

RESOLUTION NO. 15 - 03

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST CONTRA COSTA
INTEGRATED WASTE MANAGEMENT AUTHORITY AUTHORIZING THE
DISBURSEMENT OF THE OOA FUND TO MEMBER CITIES AND CONTRA COSTA
COUNTY**

WHEREAS, the West Contra Costa Integrated Waste Management Authority (the "Authority") is a joint powers authority ("JPA") organized under the provisions of Government Code section 6500 *et seq.* (the "Joint Exercise of Powers Act"); and

WHEREAS, the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo ("Member Cities") are parties to the JPA agreement that created the Authority; and

WHEREAS, the JPA agreement authorized the construction and operation of an integrated resource recovery facility ("IRRF"), pledged waste stream to control of Authority and placed certain municipal solid waste activities, including AB 939 compliance, with the Authority; and

WHEREAS, Contra Costa County (the "County") is an ex-officio member of the Authority, made the same pledge of waste stream to the Authority as the Member Cities did, and allowed the IRRF to be regulated by the Authority even though it is located within the unincorporated jurisdiction of the County; and

WHEREAS, the Authority entered into an agreement with Republic Services to operate the IRRF, and this agreement provided for a sharing of revenues generated by the IRRF between the Authority and Republic Services; and

WHEREAS, Republic Services entered into agreements with public entities other than the Member Cities ("non-Member Cities") to process the recyclables collected by those non-Member Cities ("Service Agreements"); and

WHEREAS, the Authority had no regulatory role over these non-Member Cities, and these Service Agreements were the result of freely entered into negotiations and the determination by each party that this was a commercially beneficially arrangement; and

WHEREAS, to the extent that the generators of the recyclables collected by non-Member Cities were charged a fee for collection and processing of the recyclables at the IRRF, those fees were not imposed on property owners by the Authority, Member Cities or the County; and

WHEREAS, the recyclables collected from non-Member Cities were processed at the IRRF and sold, generating revenues, of which the Authority received a portion; and

WHEREAS, these revenues were deposited into the Authority's out-of-area revenues fund ("OOA Fund"); and

WHEREAS, the OOA Fund was generated from the sale of recyclable materials, originating from outside the Authority's jurisdictional area, pursuant to commercial contracts and were not derived from a tax, a property-related fee or an assessment under Proposition 218.

WHEREAS, the Authority currently has One Million Forty-nine Thousand Sixty-four Dollars (\$1,049,064.00) in the OOA Fund; and

WHEREAS, Government Code section 6512.1 of the Joint Exercise of Powers Act expressly permits a JPA to distribute revenues it has received from the operation of a revenue-producing facility; and

WHEREAS, Government Code section 6512.1 states that "[i]f the purpose set forth in the agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide (a) for the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties pursuant to Section 6504 and (b) for payment to the parties of any sum or sums derived from the revenues of said facilities. Payments, repayments or returns pursuant to this section shall be made at the time and in the manner specified in the agreement and may be made at any time on or prior to the rescission or termination of the agreement or the completion of the purpose of the agreement"; and

WHEREAS, distribution of revenues under Government Code section 6512.1 must be in accordance with the manner specified in the agency's JPA agreement or, in the absence of express provisions regarding distribution in the JPA agreement, in a manner determined by the JPA's board of directors;

WHEREAS, the JPA agreement creating the Authority does not contain any provisions which directly regulate the distribution of revenue prior to termination of the Authority, and therefore the Board of Directors has the authority and discretion to determine if, and in what manner, the OOA Fund should be distributed; and

WHEREAS, the Board of Directors desires to distribute the monies in the OOA Fund to the Member Cities and the County and some members of the Board of Directors and Authority staff have expressed the view that OOA Funds should be used by Member Cities for the purposes for which the Authority was created, which relate to solid waste, recycling, waste reduction and compliance with AB 939. Member Agencies could further the purposes of the Authority by using the disbursed monies on any use which relates to solid waste or recycling services, or waste reduction, such as litter pickup or recycling education. The Authority does not control the use of funds received by the Member Cities, however; and

WHEREAS, a Member City or the County will be eligible to receive a share of the OOA Fund only if its legislative body authorizes the receipt of the monies and authorizes its representative to execute an agreement indemnifying the Authority, the other Member Cities and the County with regard to any claim or action arising out of the Authority's disbursement of monies from the OOA Fund; and

WHEREAS, the Board of Directors has not yet determined how much of the OOA Fund to distribute, or how to divide the OOA Fund between the Member Cities and the County, and will make that determination at some point in the future.

