



DATE: September 26, 2018
TO: Waste Management Authority Board
FROM: Dave Sadoff, WMA President
SUBJECT: Executive Director Contract Amendment

SUMMARY

In July, the Board approved the annual review for Executive Director Wendy Sommer conducted by myself, Mike Hannon, Tim Rood, Deborah Cox and Dan Kalb. Mike Hannon and I served as the negotiating team for the Board.

Based on her outstanding performance, we recommend the following contract amendments:

An increase of 5.24% in salary (\$12,528), which is the median point based on the recently adopted Classification/Compensation study, an additional 20 hours of management leave and \$400 per month transportation allowance. Payment and leave hours will be retroactive to the pay period starting July 1, 2018. We are also updating the contract to change the Executive Director's annual review from October to July to coincide with the rest of staff, as included in WMA Resolution #WMA 2018-03.

RECOMMENDATION

That the Waste Management Authority Board amend the Executive Director Employment Agreement.

Attachment:

Revised and Restated Agreement for Employment as Executive Director of the Alameda County Waste Management Authority

**REVISED AND RESTATED AGREEMENT
FOR EMPLOYMENT AS EXECUTIVE DIRECTOR
OF THE ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY**

THIS AGREEMENT is between the ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY (“Authority”) and Wendy Sommer (“Employee”) and provides:

WHEREAS, Authority hired Employee as Executive Director of the Authority effective January 1, 2016 (“Effective Date”) pursuant to an agreement dated September 16, 2015 (“Original Employee Agreement”); and

WHEREAS, Authority desires to continue to employ Employee as Executive Director and revise and restate the Original Employment Agreement as set forth below based on Employee’s positive annual review for 2018; and

WHEREAS, this Agreement complies with AB 1344 (Government Code sections 3511.1 and 3511.2), which provides for greater transparency of local agency executive contracts.

NOW THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. DUTIES.

(a) Authority hereby agrees to continue to employ Employee as Executive Director of the Authority to perform as head of staff the functions and duties of the Executive Director as specified in the job description attached as Exhibit A.

(b) Employee shall perform her duties to the best of her ability in accordance with the professional and ethical standards of the profession and shall comply with applicable law, and all general rules and regulations established by the Authority.

(c) Employee shall not engage in any activity which is or may become a conflict of interest as defined under California law or create an incompatibility of office. Prior to performing any services under this Agreement, annually thereafter, and at completion of work Employee must complete disclosure forms as required by the California Political Reform Act, Government Code section 81000 *et seq.* as those sections currently exist or as they may be amended from time to time.

(d) Employee agrees to remain in the exclusive employ of the Authority during the term of this Agreement. However, she may engage in civic or volunteer activities on her

time off so long as such activities do not conflict with her obligations to the Authority and the Authority is notified of such activities.

2. TERM.

The term of this Agreement shall be from the Effective Date until terminated by either party in accordance with the provisions set forth herein. This agreement replaces the Original Employment Agreement in its entirety.

3. RESIGNATION AND TERMINATION.

(a) Employee agrees to give Authority at least 30 days advance written notice of the effective date of her resignation.

(b) Employee understands and agrees that her employment is at the will of the Authority Board and Authority may terminate Executive Director, with or without cause, at any time.

(c) In the event Employee dies while employed under this Agreement, Employee's beneficiaries shall be entitled to Employee's earned but then-unpaid salary, including compensation for any unused leave.

4. SEVERANCE PAY.

(a) If Employee is terminated by the Board while still willing and able to perform the duties of Executive Director, Employee shall be entitled to a severance payment if Employee signs and agrees to be bound by a written general release agreeing not to sue and waiving claims and recovery against Authority and all Authority representatives and agents. The severance payment shall be equal to the amount of six months aggregate salary (at the rate of the date of termination) but in no event greater than \$100,000 (One hundred thousand dollars), in addition to any other amounts that may be due Employee at the time of termination of employment. This compensation shall be paid in monthly installments and shall continue over a six (6) month period or until Employee secures and commences other employment at equal or greater compensation, at which time the payments shall cease. In no case shall the amount of severance pay exceed the limits in Government Code section 53260 or other applicable law.

