



CITY COUNCIL REPORT

10B

DATE: MARCH 5, 2019

TO: MAYOR AND COUNCIL MEMBERS

FROM: MICHELLE FITZER, CITY MANAGER

SUBJECT: DISCUSSION AND DIRECTION REGARDING THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT UPDATE

RECOMMENDATION

It is recommended that the City Council discuss the status of the West Contra Costa Integrated Waste Management Authority (WCCIWMA/Recycle More) Joint Exercise of Powers Agreement (JEPA) update and provide direction to staff.

BACKGROUND

WCCIWMA is a Joint Powers Authority made up of the cities of Pinole, Hercules, San Pablo, El Cerrito, and Richmond whose primary tasks are Post-Collection Agreement oversight, compliance with State regulatory requirements regarding diversion of solid waste, recycling, and household hazardous waste (HHW), and related programs in support of said diversion. Contra Costa County is also a participant in some aspects of the Authority, but is not a voting member agency.

For many years the WCCIWMA Board and respective City staff have been working on updating the governing document for the Authority – the JEPA. There have been several issues that have caused the discussions to go on for so long. However, since July 2017 the City Managers have been working with WCCIWMA staff to develop a framework for core services of the Authority and amendments to the governance structure. In December 2017 the City Managers jointly presented preliminary recommendations, which were finalized and approved by the WCCIWMA Board in January 2018 (Attachment A). A key component to the recommendations was Board voting to reflect one (1) voting representative per member agency. To address the concerns of Richmond relative to this equal voting and the impacts on financial decisions, the City Managers agreed to unanimous vote requirements for several items including rate setting. To also address a Richmond interest, the withdrawal procedures were significantly simplified.

Final work to craft the draft JEPA then took place starting in January 2018. In May 2018 the member agencies received an amended JEPA draft that did not simply incorporate the City Manager's recommendations. Instead changes were made to

reflect additional feedback from the City of Richmond that the other member agencies had never received. Again, the member agencies and the City Managers began meeting to review the revised draft JEPA. Over the next several months a collaborative effort took place among the City Managers to develop a draft JEPA we could all recommend to the WCCIWMA Board.

On August 23, 2018 representatives from Pinole, Hercules, San Pablo and Richmond met with the WCCIWMA Executive Director, Stan Hakes. Then Richmond City Manager Bill Lindsey had prepared a matrix of the final changes proposed to Section 15 of the document, Withdrawal, and Richmond's concerns or interests. The participants went line by line and agreed on wording for everything except the Disbursement of Unallocated Funds Upon Withdrawal. On this topic, the participants agreed to the intent of the section, but requested that the WCCIWMA legal counsel put the final touches on the wording (see Attachment B). Unfortunately, subsequent to this August meeting the Richmond City Manager retired.

In December 2018 the incoming Richmond City Manager Carols Martinez notified Executive Director Hakes that Richmond wished to retain their three (3) voting Board members or have a weighted voting system that provided them with forty-three percent (43%) of the vote, essentially retaining a vote equal to their current three votes. Subsequently, the City Managers met another two times – once before the January 2019 WCCIWMA Board meeting and once after. The dialogue at both meetings included the thoughts of the smaller cities relative to the concessions provided to achieve the equal voting standard. It was reiterated at both meetings that this was a key issue for the small cities, as had been stated in letters from Pinole, Hercules and San Pablo City Managers to Executive Director Hakes in advance of the January Board meeting (see Attachment C).

At the conclusion of the second meeting on February 7th, it was agreed that Mr. Martinez would bring an item to the Richmond City Council for direction. That item appeared on their February 26th agenda. The agenda materials are attached as Attachment D. From the staff report it appears two options were considered: 1) Remain in WCCIWMA if the Agreement attains certain "key points of equity"; or 2) Initiate a transition plan for future consideration (withdrawal from WCCIWMA). Mayor Murray attended the February 26th Richmond City Council meeting and can provide a verbal report as to the discussion and direction to staff. Mayor Murray can also provide the history of the JEPA update discussions at the WCCIWMA Board meetings over the past several years.

REVIEW AND ANALYSIS

It is appropriate to bring this item forward to the full Council for discussion at this time. Mayor Murray has been reporting out on the progress of this matter periodically under Mayor and Council member's reports. I have also been keeping the Council informed of the City Manager's meetings progress. However, given the

direction that Richmond's participation has taken in the discussions of the JEPAs, Pinole City Council direction to staff will now be required.

FISCAL IMPACT

There is no direct fiscal impact at this time. Should any of the WCCIWMA member agencies leave there could be a negative impact to the ratepayers of the remaining jurisdictions.

