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Board of Directors Special Meeting Agenda

July 18, 2019

7:00 p.m.

San Pablo City Hall
City Council Chambers
1 Alvarado Square (13831 San Pablo Avenue)
San Pablo, CA 94806

Americans with Disabilities Act

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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

1. **Conference with Labor Negotiators**

Agency designated representative: Board Chair
Unrepresented employees: Program Managers

2. **Public Employee Performance Evaluation**

Title: Executive Director

3. **Public Employee Appointment**

Title: Executive Director

4. **Report Out of Closed Session:** Provide a report to the Public in open session of reportable action(s) taken by the Board during closed session.



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY



One Alvarado Square
San Pablo, CA 94806

t 510.215.3125
f 510.236.1636

info@recyclemore.com
www.recyclemore.com

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 agenda items.

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:

6.0 June 13, 2019 Authority Board Meeting Minutes

Note: To vote on the adoption of the minutes does not require a Director to have been present at the subject meeting.

6.1 Letter Commending Stan Hakes for RecycleMore Service

Approve and authorize the Board Chair to sign a letter commending Stan Hakes for 4 years of distinguished service as the Executive Director of RecycleMore.

6.2 Time Extension – Amendment to Agreement with Maze and Associates

Approve and authorize the Interim Executive Director to approve an amendment to the existing agreement with Maze and Associates for financial management services, extending the agreement ending date to June 30, 2020.

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 Approve Amended and Restated Joint Exercise of Powers Agreement (JEPA)

Consideration of a motion to:

1. Approve the Amended and Restated Fifth Amendment to the Joint Exercise of Powers Agreement (2019 Updated JEPA) for the West Contra Costa Integrated Waste Management Authority.
2. Authorize the Interim Executive Director to forward the 2019 Updated JEPA to the member agencies city managers for consideration of approval by their city councils.

8.1 Executive Director Recruitment

Direct staff to immediately instruct Avery Associates to resume the active recruitment process for a permanent Executive Director.

8.2 Appointment of Steve Duran as Interim Executive Director

By motion, make findings that RecycleMore has commenced and is actively engaged in the recruitment of a permanent Executive Director and that the vacant position requires specialized skills, and authorize the Board Chair to execute the attached RecycleMore Agreement for Employment of Interim Executive Director between RecycleMore and Steve Duran.

8.3 RecycleMore Staffing and Core Services

1. Receive and file a RecycleMore Staffing and Core Services Report.
2. Provide direction to staff.

8.4 County Financial Obligation for Kensington HHW Services

1. Receive and file report.
2. Provide direction to staff.

8.5 Board Discussion of RecycleMore Staffing

Provide direction to staff on potentially scheduling Board discussion of RecycleMore staffing at a future Board meeting.

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. The next regular Board of Directors' Meeting is scheduled for September 13, 2019.



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

Date: July 18, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: June 13, 2019 Authority Board Meeting Minutes

ACTION REQUESTED

Consideration of ADOPTION OF A MOTION to approve the subject minutes.

Note: To vote on the adoption of the minutes does not require a Director to have been present at the subject meeting.

BACKGROUND

The minutes of the June 13, 2019 Board meeting are attached.

FISCAL IMPACT

None.

RECOMMENDED ACTION

ADOPTION OF A MOTION to approve the subject minutes.

Approved by:

A handwritten signature in blue ink that reads "Stan Hakes".

Stan Hakes
Executive Director

Attachment 1: June 13, 2019 Board Meeting Minutes

WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS MEETING MINUTES – JUNE 13, 2019

Meeting Date | Time 6/13/2019 6:30 PM | Meeting Location San Pablo City Council Chambers, 13831 San Pablo Avenue, San Pablo, CA

Meeting called by Board of Directors

Type of meeting Regular

Authority Staff Present Stan Hakes, Christina Leard, Andy Schneider, Melinda Wong

Legal Counsel John Bakker

Board Members Present:

Directors: G. Lyman (Chair), El Cerrito; D. Romero, Hercules; P. Murray, Pinole; A. Pineda (Vice Chair), San Pablo; T. Butt, Alternate, B. Choi, and J. Myrick, Richmond

Absent: F. Glover (Ex-Officio) Contra Costa County

CALL TO ORDER/ROLL CALL

Chair Lyman called the meeting to order at 6:30 P.M. The Roll Call established the existence of a quorum (Butt (Alternate), Choi, Lyman, Murray, Myrick, Pineda, and Romero). *Directors Butt and Myrick arrived at the start of Closed Session.

CLOSED SESSION

The Board adjourned into Closed Session at 6:31 P.M.

1. Public Employee Appointment

Title: Interim Executive Director

2. Conference with Labor Negotiators

Agency designated representative: Greg Lyman, Board Chair

Unrepresented employee: Interim Executive Director

3. Report Out of Closed Session

The Board returned to open session at 6:39 P.M., and Chair Lyman reported that direction had been given by staff with regards to negotiations.

PLEDGE OF ALLEGIANCE

Chair Lyman led the Pledge of Allegiance.

EX-PARTE COMMUNICATIONS & DISCLOSURE/PUBLIC COMMENT

Chair Lyman called for ex-parte communications. There were none.

Chair Lyman called for public comment. There was none.

CONSENT CALENDAR

Chair Lyman called for approval of the Consent Calendar consisting of six items.

Director Romero requested that Item 6.3 be continued to the next meeting in July. Chair Lyman removed Item 6.5 for discussion.

MOTION by Director Romero to approve Consent Calendar Items 6.0, 6.1, 6.2, and 6.4. **SECOND** by Director Myrick.

MOTION PASSED unanimously.

Consent Agenda Item 6.5 – Resolution Commending Melinda Wong Upon Her Retirement | Presenter Stan Hakes – Executive Director

Chair Lyman had pulled the item to acknowledge Melinda C. Wong's retirement and to present the resolution commending her 22 years of dedicated, distinguished service to the West Contra Costa Integrated Waste Management Authority. He read the resolution, acknowledged that she had kept the RecycleMore organization in operation during a time of diminished staff, extensive challenges and transition and extended his sincere appreciation for her outstanding contributions to RecycleMore and the West Contra Costa community. He presented tokens of the Board's appreciation for her services.

Director Murray also commended Ms. Wong for her years of service, her loyalty, and her pleasing disposition, stated he had the utmost respect for her, recognized her as the mainstay of the organization, and stated she would be missed.

Director Choi stated that Ms. Wong had always raised his spirits and been extremely helpful to him during his tenure as Chair of the Board. He thanked her for all she had done for the organization.

Director Pineda expressed his and the City of San Pablo's appreciation for Ms. Wong's service as a dedicated public servant and for her commitment to the organization, and wished her well on her retirement.

Director Romero added that Ms. Wong had always been a pleasure to work with, and had always been a professional. He invited her to the Hercules City Council meeting on June 25 to receive a proclamation from the City of Hercules in honor of her service.

Director Myrick echoed all the comments offered to Ms. Wong, agreed that she was the mainstay of the organization, and commended her for her calm demeanor and professionalism, wishing her well on her retirement.

Director Butt concurred and recognized that Ms. Wong would be sorely missed by the Board.

Melinda Wong thanked everyone for the kind comments, stated it had been a pleasure to work for the organization, and explained that the credit she was getting was shared by a village of people who had worked for the agency and who as a team had brought the agency to where it was today. She added that she had been proud to be part of the agency and that during her tenure she had worked for five Executive Directors and two Interims.

Executive Director Stan Hakes took this opportunity to thank Ms. Wong for all her work for the agency for the last 22 years and particularly her help during his four years of employment. He recognized her professionalism, institutional knowledge, and high standards, her ability to bring calm to stressful situations, and her help in the hiring of Andy Schneider and Christina Leard who would be staying on with the agency.

MOTION by Director Murray to approve Consent Calendar Item 6.5 adopting Resolution 19-02 commending Melinda C. Wong for more than 22 years of distinguished service to the West Contra Costa Integrated Waste Management Authority. **SECOND** by Director Myrick.

MOTION PASSED unanimously.

STAFF REPORT

Staff Report Item 7.0 – Joint Exercise of Powers Agreement (JEPA) Update

Mr. Hakes reported that Board direction from the May 19, 2019 Board meeting was to prepare an updated draft JEPA document which would include the current Board voting structure of seven voting Directors; three voting Directors from Richmond and one voting Director from each of the other member cities with the county as an ex-officio member; include language to incorporate the seven other Board delegated JEPA issues resolved by the City Managers Group at its August 23, 2018 meeting (which was not widely circulated); and prepare a redline version to compare the new inclusions against the most recently widely circulated draft of the JEPA document, which was a September 15, 2018 version. That document did not include the withdrawal language, which had been a concern. Working with Legal Counsel and Rachael Hundley from Meyers Nave, a new draft JEPA redline document had been completed on June 12 and had been submitted to the City Managers Group with comments to be returned on June 25, and with a final draft updated version to be available by the end of July or early August. It was expected to be submitted to the RecycleMore Board for approval at its July 18 meeting.

In addition, Mr. Hakes advised:

- 1) Typos in the minutes with respect to adjournment for *Leonard McNeil*, and in the agenda would be corrected.
- 2) The mattress recycling program that Republic was running at 101 Pittsburg Ave. had been going well and Republic was now investigating mattress recycling as part of the HHW events in El Sobrante in August, and Richmond in September.
- 3) RecycleMore's HHW Consultant Lorna Thomson had left employment but would be retained for four months at \$1,600 to \$4,000 to help properly file for the used motor oil grant funding and similar items; the agency would be saving \$4,000 a month by not filling the Recycling Coordinator/Admin Assistant position.
- 4) With respect to HHW, Ms. Leard had applied for a used oil direct payment program; staff had been working with the California Product Stewardship Council (CPSC) to promote one pound reusable propane cylinders and several local retailers had agreed to sell and refill reusable one pound propane cylinders; in the process of getting an active one pound propane cylinder collection cage at Kennedy Grove Park; and in cooperation with CPSC would be hosting a propane exchange event on June 22 at the Marina Bay Yacht Harbor in Richmond.

Director Romero requested that Agenda Items 8.0 and 8.4 be continued to the July 18, 2019 Board meeting.

Agenda Item 8.0 – RecycleMore Staffing and Core Services | Presenter Stan Hakes – Executive Director

The item was continued to the July 18, 2019 Board meeting.

Agenda Item 8.1 – Approve Fiscal Year 2019/2020 Budget | Presenter Stan Hakes- Executive Director

Mr. Hakes commented that the staffing and core services, just continued to July, had originally been part of the budget discussion. He presented the staff recommendation to adopt a resolution adopting the Fiscal Year Operating Budget in the amount of \$1,326,958, and advised that there was an alternative option in a smaller amount with one fewer position, and an opportunity for a mix and match option that would require a motion to amend the FY 2018-19 Operating and Recycling Fund Budgets by extending them through July 31, 2019.

It was also recommended to appropriate \$130,000 from the Recycling Fund for Other Post-Employment Benefit (OPEB) Public Employment Retirement System Unfunded Accrued Liability (PERS UAL) Side Fund Investment Consultant, records management plan and implementation, SB 1383 Plan or Technical Assistance and an Organization and Staff Study; authorize staff to create a special fund specifically designated for CalPERS UAL and OPEB liabilities and approve the appropriation of \$350,000 to that fund; and provide direction to staff on preparing a report and potentially a resolution for the July or September meeting to consider actions to address "excess" Recycling Fund reserves.

Mr. Hakes presented the background of the process, and described the options and their differences and the revenue sources. He reported that salaries and benefits were less this year than last due to unfilled positions, an Interim Executive Director, and proposed budget approval for interim funding for the Manager/Administration position. There would be no new employee benefits but a minor cost increase to maintain the current benefits, a cost of living of 3.5 percent less than \$15,000 overall, and some of the new employee positions would be at a lower level than previous, also offering a savings. An informal salary survey had been conducted using similar sized organizations as comparison and reported that RecycleMore's positions were low in terms of salary range.

Mr. Hakes detailed Option A and advised that it would continue current programs and meet state mandates with minimal effect on the monthly residential rates, and while it would be \$75,000 more than Option B, he recommended the adoption of Option A. He also detailed Option B and identified the advantages and disadvantages of each option. Option B was not recommended given that it would create a significant decrease in administrative and public outreach staffing which could lead to a reduction of office hours, create delays in SB 1383 programs, fewer HHW programs, fewer outreach and administrative resources, additional administrative responsibilities, a delay in service levels, and create a destabilizing effect during a time of significant staffing turnover. Savings on residential rates would be minimal. An Option C alternative, or mix and max option, would require the extension of the final date of the 2018/19 Budget to July 31, 2019.

Director Romero expressed concern for the appropriation of \$130,000 from the Recycling Fund for an OPEB/PERS UAL Side Fund Investment Consultant, records management plan and implementation, SB 1383 Plan or Technical Assistance and an Organization and Staffing Study, as well as an appropriation of \$350,000 to take future funding actions to address CalPERS UAL and OPEB liabilities.

In response to Director Romero, Mr. Hakes stated his report included the discussion of how the \$350,000 had been identified after RecycleMore had paid down the pre-2013 PERS UAL. When asked if there was a hiring freeze he noted that there was one vacant position for the Recycling Coordinator/Admin Assistant pending some decisions from the Board, and the same with Ms. Wong's position.

Mr. Hakes also responded to Director Romero as to the \$585,258 he had earlier quoted for staff salaries and reported that would fund two program managers fully funded for one year, an Executive Director for six months, and a Manager of Office Administration and a Recycling Coordinator/Admin Assistant for nine months; five full time positions if Option A was selected.

Director Myrick verified with Mr. Hakes that there was no contingency account. He also clarified the professional services item as opposed to professional and special services with \$60,000 that included activities with respect to AB 939. He verified with Mr. Hakes that was one of the areas that could be reduced. He leaned towards Option C.

Director Butt understood that staff had a four-day work week, and Mr. Hakes clarified the 9/80 arrangement with an average of 37.5 hours a week Monday through Friday, with one week of work from 8:00 A.M. to 5:30 P.M. alternating with weeks of Monday through Thursday from 8:00 A.M. to 5:30 P.M.

Director Butt noted that several other West County cities were also on a four-day work week and that some of the staff worked on Fridays anyway. He also clarified that a comparison with cities that operated on a five-day work week had been taken into consideration in the salary comparisons.

Director Romero requested that any discussion of salary or comp study be considered in Closed Session.

Legal Counsel John Bakker stated it had not been agendized in that form but the Board could discuss salaries and ranges in Closed Session with Labor Negotiators at its July meeting.

Chair Lyman directed staff to schedule a Closed Session for the July 18, 2019 meeting to discuss salary ranges for the Program Manager.

Mr. Hakes responded to Director Choi that Professional Services included a significant increase from what had previously been included given that funds for the Interim Executive Director and Manager of Administration by contract represented \$130,000, with AB 1826 services at \$120,000, with a \$150,000 drop on the salary and benefits side.

Mr. Hakes spoke to the assumption that there would be a reduced level of staffing needs given that some of the resources would be shifted to Republic Services for AB 1826, although he emphasized that not all of the resources would be shifted in that others, including RecycleMore staff, would be involved in the implementation of AB 1826 and SB 1383 requiring the existing level of staffing.

Director Murray characterized Option B as shortsighted, noted the Board had already made that mistake, and did not want to repeat that mistake noting that staff was already at bare minimum. He suggested that additional staff might be required with respect to implementation of AB 1826 and he supported Option A to move the agency forward.

PUBLIC COMMENTS OPENED

MARIA SANDERS, City of El Cerrito, noted that while El Cerrito was a member of RecycleMore, it conducted its own compliance with AB 341 and AB 1826, although with the new direction from CalRecycle and its change of threshold, El Cerrito would have to conduct additional work to meet those thresholds by the CalRecycle deadline. She asked whether El Cerrito had been included in the \$120,000 allocated to Republic Services and stated that El Cerrito would need help to meet those new thresholds.

Mr. Hakes advised that the \$120,000 had been an early estimate from preliminary discussions with Republic Services. While El Cerrito had previously worked independently, he stated this was the first time that El Cerrito had sought help to comply with AB 1826. He referred to a Cascadia proposal for \$74,000 that had not included El Cerrito and noted the desire to support all member agencies. He identified ways that El Cerrito could be accommodated and recommended a minimum allocation of \$100,000 to allow that to occur and to put El Cerrito more on par with the other member agencies.

PETER NUTI, Republic Services, clarified that the Cascadia proposal was to bridge the program gap that the representative cities had gotten from the letter from CalRecycle and bring all member agencies in full compliance with CalRecycle. He stated if El Cerrito needed help with the new threshold it could be included in the next round of compliance follow-up. The initial effort was to get all cities in full compliance with CalRecycle's current standards, with another round to occur soon. He clarified that everyone should be in compliance by November at which time a package for the entire JEPA service area could be considered and include El Cerrito.

Mr. Hakes stated the Cascadia proposal had just come in last week. He suggested budgeting the full \$120,000 just to be safe and include El Cerrito now to avoid having to add to the funding at a later date. There would be opportunities to consider adjustments among the various accounts, if needed.

Director Romero recommended a budget of \$150,000 and in the future use the other services.

Mr. Nuti stated that going forward addressing new legislation they would have to address ongoing monitoring for compliance from the state. He suggested that not only the current budget but the Post-Collection Budget could include compliance monitoring under new legislation. He added that there would be a struggle with SB 1383 with respect to ongoing monitoring requirements from the state.

Andy Schneider clarified that there would be no new change in threshold in January 2020 in that the change had already occurred in January 2019 when the threshold had changed. The work would be from this point forward and this is the first that El Cerrito had indicated a need for assistance. He suggested there were a number of ways to do that moving forward and stated it made sense to budget for follow-up work. He urged being careful with follow-up versus compliance and explained that CalRecycle's immediate push was follow-up to demonstrate effective follow-up on all covered accounts. He suggested that RecycleMore should contract separately with Cascadia for an El Cerrito focus.

Ms. Sanders agreed that a separate scope would be good with Cascadia given the different haulers.

PUBLIC COMMENTS CLOSED

Mr. Hakes clarified for Director Romero that the recommended Operating Fund Budget of \$1,326,958 included salaries and benefits, professional services, general expense, program direct expense and capital outlay, and Items 3 and 6 would take funds from the Recycling Fund Budget.

Director Romero noted his understanding that part of Items 3 and 6 would include funds from the Operating Funds because of employee benefits and he could not support funds from the Recycling Fund when it had been designated for recycling programs for the future and not operational programs. He could support Option A but only reluctantly. He did not support action at this time related to a side fund of \$350,000 for OPEB/PERS UAL; did not want to consider filling vacant positions at this time; did not want to consider merit increases at this time; and while he supported the first staff recommendation to approve a \$1,326,958 budget, he wanted to defer all other discussion pending the selection of an Executive Director.

Director Butt supported Option C and expressed concern for the continued creation of specific funds, one-time expenditures, and special projects, and wanted to focus on the top priorities of implementation and compliance of state laws and the completion of the JEPa update. He recommended that staff be directed through Option C to prepare a balanced budget and suggested that adopting a budget with the use of reserves was not a balanced budget. He suggested areas to address would be to reduce staff costs for contracted services; to reduce professional services for AB 939 to \$10,000; to eliminate the purchase of a vehicle and compensate employees for the use of personal vehicles; to not budget for CalPERS UAL OPEB or invest in a consultant record management plan and implementation, SB 1383 Plan, or engage in a Technical Assistance or an Organization or Staffing Study, which should be considered only after the hiring of a new Executive Director. He also suggested that four permanent positions might be too many and hiring a Civic Sparks Fellow would be a good way to get good work at minimum cost. He wanted to direct staff to prepare a report and resolution for a budget to be considered in July or September and understood that some expenditures had to be approved to carry over until that time.

Director Pineda stated with respect to staffing levels that the new state regulations would require proper staffing and he leaned more towards Option A.

Director Myrick supported Option C and commented that if Option A was approved, he would make adjustments. He agreed that the use of reserves would not create a balanced budget.

Chair Lyman clarified that because the rates were set for January 1 there was a cash flow issue because of a fiscal year budget, and in order to have a balanced budget there would have to be a mid-year rate increase and potentially a rate increase in January. He added that reserves were always used and the question would be whether or not to raise rates in January to replenish those reserves. He stated therefore that the budget could be balanced.

Director Choi expressed concern dipping into the reserves and agreed with the need for a little more certainty and backup to the budget, to be made available to the Board.

Chair Lyman recommended that staff be directed to prepare a budget under Option C, the mix and match option, to defer the Recycling Coordinator/Admin Assistant position for a year; reduce the Professional Services item for AB 939 and other services from \$60,000 to something more like \$10,000 as the target; that Capital Outlay for new vehicle be eliminated, with staff to use personal vehicles with reimbursement for travel, and understood there would have to be a motion to extend the existing budget through July. He added that the \$120,000 to Republic in Professional Services should be reduced to \$80,000 with \$74,000 to Cascadia (Republic) and \$6,000 to El Cerrito (East Bay Sanitary Company).

Director Romero asked that the Professional Services item be \$81,000 instead of \$80,000 (with \$75,000 to Cascadia and \$6,000 to El Cerrito); wanted the vacant position to remain vacant for the year; and that under Capital Outlay there be \$3,000 allocated for reimbursement to RecycleMore staff for personal vehicle use, although Mr. Hakes stated the mileage reimbursement would go elsewhere in the budget. He supported Option C with those comments.

Mr. Schneider reminded the Board that part of the AB 1826 follow-up work included a contract with Recyclist, and while staff had been ready to submit that contract for Board approval, Republic Services had agreed to do a large part of that work and it had been pulled from the agenda, although RecycleMore would no longer have access to Republic's account data which would be required for its oversight over the program and Recyclist would allow controlled access, input opportunity, and accurate reporting to CalRecycle. He recommended the retention of the AB 1826 follow-up budget to at least \$100,000 (\$75,000 to Cascadia, \$6,000 to El Cerrito, and \$20,000 to Recyclist).

Director Romero requested that discussion of AB 1826 follow-up be deferred pending the discussion of Agenda Item 8.3, AB 341 – AB 1826 Progress Update, which had been continued to the next meeting.

MOTION by Director Myrick to extend the current Fiscal Year 2018/19 Budget to September 30, 2019 and consider approval of a new Fiscal Year 2019/2020 Budget at the September meeting with the Interim Director. **SECOND** by Director Butt.

MOTION PASSED unanimously.

Director Hakes clarified with respect to the reserves that when considering the Recycling Fund that had an unaudited balance at the beginning of the year of \$2.1 million and some interest. Approving the items in the staff recommendation and funding the operating shortfall would still leave \$1.3 million with a target of \$662,000, which would be \$600,000 over the target. He stated that cutting the budget with a reserve allowed flexibility to balance

the budget given the excess beyond the target. In addition, a balanced budget would be simple when using post-collection rates with a minimal impact to residents. Given that he would not be available in September, Mr. Hakes recommended that the new Interim Executive Director provide more refinement to the service impacts that could result in that case.

Director Romero commented that the Board had indicated to staff the desire not to use reserves to balance the budget.

Director Murray disagreed that there had been a Board consensus not to use reserves, recognized the excess in reserves in this year's budget, asked when the reserves would next be disbursed, and questioned whether reserves were being artificially disbursed as opposed to providing an appropriately staffed organization.

Agenda Item 8.2 – Award Administrative Services Agreement to Municipal Resource Group LLC | Presenter Stan Hakes- Executive Director

Mr. Hakes pointed out that the functions of the Manager of Office Administration were critical to personnel, financial management, payroll, and purchasing and there would be no employee qualified to do the duties after Ms. Wong's retirement.

MOTION by Director Myrick to approve and authorize the Executive Director to enter into an agreement with Municipal Resource Group LLC (MRG) in an amount not to exceed \$43,000 for administrative services from June 20, 2019 through October 20, 2019. **SECOND** by Director Choi.

MOTION PASSED unanimously.

Agenda Item 8.3 – AB 341 – AB 1826 Progress Update | Presenter Stan Hakes- Executive Director

Mr. Hakes presented the recommendation to receive and file the AB 341-AB 1826 progress report and approve a contract with Republic Services for AB 1826 monitoring and follow-up services not to exceed \$100,000 and provide direction to staff. He noted that RecycleMore, Republic Services, and CalRecycle had held a conference call on May 1 and had discussed the planned transition with compliance monitoring to Republic with oversight by RecycleMore. A later clarification communication from CalRecycle had verified that CalRecycle was pleased with RecycleMore's implementation progress and no new responsibilities were shifting to the cities. An implementation plan had been submitted prior to the May 31, 2019 deadline. He stated that Republic had worked with Cascadia to develop a scope and request a proposal and had allocated \$120,000 as a placeholder, and RecycleMore had discussed with Republic staff the importance of a data management system and the necessity for a third party tracking system.

PETER NUTI, Republic Services, stated with respect to Cascadia that that they had run the second data set which was four cubic yards of total generation, not just trash generation, and Cascadia would merge RecycleMore's tracking spreadsheet previously provided to CalRecycle and merge that spreadsheet with the spreadsheet with the new data set to take into account follow ups already done. Until those files had been merged, the total number of accounts was unknown but could be significantly less than what had originally been given to Cascadia. From a statistical standpoint, the new data for four cubic yards of total generation would take into account four cubic yards of trash, which already had follow-up. Republic would contract with Cascadia first and then provide the two excel spreadsheets and get the total number of accounts, which accounts would be given to RecycleMore staff for a through follow-up and be made compliant or provide an exemption as allowed.

Mr. Nuti added that RecycleMore staff had recommended Recyclist, Republic was looking at the usefulness of Recyclist, which he suggested should be done after the completion of the project. He suggested some sort of tracking program with more robust data attention would be required moving forward, particularly with respect to some of the newer regulations.

In response to Director Myrick, Mr. Nuti stated the program gap that had been identified was for AB 1826 and not AB 341 where all member agencies were compliant. While they were looking at both, the major emphasis was on the organics portion.

Director Murray asked about using Recyclist in order to meet state compliance and Mr. Schneider stated it could be done either way and noted that Recyclist had been developed to maintain compliance with SB 1383 and that type of data tracking software would be needed in the future. Because RecycleMore wasn't fully aware of the discussions with Cascadia, the idea that they could merge the account spreadsheet with that of Republic had not been included in the scope, and should get RecycleMore through the next year of adequate compliance reporting. One of the services Recyclist charged for was the uploading of account data and the merging of compliance lists. He was willing to consider Cascadia which could now do the same type of work as Recyclist.

Mr. Hakes verified that RecycleMore would have an opportunity to look over Cascadia's capability of merging the data and Republic would include RecycleMore in that process and report back.

Chair Lyman also verified that Cascadia's four month project would not prevent RecycleMore from picking up Recyclist at some point in the future and have an opportunity to compare the two, or others, in the future.

In response to Director Romero with respect to the Cascadia contract and who would file the Electronic Annual Report (EAR) with CalRecycle, Mr. Hakes stated the filing of the EAR was RecycleMore's responsibility. The Cascadia proposal was part of CalRecycle's review process of RecycleMore given the program gap, a separate report to be filed on a quarterly basis with CalRecycle and part of that would be reporting on how Cascadia and RecycleMore staff followed up to close the program gap. He stated it was critical to start with Cascadia now and RecycleMore staff would continue to work with Republic and Cascadia as to how to close the program gap.

PUBLIC COMMENT

Mr. Nuti clarified the process with Cascadia and CalRecycle and explained that the data would have to be reviewed by CalRecycle to verify RecycleMore's compliance so that at the end of the process everybody would be on the same page and compliance would be verified.

Mr. Schneider also clarified with respect to the submittal of the EAR to CalRecycle that the EAR would get released on June 15 for the 2018 reporting year and was due on August 1. RecycleMore had the information now to submit the EAR which only ran through December 31, 2018. Last year's EAR had successfully been submitted because it had acquired the account data, which had not occurred the year prior. The components needed for the EAR were the number of covered accounts and the number of non-compliant accounts for each sector for each city, and that information was available. There would be quarterly reporting for the coming year and the EAR for the past year was ready to submit.

Director Romero clarified there was 664 accounts to be verified which included 228 multifamily, commercial, and some unknown number of compliant accounts that would be verified by merging the data files. With no information about Recyclist, he was not prepared to approve any funding at this time.

Chair Lyman stated that no action was needed at this time and more information would be gathered about the data platform by using Sales Force, Microsoft 365, Recyclist or some other firm.

Mr. Hakes advised that action previously taken authorized staff to move ahead to allow Cascadia to do the work up to \$81,000, with \$75,000 to Cascadia working with Republic, and \$6,000 to El Cerrito working with East Bay Sanitary Company.

Agenda Item 8.4 – Executive Director Recruitment Status | Presenter Stan Hakes- Executive Director

The item was continued to the July 18, 2019 Board meeting.

Agenda Item 8.5 – Award Agreement for Post-Collection Rate Setting Services | Presenter Stan Hakes- Executive Director

There were no questions on the item.

MOTION by Director Myrick to approve and authorize the Executive Director to enter into an agreement with R3 Consulting, Inc. in an amount not to exceed \$35,500 for Calendar Year 2020 and 2021 Post-Collection rate setting services and potential contingency projects or consulting work.

SECOND by Director Murray.

MOTION PASSED unanimously.

BOARD MEMBER AND STAFF ANNOUNCEMENTS

Director Murray referred to recycling plastics and asked if commercial enterprises that sold soda were supposed to have recycle facilities to pay back bottle deposits. He asked where the money collected for bottle deposits went.

Mr. Hakes stated the bottle program was a state run program that was not administered by RecycleMore, and the retail outlets could either do it themselves, contract it out, or pay a penalty, and they chose to pay a penalty.

Director Myrick announced the Richmond Juneteenth festival and parade on June 15 from Booker T. Anderson Park on Carlson to Nicholl Park.

ADJOURNMENT

With consensus of the Board, Chair Lyman adjourned the meeting at 9:23 P.M. until the next Special Board meeting scheduled for July 18, 2019.

I hereby certify the foregoing to be a true and correct statement of the Official Minutes of the West Contra Costa Integrated Waste Management Authority Board meeting held June 13, 2019.

Board Secretary

Date



Agenda Report

Date: June 13, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Greg Lyman, Board Chair
Subject: Letter Commending Stan Hakes for RecycleMore Service

ACTION REQUESTED

Consideration of a motion to approve and authorize the Board Chair to sign a letter commending Stan Hakes for 4 years of distinguished service as the Executive Director of RecycleMore.

