



# City of San Leandro

Meeting Date: March 4, 2013

## Staff Report

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**File Number:** 13-077

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.I.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Debbie Pollart  
Acting Public Works Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for Resolution Approving an Amendment of the Joint Exercise of Powers Agreement Creating the Alameda County Waste Management Authority

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### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve the resolution to amend the Joint Exercise of Powers Agreement for Waste Management to use the County's rules as the basis for legal restrictions upon the exercise of power of the board.

### BACKGROUND

The Strategic Workplan adopted by the Alameda County Waste Management Authority and Recycling Board ("the Boards") directed agency staff to perform a governance review over a two year time period. During the review, agency staff identified a section of the Joint Powers Agreement (JPA) that requires some legal clarification.

Section 8, ("RESTRICTIONS UPON EXERCISE OF POWER OF BOARD") is a standard 'boilerplate' clause used in most JPAs to make clear that the JPA is not authorized to exercise its powers in contravention of law. However, most JPAs also include a sentence that specifies which member agency legal limitations apply if the boundaries of what is legal vary from member agency to member agency (e.g., limits on procurement practices). In the absence of such a sentence, the most stringent rule of any member agency applies, which in practice might be difficult to ascertain. In practice, the agency has used the County's rules unless they knew of a more stringent member agency rule.

On October 9, 2012, the Executive Director, Gary Wolff, of the Alameda County Waste Management Authority and Recycling Board sent a letter to the City of San Leandro requesting that the City approve such an amendment to the JPA.

### Analysis

The agency has requested that member agencies approve adding two sentences at the end of Section 8 of the JPA: "The manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the County of Alameda . If at any time the County of Alameda is not a party to this Agreement, the manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the largest city within Alameda County that is a Waste Management Authority member ."

The addition of these sentences would eliminate ambiguity related to the application of legal limitations in the event of a conflict between member agency rules .

#### **ATTACHMENTS**

- Attachment 1 - Letter from Gary Wolff, Executive Director dated October 9, 2012
- Attachment 3 - Joint Exercise of Power Agreement for Waste Management, revised 10/13/08

**PREPARED BY:** Jennifer Auletta, Administrative Analyst, Public Works Department



October 9, 2012

**TO:** Waste Management Authority (WMA) Member Agency Chief Executives  
**FROM:** Gary Wolff, Executive Director  
**SUBJECT:** Request regarding an amendment to the WMA Joint Powers Agreement (JPA)

The Strategic Workplan adopted by the Boards in 2010 directed staff to perform a governance review over a two year time period. During that review we found one item deserving of revision in the current JPA (see: [http://www.stopwaste.org/docs/joint\\_powers\\_agreement\\_updated\\_10-13-08.pdf](http://www.stopwaste.org/docs/joint_powers_agreement_updated_10-13-08.pdf) ).

Section 8, ("RESTRICTIONS UPON EXERCISE OF POWER OF BOARD") is a standard 'boilerplate' clause used in most JPAs to make clear that the JPA is not authorized to exercise its powers in contravention of law. However, most JPAs also include a sentence that specifies which member agency legal limitations apply if the boundaries of what is legal vary from member agency to member agency (e.g., limits on procurement practices). In the absence of such a sentence, the most stringent rule of any member agency applies, which in practice might be difficult to ascertain. We have historically used the County's rules unless we knew of a more stringent member agency rule. On the advice of legal counsel, we are asking that this ambiguity be eliminated.

The specific request is to approve adding two sentences at the end of Section 8: "The manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the County of Alameda. If at any time the County of Alameda is not a party to this Agreement, the manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the largest city within Alameda County that is a Waste Management Authority member."

A model resolution approving this change is attached.

Att: model resolution amending the WMA JPA

**Joint Exercise of Powers Agreement for Waste Management**

Revised 10/13/08

This Agreement is entered into and becomes effective this 10<sup>th</sup> day of November, 1992, by and between the undersigned public agencies, all of said parties referred to collectively as the "Agencies." This agreement is an amended Joint Powers Agreement which amends, restates and supersedes the Joint Exercise of Powers Agreement for Waste Management dated February 13, 1990.