(b) Such severance pay shall not be due or payable if Employee is terminated for conduct that: (1) is determined by the Authority to be dishonest or fraudulent conduct ; or (2) results in a conviction of a felony or a conviction of a misdemeanor involving moral turpitude, dishonesty, or fraud; or (3) is an abuse of her office or position, including, but not limited to (i) an abuse of public authority such as waste, fraud, and violation of the law under

color of authority; or (ii) a crime against public justice under Government Code §§ 53243-53243.4.

5. SALARY.

Effective July 1, 2018, Authority agrees to pay Employee \$251,613 (Two hundred fifty one thousand and six hundred thirteen dollars) per annum (“salary”) for her services, payable in installments at the same time as other employees of the Authority are paid. Authority may increase this base salary annually based on the results of performance evaluation as described in Section 7. In the event the Board does not hold such evaluation prior to the end of the calendar year, the base salary shall be increased on the next anniversary of the Effective Date by the California CPI for Urban Wage Earners and Clerical Workers for the most recent 12 months between June and June as calculated by the Department of Industrial Relations as authorized by Government Code §§ 3511.1 and 3511.2. Payment will be retroactive to the pay period closest to July 1 which is consistent with the time that other employees receive salary increases.

6. BENEFITS.

Employee shall retain all benefits accrued from her past employment by Authority and receive the same benefits as received by other Authority employees and shall have an additional 20 hours of management leave and a \$400 per month transportation allowance.

7. PERFORMANCE EVALUATION.

(a) Each year in June or July Employee will cause to be placed on the Authority agenda a “closed session” for the purpose of the performance evaluation. Prior to that closed session the President of the Authority Board in consultation with other Board officers and one other member of the Board shall evaluate Executive Director's performance based on the Executive Director job description and performance objectives for that year, and present the results of the evaluation to the Authority Board in closed session and shall present any amendments to this agreement proposed by Employee or a member of the Board in a closed session for the Board to provide direction to an agency negotiator concerning the proposed amendments. As part of the Employee’s evaluation process, Employee and the Authority Board shall establish performance objectives for Employee for the following year.

(b) The parties agree to fully comply with the Government Code sections that are part of AB 1344 (and as subsequently amended), and to fully comply with other applicable law. AB 1344, as subsequently amended, includes Government Code sections 3511.1-3511.2 and 53243-53243.4.

8. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The Board by resolution shall fix any other terms and conditions of employment, as it may determine, from time to time, relating to the performance of the Executive Director, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

9. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO AUTHORITY: President, Board of Directors
Alameda County Waste Management Authority
1537 Webster Street, Oakland, CA 94612

with a copy to: Richard Taylor, General Counsel
(which copy is not notice) Alameda County Waste Management Authority
c/o Shute, Mihaly & Weinberger LLP
396 Hayes Street, San Francisco, CA 94102

TO EXECUTIVE DIRECTOR: Wendy Sommer
Alameda County Waste Management Authority
1537 Webster Street, Oakland, CA 94612

10. DISPUTE RESOLUTION.

The parties shall make a good faith effort to settle any dispute or claim arising under this Agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in California. If mediation does not arrive at a satisfactory result, arbitration shall proceed in accordance with the rules of the American Arbitration Association and any judgment rendered by the arbitrator(s) may be enforced as provided by California law.

11. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. This Agreement cannot be modified except by mutual Agreement signed by the parties.

12. ASSIGNMENT.

This Agreement is not assignable by either Authority or Executive Director.

13. JURISDICTION AND SEVERABILITY.

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in this state. If any part of this Agreement is found to conflict with applicable laws, such parts shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

14. COUNTERPARTS.

This Agreement shall be executed simultaneously in three counterparts which shall be identified by number and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

AUTHORITY:

By: _____ Date: _____
Dave Sadoff, President
Alameda County Waste Management Authority

APPROVED AS TO FORM:

By: _____ Date: _____
Richard S. Taylor
Authority Counsel

EMPLOYEE:

By: _____ Date: _____
Wendy Sommer