BACKGROUND

Stan Hakes has been the RecycleMore Executive Director during the past four (4) years. RecycleMore has accomplished many achievements during the past four years, including:

1. Opening the El Cerrito HHW Facility
2. Additional day of service at the Richmond HHW Facility
3. HHW Collection Day events
4. Completion of proposed updated Joint Exercise of Powers Agreement (JEPA)
5. Hiring and Training New Staff
6. Completion of a Waste Tonnage Audit
7. Settlement with Republic for Disposal of Organics (Cooperative Agreement)
8. Managed Process to Change Fiscal Agent - From Hercules to San Pablo
9. Completion of HHW Side Agreement
10. Two Disbursements of Surplus Reserves
11. Adoption of a Reserves Policy
12. Payment to CalPERS to Reduce RecycleMore Retirement Liability

Executive Director Hakes has also completed numerous other annual projects and managed RecycleMore day to day operations in an exemplary manner. As the Chair, I recommend the Board authorize me to complete and sign a letter of commendation to Mr. Hakes.

FISCAL IMPACT

There is no fiscal impact to this action.

RECOMMENDED ACTION

Consideration of a motion to approve and authorize the Board Chair to sign a letter commending Stan Hakes for 4 years of distinguished service as the Executive Director of RecycleMore.

Approved by:

Greg Lyman
Board Chair



Agenda Report

Date: July 18, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: Time Extension - Amendment to Agreement with Maze and Associates for Financial Services

ACTION REQUESTED

Consideration of a motion to approve and authorize the Interim Executive Director to approve an amendment to the existing agreement with Maze and Associates for financial management services, extending the agreement ending date to June 30, 2020.

BACKGROUND

Rather than using an employee to manage accounting and financial management functions, RecycleMore has contracted with a well-qualified professional accountant or an accounting/financial services company to provide RecycleMore with accounting and financial management services. At the October 20, 2016 Board meeting, the Board approved a short term agreement (from November 1, 2016 to March 30, 2017) with Maze and Associates to provide professional accounting and financial management services.

At the March 9, 2017 Board meeting, the Board approved a two year and three month agreement (from April 1, 2017 through June 30, 2019) in an amount not to exceed \$ 147,585 with Maze and Associates for accounting and financial management services. Maze was selected through a competitive RFP process. A copy of the agreement with Maze and Associates is included with this report as Attachment 1.

The Maze agreement was organized to separate costs into two service categories. The first was on-going services, such as managing general ledger and sub ledgers, posting receipts and reconciling accounts receivable, posting accounts payable coding classifications, reconciling bank accounts, preparing reports on monthly budget vs. actual expenses, preparing financial and administrative documents as requested by Authority's risk management contractor and similar miscellaneous accounting and financial duties. The second category was annual one-time project services, such as managing the annual audit process, preparing and submitting the State Controller's Report and managing the annual budget preparation process.

In November 2017, the City of Hercules ended their financial services agreement with the Authority. The City of San Pablo took over financial record keeping and Controller-Treasurer duties from Hercules. A few months later, San Pablo took over on-going services (which were previously provided by Maze and Associates), such as managing general ledger and sub ledgers, posting receipts and reconciling accounts

Agenda Item No. 6.2

receivable, posting accounts payable coding classifications, reconciling bank accounts, preparing reports on monthly budget vs. actual expenses, preparing financial and administrative documents as requested by Authority's risk management contractor and similar miscellaneous accounting and financial duties. Annual one-time project services continued to be provided by Maze. Examples include managing the annual audit process, preparing and submitting the State Controller's Report and managing the annual budget preparation process.

Maze is now financial auditor for City of San Pablo, and San Pablo recommends Maze and Associates be the Authority financial auditor also. There are a number of benefits to using the same financial audit as San Pablo, including likely costs savings.

Due to financial and accounting ethics standards, Maze staff can no longer manage the annual audit process. However, Maze can continue to provide other one time annual services such as preparing and submitting the State Controller's Report and managing the annual budget preparation process. These are services San Pablo is not able to provide, and there is no financial staff for Authority employees to provide these services at this time.

The agreement with Maze expired on June 30, 2019, and only about \$115,600 of the \$147,585 limit in the agreement has been expended. Staff recommends a one-year time extension of the agreement, to provide the Interim Executive Director and new Executive Director (to be hired in 2020) with resources to help prepare the FY 2020-2021 Budget, State Controller's reports and other special financial projects.

FISCAL IMPACT

It is estimated the special financial services provided by Maze and Associates under the proposed time extension would cost less than \$10,000. The proposed FY 2019-20 Budget includes more than \$400,000 in Professional Services. Funds for this kind of special financial projects are not included in the proposed FY 2019-20 Budget. It may be possible for staff to find savings to address not funding for these services, or a budget adjustment later in the Fiscal Year could be considered.

RECOMMENDED ACTION

Consideration of a motion to approve and authorize the Interim Executive Director to approve an amendment to the existing agreement with Maze and Associates for financial management services, extending the agreement ending date to June 30, 2020.

Approved by:



Stan Hakes
Executive Director

Attachment 1: Draft Amendment to Agreement with Maze and Associates

**AMENDMENT No. 2
to
AGREEMENT FOR SERVICES
BETWEEN THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY
(RECYCLEMORE) AND
MAZE AND ASSOCIATES (CONSULTANT)**

This Amendment No. 2 (Amendment) is made by and between the West Contra Costa Integrated Waste Management Authority (RecycleMore) and Maze and Associates (Consultant) (together referred to as the Parties), as of July 18, 2019.

RECITALS

WHEREAS, the Agreement for Services (Agreement) dated March 9, 2017 between Consultant and RecycleMore for accounting and financial management services was in a total amount not to exceed \$147,585 through June 30, 2019; and

WHEREAS, the Agreement originally contracted for Consultant's accounting and financial management services, plus preparation of annual State Controller's reports and annual budget preparation duties; and

WHEREAS, on June 8, 2017 RecycleMore Board of Directors passed a motion approving Amendment # 1 to the Agreement to approve funding in the amount of \$5,340 for PERS and OPEB Liability Consulting Services, thus increasing the not-to-exceed cost of the Agreement to \$152,925; and

WHEREAS, the Agreement between RecycleMore and Consultant was not fully expended, but expired on June 30, 2019;

WHEREAS, RecycleMore and Consultant wish to continue the Agreement for an additional year, with the new term ending on June 30, 2020; and

WHEREAS, on July 18 2019 RecycleMore Board of Directors passed a motion approving Amendment # 12 to the Agreement to a new term ending on June 30, 2020.

The Parties therefore agree as follows:

AGREEMENT

Section 1 General Provisions

The foregoing Recitals are true and correct and incorporated herein by reference.

Section 2 Term of Agreement; Amendment of Section 5

Section 5 of the Agreement is amended to read as follows:

Unless otherwise agreed to in writing, the term of this Agreement shall be from April 1, 2017 through June 30, 2020.

Section 3 Effect of this Amendment

Except as the Agreement has been expressly modified by this Amendment, the Agreement shall continue in full force and effect according to its terms.

Section 4 Counterparts

This Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Amendment Number 2 to the Agreement as of the Effective Date.

RECYCLEMORE

CONSULTANT

Signature _____

Signature _____

Name Stan Hakes

Name _____

Title Executive Director

Title _____

Date _____

Date _____



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

Date: July 18, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: Approve Amended and Restated Joint Exercise of Powers Agreement (JEPA)

ACTIONS REQUESTED

Consideration of a motion to:

1. Approve the Amended and Restated Fifth Amendment to the Joint Exercise of Powers Agreement (2019 Updated JEPA) for the West Contra Costa Integrated Waste Management Authority.
2. Authorize the Interim Executive Director to forward the JEPA to the member agencies' city managers requesting approval by their city councils.

BACKGROUND

The RecycleMore Board has been engaged in the process of updating the West Contra Costa Integrated Waste Management Authority (Authority) Joint Exercise of Powers Agreement (JEPA) since early 2016. At the May 9, 2019 Board meeting, the Board directed staff and Legal Counsel to prepare an updated draft JEPA document. The updates directed by the Board were described in the June 13, 2019 Board meeting JEPA Report (Attachment 1 - Agenda Report 7.0). The Board also directed Legal Counsel to distribute the updated draft JEPA document to the City Managers and City Attorneys for their review and final comments. Legal Counsel completed a draft JEPA document on June 12, 2019, which was forwarded to the City Managers also on June 12. The deadline date for comments by the City Managers was June 25, 2019.

The City Managers met on June 24, 2019 to discuss the June 12, 2019 draft JEPA document. The Executive Director also participated in the meeting. The City Managers provide comments at this meeting, which were summarized in writing; the summary was reviewed and approved by the City Managers.

Legal Counsel produced a new draft JEPA document (May-June 2019 JEPA Draft) which was forwarded to the Board and member agencies City Attorneys on June 28, 2019. The City Attorneys were asked to provide comments by July 8, 2019 on the May-June 2019 JEPA draft. The May-June 2019 JEPA draft was also forwarded to the City Managers and regional staff, as information, on July 2, 2019. The deadline for City Attorney's comments was later changed to July 9, at the request of some of the City Attorneys.

The San Pablo City Attorney provided JEPA comments on July 8, 2019. The Richmond City Attorney's Office provided JEPA comments on July 9, 2019. No other City Attorney comments were received by the deadline.

The comments received by the San Pablo City Attorney and Richmond City Attorney's Office were constructive comments. The comments have been reviewed and addressed by Authority Legal Counsel, and most of their comments have been incorporated into the recommended final JEPA document (see

Attachment 4). One comment from San Pablo was not incorporated because it is a policy issue that should be considered by the Board of Directors. Section 8.5 specifies that a majority of the total membership is a quorum of the Board (4 directors at present). San Pablo suggested that a quorum require a majority of the total membership of the Board and a majority of the Members (4 directors representing 3 members).

The recommended final JEPA document (Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement) is included with this report as Attachment 3.

SUMMARY OF MAJOR JEPA UPDATES SINCE MAY 2019 BOARD MEETING

The Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement includes updates based on: 1) Board direction at the May 9, 2019 Authority Board meeting; 2) Requested revisions listed in the August 23, 2018 City Managers' summary; 3) Clarifying changes prepared by Legal Counsel; 4) Updates and revisions based on City Managers' input to the Executive Director at the City Managers' June 24, 2019 JEPA meeting; 5) Updates and revisions based on City Attorneys' input to Legal Counsel. The key details from the category of updates are described below.

1) The Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement reflects the following Board direction at the May 9, 2019 Authority Board meeting:

- Include the current Board voting structure (§7.2[a])
- Include the seven JEPA issues resolved by the city managers group on August 23, 2018, which would include the unanimous votes for the issues previously identified (see the next section on City Managers' summary)
- Incorporate changes to the withdrawal language agreed to by the city managers (§15)
- Incorporate notes on financial obligations (§3.2)
- Include the change to the language with the elimination of the conflicting language identified by Contra Costa County (also in §3.2)
- San Pablo to be identified as the administrative city (§5.6)

2) The Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement also reflects all of the requested revisions listed in the August 23, 2018 City Managers' summary (this was also directed by the Board at the May 9, 2019 Board meeting). These revisions include the following:

1. Update and clarification of procedure for withdrawal and calculation of payment(s) due and/or owed (§15)
2. Confirmation of voting thresholds for future amendments to JEPA (§16.1)
3. (a) Confirmation of Authority's power to acquire, construct, etc. a new facility (§5.4[b]) and to finance with bonds (also requested by Regional Staff) (§5.4[c]); confirmation that Authority does not have the power of eminent domain (§5.4[b][5])
(b) Clarification of procedure to create and "opt-in" for use and financial liability of new facility (§5.4[b])
4. Confirmation of unanimous voting threshold for levy of "pass-through" fees (§§5.3[l],[m], 12.4)
5. Clarification of penalty allocation based on solid waste tonnage (§13.1[c])
6. Details added to calculation of proportional share of costs based on Post Collection Agreement (§12.4)

7. Confirmation that member agency is still financially liable for board actions where member's representative did not vote for action (§3.2)
8. Confirmation that the City of San Pablo is Government Code section 6509 designee (§5.6)

3) The Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement includes a number of clarifying changes made by Legal Counsel. These clarifying changes were reviewed and accepted by the City Managers at their June 24 meeting. These changes are described in detail in Attachment 3 to this report.

4) In addition to the above, the Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement updated draft includes updates and revisions based on City Managers' input to the Executive Director at the City Managers' June 24, 2019 JEPa meeting:

- The title page has been revised to note this JEPa document will be the Fifth Amendment and Restatement of the JEPa.
- The word "concern" (as part of the term business concern) has been changed to "activity." (§1.20)

Section 1.26 ends with the sentence *"Post Collection Agreement as used herein shall also refer to any subsequent agreement between the Authority and a solid waste enterprise or enterprises for post collection services as approved by Members."* Similar language was included at the end of Section 1.27. (§1.27)

- The words *"to maintain the Regional Agency in order to..."* have been removed. (§2-paragraph ii)
- A sentence has been updated by including the word "to": *"Submit comments on the proposed legislation to the lead agency creating the legislation."* (§2.1-paragraph k-3)
- A sentence has been revised to say: *"Both the Board and the governing body of the jurisdiction in which the Facility would be located (the "Host") must approve the Facility prior to its construction or acquisition."* (§5.4-b4) The City Managers felt this would address the case of a facility being proposed to be located in a County unincorporated area, or proposed to be located within the boundaries of a former member agency which has withdrawn from the Authority.
- Section 5.5 included language that allowed the Authority to exercise "additional powers" in order to provide additional services by contract for member agencies requesting such services. Legal counsel recommended removing this language, as it would be a legally unworkable concept. The City Managers agreed. However, it was the intent of the City Managers to include JEPa language that would allow for an individual member agency (or two or more member agencies) to contract with the Authority for additional services beyond the core services. This language has been added. (§5.5)
- Disposition of Assets upon Dissolution language was drafted to provide for Authority assets, liabilities and debt to be divided in accordance with a Resolution adopted by a majority of the Board. Per the City Managers recommendation, this language has been updated to require the

Resolution be adopted by a unanimous vote of the Board (§14). The City Managers felt this provision should be consistent with other financial provisions in the JEPA.

- Section 16.3 was deleted. The language comes from the current JEPA document (adopted in 1995). The proposed new updated JEPA including requirement of a unanimous vote of the member agencies' governing bodies for a JEPA amendment or termination would seem to make this Section unnecessary. (§16.3)

The City Managers further recommended the Board further consider this one major policy issue, which is discussed in the next section of this report.

5) Finally, the Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement includes updates and revisions based on City Attorney's recent input (July 2019) to Legal Counsel. These changes are described in detail in Attachment 4 to this report.

RECENT MAJOR JEPA POLICY ISSUES

Policy Issue 1: At the City Managers' June 24, 2019 JEPA meeting. The City Managers recommended the Board further consider this one major policy issue:

In the recent past, proposed JEPA language required a unanimous vote of the Board for any Board action to materially modify the current rate setting methodology resulting in a reallocation of 5% or more of the cost. The City Managers recommended that any change to the rate setting methodology, no matter how small, would require a unanimous vote of the Board (§12.5). Legal counsel has incorporated the City managers recommended language into the final JEPA document (Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement). Board consideration of this important policy issue is recommended.

Policy Issue 2: The final JEPA document (Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement) includes language to define a quorum of as requiring "the presence of Directors that represent a majority of the total membership of the Board"... (§8.5). Under current conditions, 4 of the 7 Board members would constitute a quorum. The San Pablo City Attorney recommends the Board consider a further condition that a quorum also would require a majority of the Members (in other words 3 of the five jurisdictions at this time).

The San Pablo City Attorney's comment may be a good idea, but it has not previously been reviewed and considered by the Board, City Managers, staff and Legal counsel. It is a brand new idea. As such, Legal Counsel has not included this language in the Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement). It is recommended the Board provide direction to staff and Legal Counsel on this issue.

FISCAL IMPACT

The JEPA document itself should not create any major fiscal impacts at this time. It is hoped the focus on core services, with fewer Board meeting and fewer committee meetings, will lead reduced administrative costs and a more efficient and effective organization.

RECOMMENDED ACTION

1. Approve the Amended and Restated Fifth Amendment to the Joint Exercise of Powers Agreement (2019 Updated JEP A) for the West Contra Costa Integrated Waste Management Authority.
2. Authorize the Interim Executive Director to forward the JEP A to the member agencies city managers requesting approval by their city councils.

Submitted by:



Stan Hakes
Executive Director

Attachment 1: Board June 13, 2019 Agenda Item 7.0 (JEP A Update Report)

Attachment 2: Final Recommended JEP A Document (Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement).

Attachment 3: Redline Version of Final JEP A Document- Comparing Final Version to September 25 2018 JEP A Draft

Attachment 4: Summary of Recent JEP A Clarifying Changes Made by Authority Legal Counsel

Attachment 5: Legal Counsel Memorandum- Revisions to JEP A Based on City Attorneys' Comments



Agenda Report

Agenda Item 7.0

Date: June 13, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: Joint Exercise of Powers Agreement (JEPA) Update

ACTIONS REQUESTED

Receive and file Joint Exercise of Powers Agreement (JEPA) update report.

BACKGROUND

The RecycleMore Board has been engaged in the process of updating the West Contra Costa Integrated Waste Management Authority (RecycleMore) Joint Exercise of Powers Agreement (JEPA) since early 2016. At the May 9, 2019 Board meeting, the Board directed staff and Legal Counsel to prepare an updated draft JEPA document with the title May-June 2019 JEPA Update. The May-June 2019 JEPA Update would:

1. Include the current Board voting structure of 7 voting Board members—three (3) voting Board members from Richmond and one voting Board member from each of the other member cities (El Cerrito, Hercules, Pinole, and San Pablo).
2. Include language to incorporate the seven (7) other Board delegated JEPA issues resolved by the City Managers Group at their August 23, 2018 meeting.
3. Be prepared as a redline version, with the May-June 2019 JEPA document being compared to the most recent widely circulated draft JEPA document. (At the time, the Board suggested the August 2018 JEPA version).

The Board also directed Legal counsel to distribute the draft May-June 2019 JEPA Update by June to the City Managers Group and member agencies city attorneys for their review and comments. It was the Board's intention that Legal Counsel would finalize the May-June 2019 JEPA Update for Board consideration at the July 18, 2019 Board meeting.

As of June 6, 2019 (the date the Board Agenda packet was printed), Legal Counsel and staff were still working on completing a draft May-June 2019 redline JEPA document. It is anticipated the draft May-June 2019 JEPA document will be completed and distributed to the City Managers on June 11 or 12, 2019. If there is any further update on the JEPA, Legal Counsel could provide further information to the Board at the June 9 Board meeting.

FISCAL IMPACT

There are no fiscal impacts at this time. Depending on future actions by the Board, updates to the JEPA may have minor to significant fiscal impacts to the RecycleMore organization.

RECOMMENDED ACTION

Receive and file Joint Exercise of Powers Agreement (JEPA) update report.

Submitted by:

Stan Hakes
Executive Director

Agenda Item 8.0 – Attachment 2
RECOMMENDED AMENDED AND RESTATED JEPA

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

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Agenda Item 8.0 – Attachment 2
RECOMMENDED AMENDED AND RESTATED JEPA

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RECOMMENDED AMENDED AND RESTATED JEPA

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RECOMMENDED AMENDED AND RESTATED JEP A

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RECOMMENDED AMENDED AND RESTATED JEPA

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT OF THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is entered into as of _____, 2019, and is by and among the CITY OF EL CERRITO (“El Cerrito”), a municipal corporation and charter city, the CITY OF HERCULES, a municipal corporation, the CITY OF PINOLE, a municipal corporation, the CITY OF RICHMOND, a municipal corporation and charter city, and the CITY OF SAN PABLO, a municipal corporation hereinafter referred to individually as “Member” and collectively as “Members.” This Agreement amends and restates the Joint Powers 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 (together, the “Original Agreement”), and restates in full the provisions of the Original 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 at California Public Resources Code section 40000 *et seq.* (“Act”) mandating that

Agenda Item 8.0 – Attachment 2
RECOMMENDED AMENDED AND RESTATED JEPA

municipalities divert material from landfills and promulgating regulations promoting material reuse and recycling.

C. Pursuant to this authority, the Members entered into the Original Agreement to establish and confer upon a separate legal entity the powers necessary to: (i) form a Regional Agency to report as a single entity the annual regional compliance with the Act's reporting requirements; (ii) implement regional waste reduction and recycling diversion programs; (iii) to increase the diversion of waste from disposal facilities; and (iv) develop an integrated resource recovery facility ("IRRF") to achieve the Members' waste diversion goals, to comply with the Act, and to arrange for processing of and disposal of remaining waste.

D. The County and the Authority entered into a contract on May 25, 1993 ("Authority-County Contract") in order to facilitate development of an integrated resource recovery facility ("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.

F. 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

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particular Member, the Members commit to make a good faith effort to provide Richmond with funding, materials and services commensurate with its contribution to the Authority’s budget.

G. Prior to 2014, the iterations of the Original Agreement addressed IRRF bonds and development including the contract with West County Resource Recovery Inc. for IRRF operation and administration. The Authority’s involvement with these activities has now concluded. Nonetheless, the Authority continues to operate as a Regional Agency and to manage the post-collection processing and disposal activities of the Members. This Agreement 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.

H. The Members further intend that this Agreement reflect the changes that have occurred since the execution of the Third Amendment Restatement in 1995, 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. “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, and the subsequent legislation and regulations provided for in Division 30 of the Public Resources Code *et seq.*, as amended from time to time.

1.2. Agreement. “Agreement” means this Joint Exercise of Powers Agreement, as it may be amended from time to time, including the Fifth Amendment to and Restatement of the

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West Contra Costa Integrated Waste Management Authority Joint Exercise of Powers Agreement.

1.3. Alternate Director. “Alternate Director” means the person(s) appointed by each Member who is authorized to represent the Member at a Board meeting in the absence of the Member’s Director.

1.4. Approved Facilities. “Approved Facilities” 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.

1.5. Approved Rates. “Approved Rates” means the rates or charges authorized by the Authority from time to time to be paid at the Approved Facilities for Directed Waste and Materials received at the Approved Facility to pay for operational costs and other obligations of the Authority.

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

1.8. City. “City” means any Member that is a city; “Cities” means all Members that are cities.

1.9. Contractor. “Contractor” means “Contractor” as defined in the PCA or the PCAs as the context may require.

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1.10. Core Services. “Core Services” means any service, program or project the Authority is expected to perform through the termination of the current Post Collection Agreement and potentially thereafter listed in Section 2 herein.

1.11. County. “County” means Contra Costa County, California.

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

1.13. Director. “Director” means the elected person that is appointed by a Member to represent that Member on the Board. For the purposes of voting and quorum, the term “Director” 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.

1.14. El Cerrito Recycling Services. “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.

1.15. Executive Director. “Executive Director” means the person hired or 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 or his or her designee.

1.16. Facility. “Facility” means a facility or facilities for the transfer, processing, diversion or removal of portions of Solid Waste prior to disposal, owned either by one or more of the Members directly or by a private entity.

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

1.18. Franchise Agreement. “Franchise Agreement” means an agreement between a Member and a third party that provides for the collection of Solid Waste, and related services, or if additional specific authorization is provided to the Authority for a particular Member’s solid waste collection activities, an agreement between the Authority and a third party that provides for collection of Solid Waste and related services.

1.19. Hazardous Materials or Hazardous Waste. “Hazardous Materials” or “Hazardous Waste” means materials that, by reason of their 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, or:

(a) “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;

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(b) 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);

(c) 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 Hazardous Substances Account Act, California Health & Safety Code section 25300, *et seq.*;

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

(e) 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; or

(f) 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.

1.20. Household Hazardous Waste (HHW). “Household Hazardous Waste” or “HHW” means Hazardous Waste generated incidental to owning or maintaining a place of residence. HHW does not include waste generated in the course of operating a business activity at a residence.

1.21. Law. “Law” means the Joint Exercise of Powers Act, Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government

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Code sections 6500, *et seq.*) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

1.22. Member. “Member” means any of the Member agency signatories to this Agreement and “Members” means all of the Member agency signatories to this Agreement.

1.23. MRF. “MRF” means a materials 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.

1.24. Non-Core Service. “Non-Core Service” means any service, program or project which is not listed as Core Services and not included in Section 2 herein.

1.25. Non-Disposal Facility Element (NDFE) “Non-Disposal Facility Element” or “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.

1.26. Post Collection Agreement (PCA). “Post Collection Agreement” or “PCA” 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. Post Collection Agreement as used herein shall also refer to any subsequent agreements between the Authority and a solid waste enterprise or enterprises for post collection services as approved by Members.

1.27. Post Collection Agreements (PCAs). “Post Collection Agreements” or “PCAs” means, collectively, (a) the Post Collection Agreement and (b) the agreement between the City of El Cerrito and West County Resources Recovery, Inc., West Contra Costa Sanitary Landfill, Inc.,

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Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. and Keller Canyon Landfill Company for post collection recycling and disposal services effective January 1, 2014 or any successor agreement between El Cerrito and a solid waste enterprise or enterprises for post collection services.

1.28. Recyclable Materials. “Recyclable Materials” means materials that can be reused, or remanufactured or processed for one or more forms of reuse.

1.29. Solid Waste. “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, low-level radioactive waste, or medical waste.

1.30. Source Reduction and Recycling Element (SRRE). “Source Reduction and Recycling Element” or “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 maintaining an existing Regional Agency to collectively regulate post-collection services and combine disposal and diversion of Solid Waste for determining compliance with the Act and (i) plan, study, recommend and have the authority to implement proper solid waste management activities and programs consistent with the Act, (ii) to enable it to report and track programs

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under the Act on a regional basis, (iii) address future diversion mandates, to allow for efficient operation of diversion programs on a region-wide basis, and (iv) 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 Facilities and the Authority may undertake such activities subject to authorization by the Members' legislative bodies as set forth herein.

2.1. Core Services. Although the Authority may undertake additional Non-Core Service activities subject to unanimous vote of the Board as set forth herein, the Members desire to identify the following Core Services the Authority is expected to perform through the termination of the current Post Collection Agreement, and potentially thereafter:

(a) Ensure that the Post Collection Agreement (“PCA”) terms are being met by the Contractor as that term is defined in the PCA, including, but not limited to:

(1) Track and confirm expected diversion rates at the approved organic materials, dry materials, construction and demolition, and recyclable materials processing facilities;

(2) Track and confirm contracted level of service at the transfer station and other post-collection facilities and by the household hazardous waste program;

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- (3) Track and confirm expected level of service for education and outreach services for schools, including West Contra Costa Unified School District (“WCCUSD”), in the Authority’s service area;
- (4) Track and confirm compliance with applicable law, permits, Facility requirements and best management practices, including proper records management, provision of insurance and similar requirements; and
- (5) Track and confirm all recycling and diversion programs performed by Contractor pursuant to the PCA.
 - (b) Validate post collection rates to ensure accuracy, reasonableness and consistency with the methodology formula described in Exhibit B.
 - (c) Validate the accuracy of information stated in quarterly, annual, and other reports submitted by the Contractor to the Authority.
 - (d) Seek to reduce costs to Members in future post collection solid waste activities and agreements.
 - (e) Seek to increase the benefits to Members in future post collection solid waste activities and agreements.
 - (f) Negotiate the lowest possible rates for Members and customers.
 - (g) Monitor and coordinate compliance with the Act, Assembly Bill 1826 (2014), Assembly Bill 341 (2011), Senate Bill 1383 (2016), and other State solid waste related legislation and regulatory requirements
- (1) Collect and submit information from Members to update Electronic Annual Report (EAR) and update and upload other required reports;

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- (2) Report annual waste and diversion tonnages to the Board and Members;
 - (3) Maintain and update regional SRRE, NDFE and Household Hazardous Waste Element (HHWE);
 - (4) Coordinate and assist WCCUSD Source Reduction and Recycling Compliance; and
 - (5) Coordinate with CalRecycle staff to schedule on-site Member meetings.
- (h) Operate Household Hazardous Waste Programs (“HHWP”), including the following:
- (1) Act as the HHWP public agency permittee;
 - (2) Determine desired level of service after consultation with Members and communicate desired levels to all HHWP contractors;
 - (3) Manage HHW budget and monitor Contractor’s HHW costs for consistency with the approved budget;
 - (4) Manage contract for HHW Facility and any satellite or mobile events;
 - (5) Confirm and report that expected levels of service are being maintained;
 - (6) Monitor Contractor’s compliance with applicable law, permits and best management practices, including proper reporting, records management and retention, provision of insurance and similar requirements;

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(7) Operate a motor oil recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events; and

(8) Implement and oversee a pharmaceutical collection and disposal program and battery recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events.

(i) Administration and oversight of day to day Authority operations including providing support services to the Board as well as providing human resources, information technology and financial services to the Authority and its staff.

(j) Conduct public outreach and education within existing budgeted funding and staffing levels beyond existing Contractor efforts including:

(1) Outreach and education regarding HHW, pharmaceutical collection and disposal program, and battery recycling program; and

(2) Multi-family and commercial recycling and organics outreach and education ensuring that El Cerrito shall equally benefit from such Authority efforts.

(k) Monitor and analyze relevant legislation within existing budgeted funding and staffing levels including:

(1) Provide timely updates and recommendations to the Board on proposed legislation that will likely affect local government solid waste and diversion programs;

(2) Provide analysis to enable the Board to take actions to support or oppose proposed legislation;

(3) Submit comments on the proposed legislation to the lead agency creating the legislation; and

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(4) Coordinate with Members in interpreting and implementing new laws and regulations, ensuring that all Members shall equally benefit from such Authority efforts.

2.2. Future Services. In the future and post 2025, the Authority may continue to provide the Core Services or other such services as Members request, consistent with the powers set forth herein, and such authority and responsibility shall be subject to further delegation or authorization of the Members. Upon delegation or authorization, the Authority may continue to provide Core Services, a portion of Core Services, or other services, including, but not limited to potential procurement and negotiations of future post collection agreements.

2.3. Non-Core Services. Non-Core Service shall be approved by a unanimous vote of the Board.

SECTION 3. Creation of Authority.

3.1. Pursuant to the Law, the Members created and established the Authority in 1991 as a public entity separate from each of the Members.

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, to the fullest extent allowed by Government Code section 6508.1 and other applicable law. However, if Member liability exists, a Member shall be liable even if its representative did not vote in favor of the action that created the liability, except as specified in Section 5.4. 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 agency approve such contract or assumption.

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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 16 of this Agreement.