## WITNESSETH:

A. Solid Waste Management:

1. Until January 1, 1990 Government Code section 66780 et seq. had required the preparation, adoption, revision, amendment, administration and enforcement of countywide solid waste management plans in order to protect the environment and provide for safe, sanitary and economical disposal of solid waste. An objective of prior versions of this Joint Exercise of Powers Agreement for Waste Management (hereinafter "JPA") had been to create a city, county, special district waste management authority responsible for and capable of preparation, adoption, revision, amendment, administration, policy-making, budgeting, planning and enforcement of the Alameda County Solid Waste Management Plan as mandated by then existing Government Code section 66780 et seq.

2. In this regard, the Alameda County Solid Waste Management Plan has been adopted, revised and amended from time to time pursuant to Government Code Section 66780 et seq. Alameda County had previously delegated to the Alameda County Solid Waste Management Authority, an agency created by a Joint Exercise of Powers Agreement for Solid Waste Management on September 2, 1976, the power, duty and responsibility to prepare, adopt, revise, amend, administer and enforce the Alameda County Solid Waste Management Plan. On October 27, 1987, the JPA was amended to create, among other things, the Alameda County Waste Management Authority (hereinafter "Authority") which was empowered to engage in hazardous waste planning as well as solid waste planning. By its signature on the October 27, 1987 Joint Powers Agreement for Waste Management, Alameda County delegated the power, duty, and responsibility to prepare, adopt, revise, amend, administer and enforce the Alameda County Solid Waste Management Plan. In the event that Government Code section 66780 et seq. is re-enacted in any manner, whether by enactment of additions to the Government Code or other code or in uncodified sections, by its signature hereon, Alameda County continues the delegation enumerated above in regard to the Alameda County Solid Waste Management Plan.

3. Notwithstanding the repeal of Government Code section 66780 et seq. the Agencies, including Alameda County, pursuant to Public Resources Code section 50000 and through their shared power to engage in planning and regulation of solid waste, hereby delegate to the Authority the power to prepare, adopt, revise, amend, administer and enforce the Alameda County Solid Waste Management Plan which has previously been adopted by the Authority, approved by a majority of cities in the County having a majority of the population in the incorporated areas of the County, and approved by the California Waste Management Board. This delegation shall continue until approval of the Alameda County Integrated Waste Management Plan by all necessary public agencies specifically including the California Integrated Waste Management Board pursuant to the provisions of Public Resources section 40900 et seq. as those sections exist or as they may be amended from time to time.

4. Public Resources Code section 40900, part of AB 939 (Statutes of 1989, chapter 1095), became effective January 1, 1990, and requires preparation of countywide integrated waste management plans. A purpose of this JPA is to create a city, county, special district waste management authority responsible for and capable of preparation, adoption, revision, amendment, administration, policy-making, budgeting, planning, implementation and enforcement of the Alameda County Integrated Waste Management Plan. By their signatures hereon, Alameda County, each city and each participating sanitary district (hereinafter "Agencies") delegate to the Authority the power, duty and responsibility to prepare, adopt, revise, amend, administer, enforce and implement as provided for in this agreement the Alameda County Integrated Waste Management Plan pursuant to Public Resources Code section 40900 et seq. as those sections exist and as they may be amended from time to time. This JPA shall be considered a Memorandum of Understanding for the purpose of the delegation from the Agencies to the Authority of the power to prepare the Alameda County Integrated Waste Management Plan. This JPA shall not, however, limit the ability of these Agencies to plan, administer, implement, and otherwise conduct waste management and other related programs on the local level, or on the sub-regional level through appropriate interjurisdictional agreements, as determined appropriate by the Agencies and in accordance with the Alameda County Integrated Waste Management Plan.

5. As regards the Alameda County Integrated Waste Management Plan, the Agencies intend and require that the Source Reduction and Recycling Elements (hereinafter "SRRE's") required by Public Resources Code section 41000 et seq., as those sections exist and as they may be amended from time to time, may be prepared and amended from time to time by either the Agencies acting individually, or by the Authority acting on behalf of one or more of the Agencies in accordance with such memorandum of understanding or other agreement as may be satisfactory to the parties. Any Agency which elects to have its SRRE prepared through the Authority may treat said SRRE as a baseline plan to which the Agency may add or modify policies and program tailored more specifically to that Agency's needs or designed to be more effective in accomplishing source reduction and recycling of solid waste. Nothing in this JPA shall be construed to render the Authority responsible for compliance with the Public Resources Code section 41780 as that section exists or as it may be amended from time to time. The County and the cities, except the City of Berkeley, enter into this JPA for the purpose of establishing an Enforcement Agency as authorized by Public Resources Code section 43203 (b) as that section exists or as it may be amended from time to time. The County and the cities, except the City of Berkeley, hereby delegate to the Authority the power to establish or designate an Enforcement Agency as authorized by Public Resources Code section 43203 (b).

