

RESOLUTION NO. 15-005
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
APPROVING AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT FOR
MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY

WHEREAS, each of the Member Agencies presently has a representative on the Board of Directors of the Monterey Regional Waste Management District ("MRWMD"); and

WHEREAS, each Member Agency is duly authorized and empowered by law to contract for the joint exercise of powers under the Government Code of the State of California, and each Member Agency further has and possesses the statutory power and authorization to regulate and control the collection, disposal and recycling of Discarded Materials (as defined herein); and

WHEREAS, pursuant to the JPA Agreement, the Member Agencies have established the Monterey Regional Waste Management Authority (the "Authority"), a joint exercise of powers agency, separate and distinct from the Member Agencies, to undertake and implement the common power of the Member Agencies to study, plan for, design, finance, construct and operate, and to contract for same, refuse land³¹ disposal and recycling facilities within the boundaries of the Authority; and

WHEREAS, the continued maintenance of a definite and reliable flow of Solid Waste, Recyclable Materials, Organic Materials and C&D (all as defined herein) is essential to the Authority and to the Authority's ability to secure adequate financing for the maintenance, modernization and expansion of its facilities; and

WHEREAS, the Member Agencies have determined to amend Article 7 of the JPA Agreement as set forth herein to provide for such continued maintenance of such definite and reliable flow; and

WHEREAS, the Member Agencies have also determined to amend Article 6 of the JPA Agreement to correct a clerical error to an incorrect paragraph reference; and

WHEREAS, the JPA Agreement may be amended in the manner set forth in Section 8.07 thereof;

NOW, THEREFORE, the Member Agencies hereby agree to amend the JPA Agreement as follows:

1. Amendment of Article 7. Article 7 of the JPA Agreement is hereby amended to read in full as follows:

ARTICLE 7. WASTE FLOW CONTROL

7.01 Flow Control of Discarded Materials (Other Than Recyclable Materials)

Recognizing that a continued maintenance of a definite and reliable flow of Solid Waste, Organic Materials, and C&D to the Authority is essential to the Authority's continued ability to secure adequate financing for the maintenance of its existing facilities, as well as to modernize

and expand those facilities, each Member Agency shall, to the maximum extent permitted by law, require in all franchise agreements, use permits and/or contracts they enter into with each and every hauler or operator (hereinafter referred to as “Contractor”) collecting Discarded Materials (other than Recyclable Materials) for disposal or recycling from any source within MRWMD’s boundaries, that all such waste and materials be delivered during the term of said franchise agreement, use permit and/or other contract solely to a facility designated by the Authority or as otherwise directed by the Authority.

7.02 Agency Redirection of Recyclable Materials. In 2014 seven of the Member Agencies entered into new franchise agreements for the collection and delivery of Discarded Materials. Each of the franchise agreements includes the following provision: “Agency Right to Redirect Recyclable Materials. The Agency may, at any time during the term of this Agreement, require Contractor to delivery Recyclable Materials collected under this Agreement to a processing facility owned by the MRWMD.” A Member Agency with such a new franchise agreement shall, upon written notice from the Authority, during the term of the franchise agreement containing the provision set out in this subsection, exercise its right to require, and shall require, the Member Agency’s Contractor to deliver Recyclable Materials, including Source Separated Recyclable Materials, to a processing facility owned by the MRWMD. Other Member Agencies, with an existing (in 2014) and continuing franchise agreement, shall consider and consult with the MRWMD concerning the redirection of their Recyclable Materials to a MRWMD processing facility at such time as they extend or enter into new franchise agreements.

7.03 Definitions. Capitalized terms used in this Article 7 and not otherwise defined shall have the following meanings:

“C&D” means discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, commercial buildings, or other structures, excluding Excluded Waste.

“Discarded Materials” means Solid Waste, Recyclable Materials, Organic Materials and C&D placed by a generator in a receptacle and/or at a location for the purposes of collection by a Contractor, excluding Excluded Waste.

“Excluded Waste” means hazardous substance, hazardous waste, infectious waste and designated waste (all as defined by applicable law), volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that the Contractor reasonably believes would, as a result of or upon disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be disposed of in Class III landfills, and waste that in the Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the Contractor, the Member Agency or the Authority to potential liability.

“Organic Materials” means those yard trimmings and food scraps accepted at Authority facilities.

“Recyclable Materials” means those Discarded Materials that: waste generators set out in recyclables containers for collection for the purpose of recycling by the Contractor that are at least ninety percent (90%) recyclable and that exclude Excluded Waste.

“Solid Waste” means solid waste as defined in the California Public Resources Code and regulations promulgated hereunder, excluding Excluded Waste, C&D, source separated Recyclable Materials, and source separated Organic Materials and radioactive waste.

“Source Separated” means the segregation, by the generator, of materials designated for separate Collection for some form of recycling, composting, recovery or reuse.

2. Amendment of Article 6. Paragraph 6.02 of Article 6 is hereby amended to remove therefrom the word and number “paragraph 7.02” and insert in place thereof the word and number “paragraph 8.02,”
3. JPA Agreement in Full Force and Effect. Except as specifically amended hereby, the JPA Agreement shall remain in full force and effect.
4. Effectiveness. This Amendment shall be effective upon the execution and delivery hereof by two-thirds of the existing members of the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE;

1. The Agreement is amended as set forth above. All other terms of the Agreement shall remain the same.
2. The City Manager is authorized to make minor changes in the agreement to respond to changing conditions or needs to better meet City objectives.
3. This Resolution shall take effect immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this day of January 21, 2015, by the following vote:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Huitt, Lucius, Miller, Peake

NOES: None

ABSENT: None

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID LAREDO, City Attorney