SECTION 5. Powers.

5.1. The Authority shall 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 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;

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- (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;
- (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 Directed Waste generated and collected within their respective boundaries (or specified portions or specified types of such Wastes and Materials) to the Approved Facility until December 31, 2024, and potentially thereafter as the case may be; however, that the Authority is not empowered to require El Cerrito to so direct any Solid Waste collected by its collector or collected as part of El Cerrito Recycling Services unless El Cerrito so consents;
- (k) To require each Member other than El Cerrito to include some or all of the Approved Rates paid to the owner or operator of the Approved Facilities in connection with the waste stream of that Member directed to the Approved Facilities, to be “passed through” to or collected from the ratepayers within the boundaries of that Member;
- (l) Subject to a unanimous vote of the Board, to require each Member to (i) include fees which may be imposed from time to time by the Authority and to be collected from the ratepayers within the boundaries of that Member which fees are determined by the Authority

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in its sole discretion 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 ; 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 and to require that the Member take such action to direct the collection of such fees in a timely manner;

(m) Subject to a unanimous vote of the Board, to require a 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 regardless of how that Member collects fees; and (ii) provide for payment of amounts to the Authority, in the event that such amounts are not paid to the owner or operator of the Approved Facility, and to require that the Member take such action to direct payment of its portion of funding otherwise provided for in 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 an Approved Facility, or through use of other facilities;

(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; and

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

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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 additional prior written authorization by the affected Member's legislative body:

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

(b) To acquire, construct, finance, refinance, operate, regulate and maintain Facilities or contract with a private entity to do the same, subject, however, to the conditions and restrictions contained in this Agreement, including the following:

(1) Prior to any substantial Authority involvement in the planning for such a facility, the Facility shall be conceptually approved by the Board.

(2) Following such initial approval, each Member's governing body shall determine whether or not it will participate in the Facility. All costs associated with the Facility shall be borne exclusively by the participating Members.

(3) Nonparticipating members will not be entitled to use the Facilities. Subject to a unanimous vote of the participating members, a nonparticipating Member may become a participating member on such terms as may be determined by the Board.

(4) Both the Board and the governing body of the jurisdiction in which the Facility would be located (the "Host") must approve the Facility prior to its construction or acquisition.

(5) The Authority shall not exercise the power of eminent domain in order to acquire real and personal property necessary and convenient to the development of a Facility, but it may request that the Host acquire such property.

(c) To issue revenue bonds, notes, certificates of participation, or any other instrument evidencing indebtedness, from time to time, in accordance with all applicable laws,

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

(d) To enter into agreements to regulate or operate a Facility;

(e) To lease Facilities;

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

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

(h) 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 Directed Wastes and Materials) to the Approved Facility for the period beginning in 2025 or later.

5.5. The powers specified in this Section 5 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. The Members do not specifically delegate any additional powers to the Authority without the express authorization of each Member's governing body. Nothing in this Section shall prevent the Authority from providing additional services to Members pursuant to an agreement or agreements between or among the Authority and a Member or Members, in which the Member or Members agree(s) to compensate the Authority for the provision of such services.

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

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5.7. Although the Authority has not entered into Franchise Agreements to date, nothing in this Agreement 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 5.3(i).

SECTION 6. Boundaries. The boundary of the Authority shall be the consolidated boundaries of the Members as set forth in Exhibit A attached hereto and incorporated herein. If a new Member joins or a Member withdraws from the Authority, the boundary of the Authority shall be modified to include or exclude the area of the new or withdrawing Member. This Section 6 shall not prevent any Facilities from being located outside the boundary of the Authority.

SECTION 7. Organizations.

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 a Director from each Member, except that the City of Richmond shall have three Directors, and a non-voting ex officio member from the County. Upon execution of this Agreement, each Member shall appoint its representative Director(s) to the Board and one (1) person as an Alternate Director to serve in the case of absence of or recusal by an appointed Director. Directors and Alternate Directors who 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.

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(b) Each Director and Alternate Director 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 agency of that Director. Each Director and Alternate Director 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 Director.

(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 Director. The Authority and the Board shall be entitled to rely on a written notice from the City Clerk as conclusive evidence of the appointment and removal of Directors and Alternate Directors 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 13831 San Pablo Avenue, San Pablo, California 94806. The Board may change that principal office upon giving at least fifteen (15) days' prior written 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 Executive Director, Treasurer, Controller, a General Counsel and a Secretary. The Board may

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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 the Board has taken or 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 shall hold office for a period of one (1) year commencing on a date designated by resolution of the Board. 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 shall 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 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, subject to reasonable procedures adopted by the Board of Directors.

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

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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.

(a) The Treasurer shall be selected and approved by the Board, and the individual selected to serve as Treasurer shall also serve as the appointee under California Government Code section 6505.6. 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.

(b) The Treasurer shall do all of the following:

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

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

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(3) 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;

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

(5) 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.

(c) 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 the Treasurer appointed pursuant to Section 7.8 herein 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 Board shall select and 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 selection of the Secretary may be delegated to the Executive

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Director. 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 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.

SECTION 8. Meetings of the Board.

8.1. Regular Meetings. The Board shall hold a minimum of 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.

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.

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8.4. Minutes. The Secretary shall cause minutes of all meetings of the Board and any standing 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. A quorum for the transaction of business of the Board shall require the presence of Directors that represent a majority of the total membership of the Board, except that Directors constituting less than a quorum may adjourn any meeting. For purposes of establishing a quorum and voting at Board meetings, Alternate Directors that are entitled to vote pursuant to Section 7.2 shall be considered as “Directors.”

8.6. Voting. 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. Where this Agreement requires an unanimous vote, the action shall require the unanimous vote of the total membership of the Board (7 votes as of the date of this Agreement). Unless otherwise identified in this Agreement, all Board actions require a majority vote of the total membership of the Board (4 votes as of the date of this Agreement).

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

8.8. Budget. 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 including HHW Programs. Approval of the budget by the Board shall constitute authority for the Executive

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Director to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand.

8.9. Reserves.

(a) The Authority establishes the following three (3) funds: 1) an Operating Fund; 2) an Operating Reserve Fund; and 3) a Recycling Fund Reserve. The Operating Reserve Fund limit is initially set at 67% of the annual operating budget.

(b) Any amounts which accumulate in Operating Reserve Fund in excess of the limit will be rolled over into the Recycling Reserve Fund account during the annual budget process. The Board shall adopt policies and procedures by resolution to address operation and management of both Reserve Funds, including the Recycling Reserve Fund limit, procedures for replenishment of reserves and the periodic Board consideration of use of the excess Recycling Fund Reserves.

(c) Excess Recycling Fund Reserves. Any potential excess in the Recycling Fund Reserve shall be dispersed to Members, used for rate reduction or subsidy, or to fund special projects. Reserve fund procedures and policies have been adopted by Resolution 18-02.

The funding amounts of the Operating Reserve Fund and the reserve fund policies may only be modified in the future through adoption of a resolution subject to a unanimous vote of the Board.

(d) The Board may from time to time create and fund a Liability Reserve Fund for potential or anticipated future liabilities, such as CalPERS Unfunded Actuarial Accrued Liability (“UAAL”) and Other Post-Employment Benefits (“OPEB”) obligations.

8.10. Committees. The Board may create or designate committees, which typically shall be ad hoc committees. A committee would consist of two or three Directors, and Alternates may not serve on committees. An ad hoc committee would be subject to a one year term from

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its date of creation and shall typically be limited in scope to the single purpose for which it was created by the Board. In the event of a vacancy on an ad hoc committee, the Chair shall designate a replacement committee member. Permanent standing committees may be created by unanimous vote of the Board.

(a) All committee meetings shall be held subject to the provisions of the California Ralph M. Brown Act (sections 54950 *et seq.* of the California Government Code), although certain ad hoc committee meetings need not be public meetings in accord with said act.

(b) 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.

SECTION 9. Operating Fund Revenues and Other Sources of Funds.

9.1. The Authority may 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 fees under the Act 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.

9.2. The Authority may establish a joint operating fund which may receive funds from the Members or other sources. 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 unanimous vote of the Board.

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9.3. All moneys in the operating fund shall be paid out for the purposes for which the fund was created upon authorization of the Board, or within the expenditure authority of the Executive Director provided by the Board by time to time.

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 a Facility and all financial transactions of the Members relating to any Facility including any HHW Facility. 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. The Authority shall adopt a records management program to provide for the maintenance and disposal of records consistent with the requirements of State Law.

SECTION 11. Implementation of the Act.

11.1. Intent. It is the intent of all Members 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 Sections 5.1 and 5.2.

11.2. Submittal of Elements by Members.

(a) Any Member choosing to exercise its authority to undertake an SRRE, HHWE or NDFE individually, or to respond individually to a notice of deficiency, may do so 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.

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

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 Members' 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 Members 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 Members 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 Members and shall periodically report to the Members 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 the Act's programs and demonstrate compliance with the monitoring and reporting requirements related to Assembly Bill 341 (2011),

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Assembly Bill 1826 (2014), and any other future State mandates related to solid waste handling within the Member boundaries.

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 Members 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 15 and 16 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 and approved by the Authority Board of Directors and submitted or resubmitted to CalRecycle as may be needed.

(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 Members.

(c) The Regional Plan, and subsequent amendments or revisions thereto, following approval by CalRecycle, shall be included in this Agreement by this reference.

(d) Notwithstanding Section 16 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 Members shall make a good faith effort to implement programs and actions specified in the Regional Plan approved by CalRecycle for implementation by that Member.

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(f) The Members 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 cooperate 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. Authority Established Rates.

12.1. The Authority shall be solely responsible for the approval of rates for services at an Approved Facility designated pursuant to this Agreement and each Member hereby delegates, assigns and/or otherwise transfers to the Authority any powers that each Member that has its Designated Waste processed at an Approved Facility may have with respect to the regulation of, approval or establishing rates or charges for that designated waste.

12.2. The Authority shall establish or approve rates to be charged at an Approved Facility, in amounts sufficient to provide the revenues necessary to meet the contractual obligations for use of Approved Facilities.

12.3. The Authority may from time to time elect to include as an additional amount in the rates established or otherwise approved for an Approved Facility, or a portion of the amounts

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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 an Approved Facility.

12.4. 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 that uses that Approved Facility 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. 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, in an alternative manner, may elect to fund or provide its share of the costs and obligations of the Authority set forth in Section 12.5, if its Directed Waste does not go to the Approved Facility and/or an alternative funding method is approved by the Board. Any Member which has executed a separate Post Collection Agreement from the one defined in Section 1.26 shall contribute its portion of the Authority budget and HHWP costs based on its proportional share of the Members' "Inbound Solid Waste," "Dry Waste," "Construction and Demolition," and "Organics and Food Scrap" tonnage as shown in the most recent Annual Report submitted by the Contractor pursuant to the PCA.

12.5. 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. A unanimous vote shall be

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required for any Board action to materially modify the current rate setting methodology described in Exhibit B.

12.6. 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 portion of collection rates corresponding to Approved Rates. The Authority shall also notify any Member agency that is not subject to the Approved Rates the portion of the required Authority revenues which must be funded by that Member.

SECTION 13. Apportionment of Penalties.

13.1. 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 Member 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 13.1(a) or Section 13.1(b) of this Agreement shall be paid out of Authority funds including potentially its Operating or Recycling Reserve Funds and, to the extent necessary, collected in the rates or charges assessed against each Member based upon their proportionate shares of the Members' aggregate solid waste tonnage (calculated using the Members' "Inbound Solid Waste," "Dry Waste," and

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“Construction and Demolition” tonnage as shown in the last three Annual Reports submitted by the Contractor pursuant to the PCAs.)

(d) The Members shall only be liable for payment of any penalties assessed against the Authority by CalRecycle which are not paid by the Authority and which are not paid by an individual Member pursuant to Section 13.2 below..

13.2. Penalties Arising from a Member’s Failure.

(a) Any penalties assessed against the Authority by CalRecycle, which are the result of a Member’s failure to implement programs or actions specified in the Regional Plan for implementation by the Member 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 an Approved Facility from within the jurisdiction of the failing Members who have not fully reimbursed the Authority.

(2) In lieu of collection of the penalty by the Authority through the surcharge, described in Section 13.2(a)(1) above, the Member 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.

(b) Any penalties which are assessed directly against a Member as a result of the Member’s failure to either (i) implement the programs or actions specifically identified in the Regional Plan for implementation by the Member; or (ii) to exercise its prerogatives under Section 11.2 of this Agreement; or (iii) to perform its obligations under Section 11.5 of this

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

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

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

SECTION 14. Disposition of Assets at Dissolution. Subject to the then applicable requirements of the 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, and adequate provision for, all debts, liabilities and obligations of the Authority shall be divided in accordance with a resolution adopted by a unanimous vote of the Board at the time of the dissolution.

SECTION 15. Withdrawal.

15.1. Requirements for Withdrawal. A Member may withdraw from the Authority subject to the following:

(a) Notice of Withdrawal. A Member seeking to withdraw from the Authority shall notify the Authority and each of the Members, by personal delivery in the manner

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required by Section 18, by presenting (“Notice of Withdrawal”) a resolution adopted by its governing body setting forth its intent to withdraw from the Authority to the Board. The resolution shall set forth the effective date of the withdrawal (“Withdrawal Date”), which shall be no sooner than one hundred eighty (180) days from the Notice of Withdrawal. The Board may by unanimous vote authorize a Withdrawal Date that is sooner than 180 days from the Notice of Withdrawal.

(b) Defined Terms. For the purposes of this Section 15, the terms defined in this subsection have the following meanings:

(1) “Allocated Funds” means the funds allocated to meet all of the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the Withdrawal Date that are payable in the fiscal year in which a notice of withdrawal is provided.

(2) “Long-term Liabilities” means the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the Withdrawal Date that become due after the fiscal year in which the Notice of Withdrawal is provided. Long-term Liabilities include, but are not limited to, CalPERS and OPEB UAAL and office leases, if any. The calculation of the CalPERS and OPEB UAAL shall reflect the reserve funds set aside for meeting those obligations.

(3) “Pro Rata Share” means a Member’s proportionate share of the Members’ aggregate solid waste tonnage (calculated using the Members’ “Inbound Solid Waste,” “Dry Waste,” and “Construction and Demolition” tonnage as shown in last three Annual Reports submitted by the Contractor pursuant to the PCA).

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(4) “Reserve Policy” means Authority Resolution No. 18-02,

Resolution of the Board of Directors of the West Contra Costa Integrated Waste Management Authority Requiring the Establishment of Financial Reserves, adopted on June 14, 2018.

(5) “Unallocated Funds” means the portion of Authority reserve funds that have not been either (a) set aside for the purpose of meeting specific Authority Long-term Liabilities or (b) allocated in the Authority budget.

(c) Satisfaction of Pro Rata Share of Long-term Liabilities.

(1) Within ninety (90) days following receipt of a Notice of Withdrawal pursuant to Section 15.1(a), the Authority shall notify each of the Members, pursuant to Section 18, of its determination of the Allocated Funds, Unallocated Funds, Long-term Liabilities, and the Pro Rata Share. In determining the Long-term Liabilities, the Board of Directors shall, based on the recommendation of an actuary, determine the amount of any Authority UAAL as of the Withdrawal Date.

(2) On or before the Withdrawal Date, and as a condition precedent to the withdrawal’s effectiveness, the withdrawing Member must pay to the Authority its Pro Rata Share of Long-term Liabilities. If the Authority determines, under Section 15.2(b), that the withdrawing Member is entitled to a disbursement of Unallocated Funds, the withdrawing Member may direct the Authority to deduct the payment required by this Subsection from its disbursement of Unallocated Funds.

(d) Termination of Withdrawal Process. A withdrawing Member may terminate the withdrawal process at any time before the withdrawal is effective by notifying the Authority and each of the Members, by personal delivery in the manner required by Section 18. The withdrawing Member shall be liable for all third-party costs incurred by the Authority for

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processing the withdrawal, which shall be payable within 60 days of the notice of termination of the withdrawal process.

15.2. Disbursement of Unallocated Funds Upon Withdrawal.

(a) On or before the Withdrawal Date, the Authority shall disburse to the withdrawing Member its Pro Rata Share of the portion of the Unallocated Funds that are in excess of the Operating Fund Target Reserve and the Recycling Fund Target Reserve, as both are described in the Reserve Policy.

(b) Within 45 days following its adoption of a budget that reflects the departure of the withdrawing Member, the Authority shall disburse to the withdrawing Member its Pro Rata Share of the portion of the Operating Fund Reserve and the Recycling Fund Reserve that exceed, respectively, the recalculated Operating Fund Target Reserve and the recalculated Recycling Fund Target Reserve, pursuant to the Reserve Policy.

15.3. Obligations Following Withdrawal Date. A Member which has withdrawn from the Authority shall not be liable for the payment of Authority expenses accruing beyond the Withdrawal Date, and shall have no right to reimbursement of any assets or monies of the Authority once disbursement of any Unallocated Funds pursuant to Section 15.2(b), if any, has been effectuated.

15.4. 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.

15.5. Member and Authority's Obligations Under the Act.

(a) The withdrawing Member shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit an SRRE, HHWE, and NDFE to

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CalRecycle for the Member's jurisdiction to CalRecycle for approval. The withdrawing Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;

(b) 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 Member to CalRecycle for approval.

(c) The withdrawing Member 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 Member including the Authority's costs incurred and associated with CalRecycle actions leading to and including the assessment of said penalties.

(d) The withdrawing Member shall be responsible for compliance with the Act the earlier of: (i) the date of the withdrawing Member's submittal of the documents to CalRecycle; or (ii) the date of the Authority's submittal of the revised Regional Plan to CalRecycle; or (iii) the Withdrawal Date.

SECTION 16. Amendments Including Termination.

16.1. This Agreement may only be amended by a written instrument approved by a majority of the Directors which then shall be approved by all of the Member's governing bodies.

16.2. 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 minimum 2/3 vote of all Directors which then shall be approved by a minimum of 2/3 of the Members' governing bodies. Given the current membership and Board seats, to reach the 2/3 threshold, five Directors and four Members would have to vote to adopt the resolution.

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16.3. For termination of this Agreement during any period where the Authority is operating as a Regional Agency, the written instrument required by Section 16.2 of this Agreement shall include, but not be limited to, all of the following requirements:

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

(b) 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;

(c) 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;

(d) 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 15.5(d) to CalRecycle; or (ii) the specified Termination Date; and

16.4. 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.

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SECTION 17. 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 18. Notices.

18.1. 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.

18.2. 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.

18.3. 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 19. Successors and Assigns.

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

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19.2. 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.

19.3. No assignment shall be effective unless and until the Authority, the Members and the proposed assignee comply with all then applicable requirements of Law relating to changes in the composition of entities such as the Authority.

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SECTION 20. 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 Facility for the purposes of this Agreement. The City of El Cerrito operates both the Recycling Center and a curbside collection program for Recyclable Material. The City of El Cerrito also has entered into agreements relating to the collection, processing and disposal of its Solid Waste, green waste and Recyclable Materials and the flow of such wastes are not controlled by the Authority. In particular, 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 21. Third Party Beneficiaries. 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.

SECTION 22. 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 23. 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 24. Dispute Resolution.

24.1. Informal Resolution. Should a dispute arise in connection with the interpretation or performance of this Agreement, the provisions of this Section 24 shall apply. A Member shall give the Authority and Members written notice of such dispute. The parties shall attempt to resolve their disputes informally to the maximum extent possible. In the event such dispute is not resolved within thirty (30) days of such notice, either party may propose the appointment of a mediator for advice and a non-binding mediation, and the other party or parties shall attend such mediation. If the dispute is not resolved through mediation, within sixty (60) days thereafter, then any party may refer it to arbitration.

24.2. Arbitration. All disputes that arise in connection with the interpretation or performance of this Agreement that are not resolved pursuant to the informal procedures of Section 24.1, shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association.

24.3. Binding Arbitration. The arbitrator's decision shall be final and binding on the Authority, all Members and all former Members involved or affected by the dispute.

24.4. Enforcement. 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

Agenda Item 8.0 – Attachment 2
RECOMMENDED AMENDED AND RESTATED JEP A

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

CITY OF HERCULES

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

CITY OF PINOLE

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

Agenda Item 8.0 – Attachment 2
RECOMMENDED AMENDED AND RESTATED JEPA

[SIGNATURES CONTINUED ON NEXT PAGE]

CITY OF RICHMOND

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

CITY OF SAN PABLO

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

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Agenda Item 8.0 – Attachment 2
RECOMMENDED AMENDED AND RESTATED JEPA

Exhibit A
Boundaries

Agenda Item 8.0 – Attachment 2
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Exhibit B

Rate Setting Methodology

Exhibit B Summary Formulas and Full Description of RecycleMore Post-Collection Rate Calculation Methodology

Exhibit B describes and shows formulas used in the current methodology for calculating Recycle More Post-Collection Rates. All 2018 Sample Calculation figures stated in Exhibit B are directly r eferencing the Approved 2018 Richmond Sanitary Service Area Post-Collection Rate Calculation, shown in the table below.

Approved Richmond Sanitary Service Area Post-Collection Rate Calculation

| | | | | | | | | |
|--------------------------|-----------------|-----------------|------------------|-------------------|-----------------|-----------------|------------------|----------------|
| | \$ 92.02 | Blended per ton | | | 157,980 | total tons = | 14,537,960.88 | Annual Revenue |
| | Residential | | | | Commercial | Industrial | | |
| | 20- Gallon | 35- Gallon | 60/65- Gallon | 95/100- Gallon | Per Cubic Yard | Per Ton | TOTAL | |
| 2018 Rates | \$ 5.08 | \$ 8.91 | \$ 16.57 | \$ 24.86 | \$ 9.66 | \$ 140.17 | \$ 140.17 | |
| 2018 Tonnage Basis | 45,214 | | | | 25,406 | 33,099 | 103,719 | |
| 2017 % of Tons | 44% | | | | 24% | 32% | | |
| 2018 Unit Basis*** | 59,280 | | | | 368,500 | 33,099 | | |
| 2018 Revenue Requirement | \$ 6,337,578.32 | | | | \$ 3,561,051.74 | \$ 4,639,330.83 | \$ 14,537,960.88 | |
| 2017 Rate | \$ 4.86 | \$ 8.52 | \$ 15.85 | \$ 23.78 | \$ 10.35 | \$ 137.90 | \$ 137.90 | |
| 2018 Rate | \$ 5.08 | \$ 8.91 | \$ 16.57 | \$ 24.86 | \$ 9.66 | \$ 140.17 | \$ 140.17 | |
| \$ Increase/(Decrease) | \$ 0.22 | \$ 0.39 | \$ 0.72 | \$ 1.08 | \$ (0.69) | \$ 2.27 | \$ 2.27 | |
| % Increase/(Decrease) | 4.5% | 4.6% | 4.5% | 4.5% | -6.7% | 1.6% | 1.6% | |

Step 1: Calculate the Richmond Sanitary Service (RSS) Annual Post-Collection Revenue Requirement

DESCRIPTION:

The RSS Annual Post-Collection Revenue Requirement is calculated as:

\$92.02, which is the RecycleMore Board approved Blended Per-Ton Rate calculated as described in Section 5 of the Post-Collection Agreement (PCA) between RecycleMore and Republic Services (Republic) times 157,979.54, which is the Total Number of All Tons Collected by RSS¹ and reported by Republic for the twelve-month period from August 1 of the prior year through July 31 of the present year, and is inclusive of Solid Waste (Trash), Dry Waste, Construction and Demolition Debris (C&D), Recycling and Organics.

¹ Pursuant to the franchise agreements between RSS and Hercules, Pinole, Richmond and San Pablo and Contra Costa County.

FORMULAS:

Blended Per-Ton Rate (rounded to the nearest cent) *TIMES*

Total Number of All Tons Collected 8/1 to 7/31 *EQUALS*

RSS Annual Post-Collection Revenue Requirement

2018 SAMPLE CALCULATION:

$$\$92.02 \times 157,979.54 \text{ tons} = \$14,537,960.88^2$$

Step 2: Calculate the Revenue Requirement per Sector

DESCRIPTION:

The Revenue Requirement per Sector (Residential, Commercial, Industrial) is calculated as:

The RSS Annual Post-Collection Revenue Requirement as calculated in Step 1, times each Sector's percentage of the total Solid Waste (Trash), Dry Waste and C&D reported by Republic for the twelve-month period from August 1 of the prior year through July 31 of the present year.

These tonnages are a subset of the total number of all tons used in Step 1 in that recycling and organics tonnages are not included. For example, the total number of all tons used in Step 1 in 2018 was 157,979,54 tons, whereas the total solid waste (trash), dry waste and C&D tonnage was 103,718.67, with the difference between the two being 54,260.87 tons of recycling and organics, which are not counted for the purposes of calculating the Revenue Requirement per Sector.

FORMULAS:

Residential Sector

RSS Annual Post-Collection Revenues Requirement *TIMES*

Residential Sector Total Tons of Trash, Dry Waste and C&D *DIVIDED BY*

All Sector Total Tons of Trash, Dry Waste and C&D *EQUALS*

Residential Sector Revenue Requirement

² The Blended Per-Ton Rate used in prior years and in the 2018 Post-Collection Rate calculation was not rounded to the nearest cent, and as a result the RSS Annual Post-Collection Revenue Requirement shown above is an

Commercial Sector

RSS Annual Post-Collection Revenues Requirement *TIMES*

Commercial Sector Total Tons of Trash, Dry Waste and C&D *DIVIDED BY*

All Sector Total Tons of Trash, Dry Waste and C&D EQUALS

Commercial Sector Revenue Requirement

Industrial Sector

RSS Annual Post-Collection Revenues Requirement *TIMES*

Industrial Sector Total Tons of Trash, Dry Waste and C&D *DIVIDED BY*

All Sector Total Tons of Trash, Dry Waste and C&D EQUALS

Industrial Sector Revenue Requirement

2018 SAMPLE CALCULATION:

Residential Sector: \$14,537,960.88 X 45,214.40 tons / 103,718.67 tons = **\$6,337,578.32**

Commercial Sector: \$14,537,960.88 X 25,405.73 tons / 103,718.67 tons = **\$3,561,051.74**

Industrial Sector: \$14,537,960.88 X 33,098.54 tons / 103,718.67 tons = **\$4,639,330.83**

Step 3: Calculate the Unit Basis per Sector

DESCRIPTION:

The Unit Basis per Sector is expressed in monthly 35-Gallon Equivalents (Residential), Annual Cubic Yards (Commercial), and Annual Tons (Industrial) and is based on tonnage and detailed cart counts and cubic yard information reported by RSS and Republic, each of which are calculated per the following:

For the Residential Sector, the total number of residential Solid Waste (Trash) collection carts by gallon size (20, 35, 60/65, and 95/101) reported as of September 30 of the current year are multiplied by the 35-Gallon Equivalent factor for each cart size, yielding an equivalent number of 35-gallon carts. The 35-Gallon Equivalent factors for each cart size are calculated as the ratio of gallon size divided by 35 and are shown in the table below. In 2018, the total number of 35-Gallon Equivalents was calculated at 59,280.

insignificant \$683.61 higher than the product of \$92.02 times 157,979.54.

| Trash Cart Size | 35-Gallon Equivalent |
|-----------------|-------------------------|
| 20-gallon | 0.57 |
| 35-gallon | 1.00 |
| 60/65-gallon | 1.86 |
| 95/101-gallon | 2.79 |

For the Commercial Sector, the annual cubic yards are calculated as twelve (12) times the total commercial cubic yards per month on September 30. For the 2018 rate calculation, this number was 30,708 times 12, yielding 368,500 annual cubic yards.

For the Industrial Sector, the annual tons are the total industrial of Solid Waste (Trash), Dry Waste and C&D as shown in Step 2 (33,098.54 tons)

FORMULAS:

Residential Sector

Total Number of 20-gallon Trash carts ***TIMES 0.57 PLUS***

Total Number of 35-gallon Trash carts ***PLUS***

Total Number of 60/65-gallon Trash carts ***TIMES 1.86 PLUS***

Total Number of 95/101-gallon Trash carts ***TIMES 2.79 EQUALS***

Residential Sector Unit Basis

Commercial Sector

Total Number of Commercial Cubic Yards per Month ***TIMES 12 EQUALS***

Commercial Sector Unit Basis

Industrial Sector

Industrial Sector Total Tons of Trash, Dry Waste and C&D ***EQUALS***

Industrial Sector Unit Basis

2018 SAMPLE CALCULATION:

Residential Sector

8,486 20-gallon carts X 0.57 = 4,849 35-Gallon Equivalents +
 47,197 35-gallon carts X 1 = 47,197 35-Gallon Equivalents +
 3,000 60/65-gallon carts X 1.86 = 5,571 35-Gallon Equivalents +
597 95/101-gallon carts X 2.79 = 1,663 35-Gallon Equivalents =

59,280 35-Gallon Equivalents as Residential Unit Basis

Commercial Sector

30,708 cubic yards X 12 = **368,500 Annual Cubic Yards as Commercial Sector Unit Basis**

Industrial Sector

33,098.54 tons as the Industrial Sector Unit Basis

Step 4: Calculate the Post-Collection Rate Per Sector

DESCRIPTION:

For the Residential Sector, the base Post-Collection Rate is calculated for the 35-Gallon Trash cart as the Residential Sector Revenue Requirement, divided by the Residential Sector Unit Basis, divided by 12 months. The Post-Collection Rates for the 20-Gallon, 65-Gallon and 95/101-Gallon Trash carts are calculated based on the percentage increase in the 35-Gallon Post-Collection Rate for the coming rate year times the 20-Gallon, 60/65-Gallon and 95/101-Gallon Post-Collection Rates in the current rate year.

For the Commercial and Industrial Sectors, the Post-Collection Rate is simply the Revenue Requirement for each sector divided by the Unit Basis for each sector.

