RESOLUTION NO. 2015-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENTS TO THE MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY (MRWMD) JOINT EXERCISE OF POWERS AGREEMENT REVISING SECTION 7.01 TO CHANGE WASTE FLOW CONTROL WORDING CONSISTENET WITH GREENWASTE RECOVERY (GWR) FRANCIHISE AGREEMENTS AND ADDING SECTION 7.02 PROVIDING FOR THE REDIRECTION OF RECYCLABLE MATERIALS FROM GWR TO MRWMD AT THE TIME INFRASTRUCTURE IMPROVEMENTS ARE COMPLETED AND THAT THE CITY OF MONTEREY AND COUNTY OF MONTEREY WILL PROCESS ITS RECYCLABLES

WHEREAS, the Monterey Regional Waste Management District (MRWMD) is an Independent Special District of the State of California formed in 1951 to provide solid waste management, recycling, and disposal services to its member agencies. The Monterey Regional Waste Management Authority (the Authority, MRWMA) was formed in 1993 for the purpose of issuing bonds to construct capital projects related to recycling, principally the Materials Recovery Facility (MRF). The City of Marina became a member of the Authority by executing the Joint Exercise of Powers Agreement (JPA Agreement) on March 4, 1993, and;

WHEREAS, The MRF and related capital improvements that included the Last Chance Mercantile and the Household Hazardous Waste Collection Facility were built and placed into operation in the mid-1990s. The bonds are paid off and MRWMA has no debt at this time, and;

WHEREAS, MRWMD is underway in the design of three major capital improvement projects. Construction of these improvements will allow member agencies to comply with AB 1286, requiring mandatory organics diversion from landfill beginning in 2016, as well as ensuring compliance with the State 75% diversion goal by 2020. The three projects are:

1. Material Recovery Facility (MRF) Infrastructure Improvements
2. Truck Parking and Maintenance Building for GreenWaste Recovery (GWR)
3. Compressed Natural Gas (CNG) Fueling Station, and;

WHEREAS, these capital improvement projects are estimated to require $30 million in revenue bond financing for construction. In seeking financing, the MRWMD revenue stream will need to be as stable and secure as possible in the future. MRWMD current revenues are approximately 70% dependent on revenue from franchised haulers serving the member agencies. Franchise haulers are required under the waste flow control terms of the franchise agreements to deliver certain recyclable material and wastes to the District for processing and disposal, and;

WHEREAS, Section 7.01 is revised to update the wording related to the flow control of solid waste to the District facilities for processing and disposal. The waste flow control wording from the 1993 agreement has been updated to be consistent with the new GreenWaste Recovery (GWR) franchise agreements approved by seven of the nine member agencies of the Authority, and:

WHEREAS, Section 7.02 is added, to (a) provide for the redirection by the member agencies of recyclable materials to the Waste Management District's MRF, upon completion of improvements designed to accept those recyclables, as provided for in the new 15-year franchise agreements with GWR, and (b) account for the fact that the City of Monterey and the County of Monterey have existing franchise agreements that allow their recyclables to be processed at the Monterey MRF in Ryan Ranch, and at the Waste Management, Inc. facility in Castroville, and;

WHEREAS, The MRWMD Board of Directors approved as to form the draft Amendment for the flow control revision at their October 17, 2014 meeting. All of the member agency governing bodies will consider approval of the Amendment before the end of the year. The bond documents are being prepared and a closing on the sale of the revenue bond financing is anticipated for March 2015, and;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does:

1. Approve Amendments to the Monterey Regional Waste Management Authority (MRWMD) Joint Exercise of Powers Agreement revising Section 7.01 to change waste flow control wording consistent with GreenWaste Recovery(GWR) franchise agreements and adding Section 7.02 providing for the redirection of recyclable materials from GWR to MRWMD at the time infrastructure improvements are completed and that the City of Monterey and County of Monterey will process its recyclables at facilities other than MRWMD

