

**SONOMA COUNTY WASTE MANAGEMENT AGENCY**

June 20, 2012  
9:00 a.m.

City of Santa Rosa Council Chambers  
100 Santa Rosa Avenue  
Santa Rosa, CA

**Estimated Ending Time 11:30 a.m.**

**\*\*\* UNANIMOUS VOTE ON ITEMS #5 and #6 \*\*\***

**AGENDA**

<u>Item</u>	<u>Action</u>
1. Call to Order Regular Meeting	
2. Agenda Approval	
3. Public Comments (items not on the agenda)	
<b><u>Consent</u></b> (w/attachments)	Discussion/Action
4.1 Minutes of May 16, 2012 (pg. 3)	
4.2 MCR Container Expenditure (pg. 10)	
4.3 Eighth Amendment to Petaluma HHW Services Agreement (pg. 14)	
<b><u>Regular Calendar</u></b>	
5. Compost Operations Contract (pg. 20) [Carter](Attachments)	<b>UNANIMOUS VOTE Organics</b>
6. Oil Program Contract (pg. 60) [Steinman](Attachments)	<b>UNANIMOUS VOTE HHW</b>
7. Spanish Language Outreach Contract (pg. 78) [Chilcott](Attachments)	Discussion/Action <b>Education</b>
8. Joint Powers Agreement Expiration (pg. 94) [Mikus, Coleson](Attachments)	Discussion <b>All</b>
9. Carryout Bags Ordinance Report (pg. 167) [Carter](Attachments)	Discussion/Action <b>Planning</b>

10. Attachments/Correspondence:
  - 10.1 Director's Agenda Notes (pg. 187)
  - 10.2 Reports by Staff and Others:
    - 10.2.a June, July, and August 2012 Outreach Events (pg. 190)
    - 10.2.b Update Report on MCR Project (pg. 192)
    - 10.2.c Update Report on Extra Oil Grant Expenditures (pg. 193)
    - 10.2.d Styrofoam Collection at Agency Monthly E-waste Events (pg. 194)
11. On file w/Clerk: for copy call 565-3579  
Resolutions approved in May 2012  
2012-008 Resolution of the SCWMA Authorizing an Agreement with ECS  
Refining for Electronic Waste Transportation and Recycling Services.
12. Boardmember Comments
13. Staff Comments
14. Next SCWMA meeting: Meet July 18, 2012 but cancel August 15, 2012?
15. Adjourn

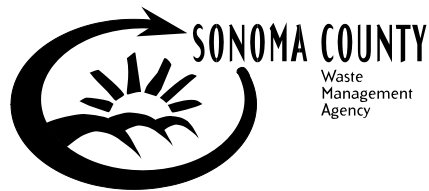
**Consent Calendar:** These matters include routine financial and administrative actions and are usually approved by a single majority vote. Any Boardmember may remove an item from the consent calendar.

**Regular Calendar:** These items include significant and administrative actions of special interest and are classified by program area. The regular calendar also includes "Set Matters," which are noticed hearings, work sessions and public hearings.

**Public Comments:** Pursuant to Rule 6, Rules of Governance of the Sonoma County Waste Management Agency, members of the public desiring to speak on items that are within the jurisdiction of the Agency shall have an opportunity at the beginning and during each regular meeting of the Agency. When recognized by the Chair, each person should give his/her name and address and limit comments to 3 minutes. Public comments will follow the staff report and subsequent Boardmember questions on that Agenda item and before Boardmembers propose a motion to vote on any item.

**Disabled Accommodation:** If you have a disability that requires the agenda materials to be in an alternative format or requires an interpreter or other person to assist you while attending this meeting, please contact the Sonoma County Waste Management Agency Office at 2300 County Center Drive, Suite B100, Santa Rosa, (707) 565-3579, at least 72 hours prior to the meeting, to ensure arrangements for accommodation by the Agency.

**Noticing:** This notice is posted 72 hours prior to the meeting at The Board of Supervisors, 575 Administration Drive, Santa Rosa, and at the meeting site the City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa. It is also available on the internet at [www.recyclenow.org](http://www.recyclenow.org)



## Agenda Item # 4.1

### Minutes of May 16, 2012

The Sonoma County Waste Management Agency (SCWMA) met on May 16, 2012, at the City of Cotati Community Room, 203 West Sierra Avenue, Cotati, California

#### **Present:**

City of Cloverdale  
City of Cotati  
City of Healdsburg  
City of Petaluma  
City of Rohnert Park  
City of Santa Rosa  
City of Sebastopol  
County of Sonoma  
Town of Windsor

Nina Regor, Chair  
Susan Harvey  
Mike Kirn  
Dan St. John  
John McArthur  
Jennifer Phillips  
Jack Griffin  
Phil Demery  
Matt Mullan

#### **Absent:**

City of Sonoma

Steve Barbose

#### **Staff Present:**

Counsel  
Staff

Janet Coleson  
Patrick Carter  
Karina Chilcott  
Henry Mikus  
Lisa Steinman  
Debra Dowdell

Clerk

#### **1. Call to Order Special Meeting**

The meeting was called to order at 8:37a.m.

#### **2. Open Closed Session**

Conference with Legal Counsel – Anticipated Litigation  
Government Code Section 54956.9(b)(1) and (b)(3)(A) one case.

#### **3. Adjourn Closed Session & Introduction**

No report.