FORMULAS:

Residential Sector

Residential Sector Revenue Requirement ***DIVIDED BY***

Residential Sector Unit Basis ***DIVIDED BY***

12 EQUALS

Coming Rate Year 35-Gallon Post-Collection Rate

Coming Rate Year 35-Gallon Post-Collection Rate ***DIVIDED BY***

Current Rate Year 35-Gallon Post-Collection Rate ***MINUS***

Percentage Increase in the 35-Gallon Post-Collection Rate

20-Gallon, 60/65-Gallon, and 95/101-Gallon Current Rate Year Post-Collection Rates *TIMES*

Percentage Increase in the 35-Gallon Post-Collection Rate *EQUALS*

Coming Rate Year 20-Gallon, 60/65-Gallon and 95/101-Gallon Post-Collection Rates

Commercial Sector

Commercial Sector Revenue Requirement *DIVIDED BY*

Commercial Sector Unit Basis *EQUALS*

Commercial Per-Cubic Yard Post-Collection Rate

Industrial Sector

Industrial Sector Revenue Requirement *DIVIDED BY*

Industrial Sector Unit Basis *EQUALS*

Industrial Per Ton Post-Collection Rate

2018 SAMPLE CALCULATION:

Residential Sector

$\$6,337,578.32 / 59,280 \text{ 35-Gallon Equivalents} / 12 = \$8.91 \text{ Coming Rate Year 35-Gallon Post-Collection Rate}$

$\$8.91 / \$8.52 \text{ Current Rate Year 35-Gallon Post-Collection Rate} = 104.56\% \text{ Annual Increase in 35-Gallon Post-Collection Rate}$

$\$4.86 \text{ Current Year 20-Gallon Post-Collection Rate} \times 104.56\% = \$5.08 \text{ Coming Rate Year 20-Gallon Post-Collection Rate}$

$\$15.85 \text{ Current Year 60/65-Gallon Post-Collection Rate} \times 104.56\% = \$16.57 \text{ Coming Rate Year 60/65-Gallon Post-Collection Rate}$

$\$23.78 \text{ Current Year 95/101-Gallon Post-Collection Rate} \times 104.56\% = \$24.86 \text{ Coming Rate Year 95/101-Gallon Post-Collection Rate}$

Commercial Sector

$\$3,561,051.74 / 368,500 = \$9.66 \text{ Commercial Per Cubic-Yard Post-Collection Rate}$

A commercial customer with a two-yard container, picked up once per week, pays \$83.72 per month in Post-Collection Rates based on:

$\$9.66$ Commercial Per Cubic Yard Post-Collection Rate \times 2 cubic yards per week \times 52 weeks per year \div 12 months = **\$83.72 per month in Commercial Post-Collection Rates**

Industrial Sector

$\$4,639,330.83 \div 33,098.54 =$ **\$140.17 Industrial Per Ton Post-Collection Rate**

An industrial customer with a thirty (30) yard container with contents weighing 5 tons would pay \$700.85 each time the container is serviced based on:

$\$140.17$ Industrial Per Ton Post-Collection Rate \times 5 = **\$700.85 in Industrial Post-Collection Rates**

~~September 25 2018 DRAFT
FOR COMMENT~~

RECOMMENDED AMENDED AND RESTATED JEPA

~~AMENDED~~ FIFTH AMENDMENT AND ~~RESTATED~~
RESTATEMENT

JOINT EXERCISE OF POWERS AGREEMENT
OF THE WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

~~September 25 2018 DRAFT~~
~~FOR COMMENT~~

[RECOMMENDED AMENDED AND RESTATED JEPA](#)

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RECOMMENDED AMENDED AND RESTATED JEPA

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT OF THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is entered into as of _____, ~~2018~~2019, and is by and among the CITY OF EL CERRITO (“El Cerrito”), a municipal corporation and charter city, the CITY OF HERCULES, a municipal corporation, the CITY OF PINOLE, a municipal corporation, the CITY OF RICHMOND, a municipal corporation and charter city, and the CITY OF SAN PABLO, a municipal corporation hereinafter referred to individually as “Member” and collectively as “Members.” This Agreement amends and restates the Joint Powers 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 (together, the “Original Agreement”), and restates in full the provisions of the Original 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 at California Public Resources Code section 40000 *et seq.* (“Act”) mandating that

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municipalities divert material from landfills and ~~promulgates~~ promulgating regulations promoting material reuse and recycling.

C. Pursuant to this authority, the Members entered into the Original Agreement to establish and confer upon a separate legal entity the powers necessary to: (i) form a Regional Agency to report as a single entity the annual regional compliance with the Act's reporting requirements; (ii) implement regional waste reduction and recycling diversion programs; (iii) to increase the diversion of waste from disposal facilities; and (iv) develop an integrated resource recovery facility ("IRRF") to achieve the Members' waste diversion goals, to comply with the Act, and to arrange for processing of and disposal of remaining waste.

D. The County and the Authority entered into a contract on May 25, 1993 ("Authority-County Contract") in order to facilitate development of an integrated resource recovery facility ("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. ~~[Added per Richmond request]~~

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. ~~[Added per Richmond request]~~

F. 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

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particular Member, the Members commit to make a good faith effort to provide Richmond with funding, materials and services commensurate with its contribution to the Authority's budget. ~~[Added per Richmond request]~~

G. Prior to 2014, the iterations of the Original Agreement addressed IRRF bonds and development including the contract with West County Resource Recovery Inc. for IRRF operation and administration. The Authority's involvement with these activities has now concluded. Nonetheless, the Authority continues to operate as a Regional Agency and to manage the post-collection processing and disposal activities of the Members. This Agreement 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.

H. The Members further intend that this Agreement reflect the changes that have occurred since the execution of the Third Amendment Restatement in 1995, 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. "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, and the subsequent legislation and regulations provided for in Division 30 of the Public Resources Code *et seq.*, as amended from time to time.

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1.2. Agreement. “Agreement” means this Joint Exercise of Powers Agreement, as it may be amended from time to time, including the Fifth Amendment to and Restatement of the West Contra Costa Integrated Waste Management Authority Joint Exercise of Powers Agreement.

1.3. Alternate Director. “Alternate Director” means the person(s) appointed by each Member who is authorized to represent the Member at a Board meeting in the absence of the Member’s Director-.

1.4. Approved Facilities. “Approved Facilities” 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.

1.5. Approved Rates. “Approved Rates” means the rates or charges authorized by the Authority from time to time to be paid at the Approved Facilities for Directed Waste and Materials received at the Approved Facility, ~~to~~ to pay for operational costs and other obligations of the Authority.

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

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

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1.9. Contractor. “Contractor” means “Contractor” as defined in the PCA or the PCAs as the context may require.

1.10. Core Services. “Core Services” means any service, program or project the Authority is expected to perform through the termination of the current Post Collection Agreement and potentially thereafter listed in ~~Sections 2.1 through 2.11 herein.~~ ~~[Edited per Richmond request]~~ Section 2 herein.

1.11. County. “County” means Contra Costa County, California.

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

1.13. Director. “Director” means the elected person that is appointed by a Member to represent that Member on the Board. For the purposes of voting and quorum, the term “Director” 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.

1.14. El Cerrito Recycling Services. “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.

1.15. Executive Director. “Executive Director” means the person hired or 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 or his or her designee.

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1.16. Facility. “Facility” means a facility or facilities for the transfer, processing, diversion or removal of portions of Solid Waste prior to disposal, owned either by one or more of the Members directly or by a private entity.

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

1.18. Franchise Agreement. “Franchise Agreement” means an agreement between a Member and a third party that provides for the collection of Solid Waste, and related services, or if additional specific authorization is provided to the Authority for a particular Member’s solid waste collection activities, an agreement between the Authority and a third party that provides for collection of Solid Waste and related services.

1.19. ~~Hazardous~~ Hazardous Materials or ~~1.18. ~~Hazardous~~ Hazardous Waste.~~ “Hazardous Materials ~~or~~” or “Hazardous Waste” means materials that, by reason of their 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~~ or:

~~{corrected per Richmond and Hercules comment}~~

(a) “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

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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;

(b) 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);

(c) 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 Hazardous Substances Account Act, California Health & Safety Code section 25300, *et seq.*; ~~corrected per Richmond comment~~

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

(e) 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~~ hazardous waste; ~~and 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.~~ or

(f) If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste"

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for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition is employed for the purposes of this Agreement.

1.20. Household Hazardous Waste (HHW). “Household Hazardous Waste” ~~(or “HHW”)~~ means ~~hazardous waste~~ Hazardous Waste generated incidental to owning or maintaining a place of residence. ~~Household hazardous waste~~ HHW does not include waste generated in the course of operating a business ~~concern~~ activity at a residence. ~~.-{edited per Pinole comment}~~

1.21. Law. “Law” means the Joint Exercise of Powers Act, 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 under that legislation, as that legislation and those regulations may be amended from time to time. ~~{edited per Hereules comment}~~

1.22. Member. “Member” means any of the Member agency signatories to this Agreement and “Members” means all of the Member agency signatories to this Agreement.

1.23. MRF. “MRF” means a materials 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. ~~{corrected per Richmond comment}~~

1.24. Non-Core Service. “Non-Core Service” means any service, program or project which is not listed as Core Services and not included in ~~Sections 2.1 through 2.11~~ Section 2 herein. ~~{edited per Richmond request}~~

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1.25. Non-Disposal Facility Element (NDFE) “Non-Disposal Facility Element ~~(NDFE)~~” or “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.

1.26. Post Collection Agreement (PCA) ~~—~~ “Post Collection Agreement ~~(PCA)~~” ~~{edited per Hercules comment}~~ ” or “PCA” 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. Post Collection Agreement as used herein shall also refer to any subsequent agreements between the Authority and a solid waste enterprise or enterprises for post collection services as approved by Members. ~~{edited per Richmond request}~~

1.27. Post Collection Agreements (PCAs). “Post Collection Agreements” or “PCAs” means, collectively, (a) the Post Collection Agreement and (b) the agreement between the City of El Cerrito 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 effective January 1, 2014 or any successor agreement between El Cerrito and a solid waste enterprise or enterprises for post collection services.

1.28. Recyclable Materials ~~—~~ “Recyclable Materials” means materials that can be reused, or remanufactured or processed for one or more forms of reuse.

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1.29. Solid Waste. “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,~~ or medical waste.

1.30. Source Reduction and Recycling Element (SRRE). “Source Reduction and Recycling Element ~~(SRRE)~~ or “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 maintaining an existing Regional Agency to collectively regulate post-collection services and combine disposal and diversion of Solid Waste for determining compliance with the Act and (i) plan, study, recommend and have the authority to implement proper solid waste management activities and programs consistent with the Act, (ii) to ~~maintain the Regional Agency in order to~~ enable it to report and track programs under the Act on a regional basis, (iii) address future diversion mandates, to allow for efficient operation of diversion programs on a region-wide basis, and (iv) to allow for the development of Regional Integrated Waste Management Plans including a Source Reduction and Recycling Element, Household Hazardous Waste Element, and~~

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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 Facilities and the Authority may undertake such activities subject to authorization by the Members' legislative bodies as set forth herein.

2.1. Core Services. Although the Authority may undertake additional Non-Core Service activities subject to unanimous vote of the Board as set forth herein, the Members desire to identify the following Core Services the Authority is expected to perform through the termination of the current Post Collection Agreement, and potentially thereafter: ~~edited per~~

~~Richmond request~~

(a) ~~2.1.~~ Ensure that the Post Collection Agreement ("PCA") terms are being met by the Contractor as that term is defined in the PCA, ~~including~~ including, but not limited to:

(1) ~~(a)~~ Track and confirm expected diversion rates at the approved organic materials, dry materials, construction and demolition, and recyclable materials processing facilities; ~~edited per Richmond request~~

(2) ~~(b)~~ Track and confirm contracted level of service at the transfer station and other post-collection facilities and by the household hazardous waste program; ~~edited per Richmond request~~

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(3) ~~(e)~~ Track and confirm expected level of service for education and outreach services for schools, including West Contra Costa Unified School District (“WCCUSD”) in the Authority’s service area; ~~edited per Richmond request~~

(4) ~~(d)~~ Track and confirm compliance with applicable law, permits, Facility requirements and best management practices, including proper records management, provision of insurance and similar requirements; ~~edited per Richmond request~~ and

(5) ~~(e)~~ Track and confirm all PCA recycling and diversion programs performed by Contractor pursuant to the PCA ~~edited per Richmond request~~.

(b) ~~2.2~~. Validate post collection rates to ensure accuracy, reasonableness, and consistency with the methodology formula described in Exhibit B. ~~edited per Richmond request~~

(c) ~~2.3~~. Validate the accuracy of information stated in quarterly, annual, and other reports submitted by the Contractor to the Authority. ~~edited per Richmond request~~

(d) ~~2.4~~. Seek to reduce costs to Members in future post collection solid waste activities and agreements.

(e) ~~2.5~~. Seek to increase the benefits to Members in future post collection solid waste activities and agreements.

(f) ~~2.6~~. Negotiate the lowest possible rates for Members and customers.

(g) ~~2.7~~. Monitor and coordinate compliance with the Act, ~~AB 1826, AB 341, SB 1383~~ Assembly Bill 1826 (2014), Assembly Bill 341 (2011), Senate Bill 1383 (2016), and other State solid waste related legislation and regulatory requirements and ~~edited per Richmond request~~

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(1) ~~(a)~~ Collect and submit information from Members to update

Electronic Annual Report (EAR) and update and upload other required reports;

(2) ~~(b)~~ Report annual waste and diversion tonnages to the Board and

Members;

(3) ~~(c)~~ Maintain and update regional SRRE, NDFE and Household

Hazardous Waste Element (HHWE); ~~{edited per Richmond request}~~

(4) ~~(d)~~ Coordinate and assist WCCUSD Source Reduction and

Recycling Compliance; and ~~{edited per Richmond request}~~

(5) ~~(e)~~ Coordinate with CalRecycle staff to schedule on-site Member

meetings. ~~{edited per Richmond request}~~

(h) ~~2.8.~~ Operate Household Hazardous Waste Programs (“HHWP”) ~~as follows,~~

including the following:

(1) ~~(a)~~ Act as the HHWP public agency permittee;

(2) ~~(b)~~ Determine desired level of service after consultation with

Members and communicate desired levels to all HHWP contractors; ~~{edited per Richmond request}~~

(3) ~~(c)~~ Manage HHW budget and monitor Contractor’s HHW costs for

consistency with the approved budget; ~~{edited per Richmond request}~~

(4) ~~(d)~~ Manage contract for HHW Facility and any satellite or mobile

events; ~~{edited per Richmond request}~~

(5) ~~(e)~~ Confirm and report ~~on that~~ expected levels of service are being

maintained; ~~{edited per Richmond request}~~

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(6) ~~(f)~~ Monitor Contractor's compliance with applicable law, permits and best management practices, including proper reporting, records management and retention, provision of insurance and similar requirements;

(7) ~~(g)~~ Operate ~~the Motor Oil Recycling Program~~ a motor oil recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events; and ~~{edited per Richmond request}~~

(8) ~~(h)~~ Implement and oversee ~~the Pharmaceutical Program and Battery Recycling Program~~, a pharmaceutical collection and disposal program and battery recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events. ~~{edited per Richmond request}~~

(i) ~~2.9~~ Administration and oversight of day to day Authority operations including providing support services to the Board as well as providing human resources, information technology and financial services to the Authority and its staff.

(j) ~~2.10~~ Conduct public outreach and education within existing budgeted funding and staffing levels beyond existing Contractor efforts including: ~~{edited per Richmond request}~~

(1) ~~(a)~~ Outreach and education regarding HHW, ~~Pharmaceutical Program and Motor Oil Recycling Program~~; and ~~{edited per Richmond request}~~ pharmaceutical collection and disposal program, and battery recycling program; and

(2) ~~(b)~~ Multi-family and commercial recycling and organics outreach and education ensuring that El Cerrito shall equally benefit from such Authority efforts.

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(k) ~~2.11.~~ Monitor and analyze relevant legislation within existing budgeted

funding and staffing levels including: ~~{edited per Richmond request}~~

(1) ~~(a)~~ Provide timely updates and recommendations to the Board on proposed legislation that will likely affect local government solid waste and diversion programs; ~~{edited per Richmond request}~~

(2) ~~(b)~~ Provide analysis to enable the Board to take actions to support or oppose proposed legislation;

(3) ~~(c)~~ Submit comments on the proposed legislation ~~on~~ to the lead agency creating the legislation. ~~— {added per Richmond request}; and~~

(4) ~~(d)~~ Coordinate with Members in interpreting ~~and implementing and~~ implementing new laws and regulations, ensuring that all Members shall equally benefit from such Authority efforts. ~~{edited per Richmond request}~~

2.2. Future Services ~~2.12. {This section needs further discussion with the City Manager group.}~~ In the future and post 2025, the Authority may continue to provide the Core Services or other such services as Members request, consistent with the powers set forth herein, and such authority and responsibility shall be subject to further delegation or authorization of the Members. Upon delegation or authorization, the Authority may continue to provide Core Services, a portion of Core Services, or other services, including, but not limited to potential procurement and negotiations of future post collection agreements.

2.3. Non-Core Services ~~2.13. Non-Core Service.~~ Non-Core Service shall be approved by a unanimous vote of the Board. ~~{included at direction of the Board and then moved from voting Section per comment by Executive Director.}~~

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SECTION 3. Creation of Authority.

3.1. Pursuant to the Law, the Members created and established the Authority in 1991 as a public entity separate from each of the Members.

3.2. ~~[This Section will be updated to be consistent with AB 1912.]~~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, to the fullest extent allowed by Government Code section 6508.1 and other applicable law. However, if Member liability exists, a Member shall be liable even if its representative did not vote in favor of the action that created the liability, except as specified in Section 5.4. 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 agency 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 16 of this Agreement.

SECTION 5. Powers.

5.1. ~~(a)~~The Authority shall 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. ~~(b)~~The Authority is empowered to prepare, revise, approve and submit a Regional Integrated Waste Management Plan pursuant to the Act to the California Environmental

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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 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. ~~5.2.~~ 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;
- (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;

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(i) To hire, manage and fire agents and employees;

(j) To require that the Members direct all of the Directed Waste generated and collected within their respective boundaries (or specified portions or specified types of such Wastes and Materials) to the Approved Facility until December 31, 2024, and potentially thereafter as the case may be; however, that the Authority is not empowered to require El Cerrito to so direct any Solid Waste collected by its collector or collected as part of El Cerrito Recycling Services unless El Cerrito so consents; ~~edited per El Cerrito request~~

(k) To require each Member other than El Cerrito to include some or all of the Approved Rates paid to the owner or operator of the Approved Facilities in connection with the waste stream of that Member directed to the Approved Facilities, to be “passed through” to or collected from the ratepayers within the boundaries of that Member; ~~edited per El Cerrito request~~

(l) Subject to a unanimous vote of the Board, to require each Member to (i) include fees which may be imposed from time to time by the Authority and to be collected from the ratepayers within the boundaries of that Member which fees are determined by the Authority in its sole discretion 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 ; 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 and to require that the Member take such action to direct the collection of such fees in a timely manner; ~~edited per City Manager agreement~~

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- (m) Subject to a unanimous vote of the Board, to require a 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 regardless of how that Member collects fees; and (ii) provide for payment of amounts to the Authority, in the event that such amounts are not paid to the owner or operator of the Approved Facility, and to require that the Member take such action to direct payment of its portion of funding otherwise provided for in said Approved Rates in a timely manner;~~[edited per City Manager agreement]~~

(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 an Approved Facility, or through use of other facilities;

(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; and

(p) To educate the public as to Solid Waste, diversion and recycling matters.~~[corrected per Richmond comment]~~

5.4. ~~5.3.~~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 additional prior written authorization by the affected Member’s legislative body:

- (a) ~~Enter~~To enter into new regional agreements binding on its Members;

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(b) To acquire, construct, finance, refinance, operate, regulate and maintain

Facilities or contract with a private entity to do the same, subject, however, to the conditions and restrictions contained in this Agreement. ~~Approval of any Facilities shall require a majority vote of the Board as well as a selection by each Member as to whether or not it will participate or “opt in” to the use of the Facilities. Only the Members which “opt in” shall have the benefits of use of the Facilities and would liable for its costs. In the event that a Member who has not “opted in” seeks to at a later date, any financial arrangements relating to such action shall be approved by a unanimous vote of the Board; [added per City Manager agreement]; [deleted per City Manager agreement], including the following:~~

(1) Prior to any substantial Authority involvement in the planning for such a facility, the Facility shall be conceptually approved by the Board.

(2) Following such initial approval, each Member’s governing body shall determine whether or not it will participate in the Facility. All costs associated with the Facility shall be borne exclusively by the participating Members.

(3) Nonparticipating members will not be entitled to use the Facilities. Subject to a unanimous vote of the participating members, a nonparticipating Member may become a participating member on such terms as may be determined by the Board.

(4) Both the Board and the governing body of the jurisdiction in which the Facility would be located (the “Host”) must approve the Facility prior to its construction or acquisition.

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(5) The Authority shall not exercise the power of eminent domain in

order to acquire real and personal property necessary and convenient to the development of a Facility, but it may request that the Host acquire such property.

(c) ~~To issue Revenue Bonds,~~ To issue revenue bonds, notes, certificates of participation, or any other instrument evidencing indebtedness, from time to time, in accordance with all applicable laws ~~for~~ for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation, modification, or maintenance of Facilities; ~~[edited per Hereules comment]~~

(d) To enter into agreements to regulate or operate a Facility;

(e) To lease Facilities; ~~[edited per staff because redundant of 5.3(b)]~~

~~(f) —~~

~~;~~ ~~[deleted per Pinole request]~~

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

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

(h) ~~(i)~~ 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 Directed Wastes and Materials) to the Approved Facility for the period beginning in 2025 or later.

5.5. ~~5.4.~~ The powers specified in this Section ~~5.3~~ shall be exercised subject only to the limitations set forth in ~~Section 5.3~~ this Agreement, applicable law and such restrictions upon

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the manner of exercising such powers as are imposed by law upon the Members in the exercise of similar powers. The Members do not specifically delegate any additional powers to the Authority without the express authorization of ~~that each~~ 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 which the Authority is not providing to all the Members.—~~[edited per Hercules comment] Nothing in this Section shall prevent the Authority from providing additional services to Members pursuant to an agreement or agreements between or among the Authority and a Member or Members, in which the Member or Members agree(s) to compensate the Authority for the provision of such services.

5.6. The Authority hereby designates San Pablo, a general law city, as the Member required to be designated by section 6509 of the California Government Code.~~[edited per City Manager agreement]~~

5.7. Although the Authority has not entered into Franchise Agreements to date, nothing in this Agreement 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 5.3(i).

SECTION 6. Boundaries. The boundary of the Authority shall be the consolidated boundaries of the Members as set forth in Exhibit A attached hereto and incorporated herein. If a new Member joins or a Member withdraws from the Authority, the boundary of the Authority

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shall be modified to include or exclude the area of the new or withdrawing Member. This Section 6 shall not prevent any Facilities from being located outside the boundary of the Authority.

SECTION 7. Organizations.

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 a Director from each Member, except that the City of Richmond shall have three Directors, and a non-voting ex officio member from the County. Upon execution of this Agreement, ~~all the Members~~ each Member shall appoint ~~their~~ its representative ~~Directors~~ Director(s) to the Board and one (1) person as an Alternate Director to serve in the case of absence ~~or conflict of~~ of or recusal by an appointed Director. Directors and Alternate Directors who 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.

(b) Each Director and Alternate Director 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 agency of that Director. Each Director and Alternate Director 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 Director.

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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 Director. The Authority and the Board shall be entitled to rely on a written notice from the City Clerk as conclusive evidence of the appointment and removal of Directors and ~~Alternates-~~ Alternate Directors 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~~ 13831 San Pablo Avenue, San Pablo, California 94806. The Board may change that principal office upon giving at least fifteen (15) days' prior written 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 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,~~ the Board has taken or 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

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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 shall hold office for a period of one (1) year commencing on a date designated by resolution of the Board. 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 shall not be representatives of the same Member.~~{edited per Hereules comment}~~

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 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, subject to reasonable procedures adopted by the Board of Directors.

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

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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.

(a) ~~Pursuant to~~ The Treasurer shall be selected and approved by the Board, and the individual selected to serve as Treasurer shall also serve as the appointee under California Government Code section 6505.5, the Authority designates the Treasurer of the City of San Pablo as Treasurer 6505.6. 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.

(b) The Treasurer shall do all of the following:

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

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

(3) ~~(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;

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

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(5) ~~(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.

(c) 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 the ~~Auditor of the City of San Pablo~~ Treasurer appointed pursuant to Section 7.8 herein 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 Board shall select and 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 selection of the Secretary may be delegated to the Executive Director. 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

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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 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.

SECTION 8. Meetings of the Board.

8.1. Regular Meetings. The Board shall hold a minimum of 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-.

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 standing 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 three (3) Directors, seated or Alternate~~

~~Directors, at a Board meeting shall constitute a~~ A quorum for the transaction of business of the Board shall require the presence of Directors that represent a majority of the total membership of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

~~[edited at Board direction and included per Executive Director request]~~ For purposes of establishing a quorum and voting at Board meetings, Alternate Directors that are entitled to vote pursuant to Section 7.2 shall be considered as “Directors.”

8.6. Voting. 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. ~~For purposes of voting at Board meetings, seated Alternate Directors shall be considered as Directors.—~~Where this Agreement requires an unanimous vote, ~~such vote~~ the action shall require ~~an affirmative vote of all seated Directors and Alternate Directors on the Board. A~~ the unanimous vote of the ~~Directors and Alternate Directors present at any individual Authority meeting shall not be sufficient~~ total membership of the Board (7 votes as of the date of this Agreement). Unless otherwise identified in this Agreement, all Board actions ~~shall be approved by a majority vote of all Directors or Alternate Directors if seated, and not merely a majority of—the Directors or Alternate Directors present at any individual Authority meeting—~~ ~~[edited per El Cerrito request]~~ require a majority vote of the total membership of the Board (4 votes as of the date of this Agreement).

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8.7. Bylaws. The Board from time to time may adopt by resolution bylaws or other procedures for the conduct of its affairs, provided that they are not inconsistent with this Agreement. ~~[edited per Hercules request]~~

8.8. Budget. 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 HHW Facilities~~ including HHW Programs. 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. [moved per Executive Director's request]~~

8.9. Reserves.

(a) The Authority establishes the following three (3) funds: 1) an Operating Fund; 2) an Operating Reserve Fund; and 3) a Recycling Fund Reserve. The Operating Reserve Fund limit is initially set at 67% of the annual operating budget.

(b) ~~(+)~~ Any amounts which accumulate in Operating Reserve Fund in excess of the limit will be rolled over into the Recycling Reserve Fund account during the annual budget process. The Board shall adopt policies and procedures by resolution to address operation and management of both Reserve Funds, including the Recycling Reserve Fund limit, procedures for replenishment of reserves and the periodic Board consideration of use of the excess Recycling Fund Reserves.

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(c) ~~(b)~~ Excess Recycling Fund Reserves. Any potential excess in the

Recycling Fund Reserve shall be dispersed to Members, used for rate reduction or subsidy, or to fund special projects. Reserve fund procedures and policies have been adopted by Resolution

~~2018-02~~ 18-02. The funding amounts of the Operating Reserve Fund and the reserve fund policies may only be modified in the future through adoption of a resolution subject to a unanimous vote of the Board.

(d) The Board may from time to time create and fund a Liability Reserve Fund

for potential or anticipated future liabilities, such as ~~for UAAL and OPEB obligations. A~~

~~Liability Reserve Fund exists as of the date of this Amendment and Restatement for the UAAL~~

~~and OPEB liabilities of the Authority which initially is set at \$550,000. [edited per City~~

~~Managers meeting 8/23/18 and included per Executive Director request]~~ CalPERS Unfunded

Actuarial Accrued Liability (“UAAL”) and Other Post-Employment Benefits (“OPEB”)

obligations.

8.10. Committees. The Board may create or designate committees, which typically shall be ad hoc committees. A committee would consist of two or three Directors, and Alternates may not serve on committees. An ad hoc committee would be subject to a one year term from its date of creation and shall typically be limited in scope to the single purpose for which it was created by the Board. In the event of a vacancy on an ad hoc committee, the Chair shall designate a replacement committee member. Permanent standing committees may be created by unanimous vote of the Board.

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(a) All committee meetings shall be held subject to the provisions of the

California Ralph M. Brown Act (sections 54950 *et seq.* of the California Government Code), although certain ad hoc committee meetings need not be public meetings in accord with said act.

(b) ~~8.12.~~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.

SECTION 9. Operating Fund Revenues and Other Sources of Funds.

9.1. The Authority may 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 fees under the Act 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 ~~5.25.3.~~

9.2. The Authority may establish a joint operating fund which may receive funds from the Members or other sources. 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 unanimous vote of the Board.

9.3. All moneys in the operating fund shall be paid out for the purposes for which the fund was created upon authorization of the Board, or within the expenditure authority of the Executive Director provided by the Board by time to time.

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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 a Facility and all financial transactions of the Members relating to any Facility including any HHW Facility. 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. The Authority shall adopt a records management program to provide for the maintenance and disposal of records consistent with the requirements of State Law. ~~[edited per Hercules comment]~~

SECTION 11. Implementation of the Act.

11.1. Intent. It is the intent of all Members 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 Sections 5.1 and 5.2.

11.2. Submittal of Elements by Members:-

(a) Any Member choosing to exercise its authority to undertake an SRRE, HHWE or NDFE individually, or to respond individually to a notice of deficiency, may do so 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.

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

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 Members' 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 Members 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 Members 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 Members and shall periodically report to the Members 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.

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(f) The Authority will implement the Act's programs and demonstrate

compliance with the monitoring and reporting requirements related to ~~AB 341, AB Assembly~~
Bill 341 (2011), Assembly Bill 1826 (2014), and any other future State mandates related to solid
waste handling within the Member boundaries.

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 Members 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 15 and 16 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 and approved by the Authority Board of Directors and submitted or resubmitted to CalRecycle as may be needed.

(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 Members.

(c) The Regional Plan, and subsequent amendments or revisions thereto, following approval by CalRecycle, shall be included in this Agreement by this reference.

(d) Notwithstanding Section 16 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.

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

(f) The Members 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~~ cooperate 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. Authority Established Rates.

12.1. The Authority shall be solely responsible for the approval of rates for services at an Approved Facility designated pursuant to this Agreement and each Member hereby delegates, assigns and/or otherwise transfers to the Authority any powers that each Member that has its Designated Waste processed at an Approved Facility may have with respect to the regulation of, approval or establishing rates or charges for that designated waste.

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12.2. The Authority shall establish or approve rates to be charged at an Approved Facility, in amounts sufficient to provide the revenues necessary to meet the contractual obligations for use of Approved Facilities.

12.3. The Authority may from time to time elect to include as an additional amount in the rates established or otherwise approved for an Approved Facility, 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 an Approved Facility.

