



Board of Directors Meeting Agenda
Regular Meeting
Thursday, November 10, 2022
6:15 PM

Teleconference/Public Participation Information

Pursuant to the provisions of California Governor's March 4, 2020 State of Emergency Declaration and enactment of Assembly Bill 361 on September 16, 2021 which adopted exemptions to the Ralph M. Brown Act and the proposed findings to be adopted by the Board at this meeting, this meeting will be conducted by the teleconference only in accordance with Government Code section 54953(e). No physical location will be available for this meeting. This meeting agenda is available online at <https://recyclemore.com/about/board-meeting-agendas>

For this meeting, there will be no physical location from which members of the public may observe the meeting. Members of the public are welcome to observe and address the Board telephonically at the appropriate time for public comment during the meeting, following these instructions:

Link to join Webinar: <https://us02web.zoom.us/j/83970413840>
Or phone: 1-669-900-6833 or 1-408-638-0968
Webinar ID: 839 7041 3840

During the meeting, the Chair will call for public comment. To make a public comment on a desired item while participating in the webinar, click on the "Raise Your Hand" option within the online webinar tool, or if participating via phone - dial *9.

Members of the public are welcome to submit written comments via email to the Board Secretary at donalds@recyclemore.com prior or during the time for public comment at the meeting. The Board Secretary will share all comments with the Board at the meeting and make them part of the public record.

Americans with Disabilities Act

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet in an alternative format, please contact the Authority Board Secretary at (510) 609-1215 or by email at donalds@recyclemore.com with the following information: name, phone number, email, and type of assistance requested. Notification of at least 48 hours prior to the meeting or time when services are needed will assist Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Public Comment

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

1. Call to Order/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

Public Employee Performance Evaluation - Title: Executive Director: Closed session with respect to every item of business to be discussed in closed session pursuant to Section 54957: PUBLIC EMPLOYEE PERFORMANCE EVALUATION. Title: Executive Director.

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.

3. Pledge of Allegiance

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

4. Ex Parte Communications Disclosures

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

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:

6.1 October 13, 2022 Authority Board Meeting Minutes

Consider a MOTION to APPROVE the subject minutes.

6.2 Continue Findings of AB 361 to Allow Teleconferenced Meeting

Consider a MOTION to ADOPT Resolution No. 22-17 to continue conducting Board

of Director meetings remotely due to health and safety concerns for the public and making related findings in compliance with Assembly Bill 361 (2021) (“AB 361”) effective November 13, 2022 through December 13, 2022.

7. Staff Report

Staff will provide updates on recent and upcoming activities.

8. Regular Agenda

8.1 Calendar Year 2023 Household Hazardous Waste Budget

Staff is recommending a MOTION to APPROVE Calendar Year 2023 Household Hazardous Waste (HHW) Budget.

8.2 Public Hearing to Consider Adoption of a Resolution to Approve of the Household Hazardous Waste Program Budget for Calendar Year 2023 and Approve the Calendar Year 2023 Post-Collection Rates

Adopt Resolution 22-18, which includes Attachment 2 Exhibits A, B-1, B-2, B-3, and B-4.

1. Approve the Household Hazardous Waste Program Budget in the amount of \$1,335,662 for Calendar Year 2023 as set forth in Exhibit A to the Resolution; and
2. Approve the 2023 Post-Collection Rates for the Republic Services Collection Service Area as set forth in Attachment 2 Exhibit B-1, B-2, or B-3 to the Resolution.

SUGGESTED FORMAT FOR THE HEARING

- Open the Public.
- Receive oral report from RecycleMore staff.
- Questions and answers from the Board for RecycleMore staff, consultant and/or Republic Services representative.
- Receive any comments from the public.
- Close the Public.
- Board discussion and consideration of recommended actions.

8.3 Memorandum of Understanding (MOU) Status/Update

If needed, provide direction to Executive Director and Staff.

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 December 8, 2022.

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WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

DATE: November 10, 2022

TO: West Contra Costa Integrated Waste Management Authority Board

FROM: Peter Holtzclaw - Executive Director

SUBJECT: October 13, 2022 Authority Board Meeting Minutes

ACTION REQUESTED:

Consider a MOTION to APPROVE the subject minutes.

BACKGROUND:

The minutes of the October 13, 2022 Board meeting are attached.

FISCAL IMPACT:

None.

ATTACHMENTS:

[6.1 Attachment 1 - ActionMinutes 2022-10-13 DRAFT](#)

WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS MEETING MINUTES – OCTOBER 13, 2022

Meeting Date | Time 10/13/2022 6:15 PM | Meeting Location The meeting was held pursuant to the provisions of California Governor’s March 4, 2020 State of Emergency Declaration and enactment of Assembly Bill 361 on September 16, 2021 which adopted exemptions to the Ralph M. Brown Act and the proposed findings to be adopted by the Board at this meeting, to be conducted by teleconference only in accordance with Government Code Section 54953(e). No physical location to be available for this meeting. All votes of the Board to be Roll Call votes.

Meeting called by Board of Directors

Type of meeting Regular

Authority Staff Present Peter Holtzclaw, Lisa Borreani, Donald Sturman

Legal Counsel John Bakker

Board Members Present:

Directors: T. Rudnick, El Cerrito (Vice Chair); D. Romero, Hercules (Chair); A. Tave, Pinole; G. McLaughlin, Richmond; and R. Xavier, San Pablo

Absent: N. Bates and M. Willis, Richmond; and F. Glover (Ex-Officio) Contra Costa County

CALL TO ORDER/ROLL CALL

Chair Romero called the meeting to order at 6:16 P.M. The Roll Call established the existence of a quorum (Tave, McLaughlin*, Romero, Rudnick and Xavier). *Director McLaughlin arrived at 6:17 P.M.

CLOSED SESSION

There was no Closed Session.

PLEDGE OF ALLEGIANCE

Director Xavier led the Pledge of Allegiance.

EX-PARTE COMMUNICATIONS & DISCLOSURES

There were no ex-parte communications or disclosures.

PUBLIC COMMENT

No written comments were submitted, or oral comments made, by any member of the public.

CONSENT CALENDAR

MOTION by Vice Chair Rudnick to approve Consent Calendar Items 6.1 and 6.2. SECOND by Director McLaughlin.

MOTION PASSED unanimously by a Roll Call vote.

STAFF REPORT

Staff Report Item 7 - | Presenter | Peter Holtzclaw - Executive Director

Executive Director Peter Holtzclaw announced that the Electronic Annual Report to CalRecycle had been completed and he thanked Republic Services and member agency staff for the completion of that effort. He also announced that two thirds of the Route Monitoring Project for SB 1383 contractually set up with Cascadia had been completed for Contra Costa County, Hercules, Pinole, Richmond and San Pablo, and he would reach out to El Cerrito to discuss their route monitoring with East Bay Sanitary District. That project would wrap up in the next two weeks.

Mr. Holtzclaw also announced that the AB 1826 project where CalRecycle had indicated the need to do better with commercial compliance and Republic had been working diligently to get organic service to the covered accounts, had also been completed. That project involved significant work with RecycleMore, Republic and member agency staff and had been completed on time. The final results would be submitted to CalRecycle. Compliance percentages were in the 93-97 range for the four cities and the county. One hundred percent compliance was expected by early November.

He also announced two job offers for RecycleMore; one for a Recycling & Household Hazardous Waste (HHW) Manager coming on board in November, and for a Recycling Outreach Coordinator coming on board soon.

Mr. Holtzclaw identified an issue with respect to the Memorandums of Understanding (MOUs) as part of the rate discussion in terms of the Compliance Fund and whether RecycleMore should have final say over the aspects of the work plan related to education and enforcement monitoring, or whether the member agencies should have the final say. He sought direction from the Board in terms of where the Board wanted RecycleMore to interact with the member agencies when it came to those aspects, which he would put on the agenda for the next meeting.

No written comments were submitted, or oral comments made, by any member of the public.

Agenda Item 8.1 – Workshop – Calendar Year 2023 Household Hazardous Waste Budget | Presenter | Garth Schultz, R-3 Consulting Group, Inc.

Executive Director Holtzclaw introduced Garth Schultz with R-3 Consulting Group, Inc. to present the rate structure which required a review of the HHW Budget that would flow into the entire rate structure. He advised that the agenda item was for a Workshop on the calendar year 2023 HHW Budget, with direction to staff on actions needed, if any, and for the Board to consider approval of the 2023 HHW Budget its November 10, 2022 meeting.

Garth Schultz, Principal with R-3 Consulting Group, Inc., walked through the HHW Budget, which was a series of calculations stipulated through the Side-Letter Agreement between RecycleMore and Republic for the provision of HHW services. He stated the story was fairly simple, straightforward and flat and each line item previously agreed to had been escalated at 80 percent based on last year's approved budget escalated by the CPI factor with an increase to the budget of \$1.2 million for 2023, the baseline activities inclusive of those provided at the HHW facility in Richmond, the satellite facility at El Cerrito as well as the one-day events and sharps container and pharmaceutical programs. He noted that last year and in years prior there had been tweaks and adjustments to some of the line items but this year the items would remain flat with a slight escalation for the El Cerrito satellite facility.

Mr. Schultz reported that in 2021, the budget had been overspent less than \$10,000 as opposed to \$90,000 overspent in 2020, representing a greater usage of HHW collection at the facility. For 2022 as adopted by the Board last November, the budget was \$50,000 less and he presented the breakout of the cost per ton both for Republic and for El Cerrito. He noted that the rate per ton was higher than last year given the fact that the total tons in all jurisdictions

had decreased slightly since last year, although he did not know why that had occurred. He commented that overall decreased solid waste tonnage was a part of the overall objective of the Authority. Mr. Schultz explained that the calculations were largely CPI-driven, and the benefit of the reduced amount carried forward from the balancing account resulted in a slight increase in the rate per ton proposed and projected for 2023.

In response to Director McLaughlin as to the per ton rate last year, Mr. Schultz stated last year's per ton rate of \$7.73 had increased to \$7.83 per ton in the 2023 budget.

Director McLaughlin referred to the RecycleMore website and noted the HHW information had only been provided up to October 2021 and she asked for the data from November 2021 to September 2022, either in an agenda report or on the website to allow access to that data.

Mr. Holtzclaw explained that information was normally provided in November or December each year and would be provided as scheduled.

No written comments were submitted, or oral comments made, by any member of the public.

Agenda Item 8.2 – Workshop – Calendar Year 2023 Post-Collection Rates | Presenter | Garth Schultz, R-3 Consulting Group, Inc.

The agenda item related to a Workshop on calendar year 2023 Post-Collection Rates, with direction to staff on actions needed, if any, and for the Board to consider adopting new calendar year 2023 RecycleMore Post-Collection Rates at its November 10, 2022 meeting.

Mr. Schultz stated there was one feed-in element resulting in a set of calculations of how RecycleMore collected revenue to compensate Republic for the services it provided via the Post-Collection Agreement (PCA) that RecycleMore held with Republic for disposal of garbage, processing of recyclables, marketing of those commodities, composting of green waste and organic material as well as processing of construction and demolition (C&D) waste material. All of those services and more were dictated via the terms and conditions of the PCA for the service area where Republic provided collection services. He added that El Cerrito had its own separate PCA with Republic.

Mr. Schultz explained that via those agreements, Republic was able to move forward a set of adjustments to the blended per ton rate annually for each of the various elements, and once those blended per ton rates and the number of tons had been established and verified that would translate into a Post-Collection Rate that RecycleMore would hear, adopt and add to customer collection rates charged in bills to residents, businesses and industrial customers.

All of the compensation to Republic for post-collection services came from the blended per ton rates. Compensation to Republic was not tied to the cost of operation but to changes in the elements as dictated in the PCA. Mr. Schultz identified the five elements involved along with a new element requested by Republic, as the material specific component of the rate escalated at 85 percent of CPI with a 4 percent cap with a rollover of .07 percent carried forward to next year; the HHW element based on the Board-approved HHW budget; the Authority budget element set based on the calendar year 2023 revenue need; the Recycling Rebate per blended per ton rate that was subject to market conditions; the Government Fees component that changed with the tonnage and fee adjustments; and the Republic requested SB 1383 Change in Law element covering the increased cost of processing organics due to SB 1383.

Mr. Schultz reported the current total blended per ton rate had been \$107.60, and the calculated 2023 per ton rate would be \$112.79 comprised of the elements identified. The recycling rebate represented a \$2.41 credit per ton offsetting the amount ratepayers compensated Republic. He added that tonnages had decreased 4.56 percent from 166,205 tons in 2022 to 158,610 tons from August 2021 to July 2022, which had been used as the basis for projecting

the revenue requirement for the coming year, as dictated in the terms and conditions of the PCA which affected the overall set of calculations.

Once detailing and evaluating Republic's proposed per ton rate according to the agreement, Mr. Schultz stated they would then look at the revenue requirement at that per ton rate that RecycleMore sought to recover from ratepayers to compensate Republic. The \$112.79 a ton times the number of tons in the most recent 12-month period would yield a 2023 revenue requirement identified as \$17,889,632. Given the decrease in the number of tons, the overall revenue requirement sought from ratepayers would only increase about \$6,000 from the prior year.

Mr. Schultz offered a detailed set of calculations and stated the revenue requirement would be allocated amongst the residential, commercial and industrial customers based on their tonnage of garbage, dry waste and construction and demolition (C&D) but did not include the tonnages of recycling or organics. That would result in a \$0.32 increase for the 20-gallon residential cart, commercial customers would see a decrease in the per cubic yard rate due to a combination of increasing subscription and decreasing disposal tonnage, industrial would increase at \$19 per ton going from \$179 to \$198 per ton, also due to a decreasing overall tonnage basis with a relatively constant revenue need.

Mr. Schultz sought direction for Republic's initial 2023 blended per ton rates and RecycleMore's initial 2023 Post-Collection Rates, and when returned to the Board in November and adopted by the Board, stated it would be added to customer bills and extended to the ratepayers in the Republic service area effective January 1, 2023.

Director McLaughlin referred to the regulatory Compliance Fund and asked for an expenditure list for the fund including any transfers to RecycleMore to cover the accepted compliance expenditures.

Mr. Holtzclaw identified the last audited amount of the Operating Fund from July 1, 2021 of \$1.136 million with \$1.88 million in the Reserve Fund, and a transfer in and out to the Operating Fund (this last summer) to bring the Operating Fund up to \$1.7 million and to bring the reserves down to \$1.3 million. Based on the June budget, he stated revenues and expenses would eat into the Operating Budget by a little over \$400,000, ending up with \$1.2 million. He identified the current Compliance Fund balance at \$479,274.

In response to Director McLaughlin who preferred hard copies of the reports that had been sent electronically, Mr. Schultz advised that a summary letter report of what he had presented could be prepared for the Board and be included in the November meeting packet.

Chair Romero requested that all Directors receive hard copies of the reports.

Mr. Holtzclaw presented a spreadsheet to identify the Operating Fund and the Special Project (Reserve) Fund and explained that for the first quarter of 2022/23, RecycleMore was within 95 percent of the revenue with expenses trailing the budget by a little over \$100,000 given that the Authority was still staffing up. As part of the Compliance Fund, he presented another spreadsheet to show almost \$480,000 in that fund going back to January 2020. He noted the actual revenue was about \$615,000, although with no formal budget the funds had been banked to prepare for SB 1383. He added that some of the Compliance Funds had been spent on Recyclist, route monitoring/inspections, edible food inspections, education and outreach for a total of \$136,718 going back to 2020. The balance in the fund was \$479,274, and when bringing the accounting in-house, there would be much more up-to-date accounting information of RecycleMore funds, expected in November or December.

Director McLaughlin asked if the data presented was inclusive of the transfers to Republic to cover accepted compliance expenditures, and Mr. Holtzclaw stated it would cover Republic's compliance activities in addition to

the PCA amounts, and he pointed out the actual numbers were actual transfers out moving through Republic to pay for Cascadia or Recyclist given their contracts with Republic. With respect to outreach for AB 1826 and SB 1383, some funds moved through Republic and some moved through RecycleMore depending on which one had the better cost or the contractor who could get mailings out quickly.

Director McLaughlin requested that the slide information provided by Mr. Holtzclaw be included in the agenda report for the next meeting.

To help the flow of the meeting, Chair Romero recommended that members who had budgetary questions identify those questions prior to the Board meeting to allow staff time to gather the applicable spreadsheets and other information to present at the meeting.

In response to Vice Chair Rudnick, Mr. Schultz stated in terms of RecycleMore actions that affected El Cerrito's PCA related to two components; the Authority per ton component predicated on the Authority's determination of revenue generation needed in the upcoming calendar year equivalent to the El Cerrito service area and the Republic service area, and the HHW component. All other components in the El Cerrito PCA were dictated pursuant to the terms and conditions of El Cerrito's agreement with Republic itself.

Chair Romero referred to the education and outreach required by SB 1383 and RecycleMore's right to direct education and outreach through the PCA contract, the governing document that remained in effect until December 31, 2024. He suggested that the discussion in November should provide clarity in that regard so that the city attorneys and the city engineers of the member agencies would understand how SB 1383 was working with the PCA.

Mr. Holtzclaw clarified that had not been flushed out in the MOU discussions.

Legal Counsel John Bakker stated the Board could look at that but his initial thought was that education and outreach in the PCA could not have contemplated the education and outreach in SB 1383 because it did not exist at that time. SB 1383 required the member agencies to conduct certain education and outreach. The MOU was being designed to delegate that responsibility to RecycleMore. While he suggested they were separate, he and the Executive Director were seeking direction on that issue and would bring it back to the Board at the next meeting.

BOARD MEMBER AND STAFF ANNOUNCEMENTS

Vice Chair Rudnick complimented staff on the incredibly good and hard work being done especially given the lean team, and with two new positions soon to be filled she was enthusiastic with the organization's direction.

Peter Nuti from Republic Services, agreed with the hard work that RecycleMore staff had done in the roll out of the AB 1826 project and the work that had gone into the can inspections that were being finalized. He acknowledged the enormous amount of time and effort that RecycleMore staff had spent with Republic staff to get all that work done, and even though short-staffed RecycleMore had done a good, smooth job.

ADJOURNMENT

With consensus of the Board, Chair Romero adjourned the meeting at 7:18 P.M. until the regular Board meeting scheduled for November 10, 2022 at 6:15 P.M.

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 October 13, 2022.

Board Secretary

Date

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WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

DATE: November 10, 2022

TO: West Contra Costa Integrated Waste Management Authority Board

FROM: Peter Holtzclaw - Executive Director

SUBJECT: Continue Findings of AB 361 to Allow Teleconferenced Meeting

ACTION REQUESTED:

Consider a MOTION to ADOPT Resolution No. 22-17 to continue conducting Board of Director meetings remotely due to health and safety concerns for the public and making related findings in compliance with Assembly Bill 361 (2021) (“AB 361”) effective November 13, 2022 through December 13, 2022.

BACKGROUND:

On March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State address the broader spread of COVID-19.

On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Ralph M. Brown Act (“**Brown Act**”) in order to allow local legislative bodies to conduct meetings telephonically or by other means. Additionally, the State implemented a shelter-in-place order, requiring all non-essential personnel to work from home.

The Board of Directors established virtual meetings. The virtual meetings have allowed the Board to continue to conduct its business from remote locations while ensuring the public’s continued access to government meetings in a safe manner.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other

things, rescinded certain clauses of Executive Order N-29-20 after September 30, 2021, including clauses that suspended certain provisions of the Brown Act. Thus, effective October 1, 2021, agencies would have had to transition back to in person public meetings. Since the Governor issued Executive Order N-08-21, the highly contagious Delta variant has emerged, causing a spike in cases throughout the state and within Contra Costa County.

On August 2, 2021, the Contra Costa County Health Officer issued a Health Order requiring all individuals in both Counties, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19. The August 2, 2021 Public Health Officer Order will be in effect until rescinded, superseded or amended.

On September 16, 2021, Governor Newsom signed AB 361, which was an urgency measure that became effective on October 1, 2021, and it allows a local agency to use teleconferencing for public meetings during a Governor-proclaimed state of emergency as long as the legislative body adopts findings every 30 days that: 1) meeting in person would present imminent risks to the health or safety of attendees as a result of the emergency; or 2) state or local officials have imposed or recommended measures to promote social distancing.

In such circumstances, a legislative body is not required to make available a physical location from which members of the public may observe the meeting and offer public comment or required to have a quorum of the members of the legislative body participate from locations within the boundaries of the agency's jurisdiction in the following circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make certain findings by majority vote every 30 days to continue using AB 361's teleconferencing requirements.

An additional provision of AB 361 states that, in the event of a disruption within the local

agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body is prohibited from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored.

These new provisions are only operative until January 1, 2024, at which point they are repealed, and the prior Brown Act teleconferencing requirements become effective again.

The California Department of Public Health (CDPH) and the Federal Centers for Disease Control and Prevention (CDC) caution that the Delta Variant of COVID-19, is more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations. The very recent emergence of the Omicron Variant of COVID-19 has resulted in the CDC's designation of it as Variant of Concern noting that it may spread more easily than other Variants, including Delta, and that fully vaccinated people who become infected with the Omicron Variant can spread the virus to others. In fact, the first verified case of the Omicron Variant in the United States has been confirmed as an individual in the Bay Area who was fully vaccinated.

The Authority meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public:

- The Governor has declared a State of Emergency related to the COVID-19 pandemic; and
- County Health Orders require that individuals in indoor public spaces wear masks and the CDC recommends social distancing of at least six feet due to COVID-19; and
- The Delta variant of COVID-19 has resulted in a significant increase of COVID-19 cases within the state and throughout Contra Costa County.

Thus, meeting in person for Board meetings would present imminent risks to the health and safety of attendees, the Board and staff. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, Authority staff recommends invoking the provisions of Assembly Bill 361 related to teleconferencing.

The Board must make its own determination and findings, no later than 30 days after the adoption of Resolution 22-17, in order to continue to hold teleconferenced meetings in

accordance with AB 361. At this time, Staff intends to schedule special Board meetings every 30 days, if necessary, to consider adoption of similar findings in the future. Staff will return no later than December 13, 2022 with an item for the Board of Directors to consider whether to continue meeting under the provisions of Assembly Bill 361.

CONCLUSION:

None.

FISCAL IMPACT:

None.

ATTACHMENTS:

[6.2 Attachment 1 - Resolution 22-17 AB 361 Continued Findings November 13 - December 13 2022](#)

RESOLUTION NO. 22-17

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY
AUTHORIZING TELECONFERENCE MEETINGS PURSUANT TO ASSEMBLY BILL
361 EFFECTIVE NOVEMBER 13, 2022 THROUGH DECEMBER 13, 2022**

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Government Code section 8550 et seq. (Declaration); and

WHEREAS, on March 17, 2020, Governor Gavin Newsom issued Executive order N- 29-20 (Executive Order), which suspended the teleconferencing rules set forth in California provided certain requirements were met and followed; and

WHEREAS, on June 11, 2021, Governor Gavin Newsom issued Executive Order N-08-21, which clarified the suspension of the teleconferencing rules set forth in the Ralph M. Brown Act and further provided that those provisions would remain suspended through September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Gavin Newsom signed Assembly Bill 361, which provides that under Government Code section 54953(e), a legislation body subject to the Ralph M. Brown Act may continue to meet using teleconferencing without complying with the non-emergency teleconferencing rules in Government Code section 54953(b)(3) if a proclaimed state of emergency exists and state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, such conditions exist in the West Contra Costa Integrated Waste Management Authority (RecycleMore) jurisdiction. In addition to the Governor’s Declaration, the Contra Costa County Health Officer has issued numerous Health Orders regarding safety protocols during the COVID-19 pandemic. In particular, on August 2, 2021, the Contra Costa County Health Officer issued an Order requiring all individuals in the County, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19. The Order was amended as of November 1, 2021 to allow groups of fully vaccinated individuals to remove masks indoors under limited circumstances, but the amendment does not apply to indoor spaces “open to the general public”. This Public Health Officer Order will be in effect until rescinded, superseded or further amended; and

WHEREAS, The California Department of Public Health (CDPH) and the Federal Centers for Disease Control and Prevention (CDC) caution that the Delta Variant of COVID-19, is more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations; and

WHEREAS, on December 9, 2021, the Board of Directors adopted Resolution No. 21-05 initially authorizing teleconferenced meetings to be conducted pursuant to AB 361 from December 18, 2021 to January 18th; and

WHEREAS, the very recent emergence of the Omicron Variant of COVID-19 has resulted in the CDC's designation of it as Variant of Concern noting that it may spread more easily than other Variants, including Delta, and that fully vaccinated people who become infected with the Omicron Variant can spread the virus to others. In fact, the first verified case of the Omicron Variant in the United States has been confirmed as an individual in the Bay Area who was fully vaccinated; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, RecycleMore intends to continue utilizing the provisions of Assembly Bill 361 related to teleconferencing in the manner authorized by Government Code § 54953(e), and such legislative body shall comply with the requirements to provide the public with access to the meetings as prescribed in Government Code § 54953(e)(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the West Contra Costa Integrated Waste Management Authority as follows:

1. The Recitals set forth above are true and correct and are incorporated herein by reference.
2. In compliance with AB 361 (2021), and in order to continue to conduct teleconference meetings without complying with the usual teleconference meeting requirements of the Ralph M. Brown Act, the Board of Directors makes the following findings:
 - a. The Board of Directors has considered the circumstances of the state of emergency; and
 - b. The state of emergency, as declared by the Governor, continues to directly impact the ability of the Board of Directors, including RecycleMore's legislative bodies and staff, as well as staff and members of the public, from meeting safely in person; and
 - c. The CDC and Contra Costa County Department of Public Health continue to recommend physical distancing of at least six feet due to COVID-19 and as a result of the presence of COVID-19 and the Delta and Omicron Variants, meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies, and staff.
3. The Board of Directors and RecycleMore's legislative bodies may continue to meet remotely in compliance with AB 361, in order to better ensure the health and safety of the public and staff in accordance with the provisions of Government Code section 54953(e).

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WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

DATE: November 10, 2022

TO: West Contra Costa Integrated Waste Management Authority Board

FROM: Peter Holtzclaw - Executive Director

SUBJECT: Calendar Year 2023 Household Hazardous Waste Budget

ACTION REQUESTED:

Staff is recommending a MOTION to APPROVE Calendar Year 2023 Household Hazardous Waste (HHW) Budget.

BACKGROUND:

Republic Services (Republic), and each of its affiliates, provides Post-Collection Services to RecycleMore via the Post-Collection Agreement (PCA) between Republic and RecycleMore. This includes the services and facilities of Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill (WCCSL) Organics Processing Facility and West County Resource Recovery.

Per Article 5 of the PCA, Republic's sole compensation for services provided to RecycleMore is via the Blended Per Ton Rate. There are five (5) components which make up Republic's Blended Per Ton Rate. One important component is calculated based on the annual HHW Budget, which is discussed in this report.

Section 5.3.3 of the PCA stipulates that Republic and RecycleMore shall jointly prepare and submit a draft HHW drop-off services budget to RecycleMore Board of Directors annually for review and approval. Once approved, the HHW budget serves as the revenue requirement for the HHW portion of Republic's Blended Per Ton Rate. The specifics of the calculations of Republic's Blended Per Ton Rate and RecycleMore's Post-Collection Rate are discussed in a separate Agenda Report this evening.

DISCUSSION:

HHW Budget - 2023 HHW Budget Summary

Republic has submitted a draft HHW Budget of \$1,335,622 for 2023 (see financial table included as Attachment 1). The 2023 HHW Budget includes continued funding for:

- One day per week operation of a Satellite HHW Facility in El Cerrito;
- Four day per week (Wednesday through Saturday) HHW Collection Service at the Republic/West County Resource Recovery (WCRR) HHW Facility in North Richmond;
- Door-to-door services for senior residents and persons with disabilities and collection kiosk services to collect medical sharps and pharmaceuticals; and
- Three one day remote collection events in 2023. As was the case in 2021 and 2022, these funds would be used for one day HHW Collection events in either Hercules or Pinole, Richmond, and either San Pablo or El Sobrante.

The annual HHW Budget is set per the *2019 First Amendment to and Restatement of Side Letter Agreement: Budget and Balancing Account for Household Hazardous Waste Operations* which was approved by the Board in November 2019 (Attachment 2). The Side Letter states how each line of the HHW Budget is to be set each year. Most HHW Budget expenses (74% of 2023 Budget) are adjusted by 85% of CPI (a 4.07% increase for the 2023 HHW Budget) based on the Board-approved 2022 HHW Budget. The CPI adjustment to these expenses results in an overall increase of \$38,757.

The only expenses that are not adjusted by 85% of CPI are:

- RecycleMore Requested Program Expenses (16% of 2023 Budget) including the Sharps Program, and three One-Day HHW Collection Events, the budgets for which are all set via joint determination of Republic and RecycleMore, which are proposed to remain constant without change from 2022 to 2023 (and for which actual expenses will vary based on actual participation);
- Balancing Account funding of \$9,256 (1% of 2023 Budget) which is calculated as the difference between the Board approved total HHW operating expenses and the actual HHW operating expenses reported by Republic via its 2021 HHW Annual Statement (Attachment 3);
- Operator Profit Margin (14% of 2023 Budget) which is calculated as 15% of the subtotal of operating expenses plus Balancing Account; and
- HHW Revenues (5% credit offset to 2023 Budget) which are estimated revenues from HHW services that Republic provides to agencies outside of RecycleMore's jurisdiction.

For 2023, Republic and RecycleMore staff agree that the following budgets for RecycleMore's Requested Program Expenses are appropriate:

- El Cerrito Satellite HHW Facility: \$220,628 - CPI increase of \$4.07% from 2022 HHW Budget;
- Sharps Program: \$42,000 - no change from 2022 HHW Budget; and
- One-Day HHW Collection Events: \$180,000 - no change from 2022 HHW Budget.

The 2021 net Balancing Account adjustment for 2023 HHW Budget is \$9,256, increasing needed Blended Per Ton Rate revenues due to 2021 HHW Total Operating Expenses of \$1,209,064 (including Operator Profit Margin and HHW Revenues) being \$9,256 more than the 2021 HHW Budget of \$1,199,808 (as shown in Attachment 3).

2023 Operator Profit Margin is \$183,342, which is \$6,550 lower than the 2022 amount of \$189,892 and is based only on other changes in the HHW Budget, including the lower net Balancing Account figure. 2023 HHW Revenue is set at a \$70,000 credit (based on rounded prior actuals) reducing needed Blended Per Ton Rate revenues.

CONCLUSION:

The 2023 HHW Budget has been calculated in accordance with the 2019 First Amendment to and Restatement of Side Letter Agreement; the Budget will also continue all existing HHW services. Staff asks that the Board approve and adopt the 2023 HHW Budget.

FISCAL IMPACT:

The proposed Calendar Year 2023 HHW Budget is \$1,335,622 which is \$49,914 (3.6%) less than the 2022 HHW Budget, and is due to the reduction in the net Balancing Account. By adopting the 2023 HHW Budget, the HHW Budget component of Republic's Blended Per Ton Rate would increase by \$0.10 from \$7.73 per ton to \$7.83 per ton. Though the HHW Budget itself is decreasing, the number of tons over which the HHW Budget is spread in the Blended Per Ton Rate has also decreased, from 179,152 tons in 2022 to 170,625 in 2023, with the net result being a slight increase in the HHW Portion of the blended per ton rate.

ATTACHMENTS:

[Item 8.1 Attachment 1 - 2023 HHW Budget Compared to 2022 HHW Budget](#)

[Item 8.1 Attachment 2 - 2019 First Amendment to and Restatement of Side Letter Agreement: Budget and Balancing Account for Household Hazardous Waste Operations](#)

[Item 8.1 Attachment 3 - Republic HHW RECON 2021 Annual Statement](#)

**Attachment 1
2023 HHW Budget Compared to 2022 HHW Budget**

	2023 Requested Budget	\$ Change to 2022 Adopted Budget	% Change to 2022 Adopted Budget	2022 Adopted Budget
Wages & Benefits	\$ 142,776	\$ 5,584	4.07%	\$ 137,192
Program Supplies, Consumables and Outside Services	\$ 41,207	\$ 1,612	4.07%	\$ 39,595
HHW Facility Outside Services (Stericycle)	\$ 441,403	\$ 17,263	4.07%	\$ 424,141
Fuel	\$ 5,010	\$ 196	4.07%	\$ 4,814
Utilities	\$ 18,317	\$ 716	4.07%	\$ 17,600
Property Taxes	\$ 21,122	\$ 826	4.07%	\$ 20,296
Insurance	\$ 10,371	\$ 406	4.07%	\$ 9,965
Permit Fees	\$ 11,320	\$ 443	4.07%	\$ 10,877
Site Maintenance	\$ 43,584	\$ 1,704	4.07%	\$ 41,879
Accounting Support	\$ 35,288	\$ 1,380	4.07%	\$ 33,908
Satellite HHW Facility (El Cerrito Recycling Center)	\$ 220,628	\$ 8,628	4.07%	\$ 212,000
Sharps Containers/Sharps & Pharmaceutical Disposal	\$ 42,000	\$ -	0.00%	\$ 42,000
Three Special One Day Collection Events	\$ 180,000	\$ -	0.00%	\$ 180,000
Subtotal	\$ 1,213,024	\$ 38,757	3.30%	\$ 1,174,267
Balancing Account Add (Deduct)	\$ 9,256	\$ (82,427)	-100.00%	\$ 91,683
Operator Profit Margin 15%	\$ 183,342	\$ (6,550)	-4.22%	\$ 189,892
HHW Revenue	\$ (70,000)	\$ 306	-0.48%	\$ (70,306)
Total Operating Expense	\$ 1,335,622	\$ (49,914)	-3.60%	\$ 1,385,536

Total HHW Program Expenses \$ 1,335,622
Total Tons 170,625

RSS HHW Expense Share \$ 1,241,571
Total Tons (RSS) 158,610
Rate per Ton \$ 7.83

El Cerrito HHW Expense Share \$ 94,051
Total Tons (El Cerrito) 12,015
Rate per Ton \$ 7.83

**First Amendment to and Restatement of Side Letter of Agreement:
Budget and Balancing Account for Household Hazardous Waste Operations**

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Agreement

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.”

