

TO: JAMES L. APP, CITY MANAGER

FROM: MEG WILLIAMSON, ACTING PUBLIC WORKS DIRECTOR

SUBJECT: CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
MEMORANDUM OF AGREEMENT FOR ENFORCEMENT SERVICES

DATE: JUNE 15, 2004

Needs: For the City Council to consider a revised Memorandum of Agreement with the California Integrated Waste Management Board for enforcement services at the City's landfill.

- Facts:
1. In 1997, the City of Paso Robles entered into an agreement with the State of California Integrated Waste Management Board (CIWMB) to act as the enforcement agency for solid waste handling and disposal at the City's landfill. These services included the enforcement of standards as they relate to public health, safety and environmental codes.
 2. The County of San Luis Obispo had previously provided enforcement services to landfills within the County (excepting Paso Robles). The County no longer wishes to provide these services and wishes to designate the CIWMB as the enforcement authority within the County.
 3. The CIWMB has indicated that it wishes to incorporate all enforcement services for this County (San Luis Obispo County and City of Paso Robles) into one Memorandum of Agreement (MOA) rather than maintain two independent contracts.
 4. The services provided to the City of Paso Robles will not change under the new three party agreement.
 5. In the event the County of San Luis Obispo wishes to designate a local enforcement authority in the future and terminate this MOA, the City will still be able to have CIWMB be the City's enforcement agency.
 6. The City Attorney has worked with legal counsel of both the County Board of Supervisors and the Integrated Waste Management Board to draft the attached MOA in a manner acceptable to all parties.
 7. The County Board of Supervisors is scheduled to consider and ratify the agreement at their meeting of June 22, 2004. The CIWMB is scheduled to act on the MOA at its meeting of June 15, 2004.

Analysis and
Conclusion:

The modified MOA will result in a three party agreement for the CIWMB to provide enforcement services to landfills and other solid waste facilities within the County of San Luis Obispo and to the City of Paso Robles. There will be no change of services to the City of Paso Robles as a result of this modified agreement. Action to enter into the modified MOA would nullify the 1997 agreement and the new MOA would go into effect on July, 1, 2004.

Policy

Reference: The California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000, et seq.).

Fiscal

Impact: There may be some savings to the City because the City will only have to pay a pro rata portion of certain costs charged by CIWMB, such as travel.

Options: The following options are offered for consideration by City Council:

- a. Adopt Resolution No. 04-xx authorizing the City Manager to enter into a modified Memorandum of Agreement with the California Integrated Waste Management Board for enforcement services at the Paso Robles landfill.
- b. Amend, modify, or reject the above option.

Attachment:

1. Resolution authorizing the amended MOA with the CIWMB

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING AND AUTHORIZING THE EXECUTION OF A MEMORANDUM OF
AGREEMENT WITH THE COUNTY OF SAN LUIS OBISPO AND THE CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD DESIGNATING THE CIWMB AS
THE ENFORCEMENT AGENCY FOR THE CITY AND TERMINATING THE
EXISTING MEMORANDUM OF AGREEMENT WITH THE CIWMB

WHEREAS, the City and the California Integrated Waste Management Board ("CIWMB") entered into a Memorandum of Agreement (the "Paso Robles MOA") in 1997 whereby the CIWMB served as the enforcement agency for the City pursuant to Public Resources Code sections 43310.1 and 43212.1; and

WHEREAS, the County of San Luis Obispo (the "County") now also has determined that it wishes the CIWMB to serve as the enforcement agency for the various facilities located within the County; and

WHEREAS, the CIWMB has requested that the City, County and CIWMB execute one agreement for CIWMB to serve as the enforcement agency for the entire County.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby approves the Memorandum of Agreement (the "MOA") between the City, County and CIWMB, which is attached hereto and incorporated herein by reference, and authorizes the City Manager to execute the MOA on behalf of the City.

SECTION 2. As provided in the MOA, the City also approves the termination of the existing Paso Robles MOA, which termination shall be effective upon the effective date of the MOA.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 15th day of June 2004 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is made this 1st day of July, 2004, by the County of San Luis Obispo, a political subdivision of the State of California, herein called "County", the City of El Paso de Robles, a municipal corporation in the State of California, herein called "City", and the State of California Integrated Waste Management Board, herein called "CIWMB". (County, City and CIWMB may be referred to herein individually as a "Party" or collectively as the "Parties".)