12.4. 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 that uses that Approved Facility 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. That portion of the Approved Rates that is paid to the Authority is to be used to fund Authority activities that benefit all Members. ~~edited per Pinole comment~~ A Member, in an alternative manner, may elect to fund or provide its share of the costs and obligations of the Authority set forth in Section 12.5, if its Directed Waste does not go to the Approved Facility and/or an alternative funding method is approved by the Board. Any Member which has executed a separate Post Collection Agreement from the one defined in Section ~~1.25 may~~ 1.26 shall contribute its portion of the Authority budget and HHWP costs based on its proportional share of ~~solid waste tonnage~~ the Members' "Inbound

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Solid Waste,” “Dry Waste,” “Construction and Demolition,” “Organics and Food Scraps”

tonnage as shown in the most recent Annual Report submitted by the Contractor pursuant to the

PCA. ~~[edited per City Manager agreement]~~

12.5. 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~~ A unanimous vote shall be required for any Board action to materially modify the current rate setting methodology described in Exhibit B ~~resulting in the — reallocation of costs more than 5% of the cost between Members or reallocating more than 5 % of the costs to recycling and diversion activities, would require a unanimous vote of all Members through adoption of a resolution.~~ ~~[edited per Richmond request and Hercules comment]~~

12.6. 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 portion of collection rates corresponding to Approved Rates. The Authority shall also notify any Member agency that is not subject to the Approved Rates, ~~—~~ the portion of the required Authority revenues which must be funded by that Member.

SECTION 13. Apportionment of Penalties.

13.1. 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

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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 Member 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 13.1(a) or Section 13.1(b) of this Agreement shall be paid out of Authority funds including potentially its Operating or Recycling Reserve Funds and, to the extent necessary, collected in the rates or charges assessed against each Member based upon ~~the Solid Waste tons generated by that Member.~~ ~~[edited per City Manager agreement]~~ their proportionate shares of the Members' aggregate solid waste tonnage (calculated using the Members' "Inbound Solid Waste," "Dry Waste," and "Construction and Demolition" tonnage as shown in the last three Annual Reports submitted by the Contractor pursuant to the PCAs.)

(d) The Members shall only be liable for payment of any penalties assessed against the Authority by CalRecycle which are not paid by the Authority and which are not paid by an individual Member pursuant to Section 13.2 below.

13.2. Penalties Arising from a Member's Failure.

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

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(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 an Approved Facility from within the jurisdiction of the failing Members who have not fully reimbursed the Authority.

(2) In lieu of collection of the penalty by the Authority through the surcharge, described in Section 13.2(a)(1) above, the Member 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) — Neither the Authority nor a Member shall be obligated to pay, nor a Member required to reimburse the Authority, if the Member 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 Member as a result of the Member's failure to either (i) implement the programs or actions specifically identified in the Regional Plan for implementation by the Member; or (ii) to exercise its prerogatives under Section 11.2 of this Agreement; or (iii) to perform its obligations under Section 11.5 of this Agreement, shall be paid by the Member 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.

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(c) In the event that failure of one or more Members to perform their

obligations under this Agreement or to implement programs or actions specified in the Regional Plan for implementation by the Member causes the Authority or other Members to be unable to implement the Regional Plan, the failing Member shall pay any penalties assessed against the Authority or other Member(s) by CalRecycle as a result of the failure.

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

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

SECTION 14. Disposition of Assets at Dissolution. Subject to the then applicable requirements of the 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, and adequate provision for, all debts, liabilities and obligations of the Authority shall be divided in accordance with a resolution adopted by a ~~majority~~ unanimous vote of the Board at the time of the dissolution.

SECTION 15. Withdrawal. ~~[The language in Sections 15.1 and 15.2 remains under discussion by the City Manager group].~~

~~15.1.~~

~~15.2.~~

=

15.1. Requirements for Withdrawal. A Member may withdraw from the Authority subject to the following:

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(a) Notice of Withdrawal. A Member seeking to withdraw from the

Authority shall notify the Authority and each of the Members, by personal delivery in the manner required by Section 18, by presenting (“Notice of Withdrawal”) a resolution adopted by its governing body setting forth its intent to withdraw from the Authority to the Board. The resolution shall set forth the effective date of the withdrawal (“Withdrawal Date”), which shall be no sooner than one hundred eighty (180) days from the Notice of Withdrawal. The Board may by unanimous vote authorize a Withdrawal Date that is sooner than 180 days from the Notice of Withdrawal.

(b) Defined Terms. For the purposes of this Section 15, the terms defined in this subsection have the following meanings:

(1) “Allocated Funds” means the funds allocated to meet all of the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the Withdrawal Date that are payable in the fiscal year in which a notice of withdrawal is provided.

(2) “Long-term Liabilities” means the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the Withdrawal Date that become due after the fiscal year in which the Notice of Withdrawal is provided. Long-term Liabilities include, but are not limited to, CalPERS and OPEB UAAL and office leases, if any. The calculation of the CalPERS and OPEB UAAL shall reflect the reserve funds set aside for meeting those obligations.

(3) “Pro Rata Share” means a Member’s proportionate share of the Members’ aggregate solid waste tonnage (calculated using the Members’ “Inbound Solid Waste,”

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“Dry Waste,” and “Construction and Demolition” tonnage as shown in last three Annual Reports submitted by the Contractor pursuant to the PCA).

(4) “Reserve Policy” means Authority Resolution No. 18-02,

Resolution of the Board of Directors of the West Contra Costa Integrated Waste Management

Authority Requiring the Establishment of Financial Reserves, adopted on June 14, 2018.

(5) “Unallocated Funds” means the portion of Authority reserve funds

that have not been either (a) set aside for the purpose of meeting specific Authority Long-term Liabilities or (b) allocated in the Authority budget.

(c) Satisfaction of Pro Rata Share of Long-term Liabilities.

(1) Within ninety (90) days following receipt of a Notice of

Withdrawal pursuant to Section 15.1(a), the Authority shall notify each of the Members, pursuant to Section 18, of its determination of the Allocated Funds, Unallocated Funds, Long-term Liabilities, and the Pro Rata Share. In determining the Long-term Liabilities, the Board of Directors shall, based on the recommendation of an actuary, determine the amount of any Authority UAAL as of the Withdrawal Date.

(2) On or before the Withdrawal Date, and as a condition precedent to

the withdrawal’s effectiveness, the withdrawing Member must pay to the Authority its Pro Rata Share of Long-term Liabilities. If the Authority determines, under Section 15.2(b), that the withdrawing Member is entitled to a disbursement of Unallocated Funds, the withdrawing Member may direct the Authority to deduct the payment required by this Subsection from its disbursement of Unallocated Funds.

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(d) Termination of Withdrawal Process. A withdrawing Member may

terminate the withdrawal process at any time before the withdrawal is effective by notifying the Authority and each of the Members, by personal delivery in the manner required by Section 18. The withdrawing Member shall be liable for all third-party costs incurred by the Authority for processing the withdrawal, which shall be payable within 60 days of the notice of termination of the withdrawal process.

15.2. Disbursement of Unallocated Funds Upon Withdrawal.

(a) On or before the Withdrawal Date, the Authority shall disburse to the withdrawing Member its Pro Rata Share of the portion of the Unallocated Funds that are in excess of the Operating Fund Target Reserve and the Recycling Fund Target Reserve, as both are described in the Reserve Policy.

(b) Within 45 days following its adoption of a budget that reflects the departure of the withdrawing Member, the Authority shall disburse to the withdrawing Member its Pro Rata Share of the portion of the Operating Fund Reserve and the Recycling Fund Reserve that exceed, respectively, the recalculated Operating Fund Target Reserve and the recalculated Recycling Fund Target Reserve, pursuant to the Reserve Policy.

15.3. Obligations Following ~~Effective~~ Withdrawal Date. A Member which has withdrawn from the Authority shall not be liable for the payment of Authority expenses accruing beyond the ~~Effective~~ Withdrawal Date, and shall have no right to reimbursement of any assets or monies of the Authority once disbursement of any Unallocated Funds pursuant to Section 15.2(b), if any, has been effectuated.

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15.4. 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.

15.5. ~~Implication of Member and Authority's Obligations Under the Act. If a Member 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:~~

~~(a) — An effective date for the withdrawal of the Member (hereinafter "Withdrawal Date");—~~

~~(a)~~ (b) A provision providing that the The withdrawing Member 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 Member's jurisdiction to CalRecycle for approval ~~and that each~~. The withdrawing Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;

~~(b)~~ (c) 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 Member to CalRecycle for approval;

(c) The withdrawing Member 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 Member including the Authority's costs

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incurred and associated with CalRecycle actions leading to and including the assessment of said penalties; ~~—~~

(d) ~~(e)(e)~~ The withdrawing Member shall be responsible for compliance with the Act the earlier of: (i) the date of the withdrawing Member's submittal of the documents to CalRecycle; or (ii) the date of the Authority's submittal of the revised Regional Plan to CalRecycle; or (iii) the Withdrawal Date.

SECTION 16. Amendments Including Termination.

16.1. This Agreement may only be amended by a written instrument approved by a majority of the Directors ~~(including seated Alternate Directors)~~ which then shall be approved by all of the Member's governing bodies. ~~[edited per City Manager agreement]~~

16.2. 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 minimum 2/3 vote of all ~~Members of the Board~~ Directors which then shall be approved by a minimum of 2/3 of the Members' governing bodies. Given the current membership and Board seats, to reach the 2/3 threshold, five Directors and four Members would have to vote to adopt the resolution.

~~16.3.— 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.—~~

16.3. ~~16.4.~~ For termination of this Agreement during any period where the Authority is operating as a Regional Agency, the written instrument required by Section 16.2 of this Agreement shall include, but not be limited to, all of the following requirements:

**September 25 2018 DRAFT
FOR COMMENT**

RECOMMENDED AMENDED AND RESTATED JEPA

- (a) A date certain that this Agreement will be terminated (hereinafter “Termination Date”);
- (b) 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;
- (c) 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;
- (d) 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 15.5(d) to CalRecycle; or (ii) the specified Termination Date; and

16.4. ~~(e)~~ 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. ~~{deleted per-~~
~~City Manager agreement}~~

~~September 25 2018 DRAFT
FOR COMMENT~~

RECOMMENDED AMENDED AND RESTATED JEP A

SECTION 17. 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 18. Notices.

18.1. 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.

18.2. 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.

18.3. 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 19. Successors and Assigns.

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

**~~September 25 2018 DRAFT
FOR COMMENT~~**

RECOMMENDED AMENDED AND RESTATED JEPA

19.2. 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.

19.3. No assignment shall be effective unless and until the Authority, the Members and the proposed assignee comply with all then applicable requirements of Law relating to changes in the composition of entities such as the Authority.

~~September 25 2018 DRAFT
FOR COMMENT~~

RECOMMENDED AMENDED AND RESTATED JEPA

SECTION 20. 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 Facility for the purposes of this Agreement. The City of El Cerrito operates both the Recycling Center and a curbside collection program for Recyclable Material. The City of El Cerrito also has entered into agreements relating to the collection, processing and disposal of its Solid Waste, green waste and Recyclable Materials and the flow of such wastes are not controlled by the Authority. In particular, 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. ~~edited per El Cerrito request~~

SECTION 21. Third Party Beneficiaries. ~~The Authority shall be a third-~~ 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.

SECTION 22. 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.

~~deleted per San Pablo comment~~

**~~September 25 2018 DRAFT
FOR COMMENT~~**

RECOMMENDED AMENDED AND RESTATED JEP A

SECTION 23. 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 24. Dispute Resolution.

24.1. Informal Resolution. Should a dispute arise in connection with the interpretation or performance of this Agreement, the provisions of this Section ~~25-24~~ shall apply. A Member shall give the Authority ~~or Member(s) and Members~~ written notice of such dispute. The parties shall attempt to resolve their disputes informally to the maximum extent possible. In the event such dispute is not resolved within thirty (30) days of such notice, either party may propose the appointment of a mediator for advice and a non-binding mediation, and the other party or parties shall attend such mediation. If the dispute is not resolved through mediation, within sixty (60) days thereafter, then any party may refer it to arbitration.

24.2. Arbitration. All disputes that arise in connection with the interpretation or performance of this Agreement that are not resolved pursuant to the informal procedures of Section ~~25-124.1~~, shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association.

24.3. Binding Arbitration. The arbitrator's decision shall be final and binding on the Authority, all Members and all former Members involved or affected by the dispute.

24.4. Enforcement. 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.

~~September 25 2018 DRAFT
FOR COMMENT~~

RECOMMENDED AMENDED AND RESTATED JEPA

CITY OF EL CERRITO

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

CITY OF HERCULES

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

CITY OF PINOLE

Dated: _____ By: _____

Mayor

ATTEST: _____

**~~September 25 2018 DRAFT
FOR COMMENT~~**

RECOMMENDED AMENDED AND RESTATED JEPA

City Clerk

APPROVED AS TO FORM: _____

City Attorney

[SIGNATURES CONTINUED ON NEXT PAGE]

**~~September 25 2018 DRAFT
FOR COMMENT~~**

RECOMMENDED AMENDED AND RESTATED JEP A

CITY OF RICHMOND

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

CITY OF SAN PABLO

Dated: _____ By: _____

Mayor

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

3231604.15

**~~September 25 2018 DRAFT
FOR COMMENT~~**

RECOMMENDED AMENDED AND RESTATED JEPA

Exhibit A

Boundaries

-

**~~September 25 2018 DRAFT
FOR COMMENT~~**

RECOMMENDED AMENDED AND RESTATED JEPA

Exhibit B

Rate Setting Methodology

~~3064090.2~~

Exhibit B
Summary Formulas and Full Description of RecycleMore Post-Collection Rate
Calculation Methodology

Exhibit B describes and shows formulas used in the current methodology for calculating Recycle More Post-Collection Rates. All 2018 Sample Calculation figures stated in Exhibit B are directly referencing the Approved 2018 Richmond Sanitary Service Area Post-Collection Rate Calculation, shown in the table below.

Approved Richmond Sanitary Service Area Post-Collection Rate Calculation

| \$ 92.02 Blended per ton 157,980 total tons = 14,537,960.88 Annual Revenue | | | | | | | |
|----------------------------------------------------------------------------|-----------------|-----------|--------------|---------------|-----------------|-----------------|-------------------------|
| | Residential | | | | Commercial | Industrial | TOTAL |
| | 20-Gallon | 35-Gallon | 60/65-Gallon | 95/100-Gallon | Per Cubic Yard | Per Ton | |
| 2018 Rates | \$ 5.08 | \$ 8.91 | \$ 16.57 | \$ 24.86 | \$ 9.66 | \$ 140.17 | \$ 140.17 |
| 2018 Tonnage Basis | 45,214 | | | | 25,406 | 33,099 | 103,719 |
| 2017 % of Tons | 44% | | | | 24% | 32% | |
| 2018 Unit Basis*** | 59,280 | | | | 368,500 | 33,099 | |
| 2018 Revenue Requirement | \$ 6,337,578.32 | | | | \$ 3,561,051.74 | \$ 4,639,330.83 | \$ 14,537,960.88 |
| 2017 Rate | \$ 4.86 | \$ 8.52 | \$ 15.85 | \$ 23.78 | \$ 10.35 | \$ 137.90 | \$ 137.90 |
| 2018 Rate | \$ 5.08 | \$ 8.91 | \$ 16.57 | \$ 24.86 | \$ 9.66 | \$ 140.17 | \$ 140.17 |
| \$ Increase/(Decrease) | \$ 0.22 | \$ 0.39 | \$ 0.72 | \$ 1.08 | \$ (0.69) | \$ 2.27 | \$ 2.27 |
| % Increase/(Decrease) | 4.5% | 4.6% | 4.5% | 4.5% | -6.7% | 1.6% | 1.6% |

Step 1: Calculate the Richmond Sanitary Service (RSS) Annual Post-Collection Revenue Requirement

DESCRIPTION:

The RSS Annual Post-Collection Revenue Requirement is calculated as:

\$92.02, which is the RecycleMore Board approved Blended Per-Ton Rate calculated as described in Section 5 of the Post-Collection Agreement (PCA) between RecycleMore and Republic Services (Republic) times 157,979.54, which is the Total Number of All Tons Collected by RSS¹ and reported by Republic for the twelve-month period from August 1 of the prior year through July 31 of the present year, and is inclusive of Solid Waste (Trash), Dry Waste, Construction and Demolition Debris (C&D), Recycling and Organics.

¹ Pursuant to the franchise agreements between RSS and Hercules, Pinole, Richmond and San Pablo and Contra Costa County.

FORMULAS:

Blended Per-Ton Rate (rounded to the nearest cent) **TIMES**

Total Number of All Tons Collected 8/1 to 7/31 **EQUALS**

RSS Annual Post-Collection Revenue Requirement

2018 SAMPLE CALCULATION:

$$\underline{\$92.02 \times 157,979.54 \text{ tons} = \$14,537,960.88^2}$$

Step 2: Calculate the Revenue Requirement per Sector

DESCRIPTION:

The Revenue Requirement per Sector (Residential, Commercial, Industrial) is calculated as:

The RSS Annual Post-Collection Revenue Requirement as calculated in Step 1, times each Sector's percentage of the total Solid Waste (Trash), Dry Waste and C&D reported by Republic for the twelve-month period from August 1 of the prior year through July 31 of the present year.

These tonnages are a subset of the total number of all tons used in Step 1 in that recycling and organics tonnages are not included. For example, the total number of all tons used in Step 1 in 2018 was 157,979,54 tons, whereas the total solid waste (trash), dry waste and C&D tonnage was 103,718.67, with the difference between the two being 54,260.87 tons of recycling and organics, which are not counted for the purposes of calculating the Revenue Requirement per Sector.

FORMULAS:

Residential Sector

RSS Annual Post-Collection Revenues Requirement **TIMES**

Residential Sector Total Tons of Trash, Dry Waste and C&D **DIVIDED BY**

All Sector Total Tons of Trash, Dry Waste and C&D **EQUALS**

Residential Sector Revenue Requirement

² The Blended Per-Ton Rate used in prior years and in the 2018 Post-Collection Rate calculation was not rounded to the nearest cent, and as a result the RSS Annual Post-Collection Revenue Requirement shown above is an

Commercial Sector

RSS Annual Post-Collection Revenues Requirement *TIMES*

Commercial Sector Total Tons of Trash, Dry Waste and C&D *DIVIDED BY*

All Sector Total Tons of Trash, Dry Waste and C&D *EQUALS*

Commercial Sector Revenue Requirement

Industrial Sector

RSS Annual Post-Collection Revenues Requirement *TIMES*

Industrial Sector Total Tons of Trash, Dry Waste and C&D *DIVIDED BY*

All Sector Total Tons of Trash, Dry Waste and C&D *EQUALS*

Industrial Sector Revenue Requirement

2018 SAMPLE CALCULATION:

Residential Sector: \$14,537,960.88 X 45,214.40 tons / 103,718.67 tons = **\$6,337,578.32**

Commercial Sector: \$14,537,960.88 X 25,405.73 tons / 103,718.67 tons = **\$3,561,051.74**

Industrial Sector: \$14,537,960.88 X 33,098.54 tons / 103,718.67 tons = **\$4,639,330.83**

Step 3: Calculate the Unit Basis per Sector

DESCRIPTION:

The Unit Basis per Sector is expressed in monthly 35-Gallon Equivalents (Residential), Annual Cubic Yards (Commercial), and Annual Tons (Industrial) and is based on tonnage and detailed cart counts and cubic yard information reported by RSS and Republic, each of which are calculated per the following:

For the Residential Sector, the total number of residential Solid Waste (Trash) collection carts by gallon size (20, 35, 60/65, and 95/101) reported as of September 30 of the current year are multiplied by the 35-Gallon Equivalent factor for each cart size, yielding an equivalent number of 35-gallon carts. The 35-Gallon Equivalent factors for each cart size are calculated as the ratio of gallon size divided by 35 and are shown in the table below. In 2018, the total number of 35-Gallon Equivalents was calculated at 59,280.

insignificant \$683.61 higher than the product of \$92.02 times 157,979.54.

Exhibit B to May-June JEPA Draft

| <u>Trash Cart Size</u> | <u>35-Gallon Equivalents</u> |
|------------------------|----------------------------------|
| <u>20-gallon</u> | <u>0.57</u> |
| <u>35-gallon</u> | <u>1.00</u> |
| <u>60/65-gallon</u> | <u>1.86</u> |
| <u>95/101-gallon</u> | <u>2.79</u> |

For the Commercial Sector, the annual cubic yards are calculated as twelve (12) times the total commercial cubic yards per month on September 30. For the 2018 rate calculation, this number was 30,708 times 12, yielding 368,500 annual cubic yards.

For the Industrial Sector, the annual tons are the total industrial of Solid Waste (Trash), Dry Waste and C&D as shown in Step 2 (33,098.54 tons)

FORMULAS:

Residential Sector

Total Number of 20-gallon Trash carts **TIMES 0.57 PLUS**

Total Number of 35-gallon Trash carts **PLUS**

Total Number of 60/65-gallon Trash carts **TIMES 1.86 PLUS**

Total Number of 95/101-gallon Trash carts **TIMES 2.79 EQUALS**

Residential Sector Unit Basis

Commercial Sector

Total Number of Commercial Cubic Yards per Month **TIMES 12 EQUALS**

Commercial Sector Unit Basis

Industrial Sector

Industrial Sector Total Tons of Trash, Dry Waste and C&D **EQUALS**

Industrial Sector Unit Basis

2018 SAMPLE CALCULATION:

Residential Sector

Exhibit B to May-June JEPA Draft

8,486 20-gallon carts X 0.57 = 4,849 35-Gallon Equivalents +

47,197 35-gallon carts X 1 = 47,197 35-Gallon Equivalents +

3,000 60/65-gallon carts X 1.86 = 5,571 35-Gallon Equivalents +

597 95/101-gallon carts X 2.79 = 1,663 35-Gallon Equivalents =

59,280 35-Gallon Equivalents as Residential Unit Basis

Commercial Sector

30,708 cubic yards X 12 = **368,500 Annual Cubic Yards as Commercial Sector Unit Basis**

Industrial Sector

33,098.54 tons as the Industrial Sector Unit Basis

Step 4: Calculate the Post-Collection Rate Per Sector

DESCRIPTION:

For the Residential Sector, the base Post-Collection Rate is calculated for the 35-Gallon Trash cart as the Residential Sector Revenue Requirement, divided by the Residential Sector Unit Basis, divided by 12 months. The Post-Collection Rates for the 20-Gallon, 65-Gallon and 95/101-Gallon Trash carts are calculated based on the percentage increase in the 35-Gallon Post-Collection Rate for the coming rate year times the 20-Gallon, 60/65-Gallon and 95/101-Gallon Post-Collection Rates in the current rate year.

For the Commercial and Industrial Sectors, the Post-Collection Rate is simply the Revenue Requirement for each sector divided by the Unit Basis for each sector.

FORMULAS:

Residential Sector

Residential Sector Revenue Requirement **DIVIDED BY**

Residential Sector Unit Basis **DIVIDED BY**

12 EQUALS

Coming Rate Year 35-Gallon Post-Collection Rate

Coming Rate Year 35-Gallon Post-Collection Rate **DIVIDED BY**

Current Rate Year 35-Gallon Post-Collection Rate **MINUS**

Percentage Increase in the 35-Gallon Post-Collection Rate

20-Gallon, 60/65-Gallon, and 95/101-Gallon Current Rate Year Post-Collection Rates **TIMES**

Percentage Increase in the 35-Gallon Post-Collection Rate **EQUALS**

Coming Rate Year 20-Gallon, 60/65-Gallon and 95/101-Gallon Post-Collection Rates

Commercial Sector

Commercial Sector Revenue Requirement **DIVIDED BY**

Commercial Sector Unit Basis **EQUALS**

Commercial Per-Cubic Yard Post-Collection Rate

Industrial Sector

Industrial Sector Revenue Requirement **DIVIDED BY**

Industrial Sector Unit Basis **EQUALS**

Industrial Per Ton Post-Collection Rate

2018 SAMPLE CALCULATION:

Residential Sector

\$6,337,578.32 / 59,280 35-Gallon Equivalents / 12 = **\$8.91 Coming Rate Year 35-Gallon Post-Collection Rate**

\$8.91 / \$8.52 Current Rate Year 35-Gallon Post-Collection Rate = **104.56% Annual Increase in 35-Gallon Post-Collection Rate**

\$4.86 Current Year 20-Gallon Post-Collection Rate X 104.56% = **\$5.08 Coming Rate Year 20-Gallon Post-Collection Rate**

\$15.85 Current Year 60/65-Gallon Post-Collection Rate X 104.56% = **\$16.57 Coming Rate Year 60/65-Gallon Post-Collection Rate**

\$23.78 Current Year 95/101-Gallon Post-Collection Rate X 104.56% = **\$24.86 Coming Rate Year 95/101-Gallon Post-Collection Rate**

Commercial Sector

\$3,561,051.74 / 368,500 = **\$9.66 Commercial Per Cubic-Yard Post-Collection Rate**

Exhibit B to May-June JEPA Draft

A commercial customer with a two-yard container, picked up once per week, pays \$83.72 per month in Post-Collection Rates based on:

\$9.66 Commercial Per Cubic Yard Post-Collection Rate X 2 cubic yards per week X 52 weeks per year / 12 months = **\$83.72 per month in Commercial Post-Collection Rates**

Industrial Sector

\$4,639,330.83 / 33,098.54 = **\$140.17 Industrial Per Ton Post-Collection Rate**

An industrial customer with a thirty (30) yard container with contents weighing 5 tons would pay \$700.85 each time the container is serviced based on:

\$140.17 Industrial Per Ton Post-Collection Rate X 5 = **\$700.85 in Industrial Post-Collection Rates**

Recent JEPA Clarification Changes Made by Authority Legal Counsel

The Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement includes a number of clarifying changes made by Legal Counsel. These clarifying changes were reviewed and accepted by the City Managers at their June 24 meeting. These changes are:

- Addition of definitions for the terms Contractor (§1.9) and Post Collection Agreements (§1.27). These clarifications are necessary to implement newly added provisions that allocate costs based on the solid waste tonnage.
- Addition of the year of adoption to legislation referenced by bill number for ease of reference (§§2.1[g], 11.3[f])
- Use of general descriptive references to special programs (i.e. motor oil recycling program, pharmaceutical collection and disposal program, and battery recycling program) to allow flexibility in implementation (§§2.1[h][7],[8])
- Reference to Government Code section 6508.1 to incorporate Assembly Bill 1912 requirements or limitations (requested by Regional Staff) (§3.2)
- Addition of requirement that notice of change of principal office must be made in writing (§7.3)
- Addition of provision requiring additions to agenda to comply with procedures adopted by board (§7.5)
- Clarification of quorum threshold (§8.5)
- Rewording of voting threshold calculations (requested by Regional Staff) (§8.6)
- Reference to HHW programs in budget instead of facilities (§8.8)
- Creation date of Liability Reserve Fund and amount has been eliminated (§8.9), since the Board has not created a Liability Reserve Fund.
- Rewording of provision requiring unanimous vote for certain rate modifications (§12.5)
- Further explanation of the 2/3 voting threshold required for termination (requested by Regional Staff) (§16.2)

555 12th Street, Suite 1500
Oakland, California 94607
tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

John Bakker
Attorney at Law
jbakker@meyersnave.com



MEMORANDUM

DATE: July 11, 2019
TO: Chair Lyman and Members of the Board
RecycleMore
FROM: John Bakker, Interim District Counsel
RE: **Revisions to JEPAs Based on City Attorneys' Comments**

We received comments on the May-June 2019 draft JEPAs update from the City Attorney's Offices of Richmond and San Pablo.

We made most of the revisions suggested by the City Attorney's Offices. Many of the comments were non-substantive (fixing cross-references, pagination, and the table of contents, editorial revisions). We wanted to highlight the following more substantive comments and revisions:

1. Section 5.4(b)(5) indicates that the Authority does not have the power of eminent domain to develop Facilities. Our May-June 2019 draft indicated that the Authority could request that the host agency condemn property "on the Authority's behalf." San Pablo suggested that the Eminent Domain Law may not allow the host agency to condemn on behalf of another agency. We revised to delete the "on the Authority's behalf" language. This language will allow the host to acquire property and transfer it to the Authority.
2. Sections 7.8 and 7.9 deal with the designation of the Treasurer and Controller. San Pablo pointed it out that the language appointed San Pablo's Treasurer and Auditor, as respectively the Authority Treasurer and Controller, while the Authority and San Pablo have an agreement that requires the City's Administrative Services Director to provide such services. Sections 7.8 and 7.9 were designed to comply with Government Code section 6505.5, which requires a member's Treasurer and Controller serve as the Authority Treasurer and Controller. Another provision, Government Code section 6505.6, allows an employee or officer of the Authority to serve as the Treasurer and Controller. Sections 7.8 and 7.9 were revised to use the

flexibility in section 6505.6 to maintain the current arrangement with San Pablo and any future arrangement the Board may desire.

3. Section 8.5 specifies that a majority of the total membership is a quorum of the Board (4 directors at present). San Pablo suggested that a quorum require a majority of the total membership of the Board and a majority of the Members (4 directors representing 3 members). We did not make this suggested revision, because it is a policy issue that should be considered by the Board.
4. San Pablo suggested deleting Section 13.2(a)(3). The provision indicated that neither the Authority nor the member would be liable for CalRecycle penalties if the member demonstrated to CalRecycle that it had made a good faith effort to comply. San Pablo correctly points out that if that occurred CalRecycle would not impose the penalty.

Please let me know if you have any questions.

JB:JB
3322326.1



Agenda Report

Date: July 18, 2019
 To: West Contra Costa Integrated Waste Management Authority Board
 From: Stan Hakes, Executive Director
 Subject: Executive Director Recruitment

ACTION REQUESTED

Direct staff to immediately instruct Avery Associates to resume the active recruitment process for a permanent Executive Director.

BACKGROUND

Current RecycleMore Executive Director Stan Hakes announced at the July 2018 Board meeting that he would be retiring in July 2019.

At the November 2018 Board meeting, the Board awarded an executive director recruitment agreement to Avery Associates. Since that time, the Board directed the Executive Director to direct Avery Associates to defer the active recruitment, due to the uncertainty about the status of the Authority on a going-forward basis. At that time, one or two of the member agencies were considering withdrawal from RecycleMore, and the JEPA update was pending. At present, indications are that all five current member agencies will remain in the Authority. In addition, it appears the JEPA update has been resolved and will move forward for approval by the member cities.

Staff seeks direction to instruct Avery Associates to resume the active recruitment process for a permanent Executive Director.

