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JOINT POWERS BOARD MEETING
February 21, 2013

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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for Record On The 26TH Day Of March, 2013 at 09:30:14 AM And Was Duly Recorded as Instrument # 1700469 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

Deputy Marcella Salazar

COUNTY CLERK GERALDINE SALAZAR SANTA FE COUNTY NEW MEXICO

SFC CLERK RECORDED 03/26/2013

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SFC CLERK RECORDED 03/05/2013

SOLID WASTE MANAGEMENT AGENCY
JOINT POWERS BOARD MEETING
Legal Conference Room
Santa Fe County Courthouse
February 21 , 2013

I. CALL TO ORDER

A meeting of the City and County of Santa Fe Solid Waste Management Agency Joint Powers Board (SWMA) was called to order by Councilor Ives, Chair, on Thursday, February 21, 2013, at approximately 12:00 noon, in the Legal Conference Room Santa Fe County Courthouse, 102 Grant Avenue, Santa Fe, New Mexico.

II. ROLL CALL

MEMBERS PRESENT:
Councilor Peter N. Ives, Chair
Commissioner Miguel Chavez, Vice-Chair
Commissioner Kathy Holian
Commissioner Daniel Mayfield
Councilor Christopher M. Rivera

MEMBERS EXCUSED:
Councilor Bill Dimas

STAFF PRESENT:
Randall Kippenbrock, Executive Director – SWMA
Angelica Salazar, SWMA
Justin Miller, Legal Counsel
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance..

III. APPROVAL OF THE AGENDA

MOTION: Commissioner Mayfield moved, seconded by Commissioner Holian, to approve the Agenda as presented.

VOTE: The motion was approved unanimously on a voice vote.

SFC CLERK RECORDED 03/22/2013

IV. APPROVAL OF THE MINUTES FOR REGULAR MEETING – JANUARY 24, 2013.

MOTION: Commissioner Holian moved, seconded by Councilor Rivera, to approve the minutes of the regular meeting of January 24, 2013, as presented.

VOTE: The motion was approved unanimously on a voice vote.

V. MATTERS FROM THE PUBLIC

There were no matters from the public.

VI. MATTERS FROM THE EXECUTIVE DIRECTOR

(A) REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT TO WAGNER CATERPILLAR OF ALBUQUERQUE, NM, TO REPAIR HYDRAULIC SYSTEM TO UNIT 1433 (CATERPILLAR 950G II WHEEL LOADER) IN THE ESTIMATED AMOUNT OF $54,192.75.

(1) APPROVAL OF BUDGET INCREASE FROM EQUIPMENT REPLACEMENT RESERVE – 5502.100700.07000 TO REPAIR MACHINERY AND EQUIPMENT – 52504.520400 IN THE AMOUNT OF $54,192.75

Randall Kippenbrock, Executive Director, presented information regarding this matter from his Memorandum of February 15, 2013, with attachments, to the SFSWMA Joint Powers Board, which is incorporated herewith to these minutes as Exhibit "1." Please see Exhibit "1" for specifics of this presentation.

Chair Ives noted this was discussed at the last meeting and thanked Commissioner Mayfield for making sure we are procedurally correct.

Commissioner Chavez asked if one motion can be made to approve VI(A) and VI(A)(1), or if two motions are needed.

Chair Ives said we usually do two separate motions.

MOTION: Commissioner Holian moved, seconded by Commissioner Chavez, to approve Item VI(A), as presented.

DISCUSSION: Commissioner Mayfield said he understands the price threshold is $35,000, before we have to go out for RFP.

Mr. Kippenbrock said on a State Price Agreement there is a price already in place. He said we use the City's Purchasing Manual amount of $50,000, before it is brought to this Board.

Commissioner Mayfield asked if SWMA falls under the City's procurement or the State Procurement Code.

Mr. Kippenbrock said we have a hybrid procurement policy, and for the most part we follow the State Procurement Code. He said the next Item will refer to our purchasing and finance policy. He said the Authority is a joint entity of the City and the County. The County follows the State Procurement Code, so we utilize all of that, and utilize the City Purchasing Manual as long as it doesn't conflict. He said the State Code talks about state pricing agreement, but doesn't deal with maximum limits. However the City Purchasing Manual refers to a $50,000 threshold where the City Manager or the Executive Director would take it before the board for approval.

Commissioner Mayfield said if we get a general estimate and it falls within the $50,000 threshold, and they give a revised estimate which goes over, what are the rules on something like that. He would defer to Ms. Martinez to answer this question.

Teresa Martinez, County Finance Director, said the County follows some of the standards, noting their threshold is $50,000, so we're all on the same page. She said Mr. Rodarte is here from the City and he can speak to the City procurement.

Commissioner Mayfield said we have to follow the Procurement Code. In this case, the estimate was under $50,000 and work is started. However, the actual cost is higher than $50,000, and asked how that comes into play.

Ms. Martinez said in this case, it was under the threshold, and issues arose. She said at that point, it should have been brought to this Board. She said, moving forward, this should be the process.

