

**AMENDMENT NUMBER TWO
TO JOINT EXERCISE OF POWERS AGREEMENT**

CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

1. Section O shall be added to Article 4 of the First Amended Joint Exercise of Powers Agreement of the Central Contra Costa Solid Waste Authority and shall read as follows:

O. Concurrent Membership of Central Contra Costa Sanitary District and Cities/Towns of Orinda, Moraga, Lafayette and Danville: The Central Contra Costa Sanitary District as an Initial Member of the Authority may remain as a Member until withdrawal or expulsion pursuant to Article 4 of this Agreement. The Central Contra Costa Sanitary District's membership may continue, notwithstanding the membership of each of the Cities comprising much of the territory which CCCSD has historically franchised and which franchise authority Central Contra Costa Sanitary District has previously delegated to the Authority. The membership of Orinda, Moraga, Danville and Lafayette may make appropriate the clarification of potential respective fiscal issues.

To the extent operating expenses exceed revenues and, as provided in Article 1, Section E, Member Agencies become responsible for payment of funds in excess of those funds provided to the Authority from fees generated through the administration of the Authority solid waste franchise, then Central Contra Costa Sanitary District, which currently generates no tonnage, shall be required to pay a pro rata share equal to one over the total number of Member Agencies times the total supplemental funding required for the Authority. The remaining portion of the unfunded expenses to be assessed against Member Agencies will be assessed based on total tonnage as required by Article 1, Section E. This same methodology shall be applied to any liability which would otherwise be passed through to Member Agencies based solely upon the proportion of total tonnage under the terms of Article 4, Section K. (For example, if there are seven Member Agencies including Central Contra Costa Sanitary District, and operating expenses exceed the funds generated by \$14,000, Central Contra Costa Sanitary District shall pay one seventh times \$14,000, or \$2,000. The remaining \$12,000 shall be assessed against the

remaining six Member Agencies, based on each of their respective percentage shares of total tonnage.)

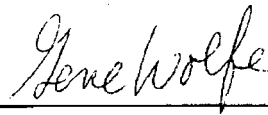
2. All other terms and conditions of the First Amended Joint Exercise of Powers Agreement shall remain in full force and effect without modification.

PASSED AND ADOPTED by the Central Contra Solid Waste Authority Board of Directors this 22nd day of February, 1996, by the following vote:

AYES: Members: Bishop, Hicks, Hockett, Rainey, Wolfe

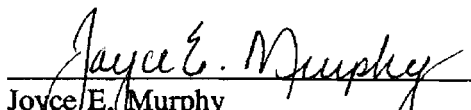
NOES: Members: None

ABSENT: Members: DeSaulnier



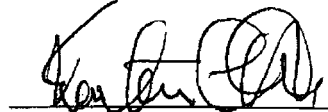
Gene Wolfe, Chair,
Central Contra Costa Solid Waste
Authority, County of Contra Costa,
State of California

COUNTERSIGNED:



Joyce E. Murphy
Secretary of the Central Contra Solid
Waste Authority, County of Contra Costa,
State of California

APPROVED AS TO FORM:



Kenton L. Alm
County for the Authority

SELLAR, HAZARD, SNYDER, KELLY & FITZGERALD

RUDD SELLAR
A. J. ENGLEKING (1924-1981)
JAMES L. HAZARD
MARTIN T. SNYDER
JOHN KELLY
JAMES V. FITZGERALD, III
RICHARD M. MCNEELY
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August 16, 1995

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WILLIAM E. MANNING
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ANNE D. JACOBBERGER
LORRAINE M. TALLARICO

Ms. Joyce Murphy
District Secretary
CENTRAL CONTRA COSTA SANITARY DISTRICT
5019 Imhoff Place
Martinez, CA 94553-4392

REGARDING: CCCSWA - Amended JPA - Our File No. CJ310-001.15

ENCLOSURE(S): FIRST AMENDED JOINT EXERCISE OF POWERS AGREEMENT
CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

These are furnished for the purpose designated below:

- () Your signing and returning the enclosures in the enclosed envelope.
- () For your record and information.
- (X) Other: Pursuant to our recent telephone conversation, enclosed please find the final version of the above referenced agreement. If you have any questions, please do not hesitate to call.

Very truly yours,

SELLAR, HAZARD, SNYDER, KELLY & FITZGERALD

Barbara Kennick

BARBARA KENNICK
Secretary to KENTON L. ALM
bk
Enclosure

**FIRST AMENDED
JOINT EXERCISE OF POWERS AGREEMENT**

CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

ARTICLE 1: PURPOSE

- A. Purpose of Agreement: It is the purpose of this Agreement to establish, pursuant to the Joint Exercise of Powers Act, a public entity separate from each of the agencies. This public entity is to be known as the Central Contra Costa Solid Waste Authority, hereinafter referred to as the "Authority".
- B. Purpose of Authority: The purpose of the Authority shall be to exercise certain powers set forth below, in a manner which will (1) assure the citizens of the Member Agencies that certain solid waste transfer station(s), regional resource recovery facility(ies), recycling facility(ies), household hazardous waste facility(ies), and/or landfill(s) and related programs will be operated in the most cost effective manner possible consistent with the proper concern for the environment; and (2) allow for the public ownership and/or management of said facilities; and (3) allow for certain or all of the Member Agencies to participate in individual or joint efforts concerning issuing Requests for Proposals and entering into contracts for franchising of solid waste collection, handling and disposal, including green waste and recyclables; and (4) allow for such other joint efforts concerning the handling and disposal of the solid waste stream as may be beneficial to constituents of the Member Agencies.
- C. Members of Authority: This Agreement was entered into as of September 11, 1990 by and between the cities of Walnut Creek and San Ramon and the Central Contra Costa Sanitary District (hereinafter "Initial Members"), as individual public entities which mutually promise and agree as hereinafter set forth. Membership in the Authority is open to any public entity that is authorized to franchise the collection or handling of solid waste in Central Contra Costa County and does so franchise or delegate the authority to franchise to the Authority. Membership in the Authority is granted upon a two-thirds (2/3) vote of all members of the Authority Board, as then constituted, approving the application for membership, and upon compliance with the terms and conditions of membership set forth by the Board and/or in force at that time.

