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**Special Meeting
Board of Directors Meeting Agenda
July 8, 2017
9:00 a.m.**

**Courtyard by Marriott
3150 Garrity Way
Richmond, CA 94806**

Americans with Disabilities Act

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet in an alternative format, please contact the Authority's Manager of Administrative Services at (510) 215-3125. Notification of at least 48 hours prior to the meeting or time when services are needed will assist Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Public Comment

Members of the public may address the Board of Directors on items that are within the jurisdiction of the Authority. Comments by the public pertaining to items listed in this Agenda should be made at the time the item is considered by the Board of Directors. Please note this Agenda contains an item for the Public to address the Board on non-agenda matters. Each speaker is limited to 3 minutes and may speak only once under each agenda item. The Board of Directors may waive these provisions. If you desire to address the Board, please submit your request on a Speaker's Card available from the Secretary.

1. CALL TO ORDER AND ROLL CALL

The Chair will call the meeting to order and the Secretary will call the roll to establish the presence of a quorum.

2. CLOSED SESSION – NONE

3. PLEDGE OF ALLEGIANCE

The Chair or a Member of the Board will lead the Pledge of Allegiance.

4. EX PARTE COMMUNICATIONS DISCLOSURES

The Chair of the Board will ask if any Director has an ex parte disclosure, pursuant to the Authority's Ex Parte Communications Policy, on any agendized items.



recyclemore
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WASTE MANAGEMENT AUTHORITY



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5. PUBLIC COMMENT

Receipt of public comment on non-agenda matters.

6. CONSENT CALENDAR

All matters listed in the Consent Calendar will be enacted with one motion. There will be no separate discussion of the items listed. However, upon request by a member of the Board or the public, items will be removed from the Consent Calendar and considered separately in the agenda order.

Consideration of a motion to approve the following actions: **None**

END OF CONSENT CALENDAR

7. STAFF REPORT

Staff will provide updates on recent and upcoming activities.

Process for Addressing Agenda Items Before the Board of Directors

- *Chair reads the agenda item*
- *Staff presents their report*
- *Board questions staff*
- *Public comments are heard*
- *Board discusses item*
- *A motion is made*
- *Final Board discussion*
- *Motion is restated and seconded for the record*
- *Board votes or provides direction to staff*

8. REGULAR AGENDA

8.0 Special Meeting Item 1 - Workshop on Joint Exercise of Powers Agreement (JEPA)

Conduct a workshop on the Joint Exercise of Powers Agreement (JEPA).

8.1 Special Meeting Item 2 - Decisions and Direction on Joint Exercise of Powers Agreement (JEPA) Prepared for July Workshop and Any Other JEPA-Related Issues

Provide direction to staff on the draft JEPA prepared for July workshop (July Draft) and any other JEPA-related issues.

END OF REGULAR AGENDA

9. BOARD MEMBER AND STAFF ANNOUNCEMENTS

INFORMATION ONLY. Announcement of matters of interest by Board Members, Alternate Board Members, Executive Director and General Counsel.

10. ADJOURNMENT

Consideration of a motion to adjourn. A Board of Directors Special Meeting is scheduled for Thursday, July 20, 2017 at 6:30 PM.



Agenda Report

Date: July 8, 2017
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director and Kent Alm, Legal Counsel
Subject: **Special Meeting Item 1 - Workshop on Joint Exercise of Powers Agreement (JEPA)**

ACTION REQUESTED

Conduct a workshop on Joint Exercise of Powers Agreement (JEPA).

BACKGROUND

The West Contra Costa Integrated Waste Management Authority (RecycleMore) Board has expressed an interest in updating the Joint Exercise of Powers Agreement (JEPA) and has conducted eight Board workshops in 2016 relating to this effort. On November 17, 2016, the Board approved circulating a draft updated JEPA (November Draft) for review and comment by the Member Agency (Members) City Attorneys, County Counsel and the Technical Advisory Council (TAC). RecycleMore has received comments from all Members as well as the County on the November Draft.

On March 19 and April 13, 2017, the staff prepared a report an oral presentation on the comments received and potential resolutions to issues raised. At the April meeting, the Board decided to schedule a Special Meeting on July 8 to discuss updating the JEPA.

On June 23, 2017, staff provided a revised draft in preparation for the July 8 meeting (July Draft) to Board members, City Managers, City Attorneys and TAC representatives. It is attached hereto as Attachment 1. Attachment 2 is a redline version of the July Draft which shows the changes made since the November Draft.

The July Draft is provided to foster Board discussion and assist in making determinations regarding the outstanding issues raised by the comments received on the November Draft.

WORKSHOP AND DECISION MAKING PROCESS

The July 8 Special Meeting has been organized in two parts. During the first part, staff will discuss the remaining issues related to updating the JEPA. This report is provided to facilitate that discussion.

This second part of the Special Meeting is intended to allow the Board to deliberate and provide direction to staff on the July Draft and any other JEPA update-related issues. A second report has been provided in the agenda packet to help focus Board decision making and direction to staff and Legal Counsel.

It is important to remember that amending the current JEPA requires approval of both a majority of the Board and a majority of the Member legislative bodies. This means that three (3) of the five (5) existing Member City Councils must approve the updated JEPA. Thus, decisions and direction to staff at the July 8 meeting should be supported by a majority of the Board members, **and** by Board members representing at least three (3) of the five (5) Members.

CITY MANAGER PARTICIPATION DURING JEPA WORKSHOP

RecycleMore staff and Legal Counsel have conferred with the Board Chair, and it was agreed that it would be beneficial for the Member City Managers to participate in discussion during Part 1 (workshop) of the July 8 Special Meeting. The specific process for City Managers' participation will be determined by the Chair and Board at the July 8 Special Meeting.

KEY JEPA ISSUES REMAINING

Requests and Issue of Concern from Multiple Member Agencies

1. Limit use of certain powers by requiring Members legislative body approval prior to exercise.

The language to limit use of RecycleMore powers by obtaining prior approval from Member legislative bodies is included in Section 5.4 of the July Draft. With regard to flow control, RecycleMore retains the power to direct waste through 2025 as the current Post-Collection Agreement (PCA) requires. After 2025, the Authority would not have the power to enter into new regional agreements binding on its Members without the consent of Members' legislative bodies, thus providing a restriction of the use of flow control authority.

In addition to flow control, all of the following powers would be predicated upon the prior approval from the affected Member(s) legislative body:

- A. Use of eminent domain to obtain property in a Member's jurisdiction;
- B. Ability to enter into franchise agreements;
- C. A bond issuance and long term financing; and
- D. Adoption of ordinances where the subject of the ordinance applies to a Member's jurisdiction.

The limiting language has not been previously reviewed by the Board, but it was presented as a resolution to this issue at the April meeting.

2. Right to withdraw with reasonable notice

The County, El Cerrito and Richmond requested a Member be allowed to withdraw upon notice only without a requirement that the withdrawing Member also enter into an agreement with RecycleMore.

Section 16.1 of the July Draft allows a Member to withdraw on a 180 days' notice. Sections 16.1 and 16.3 stipulate that an agreement would only be required if the withdrawing Member seeks a distribution of RecycleMore "reserve" funds or if it has outstanding financial obligations with RecycleMore which it does not intend to remit upon withdrawal. An agreement to provide a distribution of funds requires a supermajority vote which includes the withdrawing Member per Section 16.3.

Similar language was provided to the Board at the November 2016 meeting and the concept of a "simple withdrawal with only notice" was presented by staff and Legal counsel at the April 2017 meeting. The specific language in the July draft has not been discussed by the Board.

3. Intermittent Disbursement of Reserves

The draft updated JEP A document attached to this report does not include language on the intermittent disbursement of reserves. This was done because there was not a clear consensus from the Board on this issue. Some Board members wanted the JEP A document to include language which would not allow intermittent disbursement of reserves, others wanted language to allow intermittent disbursement of reserves with conditions, and others thought intermittent disbursement of reserves should be addressed outside of the language of the JEP A document.

Thus, as currently drafted, the question of intermittent disbursement of reserves would be decided by a future Board action. The Board, with a simple majority, could adopt a motion or a Resolution that would allow intermittent disbursement of reserves, with or without conditions. Should the Board wish to include language in the Updated JEP A document to address this issue, Legal Counsel could insert language to require a supermajority requirement for passage or other terms to further limit future disbursements.

Remaining County Requests

A. Provide that the existing rate setting methodology may not be changed unless agreed to by all Members.

Section 13.6 of the July Draft requires that modifications of the current rate setting methodology resulting in the substantial reallocation of costs between Members or reallocating costs to recycling and diversion activities would require a supermajority vote (a majority of the Board seats representing a majority of the member agencies).

This language has not been previously reviewed by the Board or discussed at a previous meeting.

B. Clarify County's right to franchise the IRRF.

The County currently franchises solid waste and recycling facilities throughout its jurisdiction, and franchising the IRRF is consistent with its regulations and practices. The current Authority-County contract (Contract) prohibits franchising the IRRF. However, the Contract may be terminated by either party on 60 days' notice. Thus, the County could terminate the Contract and franchise the IRRF after 60 days' notice.

Given that, **staff recommends the Board consider amending the Contract to note that County has the right to franchise the IRRF, but that this issue would not be addressed in the JEPA. Consequently, the July Draft does not include language addressing this issue.**

C. Continuation of RecycleMore's obligation to maximize use of in-county landfills.

Section 12.4(a) has been included in the July Draft to address this issue. In general, it requires that RecycleMore utilize the most cost-effective landfill as determined after an evaluation of all relevant factors. If an in-County landfill is demonstrated to be the most cost-effective, then the Authority shall be obligated to utilize it.

Section 12.4(b) requires that an agreement for use of a landfill outside the County shall include a provision that the Authority may terminate the agreement at the end of a ten (10) year period. It further requires that, one year prior to the expiration of the 10 year term, the Authority re-evaluate whether continued use of the out-of-county landfill is the most cost-effective option. If the results of that evaluation reveal that the total cost of use of the out-of-County landfill(s) is ninety-five percent (95%) or more of the total cost of the use of the in-County landfills, then the in-County landfill shall be afforded the opportunity to match or reduce the total cost of the bid of the out-of-County landfill.

This language has not been previously provided to the Board. It generally reflects the current provisions in the County-Authority Contract. The issue of using in-County vs. Out-of-County landfills is a major policy issue which has not been discussed in depth previously by the Board. Discussion on this issue could take significant time. This could take away time from the Board working together to resolve other JEPA issues. As such, the Board may wish to consider discussing this issue at the end of the Workshop, or at a future Board meeting.

Significant Issues Raised by Richmond

A. Should services provided by RecycleMore be proportional to the financial revenues generated by customers?

The JEPA is intended to exist beyond the term of the PCA, and it may not be in the best interests of RecycleMore to include a provision in the JEPA that would dictate a particular approach to resolve this issue. It is recognized that many RecycleMore activities are based upon the waste tonnage generated by the Member and that Richmond generates a substantially greater amount of tonnage in all categories of waste than other Members. Therefore, although RecycleMore programs are available to all Members regardless of the waste tonnage generated, staff recommends the Board consider JEPA language that there would be a good faith effort to provide Richmond with services commensurate with its contribution to RecycleMore's budget.

Recital H of the July Draft was drafted with that consideration in mind. In addition, Section 8.8 of the July Draft provides that the Board must consider the issue of services commensurate with Richmond's contributions when the budget is approved.

Similar language was provided at the April meeting, but this issue was not discussed in detail.

- B. Net revenue from Richmond’s industrial businesses should solely benefit Richmond ratepayers.

The R3 Consulting report presented to the Board on April 13, 2017 documented the current rate methodology allocates more costs to industrial and commercial customers, and less to residential customers. This methodology benefits all residential rate payers, including Richmond rate payers. The R3 Consulting report also found that the current methodology does not have a significant cross-jurisdictional impact. R3 estimated that Richmond ratepayers overall would pay about \$315,000 less under an “all tons” allocation methodology, which is about 2.3% of the overall revenue generated by the Blended Per Ton Rate charged by Republic. **Based on the findings of the R3 Consulting Report, staff recommends no change to the JEPA on this issue.**

- C. Provide for reserve funds to be distributed to withdrawing Members in proportion to the contributions that the Member Agency made.

The Board engaged in an extremely difficult determination regarding a distribution of reserve funds, which resulted in substantial controversy among Members. Ultimately, the Board approved distribution of more than \$4 million reserves to Members in 2015 and early 2016 as follows: the County received \$659,481; El Cerrito received \$527,124; Hercules received \$452,545; Pinole received \$431,220; Richmond received \$2,175,798 and San Pablo received \$502,932. Richmond’s three Board Members at that time voted in favor of disbursing these reserves in that manner. The remainder of cash assets of RecycleMore was set aside by the Board for specific purposes. It was understood at that time that reserve revenues had accumulated under the prior contract, but it is unlikely that new reserve funds will not accumulate under the current contract.

The language which provides for disbursement of funds upon withdrawal is included Section 16.3 (Page 25) of the July Draft. Similar language was provided in the April 2017 report, but this issue was not discussed in detail at that meeting.

- D. Additional Voting Representation for Richmond Directors.

If the County becomes a voting Member, there will be eight (8) voting Directors. Richmond is seeking to preserve the current balance of power on the Board where Richmond’s votes coupled with a vote from one other Director, will carry an item. Section 7.2(a) of the July Draft allows a Richmond Director to cast a tie-breaking vote where a Board vote resulted in four (4) affirmative votes and four (4) negative votes and all three (3) Richmond Directors as well as one other Director voted in the same manner. The provision has three exceptions: 1) budget approval; 2) disbursement of reserves; or 3) requests for disbursement upon withdrawal.

Similar language was provided in the April meeting, but this issue was not discussed in detail at that meeting.

CONCLUSION

There are complexities involved in analyzing the benefits and challenges of the County becoming a voting Member on the RecycleMore Board and Richmond remaining a Member. Therefore, it is

worthwhile to keep the “bigger picture” in mind. Decisions made will likely impact future rates and thus, the Board should consider how its decision would benefit RecycleMore, the Members, the community, the region and, most importantly, rate payers.

The Board should also bear in mind that accommodating the County and Richmond will require some level of compromise. The potential benefits of keeping Richmond as a Member and adding the County would include:

1. Complying with State-mandated environmental regulations such as AB 939 and AB 341 through combined reporting and program development and implementation (excluding County);
2. Meeting diversion goals: communities can benefit from each other’s diversion strengths;
3. Developing and implementing environmental policies with “punch,” e.g. bag ban;
4. Managing environmental outreach and education, e.g., Green Business Partnership, School Programs, Used Oil Payment Program, HHW Grants;
5. Managing contracts such as the post-collection services agreement;
6. Better efficiency in staffing on a regional basis for solid waste handling issues;

While there are benefits to keeping RecycleMore together, there are also significant challenges to consider. RecycleMore member agencies have significant philosophical differences on how to direct RecycleMore resources to best benefit the community. Several member agencies advocate for a regional approach; Richmond advocates for directing resources based on factors such as population, tonnage and the overall payments made by each member agency’s ratepayers.

FISCAL IMPACT

None. Future actions related to updating the JEPA may have minor to significant fiscal impacts to the RecycleMore Budget and organization.

RECOMMENDED ACTION

Conduct a workshop on Joint Exercise of Powers Agreement (JEPA).

Submitted by:



Stan Hakes
Executive Director

Attachment 1: Draft 7/8/17 Joint Exercise of Powers Agreement
Attachment 2: Red-Line Version - Draft 7/8/17 Joint Exercise of Powers Agreement

DRAFT 7/8/17 FOR COMMENT

FIFTH AMENDMENT TO AND RESTATEMENT OF THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT

THIS FIFTH AMENDMENT and RESTATEMENT OF THE JOINT EXERCISE OF POWERS AGREEMENT (“Restated Agreement”) is entered into as of _____, 2017, by and among the CITY OF EL CERRITO (“El Cerrito”), a municipal corporation, the CITY OF HERCULES, a municipal corporation, the CITY OF PINOLE, a municipal corporation, the CITY OF RICHMOND, a municipal corporation and charter city, the CITY OF SAN PABLO, a municipal corporation (collectively “Cities”) and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“County”), hereinafter referred to individually as “Member” and collectively as “Members.” This document amends the Agreement dated April 2, 1991, as amended by Amendment No. 1 dated November 14, 1991, Amendment and Restatement No. 2 dated December 21, 1993, Amendment and Restatement No. 3 dated March 6, 1995, and Amendment No. 4 on March 10, 2011 (“Agreement”) and restates in full the provisions of the Agreement, except as amended herein, without affecting the ongoing existence of the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (“Authority”).

