



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 10, 2019

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Mike Roberts, Public Works Director

SUBJECT: Approval of the Fifth Amended and Restated Joint Exercise of Powers Agreement for the West Contra Costa Integrated Waste Management Authority

RECOMMENDED ACTION: Adopt a Resolution (Attachment 1) approving the Fifth Amended and Restated Joint Exercise of Powers Agreement (“Agreement”) for the West Contra Costa Integrated Waste Management Authority to which the City is a party, and authorizing the Mayor to execute the Agreement.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this action. The City’s participation in the WCCIWMA is designed to ensure a cost effective means of meeting State mandates in relationship to recycling and the proposed JEPA Amendment is designed to ensure this is accomplished in the most effective manner.

DISCUSSION: The West Contra Costa Integrated Waste Management Authority (“Authority”), commonly known as "RecycleMore" is responsible for managing the waste processing services of the franchised waste stream (landfill, recyclables processing, composting and household hazardous waste (HHW)) in its service area in West Contra Costa County. It is a local government joint powers agency created by the Cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo, and Contra Costa County, California charged with making sure the region is in compliance with the California Integrated Waste Management Act and subsequent related laws and regulations regarding the collection and processing of waste in the Authority service area. In addition to ensuring that member agencies are in compliance with these laws and regulations, RecycleMore is responsible for managing the Agreement with Republic Services for “Post-Collection Recycling and Disposal Services” and running Household Hazardous Waste (HHW) Programs.

The Authority was formed in 1991 and the foundational governing document for the operation of RecycleMore is the Joint Exercise of Powers Agreement (JEPA). The JEPA was last amended in 2011. The Authority recognized the need to update and revise the JEPA because the prior iterations of the JEPA addressed Integrated Resource Recovery Facility (“IRRF”) bonds, as well as the development and operation of the IRRF, and the Authority’s involvement with those activities has

now concluded and amending the existing JEPA is required to remove provisions relating to those matters.

RecycleMore's Purpose and Core Services are detailed in Section 2 of the updated JEPA and are prioritized in five areas recommended by the member City Managers as follows:

- Ensuring Member Agencies are in Compliance with State Laws - These laws include AB-939 (recycling diversion levels), AB-341 (mandatory commercial recycling), AB-1826 (mandatory organics collection), SB-1383 (short-lived climate pollutants: methane emissions, organic wastes, landfills)
- Management of the Post-Collection Recycling and Disposal Services Contract
- Household Hazardous Waste (HHW) Programs
- Community Outreach and Education
- Legislative Updates

The RecycleMore Board of Directors has been engaged in the process of updating the JEPA since early 2016. At the May 9, 2019 Board meeting, the Board directed staff and Legal Counsel to prepare an updated draft JEPA document. The updates directed by the RecycleMore Board were discussed at the June 13, 2019 Board meeting and further updated. The Board directed Legal Counsel to distribute the updated draft JEPA document to the City Managers and City Attorneys for their review and final comments, which was done on June 12, 2019. The City Managers met on June 24, 2019 with the RecycleMore Executive Director to discuss the June 12, 2019 draft JEPA document. The City Managers provided comments at this meeting, which were summarized in writing, reviewed and approved by the City Managers.

RecycleMore Legal Counsel produced a new draft JEPA document (May-June 2019 JEPA Draft) which was forwarded to the Board and member agencies City Attorneys on June 28, 2019. The City Attorneys were asked to provide comments by July 8, 2019 on the May-June 2019 JEPA draft. The May-June 2019 JEPA draft was also forwarded to the City Managers and regional staff, as information, on July 2, 2019. Comments by the San Pablo City Attorney and Richmond City Attorney's Office were addressed by Authority Legal Counsel, with most of their comments incorporated into the recommended final JEPA document, which the Board approved on July 18, 2019.

This Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement represents the best efforts of the RecycleMore Board, RecycleMore Staff and Legal Counsel, City Managers and City Attorneys to provide a document to support the interests of the Member Cities and to protect the interests of each Member City. After two and a half years of negotiations, this updated JEPA is designed to balance the interests of all parties and provide a positive way forward for West County in our efforts to report, as a single entity, the annual regional compliance with California laws and regulations related to material diversion from landfills and promoting material reuse and recycling; Implement regional waste reduction and recycling diversion programs; Increase the diversion of waste from disposal facilities; Oversee an integrated resource recovery facility (IRRF) to achieve Member's waste diversion goals; and Arrange for the for the processing and disposal of remaining waste.

The most difficult issues to resolve through the negotiation of this updated JEPA related to how the votes to take major actions would be weighed (given the Board make-up), how a Member City could withdraw and how the Authority could be terminated by the Member Cities. The resolution of these issues was key to the RecycleMore Board approving the updated JEPA.

Key Issue – Rate Setting - Section 12.5: The City Managers recommended that any change to the rate setting methodology, no matter how small, would require a unanimous vote of the Board. This change was incorporated in this updated JEPA.

Key Issue – Withdrawal Section 15: This updated JEPA allows any Member City to withdraw from the Authority with 180 days written notice.

Key Issue – Future Amendments - Section 16.1: Once this updated JEPA is executed, it may only be amended by a written instrument approved by a majority of the Directors which then shall be approved by all of the Member's governing bodies.

Key Issue – Dissolution – Section 16.2: Once this updated JEPA is executed, it may only be terminated, or other action leading to dissolution of the Authority may only be effectuated, through adoption of a resolution by a minimum 2/3 vote of all Directors which then shall be approved by a minimum of 2/3 of the Members' governing bodies. Given the current membership and Board seats, to reach the 2/3 threshold, five Directors and four Members would have to vote to adopt the resolution.

In order to move RecycleMore forward in its efforts to comply with applicable state laws and regulations, as well as the other Core Services defined in the updated JEPA, it is recommended that the City Council adopt the attached Resolution authorizing the Mayor to execute the Fifth Amended and Restated Joint Exercise of Powers Agreement in accordance with the Resolution.

ATTACHMENTS:

1. Resolution
2. Exhibit A - Fifth Amended and Restated Joint Exercise of Powers Agreement

Financial Impact

Description:

Funding Source:

Budget Recap:

Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input type="checkbox"/>		