ATTACHMENTS

ATTACHMENT A – December 2017 City Managers Recommendations to the WCCIWMA Board

ATTACHMENT B – Summary Notes of City Managers August 23, 2018 Meeting

ATTACHMENT C – January 2019 Letters from Pinole, Hercules and San Pablo

ATTACHMENT D – Richmond February 28, 2019 Staff Report and Attachments

**RECYCLEMORE Framework
City Managers Recommendations
Initial Discussion Draft
December 5, 2017**

SERVICE TYPES

Required Services

- ❖ Monitoring of the Republic Services (RS) Post Collection Agreement. This includes:
 - Ensure that the terms of the PCA are being met, including
 - Expected diversion rates at the Organic Materials, Dry Materials, C&D, and Recyclable Materials Processing Facilities
 - Expected level of service at the Transfer Station and by the HHW Program
 - Expected level of service for solid waste diversion program in all WCCUSD facilities – including those in El Cerrito
 - Monitoring Contractor's compliance with Applicable Law, permits, facility requirements and best management practices, including proper records management, provision of insurance, etc.
 - Oversight of all PCA recycling and diversion programs performed by Republic pursuant to PCA
 - Validate PCA rates to ensure accuracy and reasonableness
 - Validate quarterly and annual reports
 - Seek amendments to the PCA that reduce costs to JPA participating agencies.
 - Seek amendments to the PCA that increase the benefits of the JPA to its participating agencies.
 - Negotiate the lowest possible rates for participating agency citizens and businesses.

- ❖ AB 939 Compliance/Reporting. This includes:
 - Collecting and submitting information from member agencies to update Electronic Annual Report (EAR) and updating and uploading other required reports
 - Reporting annual waste and diversion tonnages to the Board and member agencies
 - Maintain regional SRRE and HHWE
 - Coordinate WCCUSD Source Reduction and Recycling Compliance
 - Coordinating with CalRecycle staff for on-site member agency meetings

- ❖ HHW Programs. This includes:
 - Work with member agencies to determine desired level of service
 - Set and approve HHW Budget

- Provide oversight of contract for HHW facility and any satellite or mobile events
- Ensure expected level of service is being maintained
- Monitoring Contractor's compliance with Applicable Law, permits and best management practices, including proper reporting, records management and retention, provision of insurance, etc.
- Continue to operate the Motor Oil Recycling Program and all related public information, compliance and events
- Implement and oversee Pharmaceutical Program

Optional but Recommended Services

- ❖ Administration and oversight of RecycleMore including Board packet preparation, human resources, information technology and financial matters (audit services).
- ❖ Public Outreach/Education, beyond existing Republic Services efforts. This includes:
 - Outreach and education regarding HHW and Motor Oil Recycling Program
 - Multi-family and commercial recycling and organics outreach and education – but only if El Cerrito gets to equally benefit from RM efforts.
- ❖ Legislative Monitoring – as a standing Board agenda item.
 - Providing timely updates on proposed legislation that will affect local government solid waste and diversion programs;
 - Provide analysis for Board to take actions to support or oppose proposed legislation
 - Assist member agencies in interpreting and/or implementing legislation that has passed, where regional action or program templates are required.
 - C&D Recycling Compliance template and education produced by RM is a good example of assisting with implementation.
- ❖ Special Projects, with unanimous approval of the Board and funding included in annual budget

Policy Recommendations to Improve Focus and Efficiency

RESERVE POLICY

- ❖ Establish three funds:
 - Operating Reserve equal to three months or twenty-five (25) percent of annual expenditures
 - Emergency Reserve at \$300,000
 - Legal Liability Reserve (OPEB & PERS) at \$550,000
- ❖ No recycling reserve fund – rates adjusted annually to reflect current markets
- ❖ No special projects fund
- ❖ Onetime expenses budgeted annually

- ❖ Any funds above these amounts shall be either disbursed to the Member Agency pursuant to current formula or held by the Agency pursuant to that formula for future programs and projects benefiting that Member

ANNUAL RATE SETTING

- ❖ Current PCA rates pursuant to formula
- ❖ RecycleMore rate setting methodology shall be defined through a resolution of the Board reflecting current and past practice, and any changes would require unanimous approval of the Board.

STRUCTURE

- ❖ Board shall reflect one voting representative per member agency
- ❖ Board meets four quarterly and more frequently if needed
- ❖ The Internal Operations Committee becomes Ad Hoc and meets only as needed
- ❖ RecycleMore Executive Director and staff shall meet on an as needed basis jointly with Member Agency staff who shall be advisory to the Executive Director, and Member Agency staff shall also serve as a resource to each respective City Manager/County CAO and Board Member.

City Managers JEP A Meeting 8/23/18

15.1 A member may withdraw from the Authority subject to the following provisions:

- a) Notice of Withdrawal. A member withdrawing from the Authority shall provide notice by submittal to the Board of a resolution adopted by its governing body setting forth its intent to withdraw. The effective date of the withdrawal shall be no sooner than one hundred eighty (180) days following submittal of the resolution.
- b) Obligations Prior to Effective Date of Withdrawal. The members acknowledge that a member withdrawing from the Authority must agree to pay to the Authority its Pro Rata share of Allocated Funds. If the withdrawing member has not paid the Authority its obligations under this section the amount due shall be deducted from any amount payable to the member under Section 15.2 below.
- c) Definition of Terms.
 - i. “Pro Rata Share” shall mean the percentage that the withdrawing member contributes to the Authority budget, based on the withdrawing member waste tonnage divided by the total Authority waste tonnage.
 - ii. “Allocated Funds”
 1. Allocated Funds shall include all of the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal.