Commissioner Mayfield asked Ms. Martinez if SWMA violated the procurement code.

Ms. Martinez said no. She said the problem in this case is that it was initially captioned as a sole source and then exceeded the dollar amount. She said there is a valid statewide price agreement to use, and she thinks everything is fine. She said the intention is to bring it to the Board for approval. However, she understands the circumstances – you're working on it and new issues were brought up which exceed the threshold. She said lessons learned here are to caption an item correctly and bring it before this Board for approval.

Commissioner Mayfield noted our Auditor was at the last meeting, and asked if we need to self-report this. He said, "I would recommend that we do and let the auditor make this determination."

Chair Ives asked Commissioner Mayfield what he means by self-reporting.

Commissioner Mayfield said report it to our auditors.

Chair Ives asked if we provide our minutes to the auditor, because those would reflect the discussions we've had. He said the only alternative we might have pursued would have been to have called a special meeting. He said if we leave a piece of equipment idle we don't get the needed work done and it could

end up costing the Authority more money than the amount by which the repairs exceed the $50,000 limit. He is happy to consider that. He would like SWMA counsel to give a recommendation at the next meeting on whether we need to pursue that course, and we may be having a special meeting. He hopes everyone will be available if that is the case. He said in this case, we did bring it up at the January meeting, which is the next regular meeting after the issue arose, so he thinks it was very timely brought forward. He asked Mr. Miller to report back at the next meeting in this regard.

Mr. Miller said, "The Procurement Code allows exempt purchases under a state price agreement from competitive bidding or proposals, without regard to amount." He said the $50,000 threshold comes into play in the relationship between the Agency and the Board, and whether the Board should have called a special meeting. He said that was further complicated by the fact that the machine was already there, and that the initial bid was lower.

Mr. Miller said, "As far as the Procurement Code itself, which is the real basis for which the Agency must comply, there is no violation of the Procurement Code."

CALL FOR THE QUESTION: Commissioner Chavez moved, seconded by Commissioner Holian to call the question.

VOTE: The motion to call the question was approved unanimously on a voice vote.

VOTE: The main motion to approve Item VI(A) was approved unanimously on a voice vote.

MOTION: Commissioner Holian moved, seconded by Councilor Rivera, to approve Item VI(A)(1), as presented.

VOTE: The motion was approved unanimously on a voice vote.

(B) REQUEST FOR APPROVAL OF POLICY NO. 2013.1 – PURCHASING PROCEDURES AND FINANCE POLICY.

Randall Kippenbrock, Executive Director, presented information regarding this matter from his Memorandum dated February 16, 2013, with attachments, to the SFSWMA Joint Powers Board, is incorporated herewith to these minutes as Exhibit "2. Please see Exhibit "2" for specifics of this presentation

Chair Ives noted that Robert Rodarte from the City and Teresa Martinez from the County are in attendance, and asked if they have remarks in this regard.

Mr. Rodarte and Ms. Martinez said they have no remarks and will stand for questions.

Commissioner Chavez said, "An observation, in reading the packet and listening to staff's presentation, it seems that staff has pretty much covered everything. And it touches on Commissioner Mayfield's concern, or maybe an aspect of being a hybrid and using our joint experience, if you will, of the City's and County's experiences in dealing with purchases and the Procurement Code, in spending dollars, and making sure that it is in the sun in the light of day, and that we're doing it properly. And I think, in my experience on SWMA in the past, that has always been the intent and I think we've always been close to the highest standards possible. And I see that here, and I just wanted to comment on that."

Commissioner Chavez continued, "I think we have a lot of areas where the City and County need to collaborate and jointly provide services. And I think SWMA is one of the areas where we've done better at that in other areas. So I just note that for what it's worth. I would also say that I don't think it's only because of our participation or contribution, but I think it goes to staff and certainly the public that's been involved in this, because that's been a big component too."

Chair Ives said he hopes to carry on that transparency and cooperative working relationship with the Authority, certainly in this next year, and "certainly as long as I serve."

Commissioner Chavez said, "I guess the only other comment I would make, is that I know we've really struggled with the local preference, and I don't know if anyone wants to touch on that piece. But I think that we have staff that can speak to that, and if there are any possible changes or amendments that we could make in that area, that's the one area where I might want to spend some time. But if staff has already researched it and this is the best that we can do for right now, I'm comfortable with that too, because I know we've gone back and forth on that and it's never perfect. But, maybe it's the best that we can do."

Chair Ives noted that the Santa Fe City Attorney has expressed that the City, in dealing with City dollars, as opposed to federal grants, state funds, etc., actually does have a fairly large capacity to direct to that those funds be used to engage people who are residents of Santa Fe County. And that's something we could consider if you do go down that path. As per some discussions, it's important to have a release valve to then step outside in the event nobody qualifies for particular work. He said there are pros and cons of taking that approach.

Commissioner Chavez said it goes both ways, and in some cases if you have a local preference and you are using federal dollars, then you have to ignore the local preference. He reiterated it's not always perfect, and we're not always going to get it our way, but we have parameters within which we can work and there are superceding agencies which require us to do differently on certain projects, and we have to accept that.