RECITALS

- A. California Government Code section 6500 *et seq.* (“Law”) provides for agreements between two or more public agencies to jointly exercise any power common to the contracting parties, subject to certain mandatory provisions contained therein;
- B. The State of California has enacted the California Integrated Waste Management Act of 1989 (AB 939) at California Public Resources Code section 40000 *et seq.* (“Act”) mandating that municipalities and county unincorporated areas divert material from disposal and has promulgated regulations promoting material reuse and recycling;
- C. Pursuant to this authority, the Cities entered into the Agreement to establish and confer upon a separate legal entity the powers necessary to: 1) form a regional agency to report as a single entity the annual regional compliance with AB 939 reporting requirements in order to reduce the cost of reporting and tracking of disposal and diversion programs by individual jurisdictions; 2) to implement regional waste reduction and recycling diversion programs; 3) to increase the diversion of waste from disposal facilities; and 4) to develop an integrated resource recovery facilities (“IRRF”) to achieve their waste diversion goals, to comply with the Act, and to arrange for disposal of remaining waste resulting from the closure of the West Contra Costa Sanitary Landfill;
- D. The County and the Authority entered into a contract on May 25, 1993 (“Authority-County Contract”) in order to facilitate development of an IRRF to be partially located in the unincorporated area of the County, provide for the continued disposal of waste generated in the unincorporated areas of the County encompassed by the District, divert such waste through the use of an IRRF and provide for regulation of the IRRF;
- E. Pursuant to the Agreement, the County appointed an ex-officio non-voting Director to the Authority’s Board of Directors, the Authority approved IRRF bonds, an IRRF was developed and the bonds were repaid;

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F. In June 2013, the Authority Board of Directors voted to initiate the process of including the County as an Authority member and, in May 2016, the County Board of Supervisors voted to direct its staff to pursue negotiation of this Amendment and Restatement to become an Authority member;

G. Although the County wishes to join the Authority as a Member, it cannot also be a part of the regional agency as defined by Public Resources Code section 40181 because all of the County's unincorporated area is not located within the Authority's jurisdiction;

H. The Members recognize that many Authority activities are based upon the waste tonnage generated by the Members and that the City of Richmond generates a substantially greater amount of tonnage in all categories of waste than other Members. Therefore, although Authority programs are available to all Members regardless of the waste tonnage generated by a particular Member, the Members commit to make a good faith effort to provide Richmond with services commensurate with its contribution to the Authority's budget;

I. The iterations of the Agreement prior to 2014 addressed IRRF bonds and development including the contract with West County Resource Recovery Inc. for IRRF operation and administration and the Authority's involvement with these activities has now concluded. Nonetheless, the Authority continues to operate as a Regional Agency and manage the post-collection processing and disposal activities. This Amendment and Restatement is intended to be consistent with those activities and is further intended to provide a structure for the Authority to both meet new legislative mandates and provide the necessary flexibility to address Members needs post 2024; and

J. The Members intend by this Amendment and Restatement to reflect the changes in conditions that have occurred since the execution of the Third Amendment Restatement in 1995, to add the County as a Member of the Authority, to exercise their respective powers jointly and to exercise such additional powers as are available to the Authority under the Law for the purpose of achieving their waste diversion goals and complying with the Act.

ACCORDINGLY, THE MEMBERS HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions. The terms defined in this Section have the following meanings:

1.1 "Act" means the California Integrated Waste Management Act of 1989 (California Public Resources Code sections 40000 *et seq.*) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

1.2 "Agreement" means this Joint Exercise of Powers Agreement, as it may be amended from time to time.

1.3 "Alternate Director" means the person(s) appointed by each Member who may represent that Member at a Board meeting in the absence of a Director from that Member.

1.4 "Approved Facility" means a solid waste management facility or facilities, such as a MRF, transfer station, composting or other type of processing facility, designated from time to time by the Authority to receive some or all Directed Waste and Materials.

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1.5 “Approved Rates” means (i) the rates authorized by the Authority from time to time to be paid at the Approved Facility or Facilities for Directed Waste and Materials received at the Approved Facility or Facilities as set forth in the Post Collection Agreement; and/or (ii) any additional amounts determined by the Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, or to implement the Authority-County Contract to the extent such additional amounts are not included by the Authority in the rates authorized to be charged at the Approved Facility or Facilities in the Post Collection Agreement.

1.6 “Authority” means the West Contra Costa Integrated Waste Management Authority, a joint exercise of powers Agency created by the Members pursuant to the Agreement.

1.7 “Authority-County Contract” means that certain contract between the Authority and Contra Costa County dated May 25, 1993, as amended from time to time.

1.8 “Board” means the Board of Directors of the Authority.

1.9 “City” means any Member that is a city, and “Cities” means all of the Members that are cities.

1.10 “County” means Contra Costa County, California.

1.11 “Directed Waste and Materials” means materials collected pursuant to a Franchise Agreement, or collected pursuant to any other agreement between a Member and any other party, or collected by a Member, and directed by the Authority to be delivered to an Approved Facility or Facilities.

1.12 “Director” means the appointed members of the Board that represent the Cities and County. For the purposes of voting and quorum, the term Director as used herein shall be read to also include an “Alternate Director” when such person is seated on the Board as the representative of the Member at a Board meeting.

1.13 “El Cerrito Recycling Services” means both the collection of Recyclable Materials at the El Cerrito Recycling and Environmental Resource Center and the collection of Recyclable Materials through or by El Cerrito whether directly or by contract.

1.14 “Executive Director” means the person hired and appointed by the Board as the Authority’s Executive Director to administer the affairs of the Authority and to effect the policies of the Board.

1.15 “Fiscal Year” means the period commencing on each July 1 and ending on the following June 30.

1.16 “Franchise Agreement” means an agreement between a Member or, if further authorization is provided by the Board, an agreement between the Authority, and a party which provides for the collection of Solid Wastes.

1.17 “Hazardous Materials or Hazardous Waste” means materials that, by reason of their

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quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined and/or regulated as a Hazardous Waste, toxic waste, hazardous chemical substance or mixture, or asbestos under any applicable local, state or federal law or regulation, and:

(1) “Hazardous Waste” pursuant to section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with section 25800) of Division 20 of the California Health & Safety Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by sections 25110.02, 25115, and 25117 of the California Health & Safety Code (California Hazardous Waste Control Act), California Health & Safety Code section 25100 *et seq.* including 23 CCR sections 2521 and 2522;

(2) Materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 *et seq.* as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980);

(3) Materials regulated under the Toxic Substances Control Act, 15 U.S.C. section 2601 *et seq.*, as amended, and related federal, state and local laws and regulations, including the California Toxic Substances Account Act, California Health & Safety Code section 25300, *et seq.*;

(4) Materials regulated under the Comprehensive Environmental Response, Compensations and Liability Act, 42 U.S.C. section 9601, *et seq.*;

(5) Materials regulated under any future or additional or substitute federal, state or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or Hazardous Waste; and

(6) Any substance the presence of which at the Keller Canyon Landfill is prohibited by applicable law.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of “Hazardous Waste,” for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition is employed for the purposes of this Agreement.

1.18 “Household Hazardous Waste Element (HHWE)” means the household hazardous waste element required to be prepared pursuant to the Act, and as that element may be amended from time to time.

1.19 “Joint Facilities” means a facility or facilities for the diversion or removal of portions of Solid Waste prior to disposal of Solid Waste, such as a MRF, transfer station, composting or other type processing facility, regulated directly or indirectly by the Authority or operated by the Authority.

1.20 “Law” means Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government Code sections 6500, *et seq.*) and all regulations adopted

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under that legislation, as that legislation and those regulations may be amended from time to time.

1.21 “Member” means any of the six (6) signatories to this Agreement and “Members” means all of the six (6) signatories to this Agreement.

1.22 “MRF” means a municipal recovery facility, including lands on which such facility is located, for receiving, processing, recycling and transportation or transfer of Solid Waste for processing, recovery or diversion, or any combination thereof.

1.23 “Non-Disposal Facility Element (NDFE)” means the non-disposal facility element required to be prepared pursuant to the Act and as that element may be amended from time to time.

1.24 “Post Collection Agreement” means the Agreement entered into between the Authority and West County Resources Recovery, Inc., West Contra Costa Sanitary Landfill, Inc., Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. and Keller Canyon Landfill Company for post collection recycling and disposal services dated October 10, 2013, including any amendments or successor agreements thereto.

1.25 “Recyclable Materials” means materials that are reused, remanufactured, or processed.

1.26 “Revenue Bonds” means revenue bonds, notes, certificates of participation and any other instruments and evidences of indebtedness issued by the Authority from time to time pursuant to the Law or any other applicable law in order to finance any MRF, Joint Facilities or Sole Use Facility or modifications thereto.

1.27 “Separated Materials” means materials delivered separately from the comingled collection of refuse and other Solid Waste materials that are not recycled.

1.28 “Sole Use Facilities” means a facility or facilities for the diversion or removal of portions of Solid Waste prior to disposal, owned either by one or more, but not all, of the Members directly or by a private entity, but which in all events is operated in a manner which would be consistent with and not adversely affect or interfere with the operations of an existing Joint Facilities and the operations of the Authority for the benefit of one or more, but not all, of the Members and which is either rate regulated directly by the Authority or the rates are otherwise approved by the Authority.

1.29 “Solid Waste” means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, Recyclable Materials, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, as defined in California Public Resources Code section 40191 as that section may be amended from time to time and as may be limited by applicable law. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste and medical waste.

1.30 “Source Reduction and Recycling Element (SRRE)” means a source reduction and recycling element required by the Act as that element may be amended from time to time.

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SECTION 2. Purpose. This Agreement is entered into pursuant to the Act for the purpose of the Members except the County maintaining an existing regional agency to combine disposal and diversion of Solid Waste for determining compliance with AB 939 and future diversion mandates, to allow for efficient operation of diversion programs on a region-wide basis as allowed by Members under this Agreement, and to allow for the development of Regional Integrated Waste Management Plans including a Source Reduction and Recycling Element, Household Hazardous Waste Element, and Non-Disposal Facility Element. The Members are each empowered by the Laws of the State of California to exercise the powers specified in this Agreement, to comply with the provisions of the Act and other Laws. These common powers shall be exercised for the benefit of any one or more of the Members or otherwise in the manner set forth in this Agreement. The Members are also empowered to acquire, construct, finance, refinance, maintain, operate and regulate Joint Facilities and Sole Use Facilities and the Authority may undertake such activities subject to authorization by the Members' legislative bodies as set forth herein.

SECTION 3. Creation of Authority.

3.1 Pursuant to the Law, the Cities created and established the Authority in 1991 as a public entity separate from each of the Members. Although the County did not initially join the Authority as a Member upon its creation, through this Restated Amendment it now joins as a Member.

3.2 The assets, rights, debts, liabilities and obligations of the Authority shall not constitute assets, rights, debts, liabilities or obligations of any of the Members. However, nothing in this Agreement shall prevent any Member from separately contracting for, or assuming responsibility for, specific debts, liabilities or obligations of the Authority, provided that both the Board and that Member approve such contract or assumption.

SECTION 4. Term. The Authority has become effective as of April 1, 1991. It shall continue until terminated or dissolved by a vote taken in accordance with Section 17.2 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the Authority if its termination or dissolution would conflict with or violate the terms or conditions of any Revenue Bonds or related documentation including, without limitation, indentures, resolutions and letter of credit agreements or any other Authority financing obligation including, but not limited to, a certificate of participation, loan agreement or tax anticipation notes.

SECTION 5. Powers.

5.1 The Authority is empowered to acquire, construct, finance, refinance, operate, regulate and maintain Joint Facilities and Sole Use Facilities or contract with a private entity to do the same, subject however, to the conditions and restrictions contained in this Agreement. The Authority shall also have the power to plan, study and recommend proper solid waste management consistent with the Act and, if and to the extent permitted by the Act, to adopt and implement an SRRE for all or any portion of the area included within the Authority's boundary.

5.2 The Authority is empowered to prepare, revise, approve and submit a Regional Integrated Waste Management Plan pursuant to the Act to the California Environmental Protection Agency, Department of Resources Recycling and Recovery ("CalRecycle") in lieu of preparation, approval, and submittal of individual SRREs, HHWEs and NDFEs by individual Members, to specify

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in said Regional Integrated Waste Management Plan programs to be implemented by any or all Members and the Authority, and to implement programs specified in said Regional Integrated Waste Management Plan for implementation by the Authority, and in the event the Authority exercises such power, instead of the individual Members, it shall be responsible for compliance with Article 1 (commencing with section 41780) of Chapter 6 of the Act following approval of a Regional Member Integrated Waste Management Plan by the California Integrated Waste Management Board.

5.3 To the full extent permitted by applicable Law, the Authority is authorized, in its own name, to do all acts necessary or convenient for the exercise of the following powers that each Member could exercise separately:

- (a) To make and enter into contracts, including contracts with any Member;
- (b) To apply for and accept grants, gifts, donations, loans, advances and contributions;
- (c) To employ or contract for the services of engineers, attorneys, accountants, planners, consultants, fiscal agents and other persons and entities;
- (d) To make plans and conduct studies;
- (e) To acquire, improve, hold, lease and dispose of real and personal property of all types;
- (f) To sue and be sued in its own name;
- (g) To incur and discharge debts, liabilities and obligations;
- (h) To establish or approve Approved Rates;
- (i) To hire, manage and fire agents and employees;
- (j) To require that the Members direct all of the Solid Wastes generated and collected within their respective boundaries (or specified portions or specified types of such Wastes and Materials) to the Approved Facility or Facilities as the case may be, it being understood, however, that the Authority is not empowered to require El Cerrito to so direct any Recyclable Materials collected by its collector or collected as part of El Cerrito Recycling Services unless El Cerrito so consents;
- (k) To require each Member to include some or all of the Approved Rates paid to the owner or operator of the Approved Facility or Facilities in connection with the waste stream of that Member directed to the Approved Facility or Facilities, as the case may be, to be “passed through” to or collected from the ratepayers within the boundaries of that Member without reduction, limitation, offset or adjustment of any kind and to require that the Member take such action to direct the collection of said Approved Rates in a timely manner;
- (l) To require each Member to (i) include fees which may be imposed from time to time by the Authority and which fees are determined by the Authority in its sole direction as being necessary for a period of time to pay continuing expenses of the Authority under circumstances where

the revenue received from the Approved Rates is not available or inadequate to be collected from the ratepayers within the boundaries of that Member without reduction, limitation, offset or adjustment of any kind; and (ii) provide for payment of such fees collected to the Authority or a party designated by the Authority without reduction, limitation, offset or adjustment of any kind and to require that the Member take such action to direct the collection of such fees in a timely manner;

(m) To require each Member to (i) include amounts determined by Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority to be “passed through” to or collected from ratepayers within the boundaries of that Member without reduction, limitation, offset or adjustment of any kind regardless of how that Member collects fees; and (ii) provide for payment of amounts so collected to the Authority, in the event that such amounts are not paid to the owner or operator of the Approved Facility, without reduction, limitation, offset or adjustment of any kind and to require that the Member take such action to direct the collection of said Approved Rates in a timely manner;

(n) To determine the type, extent and manner of processing of Solid Waste necessary for the Members to comply with the diversion requirement of the Act and to arrange for said processing through implementation or modification of the Approved Facility, Joint Facilities or Sole Use Facilities or through use of other facilities following receipt of Solid Waste at the Approved Facility;

(o) To implement the Regional Integrated Waste Management Plan and upon approval of such plan to require Members to implement the Regional Integrated Waste Management Plan except with regard to unincorporated areas of the County;

(p) To educate the public as to Solid Waste, diversion and recycling matters; and

(q) To enter into agreements to operate Joint Facilities and/or Sole Use Facilities.

5.4 To the full extent permitted by applicable Law, the Authority is authorized, in its own name, to exercise the following powers that each Member could exercise separately subject to prior authorization by the affected Member’s legislative body:

(a) Enter into new regional agreements binding on its Members;

(b) To exercise the power of eminent domain for the acquisition of real and personal property for Joint Facilities and Sole Use Facilities, or for the acquisition of Joint Facilities or Sole Use Facilities themselves ;

(c) To issue Revenue Bonds, from time to time, in accordance with all applicable Laws for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation, modification, or maintenance of Joint Facilities or Sole Use Facilities ;

(d) To acquire or lease Joint Facilities or Sole Use Facilities;

(e) To loan the proceeds of Revenue Bonds to any person or entity to finance or

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refinance the acquisition, construction, improvement, renovation, modification, or repair of Joint Facilities or Sole Use Facilities ;

(f) To issue grant or bond anticipation notes for the purpose of financing or refinancing Joint Facilities or Sole Use Facilities;

(g) To enter into regional post collection processing or franchise agreements for the period beginning in 2025 or later; and

(h) To adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.

5.5 Such powers shall be exercised subject only to the limitations set forth in this Agreement, applicable law and such restrictions upon the manner of exercising such powers as are imposed by law upon the Members in the exercise of similar powers. However, the Members do not specifically delegate any additional powers to the Authority without the express authorization of that Member's governing body. The Authority shall only exercise additional powers in order to provide additional services to individual Members subject to approval of an agreement for compensation to the Authority by that Member(s)' governing body and the Board. Such agreement shall only apply to Member(s) who seek additional services from the Authority and which the Authority is not providing to all the Members.

The Authority hereby designates the _____, a general law city, as the Member required to be designated by section 6509 of the California Government Code.

Although the Authority has not entered into Franchise Agreements to date, nothing in this Restated Amendment prevents it from so doing. However, if the Authority wished to enter into Franchise Agreements in the future, the Board would have to authorize it to exercise such authority and it shall be conditioned upon prior authorization by the affected Member's legislative body as set forth in Section 5.4.

5.6 If and to the extent the Authority exercises a power granted to it under this Agreement and the exercise of any like power by one or more Members within its or their boundaries would be inconsistent with or likely to interfere or adversely affect such exercise of that power by the Authority, that Member or those Members shall not exercise that power; provided, however, that nothing in this Agreement shall limit a Member's right or that of any commission, Member or other body or authority of any Member to adopt, amend or implement zoning, building, land use or safety ordinances, laws or regulations with respect to real estate located within its boundaries upon which a Joint Facility or Sole Use Facility is or will be located.

SECTION 6. Boundaries. The boundary of the Authority shall be the consolidated boundaries of the Cities and the unincorporated areas of the County as set forth in Exhibit A attached hereto and incorporated herein. However, as set forth in Section 11, the unincorporated areas of the County shall not be subject to the provisions of Section 11. If a Member withdraws from the Authority, the boundary of the Authority shall be modified to exclude the area of the withdrawing Member. This Section 6 shall not prevent any Joint Facilities or Sole Use Facilities from being located outside the boundary of the Authority.

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SECTION 7. Organization.

7.1 The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on behalf of the Authority.

7.2 Directors.

(a) The Board shall consist of eight (8) Board Members, a Director from each City other than the City of Richmond and the County and three (3) Directors from City of Richmond. Upon execution of this Agreement, all the Members shall appoint their representatives to the Board and one (1) person as an alternate to serve in the case of absence or conflict of an appointed Director except that the City of Richmond shall appoint a total of two (2) people to serve as alternates for its three Directors. Directors and Alternate Directors that have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without further action of the Member.

In the event of a Board action where four (4) Directors or Alternate Directors cast affirmative votes and four (4) Directors or Alternate Directors cast negative votes resulting in a tie vote, one Richmond Director or Alternate Director who participated in such tie vote may cast a tie-breaking vote so long as all three (3) Richmond Directors or Alternate Directors voted in the same manner except where the Board action relates to approval of the budget, disbursement of Authority reserves or requests for disbursement upon withdrawal from the Authority.