B. Hazardous Waste Management:

Government Code section 66780.8 and Healthy and Safety Code sections 25135 through 25135.8 establish a planning process and requirements for the preparation, adoption, amendment, administration and enforcement of county hazardous waste management plans in order to protect the environment and provide for safe and responsible management of hazardous wastes. An objective of this Agreement is to create a city, county, special district waste management authority responsible for and capable of preparation, adoption, amendment, administration, policy-making, budgeting, funding, planning, implementation and enforcement of an Alameda County Hazardous Waste Management Plan. By its signature hereon, Alameda

county delegates to the Alameda County Waste Management Authority the power, duty and responsibility to prepare, adopt, amend, administer, implement and enforce the Alameda County Hazardous Waste Management Plan pursuant to Government Code section 66780.8 and Health and Safety Code sections 25135 through 25135.8 as those sections exist or as they may be amended from time to time.

C. Joint Exercise of Powers:

Government Code section 6500 et seq. provides that two or more public agencies by agreement may jointly exercise any power common to the contracting parties. Public Resources Code section 41823 authorizes a city or county to enter into a memorandum of understanding with another city or county or agency formed under a joint exercise of powers agreement for the purpose of preparing and implementing source reduction and recycling elements or a countywide integrated waste management plan. It is the intent of the contracting Agencies to utilize these statutory authorizations in this Agreement.

NOW, THEREFORE, the Agencies agree as follows:

1. OBJECTIVE

The purposes of this Agreement are to provide a means of preparing, adopting, revising, amending, administering, implementing, and enforcing the Alameda County Solid Waste Management Plan (on an interim basis as specified in paragraphs A2 and A3), the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous Waste Management Plan.

2. DEFINITIONS

Certain words as used in this Agreement shall be defined as follows:

- a. "Board" shall mean the board constituted herein pursuant to this Agreement to administer and execute this Agreement.
- b. "Agency" shall mean the city, county, or special district which is a signatory to this Agreement.
- c. "Alameda County Waste Management Authority" or "Authority" shall mean the public and separate agency created by this Agreement.
- d. "Enforcement Agency" shall mean the agency established or designated by the Authority pursuant to Public Resources Code section 43203 (b), as that section exists or as it may be amended from time to time, subject to the approval of the California Integrated Waste Management Board pursuant to the Public Resources Code section 43201 as that section exists or as it may be amended from time to time.

3. CREATION OF ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

There is hereby created the Alameda County Waste Management Authority to exercise in the manner set forth in this Agreement the powers common to each of the Agencies. The Authority shall be a public entity separate from the Agencies. No debt, liability, or obligation of the Authority shall constitute a debt, liability or obligation of any Agency and each party's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the parties hereto may agree.

#### 4. SUCCESSOR AGENCY

The Authority is for all purposes the successor to the Alameda County Solid Waste Management Authority created by Joint Powers Agreement effective September 2, 1976. The Authority has succeeded to all of the assets, liabilities, contracts and other obligations of the Alameda County Solid Waste Management Authority. The Authority has also assumed all powers, duties, and responsibilities specified in the Agreement regarding the Alameda County Solid Waste Management Plan.

#### 5. POWERS

The Authority shall have the power to prepare, adopt, revise, amend, administer, implement and enforce the provisions of the Alameda County Solid Waste Management Plan as specified in paragraphs A2 and A3 herein, the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous Waste Management Plan. The Authority is hereby authorized in its own name to perform all acts necessary for the exercise of said powers including but not limited to the following:

- a. to make and enter into contracts, including either to receive or provide services;
- b. to apply for and accept grants, advances and contributions;
- c. to provide funding to the Agencies and other entities for the conduct of programs under the general purview of the Authority;
- d. to employ or contract for the services of agents, consultants and such other persons or firms as necessary;
- e. to employ permanent, part time and temporary staff as necessary to carry out Authority programs, and to adopt and implement appropriate personnel policies and procedures as required;
- f. to make plans and conduct studies; to review the Alameda County Solid Waste Management Plan as specified in paragraphs A2 and A3 herein and the Alameda County Integrated Waste Management Plan and recommend or adopt revisions or amendments thereto to the extent allowed by law;
- g. to make and confirm replacement appointments to the Integrated Waste Management Plan Local Task Force on behalf of the Agencies, until such time as the replacement appointments may be confirmed by the County and a majority of the cities which contain a majority of the population in the County. Those appointments which are not confirmed as specified above shall be replaced by another replacement appointment in the same manner and subject to the same confirmation vote as provided in this section.
- h. To acquire, construct, manage, maintain, operate and control any buildings, works or improvements;
- i. To acquire, hold or dispose of property, including exercise of the power of eminent domain under the provisions of Code of Civil Procedure Sections 1230.010 et sq. as these sections exist and as they may be amended from time to time;
- j. to sue and be sued in its own name;
- k. to incur debts, liabilities or obligations, subject to limitations herein set forth;
- l. to levy and collect fees and charges, including administrative and operating costs, as provided in this Agreement or by law, against all entities to which the law applies, both signatory and non-signatory to this Agreement;

- m. to adopt, as authorized by law, ordinances or resolutions necessary to carry out the purposes of this Agreement;
- n. to issue bonds, subject to the provisions and limitations of the Government Code of the State of California;
- o. to adopt annually a budget setting forth all administrative, operational and capital expenses for the Authority, together with the apportionment of such expenses by levy against each agency to the extent necessary;
- p. to act by and on behalf of Alameda County for the purposes of Government Code section 66780.8 and Health and Safety Code sections 25135 through 25135.8 as those sections exist or as they may be amended from time to time in order to seek state funding to defray the cost of preparing, adopting, amending, administering and enforcing the Alameda County Hazardous Waste Management Plan;
- q. to determine the representation and membership of the Hazardous Waste Management Advisory Committee established pursuant to Health and Safety Code section 25135.2 as that section exists or as it may be amended from time to time. In this regard, the Agencies agree that the advisory committee shall consist of a maximum of 12 members, including at least one representative of industry, one representative of an environmental organization, one representative of the public, and at least three members of the governing boards of the Agencies selected by the City Selection Committee. Other members may be drawn from the fields of education, small and large industry, the Alameda County Environmental Health Department, Wastewater treatment and management, air quality management, fire and/or hazardous materials response.
- r. to recommend, adopt and amend the Alameda County Hazardous Waste Management Plan to the extent allowed by law.
- s. to establish or designate the Local Enforcement Agency for Alameda County, including the cities within the County, except for the City of Berkeley.
- t. to coordinate programs of mutual interest and provide administrative assistance with other organizations involved in related programs, such as Joint Refuse Rate Review Committee.

## 6. BOUNDARIES

The boundaries of the Authority shall be the boundaries of the County of Alameda.

## 7. ORGANIZATION

### a. Board

The Authority shall be governed by the Board which shall exercise all powers and authority on behalf of the Authority.

The Board is empowered to establish its own procedures. The Board may do any and all things necessary to carry out the purposes of this Agreement.

### b. Members

The Board shall consist of one member of the governing body of each of the Agencies. Upon execution of this Agreement, the governing body of each Agency shall by resolution or other appropriate action appoint one of its members to serve as a member and one of its members to serve as an alternate member of the Board after his or her appointment until a successor is selected. Each member and alternate shall serve at the pleasure of the governing body of the appointing agency. Any change in appointment of a member or alternate shall be by resolution of the governing body of the appointing agency.



c. Vote

In order to represent the population of the Agencies, each member shall have one vote except that the member selected by the City of Oakland shall have three votes and the member selected by the County of Alameda shall have two votes.

d. Vote Required

A two-thirds majority of the authorized vote shall be required for expenditures of \$500,000 or more. Except as provided elsewhere in this Agreement, a majority of the authorized vote shall be required for all other actions.

e. Meetings of the Board

(1) Regular Meetings

The Board shall hold at least one regular meeting each year. The date, hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.

(2) Special Meetings

Special meetings of the Board may be called in accordance with provisions of law.

(3) Notice of Meetings

All meetings of the Board shall be held subject to the provisions of the Ralph M. Brown Act, being sections 54950 et seq. of the Government Code, and other applicable laws of the State of California requiring notice of meetings of public bodies to be given.