2. PERS UAL and OPEB Reserve Funds are “allocated” and not available for disbursement to any withdrawing member agency.
 3. The Operating Budget for the fiscal year in which a notice of withdrawal is provided.
 4. All reserve funds established pursuant to the adopted Reserve Policy.
- iii. “Unallocated Funds” shall mean reserve funds that are not allocated.¹

15.2 Disbursement of Unallocated Funds Upon Withdrawal.

- a) Within ninety (90) days following receipt of a members’ notice of withdrawal, the Authority shall provide an accounting of the Allocated and Unallocated Funds of the Authority, including the calculation of pro-rata share.
- b) After subtracting the financial obligations as described in section 15.1(b), remaining Operating Fund Reserves and Recycling Fund Reserves are “unallocated” and the excess amount of these unallocated reserves (as defined in c below) would be disbursed upon withdrawal.
- c) The “excess and unallocated” reserves would be those funds above the reserve amounts consistent with the principles outlined in the adopted Reserve Policy. A percentage of the “excess and unallocated” reserves above the target amounts as defined in the Reserve Policy would be disbursed to the withdrawing agency, based on their pro-rate share as defined in Section 15.1(c).

Comment [MF1]: The intent here is to capture that a withdrawing member is entitled to their pro-rata share of all reserve funds, after the reserve balances are adjusted to meet the target ratio in the Reserve Policy. For example, the Operating Reserve target of 67% of \$1 million is \$670,000. If the adjusted target is now 67% of \$500,000 the new “allocated reserve” would be \$335,000. Therefore, any amount above \$335,000 in the Operating Reserve is available for distribution based on the pro-rata share. Same concept applies to the Recycling Reserve. Kent, please review this section and modify the proposed language to legally comply with this intent.

¹ Review and potentially remove the Recycling Fund from the JEPA

15.3 Obligations Following Effective Date of Withdrawal. A member which has withdrawn from the Authority shall not be liable for the payment of Authority expenses accruing beyond the withdrawal date, and shall have no right to reimbursement of any assets or monies of the Authority following satisfaction of the terms of the JEPA payment of Unallocated Funds.

2. Future JEPA Amendment- Would require majority vote of the Board of Directors and unanimous approval of member agency governing bodies.
3. JEPA Sections on Future Facilities- Sections 5.3 (b) and 5.3 (d) would remain. Section 5.3(b) would allow acquiring, constructing, etc. a facility. Section 5.3 (d) would allow bond financing for a facility. Section 5.3 (c) on eminent domain would be removed from JEPA.

Facilities would be approved on an “opt-in” basis. First, at least a majority of the Board would have to approve pursuing the Facility. Those member agencies choosing to “opt- in” would participate in the facility, have the benefits of using the facility, would pay for costs, and would have all financial and other liability. The governing body of where the facility would be located (host community) must approve the facility, and may use their rights under Government Code Section (insert eminent domain code section here).

4. Unanimous vote of the Board to allow Authority to require Members to pay pass through fees. A Board unanimous vote would be required to allow the Authority to require Members to pass through fees under circumstances where the revenue received from the Approved Rates is not available or inadequate or when such amounts are not paid to the owner or operator of the Approved Facility.

5. Penalties to be allocated based on solid waste tonnage. Penalties assessed by CalRecycle to be apportioned by the aggregated solid waste tons generated by each Member, and not on an equal share.
6. El Cerrito Compensation and HHW Budget - Any member agency with a separate Post-Collection Agreement would pay their portion of Authority budget based on aggregated solid waste tonnage. Any member agency with a separate Post-Collection Agreement would pay their share of HHW program costs through an allocation based on aggregated solid waste tonnage.
7. Financial Liability when a member agency does not vote in favor of a Board action - A member agency which does not vote in favor of a Board financial liability action is still responsible for their share of the financial liability of the action.
8. Member city designated under government code 6509- Designate San Pablo. San Pablo and Hercules both have \$50,000 contract limit (compared to \$45,000 in Pinole). City Managers felt (of the three) that San Pablo has the most up to date financial, personnel and administrative policies. Also, San Pablo is now updating their purchasing policy.
9. City Managers agreed to delegate to Regional staff group to work with Authority staff on about 20-25 other smaller issues, involving clarification and easy to resolve issues.
10. Next JEPA draft would be an administrative draft- to be reviewed and potentially revised by City Managers prior to distribution to Board, regional staff, city attorneys.



CITY OF PINOLE

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January 15, 2019

Mr. Stan Hakes
Executive Director
WCCIWMA/RecycleMore
1 Alvarado Square
San Pablo, CA 94806

Re: RECYCLEMORE JEPA AMENDMENT STATUS UPDATE

Dear Mr. Hakes:

As you know, in July 2017, the Recyclemore Board of Directors requested the assistance of the West County City Managers to recommend a Joint Exercise of Powers Agreement (JEPA) framework in order to complete the drafting of a new JEPA document.

Over the last 18 month period, there has been substantial effort made by all five (5) City Managers to reach consensus on a recommended JEPA framework which attempted to address all JPA related operational matters. The Board approved the City Manager's framework recommendations in January 2018. Since then the focus has been on developing JEPA language to reflect this new framework.