#### **4. Agenda Approval**

**Susan Harvey, City of Cotati, moved to approve the agenda, Mike Kirn, City of Healdsburg, seconded. County of Sonoma and City of Sonoma absent. Agenda approved.**

#### **5. Public Comments (items not on the agenda)**

Stu Clark of Healdsburg commented that he'd recently attended an AB 341 workshop in Sacramento that was hosted by CalRecycle and noticed there was not much local jurisdiction representation. CalRecycle is putting together a plan on how to meet the 75% diversion goal. If anyone has questions or would like information they can contact him. He will send a link

with information about the workshop to Henry Mikus, Executive Director, so it can be forwarded to the Board.

**Consent** (w/attachments)

- 6.1 Minutes of April 18, 2012
- 6.2 Amendment to MDS Fluorescent Disposal Contract
- 6.3 Eighth Amendment to Petaluma HHW Services Agreement
- 6.4 FY 10-11 SCWMA Audit

**Dan St. John, City of Petaluma, requested that item 6.3 be pulled to give him the opportunity to discuss the term with his Council.**

**Matt Mullan, Town of Windsor, moved to approve items 6.1, 6.2 and 6.4. Dell Tredinnick, City of Santa Rosa, seconded. County of Sonoma and City of Sonoma absent. Consent calendar approved as amended.**

*Phil Demery, County of Sonoma arrived at 9:31a.m.*

**Regular Calendar**

**7. E-Waste Transport and Recycling Services Contract**

Lisa Steinman reported on the five proposals that were received and evaluated for E-Waste Transport and Recycling Services. She advised that ECS Refining had the best proposal as to pricing and content and recommended a new contract be awarded to ECS Refining through February 2017.

**Board Discussion**

Matt Mullan, Town of Windsor, asked if the Agency had a purchase policy for providing a local business preference. Ms. Steinman responded not with this contract because we don't have local E-waste recyclers in Sonoma County. We have local E-waste collectors but not recyclers.

Dan St. John, City of Petaluma asked how the percentage scores for the cost category were determined. Henry Mikus answered he used the weights from last year's waste that was collected and added the estimates for the flat screen monitors to compute total revenue amounts. Not all of them were the same. It was a tiered ranking process.

**Public Comment**

Pat Potter, ECS Refining thanked the Board for their business and working with them since the beginning of SB 20.

**Board Comments**

None.

**Phil Demery, County of Sonoma, moved to approve awarding the contract to ECS Refining. Jack Griffin, City of Sebastopol seconded. City of Sonoma absent. Motion carried.**

**8. Electronic Waste Collection Events Contract**

Lisa Steinman informed the Board that three proposals for Electronic Waste Collection Events contracts were received and evaluated. Ms. Steinman urged a new 2-year contract be awarded to Goodwill Industries of the Redwood Empire for E-waste collection event services and awarding On Site Electronics Recycling the backup contract for E-waste collection event services.

### **Board Discussion**

Susan Harvey, City of Cotati stated the report Ms. Steinman gave indicated that Goodwill did not provide the best pricing but scored high in all other categories but the table that was provided in the handout showed On Site scored higher than Goodwill in at least four categories. Ms. Steinman replied that she'd misspoken. Goodwill had the highest overall score.

Ms. Harvey asked what sites the other proposer's offered. Mr. Mikus answered the other responder's locations were very vague. They had no definitive list of sites. Ms. Harvey inquired if the lack of locations from the other proposer's could add costs. Mr. Mikus replied yes. Ms. Harvey then asked what was driving the significant decrease in price per pound that Goodwill is offering. Ms. Steinman responded the decrease is necessary because Goodwill has been losing money on the E-waste events.

Dan St. John, City of Petaluma, asked what the annual value of the contract was. Ms. Steinman advised that SCWMA received \$17,907 for the covered electronic waste but they paid close to \$13,000 in advertising and staff cost. The point of the contract is providing the service and breaking even on the contract.

Susan Harvey, City of Cotati, asked with the lower price that's being offered if breaking even would still be possible. Ms. Steinman answered that she's working on lowering advertising expenses by working with partners in order to stay within the limits of what they expect to make next year.

### **Public Comment**

Ann Martin, Goodwill Industries of the Redwood Empire, said they would really appreciate the Board's support on this contract and that they would put in half of the advertising costs on the proposal.

### **Board Comment**

Matt Mullan, Town of Windsor, notified staff that Windsor has the ability to use the hauler's garbage bill to insert advertising. Staff would just need to pay for the flyers. Ms. Steinman replied they have done that before and it is something they will pursue again.

**Mike Kirn, City of Healdsburg, moved to approve the recommendation awarding the contract to Goodwill Industries of the Redwood Empire and the backup contract to On-Site Electronics Recycling. Susan Harvey, City of Cotati seconded. City of Sonoma absent. Motion carried.**

## **9. Compost Operations Contract**

Patrick Carter noted that supplemental information was emailed out yesterday and that copies are available. There are three firms we have continued to negotiate with. They're Sonoma Compost Company, Recology, Inc. and Sonoma Vermiculture. Sonoma Compost and Recology are both well qualified to handle composting however; the prices from Sonoma Compost are significantly lower. Sonoma Vermiculture is under consideration for taking up to 30,000 tons of food waste. A recommendation is anticipated for the June meeting.

