

RESOLUTION NO. 18 – 05B

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST
CONTRA COSTA INTEGRATED WASTE MANAGEMENT
AUTHORITY AUTHORIZING DISTRIBUTION OF EXCESS RESERVES
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 places certain municipal solid waste responsibilities on the Authority related to solid waste handling and recycling, including operating as a Regional Agency for compliance under the California Integrated Waste Management Act of 1989; and

WHEREAS, the Authority is an independent legal entity, distinct from the Member Cities and the County, and obtains funds for operating its programs through fees charged on a per ton basis for all solid waste, recyclables and organics handled by Republic pursuant to a Post Collection services agreement on behalf of its Member Agencies, excepting El Cerrito, and the County for certain West County areas served by Republic; and

WHEREAS, El Cerrito separately contributes similar amounts of funds based on its solid waste tonnage funds which the Authority provides on its behalf; and

WHEREAS, the Authority adopted a Resolution 18 - 02 setting forth a policy on appropriate levels of reserves for both Operations and a Recycling Funds in the amounts of 67% of annual budget for the Operating Reserve Fund and \$662,000.00 for the Recycling Reserve Fund; and

WHEREAS, the Authority currently has funds in excess of those amounts and said policy makes those excess funds subject to a determination of the Board as to whether such excess funds are to be distributed to Member Agencies and the County; 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 excess Reserve Funds should be distributed; and

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

WHEREAS, the Board of Directors desires to distribute certain excess Reserves in accordance with its adopted Reserve Policy, 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, a Member City or the County will be eligible to receive a share of the excess reserves only if its legislative body authorizes the receipt of the monies and executes 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

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 from the Authority's excess Reserves to the Authority's Member Cities and the County in amounts as follows:

Proposed

Member Agency	Percent	Disbursement
County	9.1%	\$45,302.62
El Cerrito	7.3%	\$36,644.16
Hercules	7.1%	\$35,745.39
Pinole	9.1%	\$45,602.13
Richmond	54.7%	\$273,621.19
San Pablo	12.6%	\$63,084.51
Total	100.0%	\$500,000.00

2. The distributions shall be made upon presentation of executed agreements to use the funds in a manner consistent with the functions and purpose of the Authority and to indemnify, defend, 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 these monies.

ATTEST:

CHAIR OF THE BOARD

Melinda Wong

Melinda Wong, Authority Secretary

Ben Choi

Ben Choi

11/8/2018

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 November 8, 2018 by the following vote:

AYES: Directors: Lyman, Murray, Choi, Myrick, Romero, Willis

NOES: Directors: Morris

ABSTAIN: Directors: none

ABSENT: Directors: none

Melinda Wong

Melinda Wong, Authority Secretary

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