Commissioner Mayfield asked Mr. Ross if he is familiar with whether the City and County local preference on procurement track with one or another.

Mr. Ross said he hasn't looked at the City's procurement policy.

Commissioner Chavez asked Mr. Rodarte to talk about the City's side, and said we then could research the County's policy to see how closely they are to one another.

Mr. Rodarte said, "The City does have the local preference, but it is 10%. The County has a couple of other options which are different. There is a veterans preference that is kind of being listened to, and I'm putting things together to present it to the Governing Body. But what's happening here at the County, you are able to get up to 15% putting that in there. But we're looking at it closely, and we'll bring it forward as we work on it. But basically, on the City side of the local preference, 10% is a maximum we have put in there. So, while you can accumulate things, minority businesses, veterans preference, things like this, New Mexico resident preference is also in there, but you can't exceed 10% putting them all together. That's where we're sitting right now."

Mr. Rodarte continued, "There are some challenges coming out right now in that people want more. But the funding sources for local play a lot on whether or not we can enforce it on projects. If it's federal money, you can't put it in there. A lot of the State funding we're getting will specify that we cannot use the local preference, and only follow New Mexico State preference, and that is basically 5%. But there's a lot of rules related to local preference that are tricky. And, in order for the County and the City to really come together, we have to make sure that the governing rules that the County follows... remember we're Home Rule. There might be some guidelines in there that would not allow the County to do what we do. So you have to take a good hard look at that from a legal perspective, before you really want to merge them together."

Mr. Rodarte continued, "Now the City has a local preference that extends all the way through Santa Fe County. We had to do that for the reason that many of our contractors are in the County, and they basically employee people who are in this are. Santa Fe County, as you well know, goes all the way to Chimayo and goes all the way to Moriarty, or whatever, but it's still under our umbrella of local preference, and it makes a big difference. But before you try to put them together, you're really going to have to look at legal aspect as governed by the State of New Mexico over the County, versus a Home Rule City like the City of Santa Fe."

Commissioner Chavez said one really big difference is Home Rule, so we really need to take note on that. He said on page 5 of 8 of the document, Purchasing Procedures and Finance Policy, the County is closest to the City in the Resident Veteran Business and Resident Veteran Contract, where there is a range between City 7-10%, and in others the County is lower at 5%. He said, as Commissioner Mayfield asked, how much the County can influence the 5%. And perhaps that could be a question to our legal staff.

Mr. Miller said, "We've looked at this pretty hard, so I can clarify how it all comes together, and it touches on what Commissioner Mayfield was talking about earlier, more being bound by the State Procurement Code, where the City is a Home Rule Municipality that has created it's own procurement policy. So it's bound by the Procurement Code and then the County on top of that. So, the first two preferences, (A) and (B), the In-state Resident and the Resident Veteran Business, those are are State Procurement Code preferences that local public bodies and instrumentalities, like SWMA, must follow. So, that's where (A) and (B) come from. They are not cumulative. In other words, a respective contractor can't

get the In-State Resident and the 10% Resident Veteran. Those 7, 8 and 10% values depend on the size of the Veteran's business."

Mr. Miller continued, "So, in addition to that, the question came before the Agency a number of times about a local preference, and local is separate and apart from the State Procurement Code. The City has had a local preference for a while. The County did not until April 2012. So for the Agency, our intent was to develop a local preference, where the City and County's preferences overlap, and that is expressed Subsection (C), which is a 5% preference for local vendors who are submitting a competitive sealed proposal. So it doesn't apply to bids, because the County preference doesn't apply to bids. It is in addition to (A) and (B), so it does allow a local County resident up to a 10% State preference to get the 5% local preference. It also applies if the Agency were to accept certifications from the City of Santa Fe, or what is acceptable to the County, because the City of Santa Fe local preference extends to everybody within the County, and so does the County's preference."

Commissioner Chavez asked if that would give them the cumulative effect of having a 10%.

Mr. Miller said, "Or more. Potentially that's a 15% for resident [inaudible] and local. (A) and (B) are not cumulative."

Mr. Miller said, "The reason we drafted this and limited it to only sealed proposals was simply because of the County Ordinance as a Joint Powers Agreement entity, this Agency arguably shouldn't exercise powers that aren't belonging to their entity, so if the County didn't allow it, we wouldn't want to include it here either."

Commissioner Chavez then we are pretty locked into the 5% local preference at this point, and we don't have the authority to go beyond that.

Mr. Miller said, "Right, and at the City and County level, it's just 5%.

Councilor Chavez said then that brings it full circle.

Chair Ives said, from a legal perspective, defaulting to the common denominator between the local preferences between the City and the County is the prudent way to do it. Because, that way, it's least subject to challenge by anyone participating in the bidding process, and claim it is something untoward or that the County wasn't authorized to go so far as the 10% local preference the City provides. He said this just seems like the prudent drafting choice.

Councilor Chavez said if you follow the process, you can get to that 10-15% anyway, so they still have that due process. If they want to go through the process..