(b) Each Director and Alternate shall hold office from the first meeting of the Board after appointment by the Members until his or her successor is selected by the Member that elected that Director. Each Director and Alternate shall serve at the pleasure of the Member that he or she represents and may be removed at any time, without cause, in the sole discretion of that Member. However, a Member shall not remove a Director or Alternate unless, before the next meeting of the Board, it also appoints a replacement Director or Alternate.

(c) Each Director and Alternate shall be an elected official of the governing body of the Member that he or she represents. If a Director or Alternate ceases holding any such elected position, he or she shall then cease to serve as a Director or Alternate. The Authority and the Board shall be entitled to rely on a written notice from the City Clerk (in the case of the Cities), and the County Clerk (in the case of the County) as conclusive evidence of the appointment and removal of Directors and Alternates representing that Member. If a Member appoints and/or removes a Director or Alternate, written notice of such action shall be provided to both the Authority Executive Director and Clerk of the Board at least seventy-two (72) hours prior to the next regularly scheduled Board meeting.

7.3 Principal Office. The principal office of the Authority shall be established by the Board within the boundary of the Authority and the address of the principal office shall initially be One Alvarado Square, San Pablo, California 94806. The Board may change that principal office upon giving at least fifteen (15) days' notice to each Member and to the California Integrated Waste Management Board.

7.4 Officers. The Authority shall have seven (7) officers: a Chair, a Vice Chair, an

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Executive Director, Treasurer, Controller a General Counsel and a Secretary. The Board may designate additional officers such as managers by resolution and those additional officers shall be subject to the same rules and conditions applicable to the seven (7) officers set forth herein. The Executive Director, Treasurer, Controller, General Counsel and Secretary, shall not be employees of a Member during the period that he or she serves as an officer of the Authority unless, in the case of the Secretary the Board takes specific action to authorize use of a Member's employee in that capacity. None of the officers (including the Chair or Vice Chair) shall be an employee or otherwise be affiliated with the operator of an Approved Facility or any integrated waste management company which provides services to the Authority or a Member. The Board shall select a Chair and a Vice Chair from among the Directors and not the Alternate Directors who shall hold office for a period of one (1) year commencing on a date designated by resolution of the Board. At no time shall the Chair and the Vice Chair be representatives of the same Member. No person shall serve consecutive terms as the Chair and no person shall serve consecutive terms as the Vice Chair. Successive Chairs shall not be representatives of the same Member. Successive Vice Chairs should not be representatives of the same Member.

7.5 Chair. The Chair shall preside at meetings of the Board, call meetings to order, adjourn meetings, announce the business and the order it is to be acted upon, recognize persons entitled to speak, put to a vote all questions moved and seconded, announce results of votes, maintain the rules of order, execute documents and official actions on behalf of the Board when duly approved, and carry out other duties set forth in any bylaws adopted by the Board. Notwithstanding the foregoing, any Voting Director shall be entitled to place any matter reasonably related to the business of the Authority on the agenda for any meeting of the Board.

7.6 Vice Chair. The Vice Chair shall serve as Chair in the absence of the regularly elected Chair.

7.7 Executive Director. The Board shall employ or contract for the services of an Executive Director who shall be the chief administrative officer of the Authority. The Executive Director shall have a background in public management, solid waste management or a related field. The Executive Director shall plan, organize and direct the administration and operations of the Authority, shall advise the Board on policy matters, shall recommend an administrative structure to the Board, shall hire and discharge administrative staff, shall develop and recommend budgets, shall reply to communications on behalf of the Authority, shall approve payments of amounts duly authorized by the Board, shall carry out such other duties that may be assigned to the Executive Director by the Board from time to time and shall attend meetings of the Board.

7.8 Treasurer. Pursuant to California Government Code section 6505.5, the Authority designates _____ as Treasurer. If the Treasurer herein designated can no longer serve as Treasurer, then the Authority may appoint a successor Treasurer via Board resolution. The Treasurer shall be the depository and have custody of all the funds of the Authority from whatever source.

The Treasurer shall do all of the following:

(a) Receive all funds of the Authority and place it in the treasury to the credit of the Authority;

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(b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority funds so held by him or her;

(c) Pay, when due, out of funds of the Authority held by him or her, all sums payable on outstanding bonds and coupons of the Authority;

(d) Pay any other sums due from the Authority from Authority funds, or any portion thereof, only upon warrants of the Controller;

(e) Verify and report in writing on the first day of July, October, January, and April of each year to the Authority and Members the amount of funds he or she holds for the Authority, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The governing body of the same Member as the Treasurer shall determine charges to be made against the Authority for the services of the Treasurer and Controller.

7.9 Controller. Pursuant to California Government Code section 6505.5, the Authority designates _____ to be the Controller. If the Controller herein designated can no longer serve as Controller, then the Authority may appoint a successor Controller via Board resolution. The Controller shall draw warrants to pay demands against the Authority when the demands have been approved by any person authorized to so approve in this Agreement.

7.10 General Counsel. The Board shall employ or contract for the services of a General Counsel who shall be the legal officer of the Authority. The General Counsel shall advise the Authority on legal matters.

7.11 Secretary. The Executive Director shall select and the Authority shall employ or contract for the services of a Secretary who shall prepare, distribute and maintain minutes of meetings of the Board and any committees of the Board. The Secretary shall also maintain the official records of the Authority and shall file notices as required by Section 18 of this Agreement.

7.12 Access to Property. The Executive Director is hereby designated as the person who has charge of and access to the property of the Authority. The Executive Director shall file with the Authority an official bond in an amount to be fixed by the Board. The costs of those bonds shall be paid by the Authority.

7.13 Officers, Employees and Agents. None of the officers, agents or employees employed or hired by the Authority shall by reason thereof become officers, agents or employees of any Member. The Authority may contract with any Member for any services, subject to approval by a majority of the Voting Directors who do not represent that Member. None of the persons whose services are supplied by a Member shall by reason thereof become an employee of the Authority.

7.14 Other Managers. Subject to final approval by the Board, the Executive Director may select one or more persons or firms to manage the acquisition, construction, maintenance, operation, regulation or implementation of Joint Facilities, Sole Use Facilities or SRRE. Any such person or firm shall report regularly to the Executive Director and, if requested, to the Board, on the progress, execution and status of the matters for which that person or firm has been assigned responsibility.

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Such persons or firms may be authorized to subcontract with engineers, consultants and other parties, subject to concurrence of the Board or the Executive Director and consistent with the rules and regulations of the California Integrated Waste Management Board. Nothing in this Section 7.14 shall by implication prevent the Authority or the Executive Director from appointing or hiring additional persons or firms to perform or oversee these or any other task.

SECTION 8. Meetings of the Board.

8.1 Regular Meetings. The Board shall hold at least four (4) regular meetings each year. The date upon which, and the hour and place at which, each regular meeting shall be held shall be fixed by resolution of the Board. Board meetings shall be conducted in accordance with the rules of conduct set forth in Rosenberg's Rules or Robert's Rules of Order.

8.2 Special Meetings. Special meetings of the Board may be called in accordance with the provisions of section 54956 of the California Government Code.

8.3 Notice of Meetings. All meetings of the Board shall be held subject to the provisions of the California Ralph M. Brown Act (sections 54950 *et seq.* of the California Government Code) and other applicable Laws of the State of California.

8.4 Minutes. The Secretary shall cause minutes of all meetings of the Board and any committees of the Board to be kept and shall, promptly after each meeting, cause a copy of the minutes to be forwarded to each Director.

8.5 Quorum. The presence of at least five (5) Directors, seated or Alternate Directors, at a Board meeting shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting. However, where the Board convenes an emergency meeting pursuant to the Ralph M. Brown Act, which may be the result of a natural disaster, the presence of at least four (4) Directors or Alternate Directors at that meeting shall constitute a quorum.

8.6 Voting. Subject to Sections 17, and 21.2, each Director shall have one vote on all matters presented to the Board for a vote. The Board shall specify by resolution, from time to time, what types of decisions shall be presented to the Board for a vote and what types of decisions shall be delegated to the Executive Director. Except as provided in Sections 11.2(a)(3), 17(b), and 21.2, the vote of four (4) of the Directors shall constitute a majority vote to approve an action of the Board, when five (5), six (6) or seven (7) Directors are present at a meeting. However, if all eight (8) Directors are present at a Board meeting, then a vote of five (5) Directors shall constitute a majority and the act of the Board. If any Board action requires a supermajority vote to constitute an act of the Board, then a vote of at least five (5) Directors representing at least four (4) Members shall constitute a supermajority. For purposes of voting at Board meetings, seated Alternate Directors shall be considered as Directors.

8.7 Bylaws. The Board from time to time may adopt bylaws for the conduct of its affairs, provided that they are not inconsistent with this Agreement.

8.8 Budget.

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(a) A general budget for the Authority's operations shall be adopted by the Board for the ensuing Fiscal Year prior to June 30 of each year. The budget shall include sufficient detail to constitute an operating guideline, the anticipated sources of funds, and the anticipated expenditures to be made for the operations of the Authority and the administration, maintenance and operating costs of the Joint Facilities. Any budget for Sole Use Facilities shall be maintained separately. As part of its deliberation on adoption of the budget, the Board shall consider authorizing resources to ensure Richmond receives services generally commensurate with its contribution to the Authority's budget. Such deliberation may result in a Board motion or resolution adopted separately from adoption of the budget. Approval of the budget by the Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, but subject to the availability of funds on hand.

8.9 Committees. The Board may designate a standing or ad hoc committee by resolution as the need for such standing or ad hoc committee arises. The designating resolution shall set forth the committee's specific charge and scope of duties. All committees shall serve only in an advisory capacity to the Board and shall not independently take action on any issue unless the Board has specifically delegated such authority to the committee by resolution. All committees created by the Board shall meet at least once per calendar year.

The Chair shall nominate no more than three (3) committee members representing three (3) Members and shall designate a committee chair in his/her nomination. A majority of the Board shall approve the Chair's nominations. Alternate Directors shall not be eligible to serve on committees.

(a) Ad Hoc Committees. Any ad hoc committee designated by the Board pursuant to this Section 8.9 shall be subject to a one year term from its date of creation and shall be limited in scope to the single purpose for which it was created by Board resolution. In the event of a vacancy on an ad hoc committee, the Chair shall designate a replacement committee member.

(b) Standing Committees. Each member of a standing committee shall serve a one year term which shall be concurrent with the terms of the Chair and Vice Chair. In the event of a vacancy on a standing committee, the Chair shall nominate a replacement committee member and a majority of the Board shall approve the nomination.

SECTION 9. Joint Operating Fund Contributions and Other Sources of Funds.

9.1 The Authority shall establish a joint operating fund which may receive contributions from the Members or other sources as set forth in Section 9.3. The fund shall be used to pay all administrative, operating and other non-capital expenses incurred by the Authority. In the event that the Board requires contributions from the Members any such payments shall be made in such manner and at such times as approved by a supermajority of the Board.

9.2 All moneys in the joint operating fund shall be paid out for the purposes for which the fund was created upon authorization by the Chair of the Board and approval by the Executive Director of demands for payment, or as otherwise authorized by resolution of the Board.

9.3 The Authority may seek to obtain funding for its current scope of activities as well as

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the scope of activities it is authorized to undertake by law by pursuing various sources of funds including, but not limited to, imposition of AB 939 fees to the extent practically available, sale of energy from organic waste, sale of recycled commodities and/or a waste importation or exportation mitigation fee(s) and such other methods as set forth in Section 5.3(l).

SECTION 10. Records and Accounts. This Section is intended to ensure strict accountability of all funds of the Authority and to provide accurate reporting of receipts and disbursements of such funds. The Authority shall maintain accurate and correct books of account showing in detail the costs and expenses of any acquisition and construction and the maintenance, operation, regulation and administration of Joint Facilities and all financial transactions of the Members relating to Joint Facilities. The books of account shall correctly show any receipts and any costs, expenses or charges to be paid by all or any of the Members. The books of account shall be open to inspection at all times by a representative or agent of any of the Members. In addition, if required by any resolution authorizing the issuance of Revenue Bonds, the Authority shall maintain appropriate books, records, accounts and files relating to each project as required by such resolution which shall be open to inspection by holders of Revenue Bonds if and to the extent, and in the manner, provided in the resolution approving the Revenue Bonds.

SECTION 11. Implementation of the Act.

11.1 Intent. It is the intent of all Members except the County to form a regional agency as defined by Public Resources Code section 40181 and for the Authority to undertake the responsibilities of a regional agency pursuant to the powers of the Authority as set forth, *supra*, in Section 5.2. The County shall not participate as a member of the regional agency established by this Section 11, as the County has independent obligations under the Public Resources Code that apply to all incorporated areas including those not within the jurisdictional boundaries of the Authority.

11.2 Submittal of Elements by Members.

(a) All Members except the County agree that, following CalRecycle's approval of this Agreement, that they shall refrain from submitting an SRRE, HHWE, or NDFE for a Member's jurisdiction prior to:

(1) The date that the Regional Plan or elements thereof are required to be submitted to CalRecycle by the Authority including any time extensions granted by CalRecycle; or

(2) One hundred twenty (120) days following the issuance of a notice of deficiency by CalRecycle to the Authority pursuant to section 41810 or the Act; or

(3) Receipt of a written notice from the Authority, approved by a majority of the Board of Directors representing a majority of the Members except not including the County, that the Authority either does not intend to submit a Regional Plan or required element thereof by the date required by the Act (including time extensions), or does not intend to correct deficiencies identified by CalRecycle in the Regional Plan or required elements thereof, due to the failure of one or more of the Members to perform their obligations under this agreement or to implement programs and actions specified in the Regional Plan.

(b) Any Member other than the County choosing to exercise its authority to undertake an SRRE, HHWE or NDFE individually, or respond individually to a notice of deficiency, may do so consistent with the terms of Section 11.2(a)(1) or Section 11.2(a)(2) by providing a resolution of the governing body of the Member to the Authority and each other Member within ten (10) days of adoption of said resolution.

(c) Each Member so electing to exercise the prerogatives provided in Section 11.2(a)(1) or Section 11.2(a)(2) or receiving a written notice from the Authority, pursuant to Section 11.2(a)(3) shall be solely responsible for compliance with the requirements of the Act upon adoption of the Member resolution required by Section 11.2(b), or receipt of the notice from the Authority required by Section 11.2(a)(3).

11.3 Compliance Monitoring.

(a) The Authority may establish a fair and equitable basis for determination of the amount of waste disposed of from within the Cities' jurisdiction and this method shall be used to determine the maximum amount of disposal allowable under the Act for the area included in the boundaries of the Authority.

(b) The Authority shall be entitled to cause the Solid Waste of the Cities to be monitored in order to determine compliance with the Act.

(c) The Authority shall be responsible for compiling and submitting disposal information from haulers and operators required to be submitted by CalRecycle pursuant to California Code of Regulations, Title 14, Division 7, Chapter 9, Article 9 or successor regulations and the Cities agree to require their respective haulers to submit such information to the Authority.

(d) The Authority shall monitor the implementation of the Regional Plan by the Authority and the Cities and shall periodically report to the Cities the status of compliance with the requirements of the Act and status of implementation of the Regional Plan.

(e) The Authority shall report to the Members the substantial failure of the Authority, a Member or other party to implement applicable provisions of the Regional Plan.

(f) The Authority will implement AB 939 programs and demonstrate compliance with the monitoring and reporting requirements related to AB 341, AB 1826 and any other future mandates within the Authority's Member Agencies' boundaries, excepting the County unincorporated areas. The Authority will be responsible for providing records to the County to substantiate the implementation of the AB 939 diversion programs in the County and the Authority.

11.4 Contingency Plans. Consistent with section 40975(b)(3) of the Public Resources Code, the Authority hereby establishes a Contingency Plan which provides for compliance with the Act by each of the Cities in the event the Authority, as the regional agency, is dissolved, or the Authority continues its role as a regional agency. The Contingency Plan is as set forth in Sections 17 and 18 of this Agreement, dealing with Withdrawal and Termination, respectively.

11.5 Regional Plan.

(a) The Regional Plan and amendments thereto shall be developed in consultation with the Cities and approved by the Authority Board of Directors.

(b) The Regional Plan shall identify source reduction, recycling, composting, education and public information, household hazardous waste and other programs required by the Act or CalRecycle regulations and assign responsibility for implementation of said programs among the Authority and the Cities.

(c) The Regional Plan, following approval by CalRecycle, shall be included in this Agreement by this reference.

(d) Notwithstanding Section 17 of this Agreement, the Regional Plan may from time to time be amended by a majority vote of the Authority Board of Directors and all such amendments shall become a part of the Regional Plan upon approval by CalRecycle.

(e) The Cities shall make a good faith effort to implement programs and actions specified in the Regional Plan approved by CalRecycle for implementation by that City.

(f) The Cities agree to provide the Authority information specific to its jurisdiction that is not readily available elsewhere as required by the Authority to prepare and implement the Regional Plan.

(g) Each Member agrees to coordinate its education and public information activities with respect to Solid Waste and household hazardous waste with the activities of the Authority and to conduct such activities in a manner consistent with the education and public information program contained in the Regional Plan.

11.6 Grants and Financial Assistance. Each Member agrees to co-operate with the Authority as necessary to enable the Authority to apply for and receive grant funds and other financial assistance that may be available to a Member for development of the Regional Plan or for implementation of programs and actions assigned to the Authority in the Regional Plan in order to minimize costs which must be borne by ratepayers.

SECTION 12. Direction of Solid Waste.

12.1 The Members agree that the Authority shall have sole authority to (i) determine the suitability of Solid Waste for delivery to an Approved Facility or Facilities and (ii) direct the delivery of all or a portion of Solid Waste and Separated Materials generated within the respective Cities' jurisdictions and within the County/RSS Franchise area (Directed Waste and Materials).

12.2 The Authority shall concurrently notify in writing each Member and the other party to each Member's Franchise Agreement of the date upon which delivery of Directed Waste and Materials to an Approved Facility is to commence.