Definitions

1.1 “Allowable Costs” shall have the meaning set forth in Exhibit A.

1.2 “HHW Program” means Household Hazardous Waste and Small Quantity Generator Hazardous Waste services provided by Contractor to pursuant to the PCA.

Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the PCA. If there is conflict between this Amended Agreement and the PCA, the terms of PCA shall prevail.

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.

b. Unincorporated communities adjacent to the Authority's service area, and known as Kensington, Rodeo, Crockett, Port Costa and Tormey ("KCPT") may receive some Authority HHW Program Services at the discretion of both the Authority and Contractor, shall be charged for all HHW Program services based on usage pursuant to a separate written agreement between the Authority, Contractor and third parties including KCPT. A "User" shall be any individual's use of HHW Program services, including but not limited to, the use of a Permanent or Satellite HHW Facility or participation in a one-day event conducted by Contractor as part of the HHW Program. Actual Allowable Costs will be divided by the total number of Users and the number of Users from KCPT Area jurisdictions. The KCPT Area jurisdictions will be charged in accordance with their proportionate share of total Users. Consolidated deliveries from more than one address or location, shall be treated as separate deliveries from each separate address or location. At the discretion of the Authority Board, a per use surcharge may also be imposed on users from outside the Authority's service area.

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 \$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 ("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 Executive Director 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 Executive Director 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 2020, Authority and Contractor agree that line item accounts for fuel, utilities, property tax, insurance, accounting support, permit fees, and site maintenance costs, as listed in Exhibit A, paragraph 4 and as included in the 2020 Board Approved HHW budget, are not subject to reconciliation. These seven-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 expenses relative to the actual Allowable Costs and Authority shall be allowed to recover any surpluses from actual expenses relative to Allowable Costs.

Given that HHW Program budgeted Revenues are to equal budgeted Allowable Costs, any variances between actual HHW Program Revenues less actual HHW Program Allowable Costs must be reconciled annually in a true-up, as noted above. Therefore, if actual HHW Program Revenues exceed actual Allowable Costs for the year being reviewed, then the amount of the difference shall be "Excess Cost" and be reconciled by adding such Excess Cost to the HHW Program Revenue budgeted for the HHW Program expense Budget for the calendar year subsequent to the year being reviewed. The effect would be to reduce other HHW Program expenses needed to balance the HHW Program Revenues for the subsequent calendar year. The intended effect is to reduce the calculated HHW Program portion of Contractor's collection rate for such ensuing year, as collection rates are calculated based on the HHW Program Revenue necessary to balance the HHW Program Budget with Allowable Costs. For example:

If actual HHW Program Budget Revenues for calendar Year 2021 are \$1,200,000 and the actual Allowable Costs for calendar year 2021 are (\$1,100,000) then the difference would be a 2021 under budget carryover amount of \$100,000.

If HHW Program budget of calendar year 2022 are budgeted at \$1,300,000 then 2021 budget carryover amount of \$100,000 reduces necessary 2022 Revenue by (\$100,000) and, thus, other 2022 Revenues necessary to balance the budget are \$1,200,000.

This example balances the 2021 actual HHW Program budget and actual Allowable Costs by reducing the 2022 HHW Program Revenue necessary to balance the 2022 Budget by the amount of Excess Net Revenue from 2021.

Conversely, if actual Allowable Costs exceed actual HHW budget for the year being reviewed, then the amount of the difference shall be unbudgeted Allowable Costs and be reconciled by adding such unbudgeted Allowable Costs to the Allowable Costs budgeted for the HHW Program Budget for the year subsequent to the year being reviewed. The effect would be to increase the HHW Program budget in order to balance the HHW Program budget for the ensuing calendar with budgeted Allowable Costs. The effect is to increase the calculated HHW Program budget portion of Contractor's collection rate for the ensuing year, as collection rates shall be calculated based on the HHW Program budgeted expenses necessary to balance the HHW Program budget with Allowable Costs. For Example:

If actual the HHW Program budgets for calendar Year 2021 are \$1,200,000 and the actual Allowable Costs for calendar year are (\$1,250,000) then the unbudgeted Allowable Costs for 2022 would be (\$50,000)

If HHW Program Allowable Costs of calendar year 2022 are budgeted at \$1,300,000 then the 2021 unbudgeted Allowable Costs would be added in the amount of \$50,000 and, thus, the HHW Program expense budget necessary to balance the 2022 Budget would be \$1,350,000.

This example balances the 2021 actual budget and Allowable Costs by increasing the 2022 budgeted Allowable Costs necessary to balance the 2022 Budget.

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 HHW Program Revenues and/or Allowable Costs are disputed by the Authority, the Authority's approval of the Annual Statement may be delayed until such disputed items are resolved. The 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.

vi. Pursuant to an annual true up, the Authority shall be entitled to recover any surplus as a result of lower expenses relative to actual Allowable Costs. The Authority shall recover such surplus as a credit against the following year's rates. The Contractor shall be entitled to recover any unbudgeted actual costs relative to Allowable Costs. The Contractor shall recover such unbudgeted Allowable Costs as an increase in the HHW budget for the following year.

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

 Steve Duran, Interim Executive Director

Dated: Nov. 21, 2019

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: 11/26/19

Exhibit A: Allowable Costs

A. Allowable Costs

The costs of the Permanent and Satellite HHW Facilities 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. Therefore, the Parties commissioned an independent audit of costs and reviewed historical data, and based on said audit and review, the Parties define Allowable Costs and as follows:

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, manager and similar staff members who directly oversee HHW programs, manage the budget in cooperation with the Authority and provide support to the program on site. For the 2020 Budget, the amount is \$132,085. For the 2021 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.
2. Maintenance supplies, spare parts, consumables and outside costs incurred directly to perform the HHW services required under the Post-Collection Agreement. For the 2020 budget, this amount is \$38,121. This amount will be increased by 85% of the CPI for each subsequent budget with the 2021 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 2020 budget, this amount is \$408,351. For the 2021 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.
4. The Contractor incurs facility and administrative costs in support of the HHW program. These costs are allowable as follows:
 - a. Fuel costs incurred in the operation of mobile equipment used specifically for the benefit of the HHW program. For the 2020 budget, this amount is

\$4,635. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

b. Utilities costs incurred by Contractor in the operation of the HHW program and facility. For the 2020 budget, this amount is \$16,945. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

c. Property taxes which represents a 7.29% allocation of the total property taxes paid by Contractor for the 101 Pittsburg Avenue, 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 2020 budget, the allocated amount to the HHW facility is \$19,540. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

d. Insurance costs directly attributable to the operation of the HHW program for the types and levels of coverage required by the Agreement. For the 2020 budget, this amount is \$9,594. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

e. Accounting and Financial management support to manage HHW revenues, process invoices, prepare the Annual Statement, respond to Authority inquiries and assist with budget management. For the 2020 budget, this amount is \$32,646. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

f. Costs to maintain components of the larger IRRF site that are shared with the HHW program. This includes, but is not limited to security, landscaping, janitorial, improvements/repair of main office building, repair of forklift or other equipment shared with HHW, site lighting, security cameras, internet access, site communication, perimeter fencing, entry gate, sweeping, exterminator, fire suppression system, etc. These costs represent approximately 18% of the cost to maintain the entire site. For the 2020 budget, this amount is \$40,320. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

g. Costs for permit fees for the entire IRRF site that are shared with the HHW program. This does not include HHW specific permits which are allowable under section 2, above. For the 2020 budget, this amount is \$10,472. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

5. JPA Requested Programs will be budgeted based on a budget for those programs as determined jointly by the Authority and Contractor.
6. 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.
7. Capital costs or depreciation included in a Board approved annual HHW Budget.
8. All other unforeseen costs such as payment 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 the 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 fee waivers approved by RecycleMore staff.
11. Depreciation or interest expense for Collection vehicles, Containers or 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.

2021 Budget

2021 Actual Expenses

RICHMOND

Personnel

Contract Manager	11,237		44,801	
HHW Operations Manager	94,291		14,470	
Forklift driver	29,146		29,278	
Total Personnel		134,674		88,549

Subcontracted Services

Clean Earth		416,355		429,708
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Other Direct Supplies and Services

HHW Permits	8,790		7,825	
Other	30,078		30,539	
Total Direct Services and Supplies		38,868		38,363

Facility and Administrative Allocated Costs

Property Taxes	19,923		19,923	
Insurance	9,782		11,805	
Fuel	4,726		7,095	
Utilities	17,277		17,277	
Permit Fees	10,677		10,677	
Other	41,110		41,110	
Accounting support	33,286		33,286	
Total Facility and Administrative Allocated Costs		136,781		141,173
TOTAL RICHMOND		726,678		697,794

JPA REQUESTED SPECIAL PROGRAMS

El Cerrito Satellite Facility

Contract Manager	5,510		22,400	
HHW Operations Manager	16,320		-	
Clean Earth	182,983		194,158	
HHW Permits	5,495		6,797	
Other	1,000		1,000	
Total El Cerrito Satellite Facility		211,308		224,355

Sharps Containers/Sharps & Pharmaceutical Disposal

Sharps Solutions	30,000		30,372	
Barnett Medical	12,000		6,986	
Total Sharps and Pharmaceuticals		42,000		37,358

Three One-Day Special Collection Events

Clean Earth	119,000		145,704	
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	2021 Budget		2021 Actual Expenses		
Other					
	1,000		2,473		
Total Three One-Day Special Collection Events		120,000		148,177	
TOTAL EXPENSES ALL PROGRAMS		1,099,986		1,107,684	
Plus: 15% Operating Margin		164,975		166,153	
Less: Other Revenues Received		(65,000)		(64,773)	
One Time Credit		(153)			
TOTAL		1,199,808		1,209,064	(9,256)



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

DATE: November 10, 2022

TO: West Contra Costa Integrated Waste Management Authority Board

FROM: Peter Holtzclaw - Executive Director

SUBJECT: Public Hearing to Consider Adoption of a Resolution to Approve of the Household Hazardous Waste Program Budget for Calendar Year 2023 and Approve the Calendar Year 2023 Post-Collection Rates

ACTION REQUESTED:

Adopt Resolution 22-18, which includes Attachment 2 Exhibits A, B-1, B-2, B-3, and B-4.

1. Approve the Household Hazardous Waste Program Budget in the amount of \$1,335,662 for Calendar Year 2023 as set forth in Exhibit A to the Resolution; and
2. Approve the 2023 Post-Collection Rates for the Republic Services Collection Service Area as set forth in Attachment 2 Exhibit B-1, B-2, or B-3 to the Resolution.

SUGGESTED FORMAT FOR THE HEARING

- Open the Public.
- Receive oral report from RecycleMore staff.
- Questions and answers from the Board for RecycleMore staff, consultant and/or Republic Services representative.
- Receive any comments from the public.
- Close the Public.
- Board discussion and consideration of recommended actions.

BACKGROUND:

Republic Services, and each of its affiliates, provides post-collection services to RecycleMore through an agreement between Republic and RecycleMore. This includes the services and facilities of Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill and West County Resource Recovery. Per Article 5 of the PCA, Republic's sole

compensation for services provided to RecycleMore is via the Blended Per Ton Rate. The Blended Per Ton Rate is charged by Republic to the solid waste hauler, Richmond Sanitary Service (a Republic affiliate), providing solid waste collection services to RecycleMore's member agencies, except El Cerrito, which has its own post-collection agreement and sets its own post-collection rates. Each Member City oversees the collection rates charged by their franchised haulers.

One of RecycleMore's responsibilities is to approve the maximum annual Post-Collection Rate which, when added to the collection rates established pursuant to each member agency's collection franchise agreement, equals the total amount charged to solid waste ratepayers. The Board is asked to adopt a rate schedule that approves the Post-Collection Rates to be included in the total amounts charged to the residential, commercial and industrial solid waste customers effective January 1, 2023. Residential Post-Collection Rates are a monthly amount for each service level (20, 35, 65, and 95-gallons), Commercial Post-Collection Rates are a flat amount per cubic yard, and Industrial Post-Collection Rates (for those customers using debris boxes and compactors) are on a per-ton basis.

DISCUSSION:

EXECUTIVE SUMMARY

On October 13, 2022, the RecycleMore Board held workshops regarding the draft Calendar Year 2023 Householder Hazardous Waste (HHW) Budget and the draft Calendar Year 2023 Post-Collection Rates. During those workshops, RecycleMore staff and R3 Consulting Group, Inc. (R3) presented initial findings and answered questions posed by the Board.

At the Conclusion of the workshops, the Board did not direct changes to the draft 2023 HHW Budget or 2023 Post-Collection Rates. However, since the October Workshop, and in response to follow-up questions from Board members, RecycleMore staff has conducted additional analysis regarding the \$2.20 per ton change in law request that was included in the draft Blended Per Ton Rates that were introduced at the Workshop, and Republic has provided an amended request for change in law adjustment of \$1.48 per ton. This Agenda Report includes additional information regarding the change in law request and includes alternatives to the original request for the Board's consideration, including alternatives for the Authority's 2023 revenue requirement in the Blended Per Ton Rates.

BACKGROUND

One of RecycleMore's annual responsibilities is to approve the annual HHW Budget. Section 5.3.3 of the Post-Collection Agreement (PCA) stipulates that Republic and RecycleMore shall jointly prepare and submit a draft HHW drop-off services budget to RecycleMore Board of Directors annually for review and approval. Once approved, the HHW budget serves as the revenue requirement for the HHW portion of Republic's Blended Per Ton Rate.

Another of RecycleMore's responsibilities is to approve the maximum annual Post-Collection Rate which, when added to the collection rates established pursuant to each member agency's collection franchise agreement, equals the total amount charged to solid waste ratepayers. The Board is asked to adopt a rate schedule that approves the Post-Collection Rates to be included in the total amounts charged to the residential, commercial and industrial solid waste customers effective January 1, 2023. Residential Post-Collection Rates are a monthly amount for each service level (20, 35, 65, and 95-gallons), Commercial Post-Collection Rates are a flat amount per cubic yard, and Industrial Post-Collection Rates (for those customers using debris boxes and compactors) are on a per-ton basis.

Republic Services, and each of its affiliates, provides post-collection services to RecycleMore through an agreement between Republic and RecycleMore. This includes the services and facilities of Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill and West County Resource Recovery. Per Article 5 of the PCA, Republic's sole compensation for services provided to RecycleMore is via the Blended Per Ton Rate. The Blended Per Ton Rate is charged by Republic to the solid waste hauler, Richmond Sanitary Service (a Republic affiliate), providing solid waste collection services to RecycleMore's member agencies, except El Cerrito, which has its own post-collection agreement and sets its own post-collection rates.

Each member agency oversees the collection rates charged by their franchised haulers. RecycleMore staff and R3 completed review of the proposed 2023 Blended Per Ton Rate adjustment in conjunction with calculating the 2023 Post-Collection Rates. R3's report regarding review of the Blended Per Ton Rate is included as Attachment 5.

ANALYSIS

2023 Household Hazardous Waste (HHW) Budget

The HHW Budget is a component of the Post-Collection Rate calculation. Republic budgets its HHW costs on a calendar year basis to track with annual rate setting. At the October 13, 2022 Board meeting, the Board reviewed the Republic submitted and staff proposed 2023 HHW Budget in the amount of \$1,335,622. The proposed 2023 HHW Budget includes continued funding for:

- One day per week operation of a Satellite HHW Facility in El Cerrito.
- Four day per week (Wednesday through Saturday) HHW Collection Service at the Republic/West County Resource Recovery (WCRR) HHW Facility in North Richmond.
- Door-to-door services for senior residents and persons with disabilities and collection kiosk services to collect medical sharps and pharmaceuticals.
- Three one day remote collection events in 2023. As in past years, these funds would be used for one day HHW Collection events in either Hercules or Pinole, Richmond, and either San Pablo or El Sobrante.

The annual HHW Budget is set per the 2019 First Amendment to and Restatement of Side Letter Agreement (Budget and Balancing Account for Household Hazardous Waste Operations) which was approved by the Board in November 2019. The Side Letter states how each line of the HHW Budget is to be set each year.

For 2023, Most HHW Budget expenses are adjusted by 85% of CPI (a 4.07% increase for the 2022 HHW Budget) based on the Board-approved 2022 HHW Budget. Other components of HHW Budget include RecycleMore requested Program Expenses, credits for HHW Revenues received, credit or debit pursuant to the Balancing Account established by the Side Letter, and Republic's Profit Margin on allowable expenses. The 2023 HHW Budget has been calculated in accordance with the 2019 First Amendment to and Restatement of Side Letter Agreement and will continue all existing HHW services.

The proposed Calendar Year 2023 HHW Budget is \$1,335,622 which is \$49,914 (3.6%) less than the 2022 HHW Budget. The reduction in budget being due to the reduction in the balancing account funding, which is \$9,256 for 2023 as compared to \$91,683 for 2022 (as a result of 2021 HHW expenses being much closer to budget than 2020 HHW expenses were). By adopting the 2023 HHW Budget, the HHW Budget component of Republic's Blended Per Ton Rate would increase from \$7.73 per ton to \$7.83 per ton. Though the HHW Budget itself would decrease by 3.6%, the number of tons over which the HHW Budget is spread in the Blended Per Ton Rate has also decreased, from 179,152 tons in 2022 to 170,625 in 2023, thereby increasing the HHW Portion of the blended per ton rate by \$0.10 per ton.

2023 Blended Per Ton Rates

On October 13, 2022, the RecycleMore Board conducted a workshop on calendar year 2023 Post-Collection Rates and Republic's Blended Per Ton Rate. During the workshop, RecycleMore staff and R3 reported the following regarding Republic's Blended Per Ton Rate:

- **Processing, Recycling, and Disposal:** \$3.38 per ton increase due to the annual 85% of CPI

increase (capped at 4%) in the Material Specific portion – this portion is Republic’s compensation for PCA services except HHW.

- **HHW Funding:** \$0.10 per ton increase for the HHW portion of the per ton rate – this portion increases with changes in the HHW budget.
- **Authority Funding:** This portion includes the Authority’s revenue for 2023, which was originally projected by staff at \$1.4 million, resulting in an increase of \$1.51 per ton, to \$8.21 per ton, as expressed during the October workshop. An alternative would be to provide the Authority with \$1.15 million in funding in 2023, which would result in a \$0.04 increase per ton, to \$6.74.
- **Government Fees:** \$0.34 per ton increase due to adjustments to the Governmental Fees portion of the per ton rate – this portion compensates Republic for changes in government fees based on tonnage and fee amounts.
- **Recycling Rebate:** \$2.41 per ton *decrease* due to an increase in the Recycling Rebate portion of the per ton rate – this portion is a “credit” to the rate, but that credit comes back to help rate payers as fiber markets rebounded substantially last year, for the second year in a row.
- **Regulatory Compliance:** \$0.07 per ton increase due to funding of the Regulatory Compliance portion of the per ton rate – this portion generates revenues for the Authority’s and Republic’s CalRecycle compliance activities. As in recent years, Republic and staff are proposing \$250,000 in continued annual revenues for expenses relating to activities supporting compliance with State laws AB 1826 and SB 1383. The Board approved inclusion of such funding for the 2020 Blended Per Ton Rates in the amount of \$300,000, and the 2021 and 2022 Blended Per Ton Rates of \$250,000 each. Continuing this funding into 2023 in the amount of \$250,000 would continue to provide revenues needed for CalRecycle compliance activities, including technical assistance contracts, necessary database management software, and other compliance needs.
- **Change in Law Request:** \$2.20 per ton increase for change in law request, which is described below, including a revised figure presented by Republic since the October workshop.

Republic’s Change in Law Request

Republic originally requested an increase of \$2.20 per ton for increased costs of operating Republic’s composting operation, which Republic attributes to the SB 1383 change in law which is increasing contamination in the organic waste stream and thus increasing operating expenses to remove that contamination. Section 5.5 of the PCA stipulates that Republic may request RecycleMore’s consideration of an adjustment to the Blended Per Ton Rates in the event of a change in law for which Republic’s compliance is mandatory, and that results in documented increases in the specific cost of providing services to RecycleMore. Republic’s original calculation of the change in law increase for SB 1383 included RecycleMore’s tonnage proportionate share of:

- \$1.248 million in capital equipment including a portable covered sort line, all depreciating over 7 years.
- \$350,000 per year for new grinder operations.

- \$380,000 per year for four new sort line laborers.
- \$30,000 per year for new maintenance expenses.

The total new annual costs outlined by Republic originally amounted to \$938,286 per year for the entirety of the composting operation (taking into account the 7-year amortization of capital expenses). Taking that annual operating cost over a total of 85,030 in annual organics tons into the composting facility (from all sources, not just RecycleMore) yielded an original net increase in operating costs of \$11.03 per ton of organic waste. For RecycleMore's annual organic waste tonnage (not including El Cerrito) of 31,575, this meant an increase in processing costs of \$348,419. When spread over the total 158,610 total RecycleMore tons subject to the Blended Per Ton Rate, the result was a \$2.20 increase for Republic's SB 1383 Change in Law request. Including the \$2.20 per ton increase in addition to the other components of the Blended Per Ton Rate yielded a total Blended per Ton Rate of \$112.79.

Since the October workshop, Republic has revised its request for a change in law adjustment to remove the costs of the portable covered sort line, and two of the originally proposed four sort laborers, with the revised costs being:

- \$448,000 in capital equipment (depreciating over 7 years).
- \$350,000 per year for new grinder operations.
- \$190,000 per year for two new sort line laborers.
- \$30,000 per year for new maintenance expenses.

The revised annual costs amount to \$634,000 per year for the entirety of the composting operation, yielding a net increase in operating costs of \$7.46 per ton of organic waste. For RecycleMore's annual organic waste tonnage (not including El Cerrito) of 31,575, this means an increase in processing costs of \$235,427. When spread over the total 158,610 total RecycleMore tons subject to the Blended Per Ton Rate, the result is a \$1.48 increase for Republic's revised SB 1383 Change in Law request.

Including the revised \$1.48 per ton increase in addition to the other components of the Blended Per Ton Rate yields a total Blended per Ton Rate of \$112.07, as shown in Exhibit B-1, which includes Authority funding of \$1.4 million in 2023. If the Board were to approve Authority funding at \$1.15 million in 2023, the total Blended per Ton Rate would be \$110.60, as shown in Attachment 2. If the Board does not approve Republic's change in law request, the Blended Per Ton Rate would be \$110.59 per ton, as shown in Attachment 2 (with Authority funding at \$1.4 million) or \$109.12 per ton, as shown in Attachment 2 (with Authority funding at \$1.15 million).

Staff conditionally supports the change-in-law proposal and will recommend for the Board to approve this request while also directing the Executive Director and RecycleMore's counsel to work with Republic to verify that these costs are allowable through the PCA. Likely, these costs outlined in Republic's proposal

are beyond “general business expenses” and should be covered and/or reimbursed through the rate structure. Staff have toured the compost facility with Republic and agrees that there has been an increase in contamination in the facility, and data generally supports this looking back three to four years. However, it is arguable whether it is appropriate to do so via the change-in-law avenue or through another mechanism.

Staff will return in 2023 to inform the Board if these costs are indeed allowable. If they are not, they can be deducted from the 2024 rates. If they are allowable, then no change will be needed. The process by which these costs are discussed and analyzed can happen during the imminent Triennial Review.

2023 Post-Collection Rates

Funds for the revenue requirement derived from the Blended Per Ton Rate are generated by charging an appropriate Post-Collection Rate to collection customers. Only industrial customers (those using debris boxes and compactors) pay on a per-ton basis. Residential and commercial customers pay on either a per can (based on the size of their container) or per-bin (based on the cubic yards of weekly service) basis. The calculated 2023 Post-Collection Rates (with four alternatives shown in accordance with the Board’s options regarding Republic’s change in law request and Authority revenue) to the 2022 Rates is shown in Attachment 2.

The revenue requirement for each sector is divided by a “collection unit” based on subscription information provided by Republic of each September. As an example of how the calculation works, the residential Post-Collection Rate is set equivalent to the common 35-gallon service level. For that unit, the annual revenue requirement is divided by the number of 35-gallon equivalent carts (60,463 in 2023) divided by 12 months, yielding the 2023 monthly rate.

For commercial customers, the unit basis is annual cubic yards (413,832 in 2023). The commercial revenue requirement is divided by the annual cubic yardage, yielding the 2023 rate per cubic yard. The commercial per cubic yard rate is decreasing because the tonnages decreased in the recent 12-months compared to the prior year, while subscription levels as of September 30, 2022, were higher than the same date on the prior year. This trend was also evident in the 2022 rate calculations and is likely the result of recovery from the pandemic combined with changes in waste generation from commercial businesses.

For industrial customers, the unit basis is annual tons of non-recyclable/non-organic waste (18,977 for 2023, down from 2022). The industrial revenue requirement is divided by the annual tonnage, yielding the 2023 rate per ton.

CONCLUSION:

RecycleMore staff and R3 have thoroughly reviewed Republic's proposed calendar year 2023 post-collection rates and made recommendations contained in this Agenda Report. Staff asks that the Board approve and adopt the new Calendar Year 2023 RecycleMore Post-Collection Rates as outlined in Attachment 2 Exhibit B2 (Change In Law set at \$1.48/ton; RecycleMore budget set at \$6.74/ton).

FISCAL IMPACT:

The proposed Calendar Year 2023 HHW Budget is \$1,335,622 which is \$49,914 (3.6%) less than the 2022 HHW Budget and is due to the reduction in the net Balancing Account. By adopting the 2023 HHW Budget, the HHW Budget component of Republic's Blended Per Ton Rate would increase by \$0.10 from \$7.73 per ton to \$7.83 per ton. The Authority (RecycleMore) portion of the Blended Per Ton Rate included in the 2023 Post-Collection Rates would generate \$1.4 million (Attachment 2 via Exhibits B-1 and B-2) or \$1.15 million (Attachment 2 via Exhibits B-3 and B-4). The Authority component of Republic's Blended Per Ton Rate would increase by \$1.51 from \$6.70 per ton to \$8.21 per ton associated with Exhibits B-1 and B-2 or would increase by \$0.04 to \$6.74 associated with Attachment 2 Exhibits B-3 and B-4.

The proposed 2023 Post-Collection Rates will result in 1.2% (per Exhibit B-4) to 3.9% (Attachment 2 per Exhibit B-1) increase in residential Post-Collection Rates, ranging from a monthly increase of \$0.9 to \$0.27 for the smallest garbage container size to \$0.42 to \$1.34 for the largest garbage containers size. Commercial Post-Collection rates will decrease by 6.9% (Attachment 2 per Exhibit B-1) to 9.4% (Attachment 2 per Exhibit B-4), a decrease in the monthly per cubic yard rate of \$0.85 to \$1.16. Industrial Post-Collection rates will increase by 7.0% (Attachment 2 per Exhibit B-4) to 9.9% (Attachment 2 per Exhibit B-1), an increase of \$12.55 to \$17.73 per ton.

ATTACHMENTS:

- [Item 8.2 - Attachment 1 - 2023 HHW Budget Compared to 2022 HHW Budget](#)
- [Item 8.2 - Attachment 2 - 2023 Post-Collection Rate Calculations REVISED FINAL 11-7-2022](#)
- [Item 8.2 - Attachment 3 - Tons and Can Counts Reported by Republic](#)
- [Item 8.2 - Attachment 4 - 2023 Public Hearings PPT Nov 2022](#)
- [Item 8.2 - Attachment 5 - R3 Report](#)
- [Item 8.2 - Attachment 6 - Resolution 22-18 2023 HHW and PC Rates 111023](#)

Attachment 1
2023 HHW Budget Compared to 2022 HHW Budget

	2023 Requested Budget	\$ Change to 2022 Adopted Budget	% Change to 2022 Adopted Budget	2022 Adopted Budget
Wages & Benefits	\$ 142,776	\$ 5,584	4.07%	\$ 137,192
Program Supplies, Consumables and Outside Services	\$ 41,207	\$ 1,612	4.07%	\$ 39,595
HHW Facility Outside Services (Stericycle)	\$ 441,403	\$ 17,263	4.07%	\$ 424,141
Fuel	\$ 5,010	\$ 196	4.07%	\$ 4,814
Utilities	\$ 18,317	\$ 716	4.07%	\$ 17,600
Property Taxes	\$ 21,122	\$ 826	4.07%	\$ 20,296
Insurance	\$ 10,371	\$ 406	4.07%	\$ 9,965
Permit Fees	\$ 11,320	\$ 443	4.07%	\$ 10,877
Site Maintenance	\$ 43,584	\$ 1,704	4.07%	\$ 41,879
Accounting Support	\$ 35,288	\$ 1,380	4.07%	\$ 33,908
Satellite HHW Facility (El Cerrito Recycling Center)	\$ 220,628	\$ 8,628	4.07%	\$ 212,000
Sharps Containers/Sharps & Pharmaceutical Disposal	\$ 42,000	\$ -	0.00%	\$ 42,000
Three Special One Day Collection Events	\$ 180,000	\$ -	0.00%	\$ 180,000
Subtotal	\$ 1,213,024	\$ 38,757	3.30%	\$ 1,174,267
Balancing Account Add (Deduct)	\$ 9,256	\$ (82,427)	-100.00%	\$ 91,683
Operator Profit Margin 15%	\$ 183,342	\$ (6,550)	-4.22%	\$ 189,892
HHW Revenue	\$ (70,000)	\$ 306	-0.48%	\$ (70,306)
Total Operating Expense	\$ 1,335,622	\$ (49,914)	-3.60%	\$ 1,385,536

Total HHW Program Expenses	\$ 1,335,622
Total Tons	170,625
RSS HHW Expense Share	\$ 1,241,571
Total Tons (RSS)	158,610
Rate per Ton	\$ 7.83
El Cerrito HHW Expense Share	\$ 94,051
Total Tons (El Cerrito)	12,015
Rate per Ton	\$ 7.83

Exhibit A
2023 HHW Budget Compared to 2022 HHW Budget

	2023 Requested Budget	\$ Change to 2022 Adopted Budget	% Change to 2022 Adopted Budget	2022 Adopted Budget
Wages & Benefits	\$ 142,776	Proposed	4.07%	\$ 137,192
Program Supplies, Consumables and Outside Services	\$ 41,207	\$ 1,612	4.07%	\$ 39,595
HHW Facility Outside Services (Stericycle)	\$ 441,403	\$ 17,263	4.07%	\$ 424,141
Fuel	\$ 5,010	\$ 196	4.07%	\$ 4,814
Utilities	\$ 18,317	\$ 716	4.07%	\$ 17,600
Property Taxes	\$ 21,122	\$ 826	4.07%	\$ 20,296
Insurance	\$ 10,371	\$ 406	4.07%	\$ 9,965
Permit Fees	\$ 11,320	\$ 443	4.07%	\$ 10,877
Site Maintenance	\$ 43,584	\$ 1,704	4.07%	\$ 41,879
Accounting Support	\$ 35,288	\$ 1,380	4.07%	\$ 33,908
Satellite HHW Facility (El Cerrito Recycling Center)	\$ 220,628	\$ 8,628	4.07%	\$ 212,000
Sharps Containers/Sharps & Pharmaceutical Disposal	\$ 42,000	\$ -	0.00%	\$ 42,000
Three Special One Day Collection Events	\$ 180,000	\$ -	0.00%	\$ 180,000
Subtotal	\$ 1,213,024	\$ 38,757	3.30%	\$ 1,174,267
Balancing Account Add (Deduct)	\$ 9,256	\$ (82,427)	-89.90%	\$ 91,683
Operator Profit Margin 15%	\$ 183,342	\$ (6,550)	-3.45%	\$ 189,892
HHW Revenue	\$ (70,000)	\$ 306	-0.44%	\$ (70,306)
Total Operating Expense	\$ 1,335,622	\$ (49,914)	-3.60%	\$ 1,385,536
Total HHW Program Expenses	\$ 1,335,622			
Total Tons	170,625			
RSS HHW Expense Share	\$ 1,241,571			
Total Tons (RSS)	158,610			
Rate per Ton	\$ 7.83			
El Cerrito HHW Expense Share	\$ 94,051			
Total Tons (El Cerrito)	12,015			
Rate per Ton	\$ 7.83			

Exhibit B-1 Proposed 2023 RecycleMore Post-Collection Rate Calculation

2023	\$ 112.07	Blended per ton			x	158,610	total tons =		17,775,444	Annual Revenue
	Residential				Commercial	Industrial	TOTAL			
	20-Gallon	35-Gallon	60/65-Gallon	95/100-Gallon	Per Cubic Yard	Per Ton				
2022										
2022 Rates	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2022 Tonnage Basis	49,415				27,197	23,211	99,823			
2022 % of Tons	50%				27%	23%				
2022 Unit Basis*	60,067				392,934	23,211				
2022 Revenue	\$ 8,852,830				\$ 4,872,418	\$ 4,158,364	\$ 17,883,612			
2023										
2023 Rates	\$ 7.27	\$ 12.76	\$ 23.72	\$ 35.60	\$ 11.55	\$ 196.88	\$ 196.88			
2023 Tonnage Basis	47,036				24,271	18,977	90,284			
2023 % of Tons	52%				27%	21%				
2023 Unit Basis*	60,463				413,832	18,977				
2023 Revenue	\$ 9,260,689				\$ 4,778,578	\$ 3,736,177	\$ 17,775,444			
Year-to-Year Change										
2022 Rate	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2023 Rate	\$ 7.27	\$ 12.76	\$ 23.72	\$ 35.60	\$ 11.55	\$ 196.88	\$ 196.88			
\$ Increase/(Decrease)	\$ 0.27	\$ 0.48	\$ 0.89	\$ 1.34	\$ (0.85)	\$ 17.73	\$ 17.73			
% Increase/(Decrease)	3.9%	3.9%	3.9%	3.9%	-6.9%	9.9%	9.9%			

* The "unit basis" is: monthly service expressed in 35-gallon equivalents (Residential), annual cubic yards (Commercial), and annual tons (Industrial). Container counts are as September 30 2022.