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 21st day of January 2015 by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None

_____
Bruce C. Delgado, Mayor

ATTEST:

_____
Anita Sharp, Deputy City Clerk

EXHIBIT A

Executed Copy

JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY

THIS AGREEMENT is made and entered into by and between those certain public agencies, hereinafter designated as "eligible public agencies," which have duly executed, pursuant to resolution or ordinance, a counterpart hereof, as follows:

ARTICLE I. RECITALS

1.01 Presently Existing District. Each of the parties hereto is presently a member of the Monterey Regional Waste Management District, hereafter referred to as "MRWMD," a Garbage and Refuse Disposal District organized pursuant to California Public Resources Code §§49100 et seq.

1.02 Joint Exercise of Powers. Each of the parties to this Agreement is a public agency duly authorized and empowered by law to contract for the joint exercise of powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (§§6500 et seq.), and each party further has and possesses the common power and authorization to acquire, construct, maintain, operate, regulate and control facilities for the landfill disposal or recycling of garbage, waste, rubbish or other refuse material, hereafter "waste," and to contract for the disposal of same.

1.03 Desire to Vest Power. Each of the parties hereto desires to vest the power to control the activities of the established organization of the parties comprising the MRWMD, to ensure that the facilities are owned and operated in a manner which will maximize the use and life of the existing landfill, as well as any subsequently acquired landfill property or related activities, as envisioned at the establishment of MRWMD, for the benefit of lands and inhabitants within the MRWMD's currently existing boundaries, and to assist in the financing, acquisition and construction of such recycling and refuse facilities as may be necessary to meet the expanding requirements of new state and federal environmental laws.

ARTICLE 2. CREATION OF AUTHORITY

2.01 Joint Powers Agency. In consideration of the mutual promises and covenants contained herein, there is hereby created by agreement of the parties hereto a joint powers agency, with the powers and authority as hereinafter set forth.

2.02 Name of Agency. The joint powers agency created hereby shall be known as and designated the "Monterey Regional Waste Management Authority," hereinafter referred to as the "Authority."

2.03 Purpose. The purpose of this Agreement is to create a separate public agency to undertake and implement the common power and authority of its members to study, plan for, design, finance, construct and operate, and to contract for same, refuse landfill disposal and recycling facilities within the boundaries of the Authority.

2.04 Powers. The Authority shall have all powers necessary to carry out the purpose of this Agreement, except the power to tax. The Authority shall have the power, in its own name, to do any and all of the following:

a) To make and enter into contracts;

b) To employ agents and employees and to contract for professional services;

c) To acquire, convey, construct, finance, re-finance, regulate, manage, maintain and operate buildings, works and improvements;

d) To acquire, hold, improve and convey real and personal property;

e) To sue and be sued in its own name;

f) To incur and discharge debts, liabilities and obligations;

g) To issue securities, bonds, notes, warrants, other evidences of indebtedness and certificates of participation in Authority leases or contracts to finance costs and expenses incidental to the projects of the Authority;

h) To apply for and execute appropriate grants or contracts of financial assistance from state and federal agencies;

i) To issue revenue bonds in accordance with the State of California statutes more specifically set forth in Article 5, paragraph 5.01 hereinbelow;

j) To establish, levy and collect charges, fees, rates and tolls for the use of Authority disposal and recycling facilities, as well as for any other services or facilities provided by the Authority;

k) To lease or sell any facilities operated or owned by the Authority;

l) To loan proceeds from the issuance of bonds or securities;

m) To exercise the power of eminent domain and to condemn any real property necessary to carry out the objects or purposes of the Authority;

n) To require member entities of the Authority to direct their franchise haulers or operators to deliver all waste, refuse and collected materials to specific facilities of the Authority;

o) To contract by separate agreement with Authority members for the Authority to assume the responsibility and liability of the member agencies for compliance with the requirements of Assembly Bill 939 (the California Integrated Solid Waste Management Act of 1989), and subsequent related legislation; and in the event of such an agreement, the power to require contracting member agencies to conform with certain minimum standards of A.B. 939 program service and compliance.

p) To adopt, as authorized by law, resolutions or ordinances necessary to carry out the purposes of this Agreement; and

q) To the extent not herein specifically provided for, to exercise any and all other powers common to the parties hereto.