12.3 The Authority shall concurrently notify in writing each Member and the other party to each Member's Franchise Agreement of the need to temporarily suspend delivery of Directed Waste and Materials, or portions thereof, to an Approved Facility or Facilities.

12.4 [OPTIONAL PROVISION] Use of In-County Landfills

(a) The Directed Waste and Materials shall be disposed of at the most cost-effective landfill as determined by the Authority pursuant to evaluation of all relevant factors including, but not limited to, transportation costs, closure and post-closure requirements, costs and liabilities, disposal fees, fees levied by governmental entities and costs of compliance with County ordinances and requirements affecting the disposal of Solid Waste and in-County landfills. If, after consideration of all relevant factors, in-County landfills are demonstrated to be the most cost-effective landfills, then the Authority shall direct delivery of Directed Waste and Materials to such landfills.

(b) Agreements for disposal of Directed Waste and Materials to out-of-County landfills shall include a provision that the Authority may terminate the agreement in its sole discretion at the end of ten (10) years after delivery of Directed Waste and Materials to such landfills. One year prior to the expiration of the 10 year term, the Authority shall re-evaluate whether continued use of the out-of-county landfill is the most cost-effective option pursuant to the analysis set forth in subsection 12.4(a) above. If the results of such evaluation reveal that the total cost of use of the out-of-County landfill(s) is ninety-five percent (95%) or more of the total cost of the use of the in-County landfills, then the in-County landfills shall be afforded the opportunity to match or reduce the total cost of use such landfills.

SECTION 13. Authority Established Rates.

13.1 The Authority shall be solely responsible for the approval of rates for services under the Approved Facility or Facilities, Joint Facilities and Sole Use Facilities designated pursuant to this Agreement and each Member hereby delegates, assigns and/or otherwise transfers to the Authority any powers that each Member may have with respect to the regulation of, approval or establishing of rates or charges for the Approved Facility or Facilities, Joint Facilities or Sole Use Facilities.

13.2 The Authority shall establish or approve rates to be charged at an Approved Facility or Facilities, including potentially Joint or Sole Use Facilities, established pursuant to this Agreement, in amounts sufficient to provide the revenues necessary to meet the contractual obligations for use of Approved Facility Joint Facilities or Sole Use Facilities.

13.3 The Authority may from time to time elect to include as an additional amount in the rates established or otherwise approved for the Approved Facility, Joint Facilities or Sole Use Facilities established pursuant to this Agreement, or a portion of the amounts so determined from, as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, in which case the amounts so included will be paid to the Authority by the operator of the Approved Facility, Joint Facilities or Sole Use Facilities.

13.4 The Members recognize that (i) Approved Rates will likely be established as a unit charge per unit weight of Solid Waste and Materials; and (ii) that each Member may be required to pass such rates through for collection from ratepayers as a part of the collection rate (e.g. a unit charge per can per month). Accordingly, the Members hereby agree that the Authority shall establish a fair and equitable basis for conversion of Approved Rates to a collection rate and that each Member shall include in the collection rates the amount approved by the Authority for collection from ratepayers without reduction, limitation, offset or adjustment of any kind whatsoever. That portion of the

Approved Rates that is paid to the Authority is to be used to fund Authority activities that benefit all Members. A Member may elect to fund or provide its share of the costs and obligations of the Authority set forth in Section 13.5, provided such alternative funding method is approved by the Board.

13.5 The Authority shall establish a fair and equitable basis for the conversion of Authority costs and obligations and shall, not less frequently than every two (2) years, review such conversion and either (i) find that the conversion continues to be fair and equitable; or (ii) revise the conversion so that a fair and equitable conversion is restored.

13.6 The Authority shall evaluate the accuracy of the Authority's prior conversion of Approved Rates to the unit charge collection rate that is included in the collection rate for each Member's jurisdiction. The Authority may use a balancing account concept from rate setting period to rate setting period to account for overages and underages. Any Board action to materially modify the current rate setting methodology resulting in the substantial reallocation of costs between Member or reallocating costs to recycling and diversion activities would require a supermajority vote.

13.7 The Authority shall notify each Member and the other party to the Member's Franchise Agreement of the amount of said Approved Rates and the collection rate corresponding to said Designated Rates.

SECTION 14. Apportionment of Penalties.

14.1 Penalties Arising from Authority Failure.

(a) Any penalties assessed against the Authority by CalRecycle, to a maximum of Fifty Thousand Dollars (\$50,000) per day, which are the result of the Authority's failure to either (i) submit an adequate Regional Plan or required element thereof; or (ii) make a good faith effort to implement the programs or actions specified in the Regional Plan for implementation by the Authority, shall be paid by the Authority.

(b) Any penalties assessed against a City by CalRecycle, which are the result of an Authority's failure to either (i) submit an adequate Regional Plan or required element thereof; or (ii) implement the programs or actions specified in the Regional Plan for implementation by the Authority, shall be paid by the Authority.

(c) Any penalties paid by the Authority pursuant to Section 14.1(a) or Section 14.1(b) of this Agreement shall be apportioned prorata at twenty (20) percent each among the Cities and shall be included in Approved Rates.

(d) The Cities shall only be liable for payment of any penalties assessed against the Authority by CalRecycle which are not paid by the Authority.

14.2 Penalties Arising from a City's Failure.

(a) Any penalties assessed against the Authority by CalRecycle, which are the result of a City's failure to implement programs or actions specified in the Regional Plan for

implementation by the City shall be paid by the Authority; and

(1) The Authority may recover any amounts, including penalties assessed by CalRecycle and the Authority's costs incurred as a result of CalRecycle's actions leading to and including the assessment and appeal of said penalties, by imposing a surcharge on the Directed Waste and Materials and all other waste delivered to the Approved Facility from within the jurisdiction of the Cities who have not fully reimbursed the Authority.

(2) In lieu of collection of the penalty by the Authority through the surcharge, described in Section 14.2(a)(1) above, the City may reimburse the Authority within thirty (30) days of Authority's payment of the penalties, the amount of penalties paid plus the Authority's costs incurred and associated with CalRecycle actions leading to and including the assessment and appeal of said penalties; and

(3) In the event that two or more Cities fail to implement programs or actions specified in the Regional Plan, the failing Cities may reimburse the Authority in proportion to their relative responsibility, pursuant to the terms of Section 14.2(a)(2) above, or the Authority will collect said costs and penalties through the use of the surcharge described in Section 14.2(a)(1) above.

(4) Neither the Authority nor a City shall be obligated to pay, nor a City required to reimburse the Authority, if the City has demonstrated to the satisfaction of CalRecycle to have made a good faith effort to implement the programs and actions specified in the Regional Plan; and

(b) Any penalties which are assessed directly against a City as a result of the City's failure to either (i) implement the programs or actions specifically identified in the Regional Plan for implementation by the City; or (ii) to exercise its prerogatives under Section 11.1 of this Agreement; or (iii) to perform its obligations under Section 11.5 of this Agreement, shall be paid by the City and neither the Authority nor any other Member shall be obligated to pay said penalties or any costs associated with the assessment or appeal of said penalties.

(c) In the event that failure of one or more Cities to perform their obligations under this Agreement or to implement programs or actions specified in the Regional Plan for implementation by the City causes the Authority or other Cities to be unable to implement the Regional Plan, the failing City shall pay any penalties assessed against the Authority or other Member(s) by CalRecycle as a result of the failure.

(d) In the event the failure of one or more Cities to perform their obligations under this Agreement or to implement actions required of that City (Cities) as set forth in the Regional Plan does not affect the Authority's or the non-failing Cities' ability to implement their obligations set forth the Regional Plan, the failing City (Cities) shall not be required to pay any penalties assessed by CalRecycle in excess of Ten Thousand Dollars (\$10,000) per day.

(e) Upon notification of any such violation or claim, the City or Cities shall take such prompt, corrective action as is necessary to meet the requirements.

14.3 Nothing in this Section shall preclude one or more Members or the Authority from

imposing or establishing additional incentives to meet waste diversion requirements.

14.4 The County shall not have any responsibility for any penalties imposed on the Regional Agency or its Members.

SECTION 15. Disposition of Assets at Dissolution. Subject to the then applicable requirements of Law (currently Sections 6511 *et seq.* of the California Government Code), upon dissolution of the Authority, the assets of the Authority remaining after payment of or adequate provision for all debts, liabilities and obligations of the Authority shall be divided in accordance with a resolution adopted by a majority of the Board.

SECTION 16. Withdrawal.

16.1 A Member may not withdraw from the Authority unless it has provided the Authority with a resolution adopted by its governing body setting forth its intent to withdraw one hundred eighty (180) days in advance of the proposed withdrawal date to allow time to analyze the impact of the withdrawing Member's lack of participation and to develop its budget for the following fiscal year. A withdrawing Member shall be responsible for any special financial obligations of the Authority incurred on behalf of, or in part on behalf of, the withdrawing Member, which fiscal obligations extend beyond the date of withdrawal. A Member seeking to withdraw with outstanding special financial obligations must provide funding for those obligations or enter into an agreement with the Authority regarding such financial obligations

16.2 A Member which has withdrawn from the Authority shall not be liable for the payment of further contributions falling due beyond the withdrawal date except as noted above in subsection (a) and shall have no right to reimbursement of any assets or monies of the Authority.

16.3 A withdrawing Member may request a partial distribution of remaining assets or funds of the Authority. Any distribution shall be in the discretion of the Board and approved by a supermajority of the Board including the Board Member or Members of the withdrawing agency. The decision to provide any distribution to a withdrawing Member shall be conditioned upon the Board's finding that the funds and assets remaining after the partial distribution are sufficient to provide for the Authority's continued ability to fulfill its mission and serve the non-withdrawing Members. The terms of any such distribution must be effectuated through an agreement executed by the withdrawing Member and the Authority.

16.4 Effect of Withdrawal on Agreement. The withdrawal of a Member shall have no effect on the continuance of this Agreement among the remaining Members and the Agreement shall remain in full force and effect with respect to the remaining Members.

16.5 Implication of Revenue Bonds. If Revenue Bonds are outstanding, no withdrawal shall be effective unless and until the Authority and Members: (i) comply with any then applicable requirements of Law relating to changes in the composition of entities such as the Authority with debt securities outstanding; and (ii) all the terms and conditions of all Revenue Bonds and related documentation (including without limitation, indentures, resolutions and letter of credit agreements) have been complied with or otherwise satisfied.

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16.6 Implication of the Act. If a Member other than the County wishes to withdraw from the Authority while such Authority is operating as a regional agency, the agreement for withdrawal set forth above shall include, but not be limited to, all of the following:

- (1) An effective date for the withdrawal of the City (hereinafter “Withdrawal Date”);
- (2) A provision providing that the withdrawing City shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit an SRRE, HHWE, and NDFE to CalRecycle for the City’s jurisdiction to CalRecycle for approval and that each withdrawing City shall be solely responsible for preparation of its SRRE, HHWE and NDFE;
- (3) The Authority shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit a revised Regional Plan which reflects the withdrawal of the City to CalRecycle for approval;
- (4) The withdrawing City shall pay (i) all costs incurred by Authority in preparing a revised Regional Plan and (ii) all amounts owed to the Authority for penalties assessed against the Authority or the withdrawing City including the Authority’s costs incurred and associated with CalRecycle actions leading to and including the assessment of said penalties;
- (5) The withdrawing City shall be responsible for compliance with the Act the earlier of: (i) the date of the withdrawing City’s submittal of the documents required by Section 11.3(1)(b) to CalRecycle; or (ii) the date of the Authority’s submittal of the revised Regional Plan to CalRecycle, or (iii) the Withdrawal Date; and
- (6) Notwithstanding the specified Withdrawal Date, withdrawal of a Member from membership in the Authority shall not become effective until all amounts owed to the Authority are paid by the withdrawing Member.

SECTION 17. Amendments including Termination.

17.1 This Agreement may only be amended by a written instrument approved by a majority of the Directors (including seated Alternate Directors) representing a majority of the Members which then shall be approved by at least five (5) of the six (6) Member’s governing bodies.

17.2 The Agreement may only be terminated or other action leading to dissolution of the Authority may only be effectuated through adoption of a resolution by a supermajority as that term is defined in Section 8.6 of the Board which then shall be approved by a supermajority of the Members’ governing bodies.

17.3 No amendment or termination may occur until the requirements imposed on the Authority and Members by the terms or conditions of all Revenue Bonds and related documentation (including without limitation, indentures, resolutions and letter of credit agreements) have been met or otherwise satisfied.

17.4 Signatures shall not be required on any such amendment or termination by those

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Members, if any, whose representatives on the Board did not approve the amendment or termination, but such Members shall nonetheless be bound by the amendment or termination if it was approved as required by this Agreement.

17.5 For termination of this Agreement during any period where the Authority is operating as a Regional Agency, the written instrument required by Section 17.2 of this Agreement shall include, but not be limited to, all of the following requirements:

(1) A date certain that this Agreement will be terminated (hereinafter “Termination Date”);

(2) Each Member shall, not later than one hundred twenty (120) days prior to the Termination Date, prepare and submit an SRRE, HHWE, and NDFE for the Member’s jurisdiction to CalRecycle for approval and that each Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;

(3) Each Member, prior to the Termination Date, shall promptly pay, within a reasonable time, all amounts owing to the Authority or CalRecycle for penalties assessed by CalRecycle, including the Authority’s costs incurred and associated with CalRecycle actions leading to and including the assessment of said penalties;

(4) Each Member shall be solely responsible for compliance with the Act the earlier of: (i) the date of submittal of the documents required by Section 17.5(a)(2) to CalRecycle; or (ii) the specified Termination Date; and

(5) The obligations of the Authority terminate on the Termination Date, and each member shall pay all amounts owed to the Authority prior to that date; however, in the event of default by a Member with regard to payment of amounts due, the obligation to pay all sums due to the Authority shall survive and remain in full force after the Termination Date.

17.6 Notwithstanding the foregoing, no amendment, withdrawal or termination shall require any Member to contribute any funds to the Authority or become directly or contingently liable for any debts, liabilities or obligations of the Authority, other than those for which the Member was liable immediately prior to the amendment, withdrawal or termination, without the consent of that Member evidenced in a written instrument signed by a duly authorized representative of that Member.

SECTION 18. Filing with the Secretary of State. The Secretary shall file all required notices with the Secretary of State in accordance with California Government Code sections 6503.5 and 53051.

SECTION 19. Notices.

19.1 All notices which any Member or the Authority may wish to give in connection with this Agreement shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Member or Authority, to an officer or person apparently in charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to the Member or Authority at its principal office, or to such other address as the Authority or Member may

designate from time to time by written notice given in the manner specified in this Section.

19.2 Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery (but twenty-four (24) hours after such delivery in the case of notices of special meetings of the Board) or two (2) days after mailing if deposited in the United States mail.

19.3 Members agree to provide the Authority with the official notification requirements of the Franchise Agreement for use by the Authority and agree to provide Authority with any changes in said notification requirements.

SECTION 20. Successors and Assigns.

20.1 This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Members.

20.2 However, no Member shall assign any of its rights under this Agreement except to a duly formed public entity organized and existing under the Laws of the State of California approved by a majority of the Directors who do not represent the assigning Member.

20.3 No assignment shall be effective unless and until the Authority, the Members and the proposed assignee comply with: (i) all then applicable requirements of Law relating to changes in the composition of entities such as the Authority; and (ii) if and when any Revenue Bonds are outstanding, with the terms and conditions of all Revenue Bonds and related documentation including, without limitation, indentures, resolutions and letter of credit agreements.

SECTION 21. El Cerrito Recycling Services. It is acknowledged by the Members that the El Cerrito Recycling and Environmental Resource Center was in existence and operating before the formation of the Authority, and this Agreement is not intended to alter the operations of the Center. Accordingly, the El Cerrito Recycling and Environmental Resource Center shall not be considered a Sole Use Facility or Joint Use Facility for the purposes of this Agreement. The Authority may not direct Recyclable Materials collected as part of El Cerrito Recycling Services except as separately agreed to by the Authority and El Cerrito. In addition, the costs of operating the El Cerrito Recycling Services shall not be included in the calculation of Approved Rates for Directed Waste and Materials collected within El Cerrito.

SECTION 22. Third Party Beneficiaries.

22.1 The Authority shall be a third party beneficiary of this Agreement entitled to exercise all rights of and benefits accruing to the Authority that are specified in this Agreement.

22.2 Except as provided in accordance with Section 5.3(s), there shall be no other third party beneficiaries of this Agreement.

SECTION 23. Severability. Should any part, term or provision of this Agreement be decided by a final judgment of a court or arbitrator to be illegal or in conflict with any law of the State of California or otherwise be unenforceable or ineffectual, the validity of its remaining parts, terms and provisions shall not be affected.

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SECTION 24. West Contra Costa Solid Waste Management Authority. Upon execution of this Agreement, the Authority shall be the successor Member to the West Contra Costa Solid Waste Management Authority in all matters affecting the Members or the Authority.

SECTION 25. Section Headings. All section headings contained in this Agreement are for convenience and reference. They are not intended to define or limit the scope of any provision of this Agreement.

SECTION 26. Arbitration.

26.1 All disputes that arise in connection with the interpretation or performance of this Agreement shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association.

26.2 The arbitrator’s decision shall be final and binding on the Authority, all Members and all former Members involved or affected by the dispute.

26.3 The Authority, any Member and any former Member that is party to the dispute may enforce any award, order or judgment of the arbitrator in any court of competent jurisdiction.