Councilor Rivera said he understand Mr. Miller to say that the City and County local preference is 5%, but he understood Mr. Rodarte to say it is 10%.

Mr. Rodarte said the City is at 10% following the City format, and then the resident preference or veterans is the one we give out for qualified local companies.

Chair Ives said if you look at both entities, the County's is a smaller local preference that it is safer to go with, in terms of the Joint Powers Board.

Mr. Miller said, "And the City preference, what it essentially does, is to fold the in-state preference into the 10%, so the City isn't giving the in-state preference that comes from the Procurement Code, 5%, but it's 10%, so it's similar."

MOTION: Commissioner Chavez moved, seconded by Commissioner Holian, to approve Item VI(B), as presented.

VOTE: The motion was approved unanimously on a voice vote.

(C) REQUEST FOR APPROVAL OF REVISED LIST OF VENDORS FOR SOLE SOURCE PROCUREMENT FOR FISCAL YEAR 2013.

Randall Kippenbrock, Executive Director, presented information regarding this matter from his Memorandum dated February 15, 2013, with attachments, to the SFSWMA Joint Powers Board, is incorporated herewith to these minutes as Exhibit "3." Please see Exhibit "3" for specifics of this presentation.

Councilor Rivera said, "The definition of Sole Source, is that these are the only people who can provide these services for the Agency, correct."

Mr. Kippenbrock said yes.

Chair Ives said he heard Mr. Kippenbrock indicate he periodically will go out to see if there are other vendors who might be able to provide those same services, asking if that is correct, and Mr. Kippenbrock said yes.

MOTION: Commissioner Chavez moved, seconded by Commissioner Holian, to approve Item VI(C), as presented.

DISCUSSION: Commissioner Chavez asked Mr. Kippenbrock to keep the Board updated quarterly on the list of vendors, if that would work with his schedule – keep it updated regularly "so it doesn't get away from us," so we know exactly how we're handling that.

FRIENDLY AMENDMENT: Commissioner Chavez would like to amend the motion to provide that the Director will update the Board quarterly on the list of vendors and keep it updated regularly so it doesn't get away from us. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE BOARD.**

CONTINUATION OF DISCUSSION ON THE MOTION AS AMENDED. Mr. Rodarte said HB-182 was approved by the Legislature and signed by the Governor, and will go into effect on July 1, 2013. He said, in terms of what was just mentioned about reporting, there will be a lot of parameters which will be required from all agencies in terms of sole source and emergency procurements. He said it will work well in terms of reporting these.

Chair Ives asked Mr. Miller to track the bill and its impact moving forward.

Councilor Chavez asked if this bill will change State Statutes and direct organizations to follow a different reporting.

Mr. Rodarte said it will require more justification. He said they are seeking a true sole source, and it will change the scope in that the parameters are tighter, and they seek clarity as to what they're really signing under sole source.

Commissioner Chavez said that clarity has to start with the definitions, and hopes there is a very clear definition of sole source.

Mr. Rodarte said HB-182 has a lot of strike-outs now, as far as the language that is kind of vague, and they've added a lot of new language which clarifies it quite well.

Councilor Rivera asked, "Are we kind of putting ourselves out there by putting together a list of sole source vendors. It's different if you bid on something and you only have one person to bid, or return a bid, or there's only one person that can truly provide the work, versus having a list, spending the money, and then finding out, that 'hey, I could have done this work as well, I just never knew about it.' Are we putting ourselves in a bit of a predicament by actually having a list that may or may not change from month to month."

Chair Ives said from his perspective, it makes sense to have the list, simply because there have been people who have often been essential to bringing those services. We are asking for updates to that list and making sure that if we are other people out there, we come aware of it. He said, "And additionally, it sounds like, as of July 1, 2013, we may have to make additional changes to our Procurement Policy to account for HB-182 when it becomes effective. We will certainly have to comply with the specifics of that bill at that point in time. And I think we're doing a reasonable thing now saying, here's these vendors, but keep an ear to the ground for others who might also provide that service.

Commissioner Chavez said perhaps that could be part of staff's update, "so that, here's the list, it may or may not change, but we know. I'm comfortable that some of these are in fact sole source, and that's not going to change. Some of it's cut and dry. But I think as part of staff's report, we could say, okay here's the list, saying this is last month's, and here are the other vendors I've contacted that are interested or not interested in what we have to offer. Period. If nobody else is interested or offers to provide the services, that's where we need to go."

Chair Ives said he presumes that is a component of Commissioner Chavez's amendment.

Commissioner Chavez said, "Not originally, but in discussion, that detail needs to be in there, so if there's any question about staff's comment referencing the minutes about doing due diligence on that, we have it in writing. We have staff's comment of commitment in the minutes, and then we have a report in subsequent meetings. I think we're covered."

Chair Ives said it appears there is an additional amendment to the original motion.

RESTATEMENT OF THE FRIENDLY AMENDMENT: Councilor Chavez would like to amend the motion to provide direction to staff that the Director's Report would include a list of vendors that have been contacted about services that might be needed at the Agency, and the Director will update the list quarterly so doesn't get away from us.