### **Board Discussion**

Phil Demery, County of Sonoma, asked if the cost for continuing operations at Central was for where they are now or developing a new site. Mr. Carter responded that the costs are for where they are currently. Mr. Demery asked if the cost was for developing a site on Central or off Central property. Mr. Carter replied it was not site specific. Mr. Mikus added that the Agency shared information on the sites that are under consideration.

Matt Mullan, Town of Windsor, asked if there were other proposals than those from Sonoma Compost and Recology. Mr. Mikus answered there were eight respondents to the RFQ. Two of them were clearly qualified and answered all the questions that were part of the RFQ packet. They were Sonoma Compost and Recology. They were selected with Board approval to move forward in the negotiations process. Sonoma Vermiculture was added because of the food waste diversion issue. Mr. Mullan asked if the proposal numbers from Recology are based on them using their Vacaville site. Mr. Mikus replied no.

Phil Demery, County of Sonoma, inquired if there had been any discussion in terms of the duration of the contract. Chair Regor replied that the last direction the Board gave was that the term needs to be concurrent with the expiration of the JPA.

#### **Public Comment**

Paul Yamamoto, Recology, Inc., stated that though there appears to be a gap in pricing he's hoping there will be an opportunity to work with staff to improve those numbers.

Pam Davis, Sonoma Compost Company, thanked the Board for their due diligence on this long ongoing process and affirmed that Sonoma Compost is a very cost effective and economic operator. She also noted that they are very interested in getting more experience with food scraps. A five minute video about the Sonoma Compost story was distributed.

#### **Board Comment**

Chair Regor wanted to know how many jurisdictions plan on giving updates to their own jurisdictions to figure out if timing is realistic for the June meeting.

Phil Demery, County of Sonoma, said it is doubtful that the existing site is going to be the future location of the compost facility due to the fact a very significant element of the cost is going to be in developing a new site.

Chair Regor, asked if the compost operations current location would be available until the expiration of the JPA i.e. 2017. Mr. Demery replied probably not.

Jack Griffin, City of Sebastopol, inquired about how much notice would be given to the compost site. Mr. Demery responded they would try and give as much notice as possible.

Jennifer Phillips, City of Santa Rosa, questioned if the permit that was applied for included a place for compost. Mr. Demery answered it did. They have reserved the space that was identified as one of the site locations for a new compost facility. The existing site location will become landfill space.

Henry Mikus, Executive Director, gave a quick historical review on the matter.

Dan St. John, City of Petaluma, asked if the term of the compost contract would be through 2017 or earlier if the current site becomes unavailable and if then another process to bid would open up for a new site. Mr. Mikus replied that is correct.

Jack Griffin, City of Sebastopol, thinks the Agency should be negotiating with the County for an agreement as to what the minimum term of notice should be.

Phil Demery, County of Sonoma, believes the Agency will be in a position to make a decision on a new compost site in 6 to 9 months.

Mike Kirn, City of Healdsburg, stated that the current JPA agreement has provisions for the County to provide a compost facility at Central through the term of the JPA. If there's something different that's going to happen then the ramifications of the County not fulfilling its obligations need to be looked at. Mr. Demery replied that's not an issue as they have another site.

Dan St. John, City of Petaluma, asked if the pricing includes the upgrade to the food waste. Mr. Mikus replied no.

Matt Mullan, Town of Windsor, questioned if a two year contract with three one year options could be done. That way there's an expectation of a five year term with check-ins along the way. He would also like to see performance standards included in the new contract.

Chair Regor asked Boardmembers if the June meeting would be feasible for jurisdictions to come back and make a decision.

After much discussion it was decided that jurisdictions would get back to the Agency as soon as possible to determine if action can be taken on the new contract in June or if an extension with the current provider would need to happen.

#### **10. Carryout Bags Draft Ordinance Report**

Patrick Carter reported that a draft ordinance to ban single use bags has been developed using the San Jose Ordinance as a model and asked the Board for direction and approval to issue and RFP or RFQ for a consultant to do the CEQA analysis.

##### **Board Discussion**

Susan Harvey, City of Cotati, asked if this would be applicable to stores such as Macy's and Kohl's. Mr. Mikus replied that's correct.

Jennifer Phillips, City of Santa Rosa, asked if the ordinance included the administrative process that's necessary for enforcement, fines and citations. Janet Coleson, Agency Counsel, replied that it would be a separate ordinance. It's an administrative penalties ordinance which will have a fine structure.

##### **Public Comment**

None.

##### **Board Comment**

John McArthur, City of Rohnert Park, received unanimous support from his Council to participate in this process as long as there is no cost to the City and that the City has the opportunity to participate in every step of the development of the ordinance.

Jennifer Phillips, City of Santa Rosa, also received unanimous support from her Council to direct the Agency to move forward on drafting an ordinance and completing an EIR to bring back to the City for the option to adopt an ordinance independently or as a JPA. Not having control over the ordinance was a major issue for some of the Council.

Janet Coleson, Agency Counsel, stated the scope of this as its drafted is a modified San Jose version. It does not cover restaurants but it does cover all retail establishments. It puts a fee on paper bags. There is no anticipation of enforcement problems.

Chair Regor asked if the City of San Jose conveyed to her what they're seeing in terms of enforcement. Mr. Carter responded he saw an article about it. They have not had many issues with enforcement and the few they had were resolved with just a letter.

Dan St. John, City of Petaluma, asked what staff they are using for enforcement. Mr. Carter responded existing city staff.