CITY OF EL CERRITO

Dated: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF HERCULES

Dated: _____

By: _____
Mayor

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ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF PINOLE

Dated:_____

By:_____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF RICHMOND

Dated:_____

By:_____
Mayor

ATTEST:

City Clerk

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APPROVED AS TO FORM:

City Attorney

CITY OF SAN PABLO

Dated: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

COUNTY OF CONTRA COSTA

Dated: _____

By: _____
Board of Supervisors Chair

ATTEST:

County Clerk

APPROVED AS TO FORM:

County Counsel

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FOR COMMENT**

Agenda Item 8.0 - Attachment 1

Exhibit A
Boundaries

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FOR ~~CIRCULATION PURPOSES ONLY~~ COMMENT

**FIFTH AMENDMENT TO AND RESTATEMENT OF THE WEST
 CONTRA COSTA INTEGRATED WASTE MANAGEMENT
 AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT**

THIS FIFTH AMENDMENT and RESTATEMENT OF THE JOINT EXERCISE OF POWERS AGREEMENT (“Restated Agreement”) is entered into as of _____, ~~2016~~2017, by and among the CITY OF EL CERRITO (“El Cerrito”), a municipal corporation, the CITY OF HERCULES, a municipal corporation, the CITY OF PINOLE, a municipal corporation, the CITY OF RICHMOND, a municipal corporation and charter city, the CITY OF SAN PABLO, a municipal corporation (collectively “Cities”) and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“County”), hereinafter referred to individually as “Member” and collectively as “Members.” This document amends the Agreement dated April 2, 1991, as amended by Amendment No. 1 dated November 14, 1991, Amendment and Restatement No. 2 dated December 21, 1993, Amendment and Restatement No. 3 dated March 6, 1995, and Amendment No. 4 on March 10, 2011 (“Agreement”) and restates in full the provisions of the Agreement, except as amended herein, without affecting the ongoing existence of the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (“Authority”).

RECITALS

A. California Government Code section 6500 *et seq.* (“Law”) provides for agreements between two or more public agencies to jointly exercise any power common to the contracting parties, subject to certain mandatory provisions contained therein;

B. The State of California has enacted the California Integrated Waste Management Act of 1989 (AB 939) at California Public Resources Code section 40000 *et seq.* (“Act”) mandating that municipalities and county unincorporated areas divert material from disposal and has promulgated regulations promoting material reuse and recycling;

C. Pursuant to this authority, the Cities entered into the Agreement to establish and confer upon a separate legal entity the powers necessary to: 1) form a regional agency to report as a single entity the annual regional compliance with AB 939 reporting requirements in order to reduce the cost of reporting and tracking of disposal and diversion programs by individual jurisdictions; 2) to implement regional waste reduction and recycling diversion programs; 3) to increase the diversion of waste from disposal facilities; and 4) to develop an integrated resource recovery facilities (“IRRF”) to achieve their waste diversion goals, to comply with the Act, and to arrange for disposal of remaining waste resulting from the closure of the West Contra Costa Sanitary Landfill-;

D. The County and the Authority entered into a contract on May 25, 1993 (“Authority-County Contract”) in order to facilitate development of an IRRF to be partially located in the unincorporated area of the County, provide for the continued disposal of waste generated in the unincorporated areas of the County encompassed by the District, divert such waste through the use of an IRRF and provide for regulation of the IRRF;

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E. Pursuant to the Agreement, the County appointed an ex-officio non-voting Director to the Authority’s Board of Directors, the Authority approved IRRF bonds, an IRRF was developed and the bonds were repaid;

F. In June 2013, the Authority Board of Directors voted to initiate the process of including the County as an Authority member and, in May 2016, the County Board of Supervisors voted to direct its staff to pursue negotiation of this Amendment and Restatement to become an Authority member;

G. Although the County wishes to join the Authority as a Member, it cannot also be a part of the regional agency as defined by Public Resources Code section 40181 because all of the County’s unincorporated area is not located within the Authority’s jurisdiction; ~~and~~

H. The Members recognize that many Authority activities are based upon the waste tonnage generated by the Members and that the City of Richmond generates a substantially greater amount of tonnage in all categories of waste than other Members. Therefore, although Authority programs are available to all Members regardless of the waste tonnage generated by a particular Member, the Members commit to make a good faith effort to provide Richmond with services commensurate with its contribution to the Authority’s budget;

I. The iterations of the Agreement prior to 2014 addressed IRRF bonds and development including the contract with West County Resource Recovery Inc. for IRRF operation and administration and the Authority’s involvement with these activities has now concluded. Nonetheless, the Authority continues to operate as a Regional Agency and manage the post-collection processing and disposal activities. This Amendment and Restatement is intended to be consistent with those activities and is further intended to provide a structure for the Authority to both meet new legislative mandates and provide the necessary flexibility to address Members needs post 2024; and

~~H~~ J. The Members intend by this Amendment and Restatement to reflect the changes in conditions that have occurred since the execution of the Third Amendment Restatement in 1995, to add the County as a Member of the Authority, to exercise their respective powers jointly and to exercise such additional powers as are available to the Authority under the Law for the purpose of achieving their waste diversion goals and complying with the Act.

ACCORDINGLY, THE MEMBERS HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions. The terms defined in this Section have the following meanings:

1.1 “Act” means the California Integrated Waste Management Act of 1989 (California Public Resources Code sections 40000 *et seq.*) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

1.2 “Agreement” means this Joint Exercise of Powers Agreement, as it may be amended from time to time.

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1.3 “Alternate Director” means the person(s) appointed by each Member who may represent that Member at a Board meeting in the absence of a Director from that Member.

1.4 “Approved Facility” means a ~~Solid Waste Management Facility or Facilities~~ solid waste management facility or facilities, such as a MRF, transfer station, composting or other type of processing facility, designated from time to time by the Authority to receive some or all Directed Waste and Materials.

1.5 “Approved Rates” means (i) the rates authorized by the Authority from time to time to be paid at the Approved Facility or Facilities for Directed Waste and Materials received at the Approved Facility or Facilities as set forth in the Post Collection Agreement; and/or (ii) any additional amounts determined by the Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, or to implement the Authority ~~County Contract~~ to the extent such additional amounts are not included by the Authority in the rates authorized to be charged at the Approved Facility or Facilities in the Post Collection Agreement.

1.6 “Authority” means the West Contra Costa Integrated Waste Management Authority, a joint exercise of powers Agency created by the Members pursuant to ~~this~~ the Agreement.

1.7 “Authority ~~County Contract~~” means that certain contract between the Authority and Contra Costa County dated May 25, 1993, as amended from time to time.

1.8 “Board” means the Board of Directors of the Authority.

1.9 “City” means any Member that is a city, and “Cities” means all of the Members that are cities.

1.10 “County” means Contra Costa County, California.

1.11 “Directed Waste and Materials” means ~~Aacceptable Waste and Materials~~ materials collected pursuant to a Franchise Agreement, or collected pursuant to any other agreement between a Member and any other party, or collected by a Member, and directed by the Authority to be delivered to an Approved Facility or Facilities.

1.12 “Director” means the appointed members of the Board that represent the Cities and County. For the purposes of voting and quorum, the term Director as used herein shall be read to also include an “Alternate Director” when such person is seated on the Board as the representative of the Member at a Board meeting.

1.13 “El Cerrito Recycling Services” means both the collection of Recyclable Materials at the El Cerrito Recycling and Environmental Resource Center and the collection of Recyclable Materials through or by El Cerrito whether directly or by contract.

~~1.13~~ 1.14 “Executive Director” means the person hired and appointed by the Board as the Authority’s Executive Director to administer the affairs of the Authority and to effect the policies of the Board.

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~~1.14~~ 1.15 “Fiscal Year” means the period commencing on each July 1 and ending on the following June 30.

~~1.15~~ 1.16 “Franchise Agreement” means an agreement between a Member or, if further authorization is provided by the Board, an agreement between the Authority, and a party which ~~provide~~ provides for the collection of Solid Wastes.

~~1.16~~ 1.17 “Hazardous Materials or Hazardous Waste” means materials that, by reason of their quality, concentration, composition or physical, chemical or infections characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined and/or regulated as a Hazardous Waste, toxic waste, hazardous chemical substance or mixture, or asbestos under any applicable local, state or federal law or regulation, and:

(1) “Hazardous Waste” pursuant to ~~Section~~ section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with ~~Section~~ section 25800) of Division 20 of the California Health ~~and &~~ Safety Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by ~~Sections~~ sections 25110.02, 25115, and 25117 of the California Health ~~and &~~ Safety Code (~~the~~ California Hazardous Waste Control Act), California Health ~~and &~~ Safety Code ~~Section~~ section 25100 *et seq.* including 23 CCR ~~Sections~~ sections 2521 and 2522;

(2) Materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 *et seq.* as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980);

(3) Materials regulated under the Toxic Substances Control Act, 15 U.S.C. section 2601 *et seq.*, as amended, and related federal, state and local laws and regulations, including the California Toxic Substances Account Act, California Health ~~and &~~ Safety Code section 25300, *et seq.*;

(4) Materials regulated under the Comprehensive Environmental Response, Compensations and Liability Act, 42 U.S.C. section 9601, *et seq.*;

(5) Materials regulated under any future or additional or substitute federal, state or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or Hazardous Waste; and

(6) Any substance the presence of which at the Keller Canyon Landfill is prohibited by applicable law.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of “Hazardous Waste,” for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition is employed for the purposes of this Agreement.-

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~~1.17~~ 1.18 “Household Hazardous Waste Element (HHWE)” means the household hazardous waste element required to be prepared pursuant to the Act, and as that element may be amended from time to time.

~~1.18~~ 1.19 “Joint Facilities” means a facility or facilities for the diversion or removal of portions of Solid Waste prior to disposal of Solid Waste, ~~either owned in whole or in part by the Authority or by a Member which (i) is either rate such as a MRF, transfer station, composting or other type processing facility, regulated directly or indirectly by the Authority or the rates are otherwise approved by the Authority, (ii) provides services for all or some of the Members (iii) is operated for the benefit of the residents within the jurisdictional boundaries of the Authority, and (iv) is operated in a manner which would be consistent with and not adversely affect or interfere with other operations of~~ operated by the Authority.

~~1.19~~ 1.20 “Law” means Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government Code ~~Sections~~ sections 6500, *et seq.*) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

~~1.20~~ 1.21 “Member” means any of the six (6) signatories to this Agreement and “Members” means all of the six (6) signatories to this Agreement.

~~1.21~~ 1.22 “MRF” means a municipal recovery facility, including lands on which such facility is located, ~~for~~ for receiving, processing, recycling and transportation or transfer of Solid Waste for processing, recovery or diversion, or any combination thereof, ~~which facility is owned by the Authority and is operated for the benefit of the Authority and the residents within the jurisdictional boundaries of the Authority.~~ _____

~~1.22~~ 1.23 “Non-Disposal Facility Element (NDFE)” means the non-disposal facility element required to be prepared pursuant to the Act and as that element may be amended from time to time.

~~1.23~~ 1.24 “Post Collection Agreement” means the Agreement entered into between the Authority and West County Resources Recovery, Inc., West Contra Costa Sanitary Landfill, Inc., Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. and Keller Canyon Landfill Company for post collection recycling and disposal services dated October 10, 2013, including any amendments or successor agreements thereto.

1.25 “Recyclable Materials” means materials that are reused, remanufactured, or processed.

~~1.24~~ 1.26 “Revenue Bonds” means revenue bonds, notes, certificates of participation and any other instruments and evidences of indebtedness issued by the Authority from time to time pursuant to the Law or any other applicable ~~Law~~ law in order to finance any MRF, Joint Facilities or Sole Use Facility or modifications thereto.

1.27 “Separated Materials” means materials delivered separately from the comingled collection of refuse and other Solid Waste materials that are not recycled.

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~~1.25~~ 1.28 “Sole Use Facilities” means a facility or facilities for the diversion or removal of portions of Solid Waste prior to disposal, owned either by one or more, but not all, of the Members directly or by a private entity, but which in all events is operated in a manner which would be consistent with and not adversely affect or interfere with the operations of an existing Joint Facilities and the operations of the Authority for the benefit of one or more, but not all, of the Members and which is either rate regulated directly by the Authority or the rates are otherwise approved by the Authority.

~~1.26~~ 1.29 “Solid Waste” means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, ~~recyclable materials~~ Recyclable Materials, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, as defined in California Public Resources Code section 40191 as that section may be amended from time to time and as may be limited by applicable law. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste and medical waste.

~~1.27~~ 1.30 “Source Reduction and Recycling Element (SRRE)” means a source reduction and recycling element required by the Act as that element may be amended from time to time.

SECTION 2. Purpose. This Agreement is entered into pursuant to the Act for the purpose of the Members except the County ~~forming a~~ maintaining an existing regional agency to combine disposal and diversion of ~~quantities~~ Solid Waste for determining compliance with AB 939 and future diversion mandates, to allow for efficient operation of diversion programs on a region-wide basis as allowed by Members under this Agreement, and to allow for the development of Regional Integrated Waste Management Plans including a Source Reduction and Recycling Element, Household Hazardous Waste Element, and Non-Disposal Facility Element-. The Members are each empowered by the Laws of the State of California to exercise the powers specified in this Agreement, to comply with the provisions of the Act and other Laws, ~~and to acquire, construct, finance, refinance, maintain, operate and regulate an A-MRF, Joint Facilities and Sole Use Facilities.—~~ These common powers shall be exercised for the benefit of any one or more of the Members or otherwise in the manner set forth in this Agreement. The Members are also empowered to acquire, construct, finance, refinance, maintain, operate and regulate Joint Facilities and Sole Use Facilities and the Authority may undertake such activities subject to authorization by the Members’ legislative bodies as set forth herein.

SECTION 3. Creation of Authority.

3.1 Pursuant to the Law, the Cities created and established the Authority in 1991 as a public entity separate from each of the Members. Although the County did not initially join the Authority as a Member upon its creation, through this ~~Fifth~~ Restated Amendment ~~and Restatement~~ it now joins as a Member.

3.2 The assets, rights, debts, liabilities and obligations of the Authority shall not constitute assets, rights, debts, liabilities or obligations of any of the Members. However, nothing in this Agreement shall prevent any Member from separately contracting for, or assuming

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responsibility for, specific debts, liabilities or obligations of the Authority, provided that both the Board and that Member approve such contract or assumption.

SECTION 4. Term. The Authority has become effective as of April 1, 1991. It shall continue until terminated or dissolved by a vote taken in accordance with Section ~~18.2~~ 17.2 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the Authority if its termination or dissolution would conflict with or violate the terms or conditions of any Revenue Bonds or related documentation including, without limitation, indentures, resolutions and letter of credit agreements or any other Authority financing obligation including, but not limited to, a certificate of participation, loan agreement or tax anticipation notes.

SECTION 5. Powers.

5.1 The Authority is empowered to acquire, construct, finance, refinance, operate, regulate and maintain ~~a MRF~~, Joint Facilities and Sole Use Facilities or contract with a private entity to do the same, subject however, to the conditions and restrictions contained in this Agreement. The Authority shall also have the power to plan, study and recommend proper solid waste management consistent with the Act and, if and to the extent permitted by the Act, to adopt and implement an SRRE for all or any portion of the area included within the Authority's boundary.

5.2 The Authority is empowered to prepare, revise, approve and submit a Regional Integrated Waste Management Plan pursuant to the Act to the California ~~Integrated Waste Management Board~~ Environmental Protection Agency, Department of Resources Recycling and Recovery ("CalRecycle") in lieu of preparation, approval, and submittal of individual ~~SRRE's~~ SRREs, ~~HHWE's~~ HHWEs and ~~NDFE's~~ NDFEs by individual Members, to specify in said Regional Integrated Waste Management Plan programs to be implemented by any or all Members and the Authority, and to implement programs specified in said Regional Integrated Waste Management Plan for implementation by the Authority, and in the event the Authority exercises such power, instead of the individual Members, it shall be responsible for compliance with Article 1 (commencing with ~~Section~~ section 41780) of Chapter 6 of the Act following approval of a Regional Member Integrated Waste Management Plan by the California Integrated Waste Management Board.

5.3 To the full extent permitted by applicable Law, the Authority is authorized, in its own name, to do all acts necessary or convenient for the exercise of ~~such~~ the following powers that each Member could exercise separately ~~including without limitation, any and all of the following~~:

- (a) To make and enter into contracts, including contracts with any Member;
- (b) To apply for and accept grants, gifts, donations, loans, advances and contributions;
- (c) To employ or contract for the services of engineers, attorneys, accountants, planners, consultants, fiscal agents and other persons and entities;
- (d) To make plans and conduct studies;

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all types;

- (e) To acquire, improve, hold, lease and dispose of real and personal property of
- (f) To sue and be sued in its own name;
- (g) To incur and discharge debts, liabilities and obligations;
- (h) To establish or approve Approved Rates;
- (i) To hire, manage and fire agents and employees;

~~_____ (j) _____ To exercise the power of eminent domain for the acquisition of real and personal property for a MRF, Joint Facilities and Sole Use Facilities, or for the acquisition of a MRF, Joint Facilities or Sole Use Facilities themselves;~~

~~_____ (k) _____ To issue Revenue Bonds, from time to time, in accordance with all applicable Laws for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation, modification, or maintenance of a MRF, Joint Facilities or Sole Use Facilities;~~

~~_____ (l) _____ To sell or lease a MRF, Joint Facilities or Sole Use Facilities;~~

~~_____ (m) _____ to loan the proceeds of Revenue Bonds to any person or entity to finance or refinance the acquisition, construction, improvement, renovation, modification, or repair of a MRF, Joint Facilities or Sole Use Facilities;~~

~~_____ (n) _____ To issue grant or bond anticipation notes for the purpose of financing or refinancing a MRF, Joint Facilities or Sole Use Facilities;~~

~~(o) To~~ (j) To require that the Members direct all of the Solid Wastes generated and collected within their respective boundaries (or specified portions or specified types of such Wastes and Materials) to the Approved Facility or Facilities as the case may be, it being understood, however, that the Authority is not empowered to require ~~the City of~~ El Cerrito to so direct any ~~recyclable materials~~ Recyclable Materials collected by its collector or collected ~~by the City as part~~ of El Cerrito Recycling ~~Center~~ Services unless ~~the City of~~ El Cerrito so consents;

~~(p) _____ (k)~~ To require each Member to include some or all of the Approved Rates paid to the owner or operator of the Approved Facility or Facilities in connection with the waste stream of that Member directed to the Approved Facility or Facilities, as the case may be, to be “passed through” to or collected from the ratepayers within the boundaries of that Member without reduction, limitation, offset or adjustment of any kind and to require that the Member take such action to direct the collection of said Approved Rates in a timely manner;

~~(q)~~ To require each Member to (i) include fees which may be imposed from time to time by the Authority and which fees are determined by the Authority in its sole direction as being necessary for a period of time to pay continuing expenses of the Authority under circumstances where the revenue received from the Approved Rates is not available or inadequate

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to be collected from the ratepayers within the boundaries of that Member without reduction, limitation, offset or adjustment of any kind; and (ii) provide for payment of such fees collected to the Authority or a party designated by the Authority without reduction, limitation, offset or adjustment of any kind and to require that the Member take such action to direct the collection of such fees in a timely manner;

(m) To require each Member to (i) include amounts determined by Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority to be “passed through” to or collected from ratepayers within the boundaries of that Member without reduction, limitation, offset or adjustment of any kind regardless of how that Member collects fees; and (ii) provide for payment of amounts so collected to the Authority, in the event that such amounts are not paid to the owner or operator of the Approved Facility, without reduction, limitation, offset or adjustment of any kind and to require that the Member take such action to direct the collection of said Approved Rates in a timely manner;

~~_____ (s) _____ To provide that the Authority may covenant with the holders of any Revenue Bonds and/or lenders providing security for same, on behalf of any such Member to perform such obligations and comply with any agreements that Member may have with the Authority;~~

(n) To determine the type, extent and manner of processing of Solid Waste necessary for the Members to comply with the diversion requirement of the Act and to arrange for said processing through implementation or modification of the Approved Facility, Joint Facilities or Sole Use Facilities or through use of other facilities following receipt of Solid Waste at the Approved Facility;

(o) To implement the Regional Integrated Waste Management Plan and upon approval of such plan to require Members to implement the Regional Integrated Waste Management Plan except with regard to unincorporated areas of the County;

(p) To educate the public as to Solid Waste, diversion and recycling matters;
and

(q) To enter into agreements to operate Joint Facilities and/or Sole Use Facilities.