For purposes of this Agreement "solid waste handling" or "handling" shall be as defined pursuant to California Public Resources Code Section 40195, and is to include collection, recycling, transportation, storage, transfer, or processing of solid wastes.

- D. Jurisdictional Boundaries of Authority: The jurisdictional boundaries of the Authority shall include the jurisdictional boundaries of the Authority's respective Member Agencies as set forth in, and as limited by, the Service Area Map for the Authority, attached hereto as Exhibit 1.
- E. Apportionment of Expenses: It is the intention of the Authority to collect revenues to cover the costs of Authority operations. To the extent that the Authority regulates the operation of transfer facilities, reclamation facilities, recycling facilities, household hazardous waste facilities, landfill facilities and/or other facilities, the Authority may recover a portion or all its costs of operation through facility fees and through such other fees as the Authority may lawfully impose. The Authority may, in addition or alternatively, recover its costs of operation through administration of franchise agreements granted by the Authority, including franchise fees and through the collection of other fees as may be provided for in the various franchise agreements. Such Authority costs of operation may, in addition, be recovered through franchise fees or other fees lawfully imposed by or on behalf of the Authority through its Member Agencies with regard to the Authority's solid waste management activities.

To the extent that operating expenses exceed revenues during any period, including the initial start-up period of the Authority, the Member Agencies shall be responsible for providing the requisite funds to the Authority to ensure that such expenses are met in the proportion that the total tonnage of solid waste collected within the jurisdiction of each agency bears to the total tonnage of solid waste collected within the jurisdiction of all members of the Authority. Solid waste collected from areas of a Member Agency located outside of the jurisdictional boundaries of the Authority are not included in these calculations. Each Member Agency's contribution to such expenses is dependent upon such Member Agency's governing body's yearly approval of such contribution, provided, however, that if such Member Agency's governing body does not approve such contribution, such Member Agency may be expelled.

It is the intent of this Agreement that monies and Membership Fees advanced to the Authority by individual Member Agencies to cover Authority costs of operation, including costs of establishing the Authority, are to be reimbursed to said Member Agencies. Such reimbursement of funds shall be collected through the fee structures set forth above. Such reimbursement shall be authorized to the extent that it does not impair necessary working capital or the ability of the Authority to repay any bond or other debt obligations.

Notwithstanding the above provisions, where two or more Member Agencies have dual or overlapping authority to franchise solid waste handling within any portion of the

Authority's jurisdictional boundaries, the total solid waste collected within said dual or duplicative jurisdictional boundaries shall only be counted toward or included within the total tonnage of the Member Agency actually delegating to the Authority the authority to franchise solid waste handling for the area or areas involved.

ARTICLE 2: POWERS OF THE AUTHORITY

A. **General Powers:** 1. The Authority shall have all powers common to its Member Agencies, and such general powers shall further include, but not necessarily be limited to the following:

- a) To advise the Member Agencies on issues related to solid waste handling and disposal;
- b) To advocate the interests of the Member Agencies related to solid waste management issues with local, state and federal officials;
- c) To plan for transfer station(s), resource recovery facility(ies), recycling facility(ies), household hazardous waste facility(ies), landfill(s), and other solid waste facility(ies) and programs, and/or any related closure and post-closure thereof;
- d) To develop transfer station(s), resource recovery facility(ies), recycling facility(ies), household hazardous waste facility(ies), landfill(s), any other solid waste facility(ies) and program(s) and/or any related closure and post-closure thereof;
- e) To acquire and/or operate and/or contract for the operation of transfer station(s), resource recovery facility(ies), recycling facility(ies), household hazardous waste facility(ies), landfill(s) and other solid waste facility(ies) program(s) and/or any related closure and post-closure thereof;
- f) To regulate rates of transfer station(s), resource recovery facility(ies), recycling facility(ies), household hazardous waste facility(ies) and landfill(s);
- g) To issue Requests for Proposals and enter into agreements to franchise for the handling and/or disposal of solid waste, green waste, and recyclables;
- h) To provide any or all of the solid waste handling and/or disposal services, green waste and recycling services as set forth herein to other public agencies not members of the Authority, including issuing Requests for Proposals and entering into agreements with and on behalf of these other public agencies concerning, but not limited to, the administration and/or regulation of rates, rate setting,

franchising and provision of any other solid waste services deemed reasonable or necessary by the Authority Board;

- i) To advise on matters of solid waste handling and disposal rates and charges;
- j) To advise public entities as to market conditions affecting the marketability of recyclable commodities;
- k) To market and sell recyclable commodities; and
- l) To conduct joint studies and/or institute joint programs as may be required by law or are appropriate regarding solid waste handling and disposal including, but not limited to, such efforts as may be required regarding reduction of the waste stream disposed at landfills.

2. Notwithstanding the provisions of this Agreement, each Member Agency retains its own existing authority to franchise solid waste handling and disposal services and landfills within its own jurisdictional boundaries. Any Member Agency may elect to delegate to the Authority such rights with respect to solid waste handling and disposal and upon such terms and conditions as the Authority may agree. Nothing in this Agreement is intended to or does provide authority for the Authority to regulate the Acme Landfill, Keller Canyon Landfill, or any transfer station located at the Acme Landfill, or any of their respective operations.

3. The Authority's exercise of the above general powers shall only affect those portions of the Member Agencies lying within the jurisdictional boundaries of the Authority as set forth in the Map, Exhibit 1 hereto. This provision is not intended to limit the scope of Article 2(A)(1)(h).