Exhibit B-2 Proposed 2023 RecycleMore Post-Collection Rate Calculation

2023	\$ 110.60	Blended per ton			x	158,610	total tons =		17,542,287	Annual Revenue
	Residential				Commercial	Industrial	TOTAL			
	20-Gallon	35-Gallon	60/65-Gallon	95/100-Gallon	Per Cubic Yard	Per Ton				
2022										
2022 Rates	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2022 Tonnage Basis	49,415				27,197	23,211	99,823			
2022 % of Tons	50%				27%	23%				
2022 Unit Basis*	60,067				392,934	23,211				
2022 Revenue	\$ 8,852,830				\$ 4,872,418	\$ 4,158,364	\$ 17,883,612			
2023										
2023 Rates	\$ 7.18	\$ 12.60	\$ 23.42	\$ 35.15	\$ 11.40	\$ 194.30	\$ 194.30			
2023 Tonnage Basis	47,036				24,271	18,977	90,284			
2023 % of Tons	52%				27%	21%				
2023 Unit Basis*	60,463				413,832	18,977				
2023 Revenue	\$ 9,139,219				\$ 4,715,898	\$ 3,687,170	\$ 17,542,287			
Year-to-Year Change										
2022 Rate	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2023 Rate	\$ 7.18	\$ 12.60	\$ 23.42	\$ 35.15	\$ 11.40	\$ 194.30	\$ 194.30			
\$ Increase/(Decrease)	\$ 0.18	\$ 0.32	\$ 0.59	\$ 0.89	\$ (1.00)	\$ 15.15	\$ 15.15			
% Increase/(Decrease)	2.6%	2.6%	2.6%	2.6%	-8.1%	8.5%	8.5%			

* The "unit basis" is: monthly service expressed in 35-gallon equivalents (Residential), annual cubic yards (Commercial), and annual tons (Industrial). Container counts are as September 30 2022.

Exhibit B-3 Proposed 2023 RecycleMore Post-Collection Rate Calculation

2023	\$ 110.59	Blended per ton			x	158,610	total tons =		17,540,701	Annual Revenue
	Residential				Commercial	Industrial	TOTAL			
	20-Gallon	35-Gallon	60/65-Gallon	95/100-Gallon	Per Cubic Yard	Per Ton				
2022										
2022 Rates	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2022 Tonnage Basis	49,415				27,197	23,211	99,823			
2022 % of Tons	50%				27%	23%				
2022 Unit Basis*	60,067				392,934	23,211				
2022 Revenue	\$ 8,852,830				\$ 4,872,418	\$ 4,158,364	\$ 17,883,612			
2023										
2023 Rates	\$ 7.18	\$ 12.60	\$ 23.42	\$ 35.15	\$ 11.39	\$ 194.28	\$ 194.28			
2023 Tonnage Basis	47,036				24,271	18,977	90,284			
2023 % of Tons	52%				27%	21%				
2023 Unit Basis*	60,463				413,832	18,977				
2023 Revenue	\$ 9,138,392				\$ 4,715,472	\$ 3,686,837	\$ 17,540,701			
Year-to-Year Change										
2022 Rate	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2023 Rate	\$ 7.18	\$ 12.60	\$ 23.42	\$ 35.15	\$ 11.39	\$ 194.28	\$ 194.28			
\$ Increase/(Decrease)	\$ 0.18	\$ 0.32	\$ 0.59	\$ 0.89	\$ (1.01)	\$ 15.13	\$ 15.13			
% Increase/(Decrease)	2.6%	2.6%	2.6%	2.6%	-8.1%	8.4%	8.4%			

* The "unit basis" is: monthly service expressed in 35-gallon equivalents (Residential), annual cubic yards (Commercial), and annual tons (Industrial). Container counts are as September 30 2022.

Exhibit B-4 Proposed 2023 RecycleMore Post-Collection Rate Calculation

2023	\$ 109.12	Blended per ton			x	158,610	total tons =		17,307,544	Annual Revenue
	Residential				Commercial	Industrial	TOTAL			
	20-Gallon	35-Gallon	60/65-Gallon	95/100-Gallon	Per Cubic Yard	Per Ton				
2022										
2022 Rates	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2022 Tonnage Basis	49,415				27,197	23,211	99,823			
2022 % of Tons	50%				27%	23%				
2022 Unit Basis*	60,067				392,934	23,211				
2022 Revenue	\$ 8,852,830				\$ 4,872,418	\$ 4,158,364	\$ 17,883,612			
2023										
2023 Rates	\$ 7.09	\$ 12.43	\$ 23.11	\$ 34.68	\$ 11.24	\$ 191.70	\$ 191.70			
2023 Tonnage Basis	47,036				24,271	18,977	90,284			
2023 % of Tons	52%				27%	21%				
2023 Unit Basis*	60,463				413,832	18,977				
2023 Revenue	\$ 9,016,922				\$ 4,652,792	\$ 3,637,830	\$ 17,307,544			
Year-to-Year Change										
2022 Rate	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15			
2023 Rate	\$ 7.09	\$ 12.43	\$ 23.11	\$ 34.68	\$ 11.24	\$ 191.70	\$ 191.70			
\$ Increase/(Decrease)	\$ 0.09	\$ 0.15	\$ 0.28	\$ 0.42	\$ (1.16)	\$ 12.55	\$ 12.55			
% Increase/(Decrease)	1.3%	1.2%	1.2%	1.2%	-9.4%	7.0%	7.0%			

* The "unit basis" is: monthly service expressed in 35-gallon equivalents (Residential), annual cubic yards (Commercial), and annual tons (Industrial). Container counts are as September 30 2022.

Exhibit C
Tons and Can Counts Reported by Republic

08/01/2021 - 07/31/2022

	Solid Waste	Dry Waste	Organic	C&D	Recycling	Total
Richmond	51,289	3,376	15,995	2,904	13,933	87,497
San Pablo	12,839	683	3,824	520	3,407	21,273
Pinole	8,378	656	2,978	109	2,274	14,396
Hercules	7,442	502	2,780	249	2,678	13,652
County	10,336	197	5,997	1,102	4,161	21,792
RSS Total	90,284	5,414	31,575	4,884	26,453	158,610

	Solid Waste	Dry Waste	Organic	C&D	Recycling	Total
El Cerrito	7,639	49	4,216	112	-	12,015
RSS	158,610	0.9296	92.958%			
El Cerrito	12,015	0.0704	7.042%			
Total Tons	170,625					

Detailed Can Count and Cubic Yard Information

As of September 30, 2022

	Richmond	Hercules	County	Pinole	San Pablo	Total
Can Size:						
20 Gal	4,621	1,159	1,849	823	758	9,210
35 Gal	23,356	5,253	7,485	4,501	5,662	46,257
65 Gal	1,832	524	710	476	334	3,876
95/100 Gal	312	52	108	80	74	626
	30,121	6,988	10,152	5,880	6,828	59,969
# of IRRF Can Equivalent Per Month	30,268	7,033	10,161	6,079	6,922	60,463
Commercial Cubic Yards Per Month	18,603	2,585	2,910	4,616	5,772	34,486
Per Year	223,236	31,020	34,920	55,392	69,264	413,832

Exhibit D
 Calculated 2023 Blended Per Ton Rate and Components Compared to Prior Years

	\$ Change 2023 to 2022	2023	2023	2023	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
		Proposed (w/\$1.48 Change in Law, \$1.4M in Authority Funding)	Proposed (w/\$1.48 Change in Law, \$1.15M in Authority Funding)	Proposed (w/out Change in Law, \$1.4M in Authority Funding)	Proposed (w/out Change in Law, \$1.15M in Authority Funding)	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
Material Specific	\$ 3.38	\$ 87.80	\$ 87.80	\$ 87.80	\$ 87.80	\$ 84.42	\$ 82.87	\$ 81.28	\$ 78.62	\$ 76.53	\$ 74.33	\$ 72.61	\$ 70.99	\$ 69.57
HHW	\$ 0.10	\$ 7.83	\$ 7.83	\$ 7.83	\$ 7.83	\$ 7.73	\$ 6.86	\$ 6.97	\$ 6.78	\$ 6.22	\$ 6.04	\$ 5.75	\$ 6.02	\$ 5.76
Authority Budget	\$ 1.51	\$ 8.21	\$ 6.74	\$ 8.21	\$ 6.74	\$ 6.70	\$ 5.36	\$ 7.86	\$ 6.44	\$ 6.16	\$ 6.12	\$ 5.43	\$ 5.37	\$ 7.28
Governmental Fee	\$ 0.34	\$ 10.48	\$ 10.48	\$ 10.48	\$ 10.48	\$ 10.14	\$ 10.10	\$ 10.00	\$ 9.64	\$ 9.27	\$ 9.18	\$ 10.54	\$ 11.10	\$ 11.51
Recycling Rebate	\$ (2.41)	\$ (5.20)	\$ (5.20)	\$ (5.20)	\$ (5.20)	\$ (2.79)	\$ (0.48)	\$ (1.18)	\$ (2.91)	\$ (6.15)	\$ (4.58)	\$ (4.56)	\$ (5.64)	\$ (5.71)
Authority Regulatory Compliance Change In Law (SB 1383)	\$ 0.07 TBD	\$ 1.47 \$ 1.48	\$ 1.47 \$ 1.48	\$ 1.47 -	\$ 1.47 -	\$ 1.40 NA	\$ 1.43 NA	\$ 1.33 NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA
Total	TBD	\$ 112.07	\$ 110.60	\$ 110.59	\$ 109.12	\$ 107.60	\$ 106.14	\$ 106.26	\$ 98.57	\$ 92.03	\$ 91.08	\$ 89.77	\$ 87.84	\$ 88.41
		\$ 4.47 4.15%	\$ 3.00 2.79%	\$ 2.99 2.78%	\$ 1.52 1.41%									

**Attachment 3
Tons and Can Counts Reported by Republic**

08/01/2021 - 07/31/2022

	Solid Waste	Dry Waste	Organic	C&D	Recycling	Total
Richmond	51,289	3,376	15,995	2,904	13,933	87,497
San Pablo	12,839	683	3,824	520	3,407	21,273
Pinole	8,378	656	2,978	109	2,274	14,396
Hercules	7,442	502	2,780	249	2,678	13,652
County	10,336	197	5,997	1,102	4,161	21,792
RSS Total	90,284	5,414	31,575	4,884	26,453	158,610

	Solid Waste	Dry Waste	Organic	C&D	Recycling	Total
El Cerrito	7,639	49	4,216	112	-	12,015
RSS	158,610	0.9296	92.958%			
El Cerrito	12,015	0.0704	7.042%			
Total Tons	170,625					

Detailed Can Count and Cubic Yard Information

As of September 30, 2022

	Richmond	Hercules	County	Pinole	San Pablo	Total	
Can Size:							
20 Gal	4,621	1,159	1,849	823	758	9,210	15%
35 Gal	23,356	5,253	7,485	4,501	5,662	46,257	77%
65 Gal	1,832	524	710	476	334	3,876	6%
95/100 Gal	312	52	108	80	74	626	1%
	30,121	6,988	10,152	5,880	6,828	59,969	100%
# of IRRF Can Equivalent Per Month	30,268	7,033	10,161	6,079	6,922	60,463	
Commercial Cubic Yards Per Month	18,603	2,585	2,910	4,616	5,772	34,486	
Per Year	223,236	31,020	34,920	55,392	69,264	413,832	

RecycleMore Board of Directors

1

Agenda Item 8.1
- Public Hearing-

2023 HHW Budget and Post-
Collection Rates

NOVEMBER 10, 2022

Public Hearing

2

Topics

- Open Public Hearing
- Presentation
 - 2023 HHW Budget
 - 2023 Post-Collection Rates
- Board Q&A
- Public Comment
- Close Public Hearing
- Board Discussion and Action

2023 HHW Budget

3

- Draft HHW Budget presented during October 13, 2022 Board Workshop
- 2023 Budget is lower than 2022 Budget due to reduced balancing account funding
- 2023 Budget continues all current programs
- Approval of 2023 Budget results in \$0.10 increase in blended per ton rate
 - Lower tonnage basis means increased per ton rate despite lower budget

2023 HHW Budget

4

2023 HHW Budget Compared to 2022 HHW Budget

	2023 Requested Budget	\$ Change to 2022 Adopted Budget	% Change to 2022 Adopted Budget	2022 Adopted Budget
Wages & Benefits	\$ 142,776	Proposed	4.07%	\$ 137,192
Program Supplies, Consumables and Outside Services	\$ 41,207	\$ 1,612	4.07%	\$ 39,595
HHW Facility Outside Services (Stericycle)	\$ 441,403	\$ 17,263	4.07%	\$ 424,141
Fuel	\$ 5,010	\$ 196	4.07%	\$ 4,814
Utilities	\$ 18,317	\$ 716	4.07%	\$ 17,600
Property Taxes	\$ 21,122	\$ 826	4.07%	\$ 20,296
Insurance	\$ 10,371	\$ 406	4.07%	\$ 9,965
Permit Fees	\$ 11,320	\$ 443	4.07%	\$ 10,877
Site Maintenance	\$ 43,584	\$ 1,704	4.07%	\$ 41,879
Accounting Support	\$ 35,288	\$ 1,380	4.07%	\$ 33,908
Satellite HHW Facility (El Cerrito Recycling Center)	\$ 220,628	\$ 8,628	4.07%	\$ 212,000
Sharps Containers/Sharps & Pharmaceutical Disposal	\$ 42,000	\$ -	0.00%	\$ 42,000
Three Special One Day Collection Events	\$ 180,000	\$ -	0.00%	\$ 180,000
Subtotal	\$ 1,213,024	\$ 38,757	3.30%	\$ 1,174,267
Balancing Account Add (Deduct)	\$ 9,256	\$ (82,427)	-89.90%	\$ 91,683
Operator Profit Margin 15%	\$ 183,342	\$ (6,550)	-3.45%	\$ 189,892
HHW Revenue	\$ (70,000)	\$ 306	-0.44%	\$ (70,306)
Total Operating Expense	\$ 1,335,622	\$ (49,914)	-3.60%	\$ 1,385,536

2023 Blended-Per Ton Rate

5

2023 Blended Per Ton Rates

- ❖ Material Specific – Escalates at 85% of CPI (4% cap and 0.07% carryforward to 2024)
- ❖ HHW– Set based on Board approved HHW Budget
- ❖ Authority– Set based on \$1.4M 2023 revenue need
- ❖ Gov. Fees – Changes with tons and fee adjustments
- ❖ Recycling Rebate – Changes with market
- ❖ CalRecycle Compliance– Remains at \$250,000

- ❖ Change in Law Request – New for SB 1383

2023 Blended-Per Ton Rate

6

2023 Blended Per Ton Rates

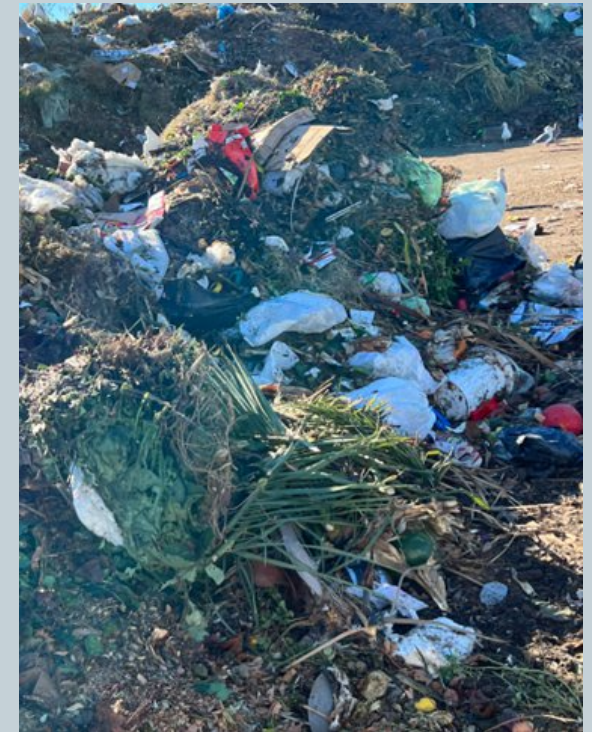
- ❖ Material Specific = +\$3.38/ton
- ❖ HHW = +\$0.10/ton
- ❖ Authority = +\$1.51/ton or +\$0.04/ton
- ❖ Gov. Fees = +\$0.34/ton
- ❖ Recycling Rebate = -\$2.41 credit/ton
- ❖ CalRecycle Compliance = +\$0.07/ton

- ❖ SB 1383 Change in Law = ~~+\$2.20/ton~~ \$1.48/ton

Revised Change In Law Request

7

- Republic is requesting \$235,427 (or \$1.48/ton in the rate structure) for compost facility expenses to mitigate increased contamination.



Revised Change In Law Request



- Supporting Documentation (Residual, Overs, Volume)

	2019				2020				2021				2022			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Inbound	15,868.49	21,029.56	18,656.74	20,345.63	12,174.17	23,968.56	20,377.81	21,192.93	17,499.45	20,476.00	19,636.99	21,386.95	21,284.96	22,430.89	21,322.92	
Residuals	1,648.08	2,407.99	1,956.35	2,626.98	2,844.46	3,983.13	3,458.72	3,567.31	3,675.60	3,719.63	3,561.80	3,838.35	4,360.11	3,653.90	3,540.50	
% Residuals	10.4%	11.5%	10.5%	12.9%	23.4%	16.6%	17.0%	16.8%	21.0%	18.2%	18.1%	17.9%	20.5%	16.3%	16.6%	
ADC	5,146.89	6,329.01	5,341.90	3,774.58	2,854.21	1,743.86	936.79	589.93	2,274.66	1,515.39	1,987.11	3,305.16	2,341.81	2,632.48	2,455.60	
% ADC	32.4%	30.1%	28.6%	18.6%	23.4%	7.3%	4.6%	2.8%	13.0%	7.4%	10.1%	15.5%	11.0%	11.7%	11.5%	
Finish Compost	2,939.83	7,665.45	5,368.86	3,971.49	7,395.79	7,091.78	8,534.00	5,212.61	5,884.95	8,899.10	6,772.06	4,577.49	7,078.72	7,733.71	7,338.00	
% Compost	18.5%	36.5%	28.8%	19.5%	60.7%	29.6%	41.9%	24.6%	33.6%	43.5%	34.5%	21.4%	33.3%	34.5%	34.4%	
% Residuals to Compost	56.1%	31.4%	36.4%	66.1%	38.5%	56.2%	40.5%	68.4%	62.5%	41.8%	52.6%	83.9%	61.6%	47.2%	48.2%	
% Residuals & ADC to Inbound	42.8%	41.5%	39.1%	31.5%	46.8%	23.9%	21.6%	19.6%	34.0%	25.6%	28.3%	33.4%	31.5%	28.0%	28.1%	

Revised Change In Law Request

9

- Equipment includes a three stage screen that reduces contamination and “overs” while increasing yield.



Revised Change In Law Request

10

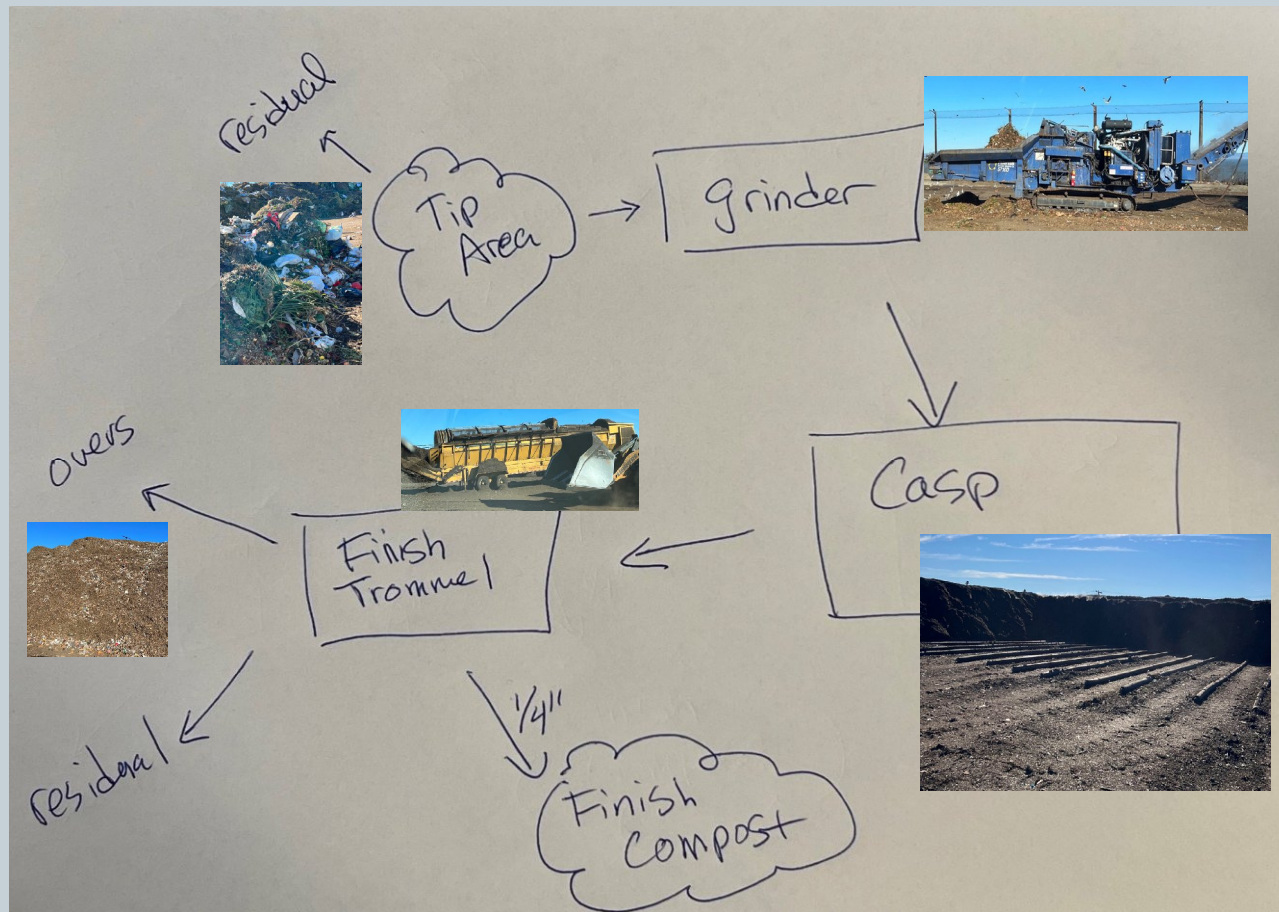
- Cost also includes regrinding “overs” for use in the CASP (“Covered Aerated Static Pile”).



Revised Change In Law Request

11

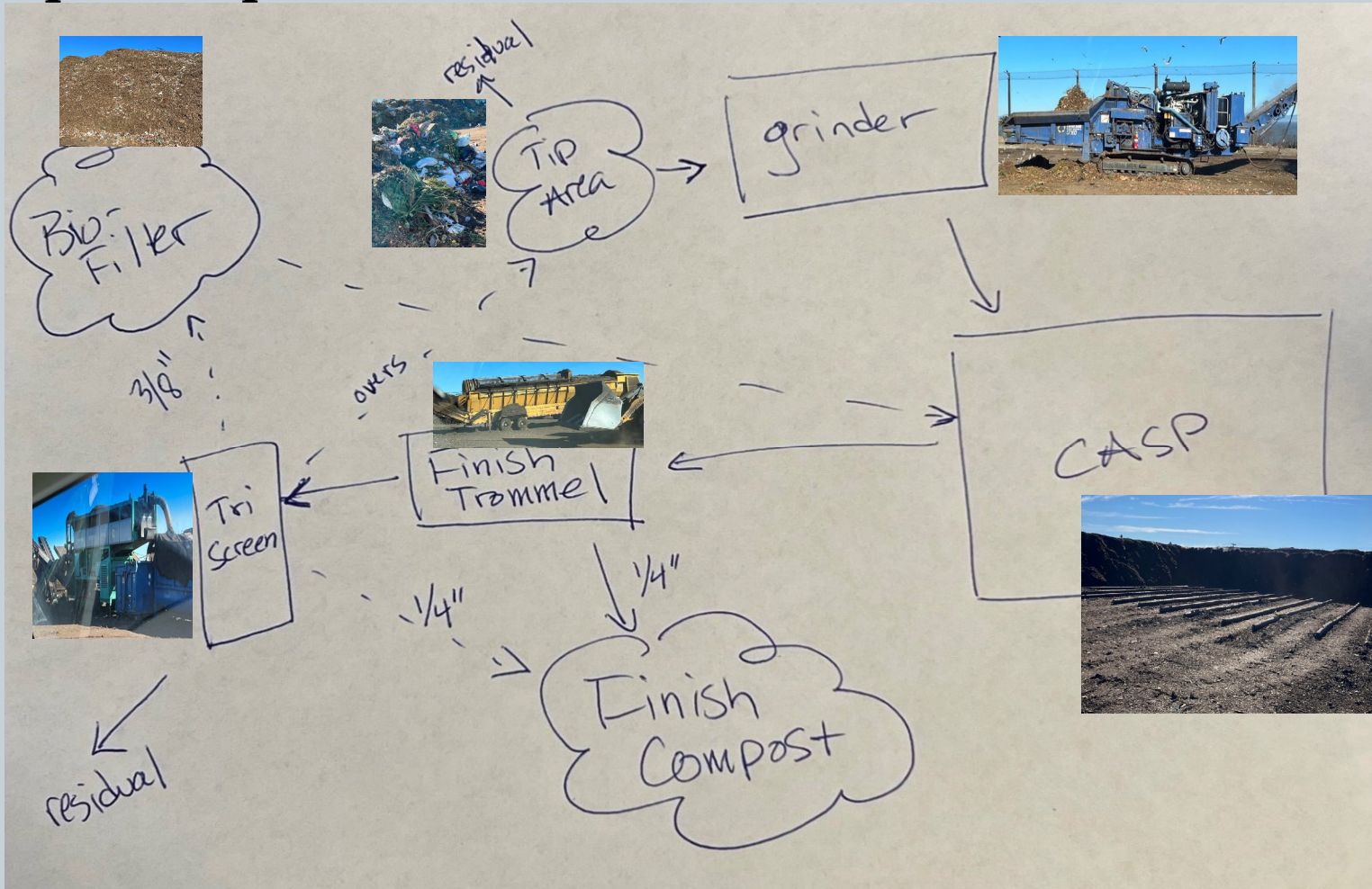
- Compost Operation Overview (no mid-fraction screen)



Revised Change In Law Request

12

- Compost Operation Overview (w/mid-fraction screen)



Change In Law Request

13

- **\$634,000 in new costs for facility operations**
 - \$350,000 per year for new grinder operations
 - \$190,000 per year for new sort line labor (2)
 - \$64,000/year in capital equipment amortization
 - \$30,000 per year for new maintenance expenses
- **RecycleMore's share is ~37% of facility usage**
 - Total facility costs over 85,030 in annual total organics tons (all sources) yields \$7.46 per ton of organic waste
 - RecycleMore's annual organic waste tons are 31,575 yielding increase in processing costs of \$235,427
 - Over the total 158,610 total RecycleMore tons subject to the Blended Per Ton Rate, the result is \$1.48/ton

2023 Post-Collection Rates

14

- Republic's Blended per Ton Rate sets the annual compensation amounts owed to Republic
- Payment of that compensation is through rates charged to customers via Post-Collection Rate
- RecycleMore sets the Post-Collection Rate based on Republic's Blended per Ton Rate
- RecycleMore's Post-Collection Rates are the sole compensation to Republic for PCA services

2023 Post-Collection Rates



- B-1 = Change in law at \$1.48 per ton, Authority Revenue Requirement at \$8.21/ton (corresponding to \$1.4M in 2023 Authority Revenues)
- B-2 = Change in law at \$1.48 per ton, Authority Revenue Requirement at \$6.74/ton (corresponding to \$1.15M in 2023 Authority Revenues)
- B-3 = NO Change in law, Authority Revenue Requirement at \$8.21/ton
- B-4 = NO Change in law, Authority Revenue Requirement at \$6.74/ton

Calculated 2023 Blended Per Ton Rate and Components Compared to Prior Years

	\$ Change	2023	2023	2023	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
	2023 to 2022	Proposed (w/\$1.48 Change in Law, \$1.4M in Authority Funding)	Proposed (w/\$1.48 Change in Law, \$1.15M in Authority Funding)	Proposed (w/out Change in Law, \$1.4M in Authority Funding)	Proposed (w/out Change in Law, \$1.15M in Authority Funding)	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Initial
Material Specific	\$ 3.38	\$ 87.80	\$ 87.80	\$ 87.80	\$ 87.80	\$ 84.42	\$ 82.87	\$ 81.28	\$ 78.62	\$ 76.53	\$ 74.33	\$ 72.61	\$ 70.99	\$ 69.57
HHW	\$ 0.10	\$ 7.83	\$ 7.83	\$ 7.83	\$ 7.83	\$ 7.73	\$ 6.86	\$ 6.97	\$ 6.78	\$ 6.22	\$ 6.04	\$ 5.75	\$ 6.02	\$ 5.76
Authority Budget	\$ 1.51	\$ 8.21	\$ 6.74	\$ 8.21	\$ 6.74	\$ 6.70	\$ 5.36	\$ 7.86	\$ 6.44	\$ 6.16	\$ 6.12	\$ 5.43	\$ 5.37	\$ 7.28
Governmental Fee	\$ 0.34	\$ 10.48	\$ 10.48	\$ 10.48	\$ 10.48	\$ 10.14	\$ 10.10	\$ 10.00	\$ 9.64	\$ 9.27	\$ 9.18	\$ 10.54	\$ 11.10	\$ 11.51
Recycling Rebate	\$ (2.41)	\$ (5.20)	\$ (5.20)	\$ (5.20)	\$ (5.20)	\$ (2.79)	\$ (0.48)	\$ (1.18)	\$ (2.91)	\$ (6.15)	\$ (4.58)	\$ (4.56)	\$ (5.64)	\$ (5.71)
Authority Regulatory Compliance	\$ 0.07	\$ 1.47	\$ 1.47	\$ 1.47	\$ 1.47	\$ 1.40	\$ 1.43	\$ 1.33	NA	NA	NA	NA	NA	NA
Change In Law (SB 1383)	TBD	\$ 1.48	\$ 1.48	\$ -	\$ -	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total	TBD	\$ 112.07	\$ 110.60	\$ 110.59	\$ 109.12	\$ 107.60	\$ 106.14	\$ 106.26	\$ 98.57	\$ 92.03	\$ 91.08	\$ 89.77	\$ 87.84	\$ 88.41
	\$	4.47	3.00	2.99	1.52									
		4.15%	2.79%	2.78%	1.41%									

Public Hearing

16

Topics

- Board Q&A
- Public Comment
- Close Public Hearing
- Board Discussion and Action
 - 2023 HHW Budget
 - 2023 Post-Collection Rates

Original Change In Law Request

17

SB 1383 Change in Law = +\$2.20/ton

- \$1.248 million in capital equipment (dep. over 7 years)
- \$350,000 per year for new grinder operations
- \$380,000 per year for new sort line labor (4)
- \$30,000 per year for new maintenance expenses
- The total new annual costs = \$938,286
- That amount over 85,030 in annual total organics tons (all sources) yields \$11.03 per ton of organic waste
- RecycleMore's annual organic waste tons are 31,575 yielding increase in processing costs of \$348,419
- Over the total 158,610 total RecycleMore tons subject to the Blended Per Ton Rate, the result is \$2.20/ton



November 4, 2022

Mr. Peter Holtzclaw
Executive Director
RecycleMore (West Contra Costa Integrated Waste Management Authority)
3220 Blume Dr., Suite 198
Richmond, CA 94806

SUBJECT: Review of Republic 2023 Blended Per Ton Rate and RecycleMore's 2023 Post-Collection Rates

Dear Mr. Holtzclaw,

R3 Consulting Group, Inc. (R3) is pleased to submit this report on our review of Republic Services' (Republic's) 2023 Blended Per Ton Rate and RecycleMore's 2023 Post-Collection Rates.