RECITALS

- A. The California Integrated Waste Management Act of 1989 [Public Resources Code (PRC), Section 40000, et seq.], hereinafter referred to as the "Act", allows counties and cities to designate a local enforcement agency, or, in the absence of a designation, requires the CIWMB to enforce the standards for solid waste handling and disposal to protect the public health, safety and environment within such jurisdiction.
- B. Until July 1, 2004, the County will serve as the Local Enforcement Agency within San Luis Obispo County. The County has withdrawn its designation of a local enforcement agency on March 16, 2004 by Resolution 2004-81. Located within the jurisdictions of the County are one or more solid waste facilities, disposal sites, and handling and transportation equipment. Pursuant to the Act, the CIWMB is obligated to act as the enforcement agency within the County. The Act provides that when the CIWMB becomes the enforcement agency, it may charge reasonable fees to the local governing body, a solid waste facility operator, or a solid waste enterprise to recover operation costs.
- C. The CIWMB and the City entered into a Memorandum of Agreement (the "Paso Robles MOA"), dated September 18, 1997, in which the parties agreed that the CIWMB would serve as the enforcement agency for the City, which is the owner of a landfill within the City's boundaries. The City desires to have the CIWMB continue to be the enforcement agency for the City.
- D. Pursuant to PRC, Sections 43310.1 and 43212.1, the County and CIWMB are required to enter into an agreement to identify the jurisdictional boundaries of the enforcement agency, address the powers and duties to be performed by the CIWMB as enforcement agency, identify an estimated workload and anticipated costs to the CIWMB, and identify the cost recovery procedures to be followed by the CIWMB as enforcement agency.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the Parties as herein expressed, the County, City and CIWMB agree as follows:

1. The jurisdiction of the CIWMB as the enforcement agency under this MOA shall be the County of San Luis Obispo including all incorporated cities and all unincorporated area within said County. Commencing July 1, 2004, which is the effective date of this MOA, the CIWMB shall be the enforcement agency for the County and all incorporated cities within the County. The CIWMB, as the enforcement agency for the County, agrees to perform the tasks and duties specified in Section 43209 of the Act, including, but not limited to, those listed below, to ensure that all regulated solid waste facilities, solid waste operations, and disposal sites within the County shall:

- a. Comply with State Minimum Standards [as defined in California Code of Regulations (CCR), Title 27, Section 20164 and described in CCR, Title 14, Division 7, Chapter 3] and the terms and conditions of their solid waste facility permits; and
 - b. Obtain permits or exemptions as may be required under the Act; and
 - c. Comply with enforcement orders issued by the CIWMB pursuant to 14 CCR 18084.
2. An estimated time/task analysis for CIWMB staff to perform enforcement agency functions within the County is attached to this Memorandum of Agreement as Attachment A and is hereby incorporated into this MOA by this reference.
- a. The analysis is based on the following criteria:
 - (1) the number and type of operating and non-operating solid waste facilities, solid waste operations, and disposal sites;
 - (2) the number of annual compliance and projected complaint inspections based on the previous year's records and anticipated additions or deletions;
 - (3) the following staff activities:
 - (i) inspections, travel, research, analysis of findings and documentation;
 - (ii) enforcement activities including warnings, notices, meetings, hearings, legal proceedings and documentation;
 - (iii) permit activities including reviews, report of facility information amendments, and revisions;
 - (iv) closure and postclosure activities including plan reviews, site evaluations and investigations, and documentation; and
 - (v) corrective actions including review and approval of site investigations, assessments, characterizations, remediation alternatives, and corrective measures.
 - b. Limited specialized services shall also be provided by the CIWMB as necessary to perform the duties required of the enforcement agency.
 - c. The staff allocation is a good faith estimate and may not reflect the actual amounts to be billed to solid waste facility operators or solid waste enterprises within the County.
3. The CIWMB shall determine the charges for services performed as the enforcement agency within the County based on the actual hours spent and expenses incurred and the CIWMB fee rate for the same period of service.
- a. The CIWMB, acting as the enforcement agency, shall act upon applications submitted by any operator within the County for solid waste facility permits according to the following process, as applicable:
 - (1) verification of the submission of required documents, site and personnel information;