To the extent not otherwise herein specifically provided for, the foregoing powers shall be exercised by the Authority in the manner and according to the methods provided in the laws applicable to a California Garbage and Refuse Disposal District, as set forth in Public Resources Code §§49100 et seq.

2.05 Compliance With State Waste Management Regulations. The Authority may agree to accept the responsibility for costs incurred by member agencies as a result of A.B. 939 and subsequent related legislation, so long as waste management plans are prepared by Monterey County, and attempt to coordinate recycling activities on a regional basis. Any member agency may, at its own expense, modify its individual "Source Reduction and Recycling Elements" or other A.B. 939 plan. If future legislation allows single district-wide plans to be prepared on a "waste-shed" basis, the Authority may agree to assume full financial responsibility for those plans.

2.06 Separate Legal Entity. The Authority created hereby is a public entity duly formed and existing under the laws of the State of California, and is a legal entity separate and distinct from its member agencies, the parties hereto. The debts, duties and obligations created pursuant to this Agreement shall be solely the obligation of the Authority and not those of its officers, employees, Board of Directors or its member agencies.

2.07 Eligible Public Agencies. The eligible public agencies which may become parties to this Agreement and members of the Authority are specified as follows:

a) The City of Carmel-by-the-Sea;
b) The City of Del Rey Oaks;
c) The City of Marina;
d) The City of Monterey;
e) The City of Pacific Grove;

f) The City of Sand City;
g) The City of Seaside; and
h) The County of Monterey.

An eligible public agency shall become a party hereto and a member of the Authority upon execution of this Agreement and any addenda, amendment or supplement thereto. The Authority may approve membership of other public agencies at any time, by a two-thirds (2/3rds) vote of the Board of Directors and upon such terms and conditions as the Authority may prescribe. Membership of the Authority shall be limited to the County of Monterey and incorporated cities and other public agencies and districts within Monterey County.

2.08 Service to Adjacent Territory. Unless otherwise determined by a duly enacted resolution of the Board of Directors, Authority disposal and recycling facilities may only be utilized for the benefit of citizens, residents and businesses within its boundaries. (It should be noted that the current practice of MRWMD the Board, within its discretion, is to provide services to the entire area of Monterey County, upon payment of an additional out-of-District fee.)

ARTICLE 3. ORGANIZATION

3.01 Board of Directors. The powers of the Authority shall be vested in and exercised by and through its governing body, known as the Board of Directors. Each member entity shall have one representative on the Board who shall be appointed, serve terms and receive compensation as prescribed in Public Resources Code §§49121 through 49123. All vacancies on the Board shall be filled in the same manner as the original appointment. Board members of the Authority shall also be appointed to and serve concurrent terms on the Board of Directors of the MRWMD.

3.02 Meetings. The Board shall establish a time, place and date for its regular meetings. Regular meetings may be adjourned from time to time. Special meetings may be called by the Chairman of the Board or by a majority of the members of the Board.

3.03 Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of Authority business.

3.04 Voting. The vote of a majority of the members of the Board of Directors present at any regular, adjourned or special meeting shall be sufficient to pass and act upon any matter properly before the Authority, and each member of the Board shall have one vote.