In August 2018 the City Managers agreed to specific verbiage and in concept to all of the outstanding issues. The last remaining task was for Board Counsel to clean up the language in draft Section 15.2, Disbursement of Unallocated Funds Upon Withdrawal, to reflect the agreed upon intent.

In December 2018, the City of Richmond proposed new changes to the August 2018 City Manager recommended JEPA language. On January 7, 2019, the City Managers, and a staff representative from Richmond, met again to discuss the proposed changes from the City of Richmond. The sticking point became clear, in that after the concessions that the other cities have made in relation to the unanimous voting requirement for all financial decisions of the Board, Richmond wishes to retain their voting power by either keeping three (3) Board members or providing one member with a weighted vote. This is not acceptable to the City of Pinole.

While the City of Pinole feels that the August 2018 draft language was suitable and in the best interest of all members, we are willing to consider additional language modifications to the financial aspects of the draft JEPA to address the other comments provided by Richmond. We are not, however, interested in providing concessions related to all financial actions and amendments to the withdrawal requirements, while still maintaining the current governance model, or a weighted voting model whereby Richmond retains more authority than the other member agencies.

RecycleMore JEPA Update Letter
January 15, 2019
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I wanted to provide you with the City of Pinole's position so you may include it in your presentation to the Board on January 24, 2019.

As always, should you have any questions or need additional information, please feel encouraged to contact me at (510) 724-8933, or mfitzer@ci.pinole.ca.us.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Fitzer". The signature is written in a cursive, flowing style.

Michelle Fitzer
City Manager

cc: Mayor and City Council members
Tamara Miller, Development Services Director



CITY MANAGER

January 15, 2019

Mr. Stan Hales
Executive Director
WCCIWMA/RecycleMore
1 Alvarado Square
San Pablo, CA 94806

I understand that you are planning to provide your Board with an update on the proposed Joint Exercise of Powers Agreement amendment later this month. Unfortunately, a recent meeting of the five West County City Managers was not able to resolve the issues raised by the City of Richmond.

The purpose of this letter is outline the City of Hercules' current position on the matter.

The City of Hercules remains willing to proceed with the JEPA Amendment as provided for in the City Manager's Framework from August 2018, with possible clarification to the financial provisions upon withdrawal as requested by Richmond. However, we are not able to entertain the proposed JEPA Amendment without the governance changes previously agreed to by the City Managers and as reflected in the August 2018 Framework.

Sincerely,

A handwritten signature in black ink that reads 'David C. Biggs'.

David Biggs
City Manager

xc: Mayor & City Council

January 9, 2019



CITY OF SAN PABLO
City of New Directions



Mr. Stan Hakes,
Executive Director
WCCIWMA/RecycleMore JPA
1 Alvarado Square
San Pablo, CA 94806

Re: RECYCLEMORE JEPA AMENDMENT PROCESS (STATUS)

Dear Mr. Hakes: *Stan*

Since July 2017, the RecycleMore JPA Board of Directors has solicited the assistance of the five (5) West County City Managers to recommend a Joint Exercise of Powers Agreement (JEPA) amendment framework to streamline RecycleMore’s regional coordination and program management of solid waste, recycling, household hazardous waste, and regulatory reporting programs to the State of California on behalf of all JPA member agencies.

Over the last 18 month period, there has been substantial effort made by all five (5) City Managers to reach consensus on a recommended JEPA amendment framework that attempted to address all JPA related operational issues (i.e. core services, reserve fund disbursement, provisions for member agency withdrawal, and including changes to Board governance and representation, etc.). A consensus was successfully reached **collaboratively by all five (5) City Managers** in August 2018.

Unfortunately, as you know, in December 2018, the City of Richmond proposed new changes to the August 2018 City Manager recommended JEPA amendment framework. Unfortunately, the City of San Pablo does not agree with all of the proposed changes from the City of Richmond as reviewed in a recent meeting held on January 7, 2019.

Therefore, despite not being able to reach consensus at this time, the City of San Pablo wishes to clarify its position for your scheduled update to the RecycleMore JPA Board on January 24, 2019. For the betterment of all member agencies involved, the City of San Pablo supports a JEPA amendment process to move forward, as follows:

- **The City of San Pablo supports a JEPA amendment process which is in alignment with the City Manager recommended JEPA amendment framework reached in August 2018 by all five (5) City Managers; and**
- **The City of San Pablo is willing to entertain possible language clarification to specific financial provisions recently requested in December 2018 by the City of Richmond; and**

Mr. Stan Hakes, Executive Director
WCCIWMA/RecycleMore JPA
January 9, 2019
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- **The City of San Pablo will NOT entertain or support any changes to the Board's recommended governance and representation provisions that were previously agreed to in the August 2018 City Manager recommended JEPa amendment framework.**

Should you have any questions about this matter, please contact me directly at (510) 215-3016, or MattR@sanpabloca.gov.

Thank you for your time and consideration.