B. Specific Powers: In carrying out its general powers, the Authority is hereby authorized to perform all acts necessary or proper for the exercise of said powers which may include, but are not limited to, the following:

- 1. To make and enter into contracts and to issue Requests for Proposals;
- 2. To apply for and accept grants, advances and contributions;
- 3. To employ or contract for the services of agents, employees, consultants and such other persons or entities as it deems necessary;
- 4. To conduct studies;

5. To review the Contra Costa Integrated Waste Management Plan and other such public planning documents as may be developed, and recommend revisions or amendments thereto;
6. To acquire, construct, manage, maintain, operate and control any buildings, works or improvements;
7. To acquire, hold or dispose of property;
8. To acquire by condemnation proceedings such real and/or personal property and/or rights of way as in the judgment of the Authority are necessary or proper to the exercise of its powers;
9. To incur debts, liabilities or obligations subject to limitations herein set forth;
10. To levy and collect fees and charges to the extent permitted by law;
11. To assess and collect, subject to Article 5, Section A and Article 1, Section E, of both Initial Members and future agency members, fees for membership in the Authority, so as to provide moneys for the financing of its activities, operations, and expansion which are not adequately funded by the revenues collected for services provided by the Authority;
12. To issue bonds, subject to the provisions and limitations of the laws of the State of California; and
13. To adopt annually, by July 1 of each fiscal year, a budget setting forth all administrative, operational and capital expenses for the Authority, together with the apportionment of such expenses by levy against each Member Agency to the extent necessary, subject to Article 1, Section E.

ARTICLE 3: ORGANIZATION OF AUTHORITY

- A. **Board of Directors:** The Authority shall be governed by a Board of Directors, hereinafter "Board", which shall exercise all powers on behalf of the Authority. The Board shall have the authority to carry out all duties and functions within the power of the Joint Exercise of Powers Agreement.

The Board shall be composed of two (2) representatives from each Authority agency, who shall be elected members of such agency's governing body. Each member representative shall have the right to vote on each issue pending before the Board. The term of Board membership is unlimited except as a Member Agency may provide for its own representatives; however, as to such member representatives, such term shall

automatically expire when the representative is no longer an elected officer of the agency that he or she represents on the Board.

B. Duties of the Board of Directors: The Board shall perform all acts necessary or proper to carry out the purposes of this Agreement and to execute the General and Specific Powers of the Authority, which acts include but are not limited to the following:

- a) Conduct Board meetings pursuant to a schedule adopted by the Board;
- b) Consider, modify and approve the annual work program and budget;
- c) Levy, fix, set and/or impose fees, assessments and charges to the extent permitted by law and by this Agreement;
- d) Authorize, review and accept reports and studies;
- e) Review, recommend, approve and/or regulate rates for services provided by the Authority or over which the Authority has regulatory power through contract or otherwise;
- f) Recommend action to Member Agencies and other public bodies on:
 - i) The Contra Costa County Integrated Waste Management plan and any other such public planning documents as may be developed and revisions or amendments thereof; and
 - ii) The planning, financing, development and operation of Authority activities;
- g) Accept agencies as subsequent parties to the Agreement and members of the Authority, and their representatives as Board members;
- h) Authorize the hiring and/or engagement of Authority staff;
- i) The Board may, from time to time, declare one of the Member Agencies as the lead agency for specific purposes as may be set forth by the Board or for the general purpose of staffing the Authority and carrying out the Authority's functions. At the time said Member Agency is appointed as a lead agency, the Board shall determine whether the member is to bear the costs of such lead agency activity or be reimbursed therefor. The Authority, in any event, shall reimburse agency members for personnel costs associated with the staffing of the Authority with Member Agency personnel;

- j) Establish committees to carry out Authority purposes, and appoint committee members from the Authority Board, the legislative bodies or administration of Member Agencies, Authority staff, and/or staff of the Member Agencies. The Authority shall reimburse agency members for personnel costs associated with the staffing of committees with Member Agency personnel;
 - k) Delegate duties to Authority or Board staff and/or members, appointed committees and committee members, the City Councils and/or staff, or the Sanitary District Board and/or staff or the County Board of Supervisors and/or staff.
- C. Voting Requirements: All actions of the Board may be undertaken by a majority vote of the Board members present, provided a quorum exists, except for such Board actions requiring a two-thirds (2/3) vote as may otherwise be set forth herein. Each Board member shall have one vote.
- D. Board of Directors Members: Upon execution of this Agreement, the governing body of each agency shall, by resolution, appoint two (2) member/representatives to serve as members of the Board in conformity with the requirements of Article 3, Section A.
- E. Subsequent Authority Members: Any agency which has the authority to franchise solid waste collection in Central Contra Costa County, and franchises the same or delegates such authority to franchise to the Authority (including cities incorporated and districts formed after the effective date of this Agreement, and including the County), may become members of the Authority. Its representatives may become voting members of the Board by: (1) presenting an adopted resolution to the Board which includes a request to become a member of the Authority, (2) receiving a two-thirds (2/3) vote of all members of the Board to accept the new member, and (3) by payment of any charges and execution of all documents as may be required by the Board. Such charges may include such items as compensation to the existing Authority members for previously expended costs in furtherance of Authority purposes, including staffing expenses, capital expenses, financing expenses, and assessments for losses in prior Authority operations. These examples are purely illustrative, however, and are not intended to limit the power of the Authority or the Board to fix whatever buy-in, capitalization or other equalization charges deemed necessary or proper. Payment of such charges may be made in any manner deemed necessary or proper by the Board, including, but not limited to cash payment, a differential rate structure at Authority facilities, future capital contributions, surcharges or by other plan which might include appropriate security.
- F. Board Officers: The Board shall by a majority vote elect from its members a Chairperson and a Vice Chairperson. The Chairperson and Vice Chairperson shall have one-year terms and may be re-elected so as to serve a maximum of two (2) consecutive one-year terms, unless the Board unanimously approves additional consecutive term(s) as to a particular Chairperson or Vice Chairperson. The Chairperson shall preside over

all meetings according to the Rules and Procedures adopted by the Board. The Board Chairperson shall represent the Authority and execute any contracts and other documents when required by the Rules and Procedures.