Chair Regor asked what can we do for as long as possible to keep our options open as to whether it's going to be an Agency or model ordinance. Ms. Coleson responded that the draft ordinance that was developed is written with a regional ordinance in mind but that it wouldn't take much to make it a model ordinance.

Henry Mikus, Executive Director, stated he needs further input on the draft ordinance and direction to go ahead and start preparing an RFQ for a consultant to do the EIR.

After much discussion about the EIR process the Board concluded that the Agency should begin the RFQ process to find a consultant for the EIR. They also directed Staff to prepare a "White Paper" which would include a table of pros and cons on model versus JPA ordinance that they can bring back to their councils for a decision.

**11. Sonoma County/City Solid Waste Advisory (SWAG)**

Susan Harvey, City of Cotati, gave an update on the last SWAG meeting. The next SWAG meeting will be scheduled for sometime in August. Minutes of the SWAG meetings can be found on the Transportation and Public Works (TPW) website at [http://www.sonoma-county.org/tpw/divisions/integrated\\_waste/solid\\_waste\\_adv\\_group.htm](http://www.sonoma-county.org/tpw/divisions/integrated_waste/solid_waste_adv_group.htm)

**Public Comment**

None.

**Board Comment**

None.

**12. Attachments/Correspondence**

Chair Regor called attention to the Director's Agenda Notes, Reports by Staff and Others; May and June 2012 Outreach Events, and update reports on the MCR Project and Extra Oil Grant Expenditures.

**13. On File with Clerk**

Chair Regor noted resolution approved in April 2012 adopting the 2012-2013 Annual Budget for the Agency.

**14. Boardmember Comments**

Chair Regor thanked the City of Cotati for letting us meet at their facility. She presented Jack Griffin with a certificate of appreciation for his commitment to the Board and congratulated him on his new job. Mr. Griffin said he will be the City Manager for the City of San Marcos and thanked the Board and Staff for all their work.

Phil Demery, County of Sonoma, noted that the SWAG would like to see ideas the Agency has in terms of extending it beyond 2017.

**15. Staff Comments**

Henry Mikus, Executive Director called attention to the Agenda, noting that it now provides page numbers on it. Mr. Mikus commented that he and Agency Counsel are already working on a plan for extending the Agency which is planned for discussion at the June meeting.



**16. Next SCWMA Meeting – June 20, 2012**

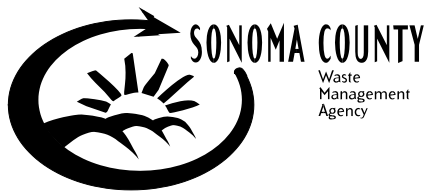
**17. Adjournment**

Meeting adjourned at 11:20a.m.

Respectfully submitted,  
Debra Dowdell

Distributed at meeting:  
Sonoma Compost Company 5 minute video

DRAFT



**Agenda Item #: 4.2**  
**Cost Center: Education**  
**Staff Contact: Chilcott**  
**Agenda Date: 6/20/2012**

**ITEM: MCR Container Expenditure**

**I. BACKGROUND**

With the passage of [AB 341](#) in fall 2011, certain businesses and multifamily dwellings are required to recycle. The purpose of the law, which goes into effect July 1, 2012, is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts. The California Department of Resources Recycling and Recovery (CalRecycle) is responsible for the administration of AB341 and local jurisdictions are required to report on efforts to implement education, outreach and monitoring through annual AB 939 reporting.

Utilizing CalRecycle grant funding, the Agency is the process of a MCR bi-lingual (English and Spanish) outreach educational program. Efforts to increase single-stream recycling, as defined in jurisdiction franchise agreements, is the focus of the Agency's outreach. To date, efforts have included sending letters to businesses informing them of the new law, collecting postcard, email, and phone responses, site visits to personally assess recycling needs, distribution of Agency literature, and recording information in an Access database. Literature offered includes Recycling Guides (English and Spanish), "This establishment recycles" posters, notices to apartment residents for distribution in billings, and single-stream posters. Educational materials can be downloaded on the Agency's website at [http://www.recyclenow.org/resources/downloads\\_graphics.asp](http://www.recyclenow.org/resources/downloads_graphics.asp).

To date, staff has collected names and quantities of establishments requesting desk side recycling containers and larger "slim-jim" recycling containers for collection in shared areas. The intent is to distribute these containers as follow-up site visits.

**II. DISCUSSION**

As grant funding budget allows, the Agency intends to purchase 2000 28-quart blue plastic desk side recycling containers and 200 32-gallon blue plastic slim-jim containers. Staff received bids from 4 vendors (Recy-Cal Supply Company, Uline, Busch Systems and R&B Wholesale Distributors) for purchase and delivery. Vendors were requested to bid on dock-to-dock delivery where containers get shipped to a third party with fork lift and warehouse storage capability and to bid on delivery incrementally to the Agency office. The volume of containers will comprise 17-18 pallets and it is estimated that distribution will occur over a 3 month period. The following details the bid summary:

Vendor	Cost for 28-quart desk side recycling containers with tax	Cost for 32-gallon blue plastic slim-jim containers with tax	Dock-to-dock storage/pick up (not including staff time)	Office delivery	Total with tax at 8.5%
R&B Wholesale Distributors, Inc.	\$9,002.86	\$7,218.20		\$50 flat fee/delivery for 1 or more pallets	\$16,404.00 to \$17,141.15 depending on # deliveries requested
Uline	\$8,987.00	\$6,788.00	\$1,458.00	Not offered	\$17,233.00
Busch Systems	\$10,025.40	\$6,041.28	\$1,458.00	Not offered	\$17,524.68
Recy-CAL Supply	\$10,415.09	\$8,332.80	\$1,458.00	Not offered	\$20,205.89