Sincerely,



Matt Rodriguez,
City Manager

cc: Mayor and City Council
City Attorney
Assistant City Manager
Public Works Director
Environmental Program Analyst



AGENDA REPORT

CITY MANAGER'S OFFICE

DATE: February 26, 2019

TO: Mayor Butt and Members of the City Council

FROM: Carlos Martinez, City Manager
Shasa Curl, Economic and Community Development Director

SUBJECT: RECYCLEMORE JOINT EXERCISE of POWERS AGREEMENT VOTING STRUCTURE

STATEMENT OF THE ISSUE:

The West Contra Costa Integrated Waste Management Authority ("RecycleMore") is a joint powers authority (JPA) charged with overseeing the post-collection processing of solid waste, recycling, and green waste materials. At the beginning of 2016, RecycleMore led the process to restate and revise the agency's governing agreement known as the Joint Exercise of Powers Agreement ("Agreement"). City staff is seeking City Council direction on the proposed reduction of Richmond's weighted vote in the draft Agreement.

RECOMMENDED ACTION:

RECEIVE a presentation and provide DIRECTION to the City Manager on the voting structure for the RecycleMore Joint Exercise of Powers Agreement.

FINANCIAL IMPACT:

There is no financial impact to the City's General Fund.

Richmond ratepayers contribute approximately 57 percent of RecycleMore's operating budget and total revenue collected for post-collection services.

DISCUSSION:

Background

The City of Richmond's solid waste and recycling services are provided by two agreements with Republic Services: 1) a collection franchise agreement managed by the City of Richmond; and 2) a post-collection agreement managed by RecycleMore. The post-collection agreement includes recyclables processing, composting, operation of a Household Hazardous Waste facility, and the transfer, transportation, and disposal of solid waste. Both the collection and post-collection agreements end in 2025.

RecycleMore was formed in 1991 to finance the construction of a regional recycling facility known as the Integrated Resource Recovery Facility (“Recycling Facility”) and meet State recycling mandates. The original Joint Exercise of Powers Agreement (“Agreement”) was developed with respect to the agency’s financial obligations, and was intended to serve as the governing agreement until the bonds were fully repaid on December 31, 2013. RecycleMore has provided benefits to member cities by meeting State recycling mandates, providing household hazardous waste recycling programs, and leading an updated post-collection agreement that expanded food scrap recycling services.

In December 2015, the RecycleMore Board of Directors directed RecycleMore staff to draft an updated Agreement that would reflect the Agency’s new role after the Recycling Facility construction bond repayment, update the withdrawal process for member cities, and include opportunities for Contra Costa County to join as an official member. The first workshop to receive input on the Agreement update was held April 2016, and since that time, there have been numerous workshops, Board Meetings, and recommendations to aid in the revision of the Agreement. Throughout the update process, Richmond Board Directors have consistently conveyed requests for equitable policies that recognize Richmond’s financial contribution to the JPA, and Richmond’s environmental and health burdens attributed to hosting the regional solid waste facilities.

On December 23, 2016, Richmond’s City Manager, as directed by the Richmond City Council, sent a letter stating grievances with the November 2017 version of the Agreement and giving notice of intent to withdraw if Richmond’s requests were not satisfactorily addressed (Attachment 1). In an effort to support the Agreement revision process, City Managers from each of the RecycleMore member cities formed a working group to develop a RecycleMore framework (Attachment 2) for Board consideration. On January 18, 2018, the City Managers presented their recommended framework (“framework”) to the RecycleMore Board and the RecycleMore Board voted to incorporate it into the Agreement update.

The intent of the City Manager’s framework was to focus RecycleMore on core programs, services, and projects, “Core Services” that would increase diversion to meet State mandates, improve quality of service, and effectively manage rates and the post-collection agreement. The Framework aimed to avoid non-core programs, services, and projects (non-core services) unless there was unanimous agreement between RecycleMore directors. In addition, this Framework included a reduction in Richmond’s voting powers to assuage concerns from smaller cities. Richmond’s previous City Manager agreed in concept to the Framework; however, agreement was dependent on adequately and satisfactorily incorporating all elements of the City Manager’s Framework and addressing Richmond’s request for equitable policies. At the end of August 2018, the City Managers and JPA failed to broker a deal on the previous Framework.

Since then, the City of Richmond’s leadership has changed and Richmond’s current leadership has determined that the proposed reduction in Richmond’s voting representation is not in the City’s best interest. The City is not obligated to continue negotiating a deal to reduce Richmond’s voting representation on the Board.

City Managers JEPAs Issues

The principal Agreement issues that remain unresolved include: 1) voting; and 2) withdrawal. The other member agencies request Richmond reduce its representation on the board to one unweighted vote, equivalent to 20 percent (*1 Richmond board member divided by 5 total members*) and consider it a “deal breaker” if Richmond does not agree to one unweighted vote. Richmond requests a clear and reasonable withdrawal policy, and fair disbursement of reserve funds upon withdrawal.

Richmond’s current voting percentage is 43% (*3 Richmond board members divided by 7 total members*), and is supported ideally by all three board member’s attendance. Richmond’s proportional representation on the RecycleMore Board was established to reflect Richmond’s significant population and rate base compared to other member cities. The Richmond community hosts the region’s solid waste facilities; provides more than 50 percent of RecycleMore’s budget; and incurs the most economic, health, and infrastructure impacts from solid waste operations. It is common practice for members of regional agencies to have weighted voting.