POTENTIAL SCHEDULE

If the Board were to direct staff to contact Avery Associates to resume the active recruitment process, the recruitment could potentially move forward based on the following tentative schedule:

| | |
|-------------------------------------------|-------------------------|
| Brochure Completed - Recruitment Underway | August – September 2019 |
| Recruitment ends | October 2019 |
| First Interviews | November 2019 |
| Final Interviews - Selection | December 2019 |
| New Executive Director Begins Work | January 2020 |
| Interim Executive Director Ends Work | January 15, 2020 |

FISCAL IMPACT

Funds are included in the FY 2019-20 Recommended Budget for Executive Director recruitment.

RECOMMENDED ACTION

Direct staff to immediately instruct Avery Associates to resume the active recruitment process for a permanent Executive Director.

Submitted by:



Stan Hakes
Executive Director



Agenda Report

Date: July 18, 2019
 To: West Contra Costa Integrated Waste Management Authority Board
 From: John Bakker, General Counsel
 Subject: Appointment of Steve Duran as Interim Executive Director

ACTION REQUESTED

By motion, make findings that RecycleMore has commenced and is actively engaged in the recruitment of a permanent Executive Director and that the vacant position requires specialized skills, and authorize the Board Chair to execute the attached RecycleMore Agreement for Employment of Interim Executive Director between RecycleMore and Steve Duran.

BACKGROUND

After more than 35 years in public service, Executive Director Stan Hakes will retire on Jul 29, 2019. Although recruitment for a permanent replacement is underway, an Interim Executive Director possessing special skills, training and experience is needed to fill the vacant position from the time of Mr. Hakes' retirement until a permanent Executive Director is appointed. If the attached employment agreement is approved, Steve Duran will serve as Interim Executive Director effective July 22, 2019.

Mr. Duran retired from public service after serving as city manager and other leadership positions with public agencies in California. He is now classified as a retiree by the California Public Employees' Retirement System ("CalPERS"). Pursuant to sections 7522.56 and 21221 of the Government Code, a CalPERS retiree may return to work to fill a vacant position for an employer that participates in CalPERS ("retired annuitant") without reinstatement under certain restrictions. The Board must deem the position to require specialized skills, which the Executive Director position obviously requires. The appointment must be for a limited duration during recruitment for a permanent replacement for the vacant position, and the employment may begin only after active recruitment has commenced. The retired annuitant must be compensated by an hourly wage within the vacant position's publicly available pay schedule, and he or she may not work more than 960 hours each fiscal year.

The attached RecycleMore Agreement for Employment of Interim Executive Director will appoint Mr. Duran as Interim Executive Director. His employment will be at-will, and he will serve at the pleasure of the Board of Directors until such time that the Board appoints a person to the permanent position of Executive Director or until either part elects to terminate the Agreement. Mr. Duran will not receive any benefit or other form of compensation other than an hourly wage of \$70.01. This hourly wage is based on the salary of the current Executive Director and was calculated pursuant to Section 7522.56 of the Government Code.

Mr. Duran has previously served as City Manager of the City of Antioch and the City of Hercules, Director of Community and Economic Development at the City of Richmond, and as the Downtown Development and Implementation Manager for San Jose Redevelopment Agency.

FISCAL IMPACT

Sufficient budget appropriations have been included in the Board-adopted budget, and no budget amendments will be required as part of this action.

RECOMMENDED ACTION

By motion, make findings that RecycleMore has commenced and is actively engaged in the recruitment of a permanent Executive Director and that the vacant position requires specialized skills, and authorize the Board Chair to execute the attached RecycleMore Agreement for Employment of Interim Executive Director between RecycleMore and Steve Duran.

Submitted by:

John Bakker
General Counsel

Attachment 1: RecycleMore Agreement for Employment of the Interim Executive Director

**RECYCLEMORE
AGREEMENT FOR EMPLOYMENT OF
INTERIM EXECUTIVE DIRECTOR**

This Agreement made and effective as of the 18th day of July, 2019, between STEVE DURAN, an individual (“Employee”), and WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a joint powers authority (“RecycleMore”), (collectively, the “Parties”).

WHEREAS, RecycleMore has begun an active and open recruitment to fill its position of Executive Director; and

WHEREAS, until such a permanent Executive Director is hired, RecycleMore desires to employ Employee as an at-will employee for services as an Interim Executive Director in accordance with Government Code sections 7522.56, 21221, and/or 21224 and the terms of this Agreement; and

WHEREAS, Employee desires to be employed as an at-will employee for services as an Interim Executive Director in accordance with Government Code sections 7522.56, 21221, and/or 21224 and the terms of this Agreement; and

WHEREAS, Employee has previously served as a City Manager and other administrative leadership positions with other public agencies and therefore possesses the specialized skills necessary to perform the duties of Interim Executive Director for a limited durations; and

WHEREAS, the Parties wish to set forth in writing the terms and conditions of Employee’s employment as Interim Executive Director; and

WHEREAS, it is the intent of the Parties to comply fully with Government Code sections 7522.56, 21221, and/or 21224 so as to prevent any loss or interruption of retirement benefits for Employee; and

WHEREAS, it is the desire of RecycleMore to provide compensation on an hourly basis, and establish certain conditions of employment for the position of Interim Executive Director

NOW, THEREFORE, in consideration of the material advantages accruing to the parties and the mutual covenants contained herein, Employee and RecycleMore agree as follows:

Section 1. Appointment. The Board of Directors hereby appoints Employee to the position of Interim Executive Director in and for the West Contra Costa Integrated Waste Management Authority. Employee hereby accepts such appointment under the terms and conditions of this Agreement.

Section 2. Term.

2.1 This Agreement will become effective upon the date of adoption by the Board of Directors. Employee’s first day of employment shall be July 22, 2019. This Agreement

will expire at the time RecycleMore hires a permanent Executive Director, unless terminated earlier pursuant to this agreement.

2.2 Notwithstanding the foregoing, the Authority may extend the term for a brief period after RecycleMore hires a permanent Executive Director so that Employee can assist in the transition of the permanent appointment.

2.3 In no event will Employee's total hours exceed nine hundred sixty (960) in the fiscal year.

Section 3. At-Will Status.

3.1 Employee is an at-will employee who shall serve at the pleasure of the Board of Directors. Accordingly, the Board of Directors may terminate Employee's employment under this Agreement at any time, with or without cause.

3.2 Nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment, or any due process right to a hearing before or after the decision to terminate his employment either for, or not for, good cause. Both parties agree that Employee is retained on a temporary, at-will basis.

3.3 Both parties agree that this relationship is governed solely by this Agreement, and not by any statutory provisions.

3.4 Employee shall not be entitled to any benefits accorded to RecycleMore employees including, but not limited to, worker's compensation, disability insurance, vacation or sick pay.

Section 4. Employee's Duties. Employee shall render his best professional services and skills for the benefit of RecycleMore, performing the duties of an Interim Executive Director of RecycleMore. His primary responsibilities are to temporarily perform all supervisory and administrative tasks generally required of an executive officer for a similarly situated public agency and further to initiate and complete the recruitment process for a permanent fulltime Executive Director. These Executive Director functions include, but are not limited to: supervising all RecycleMore administrative and financial activities; supervising financial functions in coordination with the City of San Pablo; serving as the primary contact with the Board; supervising the preparation of Board and Board subcommittee agendas and staff reports; supervising the continuation of all existing recycling and reuse programs; administering the existing RecycleMore franchises and other vendor contracts; pursuing the goal statement as adopted by Board; and overall responsibility for RecycleMore's functioning during this interim period. Employee shall be responsible for performing the work under this Agreement in a manner which is consistent with the generally accepted standards for a professional public agency administrator.

Section 5. Compensation, Benefits and Reimbursement.

5.1 Hourly Pay. Employee shall be paid at a rate of \$70.01 per hour for all approved hours worked, payable on the RecycleMore-established payroll cycle.

5.2 No Benefits. Employee is a CalPERS retired annuitant and shall not receive any benefits in addition to that specifically set forth herein and specifically shall not include any employment benefits such as health and welfare benefits.

5.3 Medical or Other Unavailability. Employee shall not accrue any personal leave or illness leave during the term of this Agreement.

5.4 Expense Reimbursement. RecycleMore agrees to pay the travel, including mileage, for trips outside the service area, and subsistence expenses of Employee for that official travel, meetings and occasions which are reasonably necessary to enable Employee to pursue official or other functions for RecycleMore, provided such travel is consistent with employee activities directed or authorized by the Board of Directors.

Section 6. Office Hours. RecycleMore and Employee agree that Employee shall on a regular basis be present at the offices of RecycleMore during a sufficient portion of office hours from 8:30 a.m. to 5:00 p.m. Monday through Friday (excepting the every other Friday when the Authority's offices are closed) in order to supervise and perform administrative services; however, Employee shall otherwise perform these employee services at times and in such manner as Employee determines.

Section 7. Possession and Ownership of Property. Employee may use such RecycleMore property and materials without charge as is necessary and appropriate to carry out Employee's responsibilities hereunder. Upon termination of this Agreement, regardless of how termination may be effected, or whenever requested by RecycleMore, Employee shall immediately turn over to RecycleMore all of RecycleMore's property, including all items used by Employee in rendering services for RecycleMore hereunder or otherwise, that may be in Employee's possession, or under his control. All rights, title, royalties and interest to all work product of Employee resulting from his performance under this Agreement, including software, systems, specifications, data, reports, opinions and any other such information and materials as may be accumulated by Employee in performance of work under this Agreement, whether complete or in progress, shall be vested in RecycleMore.

Section 8. Termination. Either Party may this Agreement at any time, with or without cause, upon giving the other party fourteen (14) days' prior written notice. Neither party's right to terminate this Agreement shall be limited by an implied covenant or oral agreement. In the event of termination of this Agreement for any reason, Employee shall be entitled to payment prorated to the date of termination. Following any notice of termination, Employee shall fully cooperate with RecycleMore in all matters relating to the winding up of his pending duties on behalf of RecycleMore and the orderly transfer of any such pending work to such other employee(s) of RecycleMore or the permanent Executive Director.

Section 9. Indemnification & Professional Liability. RecycleMore shall defend, hold harmless and indemnify Employee against any tort, civil rights, personnel, discrimination, or professional liability claim, demand, suit, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties in accordance with the provisions of Government Code section 825. RecycleMore shall provide a defense in accordance with Government Code section 995 through 999.6. RecycleMore may

decline to defend and/or indemnify Employee only as permitted by the Government Code. RecycleMore may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

Section 10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements (including but not limited to employment or letter agreements) or contracts, either oral or written, between the parties with respect to the subject matter hereof. No party has made or relied upon any representations, warranties or commitments with respect to the subject matter of this Agreement except those specifically set forth herein. This Agreement shall be modified only with a written instrument duly executed by each of the parties.

Section 11. Confidentiality. The Employee agrees that in addition to any other limitation, regardless of the circumstances of the termination of retention, he will not communicate to any person, firm or corporation any confidential information relating to RecycleMore which he might from time to time acquire in the course of carrying out his responsibilities under this Agreement.

Section 12. Waiver. Failure of either party to require the performance of any term or condition of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent subsequent enforcement of any such term or any other term, nor be deemed to be a waiver of any subsequent breach.

Section 13. Notices. Any and all notices or communications required or permitted to be given under this Agreement shall be delivered in writing by registered or certified mail, postage prepaid, and addressed, in the case of Employee, to _____, and, in the case of the RecycleMore, to One Alvarado Square, San Pablo, California 94806, or to such other address as either party hereto shall hereafter designate by written notice to the other party. Mailed notices or communications shall be delivered upon deposit thereof in the mail in accordance with this paragraph.

Section 14. Miscellaneous.

14.1 Amendments. Except as otherwise specifically provided, the terms and conditions of this Agreement may be amended by mutual agreement, provided that before any amendment shall be valid or effective, it must be reduced to writing and signed by both parties. This Agreement may be extended past its termination date by direction of the Board and written consent of Employee.

14.2 Binding on Heirs, Successors and Assigns. The employee retention provisions of this Agreement are personal to Employee, but the administrative provisions of this Agreement shall be binding upon and inure to the benefit of and shall be enforceable by the heirs, administrators, executors, successors and assigns of the parties hereto.

14.3 Arbitration and Attorney's Fees. If any dispute arises concerning the rights of either party regarding the terms of this Agreement, the parties shall submit that dispute to arbitration and shall accept as final and binding the decision of the duly selected arbitrator.

The dispute shall be arbitrated pursuant to the California Employment Dispute Resolution Rules developed by the American Arbitration Association.

14.4 Headings and Severability. The paragraph headings contained in this Agreement are for reference purposes only and do not constitute substantive matter to be considered in construing the terms and provisions of this Agreement. The invalidity or unenforceability of any particular provision of this Agreement shall not affect its other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had been omitted.

14.5 Drafting of Agreement. This Agreement was negotiated between the parties and shall be read as if it was prepared jointly by the parties.

14.6 Review. Each party to this Agreement has had the opportunity to adequately review this Agreement, and failure to do so and any consequences thereof shall not be charged to the other party.

14.7 Choice of Law. This Agreement shall be construed and enforced under the laws of the state of California.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Steve Duran

Date

Greg Lyman, Board Chair

Date

ATTEST:

Acting Board Secretary

Date

APPROVED AS TO FORM:

John Bakker, General Counsel

Date



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

Date: July 18, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: RecycleMore Staffing and Core Services

ACTION REQUESTED

1. Receive and file a RecycleMore Staffing and Core Services Report.
2. Provide direction to staff.

BACKGROUND

The West Contra Costa Integrated Waste Management Authority (RecycleMore) is an organization in transition. Three of the five RecycleMore permanent positions will become vacant over the four-month period of April 2019 to July 2019. The vacancies consist of one of the two Program Managers who left RecycleMore employment on April 25, 2019, the Manager of Administration (scheduled to retire in the middle of July 2019) and the Executive Director (scheduled to retire at the end of July 2019).

The Board recently promoted RecycleMore employee Christina Leard to fill the vacant Program Manager position. Thus, her previous position (Recycling Coordinator/Administrative Assistant) is now vacant. In essence, on August 1, 2019 there will be just two permanent filled positions responsible for the following RecycleMore essential responsibilities:

- HHW Programs
- Compliance with State law
 - Annual reports to Cal Recycle
 - AB 939 and subsequent laws - diversion levels
 - AB 341 (mandatory commercial recycling) and AB 1826 (mandatory organics collection) and SB 1383 (Short-lived climate pollutants: methane emissions: organic waste: landfills)
- Post-Collection Agreement (PCA) Management, including setting Post-Collection Rates
- Outreach and Education
- Legislative Updates
- Budget and Financial Responsibilities
- Personnel and Administrative Responsibilities

The Board intends to hire an Interim Executive Director in July 2019, and a new Civic Spark Fellow could be hired in September 2019. Nonetheless, there will be significant responsibilities falling on the shoulders of two full time permanent employees.

At recent Board meetings, the Board has expressed an interest in learning more about the specific responsibilities of each of the five (5) authorized RecycleMore positions. In addition, at the May 2019 Board meeting, the Board directed staff to prepare an analysis of how the recommended FY 2019-20 Budget staffing and resources would compare to the RecycleMore “core services” recommended in the City Managers RecycleMore Framework. This report is intended to provide the RecycleMore staffing information and core services analysis requested by the Board.

STAFFING

RecycleMore has operated with five full time positions for a number of years. RecycleMore current staffing level consists of five (5) full time employees:

1. One Executive Director position
2. One Manager of Office Administration position
3. One Program Manager (HHW Programs) position
4. One Program Manager (PCA Management, State mandates, other duties) position
5. One Recycling Coordinator/Administrative Assistant position

There is also one limited term (Civic Spark Fellow) employee, and the current agreement with the Local Government Commission (as Civic Spark administrator) will end in August 2019. The Civic Spark Fellow has worked specifically on AB 341 and AB 1826 compliance. RecycleMore staff applied for a new Civic Spark Fellow position, which was approved for limited term (11 month) grant funding. The Board approved this position at the June Board meeting, and the new Fellow could start work in September 2019.

In order to verify adequate JPA staffing levels, RecycleMore staff researched other Northern California Joint Powers Agencies that manage similar programs and mandates. In each case, RecycleMore’s current per capita staffing levels were below that of similar agencies. Our most similar comparison is that of RecycleSmart in Central Contra Costa County. RecycleSmart’s service area population is 174,000. They have 6 full time staff and utilize 4 full time hauler Recycling Coordinators. This equates to one JPA Full Time Equivalent (FTE) for each 29,000 residents with excellent support from the hauler. StopWaste, the JPA for Alameda County, has a population of 1.5 million. They have 45 full time staff, with wide support from each city and each city’s hauler, which equates to one JPA FTE for each 33,000 residents. Both agencies stated that they anticipate adding staff to manage the new requirements under SB 1383. RecycleMore’s service area has a population of 247,500. With the 5 current positions, that equates to one JPA FTE for each 49,500 residents. While it may be possible for RecycleMore to maintain current programs with the current staffing levels, the additional responsibilities of both AB 1826 and SB 1383 will likely require additional JPA staffing, even as Republic takes on more responsibilities for compliance.

The basic job responsibilities for the current five (5) permanent positions are included with this report as Attachment 1. Staff will be available to answer Board questions about these responsibilities at the July 18 Board meeting.

CORE SERVICES

The concept of core services came from the City Manager’s RecycleMore Framework, which was presented to the Board in December 2017 and approved by the Board, with minor adjustments, in January 2018. Since that time, a list of core services has been further refined in various documents, with

the most complete list coming from a City of Richmond letter dated July 16, 2018 (Attachment 2). The list of recommended core services begins on page 3 and ends on page 6 of the letter.

Based on the City Manager's Framework and the City of Richmond letter, staff has developed six (6) categories, which encompass all of the core services. Having a defined list of core service categories makes it easy to compare RecycleMore staff responsibilities to core services. These six categories are:

1. State mandates (AB 939, AB 341, AB 1826, SB 1383, others)
2. HHW Services
3. Post-Collection Agreement Management
4. Administration
5. Education and Public Outreach
6. Legislation

Staff has completed a table of the main RecycleMore staff responsibilities for all five RecycleMore positions. The table compares the job responsibilities to the core service each responsibility addresses (Attachment 3). Also, at the request of Director Romero, staff has completed a table of the responsibilities of the main service provider (Republic) and the main contractors working for RecycleMore, and how their responsibilities compare to core services (Attachment 4). Staff will be available to answer Board questions about these responsibilities at the June 13 Board meeting.

BOARD SECRETARY DESIGNATION

Section 7.9 of the current Joint Exercise of Powers Agreement says:

7.9 Secretary. 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 16 of this Agreement.

Section 7.11 of the recommended JEP A Update (Fifth Amendment and Restatement to the Joint Exercise of Powers Agreement) says:

7.11 Secretary. The Board shall select and 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 selection of the Secretary may be delegated to the Executive Director. The Secretary shall also maintain the official records of the Authority and shall file notices as required by Section 18 of this Agreement.

The currently designated Board Secretary has retired. It is recommended the Board designate the current Executive Director to be Board secretary for the July Board meeting. The current Executive Director will retire at the end of July and cannot be the Board Secretary in the future.

A Board Secretary will be needed for Board meetings after July 29, 2019. The Manager of Office Administration position and Recycling Coordinator position both are vacant. The Board could designate the Interim Executive Director or a current employee to serve as Board Secretary. It is recommended the Board provide direction to staff on this issue.

FISCAL IMPACT

There is no fiscal impact associated with this update report.

RECOMMENDED ACTION

1. Receive and file a RecycleMore Staffing and Core Services Report.
2. Provide direction to staff.

Submitted by:



Stan Hakes
Executive Director

Attachment 1: RecycleMore Staff Job Responsibilities (June 2019)

Attachment 2: City of Richmond July 16, 2018 Letter

Attachment 3: RecycleMore Staff Job Responsibilities Compared to Core Services

Attachment 4: RecycleMore Service Provider (Republic) and Main Contractor's Job Responsibilities Compared to Core Services

Recyclemore Staffing Responsibilities **June 2019**

A. Executive Director

1. Relationships
 - Board
 - Service Provider (Republic)
 - Member Agencies
 - Cal Recycle
 - Consultants
2. Financial and Budget Responsibilities
 - Annual Budget Workshop and Approval
 - Post-Collection Rate Workshop and Approval
 - Contract Management - Agreement with City of San Pablo
 - Contract Management - Maze and Associates
 - Reserve Policy- Disbursement
 - Retirement Liabilities (Cal PERS-OPEB)
3. Board Meeting Agendas
 - Agendas and reports
 - Draft Agenda Review with Chair and Legal Counsel
4. Employee Supervision and Training
 - Supervision
 - Training and Development
 - Annual Performance Evaluations
 - Employee Discipline
 - Employee Grievances
5. Organizational Development
 - Mission
 - Vision
 - Goals and Objectives
6. One Time Projects
 - JEPA
 - Tonnage Audit
 - HHW Side Agreement

B. Manager of Office Administration

Personnel

- Employee Benefits – Administers a variety of Authority employee/retiree benefit plans offered through CalPERS and a variety of other providers; plans organizes and conducts annual open enrollment and new hire enrollment processes; performs annual eligibility testing and renewal questionnaires as required by service providers to determine appropriate coverage levels and enrollment eligibility; distribute benefit plan descriptions, updates, and notices in compliance with legal and regulatory requirements; explains, interprets and counsels employees regarding employee benefit plan coverage, eligibility for benefits and claims procedures; verifies employee and dependent plan eligibility and accurate completion of enrollment and claim forms; processes enrollments/separations with benefit providers, review monthly provider billing statements for accuracy and resolves any discrepancies; performs COBRA plan administration responsibilities including billing for required premiums; serves as liaison with external plan administrators to resolve benefits concerns and changes in eligibility; administers employee leave of absence benefits and worker’s compensation claims; prepare and maintain confidential personnel files for all employees; report accurate and timely payroll information to CalPERS including any adjustment to salaries or changes in classification; Employee Relations – Act as a resource to employees to inquire about personnel policy and procedures, file grievances, or receive updates on employee’s employment or benefits eligibility; provide sound advice and counsel to Executive Director on a variety of human resource management situations and issues as needed and in conformance with good professional practice and established policy; assist Executive Director and staff to resolve or mediate employee concerns or complaints
- Employee Recruitment – Conducts and/or assists with recruitments for various positions including posting jobs, screening applications, arranging testing and interviews, scheduling applicants and advertising jobs. Coordinates the required onboarding process for all new employees including the background process and new hire orientation, verification of eligibility of benefits, and process enrollment into those benefit plans
- Training and Development - Provides administrative support to the Executive Director in the area of employee performance evaluation, promotions, disciplinary action, and grievances; provide assistance in identifying resources that will improve the efficiency of work flow and working conditions, support staff in identifying opportunities that will assist them in furthering their professional knowledge and skills
- Personnel Rules and Regulations - Acts as a resources for employees and Executive Director regarding policy and procedure questions and assists in resolving human resources related problems; interprets and explains policies, procedures, and regulations addressed in the Authority’s Employee Compensation Plan document to employees and others, and effectively apply them; researches information regarding promotional eligibility, payroll problems, benefit issues, and grievances; performs or verifies salary calculations for promotions, retirements, changes of class, etc.,

Financial Management

- Payroll - Manage all aspects of semi-monthly payroll for Authority staff, coordinate submittal of time sheets, verify accuracy of time cards and availability of employee accruals for sick leave, vacation, and other leave time; submit work hour and salary information to payroll service to generate pay checks on time; coordinate with the City of San Pablo, (Authority’s fiscal agent) to transfer funds from the Authority’s bank account to cover the cash requirement for payroll. Submit payroll records to City of San Pablo monthly for reconciliation; authorize and submit employee and employer contributions to CalPERS retirement plan, authorize and submit monthly

- CalPERS Health Plan premiums; process and submit contributions to voluntary 457 savings plan for participating employees
- Monthly Bank Reconciliation – Keeps records of monthly bank transactions, payroll records and statements that are required by the City of San Pablo (Authority's fiscal agent) to perform the monthly bank reconciliation; reconcile monthly credit card statement to original receipts, requests back up documentation from Republic Services for monthly wire transfers made to the Authority
 - Annual Financial Audit – Assists Executive Director in coordinating the Authority's annual financial audit; provides documentation as required by selected auditors in preparation of field work; perform additional research or answer inquiries as needed
 - Accounts payable – Review invoices and accounts payable summary sheet prepared by Administrative Assistant prior to submittal to City of San Pablo for processing; verify payment amounts, payees, and accounting codes; review reports received from City of San Pablo to make sure correct entries were made, make sure all purchases and payments are made in accordance with Authority purchasing policy
 - Purchasing Management - Reviews all purchases to ensure that all approvals and documentation are complete and on file in accordance with the Authority's purchasing policy and administrative orders; provides guidance to staff on procurement policy, procedures, and credit card usage to ensure compliance and prevent any acts of fraud or improper usage
 - Records Management – Maintain confidential paper and electronic files related to personnel records and employee benefits
 - Clerk of the Board – Attend meetings of the Board of Directors and perform related duties; oversee set up of meeting room and manage audio recording of the meeting; record actions taken by the Board, keep a record of public speakers and any ex-parte communications; provide assistance and oversight to ensure compliance with the Brown Act; assist with review of agenda packet prior to distribution, review draft minutes for accuracy and completeness prior to Board approval, attend Board Secretary training bi-annually to stay current on current best practices
 - IT – Assist in the management and oversight of the Authority IT systems; coordinate monthly site visits by Nerd crossing who performs monthly software updates security check ups on the desktop computers; renew and manage service contracts for the Authority's email server, web hosting, and internet providers;
 - Risk Management - Oversee and manage the Authority's workers comp, long term disability and short term disability and general liability insurance programs. Conduct annual testing and complete eligibility questionnaires to ensure the Authority has proper coverage and to document any significant changes; review premium payments, process claims, attend employer education events; provide employees with information on their rights and benefits

C. Program Manager - Source Reduction & Recycling Programs

1. Administer and ensure compliance with the requirements of the California Public Resources Code and regulations issued by CalRecycle involving solid waste reduction and diversion programs.
 - Manage AB 341 compliance
 - Manage AB 1826 compliance
 - Research and preparation for SB 1383 compliance
 - Prepares and submits Electronic Annual Report to CalRecycle
 - Coordinates CalRecycle and member agency meetings
 - Maintain awareness of new legislation and prepare accordingly
2. Manage franchised hauler compliance with the Post Collection Agreement
 - Monitors processing and end use expectations for recyclables, organics, dry waste, C&D & HHW
 - Monitors organics processing benchmarks under the new Cooperative Agreement
 - Validates quarterly and annual reports
 - Oversee facility permits and compliance
 - Assists with calculating the post collection rate annually
3. Oversee public outreach and education activities for electronic & print formats.
 - Works directly with Republic Services on content and distribution of newsletters
 - Monitors and suggests content of websites of both agencies.
4. Coordinates WCCUSD Source Reduction and Recycling Compliance
5. Coordinates bus transportation for school field trips
6. Prepare and administer requests for proposals for professional and other services necessary to implement Authority programs and related activities
7. Supervise, train and evaluate performance of Recycling Coordinators, assigned staff, interns and consultants/contractors
8. Facilitate Regional Staff Meetings with Member Agency staff and hauler
9. Assists with the Board agenda process and writes agenda reports
10. Plan, set-up and staff public events
11. Represent agency at quarterly AB 939 Meetings

D. Program Manager - Household Hazardous Waste (HHW) Programs

1. Household Hazardous Waste (HHW) Facilities – WCRR & El Cerrito
 - Prepare & Submit Reporting Documents
 - Promote & Implement HHW Programs
 - Meet with Stericycle and WCRR on issues
 - HHW Permitting Documentation
 - Grant Management
 - Manage Contracts
 - Manage Facility Audits and Shipping Manifest Review
 - Future HHW/Facility Development

2. Other HHW Activities
 - One Day Events – Documents, Permits and Outreach
 - Manage Sharps and Pharms Bins
 - Manage HHW Fee-Waiver Program
 - Door-to-Door Program
 - Manage Big Green Box Battery Collection Program
 - Manage Sweetser Contract

3. Used Oil Payment Program
 - Apply for Funds Annually
 - Manage Oil Payment Funds
 - Prepare & Submit Reporting Documents
 - Manage Contracts for Outreach, Events, Promotions, Campaigns
 - Purchase & Distribute Used Oil Recycling Materials

4. Regional Efforts
 - California Product Stewardship Council
 - Household Hazardous Waste Information Exchange (HHWIE)
 - Follow HHW Legislation
 - Used Oil & Filter Campaign on bus/BART

5. Administration/General
 - Assist with Board Meeting Preparations
 - Prepare/Proof Staff Reports
 - Act as Board Secretary When Needed
 - Provide Back-Up Support for Other Staff
 - Employee Recruitment, Training, and Development
 - Special Projects

E. Recycling Coordinator/Administrative Assistant

Recycling and Waste Prevention Programs

1. Public Outreach and Education/Special Events
 - Prepares and distributes community outreach brochures, informational materials and communications to expand public awareness of Authority's programs and services.
 - Responsible for maintenance and content updates to Authority's website and social media outreach activities.
 - Graphic design for outreach materials.
 - Represents the Authority at community events (such as, fairs, festivals, trade shows and other events): responds to questions, distributes educational materials and information regarding waste prevention, reuse, repair, composting and recycling.
 - Assist in coordinating Green Business activities and attend quarterly meetings.
 - Assist in the distribution of battery collection boxes for the Big Green Box program.
 - Organize backyard composting workshops.
2. AB 341/AB 1826 Compliance
 - Conducts waste audits/site visits and assists with new and ongoing waste reduction programs for residential and businesses for AB 341 and AB 1826 compliance.
 - Assist with AB 341 and AB 1826 non-compliant mailings.
 - Assist with managing Excel spreadsheets and compliance monitoring.
 - Distributes recycling containers and various public education material to locations in the community (such as, multi-family residences and businesses).
3. Other
 - Assist Program Managers with other related duties and projects, as assigned.