3.05 Officers. There shall be selected from the membership of the Board of Directors a chairperson and a vice-chairperson, who shall act in the absence of the chairperson, and if the Authority has no manager as provided for in Section 3.06 hereinbelow, a se-

cretary, and such other officers as the Board may deem necessary. Pursuant to Government Code §§6505.5 and 6505.6, the general manager shall be the treasurer of the Authority, to be the depositary, have custody of all money of the Authority from whatever source and have the powers and duties as set forth in said §6505.5. The administrative services officer shall be the auditor-controller of the Authority, and shall draw all warrants and pay demands against the Authority approved by the Authority Board or general manager. The treasurer and auditor-controller hereby designated may be changed by action of the Board of Directors. All officers shall serve for a term of one (1) year from the date of their election or until their successors are elected. The chairperson, or vice-chairperson, in the absence of the chairperson, is authorized to execute all documents in the name of the Authority, and the secretary is authorized to attest to the same.

3.06 Manager and Other Employees. The Board may employ or contract for the services of a manager and such other employees and assistants as may be appropriate. Should the Board employ or appoint a manager, that person shall be the chief administrative officer and shall assume such other duties and responsibilities as the Board may direct. The manager shall also serve as secretary to the Authority and shall have the power to certify Authority documents, as required by law. The manager shall serve at the pleasure of the Board.

3.07 Public Meetings. All meetings of the Board shall be open to the public and shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, being §§54950 et seq. of the California Government Code.

3.08 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

ARTICLE 4. FINANCIAL PROVISIONS

4.01 Costs of Operation. All costs of operation of the Authority shall be received from:

a) Revenues from fees and charges for the use of, or the impact of new development or the addition of new service territory upon, facilities owned, operated or to be acquired by the Authority;

b) Revenues from taxes, fees and charges levied or collected by the MRWMD, pursuant to written agreement between said MRWMD and the Authority;

c) Revenues from the sale of recyclables, sand, landfill gas, electrical power, land leases and other similar sources;

d) Grant funds received from state or federal agencies; and

e) Funds from the sale of securities, bonds or certificates of participation issued by the Authority.

4.02 Limitation on Authority. The Authority shall have no power to incur any indebtedness, nor to enter into any contract, which may be a charge payable by any member hereunder, without the express consent of the governing body of such member. The Authority shall have no power to borrow money or issue bonds which will in any way be a charge or lien on any member or any member's property.

4.03 No Liability of Member. No member shall be liable for any indebtedness of the Authority except that which is expressly consented to by its governing body. All persons dealing with the Authority shall be hereby notified that no member shall be liable for the debts of the Authority.

4.04 Subsequent Members. As determined by the Authority Board, members who are permitted to join the Authority after taxes, money, property or services shall have been contributed by existing members, or the residents-taxpayers thereof, may do so only pursuant to such terms and conditions, including the payment of an annexation or reimbursement fee, as may be determined by the Authority Board of Directors, in its sole discretion. The Authority's determinations and calculations under the section shall be conclusive, and any reimbursement or annexation fee required hereunder shall be a condition to membership.

4.05 Fiscal Year. The fiscal year of the Authority shall be from July 1 to June 30, following.

4.06 Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies (see Government Code §26909). In particular, the controller and treasurer of the Authority shall comply with the requirements of the statutes governing joint powers agencies as set forth in Articles 1 and 4, Chapter 5, Division 7, Title 1 of the Government Code (§§6500 et seq.).

4.07 Audit. The General Manager of the Authority shall cause the accounts and records of the Authority to be audited annually in accordance with the provisions of California Government Code §6505, and copies of such audit report shall be filed with the Monterey County Auditor and each member of the Authority within six (6) months of the end of the fiscal year under examination.

4.08 Official Bonds. The manager and such other employees or agents as the Board may direct shall file an official bond in the amount determined by the Board. The cost of said bond(s) shall be borne by the Authority.

ARTICLE 5. BOND FINANCING

5.01 Revenue Bonds. The Authority shall have the power and authority to issue and sell revenue bonds in accordance with the procedures and requirements set forth in:

a) Articles, 2 and 4, Chapter 5, Division 7, Title 1 of the California Government Code, commencing with §6540;

b) Chapter 6, Division 2, Title 5 of the California Government Code, commencing with §54300;

c) Chapter 5, Part 3, Division 5 of the California Public Resources Code, commencing with §49160; and

d) Any other then-applicable law regarding or permitting the issuance of revenue bonds by a joint powers agency.