NOW, THEREFORE, the Board of Directors of the West Contra Costa Integrated Waste Management Authority resolves as follows:

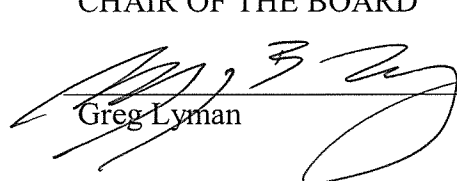
1. The Executive Director is authorized to distribute monies from the Authority's OOA Fund to the Authority's Member Cities and the County in an amount to be determined by the Board of Directors at a meeting on such date that the Board of Directors, in its sole discretion, determines appropriate.
2. The Authority's Legal Counsel is authorized to distribute the Indemnification Agreement in the form on file with the Authority's Secretary. The Indemnification Agreement shall obligate the Member City or County to indemnify, defend with counsel acceptable to the Authority, and hold harmless the Authority, other Member Cities and the County from any and all claims or liabilities arising out of the Authority's disbursement of monies from the OOA Fund, in such form and with such changes that are not materially detrimental to the Authority, as reviewed and approved by the Authority's Legal Counsel. The Executive Director shall not distribute any moneys from the OOA Fund unless and until the legislative body of a Member City approves the Indemnification Agreement, authorizes its execution, and submits an executed copy to the Executive Director. If a Member City does not execute the Indemnification Agreement, it will not be eligible to receive any disbursed monies from the Authority's OOA Fund. The County Board of Supervisors must similarly approve and authorize execution of the indemnification agreement as a condition of receiving any disbursed monies.
3. Once the Board of Directors has determined the amount of monies from the OOA Fund to distribute to each Member City and the County, the Executive Director is authorized to distribute the monies to any Member City that has submitted an executed copy of the Indemnification Agreement, or the County if it has submitted an executed copy of the Indemnification Agreement.

ATTEST:



Melinda Wong, Authority Secretary

CHAIR OF THE BOARD



Greg Lyman

11/12/2015

Date


I hereby certify that the foregoing Resolution was adopted by the Board of Directors of the West Contra Costa Integrated Waste Management Authority at its meeting on October 29, 2015, by the following vote:

AYES: Directors: Romero, Lyman, Beckles, Myrick, Martinez

NOES: Directors: Murray, Valdez

ABSTAIN: Directors: none

ABSENT: Directors: none



Melinda Wong, Authority Secretary

RESOLUTION NO. 15 – 04

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST

CONTRA COSTA INTEGRATED WASTE MANAGEMENT

AUTHORITY AUTHORIZING THE DISBURSEMENT OF THE RRRR

FUND TO MEMBER CITIES AND CONTRA COSTA COUNTY

WHEREAS, the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (the “Authority”) is a joint powers authority (“JPA”) organized under the provisions of Government Code section 6500 *et seq.* (the “Joint Exercise of Powers Act”); and

WHEREAS, the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo (“Member Cities”) are parties to the JPA agreement that created the Authority; and

WHEREAS, the JPA agreement authorized the construction and operation of an integrated resource recovery facility (“IRRF”), pledged waste stream to control of Authority and placed certain municipal solid waste activities, including AB 939 compliance, with the Authority; and

WHEREAS, Contra Costa County (the “County”) is an ex-officio member of the Authority, pledged the same waste stream control to the Authority as the Member Cities did, and allowed the IRRF to be regulated by the Authority even though it is located within the unincorporated jurisdiction of the County; and

WHEREAS, the Authority entered into an agreement with Republic Services to operate the IRRF (“Service Agreement”), and this agreement provided for a sharing of revenues generated by the IRRF between the Authority and Republic Services; and

WHEREAS, under the terms of the JPA agreement, Republic Services was the franchised collector of recyclables for the Member Cities, with the exception of El Cerrito and the County; and

WHEREAS, recyclables collected from Member Cities and the County by Republic Services were processed at the IRRF and then sold on the open market, generating revenue, of which the Authority received a portion; and