Administrative

1. Board Meeting and Agenda Preparation
 - Handles scheduling and set up of Authority Board meetings.
 - Proofread and finalize Board Agenda Cover and Reports.
 - Responsible for photocopying and preparing agenda packets for distribution.
 - Responsible for Brown Act requirements - posting Agenda and reports.
 - Assists in the preparation of monthly Board meeting PowerPoint presentations.
 - Occasionally attends and records meetings, as necessary. May assist in preparation of Authority meeting minutes.
2. Financial and Administrative Duties
 - Screens telephone calls and responds to inquiries, complaints and requests related to local recycling and waste management services. Handles same type of inquiries received through email and website.
 - Composes, proofs, edits, and disseminates Authority correspondence.
 - Prepares incoming invoices for payment and processes bi-weekly accounts payable check requests.
 - Manages office files, records, and media library.
 - Responsible for the collection and distribution of incoming and outgoing mail.
 - Orders office supplies and equipment as needed.
 - Assist with minor troubleshooting concerns with office equipment and software.
 - Occasionally assist with preparation of proposals/applications for grants and other funding opportunities as they arise.
 - Occasionally performs certain duties normally assigned to Manager – Office Administration in her/his absence.



July 16, 2018

Stan Hakes
Executive Director
West Contra Costa Integrated Waste Management Authority
1 Alvarado Square
San Pablo, CA 94806

RE: RICHMOND COMMENT LETTER ON UPDATED DRAFT JEPA

Dear Mr. Hakes:

On June 22, 2018, the City of Richmond received a copy of the proposed updated Joint Exercise of Powers Agreement (JEPA), hereinafter referred to as the "updated Agreement", from RecycleMore for comments and consideration. The process to update the JEPA was initiated with RecycleMore Board direction in December 2015. The first workshop to receive input on the JEPA update was held April 2016, and since that time, there have been numerous workshops, Board Meetings, and recommendations to aid in the revision of the JEPA. Throughout the update process, Richmond Board Directors have consistently conveyed requests for equitable policies that recognize Richmond's financial contribution to the JEPA, and Richmond's environmental and health burdens attributed to hosting the regional solid waste facilities.

On December 23, 2016, Richmond's City Manager, as directed by the Richmond City Council, sent a letter stating grievances with then version of updated JEPA and giving notice of intent to withdraw if Richmond's requests were not satisfactorily addressed. In an effort to support the JEPA revision process, City Managers from each of the JEPA member cities formed a working group to develop a RecycleMore framework for Board consideration. The City Managers presented the framework to the RecycleMore Board on January 18, 2018, which the RecycleMore Board unanimously voted to incorporate into the updated Agreement.

The intent of the City Manager's framework was to focus RecycleMore on core programs, services, and projects (core services) that would increase diversion to meet State mandates, improve quality of service, effectively manage rates and the post-collection agreement, and avoid non-core programs, services, and projects (non-core services) unless there was unanimous agreement between JEPA members. The May 2018 draft of the updated agreement did not represent the best interest of Richmond's ratepayers because it: 1) omitted critical deal points and voting requirements; and 2) did not satisfactorily focus RecycleMore on core services.

While RecycleMore has provided benefits to the West County region since its formation in 1991, Richmond has concerns regarding the future proportionality of benefits for

Richmond residents, as currently stated in the updated Agreement. The Richmond community hosts the region's solid waste facilities; provides a majority of RecycleMore's budget; and incurs the most economic, health, and infrastructure impacts from solid waste operations. Richmond has made a considerable amount of compromises in a good faith effort to update the JEPA, including a reduction in voting powers to assuage concerns from smaller cities. The updated Agreement, in its current form, does not fully convey: 1) the intent of the City Manager's framework to focus RecycleMore on core services; and 2) Richmond Board member's consistent request for equitable policies to ensure that Richmond benefits equally from regional governance of the post-collection services.

RecycleMore staff members are encouraged to recall that Richmond's proposal to reduce its Board representation is dependent on RecycleMore satisfactorily incorporating all elements of the City Managers' framework into the updated Agreement. The City of Richmond is committed to working in good faith to update the JEPA Agreement; however, the City's decision to sign onto any updated Agreement is dependent on the equitable treatment of Richmond ratepayers and satisfactorily addressing Richmond's following concerns:

Comment #1 - Create precise and action oriented language for the definition of "Core and Non-Core Services".

Richmond generates approximately 57% of solid waste in RecycleMore's service area; as such, Richmond ratepayers generate approximately 57% of RecycleMore's annual budget. The updated Agreement reduces Richmond's proportional representation on the RecycleMore Board, which was originally established to reflect Richmond's significant population and rate base contributions compared to other Member cities. As stated in an email from the Executive Director, RecycleMore's Legal Counsel found two items not included in the May 2018 draft agreement; budget to be approved by unanimous vote of the board and approval of non-core services require unanimous approval of the board. A brief statement requiring unanimous approval of non-core services was incorporated into the June 2018 updated agreement. To accommodate the other member agencies, once again, the Richmond City Manager stated that Richmond is willing to compromise on the unanimous approval of the budget only if core and non-core services were tightly defined in sections 1 and 2. The core services listed in updated agreement are a mixture of tasks, goals, and objective; as such, the core services are ambiguously defined. The intention of core services should be aimed at only action oriented responsibilities. **Definitions of core and non-core services have been revised with action orientated language. A draft redline version of Core Services has been provided below.**

Core Services Definition

1.9 “Core Services” means any service, **program, or project** the Authority is expected to perform through the termination of the current Post Collection Agreement as listed in Sections 2.1 through 2.11 herein.

1.23 “Non-Core Service ~~Programs and Projects~~” means any **service**, program, or project which is not **listed as** a Core Services in Sections 2.1 through 2.11.

Section 2 Purpose.

[...] Although the Authority may undertake additional activities subject to **unanimous approval of the Board authorization** as set forth herein, the Members desire to identify the following Core Services the Authority is expected to perform through the termination of the current Post Collection agreement, and potentially thereafter:

2.1 Ensure that the Post Collection Agreement (“PCA”) terms are being met by the Contractor as that term is defined in the PCA including, but not limited to:

- (a) **Track and confirm e**Expected diversion rates at the approved organic materials, dry materials, construction and demolition, and recyclable materials processing facilities;
- (b) **Track and confirm expected contracted** level of service at the transfer station and other post-collection facilities and by the household hazardous waste program.
- (c) **Track and confirm e**Expected level of service for education and outreach services for schools in the Authority’s service area.
- (d) **Track and confirm c**Compliance with applicable laws, permits, Facility requirements and best management practices, including proper records management, provisions of insurance and similar requirements;
- (e) **Track and confirm Oversight of** all PCA recycling and diversion programs performed by Contractor pursuant to PCA.

2.2 Validate post collection rates to ensure accuracy, **and** reasonableness and **are rates set** consistency with the methodology **formula** described in Exhibit B.

2.3 Validate the accuracy of **information stated in** the quarterly, annual and other reports submitted by the Contractor to the Authority.

~~2.4 Seek to reduce costs to Members in future post collection solid waste activities and agreements.~~

~~2.5 Seek to increase the benefits to Members in future post collection solid waste activities and agreements.~~

2.6 Negotiate the lowest possible rates for Members and customers.

2.7 ~~Comply~~ Monitor and coordinate compliance with the Act, AB 1826, AB 341, **SB AB** 1383, and other state solid waste related legislation and regular requirements.

- (a) Collect and submit information from Members to update Electronic Annual Report (EAR) and update and upload other required reports;
- (b) Report annual waste and diversion tonnages to the Board and Members;
- (c) Maintain **and update** regional SRRE, NDFE and Household Hazardous Waste Element (HHWE);
- (d) Coordinate **and assist** WCCUSD Source Reduction and Recycling Compliance; and
- (e) Coordinate with CalRecycle staff ~~for~~ **to schedule** on-site Member meetings.

2.8 Operate Household Hazardous Waste Programs ("HHWP") as follows:

- (a) Act as the HHWP public agency permittee;
- (b) Determine desired level of service after consultation with Members **and communicate desired levels to all HHWP contractors;**
- (c) **Manage** ~~Set and approve a~~ HHW budget and monitor Contractor's HHW costs for consistency with the approved budget;
- (d) ~~Oversee-Manage~~ contract for HHW Facility and any satellite or mobile events;
- (e) ~~Ensure-Confirm and report on~~ expected levels of service ~~is are~~ being maintained;
- (f) Monitor Contractor's compliance with applicable law, permits and best management practices, including proper reporting, records management and retention, provision of insurance and similar requirements;
- (g) Operate ~~programs such as~~ the Motor Oil Recycling Program, **and design and distribute** all related public information **in English and Spanish, ensure** compliance, and **coordinate** events;
- (h) Implement and oversee ~~programs such as~~ the Pharmaceutical Program **and Battery Recycling Program, including design and distribute all related public information in English and Spanish, ensure compliance, and coordinate events;**

2.9 Administration and oversight of day to day Authority operations including providing support services to the Board as well as providing human resources, information technology and financial services to the Authority and its staff.

2.10 Conduct public outreach and education within existing budgeted funding and staffing levels beyond existing Contractor efforts **including such as:**

- (a) Outreach and education regarding HHW, **Pharmaceutical Program**, and Motor Oil Recycling Program; and
- (b) Multi-family and commercial recycling and organics outreach and education ensuring that El Cerrito shall equally benefit from such Authority efforts.

2.11 Monitor and analyze relevant legislation within existing budgeted funding and staffing levels **including such as:**

- (a) Provide timely updates **and recommendations** to the Board on proposed legislation that will affect local government solid waste and diversion programs;
- (b) Provide analysis to enable the Board to take actions to support or oppose proposed legislation.
- (c) **Submit comments as needed on the proposed legislation to the lead agency creating the legislation.**
- (d) **Coordinate with Assist** Members **in** interpreting **and/or** implementing new laws and regulations, ensuring that all Members shall equally benefit from such Authority efforts.

~~2.12—In the future and post 2025, the Authority may continue to provide the Core Services or other such services as Members request, consistent with the powers set forth herein, and such authority and responsibility shall be subject to further delegation or authorization of the Members. Upon delegation or authorization, the Authority may continue to provide Core Services, a portion of Core Services, or other services, including, but not limited to potential procurement and negotiations of future post collection agreements.~~

Comment #2 - All funds contributed by a withdrawing member to be returned in proportion to their contribution.

The updated Agreement in redline version, page 42, Section 15.3 states that in the event a Member Agency chooses to withdraw: *“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 2/3 vote of all Members 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.”*

Richmond requests that RecycleMore act in good faith and adopt a clear policy within the updated Agreement to return all withdrawing Member’s ratepayer contributions. Richmond's position is that distributions of assets to a withdrawing member should be proportional to the contribution to the member agency's ratepayers. This was the principle that was applied by RecycleMore's Board of Directors for the 2015 excess reserve disbursement, and the updated Agreement does not reflect this principle. **Richmond requests that all funds contributed by a withdrawing member's ratepayers be returned to the withdrawing member in proportion to the contribution that such a member agency's ratepayers made to such funds. Draft Withdrawal language has been provided below.**

Draft Withdrawal Language

SECTION 15. Withdrawal.

15.1. A Member may withdraw from the Authority subject to the following provisions. The intention of these provisions is to provide for withdrawal at the discretion of individual Members while providing adequate protection for the Authority as a going concern.

- (a) Notice of Withdrawal. 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; and 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 such as unfunded post-retirement liabilities. 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. 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.~~

[Note: Insert AB 1912 language if available by September meeting.]

(b) Obligations Prior to Effective Date of Withdrawal. A Member may not withdraw from the Authority unless and until the Member (a) pays or enters into an agreement with the Authority to pay its full share of any and all of the Authority's existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal and (b) adequately addresses any existing commitments such as waste stream commitments or other financing commitments.

15.2. A Member which has withdrawn from the Authority shall not be liable for the payment of Authority expenses accruing beyond the withdrawal date except as noted above in Section 15.1.(b). ~~and shall have no right to reimbursement of any assets or monies of the Authority.~~

15.3. Disposition of Assets Upon Withdrawal. Any Surplus Assets that exist at the time of a Member's withdrawal shall either (i) be distributed to the withdrawing Member within sixty (60) days, based on the withdrawing Member's Contributions made to the Authority during the term of the Agreement, or (ii) such amount of Member's Contributions shall be used to offset any outstanding amount that the withdrawing Member may owe toward the Authority's operating budget. The terms of any such distribution must be effectuated through an agreement executed by the withdrawing Member and the Authority. Upon receipt of the Member's notice of withdrawal, the Authority shall, within seven (7) days, provide an accounting of the Surplus Assets upon which any distribution shall be made. Thereafter, no expenditures shall be made from

~~the Surplus Assets that would diminish the withdrawing Member's proportionate share of said Surplus Assets. 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 2/3 vote of all Members 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.~~

(a) "Member's Contributions" shall mean for the purpose of this withdrawal section, the total accumulated Authority funds not committed by the then current budgeting process, derived from: (1) the proportional amount of revenue derived from the sale of recyclables from the Member's jurisdiction; (2) the proportional amount of any fee revenue derived from the withdrawing Member and its proportional share of the waste stream charged at either the Golden Bear Transfer Station or the IRRF; and (3) the amount of other miscellaneous revenues, excluding revenues from grants, fairly attributed to the withdrawing Member and its waste stream.

(b) "Surplus Assets" shall mean that amount of excess assets, including operating accounts and reserves and any remaining fiscal year expenses, that, ~~in the opinion of the Board,~~ are not reasonably necessary for the continuation of Authority operations or performance of Authority functions in a manner similar to the Authority's operations and performance prior to the receipt of the notice of withdrawal.

15.4. Effect of Withdrawal on Agreements. 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.

- (a) "Member's Except for the City of El Cerrito, withdrawal from the Authority shall operate as the withdrawing Member's consent to assignment of all Authority rights and obligations arising under the Agreement for Enhanced Recycling Services, Post-Collection Recycling, and Disposal Services between the West County Resource Recovery, Inc.; Richmond Sanitary Service, Inc.; West Contra Costa Sanitary Landfill, Inc.; Keller Canyon Landfill, Inc.; and Golden Bear Transfer Services, Inc. and the West Contra Costa Integrated Waste Management Authority, dated October 10, 2013, and as said Agreement may be amended from time to time.

15.5. Implication of the Act. If a Member 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:

- (a) An effective date for the withdrawal of the Member (hereinafter "Withdrawal Date");
- (b) A provision providing that the withdrawing Member 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 Member's jurisdiction to CalRecycle for approval and that each withdrawing Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;
- (c) 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 Member to CalRecycle for approval;
- (d) The withdrawing Member shall pay all costs incurred by the Authority in preparing a revised Regional Plan. Such costs may be deducted from any disposition of Surplus Assets, if any, as provided above in Section 15.3. ~~The withdrawing Member 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 Member including the~~

~~Authority's costs incurred and associated with CalRecycle actions leading to and including the assessment of said penalties;~~

- (e) The withdrawing Member shall be responsible for compliance with the Act the earlier of: (i) the date of the withdrawing Member's submittal of the documents to CalRecycle; or (ii) the date of the Authority's submittal of the revised Regional Plan to CalRecycle; or (iii) the Withdrawal Date.

Comment #3 - Amendments to the Agreement require unanimous approval of the Board of Directors.

Section 16.1 allows the agreement to be amended with a written majority approval of the directors and the Member's governing body. All Members are bound by the term of the JEPA and all Members should have the right to approve any modifications to the JEPA. **Amendments to the Agreement should require unanimous approval of the Board of Directors in addition to requiring approval of Member's governing body.**

Comment #4 - Clearly list equation(s) under each calculation section in Exhibit B.

One of the conditions to Richmond's reduction in Board representation is to set the existing rate setting formula. Pursuant to the Board's direction to incorporate the City Managers' framework into the updated Agreement, a description of the RecycleMore Post-Collection Rate Calculation Methodology was included. **All rate setting equation(s) should be clearly listed under each calculation section in Exhibit B. Include a clearly defined definition of "substantial reallocation" as stated in Section 12.5.**

Comment #5 - Add funding and materials to page 2, Section D.

Although the updated Agreement acknowledges that Richmond constitutes a majority of the waste tonnage generated in the RecycleMore service area, **Richmond requests on page 2 Section D, RecycleMore add "funding and materials" in addition to services commensurate with Richmond's contributions to the Authority's budget.**

Comment #6 - All new facilities should require the approval of the host community.

Solid waste facilities significantly impact the environment, health, and infrastructure of the host community. Community members must have the opportunity to decide if they approve of the construction of a new solid waste facility within their city's boundaries. Any new facility shall require the City Council approval of the host facility. **In Section 5.3 insert the condition that "new facilities cannot be developed without the approval of the host community's City Council."**

Comment #7 - Delete Section 5.3 (b), (c), and (d).

The language on page 20, Section 5.3 (b), (c), and (d) was inserted originally for the Members to fund the construction of the IRRF. Since the IRRF has been completed, private funding should be utilized for acquiring, constructing, financing, refinancing, operating, regulating, and maintaining facilities. **Section 5.3 (b), (c), and (d) should be deleted from the document.**

Comment #8 - Delete Section 5.2. (k).

Omit Section 5.2 (k) on page 18. If language about fees is desired to be included, then a short sentence can be added to 5.2. (h).

Comment #9 - Clarify in Section 1.25 that subsequent Post Collection Agreements require Member approval.

Insert "as approved by members" on page 9, section 1.25, at the end so the last sentence shall read, "Post Collection Agreement as used here in shall also refer to any subsequent agreements between the Authority and a solid waste enterprise or enterprises for post collection services **as approved by Members.**"

Comment #10 - Update Section 3.2 consistent with new AB 1912 legislation.

Under new legislation, responsibility will fall upon members if RecycleMore does not provide adequate OPEB funding. **Update Section 3.2 to be consistent with new AB 1912 legislation.**

Comment #11 - Correct "MRF" definition on page 8, Section 1.22.

The definition of "MRF" on page 8, Section 1.22 is stated incorrectly. "MRF" is an acronym for a "materials recovery facility". **Correct the definition of "MRF" to "materials recovery facility".**

Comment #12 - Correct spelling and grammar mistakes.

There are several grammar and spelling mistakes we would like to bring to attention of the staff.

- Page 6, Section 1.18, line 2, it should state "infectious" not "infections.
- Page 5, Section 1.14 keep "and appointed by the Board as the Authority's Executive Director [...]."
- Page 7, Section 1.18 (c), in the third line it should state, California Hazardous Substances Account Act, not "California Toxic Substances Account Act".
- Page 9, "Recyclable Materials" should be number 1.26.
- Page 13, Section 2.7, it should state SB 1383 and not "AB 1383".
- Page 20, Section 5.2 (p) ends with "and" but there is no "q". Change "and" to a period.

Comment #13 - Include a cover page, table of contents, and reference.

The Fifth Amendment is a Restatement of the Third Amendment from 1995 and it is important for Richmond to understand the changes to the current agreement.

Richmond requests that the distributed redline version of the updated JEP A document be of the Third Amendment. The Fifth Amendment is a restatement of the Third Amendment. In addition, for easy reference the document should also contain a cover page and table of contents. To retain the historical recitals, it would be beneficial to include why and when the West Contra Costa Sanitary District withdrew from the JPA and when the County of Contra Costa became an ex-officio member.

The City of Richmond requests that the stated terms be incorporated in the updated draft Joint Exercise of Powers Agreement to improve ratepayer equity, and help RecycleMore meet the best interests of all West County ratepayers. We look forward to continued discussions and identifying mutually acceptable outcomes with RecycleMore.

Sincerely,



William A. Lindsay
City Manager

cc: RecycleMore Chair Ben Choi
RecycleMore Director Jael Myrick
RecycleMore Director Melvin Willis
RecycleMore Legal Counsel Kent Alm
Bruce Goodmiller, City Attorney
Everett Jenkins, Senior Assistant City Attorney
Shasa Curl, Community and Economic Development Director
Adam Lenz, Environmental Services Manager
Samantha Carr, Management Analyst

Agenda Item 8.3 - Attachment 3

Responsibilities of RecycleMore Staff

| Position | Position Responsibility | Core Service | | Category of Core service |
|---------------------------------------|------------------------------|--------------|------------------------|-----------------------------|
| | | Yes | No | |
| Executive Director | Relationships | | X | |
| | Financial & Budget | X | | Administration |
| | Board Meetings | X | | More than 1 |
| | Employee Supervision | X | | Administration |
| | One Time Projects | X | | More than 1 |
| Manager of Administration | Personnel | X | | Administration |
| | Financial Management | X | | Administration |
| | Records management | X | | Administration |
| | Clerk of Board | X | | Administration |
| | IT | X | | Administration |
| | Risk management | X | | Administration |
| Program Manager SR & Recycling | State Mandates | X | | State Mandates |
| | Manage PCA | X | | PCA Management |
| | Outreach and Education | X | | Outreach and Education |
| | WCCUSD Recycling | X | | PCA Management |
| | School Field Trips | X | | Outreach and Education |
| | RFP's | X | | More than 1 |
| | Supervise Staff | X | | Administration |
| | Regional Staff Meetings | X | | More than 1 |
| | Assist with Board Agenda | X | | More than 1 |
| Public Events | X | | Outreach and Education | |
| Program Manager HHW Programs | HHW Facilities | X | | HHW |
| | Other HHW Programs | X | | HHW |
| | Used Oil Payment Program | X | | HHW |
| | Regional Efforts | X | | Outreach |
| | Administration - General | X | | Administration |
| Recyc Coordinator/ Admin Assistant | Public Outreach | X | | Outreach and Education |
| | AB 341/1826 Compliance | X | | State mandates |
| | Board Meeting Agenda Prep | X | | Administration |
| | Financial and Administrative | X | | Administration |

Responsibilities of RecycleMore Contractors

| Contractor | Responsibility | Core Service | | Category of Core service |
|-------------------|--------------------------------------|--------------|----|--------------------------|
| | | Yes | No | |
| Republic Services | | | | |
| | Recyclables | X | | PCA |
| | HHW Operations | X | | HHW Programs |
| | Compost facility | X | | PCA |
| | School Field Trips- Classroom | X | | Public Outreach |
| | Special Events | X | | Public Outreach |
| | Submit Post-Collection Rates | X | | PCA |
| City of San Pablo | | | | |
| | Treasurer | X | | Administration |
| | Controller | X | | Administration |
| | Financial Record Keeping | X | | Administration |
| | Checks-Accounts Payable | X | | Administration |
| | Monthly Budget Reports | X | | Administration |
| | Accounting Reconciliation | X | | Administration |
| Sweetser & Assoc. | | | | |
| | Review HHW Shipping Documents | X | | HHW |
| | Annual Form 303 Report to State | X | | HHW |
| | Submit Form 1220 Closure to DTSC | X | | HHW |
| | Review Paint Shipments to Greencycle | X | | HHW |
| | Monthly Republic- Stericycle Meeting | X | | HHW |
| | Audits of HHW Facilities | X | | HHW |
| | Manage HHW customer database | X | | HHW |
| | Assist with HD 31 Grants | X | | HHW |
| | Assist with HHW questions & issues | X | | HHW |
| Maze and Assoc. | | | | |
| | Budget Assistance | X | | Administration |
| | State Controllers Reports | X | | Administration |



Agenda Report

Date: June 11, 2015
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: County Financial Obligation for Kensington HHW Services

ACTION REQUESTED

1. Receive and file report.
2. Provide direction to staff.

BACKGROUND

Household hazardous waste (HHW) management services are a core function of the West Contra Costa Integrated Waste Management Authority (Authority). The Authority has provided some form of HHW services for our service area and for additional West Contra Costa County areas (by contract) for more than 20 years. Republic Services owns and operates an HHW Facility at 101 Pittsburg Avenue in Richmond, using Stericycle as a HHW subcontractor. The Authority is the permit holder for the facility, and is the “generator of record” for all HHW.

The Authority, Republic Services and Contra Costa County (County) entered into an agreement for household hazardous waste (HHW) services in 2000. This agreement remains in effect today.

The agreement provides for limited area of County residents (Kensington, Crockett, Port Costa, Tormey) outside of the Authority service area to use the Republic owned and operated HHW Facility at 101 Pittsburg Avenue in Richmond (HHW Facility). The County pays Republic Services for these residents to use the HHW Facility, based on provisions in the agreement. Until 2018, the County paid for the HHW services on a regular basis, and County residents were able to use the HHW Facilities. There were few, or no, financial issues.

Since 2015, HHW services in West Contra Costa County have significantly expanded. There are now numerous sharps and pharmaceuticals drop off kiosks. The 101 Pittsburg HHW Facility is now open 4 days per week. The El Cerrito HHW Facility opened in 2017. One day HHW special events also started in 2017. There are also door to door HHW services for seniors, persons with disabilities and other persons with special needs.

COUNTY- KENSINGTON HHW PAYMENT ISSUE

The County has not paid Republic for Kensington HHW Services since March 2018. Republic Services has sent invoices to the County Department of Conservation and Development for the 2nd qtr. 2018,

3rd qtr. 2018, 4th qtr. 2018 and 1st and 2nd quarter of 2019. These invoices are all unpaid. This amount now totals almost \$30,000.

The main issue for the County is that Kensington residents receive HHW services at Republic 101 Pittsburg HHW Facility, but the billings are based on calculations using all costs for the our WCCIWMA HHW Programs. Kensington residents do not receive HHW door to door services and are not eligible to use the El Cerrito HHW Facility. Kensington residents have been invited to participate in our one day HHW events, but the County has declined this offer. The County also says that Kensington residents do not receive our sharps and medicine drop off services, but this is open to interpretation. Kensington residents can come to the El Cerrito Recycling Facility 7 days per week to drop off sharps or meds. Sharps and meds kiosks are also available at the Hercules and Pinole Police Departments.

County staff would like for the cost of services Kensington does not receive (door to door, one day HHW events, El Cerrito Facility) to be removed from calculation of Kensington invoices. Authority staff started a rough calculation of this a few months ago, but it was never finalized. Costs of these programs were removed but the rough calculation did not adjust for the fact that the carloads for these removed services would also involve removing vehicles carloads from the calculations. Based on the rough calculations by staff, the cost for Kensington residents would not be significantly reduced if some service costs were removed and carloads were adjusted. On the other hand, County staff has provided calculations showing that they believe Kensington residents have over paid in past years, and the amount owed to republic is only about \$5,000. Due to other priorities, staff has not had the opportunity to thoroughly review these calculations provided by the County.

It is clear that Kensington residents received HHW services during the past 15 months, and the County has not paid for these services.

Other points:

- Kensington residents benefit by economies of scale of using Authority-Republic HHW services. It would be very expensive for Kensington to find alternative HHW services.
- The agreement between County, Republic, and Authority could be terminated by a 30 day notice by any of the parties.
- Everyone, including Authority residents and non-service area residents, benefits from the economies of scale of the HHW services provided by Authority and Republic.

The County has not paid invoices totaling almost \$30,000. It is understood this amount is in dispute. While this dispute is being negotiated, staff has asked the County to pay the past invoices. They have declined.

In the interest of resolving this dispute, the Authority could ask HHW Consultant Sweetser and Associates (Larry Sweetser) to complete a financial study which would attempt to allocate and remove costs for the door to door program, El Cerrito HHW Facility and one day special HHW events, and at the same time remove the carloads associated with these services. This would be a fair and impartial way to consider the County's request, and be fair to the Authority and Republic Services. Sweetser and Associates would be an impartial third party capable of providing this study. The cost of a potential Sweetser and Associates study could be paid exclusively by one of the parties,

shared by two of the parties, or could be shared equally by RecycleMore, the County and Republic Services.

The following documents are provided for further context and information on this issue:

- Copy of HHW agreement between County, RecycleMore and Republic (Attachment 1)
- Copy of HHW side agreement (Attachment 2)
- Summary of unpaid County Kensington Invoices (Attachment 3)

Staff believes that a fair and reasonable accommodation can be achieved so that Kensington residents can continue to receive HHW services, while taking into account the unique position that Kensington residents do not receive all of the services provided to Authority service area residents.

RecycleMore staff understands that County staff is working on making a payment to Republic Services for the 2018 Kensington HHW Services. Executive Director will continue to communicate with County staff and the Republic Services Post-Collection Agreement Manager. If there is additional progress on this issue, staff will update the Board at the July 18, 2019 Board meeting.

FISCAL IMPACT

The County has been invoiced for Kensington Services in amount of \$29,907.52. These invoices were sent by Republic Services to the County, so there is an immediate fiscal impact for Republic Services on this issue. However, the recently approved Household Hazardous Waste Side Agreement (between Republic Services and RecycleMore) has provisions for an annual accounting reconciliation of budgeted HHW costs vs. actual costs. In this side agreement, the actual revenue from outside sources (such as the billing to the County for Kensington HHW services) is deducted from the total cost of HHW services as part of the annual accounting reconciliation. As such, RecycleMore could be affected by the County not paying the \$29,907.50 of invoices billed to the County for Kensington HHW services.

RECOMMENDED ACTION

1. Receive and file report.
2. Provide direction to staff.

Approved by:


Stan Hakes
Executive Director

Attachment 1: Copy of HHW agreement between County, RM and Republic

Attachment 2: Copy of HHW side agreement.

Attachment 3: Summary of unpaid County Kensington Invoices

**AGREEMENT FOR HOUSEHOLD AND SMALL QUANTITY
GENERATOR HAZARDOUS WASTE SERVICES**

This Agreement is made and entered into as of the later date of the dates of execution by and between WEST COUNTY RESOURCE RECOVERY, INC., a California corporation (“WCRR”), the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“COUNTY”), and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a public entity Joint Powers Authority (“AUTHORITY”), which, collectively, shall be referred to as the “Parties.”

RECITALS

WHEREAS, WCRR warrants and represents that it has agreed under the terms of the Service Agreement For The Integrated Resource Recovery Facility (“Service Agreement”), entered into with the AUTHORITY to provide a Household Hazardous Waste Program at the Central Processing Facility (“Central Facility”) for the collection of household and conditionally exempt small quantity generator (“CESQG”) hazardous waste as described in said Service Agreement and the Second Supplemental Agreement Regarding Modification of the IRRF (“Second Supplemental Agreement”) thereto, and

WHEREAS, WCRR has constructed a permanent household and CESQG hazardous waste facility at the Central Facility to receive the full range of household and CESQG hazardous waste allowed by the Cal/EPA permit by rule regulation governing such facilities; and

WHEREAS, the COUNTY desires to arrange for household hazardous waste and CESQG waste services at the Central Facility for the unincorporated communities known as Kensington, Crockett, Port Costa, and Tormey (collectively the “KCPT Area”) which are not within AUTHORITY boundaries, nor a part of the unincorporated area served by Richmond Sanitary Service, Inc. for which the waste stream has been previously directed to the IRRF (the “County Area”) and, therefore, such KCPT Area residents do not currently pay IRRF rates of any kind; and,

WHEREAS, the costs of construction and operation of the Central Facility are included in IRRF rates approved by the AUTHORITY and paid by ratepayers within the AUTHORITY boundaries and County Area; and

WHEREAS, the Parties seek to have household hazardous waste service provided at the Central Facility under arrangements whereby the COUNTY pays the full cost of receiving, handling, transporting and disposing of household hazardous waste delivered to the Central Facility by residents from the KCPT Area; and,

WHEREAS, the Parties seek to have CESQG service provided at the Central Facility under arrangements whereby the COUNTY pays a service charge for CESQG service reflective of the allocated costs for overhead and capitalization of the facility available to the KCPT Area CESQG's, who, in turn, will pay the actual cost for collection, packaging, transporting and disposal of the waste they dispose of at the Central Facility.

