



DATE: April 28, 2021
TO: Waste Management Authority Board
FROM: Wendy Sommer, Executive Director
SUBJECT: Executive Director Employment Agreement for Timothy Burroughs

SUMMARY

At the April 28 meeting, the Board will consider an employment agreement with Timothy Burroughs as Executive Director, commencing on July 12, 2021.

DISCUSSION

At the December 2020 WMA Board meeting, I announced that after close to three decades of service to the Agency, I will be retiring at the end of this fiscal year. My last day in the office will be July 9.

In keeping with our commitment to succession planning, the Board considered Timothy Burroughs, Deputy Director, for the ED position. After a two month process, the Board agreed to offer the position to Mr. Burroughs. An employment agreement was developed based on the Board's direction in closed session, with the Board officers (President Cox, First V.P. Young and Second V.P. Martinez) negotiating specific terms of the attached proposed contract.

RECOMMENDATION

Authorize the Board President to approve the attached Executive Director Employment Agreement.

Attachment: Employment Agreement

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

THIS AGREEMENT is between the ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY (“WMA”) and Timothy Burroughs (“Employee”) and provides:

WHEREAS, WMA desires to employ Employee as Executive Director of the WMA beginning on July 12, 2021 (“Effective Date”); and

WHEREAS, Employee desires to serve as Executive Director of the WMA, beginning on the Effective Date; and

WHEREAS, the parties acknowledge that Employee was employed on and has been serving as the Deputy Executive Director since July 20, 2020, and will continue doing so until the Effective Date; and

WHEREAS, the Board of Directors of WMA, as appointing power, and Employee desire to agree in writing to the terms and conditions of Employee’s employment as Executive Director; 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) WMA hereby agrees to employ Employee as Executive Director of the WMA beginning on the Effective Date 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 his duties to the best of his 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 WMA.

(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 not engage in any paid or self-employment, activity, or enterprise which is inconsistent, incompatible or in conflict with his Agency duties, functions and responsibilities. In order to avoid perceived or actual conflicts of interest that may arise from outside employment, Employee agrees to obtain written approval from the WMA president prior to undertaking any outside employment as described herein; said approval not to be unreasonably withheld.

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.

3. RESIGNATION AND TERMINATION.

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

(b) Employee understands and agrees that his employment is at the will of the WMA Board and WMA 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 WMA and all WMA 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), 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 WMA 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 his 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 sections 53243-53243.4.

5. SALARY.

(a) Beginning on the Effective Date, WMA agrees to pay Employee \$260,000 (Two hundred sixty thousand dollars) per annum ("salary") for his services, payable in installments at the same time as other employees of the WMA are paid. WMA may increase this base salary based on the results of the performance evaluation as described in Section 7.

(b) In the event the Board does not hold a performance evaluation as described in section 7 prior to the end of the calendar year, Employee's base salary shall be increased 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 sections 3511.1 and 3511.2. Payment will be retroactive to the pay period closest to July 1 of that calendar year, which is consistent with the time that other employees receive salary increases.

6. BENEFITS.

Upon the Effective Date, Employee shall accrue vacation at the rate of 6.154 hours per pay period (currently the top tier for vacation accruals), retain all benefits accrued from his current employment by WMA, and continue to receive the same benefits as received by other WMA employees in exempt positions.

7. PERFORMANCE EVALUATION.

(a) Each year in July, Employee will cause to be placed on the WMA agenda a “closed session” for the purpose of the performance evaluation. Prior to that closed session the President of the WMA 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 WMA 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 WMA 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:

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| TO WMA: | President, Board of Directors Alameda County Waste Management Authority 1537 Webster Street, Oakland, CA 94612 |
| with a copy to: (which copy is not notice) | Richard Taylor, General Counsel Alameda County Waste Management Authority c/o Shute, Mihaly & Weinberger LLP 396 Hayes Street, San Francisco, CA 94102 |
| TO EXECUTIVE DIRECTOR: | Timothy Burroughs Alameda County Waste Management Authority 1537 Webster Street, Oakland, CA 94612 |

Notices may be given by e-mail provided that the recipient acknowledges receipt of the e-mail.

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 WMA 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.

15. ELECTRONIC SIGNATURES.

This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

WMA:

By: _____
Deborah Cox, President
Alameda County Waste Management Authority

Date: _____

APPROVED AS TO FORM:

By: _____
Richard S. Taylor, General Counsel
Alameda County Waste Management Authority

Date: _____

EMPLOYEE:

By: _____
Timothy Burroughs

Date: _____