

## INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is dated as of \_\_\_\_\_, 2018, and is between the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (“Authority”), a California joint powers authority, and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“County”).

### RECITALS

- A. The Authority is a joint exercise of powers authority. The cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo (the “Member Cities”) are members of the Authority and the County is an ex-officio member of the Authority.
- B. The Authority was created for limited and specific purposes related to solid waste, recycling services, and waste reduction. Under the JPA agreement that governs the Authority, the Authority was empowered to construct and operate an integrated resource recovery facility (“IRRF”).
- C. From 1994 to 2013, the Authority was party to an agreement with Republic Services, under which Republic Services operated the IRRF. The agreement provided for a sharing of revenues generated by the IRRF between the Authority and Republic Services.
- D. As a result of the operation of the IRRF by Republic Services, the Authority has accumulated reserves totaling \$6.65 million (the “Reserves”) in three separate funds, each of which has a separate specific source. The three funds are the out-of-area fund (“OOR Fund”), the Recycling Revenue and Rate Reserve Fund (“RRRR Fund”) and the Authority’s Service Agreement closeout revenues (“PERAM fund”).
- E. Government Code section 6512.1 authorizes the Authority to distribute revenues generated from the IRRF to its member entities at the discretion of the Authority’s Board of Directors.
- F. On October 29, 2015, the Authority’s Board of Directors adopted resolutions that authorize the disbursement of a portion of the Reserves to the Authority’s members, including the County, on the condition that (i) the recipients use the funds in ways that further the purposes of the Authority (i.e., any use that relates to solid waste, recycling, waste reduction or compliance with AB939), and (ii) each recipient indemnify the Authority and the Authority’s members, including the County, from any and all claims arising out of the Authority’s disbursement of the monies.
- G. The County’s share of the total approved disbursement is \$659,481 (the “County Disbursement Amount”).

NOW, THEREFORE, in consideration of the above recitals, and in anticipation of a disbursement of funds by the Authority to the County, the parties agree as follows:

## AGREEMENT

### 1. Indemnification.

To the fullest extent permitted by law, the County shall indemnify, defend with counsel acceptable to the Authority, and hold harmless the Authority, the Member Cities and their officers, officials, employees, agents and volunteers (together, the “Indemnitees”) from the County’s share of any and all demands, claims, costs, suits, damages, liabilities and expenses, including legal costs and attorneys’ fees (collectively, “Liability”) arising out of or relating to, a the County’s use of reserve funds disbursed by the Authority, except to the extent Liability is caused by the negligence or willful misconduct of the Authority and provided the aggregate cost to the County of the Liability does not exceed the County Disbursement Amount.

County shall immediately notify the Authority of any claim of loss against the County arising out of the disbursement of reserve funds by the Authority.

### 2. Interpretation of this Agreement.

This Agreement represents the entire understanding of the parties as to the subject matter of this Agreement. No prior oral or written understanding is of any force or effect with respect to the matters covered by this Agreement. This Agreement may not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

### 3. Amendment.

This Agreement may not be modified or amended, except by a writing that is signed by both parties.

### 4. Waiver.

No waiver of any of the provisions of this Agreement is binding unless it is in the form of a writing signed by the Authority, and no such waiver will operate as a waiver of any other provisions of this Agreement (whether or not similar), nor will such waiver constitute a continuing waiver. Except as specifically provided in this Agreement, no failure to exercise, or delay in exercising, any right or remedy under this Agreement constitutes a waiver thereof.

### 5. Severability.

If any provision of this Agreement, or portion thereof, is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions will remain enforceable to the fullest extent permitted by law.

### 6. Governing Law and Venue.

This Agreement is governed the laws of the State of California. If either party brings an

action against the other party under this Agreement, the exclusive venue of any trial is the County of Contra Costa, State of California.

7. Notices.

All notices, demands and other communications required or permitted under this Agreement are to be made in writing and will be deemed to have been duly given if delivered by hand or sent by certified or registered mail or overnight courier and addressed as follows:

To the Authority: West Contra Costa Integrated Waste Management Authority  
Attention: Executive Director  
One Alvarado Square  
San Pablo, CA 94806

To the County: Contra Costa County  
Department of Conservation and Development  
Attention: Director of Conservation and Development  
30 Muir Road  
Martinez, CA 94553

The parties are signing this Agreement as of the date set forth in the introductory paragraph.

WEST CONTRA COSTA INTEGRATED  
MANAGEMENT AUTHORITY

COUNTY OF CONTRA COSTA

By: \_\_\_\_\_  
George Stan Hakes, Executive Director

By: \_\_\_\_\_  
John Kopchik, Director  
Department of Conservation and Development

APPROVED AS TO FORM:

APPROVED AS TO FORM:

SHARON L. ANDERSON  
COUNTY COUNSEL

By: \_\_\_\_\_  
Kenton L. Alm, Authority Counsel

By: \_\_\_\_\_  
Kathleen M. Andrus, Deputy County Counsel