Considering logistic and constrained Agency staff time resources, R&B Wholesale Distributors, Inc. proposal was the most efficient and cost effective. R&B Wholesale Distributors, Inc. has a warehouse in Hayward and has agreed to take space solely to store these containers over a 3 month time frame. The company also has a flat rate (\$50/delivery) on their own trucks for deliveries in northern California. The agreement is that the Agency would draw from the supply with a minimum of 100 pieces. Trucks carry pallet jacks for purposes of unloading at the Agency offices.

The following are the specifications of the containers for purchase:

- 27-28 quart 2956-73 Rubbermaid Deskside Recycling Container, Medium with Universal Recycle Symbol Blue (14.4" long x 10.25" wide x 15" high)  
<http://www.rubbermaidcommercial.com/rcp/products/detail.jsp?rcpNum=2956-73&search=2956-73>
- 23 Gallon 3540-75 Rubbermaid Slim Jim® Recycling Container Blue (20" long x 11" wide x 30" high)  
<http://www.rubbermaidcommercial.com/rcp/products/detail.jsp?rcpNum=3540-75&search=3540-75>



To meet grant funding criteria, it is necessary that containers are made from post-consumer content recycled beverage container content. According to Rubbermaid, their commercial products blue & green plastic recycling containers meet or exceed the U.S. EPA guideline of a minimum of 20% post-consumer resin.

### III. FUNDING IMPACT

Purchasing 2000 27-28 quart Rubbermaid Deskside Recycling containers and 200 23 gallon Rubbermaid Slim Jim Recycling containers for a maximum of \$17,141.15. These containers would be purchased using funds from CalRecycle's City/County Payment grant.

### IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends the Board grant the Chair authority to sign a purchase order for the selected recycling containers at a cost not to exceed \$17,141.15.

### V. ATTACHMENTS

Price quote from R&B Wholesale Distributors, Inc.  
Resolution

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA



2350 S. Milliken Ave. • Ontario, CA 91761 • Phone (909) 230-5420 • Fax (909) 230-5415

# Quotation

Contact: Karina Chilcott

Company: Sonoma County Waste Management Agency Job Name: \_\_\_\_\_

Fax #: \_\_\_\_\_ Job #/Location: Santa Rosa, CA

PRODUCT LINE	PRODUCT# / DESCRIPTION	LIST	NET	WEIGHT	TOTAL
Rubbermaid	2956-73BLUE (2000)	8.40	4.20	1.88	8400.00
Rubbermaid	3540-75BLUE (200)	67.20	33.60	7.50	6720.00
		Bulk Order: 1% Discount:			-151.20
			Tax Rate: 8.5%:		1272.35
		Each Delivery: \$50 (budget for 18)			900.00
			Grand Total:		17141.15
Prices and weights for each.					
	Quantity noted in ( ).				

Comments: If not in stock, please allow two weeks.

F.O.B. ONTARIO, CA.

Prices are for each. Items #'s quoted:

**\*\*R&B WHOLESALE WILL NOT HONOR ANY VERBAL PRICE QUOTATIONS, ALWAYS OBTAIN PRICING IN A WRITTEN QUOTATION. PRICE PROTECTION EXPIRATION DATE IS 60 DAYS. PLEASE INQUIRE IMMEDIATELY IF YOU REQUIRE ADDITIONAL PRICE PROTECTION.**

Date: 5/31/2012

Quoted By: ZACH KOZAK

DATED: June 20, 2012

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
AUTHORIZING THE PURCHASE OF RECYCLING CONTAINERS FROM R&B WHOLESALE  
DISTRIBUTORS, INC.

WHEREAS, the California State beverage container recycling legislation was amended by Senate Bill 332 to increase the number and types of containers with California Redemption Value and appropriated funds for distribution to jurisdictions for the express purpose of increasing the diversion of California Redemption Value containers; and

WHEREAS, the Cities of Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, and Sonoma, the Town of Windsor, and the County of Sonoma have authorized the California State Department of Conservation 2011/12 City/County Payment Program funds to be dispersed to the Sonoma County Waste Management Agency, once funds are received by their fiscal agents, for the purpose of continuing the implementation of the beverage container recycling program throughout the jurisdictions of Sonoma County; and

WHEREAS, diverting recyclables, including beverage containers, from the County disposal sites is one of the goals towards meeting the California Integrated Waste Management Act of 1989 (AB 939) diversion requirement of 50 percent by 2000; and

WHEREAS, each of the jurisdictions in the County have a mutual goal of serving the residents of Sonoma County.

NOW THEREFORE, BE IT RESOLVED that the Sonoma County Waste Management Agency authorizes the Agency Chair to sign a purchase order for the purchase 2200 recycling containers from R&B Wholesale Distributors, Inc. at a cost not to exceed \$17,141.15.