5.4 To the full extent permitted by applicable Law, the Authority is authorized, in its own name, to exercise the following powers that each Member could exercise separately subject to prior authorization by the affected Member’s legislative body:

(a) Enter into new regional agreements binding on its Members;

(b) To exercise the power of eminent domain for the acquisition of real and personal property for Joint Facilities and Sole Use Facilities, or for the acquisition of Joint Facilities or Sole Use Facilities themselves ;

(c) To issue Revenue Bonds, from time to time, in accordance with all

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applicable Laws for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation, modification, or maintenance of Joint Facilities or Sole Use Facilities ;

_____ (d) _____ To acquire or lease Joint Facilities or Sole Use Facilities;

_____ (e) _____ To loan the proceeds of Revenue Bonds to any person or entity to finance or refinance the acquisition, construction, improvement, renovation, modification, or repair of Joint Facilities or Sole Use Facilities ;

_____ (f) _____ To issue grant or bond anticipation notes for the purpose of financing or refinancing Joint Facilities or Sole Use Facilities;

_____ (g) _____ To enter into regional post collection processing or franchise agreements for the period beginning in 2025 or later; and

~~(w) _____ (h) _____ To adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement except that no ordinance adopted by the Authority shall apply to the unincorporated areas of the County unless approved by the County Board of Supervisors; and~~

~~_____ (x) _____ To enter into agreements to operate a MRF, Joint Facilities and/or Sole Use Facilities.~~

~~5.4 _____ 5.5 _____ Such powers shall be exercised subject only to the limitations set forth in this Agreement, applicable Law-law and such restrictions upon the manner of exercising such powers as are imposed by Law-law upon the Members in the exercise of similar powers. However, the Members do not specifically delegate any additional powers to the Authority without the express authorization of that Member’s governing body. The Authority shall only exercise additional powers in order to provide additional services to individual Members subject to approval of an agreement for compensation to the Authority by that Member(s)’ governing body and the Board. Such agreement shall only apply to Member(s) who seek additional services from the Authority and which the Authority is not providing to all the Members. The Authority hereby designates the City of Richmond as the Member required to be designated by section 6509 of the California Government Code.~~

The Authority hereby designates the _____, a general law city, as the Member required to be designated by section 6509 of the California Government Code.

Although the Authority has not entered into Franchise Agreements to date, nothing in this ~~Fifth Restated~~ Amendment and Restatement prevents it from so doing. However, if the Authority wished to enter into Franchise Agreements in the future, the Board would have to authorize it to exercise such authority ~~pursuant to the same process~~ and it shall be conditioned upon prior authorization by the affected Member’s legislative body as set forth in Section ~~18.15.4.-~~

~~5.5 _____ 5.6 _____ If and to the extent the Authority exercises a power granted to it under this Agreement and the exercise of any like power by one or more Members within its or their~~

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boundaries would be inconsistent with or likely to interfere or adversely affect such exercise of that power by the Authority, that Member or those Members shall not exercise that power; provided, however, that nothing in this Agreement shall limit a Member's right or that of any commission, Member or other body or authority of any Member to adopt, amend or implement zoning, building, land use or safety ordinances, laws or regulations with respect to real estate located within its boundaries upon which a ~~MRF~~, Joint Facility or Sole Use Facility is or will be located.

SECTION 6. Boundaries. The boundary of the Authority shall be the consolidated boundaries of the Cities and the unincorporated areas of the County as set forth in Exhibit A attached hereto and incorporated herein. However, as set forth in Section 11, the unincorporated areas of the County shall not be subject to the provisions of Section 11. If a Member withdraws from the Authority, the boundary of the Authority shall be modified to exclude the area of the withdrawing Member. This Section 6 shall not prevent any ~~MRF~~, Joint Facilities or Sole Use Facilities from being located outside the boundary of the Authority.

SECTION 7. Organization.

7.1 The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on behalf of the Authority.

7.2 Directors.

(a) The Board shall consist of eight (8) Board Members, a Director from each City other than the City of Richmond and the County and three (3) Directors from City of Richmond. Upon execution of this Agreement, all the Members shall appoint their representatives to the Board and one (1) person as an alternate to serve in the case of absence or conflict of an appointed Director except that the City of Richmond shall appoint a total of two (2) people to serve as alternates for its three Directors. Directors and Alternate Directors that have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without further action of the Member.

In the event of a Board action where four (4) Directors or Alternate Directors cast affirmative votes and four (4) Directors or Alternate Directors cast negative votes resulting in a tie vote, one Richmond Director or Alternate Director who participated in such tie vote may cast a tie-breaking vote so long as all three (3) Richmond Directors or Alternate Directors voted in the same manner except where the Board action relates to approval of the budget, disbursement of Authority reserves or requests for disbursement upon withdrawal from the Authority.

(b) Each Director and ~~alternate~~ Alternate shall hold office from the first meeting of the Board after appointment by the Members until his or her successor is selected by the Member that elected that Director. Each Director and ~~alternate~~ Alternate shall serve at the pleasure of the Member that he or she represents and may be removed at any time, without cause, in the sole discretion of that Member. However, a Member shall not remove a Director or Alternate ~~Director~~ unless, before the next meeting of the Board, it also appoints a replacement Director or ~~alternate~~ Alternate.

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(c) Each Director and Alternate ~~Director~~ shall be an elected official of the governing body of the Member that he or she represents. If a Director or Alternate ~~Director~~ ceases holding any such elected position, he or she shall then cease to serve as a Director or ~~alternate~~ Alternate. The Authority and the Board shall be entitled to rely on a written notice from the City Clerk (in the case of the Cities), and the County Clerk (in the case of the County) as conclusive evidence of the appointment and removal of Directors and ~~alternates~~ Alternates representing that Member. If a Member appoints and/or removes a Director or ~~alternate~~ Alternate, written notice of such action shall be provided to both the Authority Executive Director and Clerk of the Board at least ~~72~~ seventy-two (72) hours prior to the next regularly scheduled Board meeting.

7.3 Principal Office. The principal office of the Authority shall be established by the Board within the boundary of the Authority and the address of the principal office shall initially be ~~1~~ One Alvarado Square, San Pablo, California 94806. The Board may change that principal office upon giving at least ~~15~~ fifteen (15) days' notice to each Member and to the California Integrated Waste Management Board.

7.4 Officers. The Authority shall have ~~five~~ seven (7) officers: a Chair, a Vice Chair, an Executive Director, Treasurer, Controller a General Counsel and a Secretary. The Board may designate additional officers such as managers by resolution and those additional officers shall be subject to the same rules and conditions applicable to the ~~five~~ seven (7) officers set forth herein. The Executive Director, Treasurer, Controller, General Counsel and Secretary, shall not be employees of a Member during the period that he or she serves as an officer of the Authority unless, in the case of the Secretary the Board takes specific action to authorize use of a Member's employee in that capacity. None of the officers (including the Chair or Vice Chair) shall be an employee or otherwise be affiliated with the operator of ~~a MRF~~ an Approved Facility or any integrated waste management company which provides services to the Authority or a Member. The Board shall select a Chair and a Vice Chair from among the Directors and not the Alternate Directors who shall hold office for a period of one (1) year commencing on a date designated by resolution of the Board. At no time shall the Chair and the Vice Chair be representatives of the same Member. No person shall serve consecutive terms as the Chair and no person shall serve consecutive terms as the Vice Chair. Successive Chairs ~~and Vice Chairs~~ shall not be representatives of the same Member. Successive Vice Chairs should not be representatives of the same Member.

7.5 Chair. The Chair shall preside at meetings of the Board, call meetings to order, adjourn meetings, announce the business and the order it is to be acted upon, recognize persons entitled to speak, put to a vote all questions moved and seconded, announce results of votes, maintain the rules of order, execute documents and official actions on behalf of the Board when duly approved, and carry out other duties set forth in any bylaws adopted by the Board. Notwithstanding the foregoing, any Voting Director shall be entitled to place any matter reasonably related to the business of the Authority on the agenda for any meeting of the Board.

7.6 Vice Chair. The Vice Chair shall serve as Chair in the absence of the regularly elected Chair.

7.7 Executive Director. The Board shall employ or contract for the services of an

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Executive Director who shall be the chief administrative officer of the Authority. The Executive Director shall have a background in public management, solid waste management or a related field.

The Executive Director shall plan, organize and direct the administration and operations of the Authority, shall advise the Board on policy matters, shall recommend an administrative structure to the Board, shall hire and discharge administrative staff, shall develop and recommend budgets, shall reply to communications on behalf of the Authority, shall approve payments of amounts duly authorized by the Board, shall carry out such other duties that may be assigned to the Executive Director by the Board from time to time and shall attend meetings of the Board.

7.8 Treasurer. Pursuant to California Government Code section 6505.5, the Authority designates _____ as Treasurer. If the Treasurer herein designated can no longer serve as Treasurer, then the Authority may appoint a successor Treasurer via Board resolution. The Treasurer shall be the depositary and have custody of all the funds of the Authority from whatever source.

The Treasurer shall do all of the following:

- (a) Receive ~~and receipt for~~ all funds of the Authority and place it in the treasury to the credit of the Authority;
- (b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority funds so held by him or her;
- (c) Pay, when due, out of funds of the Authority held by him or her, all sums payable on outstanding bonds and coupons of the Authority;
- (d) Pay any other sums due from the Authority from Authority funds, or any portion thereof, only upon warrants of the Controller;
- (e) Verify and report in writing on the first day of July, October, January, and April of each year to the Authority and Members the amount of funds he or she holds for the Authority, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The governing body of the same Member as the Treasurer shall determine charges to be made against the Authority for the services of the Treasurer and Controller.

7.9 Controller. Pursuant to California Government Code section 6505.5, the Authority designates _____ to be the Controller. If the Controller herein designated can no longer serve as Controller, then the Authority may appoint a successor Controller via Board resolution. The Controller shall draw warrants to pay demands against the Authority when the demands have been approved by any person authorized to so approve in this Agreement.

7.10 General Counsel. The Board shall employ or contract for the services of a General Counsel who shall be the legal officer of the Authority. The General Counsel shall advise the Authority on legal matters.

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7.11 Secretary. The Executive Director shall select and the Authority shall employ or contract for the services of a Secretary who shall prepare, distribute and maintain minutes of meetings of the Board and any committees of the Board. The Secretary shall also maintain the official records of the Authority and shall file notices as required by Section ~~15-18~~ of this Agreement.

7.12 Access to Property. The Executive Director is hereby designated as the person who has charge of and access to the property of the Authority. The Executive Director shall file with the Authority an official bond in an amount to be fixed by the Board. The costs of those bonds shall be paid by the Authority.

7.13 Officers, Employees and Agents. None of the officers, agents or employees employed or hired by the Authority shall by reason thereof become officers, agents or employees of any Member. The Authority may contract with any Member for any services, subject to approval by a majority of the Voting Directors who do not represent that Member. None of the persons whose services are supplied by a Member shall by reason thereof become an employee of the Authority.

7.14 Other Managers. Subject to final approval by the Board, the Executive Director may select one or more persons or firms to manage the acquisition, construction, maintenance, operation, regulation or implementation of ~~a MRF~~, Joint Facilities, Sole Use Facilities or SRRE. Any such person or firm shall report regularly to the Executive Director and, if requested, to the Board, on the progress, execution and status of the matters for which that person or firm has been assigned responsibility. Such persons or firms may be authorized to subcontract with engineers, consultants and other parties, subject to concurrence of the Board or the Executive Director and consistent with the rules and regulations of the California Integrated Waste Management Board. Nothing in this Section 7.14 shall by implication prevent the Authority or the Executive Director from appointing or hiring additional persons or firms to perform or oversee these or any other task.

SECTION 8. Meetings of the Board.

8.1 Regular Meetings. The Board shall hold at least four (4) regular meetings each year. The date upon which, and the hour and place at which, each regular meeting shall be held shall be fixed by resolution of the Board. Board meetings shall be conducted in accordance with the rules of conduct set forth in Rosenberg's Rules or Robert's Rules of Order.

8.2 Special Meetings. Special meetings of the Board may be called in accordance with the provisions of ~~Section~~ section 54956 of the California Government Code.

8.3 Notice of Meetings. All meetings of the Board shall be held subject to the provisions of the California Ralph M. Brown Act (~~Sections~~ sections 54950 *et seq.* of the California Government Code) and other applicable Laws of the State of California.

8.4 Minutes. The Secretary shall cause minutes of all meetings of the Board and any committees of the Board to be kept and shall, promptly after each meeting, cause a copy of the minutes to be forwarded to each Director.

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8.5 Quorum. The presence of at least five (5) Directors, seated or Alternate Directors, at a Board meeting shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting. However, where the Board convenes an emergency meeting pursuant to the Ralph M. Brown Act, which may be the result of a natural disaster, the presence of at least four (4) Directors or Alternate Directors at that meeting shall constitute a quorum.

8.6 Voting. Subject to Sections 17, and 21.2, each Director shall have one vote on all matters presented to the Board for a vote. The Board shall specify by resolution, from time to time, what types of decisions shall be presented to the Board for a vote and what types of decisions shall be delegated to the Executive Director. Except as provided in Sections 11.2(a)(3), 17(b), and 21.2, the vote of ~~a~~ four (4) of the Directors shall constitute a majority ~~and the act~~ vote to approve an action of the Board, ~~if~~ when five (5), six (6) or seven (7) Directors are present at a meeting. However, if all eight (8) Directors are present at a Board meeting, then a vote of five (5) Directors shall constitute a majority and the act of the Board. If any Board action requires a supermajority vote to constitute an act of the Board, then a vote of at least five (5) Directors representing at least four (4) Members shall constitute a supermajority. For purposes of voting at Board meetings, seated Alternate Directors shall be considered as Directors.

8.7 Bylaws. The Board from time to time may adopt bylaws for the conduct of its affairs, provided that they are not inconsistent with this Agreement.

8.8 Budget.

(a) A general budget for the Authority's operations shall be adopted by the Board for the ensuing Fiscal Year prior to June 30 of each year. The budget shall include sufficient detail to constitute an operating guideline, the anticipated sources of funds, and the anticipated expenditures to be made for the operations of the Authority and the administration, maintenance and operating costs of the ~~A MRF or~~ Joint Facilities. Any budget for Sole Use Facilities shall be maintained separately. As part of its deliberation on adoption of the budget, the Board shall consider authorizing resources to ensure Richmond receives services generally commensurate with its contribution to the Authority's budget. Such deliberation may result in a Board motion or resolution adopted separately from adoption of the budget. Approval of the budget by the Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, but subject to the availability of funds on hand.

~~(b) — A budget for the acquisition or construction of Joint Facilities shall be adopted by the Board before the Authority commits any acquisition or construction funds. It may be amended if and when determined by the Board. Approval of a Joint Facilities budget shall constitute authority for the Executive Director (or any trustee or other fiduciary appointed by the Authority) to receive state or federal grant funds and proceeds of Revenue Bonds and to expend funds for the acquisition and construction of Joint Facilities.~~

~~(c) — Budgets governing the acquisition or construction of Sole Use Facilities shall be adopted by the affected Member or Members and appropriate accounts shall be established and designated as such Member's or Members' fund. Disbursement of such funds by the~~

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~~Authority shall be made only upon receipt of written authorization from the finance officer of the affected Member or Members. Receipts and disbursements for the acquisition or construction of Sole Use Facilities may also be made directly by the affected Member or Members, in which case such budgets shall not be a part of the budget of the Authority.~~

8.9 Committees. The Board may designate a standing or ad hoc committee by resolution as the need for such standing or ad hoc committee arises. The designating resolution shall set forth the committee's specific charge and scope of duties. All committees shall serve only in an advisory capacity to the Board and shall not independently take action on any issue unless the Board has specifically delegated such authority to the committee by resolution. All committees created by the Board shall meet at least once per calendar year.

The Chair shall nominate no more than three (3) committee members representing three (3) Members and shall designate a committee chair in his/her nomination. A majority of the Board shall approve the Chair's nominations. Alternate Directors shall not be eligible to serve on committees.