Objectives

Review Republic's calculation of the 2023 Blended Per Ton Rate per the terms and conditions in Section 5.3 of the Post-Collection Agreement (PCA) between RecycleMore and Republic and calculate RecycleMore's 2023 Post-Collection Rates charged to ratepayers.

Methodology

R3 completed the following tasks:

- Reviewed and confirmed that the calculation of the following elements was conducted in accordance with Section 5.3 of the PCA:
 - Material specific portion of the rate.
 - HHW portion of the rate.
 - RecycleMore's portion of the rate.
 - Recycling rebate portion of the rate.
 - Government fees portion of the rate.
 - The overall 2023 Blended Per Ton Rate as the sum of each of the prior rate portions.
- After calculating the total 2023 Blended Per Ton Rate, R3 translated Republic's calculated 2023 revenue requirement (2023 Blended Per Ton Rate times projected tonnages) into the specific per customer rates charged by RecycleMore to the residential, commercial and industrial sectors;
- Collected and analyzed applicable container size and tonnage information from Republic.
- Updated the prior rate setting model calculating the proposed 2023 RecycleMore Post-Collection Rates based on currently established post-collection rate structure.
- Calculated the potential rate impacts of potential revisions to the 2023 Blended Per Ton Rates.

Mr. Peter Holtzclaw
Review of Republic 2023 Blended Per Ton Rate and RecycleMore's 2023 Post-Collection Rates
November 4, 2022
Page 2 of 4

Analysis & Recommendations

Republic's 2023 Blended Per Ton Rate

Material Specific Portion

Republic calculated the applicable 85% CPI adjustment at 4.07%, which is capped at 4% per the PCA (with a 0.07% carryover to the 2024 Blended Per Ton Rate Calculations) which, when multiplied by the current 2022 rate of \$84.42 per ton yields a value of \$87.80 for 2023. R3 reviewed the calculation of the material specific portion of the rate and the applicable CPI and determined it to be accurate. No revisions are necessary.

HHW Portion

Republic calculated the 2023 amount at \$7.83 per ton, at the budget amounts included in Attachment 1. The total requested 2023 HHW Budget is \$1,335,662 including a carryforward of \$9,256 from the HHW Balancing Account – this is the result of 2021 HHW expenses (reported at \$1,209,064) being \$9,256 higher than the 2021 HHW budget of (\$1,199,808). RecycleMore staff reported that they have reviewed and accepted the HHW Balancing Account report from 2021.

Authority Portion

The projected 2023 revenue requirement provided by RecycleMore's staff is \$1,400,000. At this amount, the 2023 Authority Specific Portion is \$8.21 per ton. The 2022 Authority Portion is higher than the 2022 Authority Portion of \$6.70. The increase is due to the calendar year Authority revenue figure being \$1.4 million for 2023 compared to \$1.2 million for 2022 and is also due to an overall decrease in tonnage basis from 179,152 tons in 2022 to 170,625 tons in 2023.

Recycling Rebate Portion

Republic calculated the applicable adjustment based on external market indices yielding a value of (\$5.20) in 2023. R3 reviewed the calculation of the material specific portion of the rate and the applicable market indices and determined it to be accurate. No revisions are necessary.

The Recycling Rebate Portion of the rate decreased significantly starting 2018, as a result of China's National Sword Policy, which depressed global recycling markets. Starting with the 2022 Blended Per Ton Rate, the Recycling Rebate Portion of the rate reversed direction due to increasing value of recyclable commodities in the global marketplace. As a result, the Recycling Rebate Portion of the rate is offsetting the amount of increase in the per ton rates, increasing the rebate value from a credit of (\$2.79) per ton to (\$5.20) per ton.

Government Fee Portion

The 2023 Government Fee Portion is \$10.48 per ton, increasing slightly from the 2022 value of \$10.14 per ton, due to increased government fees. Republic calculated the 2023 Government Fee Portion based on updated government fee values and projected tonnages. R3 reviewed the calculations in keeping with prior practice and determined the calculations to be accurate. R3 also reviewed the terms and conditions of Section 5.3.6 (Adjustment to Government Fee Portion of the Rate) of the PCA to confirm that this portion is based on projections of fees to be paid based on prior tonnages, and not actual fees paid (which may vary slightly). It should be noted that tonnages have tended to increase over time, which would result in Republic paying higher fee amounts than projected. No revisions are necessary.

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 Review of Republic 2023 Blended Per Ton Rate and RecycleMore's 2023 Post-Collection Rates
 November 4, 2022
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Compliance Program Expenses

The 2023 Authority Regulatory Compliance Portion is \$1.47 per ton, to generate \$250,000 in revenues for compliance activities, as per direction from RecycleMore staff. While annual revenue generation has not changed, the amount per ton is increasing from the 2022 value of \$1.40 per ton due to the decreased tonnage basis mentioned above.

Total Blended Per Ton Rate

Adding up the prior elements, yields the total Republic 2023 Blended Per Ton Rate shown in Table 1, below.

Table 1: Republic's 2023 Blended Per Ton Rate

Material Specific	\$ 87.80
HHW	\$ 7.83
Authority	\$ 8.21
Recycling Rebate	\$ (5.20)
Governmental Fee	\$ 10.48
Regulatory Compliance	\$ 1.47
Total	\$ 110.59

Change in Law Request

Republic also requested that RecycleMore consider a request to add \$2.20 per ton to the Blended Per Ton Rate as a change in law request due to SB 1383. R3 was not engaged to evaluate the merits of the change in law request but did review the calculations of Republic's proposed \$2.20 per ton and found them to be mathematically accurate given the information presented by Republic and reviewed by RecycleMore staff. R3 did not generate an opinion regarding the specifics of the change in law request other than to calculate how it would impact RecycleMore's 2023 Post-Collection Rates.

RecycleMore's 2023 Post-Collection Rates

RecycleMore's Post-Collection Rates are based on a calculation that starts with multiplying the Blended Per Ton Rate times the actual tons handled for the prior 12-month period (set by the PCA) yielding an annual revenue requirement. That annual revenue requirement is then allocated based on a subset of the same 12-month tonnages (not including recycling and organics) for the residential, commercial and industrial customer sectors. Calculations of the 2023 Post-Collection Rates (including Republic's proposed \$2.20 per ton change in law request) are shown Attachment 2. A listing of the residential and commercial units used in the calculations is provided as Attachment 3. A table showing the calculations of the 2023 Blended Per Ton Rates compared to previous year's rates is included with this report as Attachment 4.

The revenue requirement for each sector is divided by a "collection unit" based on subscription information provided by Republic of each September. As an example of how the calculation works, the residential Post-Collection Rate is set equivalent to the common 35-gallon service level. For that unit, the annual revenue requirement (\$9,320,185 in 2023 including the \$2.20 per ton change in law request) is divided by the number of 35-gallon equivalent carts (currently 60,463 in 2023) divided by 12 months, yielding the 2023 rate of \$12.85 per month. This is an increase of \$0.57 over the rate of \$12.28 in 2022. Similarly, the 20-gallon rate increases by \$0.32, the 64-gallon rate increases by \$1.06, and the 95-gallon rate increases by \$1.59.

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For commercial customers, the unit basis is annual cubic yards (413,832 in 2023). The commercial revenue requirement of \$4,809,278 (including the \$2.20 change in law request) is divided by the annual cubic yardage, yielding the 2023 rate of \$11.62 per cubic yard, a decrease of \$0.78 compared to current 2022 rates. The commercial per cubic yard rate is decreasing because the tonnages decreased in 2022 compared to 2021, while subscription levels as of September 30, 2022 were higher than the same date on the prior year.

For industrial customers, the unit basis is annual tons of non-recyclable/non-organic waste (18,977 for 2023). The industrial revenue requirement of \$3,760,180 (including the \$2.20 change in law request) is divided by the annual tonnage, yielding the 2023 rate of \$198.15 per ton, which is an increase of \$19.00 per ton over the prior year.

It remains our pleasure to be of service to you and RecycleMore. If you have any questions regarding our report, or need additional information, please contact me.

Sincerely,



Garth Schultz | President
R3 Consulting Group, Inc.
510.292.0853 | gschultz@r3cgi.com

Attachment 1
2023 HHW Budget Compared to 2022 HHW Budget

	2023 Requested Budget	\$ Change to 2022 Adopted Budget	% Change to 2022 Adopted Budget	2022 Adopted Budget
Wages & Benefits	\$ 142,776	\$ 5,584	4.07%	\$ 137,192
Program Supplies, Consumables and Outside Services	\$ 41,207	\$ 1,612	4.07%	\$ 39,595
HHW Facility Outside Services (Stericycle)	\$ 441,403	\$ 17,263	4.07%	\$ 424,141
Fuel	\$ 5,010	\$ 196	4.07%	\$ 4,814
Utilities	\$ 18,317	\$ 716	4.07%	\$ 17,600
Property Taxes	\$ 21,122	\$ 826	4.07%	\$ 20,296
Insurance	\$ 10,371	\$ 406	4.07%	\$ 9,965
Permit Fees	\$ 11,320	\$ 443	4.07%	\$ 10,877
Site Maintenance	\$ 43,584	\$ 1,704	4.07%	\$ 41,879
Accounting Support	\$ 35,288	\$ 1,380	4.07%	\$ 33,908
Satellite HHW Facility (El Cerrito Recycling Center)	\$ 220,628	\$ 8,628	4.07%	\$ 212,000
Sharps Containers/Sharps & Pharmaceutical Disposal	\$ 42,000	\$ -	0.00%	\$ 42,000
Three Special One Day Collection Events	\$ 180,000	\$ -	0.00%	\$ 180,000
Subtotal	\$ 1,213,024	\$ 38,757	3.30%	\$ 1,174,267
Balancing Account Add (Deduct)	\$ 9,256	\$ (82,427)	-89.90%	\$ 91,683
Operator Profit Margin 15%	\$ 183,342	\$ (6,550)	-3.45%	\$ 189,892
HHW Revenue	\$ (70,000)	\$ 306	-0.44%	\$ (70,306)
Total Operating Expense	\$ 1,335,622	\$ (49,914)	-3.60%	\$ 1,385,536
Total HHW Program Expenses	\$ 1,335,622			
Total Tons	170,625			
RSS HHW Expense Share	\$ 1,241,571			
Total Tons (RSS)	158,610			
Rate per Ton	\$ 7.83			
El Cerrito HHW Expense Share	\$ 94,051			
Total Tons (El Cerrito)	12,015			
Rate per Ton	\$ 7.83			

Attachment 2 Proposed 2023 RecycleMore Post-Collection Rate Calculation

2023	\$ 112.7900 Blended per ton x				158,610.19 total tons =		17,889,643	Annual Revenue
	Residential				Commercial	Industrial	TOTAL	
	20-Gallon	35-Gallon	60/65-Gallon	95/100-Gallon	Per Cubic Yard	Per Ton		
2022								
2022 Rates	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15	
2022 Tonnage Basis	49,415				27,197	23,211	99,823	
2022 % of Tons	50%				27%	23%		
2022 Unit Basis*	60,067				392,934	23,211		
2022 Revenue	\$ 8,852,830				\$ 4,872,418	\$ 4,158,364	\$ 17,883,612	
2023								
2023 Rates	\$ 7.32	\$ 12.85	\$ 23.89	\$ 35.85	\$ 11.62	\$ 198.15	\$ 198.15	
2023 Tonnage Basis	47,036				24,271	18,977	90,284	
2023 % of Tons	52%				27%	21%		
2023 Unit Basis*	60,463				413,832	18,977		
2023 Revenue	\$ 9,320,185				\$ 4,809,278	\$ 3,760,180	\$ 17,889,643	
Year-to-Year Change								
2022 Rate	\$ 7.00	\$ 12.28	\$ 22.83	\$ 34.26	\$ 12.40	\$ 179.15	\$ 179.15	
2023 Rate	\$ 7.32	\$ 12.85	\$ 23.89	\$ 35.85	\$ 11.62	\$ 198.15	\$ 198.15	
\$ Increase/(Decrease)	\$ 0.32	\$ 0.57	\$ 1.06	\$ 1.59	\$ (0.78)	\$ 19.00	\$ 19.00	
% Increase/(Decrease)	4.6%	4.6%	4.6%	4.6%	-6.3%	10.6%	10.6%	

* The "unit basis" is: monthly service expressed in 35-gallon equivalents (Residential), annual cubic yards (Commercial), and annual tons (Industrial). Container counts are as September 30 2022.

**Attachment 3
Tons and Can Counts Reported by Republic**

08/01/2021 - 07/31/2022

	Solid Waste	Dry Waste	Organic	C&D	Recycling	Total
Richmond	51,289	3,376	15,995	2,904	13,933	87,497
San Pablo	12,839	683	3,824	520	3,407	21,273
Pinole	8,378	656	2,978	109	2,274	14,396
Hercules	7,442	502	2,780	249	2,678	13,652
County	10,336	197	5,997	1,102	4,161	21,792
RSS Total	90,284	5,414	31,575	4,884	26,453	158,610

	Solid Waste	Dry Waste	Organic	C&D	Recycling	Total
El Cerrito	7,639	49	4,216	112	-	12,015
RSS	158,610	0.9296	92.958%			
El Cerrito	12,015	0.0704	7.042%			
Total Tons	170,625					

Detailed Can Count and Cubic Yard Information

As of September 30, 2022

	Richmond	Hercules	County	Pinole	San Pablo	Total
Can Size:						
20 Gal	4,621	1,159	1,849	823	758	9,210
35 Gal	23,356	5,253	7,485	4,501	5,662	46,257
65 Gal	1,832	524	710	476	334	3,876
95/100 Gal	312	52	108	80	74	626
	30,121	6,988	10,152	5,880	6,828	59,969
# of IRRF Can Equivalent Per Month	30,268	7,033	10,161	6,079	6,922	60,463
Commercial Cubic Yards Per Month	18,603	2,585	2,910	4,616	5,772	34,486
Per Year	223,236	31,020	34,920	55,392	69,264	413,832

Attachment 4
Calculated 2023 Blended Per Ton Rate and Components Compared to Prior Years

	\$ Change	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
	2023 to 2022	Proposed	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Initial
Material Specific	\$ 3.38	\$ 87.80	\$ 84.42	\$ 82.87	\$ 81.28	\$ 78.62	\$ 76.53	\$ 74.33	\$ 72.61	\$ 70.99	\$ 69.57
HHW	\$ 0.10	\$ 7.83	\$ 7.73	\$ 6.86	\$ 6.97	\$ 6.78	\$ 6.22	\$ 6.04	\$ 5.75	\$ 6.02	\$ 5.76
Authority Budget	\$ 1.51	\$ 8.21	\$ 6.70	\$ 5.36	\$ 7.86	\$ 6.44	\$ 6.16	\$ 6.12	\$ 5.43	\$ 5.37	\$ 7.28
Authority Regulatory Compliance	\$ 0.07	\$ 1.47	\$ 1.40	\$ 1.43	\$ 1.33	NA	NA	NA	NA	NA	NA
Recycling Rebate	\$ (2.41)	\$ (5.20)	\$ (2.79)	\$ (0.48)	\$ (1.18)	\$ (2.91)	\$ (6.15)	\$ (4.58)	\$ (4.56)	\$ (5.64)	\$ (5.71)
Governmental Fee	\$ 0.34	\$ 10.48	\$ 10.14	\$ 10.10	\$ 10.00	\$ 9.64	\$ 9.27	\$ 9.18	\$ 10.54	\$ 11.10	\$ 11.51
Change In Law (SB 1383)	\$ 2.20	\$ 2.20	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total	\$ 5.19	\$ 112.79	\$ 107.60	\$ 106.14	\$ 106.26	\$ 98.57	\$ 92.03	\$ 91.08	\$ 89.77	\$ 87.84	\$ 88.41

R3 Rep

RESOLUTION NO. 22-18

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE WEST CONTRA COSTA INTEGRATED WASTE
MANAGEMENT AUTHORITY APPROVING THE
CALENDAR YEAR HOUSEHOLD HAZARDOUS
WASTE PROGRAM BUDGET AND THE POST-
COLLECTION RATES FOR CALENDAR YEAR 2023**

WHEREAS, the Joint Powers Agreement creating the West Contra Costa Integrated Waste Management Authority (“Authority”) provides that the Authority is to approve post-collection rates to be paid by ratepayers; and

WHEREAS, Republic Services, Inc. and each of its affiliates providing services to the Authority, collectively referred to as “Contractor” by means of the services and facilities of Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill and West County Resource Recovery, provides Post-Collection Services to the Authority through an agreement between Contractor and the Authority; and

WHEREAS, the Authority intends to approve and maintain reasonable rates for the post-Collection services described in the Post-Collection Agreement; and

WHEREAS, a notice of a Public Hearing regarding the revenue requirements for Calendar Year 2023 under the Post-Collection Agreement with Republic Services, Inc., and associated rates to be charged for Calendar Year 2023 including rates for disposal and processing of solid waste, recyclables, and household hazardous waste was published in the West County Times on November 07, 2022 and November 09, 2022; and

WHEREAS, the Authority Board of Directors conducted a Public Hearing on the proposed Post-Collection Rates for 2023 on November 10, 2022, and considered all evidence presented regarding the proposed rates.

NOW, THEREFORE, the Board of Directors of the West Contra Costa Integrated Waste Management Authority resolves as follows:

Section 1. The Calendar Year 2023 Household Hazardous Waste (HHW) Budget set forth in Attachment 1 attached hereto in the amount of \$1,335,662 is hereby approved.

Section 2. Post-Collection Rates set forth in agenda item 8.2 attached hereto are hereby approved and said rates are effective January 1, 2023.

Section 3. This Resolution shall be immediately effective upon adoption by the Board of Directors.

Section 4. The Secretary shall certify passage of this Resolution and cause it to be distributed to all Directors and Alternates, Authority Members, Contra Costa County, Authority Officers, Richmond Sanitary Service, Inc., West County Resource Recovery, Inc., and other interested parties upon request.

ATTEST:

CHAIR OF THE BOARD

Donald W. Sturman – Board Secretary Date

Dan Romero, Board Chair Date

Attachments: 1, 2, 3, 4, 5, 6

I hereby certify that the foregoing resolution was adopted by the Board of Directors of the West Contra Costa Integrated Waste Management Authority at its Regular Meeting on November 10, 2022, by the following vote:

AYES: Directors: _____

NOES: Directors: _____

ABSTAIN: Directors: _____

ABSENT: Directors: _____

Donald W. Sturman, Board Secretary



recyclemore
WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY

Agenda Report

DATE: November 10, 2022

TO: West Contra Costa Integrated Waste Management Authority Board

FROM: Peter Holtzclaw - Executive Director

SUBJECT: Memorandum of Understanding (MOU) Status/Update

ACTION REQUESTED:

If needed, provide direction to Executive Director and Staff.

BACKGROUND:

None.

DISCUSSION:

Executive Director Holtzclaw will provide the Board with an update on MOU Status.

CONCLUSION:

None.

FISCAL IMPACT:

None.

ATTACHMENTS:

- [Item 8.3 Attachment 1 - SB 1383 MOU WCCIWMA WorkPlan - Final Draft November 2022](#)
- [Item 8.3 Attachment 2 - SB 1383 MOU WCCIWMA & Richmond 2022-10-27](#)
- [Item 8.3 Attachment 3 - SB 1383 MOU WCCIWMA & San Pablo 2022-10-27](#)
- [Item 8.3 Attachment 4 - SB 1383 MOU WCCIWMA & Pinole 2022-10-27](#)
- [Item 8.3 Attachment 5 - SB 1383 MOU WCCIWMA & Hercules 2022-10-27](#)
- [Item 8.3 Attachment 6 - SB 1383 MOU WCCIWMA & El Cerrito 2022-10-14](#)
- [Item 8.3 Attachment 7 - SB 1383 MOU WCCIWMA & CCC 10-24-22](#)

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
General Provisions							
18981.2 (a)	Enforceable Ordinance	Adopt enforceable ordinances consistent with the requirements of chapter to mandate organic waste generators, haulers and entities to comply with requirements	Member Agencies		One-time; 1/1/2022	Completed	Store in individual member agency Implementation Records.
Article 3. Organic Waste Collection Services							
18984.1 (a)	Organic Waste Collection	Implement a three-container organic waste collection service and providing a green container (organics), a blue container (recycling), and a gray container to each generator (solid waste)	Member Agencies	Haulers	One time; 1/1/2022	Completed	Indicate in individual member agency Implementation Records.
18984.5 (a)	Contamination	Monitor the containers provided to the generators using three-container service to minimize contamination	RecycleMore	Haulers	7/1/2022	Inspection and Enforcement Program in development w/RecycleMore, cities, Haulers & subs	Written plan and agreement with Haulers. El Cerrito to have their own plan with credit back based on 7.5% from PCA rate structure
18984.5 (b)	Contamination Monitoring	Conduct a route review for prohibited container contaminants on randomly selected collection route annually . Containers may be randomly selected along a hauler route. This section should not be construed to require that every container on a hauler route must be sampled annually. Contact or written notice to generator upon discovering contaminants (left at door, gate and/or through mail, email, or electronic message) is required	RecycleMore	Haulers and Sub-consultant	7/1/2022; Annually	Inspection and Enforcement Program in development w/ RecycleMore, cities, Haulers and subcontractors	Written plan and agreement with Republic and their sub-consultant (i.e., Cascadia) El Cerrito to have their own plan with credit back based on 7.5% from PCA rate structure
18984.7 (a)-(b)	Container Colors	Provide collection containers to generators that comply with container color requirements specified in SB 1383	Member Agencies	Haulers	1/1/2022 1/1/2036	Bin & cart color changes implemented with both haulers for newly purchased containers, and	Current container orders are in compliance.

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
						all containers by 2036.	
18984.8 (a)-(c)	Container Labeling	Place a label on each new container or lid provided to generators consistent with the applicable container collection requirements and limitations of this article specifying what materials are allowed to be placed in each container and items that are prohibited container contaminants for each container	Member Agencies	Haulers	7/1/2022	Bin & cart label updates by Haulers for newly purchased containers and all containers by 2036.	Current container orders are compliant. Planning a relabeling project for existing.
18984.11	Waivers	Waive a commercial business' obligation to comply with some or all of the organic waste requirements due to: - De Minimis organic waste (<20 gallon or <10 gallon per week) - Physical Space	RecycleMore		1/1/2022	RecycleMore has coordinated the waiver process with Member Agencies and Haulers.	Store in individual member agency Implementation Records.
Article 4. Education and Outreach							
18985.1 (a)	Outreach – Organic Waste Generators	Provide the following: information on organic waste generators requirements to properly separate materials in appropriate containers, methods for prevention of organic waste, recovering organic waste on site, community composting and any other local requirements, information on methane reduction benefits, the methods of organic waste recovery, the organic waste collection service uses, list of approved haulers, and how to recover organics, public health and safety and environmental impacts, information for edible food	RecycleMore/ Member Agencies	RecycleMore & Haulers	Prior to 2/1/2022; Annually	RecycleMore and Hauler Websites, Postcards, Letters to non-compliant, commercial & MFD toolkits	<u>Print:</u> 1) SB 1383 Postcards to commercial & residential generators 2) SB 1383 Fact Sheet 3) Organic Waste Recycling Poster (Republic Services) 4) Comprehensive Residential & Commercial Guide Brochure (Republic Services) 5) Multifamily Multipage Guide (Republic Services) 6) Composting at Home Brochure 7) Compost Giveaway Flyer (Republic Services) 8) Recycling Directory

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
		recovery programs, information regarding self-hauling requirements					<p>9) Quarterly Newsletters (Republic Services & EBS)</p> <p><u>Website:</u></p> <p>10) Online Recycling Guide/What Goes in Each Cart</p> <p>11) SB 1383 Compliance Pages (Businesses/ Multifamily Property Owners / Residents / Residents in Multifamily Properties</p> <p>12) Backyard Composting info & resources</p> <p>13) Compost Giveaway (Republic Services)</p> <p>14) Curbside Organics & Food Scrap Pail Program</p> <p>15) Online Business Self-Reporting Form / Self-Haul / Waivers</p> <p>16) School Recycling and Classroom Educational Programs/Organic Recycling at Schools</p> <p>17) Garbage Collection Services Hauler Contact Information Resources</p> <p><u>Social Media:</u></p> <p>18) SB 1383 Post 1/3: It's Coming</p> <p>19) SB 1383 Post 2/3: Food Waste/Climate Change/Methane Education</p> <p>20) SB 1383 Post 3/3: It's Here/Are You Ready?</p> <p>21) Various postings on the following:</p> <ul style="list-style-type: none"> a. Alternative suggestions and Awareness for Reducing, Reusing and Recycling b. Food Savings/ Sustainability/Waste Reduction Tips c. Ideas for repurposing food scraps

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
							d. Compost Giveaway for Residents/ Compost Workshop/ Discount Compost Bin Program
18985.2 (a)	Outreach – Edible Food Recovery	Develop a list of food recovery organizations and food recovery services operating within the jurisdiction and maintain the list on the jurisdiction’s website	RecycleMore		On or before 2/1/2022	List is completed and website updated. Cities to add info on their websites.	RecycleMore has contacted all Food Recovery Organizations that serve the region to clarify their acceptance & contact info.
18985.2 (b)	Outreach – Edible Food Recovery	Provide commercial edible food generators that generate edible food with the following information: details about the edible food recovery program, information about commercial edible food generators, requirements and about food organizations and services operating within the jurisdiction and where a list of all services can be found	RecycleMore		Annually	Website, Tier 1 letters	RecycleMore is finalizing the Tier 1 Letters to send out
Article 7. Regulation of Haulers							
18988.1 (a)	Reporting	Require haulers to identify the facilities to which they will transport organic waste	RecycleMore	Haulers	On or before 2/1/2022	Information ready for reporting	Indicate in individual member agency Implementation Records.
18988.1 (b)	Enforceable Ordinance	If a jurisdiction allows generators to self-haul organic waste, adopt an ordinance or a similarly enforceable mechanism	Member Agencies		Completed	Individual Ordinances allow self-haul	Indicate in individual member agency Implementation Records.
Article 8. CALGreen Building Standards and Model Water Efficient Landscape Ordinance (MWELo)							
18989.1(a)	Enforceable Ordinance	Adopt an ordinance or enforceable requirement complying with	Member Agencies		On or before 2/1/2022	To be evaluated by each	Indicate in individual member agency Implementation Records.

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
		CalGreen Code Sections 4.410.2, 4.408.1, or 5.408.1				Member Agency	
18989.2(a)	Enforceable Ordinance	Adopt an ordinance or other enforceable requirement that requires compliance with the Model Water Efficient Landscape Ordinance	Member Agencies		On or before 2/1/2022	To be evaluated by each Member Agency	Indicate in individual member agency Implementation Records.
Article 10. Jurisdiction Edible Food Recovery Programs, Food Generators, and Food Recovery							
18991.1	Edible Food Recovery	Implement an edible food recovery program including: educating edible food generators, increase access to food recovery organizations and food recovery services, monitor commercial edible food generators compliance, increase edible food recovery capacity (if needed)	RecycleMore	County & Sub-consultant	9/1/2022	RecycleMore is working with RecycleSmart & the County for the regional program.	RecycleMore will educate food generators about edible food recovery organizations through a brochure with information on which organizations to partner with and how to track donations. RecycleMore has contracted with Abbe & Ass. to assist in the Edible Food Recovery Plan for West County.
18991.1 (b)	Edible Food Recovery	Jurisdictions may fund actions taken to comply with this section through franchise fees, local assessments or other funding mechanisms	RecycleMore/ Member Agencies		One time; Assessed as needed	N/A; informational	
Article 11. Capacity Planning							
18992.1 (b)	Organic Waste Recycling Capacity Planning	A jurisdiction contacted by a county pursuant to subdivision shall respond to the county's request for the information necessary to comply with the requirements of this article	RecycleMore	County	120 days of receiving request from County	N/A; respond to County as needed	
18992.1 (d)	Organic Waste Recycling Capacity Planning	If a county determines that organic waste recycling capacity, each jurisdiction that lacks sufficient capacity is required to submit an implementation schedule to the Department that demonstrates how it will ensure there is enough available capacity to recover the organic waste currently disposed	RecycleMore	County	As needed	N/A; respond to County as needed	
18992.2 (c)	Edible Food Recovery Capacity Planning	If a county identifies that new or expanded capacity is needed to recover the amount of edible food identified, each jurisdiction within that	RecycleMore	County	As needed	N/A; respond to County as needed	

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
		county that lacks capacity shall submit an implementation schedule to the Department that demonstrates how it will ensure there is enough new or expanded capacity to recover the edible food currently disposed					
Article 12. Procurement of Recovered Organic Waste Products							
18993.1 (a) (e)	Recovered Organic Waste Product Procurement	Procure quantity of recovered organic waste products that meets or exceeds its current annual recovered organic waste product procurement target. City shall comply with requirement by directly procuring recovered organic waste products or requiring, through written contract, that a direct service provider to the jurisdiction to procure recover organic waste products and provide written documentation	Member Agencies		1/1/2022; Annually	To be evaluated and implemented by each Member Agency	Indicate in individual member agency Implementation Records.
18993.3 (b)	Recycled Paper Content Procurement	Procure paper products, and printing and writing paper, consistent with the requirements of Sections 22150-22154 of the Public Contract Code	Member Agencies		1/1/2022; Ongoing	To be evaluated and implemented by each Member Agency	Store in individual member agency Implementation Records.
18993.3 (c)	Recycled Paper Content Procurement	Require businesses from whom it purchases paper products and printing to certify in writing the minimum percentage of postconsumer paper products and printing and writing paper offered or sold to jurisdiction	Member Agencies		1/1/2022; Ongoing	To be evaluated and implemented by each Member Agency	Store in individual member agency Implementation Records.
Article 13. Reporting							
18994.1 (a)	Reporting	Report to the department a copy of ordinances adopted pursuant to this chapter and the contact information for the person responsible for compliance with the container color requirements	RecycleMore/ Member Agencies		4/1/2022	Completed	Store in individual member agency Implementation Records.
18994.2 (a)	Reporting	Report for the period covering the entire previous calendar year	RecycleMore		10/1/2022; 8/1/2023		First Program reporting 10/1/22 and 8/1 thereafter.

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

Section Reference	Type of Requirement	Requirement	Responsible Party	Delegation	Frequency	Action Item(s)	Deliverables
					and annually thereafter	RecycleMore is working with the Haulers and will be prepared to report.	
Article 14. Enforcement Requirements							
18995.1 (a) (1) (A)	Enforcement	Have an inspection and enforcement program that is designed to ensure overall compliance with this chapter and complete a compliance review of all garbage accounts for commercial businesses that generate two cubic yards or more per week of solid waste and determine compliance, as well as conduct route reviews, and contamination requirements	RecycleMore/Mem ber Agencies	Haulers – Initial Inspections NOV – RecycleMo re Citations – Member Agencies	1/1/2022; Annually	Inspection and Enforcement Program in development with RecycleMore and Haulers	Store in individual member agency Implementation Records.
18995.1 (a) (2)	Enforcement	Conduct inspection of Tier 1 commercial edible food generators and organizations 2022, and Tier 2 on or after January 1, 2024	RecycleMore	Sub- consultant	1/1/2022; 1/1/2024	Inspection and Enforcement Program to be implemented	Store in individual member agency Implementation Records.
18995.1 (a) (3)	Enforcement	Inspect, conduct route or compliance reviews when investigating a complaint	RecycleMore		1/1/2022	RecycleMore will follow-up on complaints.	Store in individual member agency Implementation Records.
18995.1 (a) (4)	Enforcement	Provide educational material describing the applicable requirements of this chapter in response to violations	RecycleMore		1/1/2022- 12/31/2023	Inspection and Enforcement Program to be implemented	Store in individual member agency Implementation Records.
18995.1 (a) (5)	Enforcement	Enforce this chapter in response to violations	RecycleMore		1/1/2024	Inspection and Enforcement Program to be implemented	Store in individual member agency Implementation Records.
18995.1 (a) (6)	Enforcement	At least every five years from the date of issuance, verify through inspection that commercial businesses are meeting de minimis and physical space waivers for compliance	RecycleMore		Every 5 years	Inspection and Enforcement Program to be implemented	Store in individual member agency Implementation Records.
18995.1 (b)	Enforcement	Conduct a sufficient number of route reviews and inspections of entities described in this section to	RecycleMore/	Haulers & Sub- consultant	Ongoing	Inspection and Enforcement Program in	Store in individual member agency Implementation Records.