ARTICLE 6. PROPERTY RIGHTS

6.01 Authority Facilities. All facilities, assets and property acquired or constructed by the Authority shall be held in the name of the Authority for the benefit of its members in accordance with the terms of this Agreement; provided, however, that the Authority Board may determine, in its discretion, that such facilities, property or assets may more appropriately or beneficially be held in the name of the MRWMD, pursuant to written agreement with the Authority.

6.02 Transfer of Facilities Upon Dissolution. Upon termination of this Agreement and dissolution of the Authority, as hereinafter provided for in paragraph 7.02, the facilities, assets and property of the Authority shall be transferred and conveyed to the MRWMD or to such other successor entity as may be created hereafter by the members of the Authority to own and operate the garbage and refuse disposal and recycling facilities contemplated by this Agreement for the benefit of all lands and inhabitants within the boundaries of the Authority.

ARTICLE 7. WASTE FLOW CONTROL

7.01 Waste Flow Control. Recognizing that the establishment of a definite and reliable waste flow to the Authority is essential to the Authority and to the securing of adequate financing for the acquisition and construction of necessary recycling and recovery facilities, the parties hereby agree that, commencing upon January 1, 1994, or upon the earlier expiration date of existing refuse collection franchise agreements and use permits for transfer stations, each of the parties shall amend or condition its franchise agreements and use permits to require:

a) each hauler or operator to deliver all refuse collected, which will not be recycled or processed at a materials recovery

facility ("MRF"), and all waste materials resulting from processing at a MRF within the boundaries of the Authority, to a landfill or other facility operated by or for the Authority; and

b) each hauler or operator to transport all construction and demolition material, concrete, asphalt, wood waste and yard waste to a recycling or disposal facility operated by or for the Authority.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.01 Effective Date. This Agreement shall become effective, and the Authority shall be created, when the governing bodies of all eight (8) of the eligible public agencies listed in paragraph 2.06 hereinabove shall have either authorized or specifically declined to authorize execution of this Agreement, or in the event that any public agency should simply fail to execute the Agreement, then on April 1, 1993.

8.02 Termination. This Agreement may be terminated and the Authority dissolved by a two-thirds (2/3rds) vote of the Board of Directors, ratified by two-thirds (2/3rds) of the member agencies; provided, however, that there shall be no termination and dissolution a) if same would conflict with or violate the terms or conditions of any securities or revenue bonds issued by the Authority, and any related documentation, and b) in any event until any and all revenue bond debt incurred by the Authority for the construction or acquisition of disposal or recycling facilities has been fully amortized and retired or such debt is refinanced by the MRWMD or other successor entity.

8.03 Insurance for Tort Liability. Throughout the term of this Agreement the Authority shall maintain in force a comprehensive general and automobile liability insurance policy or policies, with minimum coverage of $1,000,000.00 insuring the Authority, its employees and agents, from any loss, liability or claims arising out of or in any way connected with this Agreement or the operation of the Authority. In addition, in contemplation of the provisions of Government Code §895.2, imposing certain tort liability upon public entities which are parties to a joint powers agreement, such policies shall also name all parties to this Agreement as additional insureds, with such insurance coverage to be construed as primary insurance, and shall further provide that thirty (30) days' written notice be given to all additional insureds of cancellation or nonrenewal of said policies.

8.04 Arbitration. If a dispute arises as to the construction, interpretation or implementation of any provision of this Agreement, the issues in dispute or matter requiring actions shall be submitted to binding arbitration. For such purpose, an agreed arbitrator shall be selected by all members of the Board, or in the absence of such an agreement, the Board, by majority vote, shall select an arbitrator and the member or members in dissent shall select another arbitrator, and the two (2) arbitrators so selected

shall select a third arbitrator. The arbitrator or the three (3) arbitrators acting as a panel, as the case may be, shall proceed to arbitrate the matter in accordance with the provisions of Title 9, Part 3, of the California Code of Civil Procedure.