(4) Minutes

The Board shall cause minutes of all meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each Agency.

(5) Quorum

A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.

f. By-laws

The Board shall adopt by resolution from time to time such by-laws, rules or regulations for the conduct of its affairs as may be required.

8. RESTRICTIONS UPON EXERCISE OF POWER OF BOARD

This Agreement is entered into under the provisions of Government Code section 6500 et seq. concerning joint powers agreements. The powers to be exercised hereunder shall be subject to the restrictions upon the manner of exercising those powers as limited by law.

9. FUNDS, AUDIT AND ACCOUNTING SERVICES

The Authority shall appoint from among them its senior management staff a Finance Officer to serve the combined functions of treasurer and auditor pursuant to Government Code section 6505.6 as it now exists or as it may be amended from time to time. The Finance Officer shall serve as the depository and have custody of all Authority funds from whatever source, and shall perform the following functions:

- a. Receive and receipt for funds for the Authority and place them in appropriate accounts of a financial institution, checking accounts or interest bearing government accounts to the credit of the Authority, and invest any surplus funds in accordance with Government Code section 53601 as that section exists or as it may be amended from time to time.
- b. Be responsible upon official bond for the safekeeping and disbursement of all Authority money so held;
- c. Draw warrants or otherwise be responsible to certify the payment of demands against the Authority when approved by the Authority or by a person authorized by the Authority to so approve;
- d. Pay any sums due from Authority money, or any portion thereof, only upon warrants or other equivalent certification pursuant to procedures established by the Authority.
- e. Verify and report in writing on the first day of July, October, Jan, and April of each year to the Authority and to the contracting parties to this Agreement the amount of money held for the Authority, as well the amount of receipts and the amount paid out since the last report to the Authority; and
- f. Pursuant to Government Code section 6505.6 as it now exists or as it may be amended from time to time, the finance officer shall cause an independent audit of the accounts and records to be conducted by a certified public accountant or public accountant. This independent audit shall comply with the requirements of section 6505 of the Government Code as it now exists or as it may be amended from time to time. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under section 26909 of the Government Code as it now exists or as it may be amended from time to time. The audit shall conform to generally accepted auditing standards.

#### 10. DISPOSITION OF AUTHORITY FUNDS UPON TERMINATION

- a. In the event of termination of the Authority where there is a successor public entity which will carry on the activities of the Authority and assume its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations shall be transferred to the successor public entity.
- b. If there is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the authority and after payment of all obligations, shall be returned in proportion to the contribution of each Agency during the term of this Agreement.
- c. If there is a successor public entity which would undertake some to the functions of the Authority and assume some its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, shall be allocated by the Board between the successor public entity and member agencies.

In the event the Authority is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to member agencies or any successor shall be final.

## 11. PROCEDURE FOR BECOMING MEMBER OF BOARD

All of the agencies signatory to this Agreement shall be members of the Board. Any city in Alameda County, including cities incorporated after the effective date of this Agreement, may become members of the Board by presenting an adopted resolution to the Authority which includes a request to become a member of the Board. Any other public entity in Alameda County which shares and exercises powers in common with the Agencies may become a member of the Board by presenting an adopted resolution to the Authority which includes a request to become a member of the Board and upon a two-thirds affirmative vote of the Authority accepting the public entity to membership.

## 12. WITHDRAWAL AND TERMINATION OF MEMBERSHIP

Any Agency may withdraw from the Agreement, subject to written notice submitted to the Authority at least one full fiscal year in advance of the effective date of withdrawal. The membership of any agency which ceases to have powers in common with the parties to this Agreement or, in the case of a special district, ceases to exercise franchise authority for solid or hazardous waste management shall terminate thirty (30) days after the occurrence of the requisite events as specified in this section.

## 13. SPECIAL PROVISIONS

### a. Hazardous Waste Facility User Fees

The Authority shall not impose or enforce a tax for general purposes or impose a user fee pursuant to Health and Safety Code section 25173.5 as that section exists or may be amended from time to time, except that such tax or user fee may be imposed and enforced by the Authority either to the extent necessary for programs undertaken by the Authority which complement the hazardous waste plans and programs of the Agencies and with the specific approval of the jurisdictional agency in which the fee is levied, or to the extent that said section or its successor authorizes such a tax or user fee to be levied by the Authority.