EXHIBIT A
Draft SB 1383 Workplan between Member Agencies and RecycleMore

November 2022

<i>Section Reference</i>	<i>Type of Requirement</i>	<i>Requirement</i>	<i>Responsible Party</i>	<i>Delegation</i>	<i>Frequency</i>	<i>Action Item(s)</i>	<i>Deliverables</i>
		adequately determine overall compliance with this chapter				development with RecycleMore and Member Agencies	
18995.1 (c)	Enforcement	Generate a written or electronic record for each inspection, route review, and compliance review conducted pursuant to this chapter	RecycleMore	Haulers & Sub-consultant	Ongoing	Inspection and Enforcement Program in development with RecycleMore and Member Agencies	Store in individual member agency Implementation Records.
18995.1 (d)	Enforcement	Documentation of route reviews, compliance and inspection reviews, as well as other records of enforcement shall be maintained in the Implementation Record . Records will include copies of all documentation, enforcement actions, date of violation, date of compliance and educational materials	RecycleMore	Haulers & Sub-consultant	Ongoing	Inspection and Enforcement Program in development with RecycleMore, Hauler and Member Agencies	Store in individual member agency Implementation Records.

**Memorandum of Understanding
Between West Contra Costa Integrated Waste Management Authority and the City of
Richmond Regarding Implementation of SB 1383 Regulations**

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2022 (“**Effective Date**”) by and between the CITY OF RICHMOND (“**Richmond**”), a municipal corporation and charter city hereinafter referred to as “**City**” and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a California joint powers authority (“**Authority**”) (individually “**Party**” and collectively “**Parties**”).

RECITALS

A. The Authority is a joint powers authority established pursuant to the California Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) pursuant to the Joint Exercise of Powers Agreement (“**JEPA**”); and

B. The City is a party to the JEPA and has entered into a franchise agreement with a solid waste collection services provider (“**Provider**”) for the collection of Solid Waste and recyclables (“**Franchise Agreement**”). The Franchise Agreement provides for certain rights and delegated authorities to the respective solid waste service provider; and

C. The Authority operates certain core programs on behalf of and for the benefit of its Member Agencies, including but not limited to providing education regarding recycling, composting, and other methods of waste diversion, and conducting, preparing, and submitting all monitoring and reporting pursuant to the Integrated Waste Management Act (California Public Resources Code §§ 40000 *et seq.*); and

D. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act (which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) (“**SB 1383**”), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires California Department of Resources Recycling and Recovery (“**CalRecycle**”) to develop regulations to reduce organics in landfills as a source of methane; and

E. CalRecycle adopted regulations to implement SB 1383, which are primarily found in Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and in certain other amendments to portions of Title 14 CCR and Title 27 CCR (collectively the “**SB 1383 Regulations**”). The SB 1383 Regulations impose requirements on counties, cities, residential households, commercial businesses (including multi-family residential dwellings), commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

F. The SB 1383 Regulations require cities and counties, among other things, to adopt and enforce a mechanism to implement relevant provisions of the SB 1383 Regulations

concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators, and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations; and

G. The SB 1383 Regulations also require cities and counties to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations; and

H. The Provider has developed programs for Organics Waste collection as required by the Franchise Agreement and applicable law; and

I. Pursuant to 14 CCR 18981.2(b), cities and counties may designate a public or private entity, such as the Authority, to fulfill their SB 1383 obligations to adopt an enforceable mechanism through a MOU. However, 14 CCR 18981.2(c) specifies that cities and counties shall remain ultimately responsible for compliance with SB 1383 Regulations; and

J. The Parties wish to enter into this MOU to designate certain roles and responsibilities that the Authority shall perform on behalf of the City to implement the SB 1383 Regulations that took effect on January 1, 2022 under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.
2. Term. This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 9.
3. Definitions.
 - (a) **“Authority”** means the West Contra Costa Integrated Management Authority.
 - (b) **“Blue Container”** shall have the same meaning as in 14 CCR Section 18982.2(a)(5). The Parties acknowledge that the City may use the term “Recycling Container” in its ordinances to refer to what are defined as Blue Containers herein.
 - (c) **“California Code of Regulations”** or **“CCR”** means the State of California Code of Regulations. CCR references in this MOU are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
 - (d) **“CalRecycle”** or **“Department”** means the California State Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for

developing implementing, and enforcing the SB 1383 Regulations among other duties.

(e) “**City**” means the City of Richmond.

(f) “**Commercial Business**” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multifamily Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of this MOU.

(g) “**Commercial Edible Food Generator**” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in 14 CCR 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

(h) “**Compliance Review**” means a review of records by an Enforcement Agency to determine compliance with SB 1383 Regulations.

(i) “**Container Contamination**” or “**Contaminated Container**” means a container, regardless of type, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(j) “**County**” means the County of Contra Costa.

(k) “**Edible Food**” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this MOU or as otherwise defined in 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded. Nothing herein requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, *et seq.*

(l) “**Enforcement Action**” means an action of the relevant Enforcement Agency to address non-compliance with SB 1383 Regulations including, but not limited to, issuing administrative citations, fines, penalties, or other remedies.

(m) “**Enforcement Agency**” means an entity with the authority to enforce part or all of SB 1383 Regulations as specified herein. The Authority and the City are each an Enforcement Agency.

(n) “**Food Recovery Organization**” means an entity that engages in the collection or receipt of edible food from Commercial Edible Food Generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25).

(o) “**Food Recovery Services**” means a person or entity that collects and transports edible food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for food recovery or as otherwise defined in 14 CCR Section 18982(a)(26).

(p) “**Generator**” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(q) “**Gray Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(28). The Parties acknowledge that the City may use the term “Garbage Container” or “Landfill Container” in its ordinances to refer to what are defined as Gray Containers herein.

(r) “**Green Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Organic Waste. The Parties acknowledge that the City may use the term “Organics Container” or “Compost Container” in its ordinances to refer to what are defined as Green Containers herein.

(s) “**Hauler**” means a person or entity who collects Organic Waste from a Generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” includes public contract haulers, private contract haulers, and Self-Haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.

(t) “**Hauler Route**” means the designated itinerary or sequence of stops for each segment of City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

(u) “**Implementation Record**” means all records, physical or electronic, that must be stored in one central location and are required by the SB 1383 Regulations.

(v) “**Inspection**” means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in the SB 1383 Regulations, or as otherwise defined in 14 CCR Section 18982(a)(35).

(w) “**Member Agencies**” mean the parties to the JEPA. Current Member Agencies are the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo. The Member Agency boundaries for the purpose of this MOU are the legal boundaries of each of the incorporated municipalities.

(x) “**Organics,**” or “**Organic Waste**” means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(y) “**Paper Products**” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

(z) “**Printing and Writing Paper**” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other writing papers, posters,

index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(aa) **“Prohibited Container Contaminants”** means the following: (i) discarded materials placed in the Green Container that are not identified as acceptable Organic Waste for the City’s Green Container; (ii) discarded materials placed in the Grey Container that are acceptable Organic Waste to be placed in the City’s Green Container.

(bb) **“Route Review”** means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical or electronic Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(cc) **“SB 1383 Regulations,”** means Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR.

(dd) **“Self-Hauler”** means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

(ee) **“Solid Waste”** has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- (i) Hazardous waste, as defined in the Public Resources Code Section 40141.
- (ii) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- (iii) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.

4. **Authority Responsibilities.** The City hereby delegates to the Authority, and the Authority hereby accepts, the following enumerated responsibilities for compliance with the provisions of SB 1383 Regulations to the extent allowed by law and as specified herein. The Authority is

concurrently with its approval of this MOU approving MOUs with the other Member Agencies in which it is accepting nearly identical delegations from the other Member Agencies (the “Other MOUs”). It is the Authority’s desire to administer responsibilities so delegated in a uniform fashion across all of the Members, so far as is feasible under the specific circumstances prevailing in each Member Agency. In furtherance of this intent, the Authority, in consultation with the Member Agencies, has developed an initial Workplan, attached as Exhibit A and hereby incorporated by this reference, that details the manner in which it will initially perform its responsibilities under this MOU and the Other MOUs. Each year, in conjunction with the Annual Budget, the Authority Board shall consider and approve any changes to the Workplan, including any amendments to align the Workplan with the Annual Budget and subject to the Executive Director’s ability to make administrative changes to the Workplan as described in this Section 4.

The Workplan is intended to be a flexible framework that can be revised as may be necessary. Accordingly, the Parties agree that the Executive Director of the Authority, after first consulting with the City and the other Member Agencies, may administratively amend the Workplan from time-to-time as may be necessary, so long as the amendments are consistent with the SB 1383 Regulations, this MOU, the Other MOUs, and Authority Board policy. The Parties agree that the Authority granted herein is intended to be, and shall be, limited to circumstances necessitated by unanticipated regulatory changes and interpretations, significant changed circumstances within the Authority related to compliance with the SB 1383 Regulations, and the discovery of new information related the relative effectiveness of the various programs in furthering the purposes of the SB 1383 Regulations. The Parties agree that, to the extent permitted by law or regulation, the Authority may perform its responsibilities using its own staff or by contracting with public and private entities. Whenever the Workplan is changed, the Authority shall provide the City with an updated version of the Workplan within ten (10) days.

(a) Education and Outreach. The Authority shall conduct the following education and outreach on behalf of the City:

(i) Generators. Prior to February 1, 2022, the Authority shall make available to Generators, through print and/or electronic media and maintain on its website, the information required pursuant to 14 CCR Sections 18985.1 and 18985.2. The Authority shall update such information as necessary, but at least annually. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, the City Manager or designee. Each Party shall cooperate in good faith regarding the delivery, review, and approval materials to be disseminated pursuant to this Section, including delivering the materials for review and approval, delivering comments on the materials, and responding to such comments.

(ii) City Procurement Target. The Authority shall annually notify City of its Organic Waste product procurement target, as required and determined by CalRecycle. Before CalRecycle releases the official procurement targets for City on January 1, 2022 and every five years thereafter, the Authority shall assist City in calculating estimates of the procurement targets pursuant to 14 CCR 18993.1. In addition, the Authority will facilitate the City’s procurement of recovered organic waste products.

(b) Reporting and Recordkeeping. The Authority shall conduct the following

reporting and recordkeeping services on behalf of City:

(i) Organics Capacity and Edible Food Recovery. The Authority shall submit reports for Organics processing capacity and Edible Food recovery planning requirements to the County within 120 days of the County's request as required by 14 CCR 18992.3.

(ii) Implementation Record. The Authority shall be responsible for maintaining the City's Implementation Record, and making it available to the Department, in accordance with 14 CCR Sections 18985.3 and 18995.2. The Authority shall endeavor to obtain all records required by Chapter 12 and include them in the Implementation Record, and the City shall reasonably cooperate with the Authority in obtaining such records from the City and third parties, including creating such records if necessary. In the event that the Department requests access to the Implementation Record, the Authority shall promptly advise the City of the request.

(iii) Compliance and Annual Reports. The Authority shall submit the initial City compliance report and City annual reports to CalRecycle as required by 14 CCR 18994.1 and 18994.2. Authority shall provide a draft copy of such reports to the City's representative for its review and approval at least 14 days prior to the applicable reporting deadlines set forth in these sections.

(c) Edible Food Recovery Programs. The Authority shall and implement the SB 1383 Regulations' edible food recovery program requirements to which jurisdictions are subject under 14 CCR §§ 18991.1–18991.2. The Parties agree that these requirements may be wholly or partially satisfied by agreement with the County or other third parties. The Authority's duties shall include, but are not limited to: assessment of existing capacity for Edible Food recovery, establishing an Edible Food recovery program, inspection of Commercial Food Edible Generators for compliance, and education and outreach to all businesses, residents, Commercial Edible Food Generators, and any other entities or parties required by law.

(d) Organic Waste Processing Capacity and Diversion Planning. The Authority shall itself or in conjunction with the County estimate existing Organics processing and Edible Food recovery capacities available pursuant to 14 CCR 18992.1 and 18992.2. If it is found that either are lacking, the Authority shall assist City in creating an implementation plan to expand capacity.

(e) Receipt of Complaints. The Authority shall be responsible for receiving all written complaints of alleged SB 1383 Regulations violations relating to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers occurring or having occurred within City's jurisdiction ("**Complaints**"). Such Complaints shall include all of the following information in accordance with 14 CCR 18995.3:

(i) If the Complaint is not anonymous, the name and contact information of the complainant;

(ii) The identity of the alleged violator, if known;

(iii) A description of the alleged violation including location(s) and all other relevant facts known to the complainant;

(iv) Any relevant photographic or documentary evidence to support the allegations in the Complaint; and

(v) The identity of any witnesses, if known.

If the Authority receives a complaint, it shall forward a copy to City within ten (10) working days of receipt.

(f) Investigation of Complaints. Where a Complaint: 1) meets the requirements of Section 4(e); and 2) the Authority determines that the allegations, if true, would constitute a violation of SB 1383 Regulations, it shall function as the Enforcement Agency for the purposes of investigation and commence an investigation within ninety (90) days of receiving such Complaint. The Authority may collaborate with City and/or a Hauler in such investigation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Complaint. The Authority may decline to investigate a Complaint if, in its judgment, investigation is unwarranted because the allegations are contrary to facts known to it.

(i) Where the Authority has investigated or declined to investigate a non-anonymous Complaint, it shall notify the complainant regarding the results of the investigation through the contact information provided by the complainant. It shall provide a copy of such notice to the City within ten (10) working days of receipt.

(ii) The Authority shall maintain records of all Complaints received in compliance with Section 4(e) and responses provided in compliance with this subsection in the Implementation Record. The records shall include the Complaint as received and the Authority's determination of compliance or Notice of Violations issued.

(g) Enforcement. The Authority shall function as the Enforcement Agency and enforce the [identify City ordinance number title and/or number] as required by SB 1383 by performing the following actions:

(i) Monitoring compliance of Generators, Haulers, Food Recovery Organizations and Food Recovery Services through Inspections, Compliance Review and Route Review conducted in accordance with SB 1383 Regulations (14 CCR § 18995.1). The Authority may collaborate with City and/or a Hauler in such Inspections, Compliance Review and Route Review where appropriate; and

(ii) Issuing Notice of Violations to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers in accordance with 14 CCR 18995.4 and providing a copy of such to City within ten (10) working days of issuance. The Authority may collaborate with City and/or a Hauler before issuance of a Notice of Violation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Enforcement Action. If the violator fails to comply with the Notice of Violation within the deadline set forth therein, the Authority shall refer the matter to City to impose penalties pursuant to the SB 1383 Regulations and it shall function as the Enforcement Agency in that matter thereafter.

(h) Waivers. The Authority shall create a standardized waiver request form, which

shall be a printable document maintained on the Authority's website. Each time the Authority updates the form, it shall so advise the City and the Provider. The Authority shall review the following waiver requests and, may consult with the Provider regarding such request and, thereafter, either approve or deny each request. The Authority will maintain, and regularly provide the City with, a list of Generators operating in its jurisdiction that have applied for waivers. The list shall include the status of the application.

(i) De Minimis Waivers: The Authority may waive a Commercial Business's obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of SB 1383 if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as set forth herein. Commercial Businesses requesting a de minimis waiver shall:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted herein; and

(2) provide sufficient documentation that either:

(a) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or

(b) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business' total waste; and

(3) Acknowledge that it must notify the Authority if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded; and

(4) Acknowledge that, if the de minimis waiver is granted, it will expire after 5 years and that the waiver is only valid as to the Commercial Business that applied for the waiver, and not as to the property or another business in the same location.

(ii) Physical Space Waivers: The Authority may waive an existing Commercial Business's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if it receives evidence from its staff, City staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of SB 1383. A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver; and

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer; and

(3) Provide written verification to the Authority that it is still eligible for physical space waiver every five years, if the Authority has approved application for a physical space waiver.

(iii) Emergency Circumstances – Waivers for City: The Authority will notify CalRecycle and apply for a waiver to landfill Organics if City experiences a natural disaster, uses a recyclable materials or Organic Waste processing facility that has a temporary operational failure, or unforeseen operational restrictions have been imposed upon it by a regulatory agency pursuant to 14 CCR 18984.13.

5. City Responsibility. City shall be responsible for all other applicable SB1383 and SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein, including the Workplan.

6. Sharing of information. Within thirty (30) days of a request by the Authority, or as soon thereafter as such information is available to City, the City shall share with the Authority all data, documents, contact information for Generators within its jurisdiction, or any other information necessary for the Authority to carry out the responsibilities delegated to it in this MOU.

7. Staffing and funding. In order for the Authority to carry out its responsibilities in connection with the administration and implementation of the SB 1383 Regulations as specified in this MOU, the Parties agree that the Authority's costs associated with its responsibilities under this MOU and the Other MOUs will be funded through the Authority's budget and rate setting process, except as otherwise specified herein. These costs may include the Authority's cost to engage independent contractors to perform some or all of the duties delegated to it herein. Budget changes related to this MOU will be integrated into the Authority's regular budget process, as approved by the Board of Directors.

8. Indemnification/Hold Harmless. Each Party shall solely be liable for any and all damages, including attorney's fees, resulting from the actions or omissions arising from its performance of the terms of this MOU, except as is expressly stated in Section 9. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Parties") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Parties because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this MOU.

For purposes of indemnification set forth in this MOU, "Indemnified Parties" means the applicable party, its affiliates, successors and assigns and its and their employees, directors, officers, agents, and volunteers. The Indemnified Parties: 1) shall notify the Indemnifying Party

in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby; 2) shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and 3) shall reasonably cooperate with the defense.

9. Apportionment of Penalties.

(a) Any penalties assessed against the City by CalRecycle that are the result of an Authority's failure to satisfy its obligations under the following provisions of this Agreement and its alleged failure to comply with the corresponding provision of the SB 1383 Regulations shall be paid by the Authority:

(i) Subdivision (a)(i) of Section 4 (14 CCR §§ 18985.1 and 18985.2)

(ii) Subdivision (b)(i) of Section 4 (14 CCR § 18992.3)

(iii) Subdivision (b)(ii) of Section 4 (14 CCR §§ 18985.3 and 18995.2)

(iv) Subdivision (b)(iii) of Section 4 (14 CCR § 18994.1)

(v) Subdivision (c) of Section 4 (14 CCR §§ 18991.1–18991.2)

(vi) Subdivision (d) of Section 4 (14 CCR §§ 18992.1 and 18992.2), with the express indication that the Authority shall not be required to pay a penalty arising from the City's failure to expand capacity.

(vii) Subdivision (e) of Section 4 (14 CCR §§ 18995.3(a)-(b))

(viii) Subdivision (f) of Section 4 (14 CCR §§ 18995.3(c)-(e))

(ix) Subdivision (g)(i) of Section 4 (14 CCR §§ 18995.1)

(x) Subdivision (g)(ii) of Section 4 (14 CCR §§ 18995.4) with the express indication that the Authority is not required to pay a penalty arising from an alleged failure to commence an action to impose penalties pursuant to 14 CCR sections 18997.1 and 18997.2 as the Authority's responsibility under subdivision (g) of Section 4 does not extend to commencing such actions.

(xi) Subdivision (h) of Section 4 (14 CCR §§ 18984.11)

(b) For avoidance of doubt, the Parties hereby indicate that any penalties arising from SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein shall not be payable by the Authority.

(c) In the event that the Authority pays any penalties assessed against the City by CalRecycle that are the result of the alleged failure to comply with Subdivision (a)(i) of Section 4, the Authority shall be entitled to allocate a reasonable portion of the penalty to the City if the

Authority had provided compliant educational materials to the City for approval, and the City failed to approve them.

(d) Nothing in this Section shall prevent either the City or the Authority (on the City's behalf when the Authority is obligated to pay the penalty) from challenging CalRecycle enforcement activities. In the event that the Authority intends to challenge CalRecycle's imposition of a penalty imposed on the City, the City shall reasonably cooperate and assist the Authority in its legal challenge. Without limiting the generality of the foregoing, the City shall promptly share any Notices of Violation or accusation issued pursuant to 14 CCR 18997.5 that it receives related to any alleged violations that subdivision (a) would require the Authority to pay.

(e) Any penalties paid by the Authority pursuant to this section shall be paid out of Authority funds.

10. Termination. Either Party may terminate this MOU upon giving one hundred and eighty (180) calendar days' prior written notice to the other Party in the manner set forth in Section 10.

Upon termination as set forth herein, City will be required to remit to the Authority the costs to conduct the services described in Section 4 including costs generated through the end of the Authority's fiscal year and shall be responsible for implementing applicable SB 1383 Regulations delegated to the Authority through this MOU and the Authority shall have no further obligations to carry out the Authority Responsibilities as described in Section 4. The Authority will provide City its Implementation Records within its possession upon termination.

11. Notice. All notices shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Party, 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 Party at its principal office, or to such other address as the Party may designate from time to time by written notice given in the manner specified in this Section.

Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery or two (2) days after mailing if deposited in the United States mail.

12. Governing Law and Venue. This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Venue in any proceeding or action among the Parties arising out of this MOU shall be in Contra Costa County, California.

13. Amendment. This MOU may only be modified or amended by a subsequent written agreement signed by all Parties.

14. Entire Agreement. This MOU, including the Workplan, as it may be amended, represents the entire and integrated agreement between the Parties as to the subject matter referenced herein.

15. Severability. No provision of this MOU shall be interpreted to require any unlawful action by any Party. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, then the meaning of that section or

clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this MOU with respect to the matter in question, and the remainder of the MOU shall remain in full force and effect. However, in the event such a section or clause is an essential element of the MOU, the Parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

16. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

17. No Waiver. The failure of any Party hereto to enforce any of the provisions of this MOU, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

18. No Partnership. The relationship between the Parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this MOU shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first above written.

ATTEST:

CITY OF RICHMOND

Clerk

Mayor

APPROVED AS TO FORM:

Attorney

ATTEST:

**WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY**

Board Secretary

Board Chair

APPROVED AS TO FORM:

Authority Counsel

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Summary Report	
Title	compareDocs Comparison Results
Date & Time	10/27/2022 4:30:23 PM
Comparison Time	0.70 seconds
compareDocs version	v5.1.500.8

Sources	
Original Document	[#5001268] [v3] 2022-02-07 SB 1383 Richmond MOU.docx
Modified Document	[#5001276] [v3] 2022-10-27 SB 1383 San Pablo MOU.docx

Comparison Statistics	
Insertions	36
Deletions	7
Changes	10
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
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Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
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Merged cells	
Changed lines	Mark left border.

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Open Comparison Report after saving	General	Always
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Character Level	Word	False
Include Comments	Word	False
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Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	False
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print

**Memorandum of Understanding
Between West Contra Costa Integrated Waste Management Authority and the City of San Pablo Regarding Implementation of SB 1383 Regulations**

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2022 (“**Effective Date**”) by and between the CITY OF SAN PABLO (“**San Pablo**”), a municipal corporation hereinafter referred to as “**City**” and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a California joint powers authority (“**Authority**”) (individually “**Party**” and collectively “**Parties**”).

RECITALS

A. The Authority is a joint powers authority established pursuant to the California Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) pursuant to the Joint Exercise of Powers Agreement (“**JEPA**”); and

B. The City is a party to the JEPA and has entered into a franchise agreement with a solid waste collection services provider (“**Provider**”) for the collection of Solid Waste and recyclables (“**Franchise Agreement**”). The Franchise Agreement provides for certain rights and delegated authorities to the respective solid waste service provider; and

C. The Authority operates certain core programs on behalf of and for the benefit of its Member Agencies, including but not limited to providing education regarding recycling, composting, and other methods of waste diversion, and conducting, preparing, and submitting all monitoring and reporting pursuant to the Integrated Waste Management Act (California Public Resources Code §§ 40000 *et seq.*); and

D. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act (which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) (“**SB 1383**”), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires California Department of Resources Recycling and Recovery (“**CalRecycle**”) to develop regulations to reduce organics in landfills as a source of methane; and

E. CalRecycle adopted regulations to implement SB 1383, which are primarily found in Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and in certain other amendments to portions of Title 14 CCR and Title 27 CCR (collectively the “**SB 1383 Regulations**”). The SB 1383 Regulations impose requirements on counties, cities, residential households, commercial businesses (including multi-family residential dwellings), commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

F. The SB 1383 Regulations require cities and counties, among other things, to adopt and enforce a mechanism to implement relevant provisions of the SB 1383 Regulations

concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators, and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations; and

G. The SB 1383 Regulations also require cities and counties to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations; and

H. The Provider has developed programs for Organics Waste collection as required by the Franchise Agreement and applicable law; and

I. Pursuant to 14 CCR 18981.2(b), cities and counties may designate a public or private entity, such as the Authority, to fulfill their SB 1383 obligations to adopt an enforceable mechanism through a MOU. However, 14 CCR 18981.2(c) specifies that cities and counties shall remain ultimately responsible for compliance with SB 1383 Regulations; and

J. The Parties wish to enter into this MOU to designate certain roles and responsibilities that the Authority shall perform on behalf of the City to implement the SB 1383 Regulations that took effect on January 1, 2022 under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.
2. Term. This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 9.
3. Definitions.
 - (a) **“Authority”** means the West Contra Costa Integrated Management Authority.
 - (b) **“Blue Container”** shall have the same meaning as in 14 CCR Section 18982.2(a)(5). The Parties acknowledge that the City may use the term “Recycling Container” in its ordinances to refer to what are defined as Blue Containers herein.
 - (c) **“California Code of Regulations”** or **“CCR”** means the State of California Code of Regulations. CCR references in this MOU are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
 - (d) **“CalRecycle”** or **“Department”** means the California State Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for

developing implementing, and enforcing the SB 1383 Regulations among other duties.

(e) **“City”** means the City of San Pablo.

(f) **“Commercial Business”** means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multifamily Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of this MOU.

(g) **“Commercial Edible Food Generator”** includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in 14 CCR 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

(h) **“Compliance Review”** means a review of records by an Enforcement Agency to determine compliance with SB 1383 Regulations.

(i) **“Container Contamination”** or **“Contaminated Container”** means a container, regardless of type, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(j) **“County”** means the County of Contra Costa.

(k) **“Edible Food”** means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this MOU or as otherwise defined in 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded. Nothing herein requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, *et seq.*

(l) **“Enforcement Action”** means an action of the relevant Enforcement Agency to address non-compliance with SB 1383 Regulations including, but not limited to, issuing administrative citations, fines, penalties, or other remedies.

(m) **“Enforcement Agency”** means an entity with the authority to enforce part or all of SB 1383 Regulations as specified herein. The Authority and the City are each an Enforcement Agency.

(n) **“Food Recovery Organization”** means an entity that engages in the collection or receipt of edible food from Commercial Edible Food Generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25).

(o) **“Food Recovery Services”** means a person or entity that collects and transports edible food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for food recovery or as otherwise defined in 14 CCR Section 18982(a)(26).

(p) “**Generator**” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(q) “**Gray Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(28). The Parties acknowledge that the City may use the term “Garbage Container” or “Landfill Container” in its ordinances to refer to what are defined as Gray Containers herein.

(r) “**Green Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Organic Waste. The Parties acknowledge that the City may use the term “Organics Container” or “Compost Container” in its ordinances to refer to what are defined as Green Containers herein.

(s) “**Hauler**” means a person or entity who collects Organic Waste from a Generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” includes public contract haulers, private contract haulers, and Self-Haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.

(t) “**Hauler Route**” means the designated itinerary or sequence of stops for each segment of City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

(u) “**Implementation Record**” means all records, physical or electronic, that must be stored in one central location and are required by the SB 1383 Regulations.

(v) “**Inspection**” means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in the SB 1383 Regulations, or as otherwise defined in 14 CCR Section 18982(a)(35).

(w) “**Member Agencies**” mean the parties to the JEPA. Current Member Agencies are the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo. The Member Agency boundaries for the purpose of this MOU are the legal boundaries of each of the incorporated municipalities.

(x) “**Organics,**” or “**Organic Waste**” means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(y) “**Paper Products**” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

(z) “**Printing and Writing Paper**” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other writing papers, posters,

index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(aa) **“Prohibited Container Contaminants”** means the following: (i) discarded materials placed in the Green Container that are not identified as acceptable Organic Waste for the City’s Green Container; (ii) discarded materials placed in the Grey Container that are acceptable Organic Waste to be placed in the City’s Green Container.

(bb) **“Route Review”** means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical or electronic Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(cc) **“SB 1383 Regulations,”** means Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR.

(dd) **“Self-Hauler”** means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

(ee) **“Solid Waste”** has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- (i) Hazardous waste, as defined in the Public Resources Code Section 40141.
- (ii) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- (iii) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.

4. **Authority Responsibilities.** The City hereby delegates to the Authority, and the Authority hereby accepts, the following enumerated responsibilities for compliance with the provisions of SB 1383 Regulations to the extent allowed by law and as specified herein. The Authority is

concurrently with its approval of this MOU approving MOUs with the other Member Agencies in which it is accepting nearly identical delegations from the other Member Agencies (the “Other MOUs”). It is the Authority’s desire to administer responsibilities so delegated in a uniform fashion across all of the Members, so far as is feasible under the specific circumstances prevailing in each Member Agency. In furtherance of this intent, the Authority, in consultation with the Member Agencies, has developed an initial Workplan, attached as Exhibit A and hereby incorporated by this reference, that details the manner in which it will initially perform its responsibilities under this MOU and the Other MOUs. Each year, in conjunction with the Annual Budget, the Authority Board shall consider and approve any changes to the Workplan, including any amendments to align the Workplan with the Annual Budget and subject to the Executive Director’s ability to make administrative changes to the Workplan as described in this Section 4.

The Workplan is intended to be a flexible framework that can be revised as may be necessary. Accordingly, the Parties agree that the Executive Director of the Authority, after first consulting with the City and the other Member Agencies, may administratively amend the Workplan from time-to-time as may be necessary, so long as the amendments are consistent with the SB 1383 Regulations, this MOU, the Other MOUs, and Authority Board policy. The Parties agree that the Authority granted herein is intended to be, and shall be, limited to circumstances necessitated by unanticipated regulatory changes and interpretations, significant changed circumstances within the Authority related to compliance with the SB 1383 Regulations, and the discovery of new information related the relative effectiveness of the various programs in furthering the purposes of the SB 1383 Regulations. The Parties agree that, to the extent permitted by law or regulation, the Authority may perform its responsibilities using its own staff or by contracting with public and private entities. Whenever the Workplan is changed, the Authority shall provide the City with an updated version of the Workplan within ten (10) days.

(a) Education and Outreach. The Authority shall conduct the following education and outreach on behalf of the City:

(i) Generators. Prior to February 1, 2022, the Authority shall make available to Generators, through print and/or electronic media and maintain on its website, the information required pursuant to 14 CCR Sections 18985.1 and 18985.2. The Authority shall update such information as necessary, but at least annually. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, the City Manager or designee. Each Party shall cooperate in good faith regarding the delivery, review, and approval materials to be disseminated pursuant to this Section, including delivering the materials for review and approval, delivering comments on the materials, and responding to such comments.

(ii) City Procurement Target. The Authority shall annually notify City of its Organic Waste product procurement target, as required and determined by CalRecycle. Before CalRecycle releases the official procurement targets for City on January 1, 2022 and every five years thereafter, the Authority shall assist City in calculating estimates of the procurement targets pursuant to 14 CCR 18993.1. In addition, the Authority will facilitate the City’s procurement of recovered organic waste products.

(b) Reporting and Recordkeeping. The Authority shall conduct the following

reporting and recordkeeping services on behalf of City:

(i) Organics Capacity and Edible Food Recovery. The Authority shall submit reports for Organics processing capacity and Edible Food recovery planning requirements to the County within 120 days of the County’s request as required by 14 CCR 18992.3.

(ii) Implementation Record. The Authority shall be responsible for maintaining the City’s Implementation Record, and making it available to the Department, in accordance with 14 CCR Sections 18985.3 and 18995.2. The Authority shall endeavor to obtain all records required by Chapter 12 and include them in the Implementation Record, and the City shall reasonably cooperate with the Authority in obtaining such records from the City and third parties, including creating such records if necessary. In the event that the Department requests access to the Implementation Record, the Authority shall promptly advise the City of the request.

(iii) Compliance and Annual Reports. The Authority shall submit the initial City compliance report and City annual reports to CalRecycle as required by 14 CCR 18994.1 and 18994.2. Authority shall provide a draft copy of such reports to the City’s representative for its review and approval at least 14 days prior to the applicable reporting deadlines set forth in these sections.

(c) Edible Food Recovery Programs. The Authority shall and implement the SB 1383 Regulations’ edible food recovery program requirements to which jurisdictions are subject under 14 CCR §§ 18991.1–18991.2. The Parties agree that these requirements may be wholly or partially satisfied by agreement with the County or other third parties. The Authority’s duties shall include, but are not limited to: assessment of existing capacity for Edible Food recovery, establishing an Edible Food recovery program, inspection of Commercial Food Edible Generators for compliance, and education and outreach to all businesses, residents, Commercial Edible Food Generators, and any other entities or parties required by law.

(d) Organic Waste Processing Capacity and Diversion Planning. The Authority shall itself or in conjunction with the County estimate existing Organics processing and Edible Food recovery capacities available pursuant to 14 CCR 18992.1 and 18992.2. If it is found that either are lacking, the Authority shall assist City in creating an implementation plan to expand capacity.