8.05 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given, in writing, and addressed to the principal office of each member of the Authority.

8.06 Severability. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement, or the application thereof to any member agency or circumstance, shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. Each of the parties hereto hereby declares that it would have entered into this Agreement, and each term, provision, promise, covenant and condition thereof, irrespective of the fact that one or more terms, provisions, promises, covenants, or conditions, or the application thereof to any member agency or circumstance, be held invalid, unenforceable, void or voidable.

8.07 Amendment. This Agreement may not be amended without the consent of two-thirds (2/3rds) of all existing members of the Authority at the time of amendment.

8.08 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

8.09 Assignment. The parties hereto shall not assign any rights or obligations under this Agreement without the written consent of all other parties.

8.10 Additional Documents. The parties hereto agree upon request to execute, acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent of this Agreement.

8.11 Captions. Captions of the articles, sections and paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective duly authorized representatives, have executed this Joint Exercise of Powers Agreement for the Monterey Regional Waste Management Authority on the date so indicated.

CITY OF CARMEL

By _____
Mayor

EXHIBIT B

AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT FOR THE MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY

THIS AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT FOR THE MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY (this "Amendment") is made and entered into by and between those certain public agencies, hereinafter designated individually as the "Member Agency," which have duly executed, pursuant to resolution or ordinance, The Joint Exercise of Powers Agreement For The Monterey Regional Waste Management Authority, dated April 1, 1993 (the "JPA Agreement"), as follows:

RECITALS

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 landfill 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 deliver 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 collected from sources within MRWMD's boundaries to a MRWMD processing facility at such time as they 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.

IN WITNESS WHEREOF the Member Agencies hereto, by and through their respective duly authorized representatives, have executed this AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT FOR THE MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY on the dates so indicated hereinafter.

CITY OF CARMEL

By _____
Mayor

ATTEST:

_____
City Clerk

CITY OF DEL REY OAKS

By _____
Mayor

ATTEST:

_____
City Clerk

CITY OF MARINA

By _____
Mayor

ATTEST:

_____
City Clerk

CITY OF MONTEREY

By _____
Mayor

ATTEST:

_____
City Clerk

CITY OF PACIFIC GROVE

By _____
Mayor

ATTEST:

_____
City Clerk

CITY OF SAND CITY

By _____
Mayor

ATTEST:

_____
City Clerk

CITY OF SEASIDE

By _____
Mayor

ATTEST:

_____
City Clerk

COUNTY OF MONTEREY

By _____
Board of Supervisors Chair

ATTEST:

_____
Board Clerk

PEBBLE BEACH COMMUNITY
SERVICES DISTRICT

By _____
Board Chair

ATTEST:

_____
Board Clerk

January 16, 2015 Item No. **11b**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 21, 2015

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2015-, APPROVING AMENDMENTS TO THE MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY (MRWMD) JOINT EXERCISE OF POWERS AGREEMENT REVISING SECTION 7.01 TO CHANGE WASTE FLOW CONTROL WORDING CONSISTENET WITH GREENWASTE RECOVERY (GWR) FRANCIHISE AGREEMENTS AND ADDING SECTION 7.02 PROVIDING FOR THE REDIRECTION OF RECYCLABLE MATERIALS FROM GWR TO MRWMD AT THE TIME INFRASTRUCTURE IMPROVEMENTS ARE COMPLETED AND THAT THE CITY OF MONTEREY AND COUNTY OF MONTEREY WILL PROCESS ITS RECYCLABLES AT FACILITIES OTHER THAN MRWMD

REQUEST:

It is requested that the City Council consider adopting Resolution No. 2015-,:

1. Approving Amendments to the Monterey Regional Waste Management Authority (MRWMD) Joint Exercise of Powers Agreement revising Section 7.01 to change waste flow control wording consistent with GreenWaste Recovery(GWR) franchise agreements and adding Section 7.02 providing for the redirection of recyclable materials from GWR to MRWMD at the time infrastructure improvements are completed and that the City of Monterey and County of Monterey will process its recyclables at facilities other than MRWMD.