VOTE: The motion, as amended, was approved unanimously on a voice vote.

Chair Ives said he just received a copy of HB-182, and asked at the next meeting there be a copy of the bill in the packets.

(D) DISCUSSION WITH POSSIBLE ACTION REGARDING COUNTY OPTIONS FOR DISPOSAL OF MATERIALS THAT MERIT SPECIAL CONSIDERATION THROUGH A CONTRACTUAL AGREEMENT UNDER THE 2012 FEE ORDINANCE.

Randall Kippenbrock, Executive Director, presented information regarding this matter from his Memorandum dated February 18, 2013, with attachments, to the SFSWMA Joint Powers Board, is incorporated herewith to these minutes as Exhibit "4." Please see Exhibit "4" for specifics of this presentation

Chair Ives said he reviewed the minutes from that prior meeting as well as the fee ordinance. And it appears that at the time, a special circumstance existed, pursuant to which the City requested a special fee consideration by this Board under Section B(4), which graciously was approved by this Board. He said he is thankful for that from the City's perspective, noting he wasn't on the Board or on the City Council at the time. He said, "As issues come up where the County might want to avail itself of this same consideration, I can certainly say [inaudible] act favorably in light of the actions of this Authority vis a vis the City's request previously."

Commissioner Chavez said he concurs with the Chair's statement. He said if the occasion does arise, the point the Chair makes about being accommodating, he would take that same position as well. He said members of the Agency need to work together and the reason we are here. He said we have a policy that says there is a way to reduce that fee in certain cases and situations. He said, "And so, kind of 'what goes round comes round.' When you need help, we'll help you, and when I need help, you help me, and this is how we do it."

Chair Ives said clearly there is a specific reason for the reduction to the $25 which was the reduced fee tor those materials that resulted in savings. He said at this point in time, he would not want to restrict the reduction of fees, in any way, if the County came forward with a special need.

Commissioner Chavez agreed, and if the reduction is merited and warranted, then we apply the reduced tipping fee and everything is okay.

Commissioner Holian said she also concurs. She said she is relieved that we have a well established policy in this regard, and the Board has indicated they would be open to special consideration for the County, as well as what happened with the City. She feels comfortable with the current situation and she sees no need to change the policy.

Commissioner Mayfield said he appreciates the time and effort that you and Mr. Kippenbrock put into this. He said he has been trying to resolve this issue for the past 1½ years. He said there has been a huge amount of green waste at the Jacona Transfer Station which he represents, as well at the Eldorado Transfer Station. He understands there are individuals who will move that out of the Eldorado Transfer Station free of charge, but there were not individuals to do that at Jacona. The County was incurring the cost for disposing of the green waste from Jacona at full price. He said the County did not present its case to this Board under this current policy, and that is not the County's fault, and said that is his fault, because he didn't advocate it to this Board.

Commissioner Mayfield said there is still green waste at the Jacona Transfer Station, and he will be asking the County Manager to move that green waste, and believes it can be used elsewhere in the County by the Public Works Department. He said he will be coming forward and request consideration by this Board for a special rate.

Chair Ives said this Board welcomes the opportunity to dispose of that waste.

Commissioner Mayfield asked if the Board would give credit of what it has disposed over the past year.

Chair Ives said no action is needed at this point in time. He said it appears that there is the consensus among those in attendance, that the procedure is available for anybody who wants to do so, and it will be considered by the Authority when the issue is presented.

(E) STATUS REPORT REGARDING THE BASALT ROCK AND RELATED BLM ROYALTY AT THE CAJA DEL RIO LANDFILL

(F) STATUS REPORT REGARDING THE CRUSHING OPERATION AT THE CAJA DEL RIO LANDFILL.

Items VI(E) and (F) were combined for purposes of presentation and discussion

Randall Kippenbrock, Executive Director, presented information regarding this matter from his Memoranda as follows:

1) Memorandum dated February 18, 2013, to the SFSWMA Joint Powers Board, regarding Status Report regarding the Basalt Rock and related BLM royalty at the Caja del Rio Landfill, incorporated herewith to these minutes as Exhibit "5;" and
2) Memorandum dated February 18, 2013, to the SFSWMA Joint Powers Board, regarding Status Report regarding the Crushing Operation at the Caja del Rio Landfill, incorporated here herewith to these minutes as Exhibit "6."

Please see Exhibits "5" and "6" for specifics of this presentation.

The Board members commented and asked questions as follows:

- Commissioner Chavez asked, after the basalt has been processed into a marketable project, if it is moved up site.

  Mr. Kippenbrock said no, it is on site until the sale is made.

- Commissioner Chavez said Del Hur is selling to the public and to contractors and the transaction is done on site, and asked if Del Hur has an office there.

  Mr. Kippenbrock said they have a field office, but all transactions are done through the pay station at SWMA. They have records and bill Del Hur.