WHEREAS, these revenues were deposited in the Authority’s Recycling Revenues and Rate Reserve Fund (“RRRR Fund”); and

WHEREAS, under the terms of the Service Agreement, the Authority was charged with developing and implementing the flow of revenues to Republic Services, but the Authority did not set any fees to be imposed directly on the Member Cities’ or the County’s solid waste customers; and

WHEREAS, the Authority calculated the revenues required to meet the terms of the Service Agreement and allocated those costs, along with the Authority's administrative costs, on a per ton charge on all tons of solid waste collected by Republic Services pursuant to the Member City and County franchises, with these per charges paid by the collectors for the services and facilities included in the Service Agreement; and

WHEREAS, these per ton charges imposed on the waste stream were contractual in nature and were not imposed directly on solid waste ratepayers by the Authority; and

WHEREAS, the RRRR Fund was generated from the sale of recyclable materials pursuant to commercial contracts, and were not in any way derived from fees; and

WHEREAS, the RRRR Fund was not derived from either a tax, a property-related fee or an assessment under Proposition 218; and

WHEREAS, the Authority is an independent legal entity, distinct from the Member Cities and the County, and any fees, charges or rates imposed by the Member Cities or the County are not imposed by the Authority; and

WHEREAS, the Authority currently has Two Million Nine Hundred Fifty Thousand Thirty-six Dollars (\$2,950,036.00) in the RRRR Fund; and

WHEREAS, Government Code section 6512.1 of the Joint Exercise of Powers Act expressly permits a JPA to distribute revenues it has received from the operation of a revenue-producing facility; and

WHEREAS, Government Code section 6512.1 states that:

[i]f the purpose set forth in the agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide (a) for the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties pursuant to Section 6504 and (b) for payment to the parties of any sum or sums derived from the revenues of said facilities. Payments, repayments or returns pursuant to this section shall be made at the time and in the manner specified in the agreement and may be made at any time on or prior to the rescission or termination of the agreement or the completion of the purpose of the agreement; and

WHEREAS, distribution of revenues under Government Code section 6512.1 must be in accordance with the manner specified in the agency's JPA agreement or, in the absence of express provisions regarding distribution in the JPA agreement, in a manner determined by the JPA's board of directors; and

WHEREAS, the JPA agreement creating the Authority does not contain any provisions which directly regulate the distribution of revenue prior to termination of the Authority, and therefore the Board of Directors has the authority and discretion to determine if, and in what manner, the RRRR Fund should be distributed; and

WHEREAS, the Board of Directors has determined that there is no immediate need for the monies in the RRRR Fund and has decided that a distribution of at least some of the monies in the RRRR Fund should occur; and

WHEREAS, the Board of Directors desires to distribute the monies in the RRRR Fund to the Member Cities and the County, but only on the condition that the Member Cities and the County use the distributed monies for uses that further the purpose of the Authority; and

WHEREAS, the Authority was created for a limited and specific purpose relating to solid waste, recycling, waste reduction and compliance with AB 939; and

WHEREAS, Member Cities and the County may further the purposes of the Authority by using the disbursed monies on any use which relates to solid waste or recycling services, or waste reduction; and

WHEREAS, a Member City or the County will be eligible to receive a share of the RRRR Fund only if its legislative body authorizes the receipt of the monies and authorizes its authorized representative to execute an agreement indemnifying the Authority, the other Member Cities and the County with regard to any claim or action arising out of the Authority's disbursement of monies; and

WHEREAS, the Board of Directors has not yet determined how much of the RRRR Fund to distribute, or how to divide the RRRR Fund between the Member Cities and the County, and will make that determination at some point in the future.