(e) Receipt of Complaints. The Authority shall be responsible for receiving all written complaints of alleged SB 1383 Regulations violations relating to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers occurring or having occurred within City’s jurisdiction (“**Complaints**”). Such Complaints shall include all of the following information in accordance with 14 CCR 18995.3:

- (i) If the Complaint is not anonymous, the name and contact information of the complainant;
- (ii) The identity of the alleged violator, if known;
- (iii) A description of the alleged violation including location(s) and all other relevant facts known to the complainant;

(iv) Any relevant photographic or documentary evidence to support the allegations in the Complaint; and

(v) The identity of any witnesses, if known.

If the Authority receives a complaint, it shall forward a copy to City within ten (10) working days of receipt.

(f) Investigation of Complaints. Where a Complaint: 1) meets the requirements of Section 4(e); and 2) the Authority determines that the allegations, if true, would constitute a violation of SB 1383 Regulations, it shall function as the Enforcement Agency for the purposes of investigation and commence an investigation within ninety (90) days of receiving such Complaint. The Authority may collaborate with City and/or a Hauler in such investigation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Complaint. The Authority may decline to investigate a Complaint if, in its judgment, investigation is unwarranted because the allegations are contrary to facts known to it.

(i) Where the Authority has investigated or declined to investigate a non-anonymous Complaint, it shall notify the complainant regarding the results of the investigation through the contact information provided by the complainant. It shall provide a copy of such notice to the City within ten (10) working days of receipt.

(ii) The Authority shall maintain records of all Complaints received in compliance with Section 4(e) and responses provided in compliance with this subsection in the Implementation Record. The records shall include the Complaint as received and the Authority's determination of compliance or Notice of Violations issued.

(g) Enforcement. The Authority shall function as the Enforcement Agency and enforce the provisions of Chapter 8.12 (Garbage, Recyclable Materials and Organic Waste) of the San Pablo Municipal Code that are required by SB 1383 by performing the following actions:

(i) Monitoring compliance of Generators, Haulers, Food Recovery Organizations and Food Recovery Services through Inspections, Compliance Review and Route Review conducted in accordance with SB 1383 Regulations (14 CCR § 18995.1). The Authority may collaborate with City and/or a Hauler in such Inspections, Compliance Review and Route Review where appropriate; and

(ii) Issuing Notice of Violations to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers in accordance with 14 CCR 18995.4 and providing a copy of such to City within ten (10) working days of issuance. The Authority may collaborate with City and/or a Hauler before issuance of a Notice of Violation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Enforcement Action. If the violator fails to comply with the Notice of Violation within the deadline set forth therein, the Authority shall refer the matter to City to impose penalties pursuant to the SB 1383 Regulations and it shall function as the Enforcement Agency in that matter thereafter.

(h) Waivers. The Authority shall create a standardized waiver request form, which

shall be a printable document maintained on the Authority’s website. Each time the Authority updates the form, it shall so advise the City and the Provider. The Authority shall review the following waiver requests and, may consult with the Provider regarding such request and, thereafter, either approve or deny each request. The Authority will maintain, and regularly provide the City with, a list of Generators operating in its jurisdiction that have applied for waivers. The list shall include the status of the application.

(i) De Minimis Waivers: The Authority may waive a Commercial Business’s obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of SB 1383 if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as set forth herein. Commercial Businesses requesting a de minimis waiver shall:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted herein; and

(2) provide sufficient documentation that either:

(a) The Commercial Business’ total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business’ total waste; or

(b) The Commercial Business’ total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business’ total waste; and

(3) Acknowledge that it must notify the Authority if circumstances change such that Commercial Business’s Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded; and

(4) Acknowledge that, if the de minimis waiver is granted, it will expire after 5 years and that the waiver is only valid as to the Commercial Business that applied for the waiver, and not as to the property or another business in the same location.

(ii) Physical Space Waivers: The Authority may waive an existing Commercial Business’s obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if it receives evidence from its staff, City staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of SB 1383. A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver; and

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer; and

(3) Provide written verification to the Authority that it is still eligible for physical space waiver every five years, if the Authority has approved application for a physical space waiver.

(iii) Emergency Circumstances – Waivers for City: The Authority will notify CalRecycle and apply for a waiver to landfill Organics if City experiences a natural disaster, uses a recyclable materials or Organic Waste processing facility that has a temporary operational failure, or unforeseen operational restrictions have been imposed upon it by a regulatory agency pursuant to 14 CCR 18984.13.

5. City Responsibility. City shall be responsible for all other applicable SB1383 and SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein, including the Workplan.

6. Sharing of information. Within thirty (30) days of a request by the Authority, or as soon thereafter as such information is available to City, the City shall share with the Authority all data, documents, contact information for Generators within its jurisdiction, or any other information necessary for the Authority to carry out the responsibilities delegated to it in this MOU.

7. Staffing and funding. In order for the Authority to carry out its responsibilities in connection with the administration and implementation of the SB 1383 Regulations as specified in this MOU, the Parties agree that the Authority's costs associated with its responsibilities under this MOU and the Other MOUs will be funded through the Authority's budget and rate setting process, except as otherwise specified herein. These costs may include the Authority's cost to engage independent contractors to perform some or all of the duties delegated to it herein. Budget changes related to this MOU will be integrated into the Authority's regular budget process, as approved by the Board of Directors.

8. Indemnification/Hold Harmless. Each Party shall solely be liable for any and all damages, including attorney's fees, resulting from the actions or omissions arising from its performance of the terms of this MOU, except as is expressly stated in Section 9. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Parties") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Parties because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this MOU.

For purposes of indemnification set forth in this MOU, "Indemnified Parties" means the applicable party, its affiliates, successors and assigns and its and their employees, directors, officers, agents, and volunteers. The Indemnified Parties: 1) shall notify the Indemnifying Party

in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby; 2) shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and 3) shall reasonably cooperate with the defense.

9. Apportionment of Penalties.

(a) Any penalties assessed against the City by CalRecycle that are the result of an Authority's failure to satisfy its obligations under the following provisions of this Agreement and its alleged failure to comply with the corresponding provision of the SB 1383 Regulations shall be paid by the Authority:

(i) Subdivision (a)(i) of Section 4 (14 CCR §§ 18985.1 and 18985.2)

(ii) Subdivision (b)(i) of Section 4 (14 CCR § 18992.3)

(iii) Subdivision (b)(ii) of Section 4 (14 CCR §§ 18985.3 and 18995.2)

(iv) Subdivision (b)(iii) of Section 4 (14 CCR § 18994.1)

(v) Subdivision (c) of Section 4 (14 CCR §§ 18991.1–18991.2)

(vi) Subdivision (d) of Section 4 (14 CCR §§ 18992.1 and 18992.2), with the express indication that the Authority shall not be required to pay a penalty arising from the City's failure to expand capacity.

(vii) Subdivision (e) of Section 4 (14 CCR §§ 18995.3(a)-(b))

(viii) Subdivision (f) of Section 4 (14 CCR §§ 18995.3(c)-(e))

(ix) Subdivision (g)(i) of Section 4 (14 CCR §§ 18995.1)

(x) Subdivision (g)(ii) of Section 4 (14 CCR §§ 18995.4) with the express indication that the Authority is not required to pay a penalty arising from an alleged failure to commence an action to impose penalties pursuant to 14 CCR sections 18997.1 and 18997.2 as the Authority's responsibility under subdivision (g) of Section 4 does not extend to commencing such actions.

(xi) Subdivision (h) of Section 4 (14 CCR §§ 18984.11)

(b) For avoidance of doubt, the Parties hereby indicate that any penalties arising from SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein shall not be payable by the Authority.

(c) In the event that the Authority pays any penalties assessed against the City by CalRecycle that are the result of the alleged failure to comply with Subdivision (a)(i) of Section 4, the Authority shall be entitled to allocate a reasonable portion of the penalty to the City if the

Authority had provided compliant educational materials to the City for approval, and the City failed to approve them.

(d) Nothing in this Section shall prevent either the City or the Authority (on the City's behalf when the Authority is obligated to pay the penalty) from challenging CalRecycle enforcement activities. In the event that the Authority intends to challenge CalRecycle's imposition of a penalty imposed on the City, the City shall reasonably cooperate and assist the Authority in its legal challenge. Without limiting the generality of the foregoing, the City shall promptly share any Notices of Violation or accusation issued pursuant to 14 CCR 18997.5 that it receives related to any alleged violations that subdivision (a) would require the Authority to pay.

(e) Any penalties paid by the Authority pursuant to this section shall be paid out of Authority funds.

10. Termination. Either Party may terminate this MOU upon giving one hundred and eighty (180) calendar days' prior written notice to the other Party in the manner set forth in Section 10.

Upon termination as set forth herein, City will be required to remit to the Authority the costs to conduct the services described in Section 4 including costs generated through the end of the Authority's fiscal year and shall be responsible for implementing applicable SB 1383 Regulations delegated to the Authority through this MOU and the Authority shall have no further obligations to carry out the Authority Responsibilities as described in Section 4. The Authority will provide City its Implementation Records within its possession upon termination.

11. Notice. All notices shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Party, 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 Party at its principal office, or to such other address as the Party may designate from time to time by written notice given in the manner specified in this Section.

Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery or two (2) days after mailing if deposited in the United States mail.

12. Governing Law and Venue. This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Venue in any proceeding or action among the Parties arising out of this MOU shall be in Contra Costa County, California.

13. Amendment. This MOU may only be modified or amended by a subsequent written agreement signed by all Parties.

14. Entire Agreement. This MOU, including the Workplan, as it may be amended, represents the entire and integrated agreement between the Parties as to the subject matter referenced herein.

15. Severability. No provision of this MOU shall be interpreted to require any unlawful action by any Party. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, then the meaning of that section or

clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this MOU with respect to the matter in question, and the remainder of the MOU shall remain in full force and effect. However, in the event such a section or clause is an essential element of the MOU, the Parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

16. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

17. No Waiver. The failure of any Party hereto to enforce any of the provisions of this MOU, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

18. No Partnership. The relationship between the Parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this MOU shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first above written.

ATTEST:

CITY OF SAN PABLO

Clerk

Mayor

APPROVED AS TO FORM:

Attorney

ATTEST:

**WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY**

Board Secretary

Board Chair

APPROVED AS TO FORM:

Authority Counsel

5001276.3

**Memorandum of Understanding
Between West Contra Costa Integrated Waste Management Authority and the City of Pinole
Regarding Implementation of SB 1383 Regulations**

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2022 (“**Effective Date**”) by and between the CITY OF PINOLE (“**Pinole**”), a municipal corporation hereinafter referred to as “**City**” and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a California joint powers authority (“**Authority**”) (individually “**Party**” and collectively “**Parties**”).

RECITALS

A. The Authority is a joint powers authority established pursuant to the California Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) pursuant to the Joint Exercise of Powers Agreement (“**JEPA**”); and

B. The City is a party to the JEPA and has entered into a franchise agreement with a solid waste collection services provider (“**Provider**”) for the collection of Solid Waste and recyclables (“**Franchise Agreement**”). The Franchise Agreement provides for certain rights and delegated authorities to the respective solid waste service provider; and

C. The Authority operates certain core programs on behalf of and for the benefit of its Member Agencies, including but not limited to providing education regarding recycling, composting, and other methods of waste diversion, and conducting, preparing, and submitting all monitoring and reporting pursuant to the Integrated Waste Management Act (California Public Resources Code §§ 40000 *et seq.*); and

D. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act (which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) (“**SB 1383**”), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires California Department of Resources Recycling and Recovery (“**CalRecycle**”) to develop regulations to reduce organics in landfills as a source of methane; and

E. CalRecycle adopted the SB 1383 Regulations that created a new Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR (“**SB 1383 Regulations**”). The SB 1383 Regulations impose requirements on counties, cities, residential households, commercial businesses (including multi-family residential dwellings), commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

F. The SB 1383 Regulations require cities and counties to adopt and enforce a mechanism to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators, and processors of edible food, together with enforcement mechanisms and administrative civil penalties

for violations of local regulations; and

G. The SB 1383 Regulations also require cities and counties, among other things, to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations; and

H. The Provider has developed programs for Organics Waste collection as required by the Franchise Agreement and applicable law; and

I. Pursuant to 14 CCR 18981.2(b), cities and counties may designate a public or private entity to fulfill their SB 1383 obligations to adopt an enforceable mechanism through a MOU. However, 14 CCR 18981.2(c) specifies that cities and counties shall remain ultimately responsible for compliance with SB 1383 Regulations; and

J. The Parties wish to enter into this MOU to designate certain roles and responsibilities that the Authority shall assume on behalf of the City to implement the SB 1383 Regulations that took effect on January 1, 2022 under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.

2. Term. This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 9.

3. Definitions.

(a) “**Authority**” means the West Contra Costa Integrated Management Authority.

(b) “**Blue Container**” shall have the same meaning as in 14 CCR Section 18982.2(a)(5). The Parties acknowledge that the City may use the term “Recycling Container” in its ordinances to refer to what are defined as Blue Containers herein.

(c) “**CalRecycle**” or “**Department**” means the California State Department of Resources Recycling and Recovery, which is the department designated with responsibility for developing, implementing, and enforcing SB1383 Regulations on jurisdictions (and others).

(d) “**California Code of Regulations**” or “**CCR**” means the State of California Code of Regulations. CCR references in this MOU are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

(e) “**City**” means the City of Pinole.

(f) “**Commercial Business**” or “**Commercial**” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit,

strip mall, industrial facility, or a Multifamily Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of this MOU.

(g) “**Commercial Edible Food Generator**” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in 14 CCR 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

(h) “**Compliance Review**” means a review of records by an Enforcement Agency to determine compliance with SB 1383 Regulations.

(i) “**Container Contamination**” or “**Contaminated Container**” means a container, regardless of type or color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(j) “**County**” means the County of Contra Costa.

(k) “**Edible Food**” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this MOU or as otherwise defined in 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded. Nothing herein requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, *et seq.*

(l) “**Enforcement Action**” means an action of the relevant Enforcement Agency to address non-compliance with SB 1383 Regulations including, but not limited to, issuing administrative citations, fines, penalties, or other remedies.

(m) “**Enforcement Agency**” means an entity with the authority to enforce part or all of SB 1383 Regulations as specified herein. The Authority and the City are each an Enforcement Agency.

(n) “**Food Recovery Organization**” means an entity that engages in the collection or receipt of edible food from Commercial Edible Food Generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25).

(o) “**Food Recovery Services**” means a person or entity that collects and transports edible food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for food recovery or as otherwise defined in 14 CCR Section 18982(a)(26).

(p) “**Generator**” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(q) “**Gray Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(28). The Parties acknowledge that the City may use the term “Garbage Container” or “Landfill Container” in its ordinances to refer to what are defined as Gray Containers herein.

(r) “**Green Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Organic Waste. The Parties acknowledge that the City may use the term “Organics Container” or “Compost Container” in its ordinances to refer to what are defined as Green Containers herein.

(s) “**Hauler**” means a person or entity who collects Organic Waste from a Generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” includes public contract haulers, private contract haulers, and Self-Haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.

(t) “**Hauler Route**” means the designated itinerary or sequence of stops for each segment of City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

(u) “**Implementation Record**” means all records, physical or electronic, that must be stored in one central location and are required by the SB 1383 Regulations.

(v) “**Inspection**” means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in the SB 1383 Regulations, or as otherwise defined in 14 CCR Section 18982(a)(35).

(w) “**Member Agencies**” mean the parties to the JEPA. Current Member Agencies are the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo. The Member Agency boundaries for the purpose of this MOU are the legal boundaries of each of the incorporated municipalities.

(x) “**Organics,**” or “**Organic Waste**” means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(y) “**Paper Products**” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

(z) “**Printing and Writing Paper**” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(aa) “**Prohibited Container Contaminants**” means the following: (i) discarded materials placed in the Green Container that are not identified as acceptable Organic Waste for the City’s Green Container; (ii) discarded materials placed in the Grey Container that are acceptable Organic Waste to be placed in the City’s Green Container.

(bb) “**Route Review**” means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical or electronic

Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(cc) “**SB 1383 Regulations,**” means Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR. Regulatory references to specific sections listed in the MOU shall be to the SB 1383 Regulations, unless specifically noted otherwise.

(dd) “**Self-Hauler**” means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

(ee) “**Solid Waste**” has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

(i) Hazardous waste, as defined in the Public Resources Code Section 40141.

(ii) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).

(iii) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.

4. Authority Responsibilities. The City hereby delegates to the Authority, and the Authority hereby accepts, the following enumerated responsibilities for compliance with the provisions of SB 1383 Regulations to the extent allowed by law and as specified herein. The Authority is concurrently with its approval of this MOU approving MOUs with the other Member Agencies in which it is accepting nearly identical delegations from the other Member Agencies (the “Other MOUs”). It is the Authority’s desire to administer responsibilities so delegated in a uniform fashion across all of the Members, so far as is feasible under the specific circumstances prevailing in each Member Agency. In furtherance of this intent, the Authority, in consultation with the Member Agencies, has developed an initial Workplan, attached as Exhibit A and hereby incorporated by reference, that details the manner in which it will initially perform its responsibilities under this MOU and the Other MOUs. Each year, in conjunction with the Annual Budget, the Authority Board shall consider and approve any changes to the Workplan, including any amendments to align the Workplan with the Annual Budget and subject to the Executive Director’s ability to make administrative changes to the Workplan as described in this Section 4.

The Workplan is intended to be a flexible framework that can be revised as may be necessary. Accordingly, the Parties agree that the Executive Director of the Authority, after first consulting with the City and the other Member Agencies, may administratively amend the Workplan from time-to-time as may be necessary, so long as the amendments are consistent with the SB 1383 Regulations, this MOU, the Other MOUs, and Authority Board policy. The Parties agree that the Authority granted herein is intended to be, and shall be, limited to circumstances necessitated by unanticipated regulatory changes and interpretations, significant changed circumstances within the Authority related to compliance with the SB 1383 Regulations, and the discovery of new information related the relative effectiveness of the various programs in furthering the purposes of the SB 1383 Regulations. The Parties agree that, to the extent permitted by law or regulation, the Authority may perform its responsibilities using its own staff or by contracting with public and private entities. Whenever the Workplan is changed, the Authority shall provide the City with an updated version of the Workplan within ten (10) days.

(a) Education and Outreach. The Authority shall conduct the following education and outreach on behalf of the City:

(i) Generators. Prior to February 1, 2022, the Authority shall make available to Generators, through print and/or electronic media and maintain on its website, the information required pursuant to 14 CCR Sections 18985.1 and 18985.2. The Authority shall update such information as necessary, but at least annually. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, the City Manager or designee. Each Party shall cooperate in good faith regarding the delivery, review, and approval materials to be disseminated pursuant to this Section, including delivering the materials for review and approval, delivering comments on the materials, and responding to such comments.

(ii) City Procurement Target. The Authority shall annually notify City of its Organic Waste product procurement target, as required and determined by CalRecycle. Before CalRecycle releases the official procurement targets for City on January 1, 2022 and every five years thereafter, the Authority shall assist City in calculating estimates of the procurement targets pursuant to 14 CCR 18993.1. In addition, the Authority will facilitate the City's procurement of recovered organic waste products.

(b) Reporting and Recordkeeping. The Authority shall conduct the following reporting and recordkeeping services on behalf of City:

(i) Organics Capacity and Edible Food Recovery. The Authority shall submit reports for Organics processing capacity and Edible Food recovery planning requirements to the County within 120 days of the County's request as required by 14 CCR 18992.3.

(ii) Implementation Record. The Authority shall be responsible for maintaining the City's Implementation Record, and making it available to the Department, in accordance with 14 CCR Sections 18985.3 and 18995.2. The Authority shall endeavor to obtain all records required by Chapter 12 and include them in the Implementation Record, and the City shall reasonably cooperate with the Authority in obtaining such records from the City and third parties, including creating such records if necessary. In the event that the Department requests access to the Implementation Record, the Authority shall promptly advise the City of the request.

(iii) Compliance and Annual Reports. The Authority shall submit the initial City compliance report and City annual reports to CalRecycle as required by 14 CCR 18994.1 and 18994.2. Authority shall provide a draft copy of such reports to the City's representative for its review and approval at least 14 days prior to the applicable reporting deadlines set forth in these sections.

(c) Edible Food Recovery Programs. The Authority shall coordinate and implement the SB 1383 Regulations' edible food recovery program requirements to which jurisdictions are subject under 14 CCR §§ 18991.1–18991.2. The Parties agree that these requirements may be wholly or partially satisfied by agreement with the County or other third parties. The Authority's duties shall include, but are not limited to: assessment of existing capacity for Edible Food recovery, establishing an Edible Food recovery program, inspection of Commercial Food Edible Generators for compliance, and education and outreach to all businesses, residents, Commercial Edible Food Generators, and any other entities or parties required by law.

(d) Organic Waste Processing Capacity and Diversion Planning. The Authority shall itself or in conjunction with the County estimate existing Organics processing and Edible Food recovery capacities available pursuant to 14 CCR 18992.1 and 18992.2. If it is found that either are lacking, the Authority shall assist City in creating an implementation plan to expand capacity.

(e) Receipt of Complaints. The Authority shall be responsible for receiving all written complaints of alleged SB 1383 Regulations violations relating to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers occurring or having occurred within City's jurisdiction ("**Complaints**"). Such Complaints shall include all of the following information in accordance with 14 CCR 18995.3:

- (i) If the Complaint is not anonymous, the name and contact information of the complainant;
- (ii) The identity of the alleged violator, if known;
- (iii) A description of the alleged violation including location(s) and all other relevant facts known to the complainant;
- (iv) Any relevant photographic or documentary evidence to support the allegations in the Complaint; and
- (v) The identity of any witnesses, if known.

If the Authority receives a complaint, it shall forward a copy to City within ten (10) working days of receipt.

(f) Investigation of Complaints. Where a Complaint: 1) meets the requirements of Section 4(e); and 2) the Authority determines that the allegations, if true, would constitute a violation of SB 1383 Regulations, it shall function as the Enforcement Agency for the purposes of investigation and commence an investigation within ninety (90) days of receiving such Complaint. The Authority may collaborate with City and/or a Hauler in such investigation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Complaint. The Authority may decline to investigate a Complaint if, in its judgment, investigation is unwarranted

because the allegations are contrary to facts known to it.

(i) Where the Authority has investigated or declined to investigate a non-anonymous Complaint, it shall notify the complainant regarding the results of the investigation through the contact information provided by the complainant. It shall provide a copy of such notice to the City within ten (10) working days of receipt.

(ii) The Authority shall maintain records of all Complaints received in compliance with Section 4(e) and responses provided in compliance with this subsection in the Implementation Record. The records shall include the Complaint as received and the Authority's determination of compliance or Notice of Violations issued.

(g) Enforcement. The Authority shall function as the Enforcement Agency and enforce the [identify City ordinance number title and/or number] as required by SB 1383 by performing the following actions:

(i) Monitoring compliance of Generators, Haulers, Food Recovery Organizations and Food Recovery Services through Inspections, Compliance Review and Route Review conducted in accordance with SB 1383 Regulations (14 CCR § 18995.1). The Authority may collaborate with City and/or a Hauler in such Inspections, Compliance Review and Route Review where appropriate; and

(ii) Issuing Notice of Violations to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers in accordance with 14 CCR 18995.4 and providing a copy of such to City within ten (10) working days of issuance. The Authority may collaborate with City and/or a Hauler before issuance of a Notice of Violation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Enforcement Action. If the violator fails to comply with the Notice of Violation within the deadline set forth therein, the Authority shall refer the matter to City to impose penalties pursuant to the SB 1383 Regulations and it shall function as the Enforcement Agency in that matter thereafter.

(h) Waivers. The Authority shall create a standardized waiver request form, which shall be a printable document maintained on the Authority's website. Each time the Authority updates the form, it shall so advise the City and the Provider. The Authority shall review the following waiver requests and, may consult with the Provider regarding such request and, thereafter, either approve or deny each request. The Authority will maintain, and regularly provide the City with, a list of Generators operating in its jurisdiction that have applied for waivers. The list shall include the status of the application.

(i) De Minimis Waivers: The Authority may waive a Commercial Business's obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of SB 1383 if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as set forth herein. Commercial Businesses requesting a de minimis waiver shall:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted herein; and

(2) provide sufficient documentation that either:

(a) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or

(b) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business' total waste; and

(3) Acknowledge that it must notify the Authority if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded; and

(4) Acknowledge that, if the de minimis waiver is granted, it will expire after 5 years and that the waiver is only valid as to the Commercial Business that applied for the waiver, and not as to the property or another business in the same location.

(ii) Physical Space Waivers: The Authority may waive an existing Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if it receives evidence from its staff, City staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of SB 1383. A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver; and

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer; and

(3) Provide written verification to the Authority that it is still eligible for physical space waiver every five years, if the Authority has approved application for a physical space waiver.

(iii) Emergency Circumstances – Waivers for City: The Authority will notify CalRecycle and apply for a waiver to landfill Organics if City experiences a natural disaster, uses a recyclable materials or Organic Waste processing facility that has a temporary operational failure, or unforeseen operational restrictions have been imposed upon it by a regulatory agency pursuant to 14 CCR 18984.13.

5. City Responsibility. City shall be responsible for all other applicable SB1383 and SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein, including the Workplan.

6. Sharing of information. Within thirty (30) days of a request by the Authority, or as soon thereafter as such information is available to City, the City shall share with the Authority all data,

documents, contact information for Generators within its jurisdiction, or any other information necessary for the Authority to carry out the responsibilities delegated to it in this MOU.

7. Staffing and funding. In order for the Authority to carry out its responsibilities in connection with the administration and implementation of the SB 1383 Regulations as specified in this MOU, the Parties agree that the Authority's costs associated with its responsibilities under this MOU and the Other MOUs will be funded through the Authority's budget and rate setting process, except as otherwise specified herein. These costs may include the Authority's cost to engage independent contractors to perform some or all of the duties delegated to it herein. Budget changes related to this MOU will be integrated into the Authority's regular budget process, as approved by the Board of Directors.

8. Indemnification/Hold Harmless. Each Party shall solely be liable for any and all damages, including attorney's fees, resulting from the actions or omissions arising from its performance of the terms of this MOU, except as is expressly stated in Section 9.. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Parties") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Parties because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this MOU.

For purposes of indemnification set forth in this MOU, "Indemnified Parties" means the applicable party, its affiliates, successors and assigns and its and their employees, directors, officers, agents, and volunteers. The Indemnified Parties: 1) shall notify the Indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby; 2) shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and 3) shall reasonably cooperate with the defense.

9. Apportionment of Penalties.

(a) Any penalties assessed against the City by CalRecycle that are the result of an Authority's failure to satisfy its obligations under the following provisions of this Agreement and its alleged failure to comply with the corresponding provision of the SB 1383 Regulations shall be paid by the Authority:

- (i) Subdivision (a)(i) of Section 4 (14 CCR §§ 18985.1 and 18985.2)
- (ii) Subdivision (b)(i) of Section 4 (14 CCR § 18992.3)
- (iii) Subdivision (b)(ii) of Section 4 (14 CCR §§ 18985.3 and 18995.2)
- (iv) Subdivision (b)(iii) of Section 4 (14 CCR § 18994.1)
- (v) Subdivision (c) of Section 4 (14 CCR §§ 18991.1–18991.2)

(vi) Subdivision (d) of Section 4 (14 CCR §§ 18992.1 and 18992.2), with the express indication that the Authority shall not be required to pay a penalty arising from the City's failure to expand capacity.

(vii) Subdivision (e) of Section 4 (14 CCR §§ 18995.3(a)-(b))

(viii) Subdivision (f) of Section 4 (14 CCR §§ 18995.3(c)-(e))

(ix) Subdivision (g)(i) of Section 4 (14 CCR §§ 18995.1)

(x) Subdivision (g)(ii) of Section 4 (14 CCR §§ 18995.4) with the express indication that the Authority is not required to pay a penalty arising from an alleged failure to commence an action to impose penalties pursuant to 14 CCR sections 18997.1 and 18997.2 as the Authority's responsibility under subdivision (g) of Section 4 does not extend to commencing such actions.

(xi) Subdivision (h) of Section 4 (14 CCR §§ 18984.11)

(b) For avoidance of doubt, the Parties hereby indicate that any penalties arising from SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein shall not be payable by the Authority.

(c) In the event that the Authority pays any penalties assessed against the City by CalRecycle that are the result of the alleged failure to comply with Subdivision (a)(i) of Section 4, the Authority shall be entitled to allocate a reasonable portion of the penalty to the City if the Authority had provided compliant educational materials to the City for approval, and the City failed to approve them.

(d) Nothing in this Section shall prevent either the City or the Authority (on the City's behalf when the Authority is obligated to pay the penalty) from challenging CalRecycle enforcement activities. In the event that the Authority intends to challenge CalRecycle's imposition of a penalty imposed on the City, the City shall reasonably cooperate and assist the Authority in its legal challenge. Without limiting the generality of the foregoing, the City shall promptly share any Notices of Violation or accusation issued pursuant to 14 CCR 18997.5 that it receives related to any alleged violations that subdivision (a) would require the Authority to pay.

(e) Any penalties paid by the Authority pursuant to this section shall be paid out of Authority funds.

10. Termination. Either Party may terminate this MOU upon giving one hundred and eighty (180) calendar days' prior written notice to the other Party in the manner set forth in Section 10.

Upon termination as set forth herein, City will be required to remit to the Authority the costs to conduct the services described in Section 4 including costs generated through the end of the Authority's fiscal year and shall be responsible for implementing applicable SB 1383 Regulations delegated to the Authority through this MOU and the Authority shall have no further obligations to carry out the Authority Responsibilities as described in Section 4. The Authority will provide City its Implementation Records within its possession upon termination.

11. Notice. All notices shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Party, 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 Party at its principal office, or to such other address as the Party may designate from time to time by written notice given in the manner specified in this Section.

Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery or two (2) days after mailing if deposited in the United States mail.

12. Governing Law and Venue. This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Venue in any proceeding or action among the Parties arising out of this MOU shall be in Contra Costa County, California.

13. Amendment. This MOU may only be modified or amended by a subsequent written agreement signed by all Parties.

14. Entire Agreement. This MOU, including the Workplan, as it may be amended, represents the entire and integrated agreement between the Parties as to the subject matter referenced herein.

15. Severability. No provision of this MOU shall be interpreted to require any unlawful action by any Party. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this MOU with respect to the matter in question, and the remainder of the MOU shall remain in full force and effect. However, in the event such a section or clause is an essential element of the MOU, the Parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

16. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

17. No Waiver. The failure of any Party hereto to enforce any of the provisions of this MOU, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

18. No Partnership. The relationship between the Parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this MOU shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first above written.

ATTEST:

CITY OF PINOLE

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

**WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY**

ATTEST:

Board Secretary

Board Chair

APPROVED AS TO FORM:

Authority Counsel

5001274.4

**Memorandum of Understanding
Between West Contra Costa Integrated Waste Management Authority and the City of
Hercules Regarding Implementation of SB 1383 Regulations**

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2022 (“**Effective Date**”) by and between the CITY OF HERCULES (“**Hercules**”), a municipal corporation hereinafter referred to as “**City**” and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a California joint powers authority (“**Authority**”) (individually “**Party**” and collectively “**Parties**”).

RECITALS

A. The Authority is a joint powers authority established pursuant to the California Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) pursuant to the Joint Exercise of Powers Agreement (“**JEPA**”); and

B. The City is a party to the JEPA and has entered into a franchise agreement with a solid waste collection services provider (“**Provider**”) for the collection of Solid Waste and recyclables (“**Franchise Agreement**”). The Franchise Agreement provides for certain rights and delegated authorities to the respective solid waste service provider; and

C. The Authority operates certain core programs on behalf of and for the benefit of its Member Agencies, including but not limited to providing education regarding recycling, composting, and other methods of waste diversion, and conducting, preparing, and submitting all monitoring and reporting pursuant to the Integrated Waste Management Act (California Public Resources Code §§ 40000 *et seq.*); and

D. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act (which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) (“**SB 1383**”), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires California Department of Resources Recycling and Recovery (“**CalRecycle**”) to develop regulations to reduce organics in landfills as a source of methane; and

E. CalRecycle adopted regulations to implement SB 1383, which are primarily found in Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and in certain other amendments to portions of Title 14 CCR and Title 27 CCR (collectively the “**SB 1383 Regulations**”). The SB 1383 Regulations impose requirements on counties, cities, residential households, commercial businesses (including multi-family residential dwellings), commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

F. The SB 1383 Regulations require cities and counties, among other things, to adopt and enforce a mechanism to implement relevant provisions of the SB 1383 Regulations

concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators, and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations; and

G. The SB 1383 Regulations also require cities and counties to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations; and

H. The Provider has developed programs for Organics Waste collection as required by the Franchise Agreement and applicable law; and

I. Pursuant to 14 CCR 18981.2(b), cities and counties may designate a public or private entity, such as the Authority, to fulfill their SB 1383 obligations to adopt an enforceable mechanism through a MOU. However, 14 CCR 18981.2(c) specifies that cities and counties shall remain ultimately responsible for compliance with SB 1383 Regulations; and

J. The Parties wish to enter into this MOU to designate certain roles and responsibilities that the Authority shall perform on behalf of the City to implement the SB 1383 Regulations that took effect on January 1, 2022 under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.
2. Term. This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 9.
3. Definitions.
 - (a) “**Authority**” means the West Contra Costa Integrated Management Authority.
 - (b) “**Blue Container**” shall have the same meaning as in 14 CCR Section 18982.2(a)(5). The Parties acknowledge that the City may use the term “Recycling Container” in its ordinances to refer to what are defined as Blue Containers herein.
 - (c) “**California Code of Regulations**” or “**CCR**” means the State of California Code of Regulations. CCR references in this MOU are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
 - (d) “**CalRecycle**” or “**Department**” means the California State Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for

developing implementing, and enforcing the SB 1383 Regulations among other duties.