MEMBERS:

- -	- -	- -	- -	- -
_____ Cloverdale	_____ Cotati	_____ County	_____ Healdsburg	_____ Petaluma
- -	- -	- -	- -	- -
_____ Rohnert Park	_____ Santa Rosa	_____ Sebastopol	_____ Sonoma	_____ Windsor

AYES: - -      NOES: - -      ABSENT: - -      ABSTAIN: - -

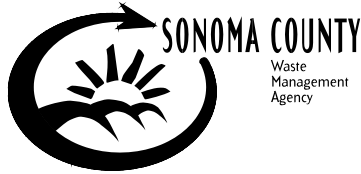
SO ORDERED.

The within instrument is a correct copy  
of the original on file with this office.

ATTEST:

DATE:

\_\_\_\_\_  
Debra Dowdell  
Clerk of the Sonoma County Waste Management  
Agency of the State of California in and for the  
County of Sonoma



**Agenda Item #:** 4.3  
**Cost Center:** All  
**Staff Contact:** Mikus  
**Agenda Date:** 6/20/2012

## **ITEM: Eighth Amendment to Petaluma HHW Services Agreement**

### **I. BACKGROUND**

In November 2004 the Board approved an agreement with the City of Petaluma in which the Agency agreed to provide Household Hazardous Waste (HHW) services to Petaluma residents for calendar year 2005. The cost for this service was paid directly by the City of Petaluma, instead of through the tipping fee surcharge, as Petaluma's solid waste bypasses the County disposal system.

The 1<sup>st</sup> Amendment to the Agreement, approved in November 2005, extended the term until the end of FY 05-06 (June 30, 2006).

The 2<sup>nd</sup> Amendment (revised) to the Agreement, approved in April 2006, extended the term until the end of FY 06-07 (June 30, 2007) and added all Agency surcharge-funded services, in addition to HHW services.

The 3<sup>rd</sup> Amendment (revised) to the Agreement, approved in May 2007, extended the term until the end of FY 07-08 (June 30, 2008) and added all Agency surcharge-funded services, in addition to HHW services.

The 4<sup>th</sup> Amendment (revised) to the Agreement, approved in May 2008, extended the term until the end of FY 08-09 (June 30, 2009) and added all Agency surcharge-funded services, in addition to HHW services.

The 5<sup>th</sup> Amendment to the Agreement, approved in May 2009, extended the term until the end of FY 09-10 (June 30, 2010) and added all Agency surcharge-funded services, in addition to HHW services.

The 6<sup>th</sup> Amendment (revised) to the Agreement, approved in May 2010, extended the term until the end of FY 10-11 (June 30, 2011) and added all Agency surcharge-funded services, in addition to HHW services.

The 7<sup>th</sup> Amendment to the Agreement, approved in May 2011, extended the term until the end of FY 11-12 (June 30, 2012) and added all Agency surcharge-funded services, in addition to HHW services.

### **II. DISCUSSION**

The City of Petaluma has indicated they would like to continue paying directly for SCWMA services as it has for the past seven years. Initially, staff brought a draft Amendment to agreement for consideration for approval at the May Board meeting. This agreement was for a single year, as had been the previous pattern. At the May meeting the Board requested staff to revise the agreement to a term of three years, and return it for discussion and action at the June Board meeting. The new agreement would thus

expire June 30, 2015. The schedule for this amendment would be for the SCWMA Board to consider the Eighth Amendment to the Agreement on June 20, 2012 with the City Council of Petaluma considering the Amendment at the July 2, 2012 City Council meeting. During the term of the Eighth Amendment, Petaluma would provide monthly solid waste tonnage reports to SCWMA for AB939 reporting purposes and to serve as a basis for calculating compensation.

### III. FUNDING IMPACT

Beginning July 1, 2012, invoices will be calculated on the reported monthly tonnage using the Board approved rate of \$5.95 per ton. The invoice would then be submitted to the City of Petaluma for payment. The payment would be due and payable to SCWMA ten days after receipt of the invoice. This would have the City of Petaluma on the same schedule and basis of calculation and payment as the rest of the jurisdictions, who use the County system for reporting of tonnage disposed and payment of the surcharge tipping fee.

### IV. RECOMMENDED ACTION/ALTERNATIVES TO RECOMMENDATION

Approve the Eighth Amendment to the Petaluma Services Agreement and direct staff to work with Petaluma's representatives to present the Eighth Amendment to the Petaluma City Council for its approval.

### V. ATTACHMENTS

Draft Eighth Amendment to the Petaluma Services Agreement  
Draft Exhibit A  
Draft Resolution

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA

## **EIGHTH AMENDMENT TO AGREEMENT**

### **Household Hazardous Waste and AB 939 Program Services**

This Eighth Amendment to Agreement, effective the 1<sup>st</sup> day of July, 2012, ("Effective Date"), is made and entered into by and between the City of Petaluma, a municipal corporation and a charter city, hereinafter referred to as "CITY," and the Sonoma County Waste Management Agency, a joint powers agency, hereinafter referred to as "AGENCY."