(a) Ad Hoc Committees. Any ad hoc committee designated by the Board pursuant to this Section 8.9 shall be subject to a one year term from its date of creation and shall be limited in scope to the single purpose for which it was created by Board resolution. In the event of a vacancy on an ad hoc committee, the Chair shall designate a replacement committee member.

(b) Standing Committees. Each member of a standing committee shall serve a one year term which shall be concurrent with the terms of the Chair and Vice Chair. In the event of a vacancy on a standing committee, the Chair shall nominate a replacement committee member and a majority of the Board shall approve the nomination.

SECTION 9. Joint Operating Fund Contributions and Other Sources of Funds.

9.1 The Authority shall establish a joint operating fund which may receive contributions from the Members, ~~the proceeds from the sale of any recyclables~~, or other sources as set forth in Section 9.3. The fund shall be used to pay all administrative, operating and other non-capital expenses incurred by the Authority. In the event that the Board requires contributions from the Members any such payments shall be made in such manner and at such times as approved by a supermajority of the Board.

9.2 All moneys in the joint operating fund shall be paid out for the purposes for which the fund was created upon authorization by the Chair of the Board and approval by the Executive Director of demands for payment, or as otherwise authorized by resolution of the Board.

9.3 The Authority may ~~also~~ seek to obtain funding for its current scope of activities as well as the scope of activities it is authorized to undertake by law by pursuing various sources of funds including, but not limited to, imposition of AB 939 fees to the extent practically available, sale of energy from organic waste, sale of recycled commodities and/or a waste importation or exportation mitigation fee(s) and such other methods as set forth in Section ~~5.3~~(5.3(1)).

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SECTION 10. Records and Accounts. This Section is intended to ensure strict accountability of all funds of the Authority and to provide accurate reporting of receipts and disbursements of such funds. The Authority shall maintain accurate and correct books of account showing in detail the costs and expenses of any acquisition and construction and the maintenance, operation, regulation and administration of ~~the A MRF or~~ Joint Facilities and all financial transactions of the Members relating to ~~the A MRF or~~ Joint Facilities. The books of account shall correctly show any receipts and any costs, expenses or charges to be paid by all or any of the Members. The books of account shall be open to inspection at all times by a representative or agent of any of the Members. In addition, if required by any resolution authorizing the issuance of Revenue Bonds, the Authority shall maintain appropriate books, records, accounts and files relating to each project as required by such resolution which shall be open to inspection by holders of Revenue Bonds if and to the extent, and in the manner, provided in the resolution approving the Revenue Bonds.

SECTION 11. Implementation of the Act.

11.1 Intent. It is the intent of all Members except the County to form a regional agency as defined by Public Resources Code section 40181 and for the Authority to undertake the responsibilities of a regional agency pursuant to the powers of the Authority as set forth, *supra*, in Section 5.2. The County shall not participate as a member of the regional agency established by this Section 11, as the County has independent obligations under the Public ~~Reserves~~ Resources Code that apply to all incorporated areas including those not within the jurisdictional boundaries of the Authority.

11.2 Submittal of Elements by Members.

(a) All Members except the County agree that, following ~~CIWMB~~ CalRecycle's approval of this Agreement, that they shall refrain from submitting ~~a~~ an SRRE, HHWE, or NDFE for a Member's jurisdiction prior to:

(1) The date that the Regional Plan or elements thereof are required to be submitted to ~~CIWMB~~ CalRecycle by the Authority including any time extensions granted by ~~CIWMB, CalRecycle;~~ or

(2) One hundred twenty (120) days following the issuance of a notice of deficiency by ~~CIWMB~~ CalRecycle to the Authority pursuant to ~~Section~~ section 41810 or the Act, ~~;~~ or

(3) Receipt of a written notice from the Authority, approved by a majority of the Board of Directors representing a majority of the Members except not including the County, that the Authority either does not intend to submit a Regional Plan or required element thereof by the date required by the Act (including time extensions), or does not intend to correct deficiencies identified by ~~CIWMB~~ CalRecycle in the Regional Plan or required elements thereof, due to the failure of one or more of the Members to perform their obligations under this agreement or to implement programs and actions specified in the Regional Plan.

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(b) Any Member other than the County choosing to exercise its authority to undertake ~~a~~an SRRE, HHWE or NDFE individually, or respond individually to a notice of deficiency, may do so consistent with the terms of Section 11.2(a)(1) or Section 11.2(a)(2) by providing a resolution of the governing body of the Member to the Authority and each other Member within ten (10) days of adoption of said resolution.

(c) Each Member so electing to exercise the prerogatives provided in Section 11.2(a)(1) or Section 11.2(a)(2) or receiving a written notice from the Authority, pursuant to Section 11.2(a)(3) shall be solely responsible for compliance with the requirements of the Act upon adoption of the Member resolution required by Section 11.2(b), or receipt of the notice from the Authority required by Section 11.2(a)(3).

11.3 Compliance Monitoring.

(a) The Authority may establish a fair and equitable basis for determination of the amount of waste disposed of from within the Cities' jurisdiction and this method shall be used to determine the maximum amount of disposal allowable under the Act for the area included in the boundaries of the Authority.

(b) The Authority shall be entitled to cause the Solid Waste of the Cities to be monitored in order to determine compliance with the Act.

(c) The Authority shall be responsible for compiling and submitting disposal information from haulers and operators required to be submitted by ~~CIWMB~~CalRecycle pursuant to California Code of Regulations, Title 14, Division 7, Chapter 9, Article ~~9/0~~ or successor regulations and the Cities agree to require their respective haulers to submit such information to the Authority.

(d) The Authority shall monitor the implementation of the Regional Plan by the Authority and the Cities and shall periodically report to the Cities the status of compliance with the requirements of the Act and status of implementation of the Regional Plan.

(e) The Authority shall report to the Members the substantial failure of the Authority, a Member or other party to implement applicable provisions of the Regional Plan.

(f) The Authority will implement AB 939 programs and demonstrate compliance with the monitoring and reporting requirements related to AB 341 ~~and AB 1826 in the County/RSS Franchise area~~, AB 1826 and any other future mandates within the Authority's Member Agencies' boundaries, excepting the County unincorporated areas. The Authority will be responsible for providing records to the County to substantiate the implementation of the AB 939 diversion programs in the County ~~/RSS Franchise area~~ and the Authority.

11.4 Contingency Plans. Consistent with ~~§40975(b)(3)~~section 40975(b)(3) of the Public Resources Code, the Authority hereby establishes a Contingency Plan which provides for compliance with the Act by each of the Cities in the event the Authority, as the regional agency, is dissolved, or the Authority continues its role as a regional agency. The Contingency Plan is as set

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forth in Sections 17 and 18 of this Agreement, dealing with Withdrawal and Termination, respectively.

11.5 Regional Plan.

- (a) The Regional Plan and amendments thereto shall be developed in consultation with the ~~Members~~ Cities and approved by the Authority Board of Directors.
- (b) The Regional Plan shall identify source reduction, recycling, composting, education and public information, household hazardous waste and other programs required by the Act or ~~CIWMB~~ CalRecycle regulations and assign responsibility for implementation of said programs among the Authority and the Cities.
- (c) The Regional Plan, following approval by ~~CIWMB~~ CalRecycle, shall be included in this Agreement by this reference.
- (d) Notwithstanding Section ~~18-17~~ of this Agreement, the Regional Plan may from time to time be amended by a majority vote of the Authority Board of Directors and all such amendments shall become a part of the Regional Plan upon approval by ~~CIWMB~~ CalRecycle.
- (e) The Cities shall make a good faith effort to implement programs and actions specified in the Regional Plan approved by ~~CIWMB~~ CalRecycle for implementation by that City.
- (f) ~~Each Member agrees-~~ The Cities agree to provide the Authority information specific to its jurisdiction that is not readily available elsewhere as required by the Authority to prepare and implement the Regional Plan.
- (g) Each Member agrees to ~~co-ordinate~~ coordinate its education and public information activities with respect to Solid Waste and household hazardous waste with the activities of the Authority and to conduct such activities in a manner consistent with the education and public information program contained in the Regional Plan.

11.6 Grants and Financial Assistance. Each Member agrees to co-operate with the Authority as necessary to enable the Authority to apply for and receive grant funds and other financial assistance that may be available to a Member for development of the Regional Plan or for implementation of programs and actions assigned to the Authority in the Regional Plan in order to minimize costs which must be borne by ratepayers.

SECTION 12. Direction of Solid Waste.

12.1 The Members agree that the Authority shall have sole authority to (i) determine the suitability of Solid Waste for delivery to ~~the~~ an Approved Facility or Facilities and (ii) direct the delivery of all or a portion of Solid Waste and Separated Materials generated within the respective Cities' jurisdictions and within the County/RSS Franchise area (Directed Waste and Materials) ~~and that no Member shall take any action to direct the delivery of said Directed Waste and Materials in any manner inconsistent with the terms of this Agreement and Exhibit "B" to this Agreement.~~

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12.2 The Authority shall concurrently notify in writing each Member and the other party to each Member's Franchise Agreement of the date upon which delivery of Directed Waste and Materials to ~~the an~~ Approved Facility is to commence.

12.3 The Authority shall concurrently notify in writing each Member and the other party to each Member's Franchise Agreement of the need to temporarily suspend delivery of Directed Waste and Materials, or portions thereof, to ~~the Approved Facility~~ an Approved Facility or Facilities.

12.4 [OPTIONAL PROVISION] Use of In-County Landfills

(a) The Directed Waste and Materials shall be disposed of at the most cost-effective landfill as determined by the Authority pursuant to evaluation of all relevant factors including, but not limited to, transportation costs, closure and post-closure requirements, costs and liabilities, disposal fees, fees levied by governmental entities and costs of compliance with County ordinances and requirements affecting the disposal of Solid Waste and in-County landfills. If, after consideration of all relevant factors, in-County landfills are demonstrated to be the most cost-effective landfills, then the Authority shall direct delivery of Directed Waste and Materials to such landfills.

(b) Agreements for disposal of Directed Waste and Materials to out-of-County landfills shall include a provision that the Authority may terminate the agreement in its sole discretion at the end of ten (10) years after delivery of Directed Waste and Materials to such landfills. One year prior to the expiration of the 10 year term, the Authority shall re-evaluate whether continued use of the out-of-county landfill is the most cost-effective option pursuant to the analysis set forth in subsection 12.4(a) above. If the results of such evaluation reveal that the total cost of use of the out-of-County landfill(s) is ninety-five percent (95%) or more of the total cost of the use of the in-County landfills, then the in-County landfills shall be afforded the opportunity to match or reduce the total cost of use such landfills.

~~12.4 The Authority shall designate the Approved Facility to receive the remaining Directed Waste and Materials received at the IRRF which is not diverted from disposal by the IRRF, and shall also have the authority to designate the Approved Facility or Facilities to receive Directed Waste and Materials in the event that delivery of Directed Waste and Materials to the IRRF must be permanently discontinued as a result of abandonment of the IRRF.~~

~~12.5 The Authority shall not refuse to direct the delivery of any Directed Waste and Materials collected from within a Member's jurisdiction to the IRRF, provided that if the IRRF is unable to accept all Directed Waste and Materials from all Members, the Authority may direct delivery of a portion of the Directed Waste and Materials collected from within each Member's jurisdiction to other Approved Facility or Facilities.~~

~~12.6 The amount of Directed Waste and Materials directed to other Approved Facility or Facilities by the Authority pursuant to Section 12.5 of this Agreement shall be determined by the Authority and either (i) said amount shall be a fair and equitable portion of the entire amount of Directed Waste and Materials from each Member's jurisdiction or (ii) the Designated Rate during~~

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~~the period of delivery of Directed Waste and Materials to the other Approved Facility or Facilities shall not be increased for any Member as a result of the delivery of any Directed Waste and Materials to such other Facility or Facilities.~~

SECTION 13. Authority Established Rates.

13.1 The Authority shall be solely responsible for the approval of rates for services under the Approved Facility or Facilities, Joint Facilities and Sole Use Facilities ~~established~~ designated pursuant to this Agreement and each Member hereby delegates, assigns and/or otherwise transfers to the Authority any powers that each Member may have with respect to the ~~franchising of,~~ regulation of, approval or establishing of rates or charges for the Approved Facility or Facilities, Joint Facilities or Sole Use Facilities.

13.2 The Authority shall establish or approve rates to be charged at ~~a~~ an Approved Facility or Facilities, including potentially Joint or Sole Use Facilities, established pursuant to this Agreement, in amounts sufficient to provide ~~for the efficient operation of such facilities, to discharge all indebtedness and liabilities relating to the acquisition and construction of such facilities (including, without limitation, any Revenue Bonds issued in connection therewith)~~ the revenues necessary to meet the contractual obligations for use of Approved Facility Joint Facilities or Sole Use Facilities.

13.3 The Authority may from time to time elect to include as an additional amount in the rates established or otherwise approved for the Approved Facility, Joint Facilities or Sole Use Facilities established pursuant to this Agreement ~~all~~ so determined from ~~time to time by the Authority,~~ as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, ~~or to implement the Authority—County Contract,~~ in which case the amounts so included will be paid to the Authority by the operator of the Approved Facility, Joint Facilities or Sole Use Facilities.

~~13.4 The Authority may from time to time elect to require Members to include a sufficient amount in the collection rates established by the Members to cover Authority costs and to require the Cities' Franchised Contractor to pay to the Authority such amounts determined from time to time by the Authority as necessary to provide for all or a portion of the costs for planning and implementation of activities of the Authority, to pay any other costs or financial obligations of the Authority or to implement the Authority—County Contract.~~

~~13.5 The Authority may include in all amounts determined from time to time by the Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, or to implement the Authority—County Contract in addition to rates approved by the Authority for the Approved Facility or Facilities in the Approved Rates.~~

~~13.6~~ 13.4 The Members recognize that (i) Approved Rates will likely be established as a unit charge per unit weight of ~~Acceptable~~ Solid Waste and Materials, ~~and~~ (ii) that each Member ~~is~~ may be required to pass such rates through for collection from ratepayers as a part of the collection rate (e.g. a unit charge per can per month). Accordingly, the Members hereby agree that the Authority

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shall establish a fair and equitable basis for conversion of Approved Rates to a collection rate and that each Member shall include in the collection rates the amount approved by the Authority for collection from ratepayers without reduction, limitation, offset or adjustment of any kind whatsoever. That portion of the Approved Rates that is paid to the Authority is to be used to fund Authority activities that benefit all Members. A Member may elect to fund or provide its share of the costs and obligations of the Authority set forth in Section 13.5, provided such alternative funding method is approved by the Board.

~~13.7~~ 13.5 The Authority shall establish a fair and equitable basis for the conversion ~~required by Section 13.5 of this Agreement by resolution of Authority costs and obligations~~ and shall, not less frequently than every two (2) years, review such conversion and either (i) find that the conversion continues to be fair and equitable; or (ii) revise the conversion so that a fair and equitable conversion is restored.

~~13.8~~ 13.6 The Authority shall evaluate the accuracy of the Authority’s prior conversion of Approved Rates to the unit charge collection rate that is included in the collection rate for each Member’s jurisdiction. The Authority may use a balancing account concept from rate setting period to rate setting period to account for overages and underages. Any Board action to materially modify the current rate setting methodology resulting in the substantial reallocation of costs between Member or reallocating costs to recycling and diversion activities would require a supermajority vote.

~~13.9~~ 13.7 The Authority shall notify each Member and the other party to the Member’s Franchise Agreement of the amount of said ~~Designated Rate~~ Approved Rates and the collection rate corresponding to said Designated ~~Rate~~ Rates.

SECTION 14

~~— Franchise Agreements and Covenants. — 14.1 — Member Franchise Agreements and any covenants provided by Members apart from Franchise Agreements shall contain provisions which materially conform to the provisions set forth in Exhibit B, attached hereto.~~

~~— 14.2 — The Members agree that the provisions of Member Franchise Agreements related in any way to the Approved Facility shall not be amended without the consent of the Authority and any said amendments shall be acceptable to the Authority.~~

~~— 14.3 — The Members agree that the Authority shall be afforded reasonably adequate opportunity to review any amendment to the Franchise Agreement prior to its approval and execution by a Member.~~

~~— 14.4 — The Members agree to require the services identified in the Regional Plan as being provided under a Member’s Franchise Agreement to be performed in accordance with the provisions of the Regional Plan.~~

~~SECTION 15.~~ Apportionment of Penalties.

~~15.1~~ 14.1 Penalties Arising ~~From~~ from Authority Failure.

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(a) Any penalties assessed against the Authority by ~~CIWMB~~CalRecycle, to a maximum of Fifty Thousand Dollars (\$50,000) per day, which are the result of the Authority's failure to either (i) submit an adequate Regional Plan or required element thereof~~;~~ or (ii) make a good faith effort to implement the programs or actions specified in the Regional Plan for implementation by the Authority, shall be paid by the Authority.

(b) Any penalties assessed against a City by ~~CIWMB~~CalRecycle, which are the result of an Authority's failure to either (i) submit an adequate Regional Plan or required element thereof~~;~~ or (ii) implement the programs or actions specified in the Regional Plan for implementation by the Authority, shall be paid by the Authority.

(c) Any penalties paid by the Authority pursuant to Section ~~15.1(a)~~14.1(a) or Section ~~15.1(b)~~14.1(b) of this Agreement shall be apportioned prorata at ~~20~~twenty (20) percent each among the Cities and shall be included in Approved Rates.

(d) The Cities shall only be liable for payment of any penalties assessed against the Authority by ~~CIWMB~~CalRecycle which are not paid by the Authority.

~~15.2~~ 14.2 Penalties ~~arising From~~ Arising from a City's Failure.

(a) Any penalties assessed against the Authority by ~~CIWMB~~CalRecycle, which are the result of a City's failure to implement programs or actions specified in the Regional Plan for implementation by the City shall be paid by the Authority; and

(1) The Authority may recover any amounts, including penalties assessed by ~~the CIWMB~~CalRecycle and the Authority's costs incurred as a result of ~~the CIWMB~~CalRecycle's actions leading to and including the assessment and appeal of said penalties, by imposing a surcharge on the Directed Waste and Materials and all other waste delivered to the Approved Facility from within the jurisdiction of the Cities who have not fully reimbursed the Authority.