(e) “**City**” means the City of Hercules.

(f) “**Commercial Business**” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multifamily Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of this MOU.

(g) “**Commercial Edible Food Generator**” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in 14 CCR 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

(h) “**Compliance Review**” means a review of records by an Enforcement Agency to determine compliance with SB 1383 Regulations.

(i) “**Container Contamination**” or “**Contaminated Container**” means a container, regardless of type, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(j) “**County**” means the County of Contra Costa.

(k) “**Edible Food**” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this MOU or as otherwise defined in 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded. Nothing herein requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, *et seq.*

(l) “**Enforcement Action**” means an action of the relevant Enforcement Agency to address non-compliance with SB 1383 Regulations including, but not limited to, issuing administrative citations, fines, penalties, or other remedies.

(m) “**Enforcement Agency**” means an entity with the authority to enforce part or all of SB 1383 Regulations as specified herein. The Authority and the City are each an Enforcement Agency.

(n) “**Food Recovery Organization**” means an entity that engages in the collection or receipt of edible food from Commercial Edible Food Generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25).

(o) “**Food Recovery Services**” means a person or entity that collects and transports edible food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for food recovery or as otherwise defined in 14 CCR Section 18982(a)(26).

(p) “**Generator**” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(q) “**Gray Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(28). The Parties acknowledge that the City may use the term “Garbage Container” or “Landfill Container” in its ordinances to refer to what are defined as Gray Containers herein.

(r) “**Green Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Organic Waste. The Parties acknowledge that the City may use the term “Organics Container” or “Compost Container” in its ordinances to refer to what are defined as Green Containers herein.

(s) “**Hauler**” means a person or entity who collects Organic Waste from a Generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” includes public contract haulers, private contract haulers, and Self-Haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.

(t) “**Hauler Route**” means the designated itinerary or sequence of stops for each segment of City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

(u) “**Implementation Record**” means all records, physical or electronic, that must be stored in one central location and are required by the SB 1383 Regulations.

(v) “**Inspection**” means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in the SB 1383 Regulations, or as otherwise defined in 14 CCR Section 18982(a)(35).

(w) “**Member Agencies**” mean the parties to the JEPA. Current Member Agencies are the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo. The Member Agency boundaries for the purpose of this MOU are the legal boundaries of each of the incorporated municipalities.

(x) “**Organics,**” or “**Organic Waste**” means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(y) “**Paper Products**” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

(z) “**Printing and Writing Paper**” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other writing papers, posters,

index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(aa) **“Prohibited Container Contaminants”** means the following: (i) discarded materials placed in the Green Container that are not identified as acceptable Organic Waste for the City’s Green Container; (ii) discarded materials placed in the Grey Container that are acceptable Organic Waste to be placed in the City’s Green Container.

(bb) **“Route Review”** means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical or electronic Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(cc) **“SB 1383 Regulations,”** means Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR.

(dd) **“Self-Hauler”** means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

(ee) **“Solid Waste”** has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- (i) Hazardous waste, as defined in the Public Resources Code Section 40141.
- (ii) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- (iii) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.

4. **Authority Responsibilities.** The City hereby delegates to the Authority, and the Authority hereby accepts, the following enumerated responsibilities for compliance with the provisions of SB 1383 Regulations to the extent allowed by law and as specified herein. The Authority is

concurrently with its approval of this MOU approving MOUs with the other Member Agencies in which it is accepting nearly identical delegations from the other Member Agencies (the “Other MOUs”). It is the Authority’s desire to administer responsibilities so delegated in a uniform fashion across all of the Members, so far as is feasible under the specific circumstances prevailing in each Member Agency. In furtherance of this intent, the Authority, in consultation with the Member Agencies, has developed an initial Workplan, attached as Exhibit A and hereby incorporated by reference, that details the manner in which it will initially perform its responsibilities under this MOU and the Other MOUs. Each year, in conjunction with the Annual Budget, the Authority Board shall consider and approve any changes to the Workplan, including any amendments to align the Workplan with the Annual Budget and subject to the Executive Director’s ability to make administrative changes to the Workplan as described in this Section 4.

The Workplan is intended to be a flexible framework that can be revised as may be necessary. Accordingly, the Parties agree that the Executive Director of the Authority, after first consulting with the City and the other Member Agencies, may administratively amend the Workplan from time-to-time as may be necessary, so long as the amendments are consistent with the SB 1383 Regulations, this MOU, the Other MOUs, and Authority Board policy. The Parties agree that the Authority granted herein is intended to be, and shall be, limited to circumstances necessitated by unanticipated regulatory changes and interpretations, significant changed circumstances within the Authority related to compliance with the SB 1383 Regulations, and the discovery of new information related the relative effectiveness of the various programs in furthering the purposes of the SB 1383 Regulations. The Parties agree that, to the extent permitted by law or regulation, the Authority may perform its responsibilities using its own staff or by contracting with public and private entities. Whenever the Workplan is changed, the Authority shall provide the City with an updated version of the Workplan within ten (10) days.

(a) Education and Outreach. The Authority shall conduct the following education and outreach on behalf of the City:

(i) Generators. Prior to February 1, 2022, the Authority shall make available to Generators, through print and/or electronic media and maintain on its website, the information required pursuant to 14 CCR Sections 18985.1 and 18985.2. The Authority shall update such information as necessary, but at least annually. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, the City Manager or designee. Each Party shall cooperate in good faith regarding the delivery, review, and approval materials to be disseminated pursuant to this Section, including delivering the materials for review and approval, delivering comments on the materials, and responding to such comments.

(ii) City Procurement Target. The Authority shall annually notify City of its Organic Waste product procurement target, as required and determined by CalRecycle. Before CalRecycle releases the official procurement targets for City on January 1, 2022 and every five years thereafter, the Authority shall assist City in calculating estimates of the procurement targets pursuant to 14 CCR 18993.1. In addition, the Authority will facilitate the City’s procurement of recovered organic waste products.

(b) Reporting and Recordkeeping. The Authority shall conduct the following

reporting and recordkeeping services on behalf of City:

(i) Organics Capacity and Edible Food Recovery. The Authority shall submit reports for Organics processing capacity and Edible Food recovery planning requirements to the County within 120 days of the County’s request as required by 14 CCR 18992.3.

(ii) Implementation Record. The Authority shall be responsible for maintaining the City’s Implementation Record, and making it available to the Department, in accordance with 14 CCR Sections 18985.3 and 18995.2. The Authority shall endeavor to obtain all records required by Chapter 12 and include them in the Implementation Record, and the City shall reasonably cooperate with the Authority in obtaining such records from the City and third parties, including creating such records if necessary. In the event that the Department requests access to the Implementation Record, the Authority shall promptly advise the City of the request.

(iii) Compliance and Annual Reports. The Authority shall submit the initial City compliance report and City annual reports to CalRecycle as required by 14 CCR 18994.1 and 18994.2. Authority shall provide a draft copy of such reports to the City’s representative for its review and approval at least 14 days prior to the applicable reporting deadlines set forth in these sections.

(c) Edible Food Recovery Programs. The Authority shall coordinate and implement the SB 1383 Regulations’ edible food recovery program requirements to which jurisdictions are subject under 14 CCR §§ 18991.1–18991.2. The Parties agree that these requirements may be wholly or partially satisfied by agreement with the County or other third parties. The Authority’s duties shall include, but are not limited to: assessment of existing capacity for Edible Food recovery, establishing an Edible Food recovery program, inspection of Commercial Food Edible Generators for compliance, and education and outreach to all businesses, residents, Commercial Edible Food Generators, and any other entities or parties required by law.

(d) Organic Waste Processing Capacity and Diversion Planning. The Authority shall itself or in conjunction with the County estimate existing Organics processing and Edible Food recovery capacities available pursuant to 14 CCR 18992.1 and 18992.2. If it is found that either are lacking, the Authority shall assist City in creating an implementation plan to expand capacity.

(e) Receipt of Complaints. The Authority shall be responsible for receiving all written complaints of alleged SB 1383 Regulations violations relating to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers occurring or having occurred within City’s jurisdiction (“**Complaints**”). Such Complaints shall include all of the following information in accordance with 14 CCR 18995.3:

- (i) If the Complaint is not anonymous, the name and contact information of the complainant;
- (ii) The identity of the alleged violator, if known;
- (iii) A description of the alleged violation including location(s) and all other relevant facts known to the complainant;

(iv) Any relevant photographic or documentary evidence to support the allegations in the Complaint; and

(v) The identity of any witnesses, if known.

If the Authority receives a complaint, it shall forward a copy to City within ten (10) working days of receipt.

(f) Investigation of Complaints. Where a Complaint: 1) meets the requirements of Section 4(e); and 2) the Authority determines that the allegations, if true, would constitute a violation of SB 1383 Regulations, it shall function as the Enforcement Agency for the purposes of investigation and commence an investigation within ninety (90) days of receiving such Complaint. The Authority may collaborate with City and/or a Hauler in such investigation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Complaint. The Authority may decline to investigate a Complaint if, in its judgment, investigation is unwarranted because the allegations are contrary to facts known to it.

(i) Where the Authority has investigated or declined to investigate a non-anonymous Complaint, it shall notify the complainant regarding the results of the investigation through the contact information provided by the complainant. It shall provide a copy of such notice to the City within ten (10) working days of receipt.

(ii) The Authority shall maintain records of all Complaints received in compliance with Section 4(e) and responses provided in compliance with this subsection in the Implementation Record. The records shall include the Complaint as received and the Authority's determination of compliance or Notice of Violations issued.

(g) Enforcement. The Authority shall function as the Enforcement Agency and enforce the [identify City ordinance number title and/or number] as required by SB 1383 by performing the following actions:

(i) Monitoring compliance of Generators, Haulers, Food Recovery Organizations and Food Recovery Services through Inspections, Compliance Review and Route Review conducted in accordance with SB 1383 Regulations (14 CCR § 18995.1). The Authority may collaborate with City and/or a Hauler in such Inspections, Compliance Review and Route Review where appropriate; and

(ii) Issuing Notice of Violations to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers in accordance with 14 CCR 18995.4 and providing a copy of such to City within ten (10) working days of issuance. The Authority may collaborate with City and/or a Hauler before issuance of a Notice of Violation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Enforcement Action. If the violator fails to comply with the Notice of Violation within the deadline set forth therein, the Authority shall refer the matter to City to impose penalties pursuant to the SB 1383 Regulations and it shall function as the Enforcement Agency in that matter thereafter.

(h) Waivers. The Authority shall create a standardized waiver request form, which

shall be a printable document maintained on the Authority’s website. Each time the Authority updates the form, it shall so advise the City and the Provider. The Authority shall review the following waiver requests and, may consult with the Provider regarding such request and, thereafter, either approve or deny each request. The Authority will maintain, and regularly provide the City with, a list of Generators operating in its jurisdiction that have applied for waivers. The list shall include the status of the application.

(i) De Minimis Waivers: The Authority may waive a Commercial Business’s obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of SB 1383 if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as set forth herein. Commercial Businesses requesting a de minimis waiver shall:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted herein; and

(2) provide sufficient documentation that either:

(a) The Commercial Business’ total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business’ total waste; or

(b) The Commercial Business’ total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business’ total waste; and

(3) Acknowledge that it must notify the Authority if circumstances change such that Commercial Business’s Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded; and

(4) Acknowledge that, if the de minimis waiver is granted, it will expire after 5 years and that the waiver is only valid as to the Commercial Business that applied for the waiver, and not as to the property or another business in the same location.

(ii) Physical Space Waivers: The Authority may waive an existing Commercial Business’ or property owner’s obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if it receives evidence from its staff, City staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of SB 1383. A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver; and

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer; and

(3) Provide written verification to the Authority that it is still eligible for physical space waiver every five years, if the Authority has approved application for a physical space waiver.

(iii) Emergency Circumstances – Waivers for City: The Authority will notify CalRecycle and apply for a waiver to landfill Organics if City experiences a natural disaster, uses a recyclable materials or Organic Waste processing facility that has a temporary operational failure, or unforeseen operational restrictions have been imposed upon it by a regulatory agency pursuant to 14 CCR 18984.13.

5. City Responsibility. City shall be responsible for all other applicable SB1383 and SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein, including the Workplan.

6. Sharing of information. Within thirty (30) days of a request by the Authority, or as soon thereafter as such information is available to City, the City shall share with the Authority all data, documents, contact information for Generators within its jurisdiction, or any other information necessary for the Authority to carry out the responsibilities delegated to it in this MOU.

7. Staffing and funding. In order for the Authority to carry out its responsibilities in connection with the administration and implementation of the SB 1383 Regulations as specified in this MOU, the Parties agree that the Authority's costs associated with its responsibilities under this MOU and the Other MOUs will be funded through the Authority's budget and rate setting process, except as otherwise specified herein. These costs may include the Authority's cost to engage independent contractors to perform some or all of the duties delegated to it herein. Budget changes related to this MOU will be integrated into the Authority's regular budget process, as approved by the Board of Directors.

8. Indemnification/Hold Harmless. Each Party shall solely be liable for any and all damages, including attorney's fees, resulting from the actions or omissions arising from its performance of the terms of this MOU, except as is expressly stated in Section 9.. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Parties") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Parties because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this MOU.

For purposes of indemnification set forth in this MOU, "Indemnified Parties" means the applicable party, its affiliates, successors and assigns and its and their employees, directors, officers, agents, and volunteers. The Indemnified Parties: 1) shall notify the Indemnifying Party

in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby; 2) shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and 3) shall reasonably cooperate with the defense.

9. Apportionment of Penalties

(a) Any penalties assessed against the City by CalRecycle that are the result of an Authority's failure to satisfy its obligations under the following provisions of this Agreement and its alleged failure to comply with the corresponding provision of the SB 1383 Regulations shall be paid by the Authority:

- (i) Subdivision (a)(i) of Section 4 (14 CCR §§ 18985.1 and 18985.2)
- (ii) Subdivision (b)(i) of Section 4 (14 CCR § 18992.3)
- (iii) Subdivision (b)(ii) of Section 4 (14 CCR §§ 18985.3 and 18995.2)
- (iv) Subdivision (b)(iii) of Section 4 (14 CCR § 18994.1)
- (v) Subdivision (c) of Section 4 (14 CCR §§ 18991.1–18991.2)
- (vi) Subdivision (d) of Section 4 (14 CCR §§ 18992.1 and 18992.2), with the express indication that the Authority shall not be required to pay a penalty arising from the City's failure to expand capacity.
- (vii) Subdivision (e) of Section 4 (14 CCR §§ 18995.3(a)-(b))
- (viii) Subdivision (f) of Section 4 (14 CCR §§ 18995.3(c)-(e))
- (ix) Subdivision (g)(i) of Section 4 (14 CCR §§ 18995.1)
- (x) Subdivision (g)(ii) of Section 4 (14 CCR §§ 18995.4) with the express indication that the Authority is not required to pay a penalty arising from an alleged failure to commence an action to impose penalties pursuant to 14 CCR sections 18997.1 and 18997.2 as the Authority's responsibility under subdivision (g) of Section 4 does not extend to commencing such actions.
- (xi) Subdivision (h) of Section 4 (14 CCR §§ 18984.11)

(b) For avoidance of doubt, the Parties hereby indicate that any penalties arising from SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein shall not be payable by the Authority.

(c) In the event that the Authority pays any penalties assessed against the City by CalRecycle that are the result of the alleged failure to comply with Subdivision (a)(i) of Section 4, the Authority shall be entitled to allocate a reasonable portion of the penalty to the City if the

Authority had provided compliant educational materials to the City for approval, and the City failed to approve them.

(d) Nothing in this Section shall prevent either the City or the Authority (on the City's behalf when the Authority is obligated to pay the penalty) from challenging CalRecycle enforcement activities. In the event that the Authority intends to challenge CalRecycle's imposition of a penalty imposed on the City, the City shall reasonably cooperate and assist the Authority in its legal challenge. Without limiting the generality of the foregoing, the City shall promptly share any Notices of Violation or accusation issued pursuant to 14 CCR 18997.5 that it receives related to any alleged violations that subdivision (a) would require the Authority to pay.

(e) Any penalties paid by the Authority pursuant to this section shall be paid out of Authority funds.

10. Termination. Either Party may terminate this MOU upon giving one hundred and eighty (180) calendar days' prior written notice to the other Party in the manner set forth in Section 10.

Upon termination as set forth herein, City will be required to remit to the Authority the costs to conduct the services described in Section 4 including costs generated through the end of the Authority's fiscal year and shall be responsible for implementing applicable SB 1383 Regulations delegated to the Authority through this MOU and the Authority shall have no further obligations to carry out the Authority Responsibilities as described in Section 4. The Authority will provide City its Implementation Records within its possession upon termination.

11. Notice. All notices shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Party, 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 Party at its principal office, or to such other address as the Party may designate from time to time by written notice given in the manner specified in this Section.

Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery or two (2) days after mailing if deposited in the United States mail.

12. Governing Law and Venue. This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Venue in any proceeding or action among the Parties arising out of this MOU shall be in Contra Costa County, California.

13. Amendment. This MOU may only be modified or amended by a subsequent written agreement signed by all Parties.

14. Entire Agreement. This MOU, including the Workplan, as it may be amended, represents the entire and integrated agreement between the Parties as to the subject matter referenced herein.

15. Severability. No provision of this MOU shall be interpreted to require any unlawful action by any Party. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, then the meaning of that section or

clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this MOU with respect to the matter in question, and the remainder of the MOU shall remain in full force and effect. However, in the event such a section or clause is an essential element of the MOU, the Parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

16. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

17. No Waiver. The failure of any Party hereto to enforce any of the provisions of this MOU, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

18. No Partnership. The relationship between the Parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this MOU shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first above written.

ATTEST:

CITY OF HERCULES

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

**WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY**

ATTEST:

Board Secretary

Board Chair

APPROVED AS TO FORM:

Authority Counsel

5001258.3

Memorandum of Understanding
Between West Contra Costa Integrated Waste Management Authority and the City of El Cerrito Regarding Implementation of SB 1383 Regulations

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2022 (“**Effective Date**”) by and between the CITY OF EL CERRITO (“**El Cerrito**”), a municipal corporation and charter city hereinafter referred to as “**City**” and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a California joint powers authority (“**Authority**”) (individually “**Party**” and collectively “**Parties**”).

RECITALS

A. The Authority is a joint powers authority established pursuant to the California Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) pursuant to the Joint Exercise of Powers Agreement (“**JEPA**”); and

B. The City is a party to the JEPA and has entered into a franchise agreement with a solid waste collection services provider (“**Provider**”) for the collection of Solid Waste (the “**Franchise Agreement**”) and operates its own service for the collection of recyclables. The Franchise Agreement provides for certain rights and delegated authorities to the respective solid waste service provider; and

C. The Authority operates certain core programs on behalf of and for the benefit of its Member Agencies, including but not limited to providing education regarding recycling, composting, and other methods of waste diversion, and conducting, preparing, and submitting all monitoring and reporting pursuant to the Integrated Waste Management Act (California Public Resources Code §§ 40000 *et seq.*); and

D. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act (which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) (“**SB 1383**”), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires California Department of Resources Recycling and Recovery (“**CalRecycle**”) to develop regulations to reduce organics in landfills as a source of methane; and

E. CalRecycle adopted regulations to implement SB 1383, which are primarily found in Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and in certain other amendments to portions of Title 14 CCR and Title 27 CCR (collectively the “**SB 1383 Regulations**”). The SB 1383 Regulations impose requirements on counties, cities, residential households, commercial businesses (including multi-family residential dwellings), commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

F. The SB 1383 Regulations require cities and counties, among other things, to adopt

and enforce a mechanism to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators, and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations; and

G. The SB 1383 Regulations also require cities and counties to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations; and

H. The Provider has developed programs for Organics Waste collection as required by the Franchise Agreement and applicable law; and

I. Pursuant to 14 CCR 18981.2(b), cities and counties may designate a public or private entity, such as the Authority, to fulfill their SB 1383 obligations to adopt an enforceable mechanism through a MOU. However, 14 CCR 18981.2(c) specifies that cities and counties shall remain ultimately responsible for compliance with SB 1383 Regulations; and

J. The Parties wish to enter into this MOU to designate certain roles and responsibilities that the Authority shall perform on behalf of the City to implement the SB 1383 Regulations that took effect on January 1, 2022 under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.
2. Term. This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 9.
3. Definitions.
 - (a) “**Authority**” means the West Contra Costa Integrated Management Authority.
 - (b) “**Blue Container**” shall have the same meaning as in 14 CCR Section 18982.2(a)(5). The Parties acknowledge that the City may use the term “Recycling Container” in its ordinances to refer to what are defined as Blue Containers herein.
 - (c) “**California Code of Regulations**” or “**CCR**” means the State of California Code of Regulations. CCR references in this MOU are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
 - (d) “**CalRecycle**” or “**Department**” means the California State Department of

Resources Recycling and Recovery, which is the state agency designated with responsibility for developing implementing, and enforcing the SB 1383 Regulations among other duties.

(e) “**City**” means the City of El Cerrito.

(f) “**Commercial Business**” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multifamily Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of this MOU.

(g) “**Commercial Edible Food Generator**” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in 14 CCR 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

(h) “**Compliance Review**” means a review of records by an Enforcement Agency to determine compliance with SB 1383 Regulations.

(i) “**Container Contamination**” or “**Contaminated Container**” means a container, regardless of type, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(j) “**County**” means the County of Contra Costa.

(k) “**Database**” means the existing database tracking system (or similar system that may be acquired or created in the future) that the City and Authority share for the purposes of complying with various state laws concerning solid waste handling.

(l) “**Edible Food**” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this MOU or as otherwise defined in 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded. Nothing herein requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, *et seq.*

(m) “**Enforcement Action**” means an action of the relevant Enforcement Agency to address non-compliance with SB 1383 Regulations including, but not limited to, issuing administrative citations, fines, penalties, or other remedies.

(n) “**Enforcement Agency**” means an entity with the authority to enforce part or all of SB 1383 Regulations as specified herein. The Authority and the City are each an Enforcement Agency.

(o) “**Food Recovery Organization**” means an entity that engages in the collection or receipt of edible food from Commercial Edible Food Generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25).

(p) **“Food Recovery Services”** means a person or entity that collects and transports edible food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for food recovery or as otherwise defined in 14 CCR Section 18982(a)(26).

(q) **“Generator”** means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(r) **“Gray Container”** shall have the same meaning as defined in 14 CCR Section 18982(a)(28). The Parties acknowledge that the City may use the term “Garbage Container” or “Landfill Container” in its ordinances to refer to what are defined as Gray Containers herein.

(s) **“Green Container”** shall have the same meaning as defined in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Organic Waste. The Parties acknowledge that the City may use the term “Organics Container” or “Compost Container” in its ordinances to refer to what are defined as Green Containers herein.

(t) **“Hauler”** means a person or entity who collects Organic Waste from a Generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” includes public contract haulers, private contract haulers, and Self-Haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.

(u) **“Hauler Route”** means the designated itinerary or sequence of stops for each segment of City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

(v) **“Implementation Record”** means all records, physical or electronic, that must be stored in one central location and are required by the SB 1383 Regulations.

(w) **“Inspection”** means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in the SB 1383 Regulations, or as otherwise defined in 14 CCR Section 18982(a)(35).

(x) **“Member Agencies”** mean the parties to the JEPA. Current Member Agencies are the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo. The Member Agency boundaries for the purpose of this MOU are the legal boundaries of each of the incorporated municipalities.

(y) **“Organics,”** or **“Organic Waste”** means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(z) **“Paper Products”** include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

(aa) **“Printing and Writing Paper”** include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(bb) **“Prohibited Container Contaminants”** includes all of the following: (i) materials placed in the Blue Container that are not identified as acceptable source separated recyclable materials for the Blue Container; (ii) materials placed in the Green Container that are not identified as acceptable source separated Green Container Organic Waste; (iii) materials placed in the Gray Container that are acceptable source separated recyclable materials that can be placed in the Blue Container and/or acceptable source separated Green Container Organic Waste; and (iv) Excluded Wastes, as that phrase is defined in El Cerrito Municipal Code section 8.12.020.A.12, placed in any container.

(cc) **“Route Review”** means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical or electronic Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(dd) **“SB 1383 Regulations,”** means Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR.

(ee) **“Self-Hauler”** means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

(ff) **“Solid Waste”** has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- (i) Hazardous waste, as defined in the Public Resources Code Section 40141.
- (ii) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- (iii) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code).

Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.

4. Authority Responsibilities. The City hereby delegates to the Authority, and the Authority hereby accepts, the responsibilities enumerated in this Section 4 for compliance with the provisions of SB 1383 Regulations to the extent allowed by law and as specified herein. The Authority is concurrently with its approval of this MOU approving MOUs with the other Member Agencies in which it is accepting nearly identical delegations from the other Member Agencies (the “Other MOUs”). It is the Authority’s desire to administer responsibilities so delegated in a uniform fashion across all of the Members, so far as is feasible under the specific circumstances prevailing in each Member Agency. In furtherance of this intent, the Authority, in consultation with the Member Agencies, has developed an initial Workplan, attached as Exhibit A and hereby incorporated by reference, that details the manner in which it will initially perform its responsibilities under this MOU and the Other MOUs. Each year, in conjunction with the Annual Budget, the Authority Board shall consider and approve any changes to the Workplan, including any amendments to align the Workplan with the Annual Budget and subject to the Executive Director’s ability to make administrative changes to the Workplan as described in this Section 4.

For the avoidance of confusion, “responsibilities” refers to the categories of work required by the SB 1383 Regulations that are enumerated in this Section 4. The Workplan includes a column entitled “Requirement,” and the activities listed in that column are the ways and means of carrying out the responsibilities. The Workplan also contains columns identifying the party responsible for a requirement and whether the work related to a requirement has been delegated in whole or in part to a third party. Addition, deletion, or modification of responsibilities requires an amendment to the MOU approved by both parties. Addition, deletion, or modification of a requirement, including but not limited to the responsible party and delegation or work, requires an amendment to the Workplan through the processes described in this Section 4.

The Workplan is intended to be a flexible framework that can be revised as may be necessary. Accordingly, the Parties agree that the Executive Director of the Authority, after first consulting with the City and the other Member Agencies, may administratively amend the Workplan from time-to-time as may be necessary, so long as the amendments are consistent with the SB 1383 Regulations, this MOU, the Other MOUs, and Authority Board policy. The Parties agree that the Authority granted herein is intended to be, and shall be, limited to circumstances necessitated by unanticipated regulatory changes and interpretations, significant changed circumstances within the Authority related to compliance with the SB 1383 Regulations, and the discovery of new information related the relative effectiveness of the various programs in furthering the purposes of the SB 1383 Regulations. The Parties agree that an administrative amendment to the Workplan shall not result, directly or indirectly, in the Authority ceasing or substantially failing to perform any of the responsibilities delegated to and accepted by the Authority pursuant to this MOU. In the event that an administrative amendment to the Workplan is authorized, as set forth in this paragraph, and the administrative amendment to the Workplan would require the addition of a new requirement, the City shall have the option to be the responsible party.

In the event that, pursuant to Sections 7(A) and 7(B) below, the Authority cease to perform or arrange for a delegated responsibility listed in the Workplan or the City elects to perform any responsibilities delegated to and accepted by the Authority in this MOU, the Executive Director shall revise the Workplan to reflect the Party performing the responsibility. The Parties agree that, to the extent permitted by law or regulation, the Authority may perform its responsibilities using its own staff or by contracting with public and private entities. Whenever the Workplan is changed, the Authority shall provide the City with an updated version of the Workplan within ten (10) days.

(a) Education and Outreach. The Authority shall conduct the following education and outreach on behalf of the City:

(i) Generators. Prior to February 1, 2022, the Authority shall make available to Generators, through print and/or electronic media and maintain on its website, the information required pursuant to 14 CCR Sections 18985.1 and 18985.2. The Authority shall update such information as necessary, but at least annually. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, the City Manager or designee. Each Party shall cooperate in good faith regarding the delivery, review, and approval materials to be disseminated pursuant to this Section, including delivering the materials for review and approval, delivering comments on the materials, and responding to such comments.

(ii) City Procurement Target. The Authority shall annually notify City of its Organic Waste product procurement target, as required and determined by CalRecycle. Before CalRecycle releases the official procurement targets for City on January 1, 2022 and every five years thereafter, the Authority shall assist City in calculating estimates of the procurement targets pursuant to 14 CCR 18993.1. In addition, the Authority will facilitate the City's procurement of recovered organic waste products.

(b) Reporting and Recordkeeping. The Authority shall conduct the following reporting and recordkeeping services on behalf of City:

(i) Organics Capacity and Edible Food Recovery. The Authority shall submit reports for Organics processing capacity and Edible Food recovery planning requirements to the County within 120 days of the County's request as required by 14 CCR 18992.3.

(ii) Implementation Record. The Authority shall be responsible for maintaining the City's Implementation Record, and making it available to the Department, in accordance with 14 CCR Sections 18985.3 and 18995.2. The Authority shall endeavor to obtain all records required by Chapter 12 and include them in the Implementation Record, and the City shall reasonably cooperate with the Authority in obtaining such records from the City and third parties, including creating such records if necessary. In the event that the Department requests access to the Implementation Record, the Authority shall promptly advise the City of the request.

(iii) Compliance and Annual Reports. The Authority shall submit the initial City compliance report and City annual reports to CalRecycle as required by 14 CCR 18994.1 and 18994.2. Authority shall provide a draft copy of such reports to the City's representative for

its review and approval at least 14 days prior to the applicable reporting deadlines set forth in these sections.

(c) Edible Food Recovery Programs. The Authority shall coordinate and implement the SB 1383 Regulations’ edible food recovery program requirements to which jurisdictions are subject under 14 CCR §§ 18991.1–18991.2. The Parties agree that these requirements may be wholly or partially satisfied by agreement with the County or other third parties. The Authority’s duties shall include, but are not limited to: assessment of existing capacity for Edible Food recovery, establishing an Edible Food recovery program, inspection of Commercial Food Edible Generators for compliance, and education and outreach to all businesses, residents, Commercial Edible Food Generators, and any other entities or parties required by law.

(d) Organic Waste Processing Capacity and Diversion Planning. The Authority shall itself or in conjunction with the County estimate existing Organics processing and Edible Food recovery capacities available pursuant to 14 CCR 18992.1 and 18992.2. If it is found that either are lacking, the Authority shall assist City in creating an implementation plan to expand capacity.

(e) Receipt of Complaints. The Authority shall be responsible for receiving all written complaints of alleged SB 1383 Regulations violations relating to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers occurring or having occurred within City’s jurisdiction (“**Complaints**”). Such Complaints shall include all of the following information in accordance with 14 CCR 18995.3:

- (i) If the Complaint is not anonymous, the name and contact information of the complainant;
- (ii) The identity of the alleged violator, if known;
- (iii) A description of the alleged violation including location(s) and all other relevant facts known to the complainant;
- (iv) Any relevant photographic or documentary evidence to support the allegations in the Complaint; and
- (v) The identity of any witnesses, if known.

If the Authority receives a complaint, it shall forward a copy to City within ten (10) working days of receipt and document the complaint in the Database.

(f) Investigation of Complaints. Where a Complaint: 1) meets the requirements of Section 4(e); and 2) the Authority determines that the allegations, if true, would constitute a violation of SB 1383 Regulations, it shall function as the Enforcement Agency for the purposes of investigation and commence an investigation within ninety (90) days of receiving such Complaint. The Authority may collaborate with City and/or a Hauler in such investigation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Complaint. The Authority may decline to investigate a Complaint if, in its judgment, investigation is unwarranted because the allegations are contrary to facts known to it.

(i) Where the Authority has investigated or declined to investigate a non-anonymous Complaint, it shall notify the complainant regarding the results of the investigation through the contact information provided by the complainant. It shall provide a copy of such notice to the City within ten (10) working days of receipt and document the notice in the Database.

(ii) The Authority shall maintain records of all Complaints received in compliance with Section 4(e) and responses provided in compliance with this subsection in the Implementation Record. The records shall include the Complaint as received and the Authority's determination of compliance or Notice of Violations issued.