- G. Board Rules: The Board is empowered to establish its own Rules and Procedures to the extent those rules are not inconsistent with the laws of the State of California governing the operations of this Authority.
- H. Meetings of the Board:
- a) Regular Meetings: The Board shall hold scheduled public meetings at a location selected by the Board.
 - b) Special Meetings: Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the California Government Code.
 - c) Notice of Meetings: All meetings of the Board shall be held subject to the current provisions of the Ralph M. Brown Act, being Sections 54950 et seq. of the California Government Code, and other applicable laws of the State of California requiring public meetings.
 - d) Minutes: The Board Chairperson shall cause minutes of all meetings to be kept and shall, as soon as possible after such meeting, cause a copy of the minutes to be forwarded to each member of the Board.
- I. Staffing: Each of the Member Agencies shall use its best efforts to provide staff to the Authority as may be necessary initially for the Authority to execute its powers and duties and as may be required by the Board thereafter. Staff may be drawn from Member Agencies or agency staff. Additionally, the Authority may contract with or employ entities and/or individuals not associated with Member Agency staff, as permitted by Article 2, Section B(3).
- J. Officers: The Board has the power to appoint as staff to the Board the following officers:
- a) Executive Director: There may be an Executive Director appointed who will serve as the chief executive officer of the Authority. He or she shall be responsible to the Board for the management and administration of all Authority affairs pursuant to the Board's direction.

Until such time as the Board may determine to appoint an Executive Director who is not a staff member of a Member Agency, and for such other times as there is no Executive Director serving, the Board may appoint an interim Executive Director, who shall have such powers and duties as are set forth in this section.

An interim Executive Director shall be the chief administrative officer of one of the Member Agencies, or such other agency staff member as the Board deems appropriate.

- b) Treasurer and Controller: There shall be a Treasurer and Controller to be the custodian of all Authority funds, to pay demands and to make or contract for an annual audit. Such Treasurer shall be the Treasurer of one of the Member Agencies, the County Treasurer, a Certified Public Accountant or one of the Authority's officers or employees as set forth in California Government Code §§6505.5 and 6505.6.
- c) Secretary: There shall be a Secretary appointed by the Executive Director who shall be responsible for the noticing of meetings and recording of minutes of meetings as required by the Brown Act and the Rules and Procedures, in addition to such other duties as the Executive Director may assign.

K. Funds, Expenditures and Audits:

Each and every expenditure of moneys shall be authorized or approved by the Board or by a person designated by the Board to authorize expenditures. The Treasurer shall draw warrants to pay demands so authorized for payment by the Board.

Before the Authority may expend any moneys or incur any financial obligation, it shall adopt a budget showing proposed expenditures for the Fiscal Year and the proposed means of financing such expenditures. The budget shall be for the ensuing Fiscal Year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.

The Board shall periodically cause an audit to be performed with regard to the financial operations of the Authority.

ARTICLE 4: TERMS OF AGREEMENT

- A. Effective Date: This Agreement shall become effective on the date of its execution by all the agencies identified as Initial Members in Article 1, Section C.
- B. Amendments: This Agreement may be amended by a two-thirds (2/3) vote of all members of the Board. Any such amendment shall be effective upon the date of such action.
- C. Undertaking of Specific Projects: Although it is the intent of this Agreement, and therefore the purpose of the Authority, to cooperate jointly amongst the Member Agencies so as to provide the most efficient operation of solid waste facilities and most efficient means of handling and/or disposal of solid waste, green waste and recyclables on a regional basis, nothing contained in this Agreement is intended to prevent the

Authority from undertaking projects and agreements to provide services pursuant to separate contracts between the Authority and individual Member Agencies and non-member public agencies, which projects and agreements are not intended to benefit all of the Member Agencies. The Authority shall hold title to each project and to the rights and benefits of each agreement in trust for the use of the members who participate. The members who participate in a project or agreement shall indemnify and hold harmless the members who do not participate from liability of any kind resulting from, or in any way related to, the financing, construction, acquisition, operation or maintenance of such project, or resulting from or arising out of performance of such agreement.

The Authority shall have the power to proceed with the final acquisition and construction of a project which is not joined in by all Authority members, only when a separate project contract has been entered into which provides arrangements for obtaining funds sufficient to pay for all costs of such project.

D. Withdrawal:

- a) Any Member Agency, upon written notice given by January 1 of any year to the Chairperson of the Board of Directors, and to all other Member Agencies, may withdraw from the Authority effective no earlier than July 1 of that year; provided, however, that the withdrawal of such Member Agency shall not terminate such Member Agency's responsibility under any obligation of such Member Agency or the Authority or any action taken in connection therewith, and further provided that the withdrawing agency may pay to the Authority on the effective date of withdrawal, all money owing to the Authority, and as to those capital expenditures that the withdrawing agency has agreed to participate in by contract or otherwise, its share of such capital expenditures. Such financial obligations of such withdrawing agency may be assumed by another entity upon a two-thirds (2/3) vote of the Board, absent the participation of the representative of the withdrawing agency.
- b) Notwithstanding subsection (a) above, a member shall not be permitted to withdraw from the Authority unless the Board determines by majority vote, absent the participation of the representatives of the withdrawing agency, that as of the effective date of withdrawal the Authority will have a waste stream sufficient to meet all Authority operating expenses and obligations outstanding as of the effective date of withdrawal, whether capital, operational, maintenance-related or otherwise, and to ensure that all Authority operations will not be adversely affected to a material extent by the withdrawal of the withdrawing member.
- c) Notwithstanding subsections a and b, above, any Member Agencies, regardless of whether it withdraws from Authority membership, may at any time, for any reason, upon thirty (30) days prior written notice to the chairperson of the Board