THEREFORE, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

The terms defined in this Section that begin in this Agreement with capital letters have these meanings:

1.1 Household Hazardous Waste ("HHW") means the types and quantities of Hazardous Waste typically found in residences (that may include, but are not limited to, pesticides, solvents, oil based paints, acids, bases, latex paint, used oil, antifreeze, lead-acid batteries, and household batteries) and generated incidental to owning or maintaining a place of residence. Household Hazardous Waste does not include (a) any waste generated in the course of operating a business concern at a residence, (b) ammunition, (c) explosives, (d) nuclear wastes, and/or (e) infectious waste.

1.2 CESQG Waste means Hazardous Waste from a Conditionally Exempt Small Quantity Generator (CESQG) which is a business generating no more than 100KG or 27 gallons per month of hazardous waste and meets all other requirements as set forth in 40 CFR 261.5.

1.3 Hazardous Waste shall have the same meaning as Section 2.60 of the IRRF Service Agreement between the AUTHORITY and WCRR.

1.4 Central Facility shall mean the HHW Facility constructed at the IRRF to receive Household Hazardous Waste and CESQG Waste from within the boundaries of the AUTHORITY and County Area.

SECTION 2. SERVICES TO BE PROVIDED

2.1 The HHW services provided to the KCPT Area by WCRR at the Central Facility shall be the same as those provided to the area within the boundaries of the AUTHORITY and County Area, provided that, all operational decisions involved in the providing of such service to KCPT Area residents shall remain the sole discretion of WCRR.

2.2 The CESQG services provided to the KCPT Area by WCRR at the Central Facility shall be the same as those provided to the area within the boundaries of the AUTHORITY and County Area, provided that, all operational decisions involved in providing of such service shall remain the sole discretion of WCRR. WCRR shall be obligated to accept waste only from CESQG's from the KCPT Area that pay the CESQG service charge for collection and disposal established and levied by WCRR prior to acceptance of said waste.

2.3 The services provided pursuant to this Agreement shall not in any way include publicity or promotion of the availability of the Central Facility. Neither the AUTHORITY nor WCRR shall publicize or promote the availability of the Central Facility to the KCPT Area, and COUNTY shall be solely responsible for publicizing and promoting the availability of the Central Facility to the KCPT Area. The AUTHORITY may provide reproducible art work, at cost, to the COUNTY for its use in publicizing the facility if it is available. The text, graphics and distribution of all publicity for the Central Facility shall first be reviewed by WCRR. COUNTY understands that promotions undertaken by AUTHORITY may be seen in the KCPT area and that WCRR and AUTHORITY shall not be financially responsible for additional demand and use of the Central Facility by the KCPT area resulting from those promotions.

2.4 WCRR shall provide reports on the number of KCPT Area residents using the Central Facility to the AUTHORITY and COUNTY on a monthly basis.

2.5 Service provided by WCRR under this Agreement shall be performed in accordance with the IRRF Service Agreement and modifications thereto.

2.6 In the event that off-site or mobile HHW events are provided by WCRR, KCPT Area residents and CESQG will be eligible to participate pursuant to a separate agreement among the Parties hereto, which separate agreement shall expressly set forth the services and related charges associated with any such events.

SECTION 3: SERVICE CHARGES

3.1 Effective upon the execution of this Agreement by the Parties, the total fee charged by WCRR to the COUNTY for HHW service to KCPT Area residents shall be based on WCRR's actual costs in providing such HHW service. WCRR's actual costs shall include, but not be limited to, the cost of labor, consumables, utilities, general overhead, administrative and management oversight, and any subcontractor costs for start-up services, receiving, handling, transporting and disposing of Household Hazardous Waste delivered to the Central Facility. WCRR's actual costs shall be determined by dividing such costs by the total number of users of HHW services during the invoice period set forth in Section 3.3. The per user cost shall then be multiplied by the number of users of HHW services from the KCPT Area to determine the COUNTY charge for the invoice period.

3.2 Effective upon the execution of this Agreement by the Parties, the total fee charged by WCRR to the COUNTY for CESQG service to KCPT Area residents shall be based on the COUNTY's proportionate share of overhead and capitalization of the Central Facility. The cost of overhead and capitalization shall not include the cost of transport or disposal and shall include, but not be limited to, the cost of labor, utilities, general overhead, administrative and management oversight, and capitalization of the Central Facility. The COUNTY's proportionate share shall be determined by dividing such costs by the total number of users of CESQG services during the invoice period set forth in Section 3.3. The per user cost shall then be multiplied by the number of users of CESQG services from the KCPT Area to determine the COUNTY's proportionate share for the period. The charge to the COUNTY for CESQG service is in addition to the charge WCRR is hereby authorized to establish and levy on CESQG users from the KCPT Area for, and as a pre-condition to, receiving, handling, transporting and disposing Hazardous Waste. The charge to CESQG users will be used to pay the actual cost of transporting and disposal of the waste they dispose of at the Central Facility. This charge will be subject to change as necessary to cover these costs. If funds collected from user charges exceed the cost of transporting and disposal then the excess will be applied to that quarter's overhead and capitalization costs.

3.3 WCRR shall invoice the COUNTY quarterly for services rendered to KCPT Area residents. The COUNTY shall pay for services rendered pursuant to this Agreement within thirty (30) days of receipt of a detailed statement.

3.4 The Parties hereto acknowledge that the charges to the COUNTY for HHW and CESQG services may fluctuate from time to time based on the total number of users, the number of users from the KCPT Area, and the costs incurred by WCRR from its subcontractors. The COUNTY shall have the right to inspect WCRR's records pertaining to the services rendered under this Agreement, upon reasonable notice, to verify WCRR's costs.

SECTION 4: GENERATOR RESPONSIBILITY, INDEMNITY AND INSURANCE

4.1 The COUNTY agrees to maintain status as the "generator of record" for the percentage, by weight or volume, whichever is greater, of wastes delivered to the Central Facility from the KCPT Area, to the extent permitted by law. Pursuant to existing agreements between WCRR and the AUTHORITY, the AUTHORITY will be listed as the "generator of record" for the wastes delivered to the Central Facility from the AUTHORITY's Area.

4.2 The COUNTY shall indemnify, hold harmless and defend WCRR, including its respective officers, employees, attorneys, board members and directors, from any action in law or equity related to claims, losses, damage, including property damage, personal injury (including death), and liability of every kind, nature and description, including but not limited to environmental liabilities and claims directly or indirectly arising from the COUNTY's performance hereunder or any waste generated from the KCPT Area. Notwithstanding the foregoing, COUNTY shall not be required to indemnify WCRR for the proportion of liability attributable to the active negligence or willful misconduct of WCRR. The provisions of this section shall survive the termination or expiration of this Agreement.

4.3 WCRR shall indemnify, hold harmless and defend the COUNTY, and the AUTHORITY, including their respective officers, employees, attorneys, board members and directors, from any action in law or equity related to claims, losses, damage, including property damage, personal injury (including death), and liability of every kind, nature and description, including but not limited to environmental liabilities and claims directly or indirectly arising from WCRR's

performance hereunder. Notwithstanding the foregoing, WCRR shall not be required to indemnify COUNTY for the proportion of liability attributable to the active negligence or willful misconduct of the COUNTY, nor shall WCRR be required to indemnify AUTHORITY for the proportion of liability attributable to the active negligence or willful misconduct of the AUTHORITY. The provisions of this section shall survive the termination or expiration of this Agreement.

4.4 The indemnity provisions of this Agreement are intended to operate as an agreement pursuant to 42 U.S.C. §9607(e) and California Health and Safety Code §25364 to insure, protect, hold harmless and indemnify said indemnitees from any and all liability in accordance to this section. Said indemnitees do not hereby waive or surrender any other indemnity available to all or any of them under any applicable law.

4.5 WCRR agrees to require in its contract(s) with the provider(s) of HHW transportation and disposal services to the Central Facility that the COUNTY, its officers, employees and agents be named as an additional insured in all applicable insurance policies under which WCRR is named as an additional insured.

SECTION 5: TERM OF AGREEMENT

5.1 The term of this Agreement shall be for ONE (1) year from the later date of the dates of execution of this Agreement, except that this Agreement shall automatically renew itself for successive one-year terms unless WCRR or the COUNTY or the AUTHORITY gives notice in writing at least 30 days prior to expiration of the term. Notwithstanding any other provision of this Agreement, the COUNTY, the AUTHORITY or WCRR shall have the right to suspend or terminate this Agreement at any time, upon reasonable cause, upon ten (10) days' written notice. For purposes of this Agreement, "reasonable cause" shall include, but not be limited to, insufficient funding authorization from any public entity, including the AUTHORITY or the COUNTY, relative to the cost of providing household or CESQG hazardous waste services pursuant to this Agreement. In the event the COUNTY suspends or terminates this Agreement, WCRR shall suspend or terminate all HHW services and CESQG services to the KCPT Area. The COUNTY shall pay WCRR for all services completed or in progress at the time such written notice is received and WCRR may invoice the COUNTY immediately upon receipt of such notice.

SECTION 6: NOTICES

6.1 All notices shall be made in writing and delivered in person or by facsimile transmission or mailed to such party at their respective address as follows:

AUTHORITY: West Contra Costa Integrated Waste Management Authority
 One Alvarado Square, San Pablo, CA 94806
 ATTN: Executive Director

WCRR: West County Resource Recovery, Inc.
 101 Pittsburg Avenue, Richmond, CA 94801
 ATTN: General Manager

COUNTY: Contra Costa County
 651 Pine Street, 4th Floor - North Wing, Martinez, CA 945553
 ATTN: Community Development Director

SECTION 7: MISCELLANEOUS

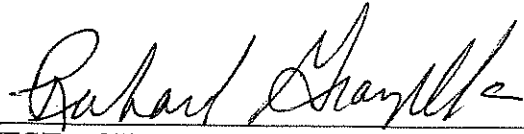
7.1 Any party shall be relieved of its obligations hereunder for the duration of an event of a force majeure or a change of law if, as a result of a force majeure or a change of law, such party is unable to perform or if such event renders a party's performance economically unreasonable. A force majeure shall include only events outside of the control of the parties and which are either acts of God or unforeseeable.

7.2 The waiver of any contractual, legal or equitable remedy by any Party hereto shall not constitute a waiver of any contractual, legal or equitable remedy by the others.

7.3 If any material part, term or provision of the Agreement is determined to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be null, void and terminated.

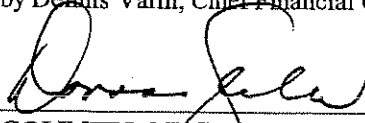
7.4 This agreement, and amendments and supplemental agreements hereto, may be executed in counterparts.

DATE: _____



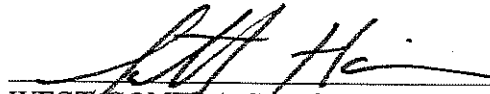
WEST COUNTY RESOURCE RECOVERY, INC.
by Dennis Varni, Chief Financial Officer

DATE: 6/6/00



COUNTY OF CONTRA COSTA
by Chairperson of the Board of Supervisors

DATE: 5/19/00



WEST CONTRA COSTA INTEGRATED WASTE
MANAGEMENT AUTHORITY
by Executive Director

**Side Letter of Agreement:
Budget and Balancing Account for Household Hazardous Waste Operations**

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1. This Side Letter Agreement (“HHW Agreement”) is between the West Contra Costa Integrated Waste Management Authority (“Authority”), and West County Resource Recovery, Inc.; West Contra Costa Sanitary Landfill, Inc.; Golden Bear Transfer Services, Inc.; Richmond Sanitary Service, Inc.; and Keller Canyon Landfill Company operating subsidiaries of Republic Services, Inc.) (hereinafter collectively, “Contractor”). The Authority and Contractor may be referred to individually as “Party” or collectively as “Parties.”

2. On October 10, 2013, the Authority and Contractor entered into a Post-Collection Recycling, and Disposal Services Agreement (“Post-Collection Agreement” or “Agreement”). Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Post-Collection Agreement. If there is conflict between this HHW Agreement and the Post-Collection Agreement, the terms of this HHW Agreement shall prevail.

a. Section 4.1.7 of the Post-Collection Agreement provides that “Contractor shall contract with a vendor acceptable to the Authority for the operation of a permanent Household Hazardous Waste (HHW) drop-off facility (located at 101 Pittsburg Avenue, North Richmond) [“HHW Facility”] that shall serve the Member Agencies (Richmond, El Cerrito, San Pablo, Pinole, Hercules, and Contra Costa County unincorporated communities within the Authority service area). There are separate agreements with Contra Costa County to include the unincorporated communities adjacent to the Authority’s service area (Kensington, Rodeo, Crockett, Port Costa, and Tormey). The types of materials accepted, as well as days and hours of operation shall be determined by Authority, after good faith consultation with Contractor and County and may be subject to change at any time by the Authority Board of Directors with input from Contractor and County, subject to reasonable implementation lead time and budget considerations.

3. On January 1, 2014, Contractor initiated services under the Post-Collection Processing and Landfill Disposal Service Agreement with the City of El Cerrito (“El Cerrito Post-Collection Agreement”). Contractor’s existing obligations to provide household hazardous waste services to the City of El Cerrito as a Member of the Authority at the HHW Facility are referenced in Section 4.1(e) of the El Cerrito Post-Collection Agreement. For the purposes of this HHW Agreement, Contractor shall be allowed to contract with a vendor acceptable to the Authority for the operation of one or more satellite Household Hazardous Waste facilities as they may be or are developed within the Authority’s service area that shall serve the Authority’s member agencies

including the City of El Cerrito, and the unincorporated communities of Contra Costa County within Authority's service area. The other unincorporated areas of Contra Costa County outside the Authority service area shall be included by a separate agreement among Authority, Contractor, and County. The annual budget for HHW services and this HHW Agreement shall apply to any satellite HHW facility developed within the Authority's service area.

4. The Authority acknowledges that the Contractor has the right to utilize its assets and market its services. To the extent Contractor allows any additional ("out-of-area") jurisdictions to deliver HHW materials to the HHW Facility with the Authority as the generator of record, the Contractor and the Authority will meet and confer to develop an acceptable arrangement. The mutually acceptable arrangement will be included in the Republic annual HHW Budget submittal to the Board of Directors for review and consideration of approval.

5. Section 5.3.3 of the Post-Collection Agreement provides that Contractor and the Authority Contract Manager shall jointly prepare and submit a draft HHW budget to the Authority Board of Directors for its review and approval (HHW Budget). Section 5.3.3 further provides that the Board, "may approve that budget as submitted or may request modifications to the budget, including requesting either an increase in service levels or a reduction or elimination of Services to reduce costs." Once approved, the HHW Budget shall serve as the revenue requirement for the HHW portion of the Rate for the coming year. The HHW component of the 2014 rate was established based on jointly estimated calendar year proposed cost of service of seven hundred ninety-one thousand one hundred forty-four dollars (\$791,144). Section 5.3.3 further provides that "Contractor shall be entitled to an operating margin of eleven and fifty-five one hundredths percent (11.55%) for calendar year 2014 and fifteen percent (15%) in all subsequent Rate Years."

6. The Parties agree that the costs of the HHW Facility are variable, due to factors such as variable days and hours of operation, labor costs and the costs of handling and properly disposing of the HHW materials received from the public. The Parties are interested in creating an equitable solution to the handling of those costs, in the event that costs exceed or fall short of budgeted amounts.

7. The intent of this HHW Agreement is to memorialize a procedure for establishing the HHW Budget for all subsequent Rate Years, using a balancing account approach.

8. The Parties therefore agree upon the following terms and conditions:

a. The Board of Directors shall, on an annual basis, approve an HHW Budget prior to December 1 for the following calendar year's budget.

b. In establishing the HHW Budget for the following calendar year, the Parties shall consider Contractor's actual prior year costs incurred in the operation of the HHW Facility. The line item accounts for prior year costs are identified in Exhibit A.

c. In establishing the HHW Budget, the Parties shall also agree upon certain operational parameters, including, but not limited to, the assumed number of part-time and full-time staff; the days and hours of all HHW facilities operations; and assumed volume of HHW materials received by type. These operational parameters will form the basis of annual allowable costs for the HHW Budget, as described in Exhibit A.

d. Unless the Parties are proposing changes to the operational parameters, some of the current year budget line items would be adjusted by the average monthly change in the San Francisco-San Jose-Oakland All Urban Consumers CPI (CPI) to arrive at the HHW Budget for the following calendar year as described in Exhibit A. Exhibit A shall identify those budgets items to be subject to the CPI adjustments.

e. Except in the event of an emergency or other exigent circumstance, neither Authority nor Contractor may adjust the operational parameters of the HHW Budget without prior written authorization of the Board of Directors. The Authority and Contractor must mutually determine whether an emergency or other exigent circumstance exists.

f. If the HHW Budget parameters are changed without approval of the Board of Directors and those adjustments result in increased costs of operation, those increased costs shall not be allowable in consideration of the balancing account established below.

g. Once the HHW Budget is approved for the calendar year, neither Contractor nor the Authority shall add new categories of allowable costs in Exhibit A without the Authority verification and written authorization of the Board of Directors.

h. The previous approved Budgets in prior years have been approved by the Authority Board of Directors as follows:

- 2014 Budget \$791,144
- 2015 Budget \$836,818
- 2016 Budget \$857,284
- 2017 Budget \$978,684
- 2018 Budget \$1,058,785

Contractor will provide Authority with a reconciliation of actual expenses vs. budget amounts for 2014, 2015, 2016, and 2017. Contractor and Authority agree that the overall reconciliation for 2014 through 2017 could be in favor of Contractor; if so, Contractor would receive a direct payment or credit of no more than \$41,500. Contractor waives the right to any further payment, reimbursement, credit or other compensation after the

Annual Statement line item reconciliation of actual expenses vs. budget amounts for 2014, 2015, 2016, and 2017 is completed.

Contractor will provide Authority with a reconciliation of actual expenses vs. budget amounts for 2018 by April 1, 2019. The reconciliation for years 2014, 2015, 2016, 2017 and 2018 shall include details of actual costs incurred and actual total revenues received compared to the approved budget in the operation of the HHW Facility for that calendar year, including any revenues allocated to the HHW Budget from jurisdictions other than the Member Agencies. The reconciliation shall include supporting documentation from Contractor's vendors and subcontractors. The reconciliation shall also be in a format as agreeable by the Authority in good faith consultation with the Contractor. Upon the Authority's request, Contractor shall provide any additional records not already provided with the reconciliation, that are relevant to the determination of the accuracy and appropriateness of the reported revenues and costs. Contractor shall grant such access to the relevant records within thirty (30) calendar days of such request. Contractor may provide electronic or hard copies of such records. The Authority acknowledges that some records may be "trade secrets" and must be kept confidential. Either the Authority or the Contractor shall be entitled to recover any surplus/shortfall in actual revenues relative to actual allowable costs. The Authority or the Contractor shall recover such surplus/shortfall either by (a) a direct payment; or (b) as a credit/debit against the following year's rates.

i. To manage the HHW Budget, the Parties further agree to establish a balancing account effective January 1, 2019, for the remainder of the term of the Post-Collection Agreement.

j. The intent of the balancing account is to create an equitable arrangement to allow sufficient, but not excessive, revenues to cover actual costs and agreed-upon operating margin. The balancing account shall function as follows:

i. Contractor will provide Authority with a reconciliation of actual expenses vs. budget amounts for the previous budget year in the form of an "Annual Statement".

ii. The "Annual Statement" shall be developed as follows: Within one hundred twenty (120) days following the end of each calendar year, Contractor shall submit to the Authority its statement of actual costs incurred and actual total revenues received compared to the approved budget in the operation of the HHW Facility for that calendar year, including any revenues allocated to the HHW Budget from jurisdictions other than the Member Agencies. The Annual Statement shall include supporting documentation from Contractor's vendors and subcontractors. The Annual Statement shall also be in a format as agreeable by the Authority in good faith consultation with the Contractor.

iii. In reviewing the Annual Statement, the Authority Contract Manager and the Contractor shall determine if actual allowable costs exceeded annual budgeted costs, and if actual revenues exceeded or fell short of budgeted revenues. Upon the Authority's request, Contractor shall provide any additional records not already provided with the Annual Statement, that are relevant to the determination of the accuracy and appropriateness of the reported revenues and costs. Contractor shall grant such access to the relevant records within thirty (30) calendar days of such request. Contractor may provide electronic or hard copies of such records. The Authority acknowledges that some records may be "trade secrets" and must be kept confidential. The Authority Contract Manager may deny or reject an increase in the HHW Budget for the following year if Contractor fails to provide such requested records within thirty (30) calendar days. Beginning in Calendar Year 2019, Authority and Contractor agree that line item accounts for fuel, utilities, property tax and insurance, as listed in Exhibit A and as included in the 2019 Board Approved HHW budget, are not subject to reconciliation. These four-line items shall be subject to an annual CPI adjustment as described in Exhibit A for all subsequent years and will be considered actual costs.

iv. The Authority shall review and either approve or reject the Annual Statement within sixty (60) days of receipt of the same. However, if any reported revenues and/or costs are disputed by the Authority, the Authority's approval of the Annual Statement may be delayed until such disputed items are resolved. Authority shall provide Contractor with a detailed statement outlining the areas of dispute. Contractor and the Authority shall then resolve any disputes pursuant to Section 8.17 of the Post-Collection Agreement.

v. Upon the Authority's approval of the Annual Statement, Contractor shall be allowed to recover any shortfall in actual revenues relative to actual allowable costs. If the amount of any shortfall is twenty-five thousand dollars (\$25,000) or less, then the Authority shall compensate Contractor for the shortfall through a direct payment to Contractor. If, however, the amount of any shortfall is greater than twenty-five thousand dollars (\$25,000), then the Authority shall compensate Contractor for the shortfall either through (a) a direct payment to Contractor; or (b) by adjusting the following year's rates.

vi. In addition, the Authority shall be entitled to recover any surplus in actual revenues relative to actual allowable costs. The Authority shall recover such surplus either by (a) a direct payment from Contractor; or (b) as a credit against the following year's rates.

9. On June 17, 2017 Contractor contracted with a vendor acceptable to the Authority and the City of El Cerrito for the operation of a satellite HHW facility located at 7501 Schmidt Lane in El Cerrito, California pursuant to an Agreement between

Contractor, the Authority and El Cerrito ("El Cerrito Facility"). The El Cerrito Facility serves the Member Agencies. The HHW budget for the El Cerrito Facility shall be part of the entire HHW Budget approved by the Authority Board of Directors. The HHW Budget for the El Cerrito Facility shall not include any non-allowable costs identified in Exhibit A.

10. This HHW Agreement shall expire upon completion of the final HHW Budget reconciliation which shall be conducted after expiration of the Post-Collection Agreement.

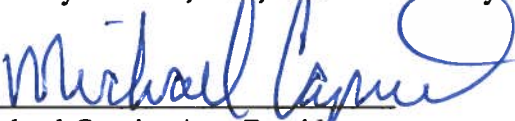
11. The terms and conditions set forth in this HHW Agreement have been mutually agreed upon by the Parties.

West Contra Costa Integrated Waste Management Authority



Stan Hakes, Executive Director
Dated: 1-3-18 19 *gdt*

West County Resource Recovery, Inc.; West Contra Costa Sanitary Landfill, Inc.; Golden Bear Transfer Services, Inc.; Richmond Sanitary Service, Inc.; and Keller Canyon Landfill Company



Michael Caprio, Area President
Dated: 1/10/19

Exhibit A: Allowable Costs**A. Allowable Costs**

Contractor shall calculate its cost of operations including the actual and direct costs of operating the HHW Programs, Permanent HHW Facility, any satellite HHW Facilities, special one day collection events, and any additional HHW services/programs as necessary for the following allowable costs:

1. Direct wages and benefits paid to Contractor for an HHW supervisor who oversees HHW programs and manages the budget in cooperation with the Authority. For the 2019 Budget, the amount is ninety-two thousand four hundred thirty four dollars(\$92,434). This amount will be estimated for budget purposes using the actual fully loaded wages for the previous twelve months from July 1st through June 30th. For the 2020 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
2. Maintenance supplies, spare parts, consumables & outside services costs incurred directly to perform the HHW services required under the Post-Collection Agreement. For the 2019 budget, this amount is forty-three thousand two hundred forty-eight dollars (\$43,248). This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
3. HHW Facility Outside Services which are limited to the subcontracted services of Stericycle (or a replacement subcontractor approved by the Authority) for the receipt, handling, processing, and responsible disposal of the materials collected by the HHW program. Contractor shall separately account for and report the various components of this cost (i.e. labor, handling, transportation, material disposal, etc.) in both their budget request and Annual Statement. For the 2019 budget, this amount is five hundred fifty-two thousand dollars (\$552,000). For budget purposes, this amount will be the actual costs for the previous twelve months from July 1st through June 30th. For the 2020 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
4. Fuel costs incurred in the operation of mobile equipment used specifically for the benefit of the HHW program. To the extent that such mobile equipment is shared with other operations of Contractor, Contractor shall have the burden of demonstrating the appropriateness of the allocation of these costs to the Authority's Executive Director. For the 2019 budget, this amount is two thousand eight hundred fourteen (\$2,814). This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
5. Utilities costs incurred by Contractor in the operation of the HHW program. For the 2019 budget, this amount is eleven thousand five hundred

seventeen (\$11,517) dollars. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.

6. Property taxes which represents a 7.29% allocation of the total property taxes paid by Contractor for the 101 Pittsburg Ave, Richmond site. The 7.29% allocation is based on Contractor's representation of the square footage of the site occupied by the HHW facility. For the 2019 budget, the allocated amount to the HHW facility is fifteen thousand five hundred forty-four dollars (\$15,544). This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.

7. Insurance costs directly attributable to the operation of the HHW program for the types and levels of coverage required by the Agreement. For the 2019 budget, this amount is nine thousand two hundred eighty (\$9,280) dollars. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.

8. JPA Requested Programs will be budgeted based on a budget for those programs as determined jointly by the Authority and Contractor.

9. Contractor expenses for Household Hazardous Waste, motor oil, and universal waste training, education networking and related travel expenses not to exceed \$3,500 per year.

10. Capital costs or Depreciation included in a Board approved annual HHW Budget.

11. All other unforeseen costs such as payments to repair damage, fines and penalties not due to Contractor's negligence, both the Authority and Contractor agree to meet and confer in good faith towards a resolution.

B. Non-Allowable Costs

Non-allowable costs shall not be included in the Annual Statement and, if determined by the Authority to have been included in the Annual Statement, shall be deducted from actual costs. Non-allowable costs include but are not limited to the following:

1. Any costs or portions of allocated costs associated with the Contractor's provision of similar services to "out of area" users of the HHW Facility that are not approved by Authority Board of Directors.

2. Labor and equipment costs for personnel and vehicles that are not specified in the operational parameters and assumptions that are approved as part of the HHW Budget.

3. Payments or other compensation to managers, directors, and/or owners of Contractor.

4. Corporate overhead allocations or other charges for Contractor's selling, general, and/or administrative employees, except for insurance and other overhead included in a Board approved annual HHW Budget.

5. Travel and entertainment expenses except for Household Hazardous Waste, motor oil and universal waste training, education networking and related travel expenses.

6. Payments to repair damage to public or private property due to Contractor's negligence.

7. Fines or penalties due to Contractor's negligence.

8. Liquidated Damages assessed under the Agreement.

9. Federal or State income taxes.

10. Charitable or political donations, except non- profit organization HHW fees waivers approved by RecycleMore staff.

11. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased unless approved by the Board as part of the Budget.

12. Attorney's fees and other expenses incurred by Contractor in any dispute, negotiation, or court proceeding.

13. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of the Agreement.

14. Payments to Affiliates for products or services, in excess of the cost to the Affiliates for those products or services.

15. Goodwill.

16. Profit and/or profit sharing distributions exceeding the operator's margin described in the Agreement.

17. Bad debt.

County Kensington HHW Services
2018- 19 Unpaid Invoices

| Quarter | Amount | Source |
|--------------|--------------------|---------|
| 2Q2018 | \$5,952.60 | Dingman |
| 3Q2018 | \$6,872.68 | Dingman |
| 4Q2018 | \$5,403.62 | Dingman |
| 1Q2019 | \$4,890.60 | Dingman |
| 2Q2019 | <u>\$6,788.02</u> | Forte |
| Total | \$29,907.52 | |



Agenda Report

Date: July 18, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: Board Discussion of RecycleMore Staffing

ACTION REQUESTED

Provide direction to staff on potentially scheduling Board discussion of RecycleMore staffing at a future Board meeting.

BACKGROUND

RecycleMore is in a state of serious transition. Current RecycleMore Executive Director Stan Hakes will retire and leave the organization on July 29, 2019. Former Manager of Office Administration Melinda Wong recently retired, and former RecycleMore Program Manager Lorna Thomson left employment with RecycleMore in April 2019.

It is anticipated the Board will hire Steve Duran to be the Interim Executive Director, beginning July 22, 2019. Mr. Duran has communicated to the current Executive Director he would like the opportunity to receive input from the Board on RecycleMore future staffing needs.

Traditionally, the RecycleMore Board meets on the second Thursday evening of each month, except in August. There is usually no August Board meeting. The Board has a number of options to address this issue. The Board could meet in August, schedule a special meeting in September or place discussion of RecycleMore staffing on the agenda of the regularly scheduled September Board meeting (September 12, 2019).

It is recommended the Board provide direction to staff on potentially scheduling Board discussion of RecycleMore staffing at a Future Board meeting.

FISCAL IMPACT

There are no fiscal impacts associated with this subject.

RECOMMENDED ACTION

Provide direction to staff on potentially scheduling Board discussion of RecycleMore staffing at a future Board meeting.

Submitted by:


 Stan Hakes
 Executive Director