NOW, THEREFORE, the Board of Directors of the West Contra Costa Integrated Waste Management Authority resolves as follows:

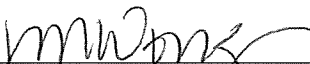
1. The Executive Director is authorized to distribute monies from the Authority's RRRR Fund to the Authority's Member Cities and the County in an amount to be determined by the Board of Directors at a meeting on such date that the Board of Directors, in its sole discretion, determines appropriate.
2. The Authority's Legal Counsel is authorized to distribute the Indemnification Agreement in the form on file with the Authority's Secretary. The agreement shall obligate the Member City or the County to indemnify, defend with counsel acceptable to the Authority, and hold harmless the Authority, other Member Cities and the County from any and all claims or liabilities arising out of the Authority's disbursement of monies from the RRRR Fund, in such form and with

such changes that are not materially detrimental to the Authority, as reviewed and approved by the Authority's Legal Counsel. The city council of each Member City receiving disbursement of RRRR Fund shall approve the agreement and authorize its execution prior to receipt of any monies from the RRRR Fund. If a Member City does not execute the indemnification agreement, it will not be eligible to receive any disbursed monies from the Authority. The County Board of Supervisors must similarly approve and authorize execution of the indemnification agreement as a condition of receiving any disbursed monies

3. Once the Board of Directors has determined the amount of monies from the RRRR Fund to distribute to each Member City and the County, the Executive Director is authorized to distribute the monies to any Member City that has submitted an executed copy of the indemnification agreement, or the County if it has submitted an executed copy of the indemnification agreement.

ATTEST:

CHAIR OF THE BOARD



Melinda Wong, Authority Secretary



Greg Lyman

10/30/2015

Date

I hereby certify that the foregoing Resolution was adopted by the Board of Directors of the West Contra Costa Integrated Waste Management Authority at its meeting on October 29, 2015 by the following vote:

AYES: Directors: Romero, Lyman, Beckles, Myrick, Martinez

NOES: Directors: Valdez, Murray

ABSTAIN: Directors: none

ABSENT: Directors: none



Melinda Wong, Authority Secretary
2542206.1

RESOLUTION NO. 15 – 05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST

CONTRA COSTA INTEGRATED WASTE MANAGEMENT

AUTHORITY AUTHORIZING THE DISBURSEMENT OF THE PERAM

FUND TO MEMBER CITIES AND CONTRA COSTA COUNTY

WHEREAS, the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (the “Authority”) is a joint powers authority (“JPA”) organized under the provisions of Government Code section 6500 *et seq.* (the “Joint Exercise of Powers Act”); and

WHEREAS, the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo (“Member Cities”) are parties to the JPA agreement that created the Authority; and

WHEREAS, the JPA agreement authorized the construction and operation of an integrated resource recovery facility (“IRRF”), pledged waste stream to control of Authority and placed certain municipal solid waste activities, including AB 939 compliance, with the Authority; and

WHEREAS, Contra Costa County (the “County”) is an ex-officio member of the Authority, pledged the same waste stream control to the Authority as the Member Cities did, and allowed the IRRF to be regulated by the Authority even though it is located within the unincorporated jurisdiction of the County; and

WHEREAS, the Authority entered into an agreement with Republic Services to operate the IRRF (“Service Agreement”), and the original version of that agreement expired in 2013; and

WHEREAS, under the terms of the Service Agreement, Republic Services owed the Authority a reconciliation and account balancing payment upon the expiration of the Service Agreement; and

WHEREAS, this payment was deposited into the Authority’s Service Agreement closeout revenues fund (“PERAM Fund”); and

WHEREAS, under the terms of the Service Agreement, the Authority was charged with developing and implementing the flow of revenues to Republic Services, but the Authority did not set any fees to be imposed directly on the Member Cities’ or the County’s solid waste customers; and

WHEREAS, the Authority calculated the revenues required to meet the terms of the Service Agreement and allocated those costs, along with the Authority’s administrative costs, on a per ton charge on all tons of solid waste collected by Republic Services pursuant to the

Member City and County franchises, with these per charges paid by the collectors for the services and facilities included in the Service Agreement; and

WHEREAS, these per ton charges imposed on the waste stream were contractual in nature and were not imposed directly on solid waste ratepayers by the Authority; and

WHEREAS, the PERAM Fund was generated from Republic Services' contractual obligation pursuant to the Service Agreement and were not in any way derived from fees; and

WHEREAS, the PERAM Fund was not derived from either a tax, a property-related fee or an assessment under Proposition 218; and

WHEREAS, the Authority is an independent legal entity, distinct from the Member Cities and the County, and any fees, charges or rates imposed by the Member Cities or the County are not imposed by the Authority; and

WHEREAS, the Authority currently has Two Million Six Hundred Fifty Thousand Dollars (\$2,650,000.00) in the PERAM Fund; and