- (2) evaluation of the application documents for accuracy and conformity with appropriate solid waste statutes and regulations;
 - (3) compliance review with the California Environmental Quality Act (Public Resources Code, Section 21000 et. seq.) for short and long term environmental impacts, damage, and proposed mitigation measures;
 - (4) determination of whether or not to accept the application and proceed with a proposed permit for CIWMB consideration;
 - (5) initiation of the appropriate public notice and comment period, including any public hearings;
 - (6) submittal of copies of the above documents, notices, comments, and responses to any party requesting such information in writing;
 - (7) preparation of permits with specific conditions for design, operation, and adverse environmental effects, monitoring and mitigation;
 - (8) submittal of proposed permits to the applicant within the required time frame; and
 - (9) provide for permit review and acceptance by the applicant, and a hearing panel process if necessary.
- b. The CIWMB shall review Enforcement Agency (EA) Notifications (as described in CCR, Title 14, Division 7, Chapter 5, Article 3) from any operator to ensure that such operations are eligible to file EA Notifications within the County. The CIWMB shall retain the EA Notifications for a minimum of one year after the cessation of operations.
- c. Pursuant to PRC, Division 30, Parts 4 and 5 and 27 CCR, Subdivision 1, Chapter 3, Subchapter 5, Article 2, and Chapter 4, the CIWMB shall require any person owning or operating a solid waste landfill within the County to submit for approval the following:
- (1) plans for the landfill closure and postclosure maintenance;
 - (2) estimates of closure and postclosure maintenance costs; and
 - (3) financial mechanisms to ensure adequate availability of funds.
5. The CIWMB shall conduct solid waste facility permit reviews as required by PRC, Sections 44015 and 27 CCR 21675.
6. The CIWMB shall perform inspections of solid waste facilities, solid waste operations, and disposal sites within the County as required by PRC, Division 30, Parts 4 and 5 and 14 CCR Division 7, Chapters 3 and 5.
7. a. If during an inspection, investigation, or at any other time, the CIWMB finds a solid waste facility, solid waste operation, or disposal site in violation of state regulations, or the terms and conditions of the permit, the CIWMB shall enforce the applicable provisions as required by PRC, Division 30 and 14 CCR Division 7, Chapter 5, Article 4. CIWMB

enforcement actions shall address the following categories of violations including, but not limited to:

- (1) operational violations pursuant to 27 CCR, Chapter 3 and 14 CCR Division 7, Chapter 3 and PRC, Division 30;
 - (2) emergency violations which are violations of subsection (1) above which present an imminent threat to public health, safety, or the environment and require immediate action pursuant to PRC, Division 30, Part 5;
 - (3) closure and postclosure violations pursuant to PRC, Division 30, Part 4, Chapter 2, Articles 3 and 4, Part 5, and 27 CCR Subdivision 1, Subchapter 5, Article 2, and Chapter 4, Subchapter 4;
 - (4) permit terms and conditions.
- b. CIWMB enforcement action options include, but are not limited to, as set forth in PRC, Division 30, Parts 4 and 5 and 14 CCR Division 7, Chapter 5, Article 4.
8. The CIWMB may conduct hearings to determine if solid waste facilities, solid waste operations, and disposal sites are in compliance with State Minimum Standards. Compliance with State Minimum Standards is enforced through the means of inspections and enforcement orders.
 9. As part of the enforcement agency responsibility, the CIWMB will conduct administrative tasks reasonably related to its enforcement agency activities. Examples of administrative tasks include report writing, office conferences, telephone calls, records maintenance, billing, and attendance at meetings related to enforcement agency activities in the County. The CIWMB will maintain service records containing the following data for each service or activity: date, facility or operation by name and "SWIS" number, type of activity, staff hours, and inspector name. Travel and other expenses will be itemized. During the term of this MOA and for five (5) years after its termination, the CIWMB shall make available at reasonable times and places to the County, the documents and files maintained by the CIWMB pursuant to enforcement agency activities under this MOA.
 10. The County, City, and other cities and districts within the County will administer and implement all provisions of the local jurisdictions' solid waste handling ordinances. The CIWMB is not responsible for aspects of solid waste handling which are of local concern, as described in PRC, Section 40059.
 11. The CIWMB and the City acknowledge and agree that, on the effective date of this MOA, the "Paso Robles MOA" shall terminate and shall have no further force and effect. The Parties acknowledge that, until this MOA takes effect, CIWMB is serving as the enforcement agency for the City of El Paso de Robles, pursuant to the Paso Robles MOA. Upon the expiration or earlier termination of this MOA, the CIWMB and the City may elect to enter a memorandum of agreement similar to the Paso Robles MOA pursuant to Sections 43310.1 and 43212 of the Act, such that the CIWMB will continue to serve as enforcement agency in the City of El Paso de Robles although it is no longer serving in that role for the entire County.