BACKGROUND:

The Monterey Regional Waste Management District (MRWMD) is an Independent Special District of the State of California formed in 1951 to provide solid waste management, recycling, and disposal services to its member agencies. The Monterey Regional Waste Management Authority (the Authority, MRWMA) was formed in 1993 for the purpose of issuing bonds to construct capital projects related to recycling, principally the Materials Recovery Facility (MRF). The City of Marina became a member of the Authority by executing the Joint Exercise of Powers Agreement (JPA Agreement) on March 4, 1993 ("**EXHIBIT A**").

The MRF and related capital improvements that included the Last Chance Mercantile and the Household Hazardous Waste Collection Facility were built and placed into operation in the mid-1990s. The bonds are paid off and MRWMA has no debt at this time.

ANALYSIS:

The General Manager of the Monterey Regional Waste Management Authority will present the proposed amendments to the Joint Exercise of Powers Agreement **("EXHIBIT B").**

MRWMD is underway in the design of three major capital improvement projects. Construction of these improvements will allow member agencies to comply with AB 1286, requiring mandatory organics diversion from landfill beginning in 2016, as well as ensuring compliance with the State 75% diversion goal by 2020. The three projects are:

1. Material Recovery Facility (MRF) Infrastructure Improvements
2. Truck Parking and Maintenance Building for GreenWaste Recovery (GWR)
3. Compressed Natural Gas (CNG) Fueling Station

These capital improvement projects are estimated to require $30 million in revenue bond financing for construction. In seeking financing, the MRWMD revenue stream will need to be as stable and secure as possible in the future. MRWMD current revenues are approximately 70% dependent on revenue from franchised haulers serving the member agencies. Franchise haulers are required under the waste flow control terms of the franchise agreements to deliver certain recyclable material and wastes to the District for processing and disposal.

The first proposed amendment is to revise Section 7.01 to update the wording related to the flow control of solid waste to the District facilities for processing and disposal. The waste flow control wording from the 1993 agreement has been updated to be consistent with the new GreenWaste Recovery (GWR) franchise agreements approved by seven of the nine member agencies of the Authority.

Secondly, Section 7.02 has been added, which (a) provides for the redirection by the member agencies of recyclable materials to the Waste Management District's MRF, upon completion of improvements designed to accept those recyclables, as provided for in the new 15-year franchise agreements with GWR, and (b) accounts for the fact that the City of Monterey and the County of Monterey have existing franchise agreements that allow their recyclables to be processed at the Monterey MRF in Ryan Ranch, and at the Waste Management, Inc. facility in Castroville.

A second minor revision is included in the proposed Amendment to correct a clerical error in Section 6.02 of the JPA Agreement.

It should be noted Section 2.06 of the attached JPA Agreement provides that the Authority "is a legal entity separate and distinct from its member agencies" and "The debts, duties and obligations created pursuant to this Agreement shall be solely the obligation of the Authority and not those of its officers, employees, Board of Directors or its member agencies."

The MRWMD Board of Directors approved as to form the draft Amendment for the flow control revision at their October 17, 2014 meeting. All of the member agency governing bodies will consider approval of the Amendment before the end of the year. The bond documents are being prepared and a closing on the sale of the revenue bond financing is anticipated for March 2015.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

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Christine di Iorio, AICP
Community Development Director
City of Marina

REVIEWED/CONCUR:

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Layne P. Long
City Manager
City of Marina