WHEREAS, Government Code section 6512.1 of the Joint Exercise of Powers Act expressly permits a JPA to distribute revenues it has received from the operation of a revenue-producing facility; and

WHEREAS, Government Code section 6512.1 states that:

[i]f the purpose set forth in the agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide (a) for the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties pursuant to Section 6504 and (b) for payment to the parties of any sum or sums derived from the revenues of said facilities. Payments, repayments or returns pursuant to this section shall be made at the time and in the manner specified in the agreement and may be made at any time on or prior to the rescission or termination of the agreement or the completion of the purpose of the agreement; and

WHEREAS, distribution of revenues under Government Code section 6512.1 must be in accordance with the manner specified in the agency's JPA agreement or, in the absence of express provisions regarding distribution in the JPA agreement, in a manner determined by the JPA's board of directors; and

WHEREAS, the JPA agreement creating the Authority does not contain any provisions which directly regulate the distribution of revenue prior to termination of the Authority, and

therefore the Board of Directors has the authority and discretion to determine if, and in what manner, the PERAM Fund should be distributed; and

WHEREAS, the Board of Directors desires to distribute the monies in the PERAM Fund to the Member Cities and the County, but only on the condition that the Member Cities and the County use the distributed monies for uses that further the purpose of the Authority; and

WHEREAS, the Authority was created for a limited and specific purpose relating to solid waste, recycling, waste reduction and compliance with AB 939; and

WHEREAS, Member Cities and the County may further the purposes of the Authority by using the disbursed monies on any use which relates to solid waste or recycling services, or waste reduction; and

WHEREAS, a Member City or the County will be eligible to receive a share of the PERAM Fund only if its legislative body authorizes the receipt of the monies and authorizes its representative to execute an agreement indemnifying the Authority, the other Member Cities and the County with regard to any claim or action arising out of the Authority's disbursement of monies; and

WHEREAS, the Board of Directors has not yet determined how much of the PERAM Fund to distribute, or how to divide the PERAM Fund between the Member Cities and the County, and will make that determination at some point in the future.

NOW, THEREFORE, the Board of Directors of the West Contra Costa Integrated Waste Management Authority resolves as follows:

1. The Executive Director is authorized to distribute monies from the Authority's PERAM Fund to the Authority's Member Cities and the County in an amount to be determined by the Board of Directors at a meeting on such date that the Board of Directors, in its sole discretion, determines appropriate.
2. The Authority's Legal Counsel is authorized to distribute the Indemnification Agreement in the form on file with the Authority's Secretary. The agreement shall obligate the Member City or the County to indemnify, defend with counsel acceptable to the Authority, and hold harmless the Authority, other Member Cities and the County from any and all claims or liabilities arising out of the Authority's disbursement of monies from the PERAM Fund, in such form and with such changes that are not materially detrimental to the Authority, as reviewed and approved by the Authority's Legal Counsel. The city council of each Member City receiving the disbursed PERAM Fund shall approve the agreement and authorize its execution prior to receipt of any monies from the PERAM Fund. If a Member City does not execute the indemnification agreement, it will not be eligible to receive any disbursed monies from the Authority. The

County Board of Supervisors must similarly approve and authorize execution of the indemnification agreement as a condition of receiving any disbursed monies.

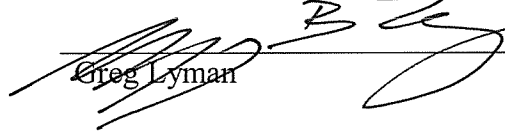
3. Once the Board of Directors has determined the amount of monies from the PERAM Fund to distribute to each Member City and the County, the Executive Director is authorized to distribute the monies to any Member City that has submitted an executed copy of the indemnification agreement, or the County if it has submitted an executed copy of the indemnification agreement.

ATTEST:

CHAIR OF THE BOARD



Melinda Wong, Authority Secretary



Greg Lyman

10/30/2015

Date

I hereby certify that the foregoing Resolution was adopted by the Board of Directors of the West Contra Costa Integrated Waste Management Authority at its meeting on October 29, 2015 by the following vote:

AYES: Directors: Romero, Lyman, Beckles, Myrick, Martinez
NOES: Directors: Murray, Valdez
ABSTAIN: Directors: none
ABSENT: Directors: none



Melinda Wong, Authority Secretary