### b. Hazardous Waste Management/Administrative Fees

The Agencies understand and agree that the Authority may, by agreement with one or more Agencies, share in hazardous waste administration fees such as advance disposal fees or plan check fees if the Authority is incurring costs related to programs for which such fees are levied. The Authority may also levy fees for such purposes to the extent that it is also incurring costs for administration of hazardous waste programs, but the discretion to levy such fees does not preclude the Agencies from also levying such fees as authorized by law.

### c. Funding of County Solid Waste Management Plan

The previous JPA provided that the Authority could levy the fee authorized by then existing Government Code section 66784.3 to defray the cost of preparing, maintaining and administering the Alameda County Solid Waste Management Plan. The Agencies are desirous of continuing the authorization to levy a fee for the purpose of defraying the cost of preparing, maintaining and administering the Alameda County Solid Waste Management Plan until such time as an Alameda County Integrated Waste Management Plan is approved by the California Integrated Waste Management Board. Therefore, by their signatures hereon, the Agencies delegate to the Authority the power to levy such a fee upon solid waste operators in the County for the purpose of defraying the cost of preparing, maintaining and administering the Alameda County Solid Waste Management Plan until such time as it is superseded by an approved Alameda County Integrated Waste Management Plan. Alameda County understands and agrees that the Authority and not the County may levy the fee authorized by this provision.

d. Funding the Integrated Waste Management Plan

Except as provided hereinafter the Agencies understand and agree that the Authority and not the agencies may levy fees as authorized by Public Resources Code sections 41901 and 41902 as those sections exist or as they may be amended from time to time for the purposes of preparing and adopting the Alameda County Integrated Waste Management Plan, and planning or implementing policies, programs or facilities identified in such plan which affect or benefit more than one Agency, or which implement countywide policies, programs or facilities, or which would fund grant programs for demonstration projects. Each Agency, or group of agencies through agreement as hereinafter provided, reserves to itself or themselves the power to levy fees as authorized by Public Resources Code sections 41901 and 41902 as those sections exist or as they may be amended from time to time for the purpose of preparing and adopting its or their SRRE(s), and for implementing local policies, local programs or facilities located within the particular Agency's or Agencies' jurisdiction(s) and identified in the SRRE(s), if the fee is levied on a waste stream originating within the Agency's or Agencies' jurisdiction(s) and is levied on facilities or activities within the Agency's or Agencies' jurisdiction(s). To the extent the jurisdiction of a city and a sanitary district are concurrent, the power to levy fees for implementation as provided herein may be exercised only by the affected city. This provision is not intended to and does not in any way affect the power or discretion of the Agencies regarding franchise agreements or rate setting for solid waste hauling, disposal, recycling, source reduction or other aspects of solid waste processing, including the power of the Agencies to levy fees or other charges through franchise agreements or rate setting involving solid waste.

e. Agreements Between Agencies

This Joint Powers Agreement shall not preclude Agencies from entering into agreements for joint development and operation of programs and facilities. Through such agreements, participating Agencies may assign the responsibility for setting fees and charges collected throughout the program or facility to a lead Agency.

f. Agency Facilities

This Joint Powers Agreement shall not preclude Agencies which own and /or operate facilities from setting fees and charges for use of the facility by the public in general, including other Agencies.

g. Funding for Agency Programs

The Authority may also levy county-wide fees to provide funding for local solid waste planning activities and local implementation of source reduction and recycling plans, administered by the Agencies. The distribution of such funds to local agencies shall be based upon types of quantities of wastes generated by the member agencies, or other means as may be approved by the Board. The funding so provided to the Agencies shall be used in accordance with all state and local requirements enabling and pertaining to the collection of such fees.

h. Waste Import Fees

The Agencies understand and agree that the Authority and not the Agencies may assess special fees of a reasonable amount on the importation of waste from outside of the County pursuant to Public Resources Code section 41903 as that section exists or as it may be amended from time to time.

i. Franchise and Resource Management Agreements

This Joint Powers Agreement does not modify, cancel and/or defer any rights or duties of any party to this Agreement pursuant to franchise agreements between such party and its franchisee. Particularly, this Joint Powers Agreement shall have no effect on the rights or duties of a party to this Agreement with regard to priority in any landfill and/or the rights of any such party to extract recyclable materials from the waste stream.