12. The County will maintain a list of all solid waste handling and collection vehicles and perform inspections of solid waste handling and collection vehicles within the County in accordance with 14 CCR, Division 7, Chapter 3, Article 5.
13. Any dispute that develops between the Parties hereto with regard to matters arising out of or related to this MOA, and that the Parties do not resolve within 90 days, shall be submitted to mediation if so requested by one of the Parties. Within 15 days of such request, the Parties shall select a mutually acceptable mediator. Each Party shall bear its own costs (including, without limitation, attorney's fees) incurred in connection with the mediation. In the event the mediator is unable to resolve the dispute, then the Parties may pursue any and all remedies available to them.
14. To recover costs associated with the enforcement agency services provided by the CIWMB within the County, the CIWMB will impose fees on the solid waste facility operators and/or solid waste enterprises to which it provides services. This MOA shall constitute the consultation called for pursuant to PRC, Section 43212(a). The fee will include, but may not be limited to, compensation for staffing, per diem, and transportation costs. Staffing costs will be determined by using a billable hourly rate as adopted by the CIWMB. The CIWMB will provide quarterly, itemized invoices to the respective operator and/or enterprise. The itemized invoices shall have a level of detail comparable to the tasks discussed in Paragraph 9. The operator and/or enterprise shall remit payment within 45 days of receipt of invoices. The operator and/or enterprise may request evidence of invoiced costs.
15. The term of this MOA shall commence on the date set forth above and continue through June 30, 2005, unless sooner terminated by mutual written agreement of the Parties. The term of the MOA shall be automatically extended for additional one (1) year terms, commencing on the expiration of the current term. Any such extended term may be terminated by mutual written agreement of the Parties. Notwithstanding, the Parties agree that this MOA shall terminate on the next June 30 to occur following the CIWMB's certification of a local enforcement agency designated by the County, provided that the local enforcement agency is certified for all purposes by the CIWMB. In the event that the CIWMB certifies a local enforcement agency for some, but not all, purposes, the Parties agree that they will negotiate in good faith and make good faith efforts to amend this MOA as appropriate.
16. This MOA may be amended only by a writing signed by the Parties. This MOA and the exhibit(s) incorporated herein by the MOA constitutes the final, complete, and exclusive statement of the terms of the MOA between the Parties pertaining to CIWMB's serving as the enforcement agency within the County of San Luis Obispo and supersedes all prior and contemporaneous understandings or agreements of the Parties.

IN WITNESS WHEREOF, this Memorandum is executed by the County, pursuant to Board of Supervisor's Resolution No. _____, the City of El Paso de Robles, acting by and through its City Manager, pursuant to City Council Resolution No. _____ authorizing such execution, and by the California Integrated Waste Management Board, acting by and through its Executive Director, pursuant to CIWMB Resolution No.2004-165, authorizing such execution.

COUNTY OF SAN LUIS OBISPO

Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT

JAMES B. LINDHOLM, JR.
County Counsel

By: _____
Raymond A. Biering
Deputy County Counsel

Date: _____

CITY OF EL PASO DE ROBLES

By _____
James L. App
City Manager

ATTEST:

Sharilyn M. Ryan
Deputy City Clerk

APPROVED AS TO FORM AND LEGAL EFFECT
IRIS YANG
City Attorney

By: _____
Iris Yang
City Attorney

Date: _____

CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD

By _____
Mark Leary
Executive Director

Date: _____