of Directors, terminate the delegation of authority from said Member Agency granting the Authority the right to franchise on behalf of said Member Agency. As of the effective date of termination of said delegation of franchise authority, said Member Agency shall no longer be a party subject to any franchise agreement entered into on its behalf by the Authority. Said Member Agency agrees, however, to accept an assignment of all rights and obligations under each said franchise agreement entered into on its behalf by the Authority with respect to those portions of the service area of each franchise agreement located within the jurisdictional boundaries of said Member Agency. Said Member Agency further agrees to administer such partially assigned franchise agreements in good faith, pursuant to the terms of each said franchise agreement, for the balance of their respective terms. Nothing contained herein limits the right of said Member Agency and any of said franchisees from subsequently agreeing to amend said partially assigned franchise agreements.

- d) The withdrawing agency shall also continue to be liable for its share of Authority obligations, including, but not limited to, operations costs and the General Budget, until the effective date of its withdrawal.
- E. Expulsion of Member: The Board may, by a two-thirds (2/3) vote of the Board members, terminate a Member Agency's membership in the Authority for a material breach of this Agreement after six (6) months' notice to such Member Agency. A Member Agency so expelled shall be responsible for capital expenditures and non-capital obligations of the Authority as set forth in Article 4, Section D above. Further, a Member Agency so expelled shall have the rights as set forth in Article 4 D(3) with respect to termination of its delegation of franchising authority and partial assignment of the franchise agreements.
- F. Reinstatement: An agency, subsequent to its withdrawal, or subsequent to expulsion, may seek reinstatement as a Member of the Authority. Application for reinstatement shall be made in writing to the Board. An agency shall be reinstated upon a two-thirds (2/3) vote of all members of the Board as then constituted. The Board may require an agency seeking reinstatement to meet any terms and conditions which the Board deems appropriate.
- G. Division of Property and Obligations on Dissolution: Upon dissolution of the Authority as a legal entity, all debts and obligations of the Authority, including all bonded indebtedness, shall be paid, and the remaining property of the Authority shall be divided in proportion to the contributions made among all of the agencies who are parties to this Agreement at the time of its dissolution.
- H. Flow Control: With regard to any flow control rights that Member Agencies may have with respect to any solid waste, Member Agencies shall not exercise such flow control rights for solid waste collected within the Authority's jurisdictional boundaries in any

manner inconsistent with the terms of any Authority franchise or other contractual agreements.

To the extent that Member Agencies may now, or in the future, have the authority to exercise flow control for the said waste stream collected within their jurisdictional boundaries, the Authority shall, on entering into a contract or franchise concerning collection, transfer and disposal of solid waste, be deemed to have the authority to exercise such flow control rights for the solid waste within the jurisdictional boundaries of the Authority under the terms of this Agreement.

Nothing herein is intended in any manner to constitute an exercise of flow control by the Authority or its Member Agencies. The intent of this Agreement is to provide recognition of the respective roles of the Authority and its Member Agencies with respect to solid waste flow control issues. Moreover, this Agreement shall be interpreted to be limited by existing and developing law on issues of flow control and interstate commerce.

- I. Acceptance of Waste Stream: The Authority shall accept the waste stream of any Member Agency, whether delivered for solid waste handling by the Member Agency or by a franchisee of the Authority or Member Agency, to the extent the Authority owns or operates solid waste handling facilities designed and constructed to accommodate the waste stream from the affected Member Agency and the facility or facilities have adequate capacity to serve the Member Agency's entire need. The Authority shall attempt to acquire, construct and/or operate Authority facilities in such a manner as to best accommodate the solid waste handling needs of all Member Agencies.
- J. Funding From Member Agencies: Subject to Article 1, Section E, each Member Agency shall provide its share of the Authority's general budgetary obligation.
- K. Liability: The tort liability of the Authority, all members of the Board, and all officers and employees of said Authority shall be controlled by the provisions of Division 3.6 of Title I of the Government Code of the State of California. Any tort and contractual liability incurred by or imposed upon the "Authority" shall remain the sole liability of the Authority rather than the liability of the Member Agencies, to the full extent such allocation of liability is permitted by law. The provisions of said Division relating to the indemnification of public employees and the defense of actions against them arising out of any act or omission occurring within the scope of their employment shall apply to all Authority directors, officers and employees. Notwithstanding the specific terms of this section, the Authority and the Member Agencies shall retain the power to allocate liability between the Authority and the Member Agencies, or among the Member Agencies, in a manner other than as set forth above pursuant to written agreement or to do the same for specific projects or undertakings of the Authority.

To the extent that any liability of the Authority, whether based on contract, tort or otherwise, passes through to a Member Agency, or Member Agencies, said liability shall

be apportioned based upon principals of fault. If, for any reason, apportionment between Member Agencies cannot be based upon fault under the circumstances involved, then apportionment shall be based upon that proportion that the total tonnage of solid waste collected within the jurisdiction of each Member Agency bears to the total tonnage of solid waste collected within the jurisdiction of all members of the Authority as more fully described in Article 1(E).

- L. Indemnity: The Authority shall indemnify, defend (at the Authority's sole expense), and hold harmless the Member Agencies, their respective officers, directors, employees, and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding, or suit of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising as the sole result of the Member Agency or Agencies' status as members of the Joint Powers Authority, i.e. liability of the Member Agency is derivative only. The Authority's duty to indemnify, hold harmless and defend shall survive the expiration or earlier termination of this Agreement.
- M. Insurance: Each Member Agency and its respective officers, directors and employees shall be named as additional insured to the same extent and degree that the Authority and its officers, directors and employees are named as additional insureds with respect to any insurance as required by the Authority pursuant to the terms of any contract or franchise agreement entered into by any other party with the Authority.
- N. Term and Termination: This Agreement shall continue in force until terminated as specified by this section. This Agreement may be terminated at the end of any Fiscal Year by consent of all Member Agencies; however, this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, the distribution of assets, and any other functions necessary to conclude the affairs of the Authority. Upon termination, payment of the obligations and division of the property of the Authority shall be conducted pursuant to Section G of this Article.