j. Facility Development

The Agencies agree that the Authority shall have the power to plan, develop and implement countywide or regional facilities and countywide systems of subregional facilities designed to complement the Agencies' Integrated SRRE's and to achieve the goals and objectives of the County Integrated Waste Management Plan. It is understood in undertaking such facilities that those which are not designed to service the entire County shall be the subject of separate agreements between the Agencies concerned. In general, subregional facility agreements shall provide for financial arrangements and liabilities. The Authority may participate in such separate agreements if approved by the Board of the Authority. Costs and fees arising through such agreements shall be specific to the Agencies participating in said agreement, and non-participating Agencies and their rate payors shall not incur costs related to the special agreement. Fee implementation pursuant to these special agreements shall be independent of and not subject to the schedule set forth in this Agreement for fees levied by the Authority.

k. Fee Implementation Procedure

Except as provided herein, the Authority shall, prior to July 1<sup>st</sup> of each year, consider increases to current fees, or the imposition of new fees, which affect rates for municipal solid waste collection and disposal. Each affected member Agency shall be notified by July 15<sup>th</sup> of the action taken. The effective date of any increase shall not be earlier than the following January 1<sup>st</sup>. In the event that a fee adjustment is required on a different schedule, the Authority shall obtain approval as follows: Two-thirds of the Agencies which are affected, or whose ratepayers are affected, by the fee must approve of such action prior to implementation of a new fee or any increase in an existing fee. After forty-five days from Authority approval of a fee adjustment, if any agency has not, in writing, expressed its disapproval, it shall be deemed that the Agency has given its approval.

14. Amendments

This Agreement may be amended by the affirmative vote of the governing bodies of not less than two-thirds of all member Agencies.

15. Notices

All notices to Agencies shall be deemed to have been given when mailed to the governing body of each member agency.

IN WITNESS WHEREOF, each Agency has executed approval of this Agreement and filed said approval with the Clerk of the County of Alameda and said signatures are listed below or attached hereto.

(see the following attachments)

Note the revisions approved 10/13/08 pertain to voting requirements Section 7 d. The member agencies took the following actions:

	<u>Member Agency</u>	<u>Action</u>	<u>Date</u>
1.	Alameda County Board of Supervisors	Approve	September 9, 2008
2.	City of Alameda	Approve	September 2, 2008
3.	City of Albany	Approve	September 2, 2008
4.	Castro Valley Sanitary District	Approve	August 5, 2008
5.	City of Dublin	Approve	October 7, 2008
6.	City of Hayward	Approve	September 23, 2008
7.	City of Livermore	Approve	October 13, 2008
8.	City of Oakland	Approve	September 16, 2008
9.	Oro Loma Sanitary District	Deny	September 2, 2008
10.	City of Piedmont	Approve	September 15, 2008
11.	City of Pleasanton	Approve	October 7, 2008
12.	City of San Leandro	Approve	July 28, 2008
13.	City of Union City	Approve	July 22, 2008



# City of San Leandro

Meeting Date: March 4, 2013

## Resolution - Council

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**File Number:** 13-068

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Debbie Pollart  
Acting Public Works Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** ADOPT: Resolution Approving an Amendment of the Joint Exercise of Powers Agreement Creating the Alameda County Waste Management Authority (provides for the use of the County's rules as the basis for legal restrictions upon the exercise of power of the board)

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WHEREAS, The Alameda County Waste Management Authority (ACWMA) was founded in 1976 and currently operates under a Joint Exercise of Powers Agreement (JPA) most recently revised October 10, 2008, for the purpose of preparing, adopting, revising, amending, administering, implementing and enforcing the Countywide Integrated Waste Management Plan and Alameda County Hazardous Waste Management Plan; and

WHEREAS, the ACWMA, as part of its Strategic Workplan 2020 (developed collaboratively with the Alameda County Source Reduction and Recycling board) initiated a complete governance review in 2010 which has concluded that a specific amendment to the WMA JPA would promote transparency and efficiency in government, and

WHEREAS, Section 8 of the existing WMA JPA does not include typical language that states the member agency rules that govern in the event of a conflict between member agency rules.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That adding the following sentences to the end of Section 8 of the existing WMA JPA is hereby approved: "The manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the County of Alameda. If at any time the County of Alameda is not a party to this Agreement, the manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the largest city within Alameda County that is a Waste Management Authority member."