(2) In lieu of collection of the penalty by the Authority through the surcharge, described in Section ~~15.2(a)~~14.2(a)(1) above, the City may reimburse the Authority within thirty (30) days of Authority's payment of the penalties, the amount of penalties paid plus the Authority's costs incurred and associated with ~~CIWMB~~CalRecycle actions leading to and including the assessment and appeal of said penalties~~;~~ and

(3) In the event that two or more Cities fail to implement programs or actions specified in the Regional Plan, the failing Cities may reimburse the Authority in proportion to their relative responsibility, pursuant to the terms of Section ~~15.2(a)~~14.2(a)(2) above, or the Authority will collect said costs and penalties through the use of the surcharge described in Section ~~15.2(a)~~14.2(a)(1) above.

(4) Neither the Authority nor a City shall be obligated to pay, nor a City required to reimburse the Authority, if the City has demonstrated to the satisfaction of ~~CIWMB~~CalRecycle to have made a good faith effort to implement the programs and actions specified in the

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Regional Plan~~;~~ and

(b) Any penalties which are assessed directly against a City as a result of the City's failure to either (i) implement the programs or actions specifically identified in the Regional Plan for implementation by the City~~;~~ or (ii) to exercise its prerogatives under Section 11.1 of this Agreement~~;~~ or (iii) to perform its obligations under Section 11.5 of this Agreement, shall be paid by the City and neither the Authority nor any other Member shall be obligated to pay said penalties or any costs associated with the assessment or appeal of said penalties.

(c) In the event that failure of one or more Cities to perform their obligations under this Agreement or to implement programs or actions specified in the Regional Plan for implementation by the City causes the Authority or other Cities to be unable to implement the Regional Plan, the failing City shall pay any penalties assessed against the Authority or other Member(s) by ~~CIWMB~~ CalRecycle as a result of the failure.

(d) In the event ~~that the~~ failure of one or more Cities to perform their obligations under this Agreement or to ~~implementation programs or implement~~ actions ~~specified~~ required of that City (Cities) as set forth in the Regional Plan ~~for implement by the City do not cause the Authority or other Cities to be unable to implement~~ does not affect the Authority's or the non-failing Cities' ability to implement their obligations set forth the Regional Plan, the failing City ~~(Cities)~~ shall not be required to pay any penalties assessed by ~~CIWMB~~ CalRecycle in excess of Ten Thousand Dollars (\$10,000) per day.

(e) Upon notification of any such violation or claim, the City or Cities shall take such prompt, corrective action as is necessary to meet the requirements.

~~15.3~~ 14.3 Nothing in this Section shall preclude one or more Members or the Authority from imposing or establishing additional incentives to meet waste diversion requirements.

14.4 The County shall not have any responsibility for any penalties imposed on the Regional Agency or its Members.

SECTION ~~16~~ 15. Disposition of Assets at Dissolution. Subject to the then~~;~~ applicable requirements of Law (currently Sections 6511 *et seq.* of the California Government Code), upon dissolution of the Authority, the assets of the Authority remaining after payment of or adequate provision for all debts, liabilities and obligations of the Authority shall be divided in accordance with a resolution adopted by a majority of the Board.

SECTION ~~17~~ 16. Withdrawal.

~~(a) Notice Required. A Member may not withdraw from the Authority unless it has provided the Authority a resolution adopted by its governing body setting forth its intent to withdraw at least one hundred and eighty (180) days prior to any Authority consideration of a withdrawal request. Any notice provided pursuant to this Section 17(a) shall coincide with the Authority's rate setting cycle.~~

~~(b) Agreement Required. A Member may not withdraw from the Authority unless it~~

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~~has entered into an agreement with the Authority, approved by a majority of the Directors representing the non-withdrawing Members permitting the Member to withdraw.—~~

16.1 A Member may not withdraw from the Authority unless it has provided the Authority with a resolution adopted by its governing body setting forth its intent to withdraw one hundred eighty (180) days in advance of the proposed withdrawal date to allow time to analyze the impact of the withdrawing Member's lack of participation and to develop its budget for the following fiscal year. A withdrawing Member shall be responsible for any special financial obligations of the Authority incurred on behalf of, or in part on behalf of, the withdrawing Member, which fiscal obligations extend beyond the date of withdrawal. A Member seeking to withdraw with outstanding special financial obligations must provide funding for those obligations or enter into an agreement with the Authority regarding such financial obligations.

~~(c) Distribution of Funds to Withdrawing Member.— 16.2 A Member which has withdrawn from the Authority shall not be liable for the payment of further contributions falling due beyond the ~~Withdrawal Date~~ withdrawal date except as noted above in subsection (a) and shall have no right to reimbursement of any assets or monies ~~previously paid to the Authority.—Any distribution of funds to the withdrawing Member pursuant to such an agreement shall be conditioned upon the Authority's continued ability to fulfill its mission and serve the non-withdrawing Members and the terms of such distribution must be effectuated through adoption of resolution by a supermajority of the Directors representing the non-withdrawing Members.—Any terms included in an agreement adopted pursuant to this subsection shall be included in all subsequent agreements adopted pursuant to this subsection.—~~ of the Authority.~~

16.3 A withdrawing Member may request a partial distribution of remaining assets or funds of the Authority. Any distribution shall be in the discretion of the Board and approved by a supermajority of the Board including the Board Member or Members of the withdrawing agency. The decision to provide any distribution to a withdrawing Member shall be conditioned upon the Board's finding that the funds and assets remaining after the partial distribution are sufficient to provide for the Authority's continued ability to fulfill its mission and serve the non-withdrawing Members. The terms of any such distribution must be effectuated through an agreement executed by the withdrawing Member and the Authority.

~~(d)~~ 16.4 Effect of Withdrawal on Agreement. The withdrawal of a Member shall have no effect on the continuance of this Agreement among the remaining Members and the Agreement shall remain in full force and effect with respect to the remaining Members.

~~(e)~~ 16.5 Implication of Revenue Bonds. If Revenue Bonds are outstanding, no withdrawal shall be effective unless and until the Authority and Members: (i) comply with any then- applicable requirements of Law relating to changes in the composition of entities such as the Authority with debt securities outstanding; and (ii) all the terms and conditions of all Revenue Bonds and related documentation (including without limitation, indentures, resolutions and letter of credit agreements) have been complied with or otherwise satisfied.

~~(f)~~ 16.6 Implication of the Act. If a Member other than the County wishes to withdraw ~~other than the County~~ from the Authority while such Authority is operating as a regional agency,

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the agreement for withdrawal set forth above shall include, but not be limited to, all of the following:

(1) An effective date for the withdrawal of the ~~Member-City~~ (hereinafter “Withdrawal Date”);

(2) A provision providing that the withdrawing City shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit an SRRE, ~~HHWE~~ HHWE, and NDFE to ~~CIWMB~~ CalRecycle for the City’s jurisdiction to ~~CIWMB~~ CalRecycle for approval and that each withdrawing ~~Member-City~~ shall be solely responsible for preparation of its SRRE, HHWE and NDFE;

(3) The Authority shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit a revised Regional Plan which reflects the withdrawal of the City to ~~CIWMB~~ CalRecycle for approval;

(4) The withdrawing City shall pay (i) all costs incurred by Authority in preparing a revised Regional Plan and (ii) all amounts owed to the Authority for penalties assessed against the Authority or the withdrawing City including the Authority’s costs incurred and associated with ~~CIWMB~~ CalRecycle actions leading to and including the assessment of said penalties;

(5) The withdrawing City shall be responsible for compliance with the Act the earlier of: (i) the date of the withdrawing City’s submittal of the documents required by Section 11.3(1)(b) to ~~CIWMB~~ CalRecycle; or (ii) the date of the Authority’s submittal of the revised Regional Plan to ~~CIWMB~~ CalRecycle, or (iii) the Withdrawal Date; and

(6) Notwithstanding the specified Withdrawal Date, withdrawal of a Member from membership in the Authority shall not become effective until all amounts owed to the Authority are paid by the withdrawing Member.

SECTION ~~18~~ 17. Amendments including Termination.

~~18.1~~ 17.1 This Agreement may only be amended by a written instrument approved by a majority of the Directors (including seated Alternate Directors) representing a majority of the Members which then shall be approved by at least five (5) of the six (6) Member’s governing bodies.

~~18.2~~ 17.2 The Agreement may only be terminated or other action leading to dissolution of the Authority may only be effectuated through adoption of a resolution by a supermajority as that term is defined in Section 8.6 of the Board which then shall be approved by a supermajority of the Members’ governing bodies.

~~18.3~~ 17.3 No amendment or termination may occur until the requirements imposed on the Authority and Members by the terms or conditions of all Revenue Bonds and related documentation (including without limitation, indentures, resolutions and letter of credit agreements) have been met or otherwise satisfied.

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~~18.4~~ 17.4 Signatures shall not be required on any such amendment or termination by those Members, if any, whose representatives on the Board did not approve the amendment or termination, but such Members shall nonetheless be bound by the amendment or termination if it was approved as required by this Agreement.

~~18.5~~ 17.5 For termination of this Agreement during any period where the Authority is operating as a Regional Agency, the written instrument required by Section ~~18.2-17.2~~ of this Agreement shall include, but not be limited to, all of the following requirements:

- (1) A date certain that this Agreement will be terminated (hereinafter “Termination Date”);~~;~~
- (2) Each Member shall, not later than one hundred twenty (120) days prior to the Termination Date, prepare and submit an SRRE, HHWE, and NDFE for the Member’s jurisdiction to ~~CIWMB~~ CalRecycle for approval and that each Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;~~;~~
- (3) Each Member, prior to the Termination Date, shall promptly pay, within a reasonable time, all amounts owing to the Authority or ~~CIWMB~~ CalRecycle for penalties assessed by ~~CIWMB~~ CalRecycle, including the Authority’s costs incurred and associated with ~~CIWMB~~ CalRecycle actions leading to and including the assessment of said penalties;~~;~~
- (4) Each Member shall be solely responsible for compliance with the Act the earlier of: (i) the date of submittal of the documents required by Section ~~18.5(a)(2)~~ 17.5(a)(2) to ~~CIWMB~~ CalRecycle; or (ii) the specified Termination Date;~~;~~ and
- (5) The obligations of the Authority terminate on the Termination Date, and each member shall pay all amounts owed to the Authority prior to that date; however, in the event of default by a ~~member agency~~ Member with regard to payment of amounts due, the obligation to pay all sums due to the Authority shall survive and remain in full force after the Termination Date.

~~18.4~~ 17.6 Notwithstanding the foregoing, no amendment, withdrawal or termination shall require any Member to contribute any funds to the Authority or become directly or contingently liable for any debts, liabilities or obligations of the Authority, other than those for which the Member was liable immediately prior to the amendment, withdrawal or termination, without the consent of that Member evidenced in a written instrument signed by a duly authorized representative of that Member.

SECTION ~~19~~ 18. Filing with the Secretary of State. The Secretary shall file all required notices with the Secretary of State in accordance with California Government Code sections 6503.5 and 53051.

SECTION ~~20~~ 19. Notices.

~~20.1~~ 19.1 All notices which any Member or the Authority may wish to give in connection with this Agreement shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Member or Authority, to an officer or person apparently in

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charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to the Member or Authority at its principal office, or to such other address as the Authority or Member may designate from time to time by written notice given in the manner specified in this Section.

~~20.2~~ 19.2 Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery (but ~~24~~ twenty-four (24) hours after such delivery in the case of notices of special meetings of the Board) or two (2) days after mailing if deposited in the United States mail.

~~20.3~~ 19.3 Members agree to provide the Authority with the official notification requirements of the Franchise Agreement for use by the Authority and agree to provide Authority with any changes in said notification requirements.

SECTION ~~21~~ 20. Successors and Assigns.

~~21.1~~ 20.1 This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Members.

~~21.2~~ 20.2 However, no Member shall assign any of its rights under this Agreement except to a duly formed public entity organized and existing under the Laws of the State of California approved by a majority of the Directors who do not represent the assigning Member.

~~21.3~~ 20.3 No assignment shall be effective unless and until the Authority, the Members and the proposed assignee comply with: (i) all then-applicable requirements of Law relating to changes in the composition of entities such as the Authority; and (ii) if and when any Revenue Bonds are outstanding, with the terms and conditions of all Revenue Bonds and related documentation including, without limitation, indentures, resolutions and letter of credit agreements.

SECTION ~~22~~ 21. El Cerrito Recycling ~~Center~~ Services. It is acknowledged by the ~~members~~ Members that the El Cerrito Recycling and Environmental Resource Center was in existence and operating before the formation of the Authority, and this Agreement is not intended to alter the operations of the ~~El Cerrito Recycling~~ Center. Accordingly, the El Cerrito Recycling and Environmental Resource Center shall not be considered a Sole Use Facility or Joint Use Facility for the purposes of this Agreement. The Authority may not direct Recyclable Materials collected as part of El Cerrito Recycling Services except as separately agreed to by the Authority and El Cerrito. In addition, the costs of operating the El Cerrito Recycling Services shall not be included in the calculation of Approved Rates for Directed Waste and Materials collected within El Cerrito.

~~-~~ SECTION ~~23~~ 22. Third Party Beneficiaries.

~~23.1~~ 22.1 The Authority shall be a third party beneficiary of this Agreement entitled to exercise all rights of and benefits accruing to the Authority that are specified in this Agreement.

~~23.2~~ 22.2 Except as provided in accordance with Section 5.3(s), there shall be no other third party beneficiaries of this Agreement.

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SECTION ~~24~~23. Severability. Should any part, term or provision of this Agreement be decided by a final judgment of a court or arbitrator to be illegal or in conflict with any law of the State of California or otherwise be unenforceable or ineffectual, the validity of its remaining parts, terms and provisions shall not be affected.

SECTION ~~25~~24. West Contra Costa Solid Waste Management Authority. Upon execution of this Agreement, the Authority shall be the successor Member to the West Contra Costa Solid Waste Management Authority in all matters affecting the Members or the Authority.

SECTION ~~26~~25. Section Headings. All section headings contained in this Agreement are for convenience and reference. They are not intended to define or limit the scope of any provision of this Agreement.

SECTION ~~27~~26. Arbitration.

~~27.1~~ 26.1 All disputes that arise in connection with the interpretation or performance of this Agreement shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association.

~~27.2~~ 26.2 The arbitrator's decision shall be final and binding on the Authority, all Members and all former Members involved or affected by the dispute.

~~27.3~~ 26.3 The Authority, any Member and any former Member that is party to the dispute may enforce any award, order or judgment of the arbitrator in any court of competent jurisdiction.

CITY OF EL CERRITO

Dated: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT ~~11/16/2016~~ 7/8/17
FOR ~~CIRCULATION PURPOSES ONLY~~ COMMENT

CITY OF HERCULES

Dated: _____

By: _____
Mayor

DRAFT ~~11/16/2016~~ 7/8/17
FOR ~~CIRCULATION PURPOSES ONLY~~ COMMENT

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF PINOLE

Dated: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF RICHMOND

Dated: _____

By: _____
Mayor

ATTEST:

DRAFT ~~11/16/2016~~ 7/8/17
FOR ~~CIRCULATION PURPOSES ONLY~~ COMMENT

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF SAN PABLO

Dated: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

COUNTY OF CONTRA COSTA

Dated: _____

By: _____
Board of Supervisors Chair

ATTEST:

County Clerk

DRAFT ~~11/16/2016~~ 7/8/17
FOR ~~CIRCULATION PURPOSES ONLY~~ COMMENT

APPROVED AS TO FORM:

County Counsel

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DRAFT ~~11/16/2016~~ 7/8/17
FOR ~~CIRCULATION PURPOSES ONLY~~ COMMENT

Exhibit A
Boundaries



Agenda Report

Date: July 8, 2017
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director and Kent Alm, Legal Counsel
Subject: **Special Meeting Item 2 – Decisions and Direction on Joint Exercise of Powers Agreement (JEPA) Prepared for July Workshop and Any Other JEPA-Related Issues**

ACTION REQUESTED

Provide direction to staff on the draft JEPA prepared for the July workshop (July Draft) and any other JEPA-related issues.

BACKGROUND

This agenda report accompanies the previous agenda report (Agenda Item 8.0). The history and background on the JEPA Update process is described in the Agenda Item 8.0 report.

KEY JEPA ISSUES REMAINING

There are ten (10) JEPA Update issues remaining. These ten (10) issues will be discussed at the July 8 Special Board Meeting JEPA Workshop. These issues are:

1. Limit use of some RecycleMore powers and need to obtain Member Agency's Council or Board approval prior to exercising certain powers. (Request by multiple member agencies)
2. Right to withdraw with reasonable notice. (Request by multiple member agencies.)
3. Intermittent disbursement of reserves. (Issue of concern for multiple member agencies)
4. Provide that rate setting methodology may not be changed unless agreed to by all member agencies. (County Request)
5. Clarify County's right to franchise the IRRF. (County Request)

6. Should services provided by RecycleMore be proportional to the financial revenues generated by customers? (Richmond Request)
7. Net revenue from Richmond's industrial businesses should solely benefit Richmond ratepayers. (Richmond Request)
8. Provide for reserve funds to be distributed to withdrawing Members in proportion to contributions that the Member Agency made. (Richmond Request)
9. Additional Voting Representation for Richmond Directors. (Richmond Request)
10. Continuation of RecycleMore's obligation to maximize use of in-county landfills. (County request)

After conducting the July 8 Board JEPA Update Workshop, it is recommended the Board provide direction to staff and Legal Counsel on remaining JEPA issues.

FISCAL IMPACT

Direction to staff on these JEPA items will not have a significant immediate fiscal impact to member agencies or to RecycleMore. Future specific actions related to updating the JEPA may have minor to significant fiscal impacts to RecycleMore and member agencies.

RECOMMENDED ACTION

Provide direction to staff on the draft JEPA prepared for the July workshop (July Draft) and any other JEPA-related issues.

Submitted by:



Stan Hakes
Executive Director

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