WHEREAS, CITY and AGENCY entered into an Agreement effective January 1, 2005 and terminating on January 1, 2006, governing the use of AGENCY's Household Hazardous Waste Facility (hereinafter the "Agreement"); and

WHEREAS, CITY and AGENCY approved the First Amendment to the Agreement to extend the term of the Agreement for an additional six (6) months, until June 30, 2006; and,

WHEREAS, CITY and AGENCY approved the Second Amendment to the Agreement to (1) add additional services for compliance to the requirements mandated by AB 939, (2) compensate the AGENCY for services managed and performed by the AGENCY, and (3) extend the term of the Agreement for an additional twelve (12) months, until June 30, 2007; and,

WHEREAS, CITY and AGENCY approved the Third Amendment to the Agreement to compensate the AGENCY for services managed and performed by the AGENCY, and extend the term of the Agreement for an additional twelve (12) months, until June 30, 2008; and,

WHEREAS, CITY and AGENCY approved the Fourth Amendment to the Agreement to compensate the AGENCY for services managed and performed by the AGENCY, and extend the term of the Agreement for an additional twelve (12) months, until June 30, 2009; and,

WHEREAS, CITY and AGENCY approved the Fifth Amendment to the Agreement to compensate the AGENCY for services managed and performed by the AGENCY, and extend the term of the Agreement for an additional twelve (12) months, until June 30, 2010; and,

WHEREAS, CITY and AGENCY approved the Sixth Amendment to the Agreement to compensate the AGENCY for services managed and performed by the AGENCY, and extend the term of the Agreement for an additional twelve (12) months, until June 30, 2011; and,

WHEREAS, CITY and AGENCY approved the Seventh Amendment to the Agreement to compensate the AGENCY for services managed and performed by the AGENCY, and extend the term of the Agreement for an additional twelve (12) months, until June 30, 2012; and,

WHEREAS, CITY and AGENCY wish to amend the Agreement an eighth time to adjust the compensation to the AGENCY for services managed and performed by the AGENCY, and extend the term of the Agreement for an additional thirty-six (36) months, until June 30, 2015.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained in this Eighth Amendment, AGENCY and CITY agree as follows:

Section 1. Section 2. of the Agreement, "Compensation; Business Tax Certificate," is amended to read as follows:



## 2. Compensation

- A. For the full performance of the Services as described herein, CITY shall compensate AGENCY under the terms defined in Exhibit A Services and Compensation. Payment of this amount is due monthly installments, upon invoice, beginning August 1, 2012.
- B. AGENCY shall be compensated for services in addition to those described in Exhibit A, only if AGENCY and CITY execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services.

Section 2. Section 3 of the Agreement, "Term," is amended to read as follows:

3. Term. The term of this Agreement commences on the effective date of July 1, 2012 and terminates at midnight on June 30, 2015, unless extended or terminated sooner pursuant to the provisions of this Agreement.

Section 3. Except as expressly amended hereby, all the remaining provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Eighth Amendment to the Agreement to be executed as of the date first set forth above.

CITY OF PETALUMA

SONOMA COUNTY WASTE MANAGEMENT  
AGENCY

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Agency Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Agency Counsel

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Risk Manager

APPROVED:

\_\_\_\_\_  
Finance Director

## **Exhibit “A” – Eighth Amendment**

### **Services and Compensation**

Under the terms of this agreement, the Sonoma County Waste Management Agency (AGENCY) shall allow the CITY and its residents the use of the Household Hazardous Waste (HHW) Facility at the Central Disposal Site, without additional charge during the term of the Agreement. CITY residents shall be provided any other privilege or right enjoyed by other member agencies of the AGENCY regarding the promotion and use of the HHW Facility at the Central Disposal Site.

Services provided by this agreement shall also include educational efforts, recycling and other waste diversion services, compliance with AB 939 reporting requirements and any updates necessary to state and/or county planning documents on behalf of CITY as required by the Countywide Integrated Waste Management Plan and state regulations.

The annual compensation for services shall be calculated by applying the AGENCY tipping fee surcharge rate on the actual tonnages of solid waste disposed by the City of Petaluma’s franchised waste hauler, Petaluma Refuse and Recycling. The amount of solid waste disposed for each month shall be reported to AGENCY for invoicing purposes by the 20<sup>th</sup> of the succeeding month. The AGENCY approved rate of \$5.95 per ton will be used for calculating invoices. Payment of each monthly invoice shall be due and payable to AGENCY ten (10) days after receipt of the invoice.

RESOLUTION NO.: 2012-

DATED: June 20, 2012

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY") APPROVING THE EIGHTH AMENDMENT TO THE AGREEMENT FOR  
AB 939 AND HOUSEHOLD HAZARDOUS WASTE FACILITY SERVICES, BY AND  
BETWEEN THE AGENCY AND THE CITY OF PETALUMA

WHEREAS, on November 17, 2004 the Agency authorized the Agency Chair to sign a contract with the City of Petaluma, which was subsequently amended in November 2005, April 2006, May 2007, May 2008, May 2009, June 2010; May 2011 and

WHEREAS, the contract, as amended, allows the citizens of Petaluma the use of the Household Hazardous Waste Facility and includes other Agency services funded by the Agency's tipping fee surcharge; and

WHEREAS, for FISCAL YEARS 12-13, 13-14, and 14-15, the basis of calculation for payment of the portion of tipping fees the City of Petaluma will be paying shall be the actual tonnage of solid waste disposed calculated at \$5.95 per ton and invoiced on a monthly schedule; and

WHEREAS, the City of Petaluma and the Agency agree to extend the Agreement for Household Hazardous Waste program and other Agency services for an additional thirty-six (36) months, until June 30, 2015.

NOW, THEREFORE, BE IT RESOLVED that the Agency hereby approves the Eighth Amendment to the Agreement for AB 939 and Household Hazardous Waste Facility Services with the City of Petaluma.

