

**INDEMNIFICATION AGREEMENT BY AND BETWEEN
WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT
AUTHORITY AND THE CITY OF SAN PABLO**

This Indemnification Agreement (“Agreement”), dated as of the Effective Date set forth below, is entered into by and between WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (“Authority”), a California joint powers authority, and the CITY OF SAN PABLO, California municipal corporation (“City”).

RECITALS

WHEREAS, the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (the “Authority”) is a joint powers authority (“JPA”) organized under the provisions of Government Code section 6500 *et seq.* (the “Joint Exercise of Powers Act”);

WHEREAS, the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo (“Member Cities”) are parties to the JPA agreement that created the Authority;

WHEREAS, the JPA agreement places certain municipal solid waste responsibilities on the Authority related to solid waste handling and recycling, including operating as a Regional Agency for compliance under the California Integrated Waste Management Act of 1989;

WHEREAS, the Authority is an independent legal entity, distinct from the Member Cities and the County, and obtains funds for operating its programs through fees charged on a per ton basis for all solid waste, recyclables and organics handled by Republic pursuant to a Post Collection services agreement on behalf of its Member Agencies, excepting El Cerrito, and the County for certain West County areas served by Republic;

WHEREAS, the Authority adopted a Resolution 18 - 02 setting forth a policy on appropriate levels of reserves for both Operations and a Recycling Funds in the amounts of 67% of annual budget for the Operating Reserve Fund and \$662,000.00 for the Recycling Reserve Fund;

WHEREAS, the Authority currently has funds in excess of those amounts and said policy makes those excess funds subject to a determination of the Board as to whether such excess funds are to be distributed to Member Cities and the County;

WHEREAS, Government Code section 6512.1 of the Joint Exercise of Powers Act expressly permits a JPA to distribute revenues it has received from the operation of a revenue-producing facility;

WHEREAS, distribution of revenues under Government Code section 6512.1 must be in accordance with the manner specified in the agency’s JPA agreement or, in the absence of express provisions regarding distribution in the JPA agreement, in a manner determined by the JPA’s Board of Directors;

WHEREAS, the Board of Directors has determined that there is no immediate need for the monies in the excess Reserve Funds and has decided that a distribution of at least some of the excess Reserves should occur;

WHEREAS, the Board of Directors desires to distribute certain excess Reserves in accordance with its adopted Reserve Policy, but only on the condition that the Member Cities and the County use the distributed monies for uses that further the purpose of the Authority;

WHEREAS, the Board of Directors adopted Resolution No. 18-05B on November 8, 2018, authorizing a disbursement of a portion of the Recycling Reserve Fund to the Member Cities and the County;

WHEREAS, the Board of Directors authorized a disbursement of monies from the Recycling Reserve fund to the City on November 8, 2018, in the amount of sixty three thousand eighty four dollars and fifty one cents (\$63,084.51);

WHEREAS, the Authority authorized the disbursement on the condition that the City use the disbursed monies for uses that furthers the purpose of the Authority, and on the condition that the City indemnify the Authority from any claim arising out of the disbursement of the monies; and

NOW, THEREFORE, in consideration of the above recitals, and in anticipation of a disbursement of funds by the Authority to the City, the parties agree as follows:

1. Indemnification.

To the fullest extent permitted by law, the City shall indemnify, defend with counsel acceptable to the Authority, and hold harmless the Authority, other Authority Member Agencies, the County, and their officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liabilities, actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, (collectively, "Liability") of every nature arising out of or in connection with City's use of funds disbursed by the Authority to the City, except such Liability caused by the sole negligence or willful misconduct of the Authority.

City shall immediately notify the Authority of any claim or loss against City arising out of the disbursement of funds by the Authority. Authority assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim.

2. Interpretation of this Agreement.

This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

3. Amendment.

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto.

4. Waiver.

No waiver of any of the provisions of this Agreement shall be binding unless in the form of writing signed by the Authority, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

5. Severability.

If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

6. Governing Law and Venue.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of California applicable to contracts made and to be performed in California. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa

7. Notices.

All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, mailed certified or registered mail or sent by overnight courier and addressed as follows:

If to the Authority: West Contra Costa Integrated Waste Management Authority
Attention: Executive Director
One Alvarado Square
San Pablo, CA 94806

If to the City City of San Pablo
Attention: City Manager
13831 San Pablo Avenue, Building 1
San Pablo, CA 94806

8. Effective Date.

This Agreement will be effective as of the date (the "Effective Date") of the latest date of the execution of this Agreement by the parties as set forth in the signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

WEST CONTRA COSTA INTEGRATED
MANAGEMENT AUTHORITY

By: _____
George Stan Hakes
Executive Director

CITY OF SAN PABLO

By: _____
Matt Rodriguez
City Manager

ATTEST:

ATTEST:

APPROVED AS TO FORM:

Authority Counsel

APPROVED AS TO FORM:

Lynn Tracy Nerland, City Attorney