



SF Environment

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A Department of the City and County of San Francisco



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Mayor

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Director

Special Reserve Fund

Background: The 1988 Facilitation Agreement between the City and Sanitary Fill Company (now Recology) established a requirement to create a reserve fund to be drawn upon from time to time for payment of "extraordinary expenses," which were not fully covered by the currently effective rates. This Special Reserve Fund was not to take the place of normal ratemaking processes, but to protect the Companies from major fluctuations in the rates that were not anticipated during the ratemaking process.

The Facilitation Agreement requires a minimum balance of \$15 million to be maintained through the term of the Agreement. The Facilitation Agreement will expire concurrent with the expiration of the Waste Disposal Agreement between the City, Sanitary Fill Company (now SF Recycling & Disposal) and the Oakland Scavenger Company (now Waste Management of Alameda County). That agreement is not anticipated to expire before 2014, and may expire at a later date, depending on the amount of waste landfilled. The Special Reserve Fund is funded by a 1.3% surcharge on the Companies' volumetric billings to residents and commercial customers. The Companies do not apply a COLA or make a profit on monies collected for this account.

Not later than five years after the expiration of the landfill contract, the Rate Board will determine whether there is any continuing need for the fund. If the Rate Board determines that there is no further need for the fund, the Rate Board is then required to allocate the remaining funds for the benefit of the then current and future residential rate payers and commercial accounts of the collection companies.

Balance in Account: As of 9/30/2011 - \$29,499,426.99

How Requests for Withdrawals are handled: Recovery requests are made by the Companies to the City Administrator. The Director of Public Works makes a recommendation to the City Administrator after the request is reviewed by staff at the Department of Public Works, Department of the Environment and the City Attorney's Office, and the City Administrator then makes the determination on the appropriateness of the request. The Director of DPW memorializes the determination in a Director's Order.

Withdrawals: \$4,249,188 for pre-1995 Cost Recovery as provided in the Implementation Protocol for Cost Recovery Pursuant to Waste Disposal Agreement, June 1995; \$383,948 in 2003 and \$226,112 in 2005 for e-waste disposal costs mandated by state legislation passed after the 2001 refuse rate process; \$658,142 in 2007 for "Subtitle D" construction costs required by environmental regulations.

Special Reserve Account in New Landfill Contract: Subject to approval by the Director (and, if applicable, the Rate Board), City shall establish and maintain throughout the Disposal Term a special reserve fund (the "Reserve Fund") in an amount not less than \$10 million in 2010 dollars, as adjusted by the Consumer Price Index, All Urban Consumers, All Items, Not Seasonally Adjusted, San Francisco-Oakland-San Jose Metropolitan Area, published by the U.S. Department of Labor, Bureau of Labor Statistics. The Reserve Fund shall be funded from a one percent (1%) surcharge on all Collected Waste delivered to the Transfer Station or the Landfill (or Back-Up Landfill, if applicable), and/or by reallocation of funds from



the reserve fund established under Section 5 of the Prior Facilitation Agreement, as determined by the Director (and, if applicable, the Rate Board). City shall use its best efforts to obtain the approval of the Director (and, if applicable, the Rate Board) for the creation of the Reserve Fund, and for its funding through such surcharge or reallocation of funds. The size of the Reserve Fund and/or the amount of the surcharge may be changed if mutually agreed by the Director of the Department of the Environment and Contractor, subject to approval by the Director (and, if applicable, the Rate Board). If the monies in the Reserve Fund exceed \$10 million (or other agreed-upon size), then the Director (and, if applicable, the Rate Board) shall allocate the excess monies in the fund for the benefit of the then-current and future residential and/or commercial customers of the Permitted Haulers.

The Reserve Fund may be drawn upon from time to time by Contractor, subject to appropriate City controls as approved by the Director and, if applicable, the Rate Board. The sole purpose of the Reserve Fund is to reimburse costs arising out of this Agreement or the Landfill Agreement that have been or will be incurred by Contractor but have not been recovered (e.g., because a corresponding adjustment in Rates has not taken effect, or has taken effect but has not yet fully reimbursed Contractor for such costs). Such costs include without limitation (i) the Solid Waste Fee, the Organics-Free Waste Fee, the Beneficial Use Material Fee and the Rail Transport Fee, and all adjustments thereto, (ii) the amounts contemplated by Section 2 and Section 7.2, and (iii) subject to approval by the Director and, if applicable, the Rate Board, any other costs relating to the performance of this Agreement or the Landfill Agreement that City and Contractor agree may be reimbursed from the Reserve Fund.

It is not the intention of the parties that withdrawals from the Reserve Fund should take the place of normal ratemaking processes by which Rates are adjusted to reimburse Contractor's recoverable costs. Rather, the Reserve Fund is designed to ensure that Rates are not subject to major fluctuations, to streamline the ratemaking process by obviating the need for continuous adjustments to Rates as costs change, and to protect Contractor against events which cause actual costs to exceed the cost forecasts approved in the rate process. It is understood that nothing in this Section 6 shall limit Contractor's right to seek a special rate adjustment.

To the extent Rates are increased to cover the costs that gave rise to the withdrawal from the Reserve Fund, Contractor shall, as such increased Rates are collected, remit the monies derived from such increase to the Reserve Fund until the amount withdrawn has been repaid. If the amount in the Reserve Fund is insufficient to cover costs otherwise reimbursable through the Reserve Fund, then Contractor shall be entitled to interest at a rate equivalent to the U.S. Prime Rate plus two percent (2.0%) per annum (after the first 120 days, during which no interest shall accrue) for the period from the time Contractor incurred the cost until the time Contractor recovers the cost (through Rates or otherwise). Rates shall be appropriately adjusted to provide for any such interest.

After the end of the Disposal Term, the Director (and, if applicable, the Rate Board) shall determine whether there is any continuing need for the Reserve Fund. If the Director (and, if applicable, the Rate Board) determines there is no further need for the fund, then the Director (and, if applicable, the Rate Board) shall allocate the remaining monies in the fund for the benefit of the then-current and future residential and/or commercial customers of the Permitted Haulers.