ARTICLE 5: PROJECT FINANCING

- A. Separate Contracts: Financing of specific capital projects, such as the acquisition or construction of solid waste facilities by the Authority, shall be subject to separate contracts between the Authority and Member Agencies which intend to participate in the specific facility. The contracts shall set forth each agency's responsibility for capital expenditures and operating expenses, as well as such other terms as may be appropriate.
- B. Debt: The Authority may issue or cause to be issued bond and other indebtedness, and pledge any property and/or revenues as security to the extent permitted by law. Any and all debts, liabilities, and obligations incurred by or imposed upon the Authority shall be

the debts, liabilities, and obligations solely of the Authority, rather than the debts, liabilities, and obligations of the individual Member Agencies.

- C. Financial Contribution: For agencies joining the Authority after the effective date of this Agreement, the Board shall determine such agencies' proportionate financial contribution, which is due upon joining the Authority.
- D. Funding: It is intended that the liabilities of the Authority, to the fullest extent possible, are funded by revenues generated by facility operations or through solid waste fees and franchise fees based on services provided by Authority or pursuant to Authority direction or regulation.

ARTICLE 6: EXERCISE OF AUTHORITY'S POWERS

This Agreement is entered into under the provisions of Article 1 of Chapter 5, Division 7, Title One of the Government Code concerning Joint Powers Agreements. As to those powers vested in the Authority pursuant to Section 6508 of the Government Code, they shall be exercised in the same manner and subject to the same restrictions as those applicable to a sanitary district pursuant to statutes and laws of the State of California.

ARTICLE 7: OBLIGATIONS OF AUTHORITY

Any and all debts, liabilities, and obligations incurred by or imposed upon the Authority shall be the debts, liabilities, and obligations solely of the Authority and no capital or administration debt, liability, or obligation shall thereby be imposed upon any party to this Agreement or the collective parties hereto.

PASSED AND ADOPTED this 24th day of August, 1995 by the following vote:

AYES: Members: Bishop, Hicks, Hockett, Rainey, Smith, Wolfe

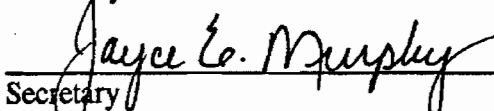
NOES: Members: None

ABSENT: Members: None



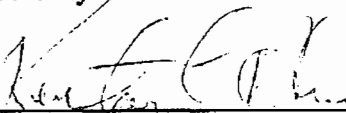
President of the Board of Directors
Central Contra Costa Solid Waste
Authority

COUNTERSIGNED:



Secretary
Central Contra Costa Solid Waste
Authority

APPROVED AS TO FORM:



Kenton L. Alm
District Counsel



Agenda Report

DATE: OCTOBER 19, 2004
TO: CITY COUNCIL
FROM: PUBLIC SERVICES DEPARTMENT
SUBJECT: SOLID WASTE FRANCHISE AGREEMENT

STATEMENT OF ISSUE:

On July 11, 1995 the City of Walnut Creek delegated its solid waste franchising authority to the Central Contra Costa Solid Waste Authority (CCCSWA). CCCSWA has negotiated new agreements to replace the current 10-year solid waste and recycling agreements that expire on February 28, 2005. The City Council must adopt a resolution continuing the delegation of authority to CCCSWA to enter into the new agreements on the City's behalf.

RECOMMENDED ACTION:

Staff recommends that the City Council approve the attached resolution continuing the delegation of authority to CCCSWA to enter into franchise agreements on the City's behalf.

DISCUSSION:

The Central Contra Costa Solid Waste Authority is a joint powers authority comprising the cities/towns of Walnut Creek, Danville, Lafayette, Orinda, Moraga, and Contra Costa County. Currently Councilmembers Kathy Hicks and Sue Rainey serve as the Walnut Creek representatives on the CCCSWA Board of Directors.

In 1996, the City delegated its authority to the CCCSWA to enter into franchise agreements with Browning-Ferris, Industries (BFI) for solid waste collection, transfer, and disposal and Valley Waste Management for recycling and yard waste services beginning March 1, 1996. The term of the agreement was for eight (8) years with an option for two 12-month extensions. The agreements expire February 28, 2005.

During the past year, CCCSWA negotiated a new agreement with Pleasant Hill Bayshore Disposal, Valley Waste Management and Pacific Rim Recycling to provide solid waste disposal and recycling services for members of the joint powers authority. The term of the agreements commence on March 1, 2005 and are for ten years with two 12-month extensions. The CCCSWA Board of Directors approved the new agreements at its April 29, 2004 meeting and has requested that authority members

adopt resolutions continuing the delegation of authority to the CCCSWA to negotiate and execute the agreements on its behalf.

FINANCIAL IMPACTS:

None.

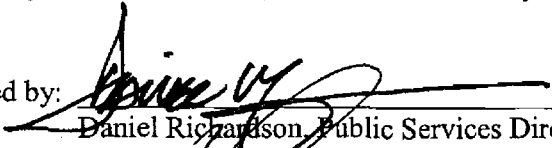
DOCUMENTS ATTACHED:

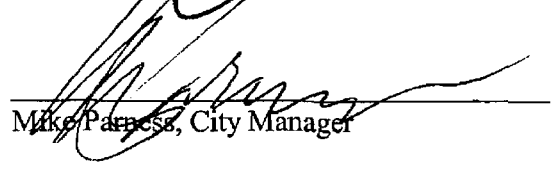
1. Resolution approving the franchise agreement.

