to be negotiated. She sought a chart in that regard. Noting that the contracts were designed to work together, she wanted to make sure that Republic Services and MDR had no conflicts with respect to the status of the contracts and how that would work moving forward. She also wanted to know what would happen if the contracts were extended with respect to notice, conditions, and liquidated damages.

Mr. Etherington clarified that what was being presented at this time as a follow-up to the September 2021 Board meeting had nothing to do with the Republic Services contract extension which would be exercised as late as 2024. The item under consideration was strictly the recycling

processing with MDR or Republic and would be an amendment with MDR and a new contract with Republic. The depreciation schedule applied to the Republic side only and on the MDR side on processing only with no depreciation issue.

Legal Counsel Miller clarified that the item presented in September was limited to considering building back into the MDR contract a term through 2027. If the Board was inclined to take up that recommended action at this time it would be limited to the Second Amendment to the MDR contract. While she understood that could presuppose an extension of the Republic Services contract in the future, it did not lock the Board into taking any action relative to the Republic contract. She characterized the recommendation from September to build back what had been negotiated away in 2019, an opportunity to continue the relationship with MDR and Republic through 2027. Specific to the MDR contract, it did not include specifics as to depreciation or anything else. The September recommendation was to take advantage of the extension through 2027 given the favorable economics.

Board Member Morgan asked what control would the agency have if entering into another contract with MDR where it might want to end the contract prematurely again.

Legal Counsel Miller stated that the agency could take the position that a contracting partner did not have a unilateral right to change the terms or exit the contract. While there were a handful of provisions in both contracts about limited circumstances when a contracting partner could come back to the agency, partners had to adhere to the terms of the contract, and if that was not done the agency reserved all rights and remedies under the agreement as described by law.

TIM ARGENTI, former General Manager of Republic Services, now working with Government and Community Relations, explained that he had been involved with the negotiations on the original Franchise Agreement, and explained that when entering the contract in 2015 for ten years, the existing equipment had been depreciated to 2025. With respect to the extension of the recycling contract, the depreciation expense had been put in at two years given the length of time under discussion. If the contract had gone out further than two years the depreciation expense would come way down. He also clarified that given the current value for recyclable material under current market conditions, the rebate that would be able to be given back to the agency would be \$77/ton, which would bring down the \$195/ton rate in the proposal. He added that Republic would have no influence over the proposed MDR contract.

SAL EVOLA, Mt. Diablo Recycling, appreciated the consideration of the item and the relationship with RecycleSmart but at this time he wants to come back to staff to talk about next steps.

Board Member Silva recommended that staff be directed to bring back precise details, in writing to the Board, at a subsequent meeting to address all questions.

Vice Chair Sos recommended consideration of an ad hoc committee given that it felt like more than a two-year decision.

Board Member Andersen agreed with the need for a comprehensive report and direct comparison along with pros and cons to better understand the rebate, supported an ad hoc committee, and recommended that Vice Chair Sos lead that committee.

Board Member Worth concurred but with the item to be brought back to the full Board, to include a ratepayer discussion and a discussion of the issue of a short extension versus a longer term, after which a potential ad hoc committee would make sense.

Board Member Silva stated that having been involved in the ad hoc process for the initial development of the contract process for the Franchise Agreement that it had been very detailed in a multi-month process. She emphasized the need to consider what the agency wanted to ask for after which the operator needed a multi-month process to respond. As a result, she explained that process would have to start as soon as possible.

Legal Counsel Miller concurred and reiterated the staff recommendation that the Board target October 2022 for a start date in 2025 to build in an 18-month time period for putting together a proposal, receiving responses, negotiating a contract, and allowing a contractor 12 months to be able to provide timely services.

Board Member Arnerich supported the formation of an ad hoc committee to review the criteria, the contract proposals, and to potentially consider longer terms given the capital costs. He recommended that the committee also move into setting up for a contract for a new proposal. He did not want to wait.

Mr. Etherington stated he would get Republic's proposal in writing and address the apparent additional questions from MDR to provide direct comparisons for both proposals.

Board Member Miller commented that the ideas proposed to be considered went beyond consideration of the two-year extension.

Mr. Etherington clarified the costs of extending the Republic contract would be a completely separate analysis that would require the assistance of a consultant, which could potentially return to the Board in June.

MOTION by Board Member Silva (as amended) to continue the consideration of offers from Mt. Diablo Recycling and Allied Waste Systems (Republic Services) relative to recyclables processing, and directed staff to bring back precise details in an apples-to-apples comparison, in writing, to address all the Board questions and to encompass the fiscal analysis of the impact of extending the Republic Services contract so that the Board would have a full understanding of all relevant and related costs. SECOND by Board Member Arnerich.

MOTION PASSED unanimously by a Roll Call vote.

6. INFORMATION ITEMS

Reports were provided for information only and no Board action was required.

- a. Executive Director's Monthly Report
- b. Future Agenda Items
- c. News Articles of Interest

Board Member Silva noted with respect to the Executive Director's Monthly Report that all member agencies must apply directly for the SB 1383 grant funds available from CalRecycle.

Judith Silver, Senior Program Manager, explained that after making a presentation to the Walnut Creek City Council she had verified a question from that meeting with CalRecycle, which had confirmed that RecycleSmart could not apply as a single agency because of the County in that there was no methodology for parceling out. All the member agencies had agreed to apply on the agency's behalf which would end up with more or less the same amount of money at \$250,000.

Ms. Silver explained that the agency would serve as a consultant to the member agencies and would invoice them, and then use those funds to do the work needed to be done on behalf of the entire agency.

7. BOARD COMMUNICATIONS AND ANNOUNCEMENTS

There were no Board communications or announcements.

8. ADJOURNMENT

The Board adjourned at 5:10 P.M. to the meeting scheduled for February 24, 2022 at 3:00 P.M.

Respectfully submitted by:

Janna McKay, Executive Assistant/
Secretary to the Board of the
Central Contra Costa Solid Waste Authority,
County of Contra Costa, State of California