Richmond City staff recommends that the City Council direct the City Manager to pursue two options presented below.

Option 1: Remain in the JPA if the Agreement attains the following three key points of equity:

- 1) Maintain Richmond’s weighted voting to include:
 - a. “MCE model” (explanation stated below)
 - 1 Director equivalent to 3 votes; or
 - b. Status quo with 3 Directors.
- 2) Update the withdrawal language to allow member agencies to leave the agency and request ratepayer contributed funds proportionally and fairly.
- 3) Focus JPA programs on the following:
 - Household Hazardous Waste Programs
 - Compliance with State laws
 - § Prepare and submit annual reports to Cal Recycle
 - § Remain in compliance with AB 939 and associated diversion mandates.
 - § Implement and remain in compliance with AB 341 (mandatory commercial recycling) and AB 1826 (mandatory organics collection)
 - § Implement and remain in compliance with SB 1383
 - Manage the Post-Collection Agreement
 - Set Post-Collection Rates
 - Outreach and Education
 - Legislative Updates

The “MCE model” would utilize the voting model adopted in the MCE JPA as stated below.

Summary (example) of voting percentage calculation:

1. (1/total Number of Directors)/multiplied by 50 AND (10 percent for each member city)
2. (Jurisdiction Annual Solid Waste Tonnage/JEPA Total Annual Solid Waste Tonnage) multiplied by 50 (Approximately 29.3 percent for Richmond)

The sum of the above is equivalent to: $10\% + 29.3\% = 39.3\%$ for Richmond’s weighted voting.

Option 2: If there is no agreement between the member cities, then RecycleMore and the City of Richmond should initiate a transition plan for future consideration.

The Member Agencies’ contributions to RecycleMore were reported in the April 6, 2017 Financial Impact and Disposal/Diversion Report by R3 Consultants. The report concluded that Richmond ratepayers contribute a net \$916,318 annually to the RecycleMore budget. If Richmond were to withdraw, it would receive an estimated \$916,318 annually to manage the Post-Collection Agreement and provide related recycling services. The following findings summarize the subsidies and contributions from RecycleMore budget and Richmond’s ratebase:

- Richmond ratepayers contribute \$515,000 of RecycleMore’s \$991,000 annual budget.
- Richmond ratepayers contribute \$508,531 of RecycleMore’s \$978,607 HHW budget.
 - § R3 estimates our participation costs are \$382,981 annually, with a net annual variance of \$125,464 (the variance is due to the Richmond’s lower participation at the HHW facility and revenues generated from solid waste tonnage).
- Richmond ratepayers contribute an annual rate subsidy of \$315,854 to other JPA cities (Richmond has a higher industrial and commercial ratepayer base).
- It is important to note that Richmond ratepayers benefit from approximately \$40,000 of recycling revenues generated by other participating cities.

It is important to consider Richmond’s responsibility and obligation to contribute to retirement obligations. RecycleMore Board has recently appropriated significant funding from the reserves to address the CalPERS Unfunded Accrued Liability and Other Post-Employment Benefit liabilities. More information still needs to be analyzed on future liabilities if Richmond were to withdraw.

Additionally, household hazardous waste costs in the post-collection agreement are aggregated regionally with all RecycleMore cities. Richmond has reached out to Republic Services to provide feedback on the April 6, 2017 Financial Impact and Disposal/Diversion Report by R3 Consultants to determine how Household Hazardous Waste (HHW) costs and services may be affected by withdrawal. City staff will continue to evaluate all potential financial obligations and clarify cost changes if the City were to withdraw from RecycleMore.

ATTACHMENTS:

1. City Manager Letter to RecycleMore 12-23-16
2. City Managers’ Recommendation 12-5-17



December 23, 2016

Mr. Stan Hakes
Executive Director
West Contra Costa Integrated Waste Management Authority
1 Alvarado Square
San Pablo, CA 94806

RE: INITIATION OF PROCESS TO WITHDRAW FROM RECYCLEMORE

Dear Mr. Hakes:

At its meeting of December 20, 2016, the Richmond City Council directed its city manager to initiate actions on behalf of the Richmond City Council for possible withdrawal by the City of Richmond from the West Contra Costa Integrated Waste Management Authority ("RecycleMore"). In accordance with City Council direction, this letter shall serve as the City of Richmond's initial notice of intent to withdraw from RecycleMore.

While we acknowledge the significant benefits that have been provided by RecycleMore to member cities since its formation in 1991, the City of Richmond has significant concerns with the new terms of a proposed updated Joint Exercise of Powers Agreement (hereinafter referred to as the "updated Agreement").

As you know, RecycleMore held a series of workshops during 2016 that has led to the creation of an updated Agreement. In discussing the proposed updated Agreement throughout RecycleMore meetings and workshops in 2016, Richmond's Board Directors requested that terms be equitable across all participating agencies. Unfortunately, the underlying policies included in the updated Agreement proposed by RecycleMore do not represent the best interest of Richmond's ratepayers, and continue inequitable ratesetting and budgetary policies that disproportionately impact Richmond's businesses and residents.