COUNCIL ACTION NEEDED:

Move to adopt the attached resolution continuing the delegation of authority to CCCSWA to enter into franchise agreements on the City's behalf.

Prepared by: Kathleen Wilkie, Administrative Analyst II

Approved by: 
Daniel Richardson, Public Services Director

Approved by: 
Mike Parnese, City Manager

RESOLUTION NO. 04-64

**RESOLUTION OF THE CITY OF WALNUT CREEK AUTHORIZING THE CENTRAL
CONTRA COSTA SOLID WASTE AUTHORITY TO ENTER INTO SOLID WASTE
COLLECTION AGREEMENTS FOR SERVICE**

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (hereinafter "AB 939"), as set forth in Public Resources Code §§40000 et. seq., as it may be amended from time to time, has declared that it is within the public interest to authorize and require local agencies, including cities, to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, AB 939 directed cities, among other public agencies, to develop and implement Source Reduction and Recycling Elements (hereinafter "SRRE") and Household Hazardous Waste Elements (hereinafter "HHWE"); and

WHEREAS, the City of Walnut Creek has concluded that franchising of solid waste collection and implementing SRRE and HHWE on a regional basis consolidates coordination and planning of such collection, transfer, transport, processing, and disposal activities, maximizing the ratepayers' market power while providing for economies of scale, thus benefiting the citizens of Walnut Creek; and

WHEREAS, the Central Contra Costa Solid Waste Authority (hereinafter "CCCSWA") is a joint powers agency formed pursuant to Government Code §6500 et seq. and currently is comprised of member agencies that include the Cities and Towns of Danville, Lafayette, Moraga, Orinda and Walnut Creek, and Contra Costa County; and

WHEREAS, a joint powers agency, as a separate public entity, may exercise those powers commonly held by its representative members, to the extent the member agencies provide for the exercise of such common powers to the joint powers agency; and accordingly, CCCSWA through the Joint Powers Agreement, as amended, has the authority to contract for the collection, transfer, transport, processing and disposal of solid waste generated within jurisdictional boundaries of its

members agencies and for the performance of other services related to meeting AB 939 diversion goals of fifty percent (50%) by the year 2000 and beyond, and other requirements; and

WHEREAS, pursuant to California Public Resources Code §40059(a)(1) the CCCSWA Board of Directors has determined that public health, safety and well-being require that an exclusive franchise be awarded to a qualified company(ies) for the collection, transfer, transport, processing and disposal of solid waste and other services related to meeting the requirements of AB 939; and

WHEREAS, the CCCSWA Board of Directors finds that solid waste services can most cost-effectively be carried out on a multi-jurisdictional basis; and

WHEREAS, the CCCSWA pursuant to Resolution Nos. 95-2 and 95-3, entered into Agreements between the CCCSWA and Allied Waste Industries, Inc. d.b.a. Pleasant Hill Bayshore Disposal (hereinafter "PHBD") (formerly BFI) for Solid Waste Collection, Transfer, and Disposal and Valley Waste Management (hereinafter "VWM") for Recycling and Green Waste Collection, Processing, and Marketing Services dated September 14, 1995 (collectively "Franchise Agreements") that currently expire on February 28, 2006; and

WHEREAS, the CCCSWA successfully negotiated terms of new Franchise Agreements and Recycling Services Agreement effective March 1, 2005; and

WHEREAS, on June 24, 2004, the CCCSWA Board executed 1) new Franchise Agreements that continue exclusive franchises between the CCCSWA and a) PHBD for collection, transfer, transport and disposal of solid waste, and green and food waste and b) VWM for collection, transfer, transport, recycling, and processing of recyclable materials, green waste and food waste and 2) a new Agreement with Julie Coleman Enterprises, Inc. d.b.a. Pacific Rim Recycling for recycling services; and

WHEREAS, the City of Walnut Creek desires to continue delegating its solid waste collection franchising authority to CCCSWA.

NOW, THEREFORE, the Walnut Creek City Council resolves as follows:

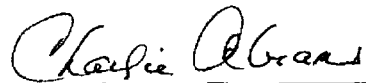
1. The City of Walnut Creek continues delegating its authority to CCCSWA to enter into agreements concerning solid waste, recyclables, and green and food waste collection, transfer, transport, processing and disposal or reuse for all territory within the jurisdictional boundaries of the City of Walnut Creek for such services; and
2. The City of Walnut Creek continues to delegate its authority to CCCSWA to implement the SRREs and HHWEs of the City of Walnut Creek through the CCCSWA franchising authority; and
3. Said delegation of authority from the City of Walnut Creek as set forth in (1) and (2) above is for a ten (10) year term beginning March 1, 2005 plus two possible one-year extensions of the above Franchise Agreements and is subject to the limitations that said delegation is conditioned upon the City of Walnut Creek reserving the right to withdraw at any time, for any reason, the delegation of authority. However, in doing so, the City of Walnut Creek agrees to administer the Franchise Agreements and Recycling Services Agreement as negotiated for the term of the Agreements.
4. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED by the Walnut Creek City Council at a Regular Meeting this 19th day of October, 2004 by the following vote:


AYES: Council members: Hicks, Rainey, Skrel, Regalia, Mayor Abrams

NOES: Council members: None

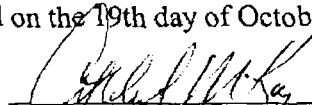
ABSENT Council members: None


Charlie Abrams
Mayor of the City of Walnut Creek

Attest:


Cathleen McKay, City Clerk of the City of Walnut Creek

I HEREBY CERTIFY that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Walnut Creek, County of Contra Costa, State of California, at a regular meeting of said Council held on the 19th day of October 2004.