- Commissioner Holian said then Del Hur doesn't pay royalties to SWMA until they have sold the aggregate to an outside party, and Mr. Kippenbrock said this is correct.

- Commissioner Holian so they don't have to pay royalties until they receive some income from it, and Mr. Kippenbrock said this is correct.

- Commissioner Chavez said then SWMA is tracking all of the activity, so you have an estimated amount on the royalties.

  Mr. Kippenbrock said yes, based on the density, the amount that was taken and converted to tons.

- Commissioner Chavez said then you have a separate log, a separate line item in your office that tracks all of this, and Mr. Kippenbrock said yes.

- Commissioner Mayfield asked, when the RFP was issued, and this contractor was selected, were they told they would be provided office space in the SWMA building, and they could use our facilities to crush the rock, store the rock and aggregate material on our property and go ahead and sell it off-location and then pay us the royalties after. He asked, "Was that all disclosed in the RFP process."

Mr. Kippenbrock said yes. The RFP expressly implied, in terms of locations, hours, permits and so forth.

- Commissioner Mayfield said he wants a copy of that RFP.

- Chair Ives said on page 94 of the packet, in the entry of October 26, 2011, it says, "..the Agency met with County staff from the Santa Fe County's Land Use Department and the County Attorney, to discuss if there were any permits required for the crushing operation at the landfill. The County concluded that no permit for the crushing operation was needed and did not ask or require the Agency to obtain permit." He said then this has been the circumstance through today, and asked if this is correct.

  Mr. Kippenbrock said this is correct.

- Chair Ives said it also was his understanding that as part of the adoption of the new Land Use Code, hopefully there will be consideration of the status of facilities that exist and asked if he understands this correctly.

- Commissioner Chavez said, "I think you're right, because the existing conditions will be factored into the new Land Use Plan, and obviously the regional landfill, SWMA, has been permitted, there's a master plan, we know that there is a life expectancy that we're looking at for that permit process, and it's a very extensive and very expensive process to permit. I'm sure that will be factored in, and maybe you want to add to that."

- Commissioner Holian said, "I would just point out that part of the process in developing the new Land Development Code is to create zones. We really don't have zoning *per se* right now, and that is going to be a very important part of it, to do the zoning map for the County."

- Commissioner Chavez said, "I think on the mere point of whether SWMA should have or shouldn't have a special sand and gravel permit, I can't see why we would want to go back and do that now. We knew full well that the basalt was going to present some challenges and we dealt with that. If site selection would have been different, if that had played out differently, we wouldn't be having this discussion. But the basalt is the nature of the beast, and there's no way around it. And I think the way it's being handled now is probably the best that we can do."

- Chair Ives noted the feds own the basalt and he is unsure under the circumstances whether questions of federal preempting come in, in terms of permitting, commenting he doesn't want to confuse the issue. He said we may get greater clarity as the County moves into its new Code on some of those issues. He said we can certainly engage the BLM in a discussion of that as well.

- Commissioner Mayfield said this is the reason the City and the County were fined.

- Commissioner Mayfield said he has "several questions." He said then the Agency is SWMA and Mr. Kippenbrock said yes.

- Commissioner Mayfield said then SWMA is receiving royalties.

  Mr. Kippenbrock said it is $1.50 per ton. The annual receipts are approximately $1.50 times $75,000.

- Commissioner Mayfield said then that goes into the base budget and he is reporting it back to the Board, and we approve it in the budget for the following year.

- Mr. Kippenbrock said when we do budgeting, we look at the prior year, and estimate the revenue, noting sometimes it is a lot more and in other years it is less. Last year it was $69,000. He said there is another line established for BLM, noting there is an expense of 59¢ per ton to BLM.

- Commissioner Mayfield said in 2005, it was determined there was no need for a permit for the sand and gravel mining operation at SWMA. He said part of the RFP said there will be a gravel and mining operation.

- Mr. Kippenbrock said the RFP said to obtain all necessary permits.

- Commissioner Mayfield asked how we could determine at that time that a permit isn't needed from the County.

  Steve Ross, County Attorney said, "There's two things going on here, there's two regulatory touchstones on this project. Number one, zoning in general, which is the major focus of the new Code. The new Code is going to contain provisions regarding zoning, a zoning map, and hopefully we will correctly capture this operation on the new zoning map, resolving that long standing ambiguity about the zoning sets, the proper sets, is one. Under the new Code, there also will be parallel police power provisions regarding sand and gravel operations generally, just like we have in the current Code. I don't know if they'll be any different. We probably will propose something fairly similar to the current Code, and will have discussions about what that will look like."

  Mr. Ross continued, "The current Code has special regulations concerning sand and gravel operations. I'm not sure how the determination, if it were, in 2005 came about concerning the need for a sand and gravel permit. But Councilor Ives has hit on the key issue here, an issue that we've been discussing in recent weeks, and that is whether these are valuable federal minerals or not. If they are, we don't have any jurisdiction, even assuming the present sand and gravel ordinance applies. So that's what we're looking like right now."