Richmond's interest in remaining a member of RecycleMore is dependent on whether or not the following issues can be satisfactorily addressed:

- 1) The updated Agreement reduces Richmond's proportional representation on the RecycleMore Board, which was established to reflect Richmond's significant population and rate base contributions compared to other member cities. Richmond represents approximately 56 percent of all tonnage and revenues for RecycleMore in calendar year 2015. Under the updated Agreement, Richmond's

representation on the RecycleMore board would be reduced to 37.5 percent, or three Richmond directors sitting on a board of eight directors total.

Richmond requests that it receive an additional voting Director, or RecycleMore adopt a tie-breaker voting policy weighted solely by solid waste tonnage.

- 2) The updated Agreement contains an unclear and inequitable withdrawal policy that would prevent a member city from withdrawing without an agreement approved by a majority of the non-withdrawing members. These terms unfairly hamper any member's ability to withdraw even in the case where common interests no longer exist among RecycleMore's member cities.

Richmond requests that all member cities have the right to withdraw with a simple notice. Individual agreements with a member city should not be a requirement for withdrawal in any circumstance; instead, there should be language in the updated Agreement that specifies all standard terms for such an agency withdrawal.

- 3) In the event of member city withdrawal within the updated Agreement, RecycleMore is requesting the right to retain all reserve funds contributed to RecycleMore by the withdrawing member. This is unfair to any withdrawing member's ratepayers and inconsistent with past Board practice. Richmond's position is that distributions of excess reserves to members, or distributions of reserves to a withdrawing member, be proportional to the contribution that each member agency's ratepayers made to such reserves. This was the principle that was applied by RecycleMore's Board of Directors for the most recent fund distribution, and the updated Agreement does not reflect this principle.

Richmond requests that all funds contributed by a withdrawing member's ratepayers be returned to the withdrawing member in proportion to the contribution that such a member agency's ratepayers made to such funds.

- 4) **Richmond requests that RecycleMore include an equity policy framework in the updated Agreement. Consistent with the requests previously conveyed by Richmond's Board Directors, an equity policy framework would ensure that RecycleMore 1) provide services proportional to the financial contributions of each community, and 2) ensure that no member city is disproportionately impacted by post-collection operations, policies or rates overseen by RecycleMore. Reasons for including such an equity framework are addressed below.**

Richmond represents 56 percent of all tons for post-collection services within RecycleMore according to the 2015 annual post collection report. As such,

Richmond ratepayers contribute approximately 56 percent of RecycleMore's operating budget through a per ton pass through fee. RecycleMore's annual operating budget for the Fiscal Year 2017 is \$994,750. Richmond's ratepayers account for approximately \$557,060 of the total annual operating budget.

RecycleMore's primary responsibilities include oversight of the post-collection agreement, household hazardous waste budget and reporting to the State to meet recycling mandates. Many of RecycleMore's services are provided to member cities on a per member city basis and are not pro rata. Richmond receives the same level of RecycleMore service as each of the smaller cities within RecycleMore; however, Richmond ratepayers contribute a majority of the RecycleMore budget. If the 2017 RecycleMore budget were divided equally amongst the five member cities, each member city would contribute \$198,950. The budgetary difference for Richmond's ratepayers contributions minus services received is estimated to be \$358,110 annually.

Proposed amendments in the updated Agreement would formalize RecycleMore's inequitable budget policies. Section 13.6 of the updated Agreement would continue and strengthen an inequitable policy to generate a majority of funding for RecycleMore general services from Richmond's ratepayers. The updated Agreement does not provide a framework to develop a more equitable delivery of services to ratepayers as requested by Richmond's RecycleMore Board Directors throughout the workshops in 2016.

Richmond has historically subsidized rates for all RecycleMore member cities through an industrial rate base funded primarily by Richmond's businesses. In calendar year 2017, the actual cost per ton to process all waste types is \$91.08; the amount charged on industrial customers is \$137.90; this difference generates a net revenue of \$46.82 per ton. According to the 2015 annual report, Richmond represents nearly 76 percent of the 21,489 industrial tons processed within RecycleMore; all other RecycleMore cities combined represent 24 percent. The net revenue from the industrial sector is used to offset costs for all RecycleMore ratepayers irrespective of the originating city. Richmond City staff members estimate that the cross-jurisdictional industrial subsidy emanating from Richmond to other cities is approximately \$354,116 annually. That amount is expected to continue to grow each year due to Richmond's expanding industrial rate base relative to other RecycleMore cities.

Richmond requests that the net revenue emanating from Richmond's industrial businesses remain within Richmond to provide additional funding or services to Richmond residents.

- 5) Richmond has significant concerns regarding RecycleMore's expansion of powers and authority concerning the acquisition, construction, or financing of a solid waste or recycling facility.

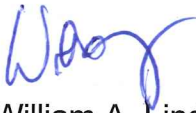
Richmond requests that each member's respective board or city council be provided the option to participate, or not to participate without penalty, in any bond issuance or ordinance developed by RecycleMore.

Richmond requests that RecycleMore not have the ability to franchise any of Richmond's recycling, solid waste, or green waste material, without the expressed consent of the Richmond City Council at a Richmond City Council public hearing.