Cathleen McKay
City Clerk of the City of Walnut Creek



Agenda Report

DATE: FEBRUARY 3, 2004
TO: PUBLIC SERVICES DEPARTMENT
FROM: CITY MANAGER
SUBJECT: SOLID WASTE FRANCHISE FEE ADJUSTMENT

STATEMENT OF ISSUE:

On July 11, 1995 the City of Walnut Creek delegated its solid waste franchising authority to the Central Contra Costa Solid Waste Authority (CCCSWA). This enables the CCCSWA to franchise solid waste, yard waste, and recycling services for the City of Walnut Creek. On September 12, 1995 the City Council adopted a resolution establishing the rate setting policies pursuant to this agreement. In December 2003, CCCSWA notified the City that the adopted franchise fee of 9% may be raised to 10% this year without incurring a ratepayer increase. The City Council must amend Resolution 95-51 to adjust the franchise fee.

RECOMMENDED ACTION:

Staff recommends that the City Council approve the attached resolution increasing the franchise fee from 9% to 10% and transmit the new rate structure to CCCSWA.

DISCUSSION:

The Central Contra Costa Solid Waste Authority is a joint powers authority comprising the City of Walnut Creek, Central Contra Costa Sanitary District (the District), and Contra Costa County. The District represents and administers solid waste franchise services for the cities/towns of Danville, Lafayette, Orinda, and Moraga. Currently Council members Kathy Hicks and Sue Rainey serve as the Walnut Creek representatives on the board.

In 1996, the CCCSWA entered into contract with Browning-Ferris, Industries (BFI) for solid waste collection, transfer, and disposal and Valley Waste Management for recycling and yard waste services beginning March 1996. On January 28, 1999, the BFI contract was assigned to Allied Waste Industries that is doing business as Pleasant Hill Bayshore Disposal. The term of the franchise was for eight (8) years with an option for two (2) twelve (12) month extensions. Under the terms of the franchise, company assets were fully depreciated over the first eight (8) years. No depreciation costs were allowed for the two (2) twelve (12) month extensions.

In December 2003, the CCCSWA Board approved the first twelve-month extension and rate year nine (RY9) compensation for both Pleasant Hill Bayshore Disposal and Valley Waste Management. CCCSWA determined that there will be an 11% decrease in services costs this year compared to the

previous year. The reduction in service costs can largely be attributed to the elimination of depreciation and interest on the companies' assets for RY9. The total service cost reduction means that the franchise fees paid to the City will also be reduced if there is no change in the rate.

However, the reduction in service costs results in a situation where the RY9 estimated revenues exceed the estimated RY9 revenue requirement (company compensation, agency fees, and the Reuse and Clean-up Days program costs). This presents an opportunity for all members of the joint powers authority to raise franchise fees without incurring a ratepayer increase. Therefore, the City of Walnut Creek can raise its franchise fee from 9% to 10% at this time without impacting ratepayers.

It should be noted that when CCCSWA enters into a new franchise agreement after the second extension period, (March 2006) depreciation costs will likely be included. Therefore, the City's franchise fee may need to be reduced or ratepayer rates may need to be increased.

ALTERNATIVES:

Leave franchise fees set at 9% of the agency's share of annual service costs.

FINANCIAL IMPACTS:

Increasing the franchise fee to 10% will allow the City to slightly increase revenue from this source in 2004 rather than experience a decrease as shown in the following table.

City of Walnut Creek Franchise Fees		
Service Year	Leave at 9%	Raise to 10%
Rate Year 9 (2004)	\$ 812,065	\$902,300
Rate Year 8 (2003)	\$861,562	\$861,562
Net Change	(\$49,497)	\$40,738

DOCUMENTS ATTACHED:

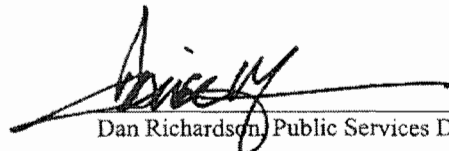
1. Draft Resolution raising the franchise fee from 9% to 10%.

COUNCIL ACTION NEEDED:

Adopt the attached resolution that raises the franchise fee from 9% to 10%.

Prepared by:


Kathleen Wilkie, Public Services Business Manager


Dan Richardson, Public Services Director

Approved by:


Mike Parness, City Manager

RESOLUTION NO. 04-12

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WALNUT CREEK REVISING THE SOLID WASTE FRANCHISE FEE**

WHEREAS, the City of Walnut Creek delegated its solid waste franchising authority to the Central Contra Costa Solid Waste Authority (CCCSWA) on July 11, 1995;

WHEREAS, on September 12, 1995 the City Council adopted Resolution 95-51 establishing policies for setting the rates for solid waste, yard waste and recycling services and setting the franchise fee to be paid by the operators providing these services at 9% of revenues;

WHEREAS, On December 9, 2003 CCCSWA notified the City that there is an 11% decrease in the cost of service for solid waste disposal and that the City could raise its franchise fee from 9 % to 10% in order to offset the resulting reduction in franchise fee revenues without incurring a ratepayer increase.

NOW, THEREFORE, BE IT RESOLVED that section (a)(7) of Resolution 95-51 is hereby amended to read as follows: "A franchise fee of 10% shall be collected."

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 3rd day of February 2004, by the following called vote:

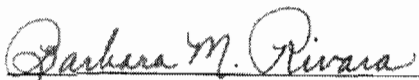
AYES: Councilmembers: Rainey, Hicks, Skrel, Regalia, Mayor Abrams

NOES: Councilmembers: None

ABSENT: Councilmembers: None


Mayor of the City of Walnut Creek

Attest:


City Clerk of the City of Walnut Creek

I HEREBY CERTIFY that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Walnut Creek, County of Contra Costa, State of California, at a regular meeting of said Council held on the 3rd day of February 2004.


City Clerk of the City of Walnut Creek