- Commissioner Mayfield also quoted from paragraph 2 on page 94 of the packet, "..the Agency met with County staff from the Santa Fe County's Land Use Department and the County Attorney, to discuss if there were any permits required for the crushing operation at the landfill." Commissioner Mayfield said this just talks about the crushing side of it. Mr. Mayfield continued reading from page 94, "The County concluded that no permit for the crushing operation was needed and did not ask or require the Agency to obtain permit." He said this is under Code, and there haven't been any exceptions granted under the current Code as written.

- Commissioner Mayfield said, "My second part to that question. Along 599, just tell me if I'm wrong on this, there's other, I guess, mining operations or sand and gravel operations all along 599. Do all those other entities have a permit from Santa Fe County, or are they all non-permitted operations along 599."

  Mr. Ross said, "Virtually all of the existing sand and gravel operations in the County are pre-Code."

- Commissioner Mayfield said, "Then along 599, those are all pre-Code. And can you clarify this for me, Steve, would SWMA be pre-Code."

  Mr. Ross said no.

- Commissioner Mayfield said, "Then why don't they need a permit from us today under Code."

  Mr. Ross said, "Under current Code, we're studying the question that I mentioned earlier, with respect to the sand and gravel operations themselves."

- Commissioner Chavez asked, "Would this be a permit after the fact, since the house has already been built."

  [Mr. Ross's response was inaudible]

- Commissioner Chavez said, "So what's the point then. I don't understand. I don't understand. I just have to ask, because if the house is already built, do you want us to move the house."

- Commissioner Mayfield said, "I don't know. The residents are calling me asking this question."

- Commissioner Chavez said, "Well I'm asking, because if they want us to move the house, we need to know, because that's going to be a hard house to move."

- Commissioner Mayfield said, "I just want the question answered."

- Commissioner Chavez said, "Well, then I just have to ask. I apologize, but I needed clarification, and I want to know...."

- Commissioner Mayfield said, "And I just want the question answered, that's all I want. Tell me if these guys have not had the proper permit. Just answer the question, and when residents call and ask me, I'll tell them they don't have the proper permit and we're just waiting it out until the new Code comes and then we're going to grandfather it under the Code. That's simple."

- Chair Ives said, "From my point of view, we certainly appear to have had an answer to that question, correct or incorrect."

- Commissioner Mayfield said, "I still want an answer, Mr. Chairman, straight up."

- Chair Ives said, "When I read this, at least to me, it suggests that question appears to have been asked and answered. And certainly I think the County is more than free to pick that issue up. This Board, running this operation, understands that it is running with the requisite authority at this point in time, and presumably has been for the last however many years we've been operating the landfill. And they've been crushing rock out there and selling it. So, I'm not sure it's an answer... we would certainly to look to guidance from the County, but so far the County's guidance on the issue has been that additional permitting is not required."

- Commissioner Chavez said, "Mr. Chair and Mr. Commissioner, I don't know that it does the County any service to let the public know that we didn't get a permit, and then do something after the fact. Because the landfill was permitted, and it was a very extensive process to get that permit from the State, Federal BLM, City, County. So I don't know, if residents are uncomfortable with the operation of SWMA, I think the Agency has tried to compensate and change its hours and do what it can to be sensitive to the neighbors in the area, and I think they're going to have to continue to do that. That's going to be ongoing."

- Chair Ives said, "Indeed, from Mr. Kippenbrock's prior presentation, it sounds when complaints are made regularly, they do contact people at the operation and ask them to adjust their scheduling, please correct me if I'm misstating what your prior indications were."

  Mr. Kippenbrock said there was an instance where they did some early hours of construction and we advised our employees to stay within the [inaudible due to the noise overlay] with the one time instance. We do try to respond as quickly as possible to all calls that are made by concerned citizens, whether locally or not locally.

- Commissioner Mayfield said, "This is my last question. One, there were two meetings involved, there was a report that was done and we had the presentation from the, I don't recall the company. But questions were still asked by some of the community residents with regard to the permitting at SWMA. I'm still asking questions for community residents. I'm just going to make my point Mr. Chairman if I can. And two, if it was sited and permitted, was this the original site for the Caja del Rio to be sited, or the Marty Sanchez Golf Course was. I don't know if anybody has an answer to that. Was it moot at one time. Was that the proper site, then we know that. If nobody has an answer to that, that's fine too. But that's all I have Mr. Chairman, thank you."

- Chair Ives said, "Certainly part of our moving forward with the renewal of the permit to run the landfill, again I'm sure this issue will come up in the context of the new Code the County is adopting. What may not be clear now, I believe will become very clear in the future as those additional processes unfold."

(G) STATUS REPORT ON CURRENT CONTRACTS

Randall Kippenbrock, Executive Director, presented information regarding this matter from his Memorandum dated February 17, 2013 , with attachments, to the SFSWMA Joint Powers Board, is incorporated herewith to these minutes as Exhibit "7." Please see Exhibit "7" for specifics of this presentation.

Chair Ives asked if this is an inclusive of all the contracts that the authority has in place.