Richmond also requests that the Authority's use of eminent domain for purposes of acquiring an existing facility or constructing a new facility require the consent of the City Council or Board that hosts the existing facility or that will host the new facility.

In its action at the meeting of December 20, 2016, the Richmond City Council was clear that its city manager should only initiate actions on its behalf for possible withdrawal by the City of Richmond from RecycleMore, and that the Council was not making a final decision to withdraw from the JPA. However, the Council was also clear that satisfactory progress on these issues would be critical to their decision. We look forward to continued discussions with RecycleMore to identify mutually acceptable outcomes in the updated Agreement that allow RecycleMore to act in the best interests of all ratepayers.

Sincerely,



William A. Lindsay
City Manager

CC:
RecycleMore Chair Peter Murray
Kent Alm

**RECYCLEMORE Framework
City Managers Recommendations
Initial Discussion Draft
December 5, 2017**

SERVICE TYPES

Required Services

- ❖ Monitoring of the Republic Services (RS) Post Collection Agreement. This includes:
 - Ensure that the terms of the PCA are being met, including
 - Expected diversion rates at the Organic Materials, Dry Materials, C&D, and Recyclable Materials Processing Facilities
 - Expected level of service at the Transfer Station and by the HHW Program
 - Expected level of service for solid waste diversion program in all WCCUSD facilities – including those in El Cerrito
 - Monitoring Contractor's compliance with Applicable Law, permits, facility requirements and best management practices, including proper records management, provision of insurance, etc.
 - Oversight of all PCA recycling and diversion programs performed by Republic pursuant to PCA
 - Validate PCA rates to ensure accuracy and reasonableness
 - Validate quarterly and annual reports
 - Seek amendments to the PCA that reduce costs to JPA participating agencies.
 - Seek amendments to the PCA that increase the benefits of the JPA to its participating agencies.
 - Negotiate the lowest possible rates for participating agency citizens and businesses.

- ❖ AB 939 Compliance/Reporting. This includes:
 - Collecting and submitting information from member agencies to update Electronic Annual Report (EAR) and updating and uploading other required reports
 - Reporting annual waste and diversion tonnages to the Board and member agencies
 - Maintain regional SRRE and HHWE
 - Coordinate WCCUSD Source Reduction and Recycling Compliance
 - Coordinating with CalRecycle staff for on-site member agency meetings

- ❖ HHW Programs. This includes:
 - Work with member agencies to determine desired level of service
 - Set and approve HHW Budget

- Provide oversight of contract for HHW facility and any satellite or mobile events
- Ensure expected level of service is being maintained
- Monitoring Contractor's compliance with Applicable Law, permits and best management practices, including proper reporting, records management and retention, provision of insurance, etc.
- Continue to operate the Motor Oil Recycling Program and all related public information, compliance and events
- Implement and oversee Pharmaceutical Program

Optional but Recommended Services

- ❖ Administration and oversight of RecycleMore including Board packet preparation, human resources, information technology and financial matters (audit services).
- ❖ Public Outreach/Education, beyond existing Republic Services efforts. This includes:
 - Outreach and education regarding HHW and Motor Oil Recycling Program
 - Multi-family and commercial recycling and organics outreach and education – but only if El Cerrito gets to equally benefit from RM efforts.
- ❖ Legislative Monitoring – as a standing Board agenda item.
 - Providing timely updates on proposed legislation that will affect local government solid waste and diversion programs;
 - Provide analysis for Board to take actions to support or oppose proposed legislation
 - Assist member agencies in interpreting and/or implementing legislation that has passed, where regional action or program templates are required.
 - C&D Recycling Compliance template and education produced by RM is a good example of assisting with implementation.
- ❖ Special Projects, with unanimous approval of the Board and funding included in annual budget

Policy Recommendations to Improve Focus and Efficiency

RESERVE POLICY

- ❖ Establish three funds:
 - Operating Reserve equal to three months or twenty-five (25) percent of annual expenditures
 - Emergency Reserve at \$300,000
 - Legal Liability Reserve (OPEB & PERS) at \$550,000
- ❖ No recycling reserve fund – rates adjusted annually to reflect current markets
- ❖ No special projects fund
- ❖ Onetime expenses budgeted annually

- ❖ Any funds above these amounts shall be either disbursed to the Member Agency pursuant to current formula or held by the Agency pursuant to that formula for future programs and projects benefiting that Member

ANNUAL RATE SETTING

- ❖ Current PCA rates pursuant to formula
- ❖ RecycleMore rate setting methodology shall be defined through a resolution of the Board reflecting current and past practice, and any changes would require unanimous approval of the Board.

STRUCTURE

- ❖ Board shall reflect one voting representative per member agency
- ❖ Board meets four quarterly and more frequently if needed
- ❖ The Internal Operations Committee becomes Ad Hoc and meets only as needed
- ❖ RecycleMore Executive Director and staff shall meet on an as needed basis jointly with Member Agency staff who shall be advisory to the Executive Director, and Member Agency staff shall also serve as a resource to each respective City Manager/County CAO and Board Member.