

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

August 23, 2016

**FROM: GERRY NEWCOMBE, Director
Department of Public Works – Solid Waste Management**

**SUBJECT: SURETY BOND RELEASE AND ASSIGNMENT OF CLAIM WITH SURETEC
INSURANCE COMPANY IN CONNECTION WITH SOLID WASTE DEFERRED
BILLING ACCOUNT WITH APEX WASTE SYSTEMS, INC.**

RECOMMENDATION(S)

1. Approve Full and Final Release and Assignment of Claims with SureTec Insurance Company in the amount of \$40,000, in connection with Surety Bond No. 4397775.
2. Authorize the Public Works Director to execute the Full and Final Release and Assignment of Claims and submit these documents to SureTec Insurance Company in order for the County to receive the \$40,000 payment related to disposal charges incurred by Apex Waste Systems, Inc.

(Presenter: Gerry Newcombe, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS AND OBJECTIVES
Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Department of Public Works – Solid Waste Management Division (SWMD) is not financed by the General Fund. Instead, SWMD establishes fees that are charged to the public and other agencies for utilization of the County’s solid waste disposal system. The execution of these agreements will result in the collection \$40,000 of the \$72,000 of disposal charges incurred by Apex Waste Systems, Inc. (Apex). Sufficient appropriation and revenues are included in the SWMD 2016-17 Operations Budget (EAA-SWM-SWM-200-2443, EAA-SWM-SWM-9700).

BACKGROUND INFORMATION

This action supports the County and Chief Executive Officer goals and objective of operating in a fiscally-responsible and business-like manner by allowing SWMD to submit a claim to SureTec Insurance Company (SureTec) to collect on a past-due debt owed the County for waste disposal services.

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cc: SWMD-Newcombe
CAO-Garth
File - SWMD/Refuse Disposal/
Bonds/Sites w/attach
jr 8/24/16

ITEM 52

Record of Action of the Board of Supervisors

**APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors**

MOTION	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>	<u>AYE</u>
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY _____

DATED: August 23, 2016

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SWMD operates the gates at each of the County's solid waste facilities, even though the landfill operations are contracted out. In managing the intake of solid waste and payment for disposal services, SWMD has historically used credit accounts for regular customers, such as franchise haulers and City accounts, so that regular customers do not have to pay for each load at the time it comes through the gate. Procedurally, SWMD establishes an account, tallies the customer's monthly disposal charges, and bills its regular customers on a monthly basis. To secure the payment, SWMD utilizes a standard credit arrangement with its customers. The recommended actions will allow SWMD to collect \$40,000 from a surety bond used in the credit arrangement with Apex. The County will proceed with collection activities to collect the remaining amount owed by Apex.

SWMD has utilized billing accounts as a routine business practice since the 1960's; maintains approximately 300 active deferred billing accounts; and issues bills totaling over \$5 million of accounts receivables (AR) in its monthly billing cycle. Most deferred billing account holders are other governmental agencies (such as cities and special districts), refuse hauling companies, contractors, and businesses. Opening a deferred billing account starts with completing a Deferred Billing Account Application. Based upon the applicant's credit check, SWMD makes a determination on whether or not to approve the deferred billing account application. Once approved, the security deposit is calculated based on an estimated three months of tonnage listed on the application. The required security deposit is communicated to the applicant. When the security deposit is received from the applicant, SWMD opens a deferred billing account. Security deposits can be in the form of a contract instrument, a surety bond, or a cash deposit held in trust by SWMD. Cash and bond security deposits are used, when needed, to settle final amounts due upon either the account holder's request to close an account or upon SWMD's suspension of an account due to an account holder's failure to pay.

The summary of Apex's account history and security deposit arrangements follows:

- June 2008 - Apex was approved for a SWMD deferred billing account. The original required security deposit was calculated at \$59,100 based on their estimated monthly disposal for three months as listed on their credit application. Apex met the security deposit requirement by posting a surety bond, which was subsequently periodically reduced or increased as appropriate based on SWMD's review of Apex's actual monthly disposal charges at the time.
- August 2014 - Apex's security deposit was set at \$24,100, secured by SureTec's Bond No. 4397775.
- November 2014 - Apex's security deposit was increased to \$38,200 based on SWMD's review of actual monthly disposal charges to adequately cover three months of estimated disposal charges.
- August 2015 - Apex's security deposit was increased to \$40,000 based on SWMD's review of actual monthly disposal charges to adequately cover three months of estimated disposal charges (revised Bond No. 4397775).

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- October 2015 - Apex's deferred billing account became delinquent. In an attempt to resolve this delinquency, staff sent numerous emails and made phone calls to Apex's principal officers over the next several months in an attempt to bring the account current. Apex made promises to bring the account current and Apex did make several intermittent partial payments during this time; however, the account remained in a delinquent status, incurring monthly finance charges due to its past due status.
- February 2016 - On February 4, 2016, SWMD suspended Apex's deferred billing account for lack of timely payments and unresponsiveness to staff inquiries. SWMD gave notice to Apex of the suspension via letter and phone call. On February 4, 2016, SWMD received an email from Apex outlining an offered payment plan and explanation of how Apex planned to bring the account current.
- April 2016 - On April 22, 2016, SWMD contacted SureTec for instructions regarding opening a claim for the Surety Bond after Apex failed to make the promised payments and stopped responding to SWMD staff inquiries.
- May 2016 - On May 10, 2016, SureTec acknowledged that the claim against Bond No. 4397775 was received and requested additional information.

SureTec has performed their due diligence by researching SWMD's efforts to collect payment from Apex. SureTec has now issued the required surety bond claim forms to SWMD for Board of Supervisors approval.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Principal Assistant County Counsel, 387-5455) on August 1, 2016; Finance (Deborah Garth, Administrative Analyst, 387-5426) on August 2, 2016; and County Finance and Administration (Mary Jane Olhasso, Assistant Executive Officer, 387-4599) on August 2, 2016.