(g) Enforcement. The Authority shall function as the Enforcement Agency and enforce Chapter 8.12 of the El Cerrito Municipal Code titled "Requirements for Separation, Collection, Disposal and Recovery of Organics, Recyclables, and Solid Waste" that are required by SB 1383 by performing the following actions:

(i) Monitoring compliance of Generators, Haulers, Food Recovery Organizations and Food Recovery Services through Inspections, Compliance Review and Route Review conducted in accordance with SB 1383 Regulations (14 CCR § 18995.1). The Authority may collaborate with City and/or a Hauler in such Inspections, Compliance Review and Route Review where appropriate; and

(ii) Issuing Notice of Violations to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers in accordance with 14 CCR 18995.4 and providing a copy of such to City within ten (10) working days of issuance and document the Notice of Violation in the Database. The Authority may collaborate with City and/or a Hauler before issuance of a Notice of Violation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Enforcement Action. If the violator fails to comply with the Notice of Violation within the deadline set forth therein, the Authority shall refer the matter to City to impose penalties pursuant to the SB 1383 Regulations and it shall function as the Enforcement Agency in that matter thereafter.

(h) Waivers. The Authority shall create a standardized waiver request form, which shall be a printable document maintained on the Authority's website. Each time the Authority updates the form, it shall so advise the City and the Provider. The Authority shall review the following waiver requests and, may consult with the Provider regarding such request and, thereafter, either approve or deny each request. The Authority will maintain, and regularly provide the City with, a list of Generators operating in its jurisdiction that have applied for waivers, and it shall document the list in the Database. The list shall include the status of the application.

(i) De Minimis Waivers: The Authority may waive a Commercial Business's obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of SB 1383 if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as set forth herein. Commercial Businesses requesting a de minimis waiver shall:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted herein; and

(2) provide sufficient documentation that either:

(a) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or

(b) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business' total waste; and

(3) Acknowledge that it must notify the Authority if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded; and

(4) Acknowledge that, if the de minimis waiver is granted, it will expire after 5 years and that the waiver is only valid as to the Commercial Business that applied for the waiver, and not as to the property or another business in the same location.

(ii) Physical Space Waivers: The Authority may waive an existing Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if it receives evidence from its staff, City staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of SB 1383. A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver; and

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer; and

(3) Provide written verification to the Authority that it is still eligible for physical space waiver every five years, if the Authority has approved application for a physical space waiver.

(iii) Emergency Circumstances – Waivers for City: The Authority will notify CalRecycle and apply for a waiver to landfill Organics if City experiences a natural disaster, uses a recyclable materials or Organic Waste processing facility that has a temporary operational failure, or unforeseen operational restrictions have been imposed upon it by a regulatory agency pursuant to 14 CCR 18984.13.

5. City Responsibility. City shall be responsible for all other applicable SB1383 and SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein, including the Workplan. If the City requests that the Authority accept an additional SB 1383 or SB 1383 Regulation responsibility or perform an additional requirement listed in the Workplan, the Parties shall meet and confer regarding the request and implementation, if the Authority is willing to do so.

6. Sharing of information. Within thirty (30) days of a request by the Authority, or as soon thereafter as such information is available to City, the City shall share with the Authority all data, documents, contact information for Generators within its jurisdiction, or any other information necessary for the Authority to carry out the responsibilities delegated to it in this MOU.

7. Staffing and funding; coordination of work; reimbursement of City for performance of work.

(a) In order for the Authority to carry out its responsibilities in connection with the administration and implementation of the SB 1383 Regulations as specified in this MOU, the Parties agree that the Authority's costs associated with its responsibilities under this MOU and the Other MOUs will be funded through the Authority's budget and rate setting process, except as otherwise specified herein. These costs may include the Authority's cost to engage independent contractors to perform some or all of the duties delegated to it herein. Budget changes related to this MOU will be integrated into the Authority's regular budget process, as approved by the Board of Directors.

(b) Prior to the Authority initiating a process to contract with a third party for the performance of any of the responsibilities delegated to and accepted by the Authority in this MOU, including the Workplan, the Authority shall consult with the City to confirm that the City wants the Authority to contract for the specified work on behalf of the City. The City may elect to perform all or some of the work itself or through its own third-party contractor(s).

(c) In the event, the City elects to perform any of the responsibilities delegated to and accepted by the Authority in this MOU, including any of the requirements listed in the Workplan, the Parties shall meet and confer to discuss the timing and other aspects of implementation of the proposed changes.

(d) In the event, the City elects to perform any of the responsibilities delegated to and accepted by the Authority in this MOU, including any of the requirements listed in the Workplan, or the Authority elects to stop performing any such responsibilities or requirements pursuant to Section 4, the Authority shall make a direct payment to the City in an amount determined by the following formula: the amount that the Authority agrees to pay the contractor to perform the work for other member agencies of the Authority divided by 0.925 and the resulting quotient multiplied by 0.075. By way of example only, if the Authority contracts for work for other members agencies that is also delegated to and accepted by the Authority in this MOU, but the City elects to perform the work itself, and the amount to be paid by the Authority to the contractor is \$92,500 (assuming this amount excludes any work for the City), then the payment to the City would be calculated as follows: $(\$92,500 \div 0.925) \times 0.075 = \$7,500$. If the contract between the Authority and the contractor is for multiple years, then the Authority shall

make an annual payment to the City using the formula in this paragraph, with the contract amount equal to the annual payment to the contractor.

8. Indemnification/Hold Harmless. Each Party shall solely be liable for any and all damages, including attorney's fees, resulting from the actions or omissions arising from its performance of the terms of this MOU, except as is expressly stated in Section 9.. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Parties") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Parties because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this MOU.

For purposes of indemnification set forth in this MOU, "Indemnified Parties" means the applicable party, its affiliates, successors and assigns and its and their employees, directors, officers, agents, and volunteers. The Indemnified Parties: 1) shall notify the Indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby; 2) shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and 3) shall reasonably cooperate with the defense.

9. Apportionment of Penalties

(a) Any penalties assessed against the City by CalRecycle that are the result of Authority's failure to satisfy its obligations under the following provisions of this Agreement and its alleged failure to comply with the corresponding provision of the SB 1383 Regulations shall be paid by the Authority:

- (i) Subdivision (a)(i) of Section 4 (14 CCR §§ 18985.1 and 18985.2)
- (ii) Subdivision (b)(i) of Section 4 (14 CCR § 18992.3)
- (iii) Subdivision (b)(ii) of Section 4 (14 CCR §§ 18985.3 and 18995.2)
- (iv) Subdivision (b)(iii) of Section 4 (14 CCR § 18994.1 and 18994.2)
- (v) Subdivision (c) of Section 4 (14 CCR §§ 18991.1–18991.2)
- (vi) Subdivision (d) of Section 4 (14 CCR §§ 18992.1 and 18992.2), with the express indication that the Authority shall not be required to pay a penalty arising from the City's failure to expand capacity.
- (vii) Subdivision (e) of Section 4 (14 CCR §§ 18995.3(a)-(b))
- (viii) Subdivision (f) of Section 4 (14 CCR §§ 18995.3(c)-(e))

(ix) Subdivision (g)(i) of Section 4 (14 CCR §§ 18995.1)

(x) Subdivision (g)(ii) of Section 4 (14 CCR §§ 18995.4) with the express indication that the Authority is not required to pay a penalty arising from an alleged failure to commence an action to impose penalties pursuant to 14 CCR sections 18997.1 and 18997.2 as the Authority's responsibility under subdivision (g) of Section 4 does not extend to commencing such actions.

(xi) Subdivision (h) of Section 4 (14 CCR §§ 18984.11)

(b) For avoidance of doubt, the Parties hereby indicate that any penalties arising from SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein shall not be payable by the Authority.

(c) In the event that the Authority pays any penalties assessed against the City by CalRecycle that are the result of the alleged failure to comply with Subdivision (a)(i) of Section 4, the Authority shall be entitled to allocate a reasonable portion of the penalty to the City if the Authority had provided compliant educational materials to the City for approval, and the City failed to approve them.

(d) Nothing in this Section shall prevent either the City or the Authority (on the City's behalf when the Authority is obligated to pay the penalty) from challenging CalRecycle enforcement activities. In the event that the Authority intends to challenge CalRecycle's imposition of a penalty imposed on the City, the City shall reasonably cooperate and assist the Authority in its legal challenge. Without limiting the generality of the foregoing, the City shall promptly share any Notices of Violation or accusation issued pursuant to 14 CCR 18997.5 that it receives related to any alleged violations that subdivision (a) would require the Authority to pay.

(e) Any penalties paid by the Authority pursuant to this section shall be paid out of Authority funds.

10. Termination. Either Party may terminate this MOU upon giving one hundred and eighty (180) calendar days' prior written notice to the other Party in the manner set forth in Section 10.

Upon termination as set forth herein, City will be required to remit to the Authority the costs to conduct the services described in Section 4 including costs generated through the end of the Authority's fiscal year and shall be responsible for implementing applicable SB 1383 Regulations delegated to the Authority through this MOU and the Authority shall have no further obligations to carry out the Authority Responsibilities as described in Section 4. The Authority will provide City its Implementation Records within its possession upon termination.

11. Notice. All notices shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Party, 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 Party at its principal office, or to such other address as the Party may designate from time to time by written notice given in the manner specified in this Section.

Service of notice pursuant to this Section shall be deemed complete on the day of service

by personal delivery or two (2) days after mailing if deposited in the United States mail.

12. Governing Law and Venue. This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Venue in any proceeding or action among the Parties arising out of this MOU shall be in Contra Costa County, California.

13. Amendment. This MOU may only be modified or amended by a subsequent written agreement signed by all Parties.

14. Entire Agreement. This MOU, including the Workplan, as it may be amended, represents the entire and integrated agreement between the Parties as to the subject matter referenced herein.

15. Severability. No provision of this MOU shall be interpreted to require any unlawful action by any Party. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this MOU with respect to the matter in question, and the remainder of the MOU shall remain in full force and effect. However, in the event such a section or clause is an essential element of the MOU, the Parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

16. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

17. No Waiver. The failure of any Party hereto to enforce any of the provisions of this MOU, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.

18. No Partnership. The relationship between the Parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this MOU shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first above written.

ATTEST:

CITY OF EL CERRITO

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney
ATTEST:

**WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY**

Board Secretary

Board Chair

APPROVED AS TO FORM:

Authority Counsel

5197894.6

**MEMORANDUM OF UNDERSTANDING
BETWEEN CONTRA COSTA COUNTY AND
WEST CONTRA COSTA COUNTY INTEGRATED WASTE MANAGEMENT
AUTHORITY
REGARDING IMPLEMENTATION OF SB 1383 REGULATIONS**

This Memorandum of Understanding (“MOU”) is made this ____ day of _____, 2022 (the “Effective Date”), by and between Contra Costa County, a political subdivision of the State of California (“County”) and West Contra Costa County Integrated Waste Management Authority, a joint powers authority established under the laws of the State of California (“Authority”) (collectively the “Parties” and individually a “Party”).

RECITALS

- A. On April 2, 1991, the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo (“Cities”), and the West Contra Costa Sanitary District (“District”) formed Authority to establish integrated resource recovery facilities for the benefit of its members.
- B. On June 11, 1991, County adopted County Ordinance No. 91-31, requiring solid waste handling businesses to obtain franchises from the County in order to lawfully operate in the unincorporated area, and requiring public agencies that provided solid waste handling services to enter into a memorandum of understanding with the County. After the adoption of County Ordinance No. 91-31, District withdrew as a member of Authority and ceased providing solid waste handling services in the unincorporated area.
- C. On May 25, 1993, County and Authority entered into a contract (“Contract”), under which County (1) agreed to direct all solid waste collected within the unincorporated area of District’s jurisdiction to solid waste processing facilities designated by Authority, (2) delegated to Authority the authority to regulate rates charged at the Integrated Resource Recovery Facility, and (3) agreed to include specified provisions in solid waste collection franchise agreements mandating collectors to collect those rates from customers (“Rate Provisions”).
- D. On October 12, 1993, County approved a solid waste collection franchise agreement with Richmond Sanitary Service, Inc. (“RSS”), (“Franchise Agreement”) to collect solid waste in the unincorporated west County area (the “RSS Franchise Area”), the boundaries of which are depicted in **Exhibit A** attached hereto and incorporated herein. Pursuant to the Contract, the Franchise Agreement incorporated the Rate Provisions contained in the Contract.

- E. On October 10, 2013, Authority entered into an agreement with West County Resource Recovery, Inc., West Contra Costa Sanitary Landfill, Inc., Golden Bear Transfer Services, Inc., and Keller Canyon Landfill Company and RSS (collectively “Republic Services Entities”) for post-collection recycling and disposal services (“Post-Collection Agreement”). Among other things, the Post-Collection Agreement established a “Post-Collection Rate” to be collected by Republic Services Entities from customers. Revenue from the Post-Collection Rate is used to compensate Republic Services Entities and fund a portion of Authority’s operating expenses, which include costs of regulatory compliance activities that Authority conducts on behalf of its members and County.

- F. The Post-Collection Agreement provided that prior to it taking effect, Cities and County (collectively the “Franchise Agencies”) were required to amend their respective solid waste collection franchise agreements by including specified provisions. The Post-Collection Agreement further provided that Franchise Agencies approving these amendments by November 15, 2013, would be “able to receive the benefits of the new post collection rates.” County approved the required amendment of its Franchise Agreement with RSS on November 12, 2013.

- G. For the past two calendar years, and in 2022, the Post-Collection Rate includes amounts specifically intended to generate revenue to cover Authority costs to address regulatory mandates, including mandates arising from the passage of the Short-lived Climate Pollutant Reduction Act (“SB 1383”). Among other things, SB 1383 included a requirement that the California Department of Resources Recycling and Recovery (“CalRecycle”) develop regulations to reduce organics in landfills as a source of methane. The regulations developed by CalRecycle under SB 1383 revised numerous provisions of division 7 of title 14 of the California Code of Regulations and added Chapter 12, entitled “Short-lived Climate Pollutants,” effective January 1, 2022. Hereafter, Chapter 12 of division 7 of title 14 of the California Code of Regulations, with the exception of articles 8 and 9, will be referred to as the “SB 1383 Regulations.”

- H. The SB 1383 Regulations require counties, cities and other local jurisdictions to adopt enforceable ordinances or other enforceable mechanisms to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contaminants, regulate commercial edible food generators, provide education and outreach information to generators, report to CalRecycle on compliance with the SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations, with the goal of achievement of statewide organic waste disposal reduction targets. In accordance with the SB 1383 Regulations, County adopted County Ordinance No. 2021-38 (“County’s

Ordinance”) on December 14, 2021. County’s Ordinance added Chapter 418-20 to the County Ordinance Code.

- I. Under the SB 1383 Regulations, a county may designate a joint powers authority to fulfill certain obligations in a memorandum of understanding. (See Cal. Code Regs., tit. 14, § 18981.2, subd. (b).) Because the Post-Collection Rate generates revenue for Authority to conduct SB 1383 compliance activities, and because the Post-Collection Rate is charged to and paid by customers of RSS under the Franchise Agreement, County and Authority have agreed that Authority should conduct certain SB 1383 compliance activities on behalf of County and use its revenue from the Post-Collection Rate to fund these activities.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.

2. Term. This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in paragraph 7 of this MOU.

3. Definitions.

a. “Complaint” means a complaint that (i) alleges a violation of County’s Ordinance or Title 14 within the RSS Franchise Area and (ii) conforms to all applicable requirements in section 18995.3 of Title 14.

b. “County’s Representative” means the County representative identified in paragraph 8 of this MOU or his or her designee.

c. “RSS Implementation Record” means all records pertaining to the RSS Franchise Area that must be maintained by County under section 18995.2 of Title 14.

d. “Subscribers” means organic waste generators who reside or do business within the RSS Franchise Area and subscribe to the organic waste collection service provided by RSS in the RSS Franchise Area.

e. “Title 14” means title 14 of the California Code of Regulations.

f. If a term appearing in this MOU is defined in the SB 1383 Regulations, the term will have the meaning set forth in the SB 1383 Regulations, except as otherwise set forth in this MOU.

g. The following terms will have the meanings set forth in County's Ordinance, as may be amended from time to time. As of the Effective Date, County's Ordinance defines these terms as follows:

(1) "Commercial business" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, that operates a business facility in the unincorporated area, including, by way of example and without limitation, strip malls, industrial facilities and multifamily residential dwellings consisting of five or more units.

(2) "Commercial edible food generator" means an entity, other than a food recovery organization or food recovery service, that:

(a) Disposes of edible food in the course of the entity's operation of a commercial business;

(b) Disposes of edible food in the course of the entity's operation of a large venue or large event, either directly or indirectly through a food facility; or

(c) Arranges for the recovery of edible food that would otherwise be disposed of in the course of the entity's operation of a commercial business, large venue or large event.

(3) "Edible food" means food that is intended for human consumption and meets the food safety requirements of the California Retail Food Code.

(4) "Food distributor" means a commercial business that distributes food to entities including, but not limited to, supermarkets and grocery stores.

(5) "Food facility" means a food facility as defined in section 113789 of the California Health and Safety Code.

(6) "Food recovery" means the collection of food designated for disposal and the distribution of the collected food for human consumption.

(7) "Food recovery organization" means an entity that collects or receives edible food from commercial edible food generators or food recovery services and, either directly or indirectly, distributes that edible food to the public for consumption. Food recovery organizations include, but are not limited to, all of the following:

(a) Food banks as defined in section 113783 of the California Health and Safety Code;

(b) Nonprofit charitable organizations as defined in section 113841 of the California Health and Safety Code; and

(c) Nonprofit charitable temporary food facilities as defined in section 113842 of the California Health and Safety Code.

(8) "Food recovery service" means a person who collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for distribution to the public for consumption.

(9) "Food service provider" means a person primarily engaged in providing contracted food services to institutional, governmental, commercial, or industrial customers.

(10) "Grocery store" means a store located in the unincorporated area of the county that is primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments.

(11) "Large event" means an event in the unincorporated area of the county that is attended by an average of more than 2,000 individuals each day of the event and that (1) requires payment of an admission price; or (2) is operated by a local agency.

(12) "Large venue" means a permanent venue facility in the unincorporated area of the county where an average of more than 2,000 individuals are seated or served each day of operation. By way of example and without limitation, venue facilities include stadiums, amphitheaters, arenas, halls, amusement parks, conference or civic centers, zoos, aquariums, airports, racetracks, horse tracks, performing arts centers, fairgrounds, museums, theaters, and other public attraction facilities. A site under common ownership or control that includes two or more contiguous large venues is a single large venue.

(13) "Organic waste" means solid waste containing material originated from living organisms and their metabolic waste products including, but not limited to, food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges.

(14) "Organic waste collection service" means a service provided to customers by a hauler under a franchise agreement to collect routinely generated organic waste from properties in the unincorporated area.

(15) "Organic waste generator" means a person who:

(a) Resides in, or operates a commercial business or other facility located in, the unincorporated area of the county; and

(b) Creates organic waste.

(16) "Person" means an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(17) "Supermarket" means a full-line, self-service retail store located in the unincorporated area of the county that has gross annual sales of \$2 million or more and sells a line of dry grocery, canned goods, or nonfood items and some perishable items.

(18) "Tier one commercial edible food generator" means a commercial edible food generator that operates a grocery store with a total facility size equal to or greater than 10,000 square feet, or operates a supermarket, or is a food distributor, wholesale food vendor, or food service provider that serves customers in the unincorporated area of the county.

(19) "Tier two commercial edible food generator" means a commercial edible food generator that:

(a) Operates a large venue or large event; or

(b) Operates one of the following in the unincorporated area of the county:

(i) A restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet;

(ii) A hotel that has an on-site food facility and 200 or more rooms; or

(ii) A health facility that has an on-site food facility and 100 or more beds.

(20) "Wholesale food vendor" means a commercial business where food is received, shipped, stored, and prepared for distribution to a retailer, warehouse, distributor, or other destination.

4. Authority Obligations

a. Education and outreach

(1) To organic waste generators. At least once each calendar year of this MOU, Authority shall provide to all Subscribers all of the information described in section 18985.1 of Title 14 in the form and manner described therein. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, County's Representative.

(2) To commercial edible food generators. At least once each calendar year of this MOU, Authority shall provide to all tier one commercial edible food generators and tier two commercial edible food generators located in the RSS Franchise Area all of the information described in section 18985.2 of Title 14 in the form and manner described therein. Prior to disseminating any materials under this paragraph, Authority shall provide the materials to, and obtain approval of the materials from, County's Representative.

b. Reporting and recordkeeping

(1) Capacity information

(a) Organic waste recycling. Authority shall timely provide County with information regarding organic waste recycling capacity within the RSS Franchise Area in response to a request by County under section 18992.1 of Title 14.

(b) Edible food recovery. Authority shall timely provide County with information regarding edible food recovery capacity within the RSS Franchise Area in response to a request by County under section 18992.2 of Title 14.

(2) Implementation Record

(a) Records maintenance. To the extent that the Authority creates or obtains a record that must be maintained in the RSS Implementation Record, within 30 days of the creation of the record, Authority will store the record in the RSS Implementation Record. All records stored in the RSS Implementation Record will remain in the RSS Implementation Record until County directs otherwise. Authority shall provide CalRecycle with access to the RSS Implementation Record upon request within 10 business days. Authority shall provide County with electronic access to all Authority records related to Authority's responsibilities under this MOU through a cloud-based software program when, and for so long as, County provides the program at County's sole cost. Notwithstanding the foregoing, nothing in this paragraph requires Authority to disclose documents not subject to disclosure under the California Public Records Act. (Gov. Code, § 6250 *et seq.*)

(b) Records requests. Authority will respond to a request for records contained in the RSS Implementation Record in accordance with all applicable requirements in the California Public Records Act.

(3) Compliance and annual reports. Authority shall prepare and submit to County all of the RSS Franchise Area-related information that County is required to include in its initial compliance report under section 18994.1 of Title 14, and annual reports under section 18994.2 of Title 14, at least 45 days prior to the applicable reporting deadlines set forth in these sections.

c. Assistance with capacity planning

(1) Organic waste processing capacity. Authority shall assist County with its organic waste processing capacity planning obligations under section 18992.1 of Title 14 to the extent that the planning pertains to organic waste recycling capacity within the RSS Franchise Area, in the manner requested by County's Representative. At a minimum, Authority will:

(a) Estimate existing, expanded and new organic waste processing capacity within the RSS Franchise Area, and provide the estimates to County's Representative within 120 days after receipt of a request by County's Representative for the information; and

(b) If County determines that additional organic waste processing capacity is needed within the RSS Franchise Area, within 120 days of receipt of notice by County's Representative, Authority will prepare and submit to County's Representative an implementation schedule for the RSS Franchise Area that conforms to the requirements in section 18992.1, subdivision (d)(1), of Title 14.

(2) Edible food recovery capacity. Authority shall assist County with its edible food recovery capacity planning obligations under section 18992.2 of Title 14 to the extent that the planning pertains to edible food recovery capacity within the RSS Franchise Area, in the manner requested by County. At a minimum, Authority will:

(a) Estimate existing, expanded and edible food recovery capacity within the RSS Franchise Area, and provide the estimates to County's Representative within 120 days after receipt of a request by County's Representative for the information; and

(b) If County determines that additional edible food recovery capacity is needed within the RSS Franchise Area, within 120 days of receipt of notice by County's Representative, Authority will prepare and submit to County's Representative an implementation schedule for the RSS Franchise Area that conforms to the requirements in section 18992.2, subdivision (c)(1), of Title 14.

d. Edible food recovery program. Authority shall develop and implement an edible food recovery program within the RSS Franchise Area that conforms to the

requirements in section 18991.1 of Title 14. The Parties agree that these requirements may be wholly or partially satisfied under other agreements between Authority and County or agreements between Authority and third parties. In addition to Authority actions under subparagraphs 4.a.(2) and 4.e. of this MOU that pertain to edible food generators or edible food recovery entities within the RSS Franchise Area, the program will include actions by Authority to:

(1) Increase access to food recovery organizations and food recovery services by tier one commercial edible food generators and tier two commercial edible food generators located in the RSS Franchise Area; and

(2) Increase edible food recovery capacity if County determines that the RSS Franchise Area does not have sufficient capacity to meet its edible food recovery needs.

e. Enforcement. Authority shall assist County with enforcement of County's Ordinance as follows:

(1) Complaints; investigations

(a) Authority shall develop written procedures for the receipt and investigation of Complaints. The written procedures must conform to all applicable requirements set forth in section 18995.3 of Title 14. Authority shall provide the procedures to County's Representative within 30 days after the Effective Date and obtain County's Representative's approval of the procedures before Authority receives or investigates any Complaints.

(b) Authority shall investigate Complaints that it receives in accordance with the requirements set forth in section 18995.3 of Title 14 and procedures approved under subparagraph 4.e.(1)(a) of this MOU. If Authority determines based upon its investigation of a Complaint that a provision of County's Ordinance has been violated, Authority shall prepare and submit to County's Representative and the alleged violator a report that (i) identifies the alleged violator and provision(s) determined to have been violated, (ii) summarizes the facts regarding the violation; (iii) includes photographs and other documentary evidence of the violation; (iv) describes Authority's efforts to educate the alleged violator and assist the violator in achieving compliance with County's Ordinance in accordance with subparagraph 4.e.(1)(c) of this MOU; and (v) describes any and all past violations of County's Ordinance by the violator.

(c) Authority shall develop and provide to County's Representative for its review and approval standardized procedures for educating and seeking voluntary compliance from persons determined to have violated a provision of County's Ordinance, in accordance with section 18995.1, subdivision (a)(4) of Title 14. When Authority receives a Complaint or otherwise determines that a person has violated a provision of County's Ordinance, Authority shall follow the approved procedures.

(d) Upon receipt of a written request from County's Representative for assistance with investigation of a potential violation of County's Ordinance or the SB 1383 Regulations within the RSS Franchise Area, Authority will utilize its best efforts to provide the requested assistance. Such assistance may include, without limitation, gathering facts from Authority's contractors and other witnesses regarding the identity of the potential violator and the date, time, location and nature of the potential violation, and providing written reports to County's Representative regarding Authority's investigative findings.

(2) Inspections and reviews

(a) Authority shall conduct inspections of entities located in the RSS Franchise Area as needed to comply with section 18995.1, subdivisions (a)(2) and (b), of Title 14. All inspections must be conducted in accordance with the restrictions set forth in section 418-20.220 of County's Ordinance as may be amended from time to time to conform to the SB 1383 Regulations.

(b) Authority shall conduct compliance reviews of solid waste collection accounts of commercial businesses within the RSS Franchise Area as needed, and keep records of each review, in accordance with applicable provisions of section 18995.1, subdivision (a)(1)(A), of Title 14.

(c) Authority shall conduct, or cause to be conducted, route reviews of organic waste generators within the RSS Franchise Area as needed for compliance with applicable organic waste generator requirements set forth in County Ordinance Code sections 418-20.206 and 418-20.208, in accordance with applicable provisions of sections 18995.1 and 18984.5 of Title 14.

(d) Authority shall generate a written or electronic record of each inspection, route review, and compliance review that Authority conducts in the RSS Franchise Area under this paragraph. Each record will include all of the information required under section 18995.1, subdivision (c), of Title 14.

(3) Formal enforcement support. In the event County initiates a formal enforcement action against an alleged violator under County Ordinance Code section 418-20.222, to the extent the violation occurred within the RSS Franchise Area, Authority will provide support to County in carrying out the enforcement action, in a manner directed by County's Representative, including but not limited to working with RSS to determine whether the alleged violator has come into compliance prior to a compliance deadline in a notice of violation, and providing testimonial and other evidence at hearings.

f. Waivers

(1) Authority shall assist County in processing applications by organic waste generators in the RSS Franchise Area for waivers under County Ordinance Code section 418-20.210, as follows:

(a) Upon receipt of a copy of an application submitted to County and request by County's Representative for assistance under this provision, Authority will promptly gather sufficient evidence to determine if a waiver is legally authorized under one or more of the grounds described in County Ordinance Code sections 418-20.210(a) or (b), and make a preliminary determination whether a waiver should be granted or denied.

(b) Within 14 days after receipt of County's Representative's request for assistance, Authority will provide a written report to County's Representative that sets forth the evidence gathered and preliminary determination made under subparagraph 4.f.(1)(a) above.

(2) Authority shall conduct inspections of each commercial business within the RSS Franchise Area that has a waiver under County Ordinance Code section 418-20.210, in accordance with section 18995.1, subdivision (a)(6), of Title 14.

(3) Upon request by County's Representative, Authority shall assist County in investigating whether grounds exist to rescind a waiver granted to a person under County Ordinance Code section 418-20.210(f), by (a) gathering sufficient evidence to determine if the person no longer qualifies for the waiver, and making a preliminary determination whether the waiver should be rescinded; and (b) within 14 days of receipt of the request, providing a written report to County's Representative that sets forth the evidence gathered and preliminary determination.

(4) Authority shall provide a link on Authority's website to County's waiver application form.

g. Other measures. Authority and County acknowledge that CalRecycle may, from time to time, issue opinions, directives or other communications regarding the obligations of jurisdictions under Title 14, and that responsibilities described in this paragraph may need to change, or new responsibilities added, in response to such communications. In the event of such a communication by CalRecycle, upon written notice by County to Authority, Authority will work cooperatively with County to develop and then promptly implement such measures that are needed to satisfy CalRecycle.

h. Funding. Authority shall use revenues from the Post-Collection Rate charged to Subscribers, or other revenues available to Authority, to pay all staff and other costs incurred by Authority in performance of its responsibilities under this MOU.

5. Responsibilities of County

a. Compliance with SB 1383 Regulations. Except for those responsibilities and requirements expressly assumed by Authority under this MOU, County shall be responsible for compliance with applicable provisions of the SB 1383 Regulations.

b. Sharing of information. Within thirty (30) days of request by Authority, or promptly after information described in this paragraph becomes available to County, whichever is later, County shall share with Authority all data, documents, contact information for generators within the RSS Franchise Area, or any other information County deems necessary for Authority to carry out its responsibilities set forth in this MOU. Notwithstanding the foregoing, nothing in this subparagraph requires County to share documents not subject to disclosure under the California Public Records Act.

c. Enforcement. County shall be responsible for any formal enforcement of County's Ordinance within the RSS Franchise Area.

6. Indemnification. Each Party, on behalf of itself and its boards, officers, employees, agents and consultants (individually and collectively the "Indemnitor") shall indemnify, hold harmless and defend the other Party and its boards, officers, employees, agents and consultants from and against any and all claims, demands, actions, losses, damages, liabilities, penalties, costs and expenses, including reasonable attorney's fees, to the extent such claims, demands, actions, losses, damages, liabilities, penalties, costs and expenses are caused by or result from the negligent or intentional acts or omissions of the Indemnitor under this MOU.

7. Termination. This MOU may be terminated by mutual written consent of the Parties. Any Party may terminate this MOU, for any reason or no reason, upon giving three hundred and sixty-five (365) days' prior written notice to the other Party. If County gives Authority 60 days written notice of termination, County may terminate this MOU upon giving Authority 60 days written notice of termination of the MOU. Upon termination of this MOU, Authority shall have no further obligations to carry out the Authority Responsibilities described in paragraph 4 of this MOU. The obligations set forth in paragraph 6 of this MOU will survive the termination of this MOU.

8. Notice. All notices under this MOU (including requests, reports, approvals, and other communications), shall be made in writing and either served personally, sent by first class mail, or sent by e-mail provided confirmation of delivery is obtained at the time of e-mail transmission, addressed as follows:

To Authority:

West Contra Costa Integrated Waste
Management Authority
3220 Blume Drive, Suite 198
Richmond, CA 94806
Attn: Executive Director
E-mail: PeterH@Recyclemore.com

To County: Contra Costa County
Department of Conservation & Development
30 Muir Road
Martinez, CA 94553
Attn: Solid Waste Program Manager
E-mail: Recycling@dcd.cccounty.us

Any Party may change the address to which notice is to be given by providing the other Party with written notice of the change at least fifteen (15) calendar days prior to the effective date of the change.

Service of notices shall be deemed complete on the date of receipt if personally served, or if served by e-mail provided confirmation of delivery is obtained at the time of email transmission. Service of notices sent by first class mail shall be deemed complete on the fifth (5th) day following deposit in the United States mail.

9. No Waiver. No waiver of any provision of this MOU will be binding unless executed in writing by the Party making the waiver. No waiver of any provision in this MOU will be deemed, or constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

10. Counterparts. This MOU may be executed in counterparts and so executed shall constitute an agreement which shall be binding upon the Parties hereto. A photocopy of the fully executed MOU shall have the same force and effect as the original.

11. Governing Law and Venue. This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Venue in any proceeding or action among the Parties arising out of this MOU shall be in Contra Costa County, California.

12. Amendment. This MOU may only be amended in writing signed by all Parties. This MOU may be amended to both extend the term and conditions, as well as to add tasks. Authority shall not begin new tasks without express written permission of County.

13. Entire Agreement. This MOU constitutes the entire agreement between County and Authority regarding the subject matter of this MOU, and supersedes all prior negotiations, representations, or agreements regarding the subject matter of this MOU, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first above written.

COUNTY

AUTHORITY

By: _____
John Kopchik
Conservation & Development
Director

By: _____
Peter Holtzclaw
Executive Director

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Mary Ann McNett Mason
County Counsel

By: _____
General Counsel

By: _____
Deputy County Counsel

ATTACHMENT: Exhibit A (Map)

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WASTE MANAGEMENT AUTHORITY

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