Mr. Kippenbrock said these are contracts that went out for competitive bidding, whether for proposal or a bid. They are not the small maintenance contracts, or any that require a small amount of work to be done, as a one-time contract, or less than one year.

Chair Ives appreciates the list. He said he would like for the City to put together a similar list, noting it would be a small book for the City. It is able to see in 2 pages the major contracts that the Agency has in place, along with all the details of the contract.

VII. MATTERS FROM STAFF

Ms. Padilla gave a brief update on the City's updated recycling strategies for 2013. Ms. Padilla said they have partnered with the Sierra Club and in the evenings will be volunteering to help distribute recycling binds at the Chavez Center. She said they will be doing distribution monthly. She spoke about the outreach to the public so people understand the recycling process better. She said the position of Recycling Supervisor Manager is being advertised. The City has purchased 4 compressed natural gas collection units that will be delivered next week.

Chair Ives said he has received emails regarding "Zero Waste." He asked if they are looking at that and giving it consideration.

Ms. Padilla said they have, and a workshop is scheduled for this evening as an introduction and all day tomorrow at the Santa Fe Community college. She and Katherine Mortimer will be attending to get more education and information about the concept.

Chair Ives asked Ms. Padilla if she will provide a short Memorandum about what she learned at that meeting, and Ms. Padilla said she will do so.

VIII. MATTERS FROM THE BOARD

Commissioner Mayfield said we are paying more than $40 per ton to dump our waste because we are going to have to back under the ground, and are working on preservation of a life cycle. He said, "That's my point. We're paying over $40 per ton and trying to reduce the amount per ton that we are paying the landfill. So that's one of my points, and I think it is important for the record to note that."

Commissioner Chavez suggested we discuss having a meeting at SWMA.

Mr. Kippenbrock said we generally have meetings over there, and will have to get back to the Board as to when it would be appropriate.

Commissioner Chavez said this is fine, noting he is suggesting this for the future, and we could hear any concerns from the residents in the area. He said perhaps we want to do some outreach and have meetings on a rotating basis, and hold meetings there every 3rd month or so, so we can have that interaction and make it a little easier for the public to attend.

Commissioner Chavez asked Mr. Kippenbrock if he has a log listing complaints, and Mr. Kippenbrock said no.

Commissioner Chavez suggested he start doing this in the future, to see the number of complaints, where they're coming from, the nature of the complaints and such.

Commissioner Chavez said he had a brief discussion with staff earlier about the disposal of horse manure, and asked Ms. Merrill to share what they discussed earlier about horse manure and the green waste program.

Ms. Merrill said there are quite a few residents who are illegally dumping horse manure. She said she thinks the County is going to encourage people, rather than throwing away horse manure or illegally dumping it, to bring it to Jacona and Eldorado as green waste. She said at BuRRT they accept horse manure as green waste, and they would accept it from the County if the County were to accept it from the residents as well.

Chair Ives there were questions about when it contains additional materials, it moves out of the green waste to trash. He said that begs the question of making sure that people who are the generators of manure know that this process exists for them, if it is kept clean. He would like to do outreach so people know how they need to bring it.

Ms. Van Peski said it is quite valuable, and asked if they are planning to sell it.

Ms. Merrill said they don't sell it, they put it with the mulch and then give it away free. She said after the assessment study is done, and whatever happens with composting, she is sure it will be included with composting, and is unsure if it will continue to be free.

Councilor Chavez said his interest is to give the public another option instead of dumping in arroyos.

Ms. Merrill said they can charge people if they unload it, at $5 per cubic yard.

Mr. Barela said they don't accept horse manure at the transfer stations, but he will check on that, and if the County wants to do that, the County would have to change the Ordinance. And if that is done, it can be included in the green waste at the transfer stations.

Commissioner Chavez asked if we can direct staff to work in that direction, or does the Board want more discussion.

Commissioner Holian said it has to be the County staff that works on it.

Commissioner Chavez asked if the Board is okay with this, or do we need to bring it back for discussion at the next meeting.

Chair Ives asked if this would require a change to our operations.

Mr. Kippenbrock said it would not mean a change to the current fee ordinance, but he will respectfully request the County staff to change the definition of what constitutes green waste. He would like it to be delivered separately rather than in the green waste.

Responding to Commissioner Chavez, Commissioner Holian said we should work together as to how to move this forward, and Commissioner Chavez said he will work with her in this regard.

Chair Ives said it is his sense that it would be a consensus among the members that it would be a good thing to do.

Commissioner Mayfield asked the kind of manure matters.

Mr. Kippenbrock said it doesn't matter, however they accept mostly horse manure.

Commissioner Chavez said perhaps the definition needs to consider manure from other small farm animals.

IX. NEXT MEETING DATE – Thursday, March 21, 2013

X. ADJOURNMENT

MOTION: Commissioner Holian moved, seconded by Commissioner Chavez, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the meeting was adjourned at approximately 1:50 p.m.

APPROVED BY:

Peter N. Ives, Chair

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

SUBMITTED BY:

Melessia Helberg, Board Stenographer

SFC CLERK RECORDED 03/22/2013