MEMBERS:

-- _____ Cloverdale	-- _____ Cotati	-- _____ County	-- _____ Healdsburg	-- _____ Petaluma
-- _____ Rohnert Park	-- _____ Santa Rosa	-- _____ Sebastopol	-- _____ Sonoma	-- _____ Windsor

AYES --      NOES --      ABSENT --      ABSTAIN --

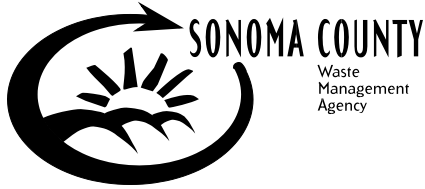
SO ORDERED

The within instrument is a correct copy of the original on file with this office.

ATTEST:

DATE:

\_\_\_\_\_  
Debra Dowdell  
Clerk of the Sonoma County Waste Management Agency  
of the State of California in and for the County of Sonoma



**Agenda Item #: 5**  
**Cost Center: Wood/Yard**  
**Staff Contact: Mikus/Carter**  
**Agenda Date: 6/20/2012**

## **ITEM: Compost Operations Contract**

### **I. BACKGROUND**

#### Joint Powers Agency Agreement

One of the Sonoma County Waste Management Agency (SCWMA)'s primary responsibilities is to ensure the proper treatment of wood and yard wastes in Sonoma County. The Joint Powers Agreement contains a number of provisions regarding the SCWMA's role in dealing with wood and yard wastes including the following:

“Section 11. Role of Participants in Collection of Wood, and Yard Waste  
Each Participant shall cause wood waste and yard waste generated within its jurisdiction (that could not be diverted otherwise) to go to the Central Landfill to be delivered to the Treatment System and shall take such actions as are appropriate and necessary to accomplish that result. The Joint Powers Agency shall establish standards for the quality of yard and wood waste acceptable for delivery to the Treatment System and may also approve diversions of wood waste and yard waste to alternative treatment systems.”

This work is done via operation of a compost facility located at the County's Central Disposal Facility on Mecham Road near Cotati and Petaluma. SCWMA holds the operating permit while operations are conducted by a contractor, Sonoma Compost Company (SCC). Wood and yard wastes are delivered to the site, then processed into useable products rather than disposed of via landfill burial. In recent years the materials managed through the compost site have approached 100,000 tons per year. SCWMA conducted a Waste Characterization Study in 2007 that identified an additional 80,000 tons of materials currently still in the landfill-bound waste stream that could be otherwise processed.

#### Three Party Agreement for Composting Services

An Agreement between the County of Sonoma (County), the SCWMA, and the Sonoma Compost Company (Contractor) for Organic Material Processing, Composting and Marketing Services (Agreement) was entered into on September 28, 1999. This Agreement fulfills part of the SCWMA's obligation to provide a regional composting program to convert yard debris and wood waste into organic marketable products at the composting facility currently located at the Central Disposal Site. Amendments to this Agreement have been approved as follows:

- July 11, 2000 – the First Amendment (A) modified a new work surface, included a termination provision and updated Exhibit B (List of Operating Equipment).
- February 20, 2002 – the First Amendment (B) identified new finished products (“Specialty Products”) and set revenue allocation or sharing methods for these products.
- March 17, 2004 – the Second Amendment approved an increase to the payment for wood waste processing, from \$12 per ton of material delivered to the compost facility to \$20 per ton for fuel products and \$22 per ton for non-fuel wood chip products.
- April 21, 2004 – the Third Amendment allowed for an expansion and/or relocation of the composting processing site, extended the term of the agreement to November 15, 2010, and created a new yard debris product designed for use by

- the City of Santa Rosa's Laguna Composting Facility.
- June 16, 2004 – the Fourth Amendment added new language to the Agreement regarding prevailing wages.
- July 12, 2005 – the Fifth Amendment added new definitions in order to add a Construction and Demolition Program ("C&D") and establish partial reimbursement to the SCWMA for transportation costs associated with hauling green waste from the transfer stations to the Central Disposal Site.
- April 22, 2008 – the Sixth Amendment amended the definition of "Prepared Yard Debris" to a product that would be agreeable to City of Santa Rosa for use as a bulking agent in their biosolids composting program, changed the amount of process material delivered per week from 350 tons to 400 tons, and amended the compensation to Contractor for the prepared yard debris to include an inflation computation and a trigger for rate change like the other products produced by Contractor.
- January 20, 2010 – the Seventh Amendment extended the termination date of the agreement to November 15, 2011, with acceptance of material ending July 18, 2011 and added a provision for the County to terminate the agreement with six months written notice if the County determined the area was needed for landfilling of refuse or to implement final closure on the composting area of the landfill.
- March 16, 2011 – the Eighth Amendment extended the agreement a year, to where Sonoma Compost would need to cease accepting raw material July 15, 2012 and cease all operations by November 15, 2012. This amendment included provisions for extending the agreement two additional one year increments.

At the April 20, 2011 SCWMA Board meeting staff presented estimated cost and capacity figures for several alternative plans for future composting operations, which included shipping materials to out of county locations, constructing locally, or privatized operations.

At the November 16, 2011 SCWMA meeting, the Board directed staff to release a Request for Qualifications (RFQ) for composting services. Staff released the RFQ on November 22, 2011. Responses were due December 19, 2011. At the January 18, 2012 SCWMA meeting, the Board directed staff to begin interviews with the respondents.

At the February 20, 2012 SCWMA meeting, the Board directed staff to begin negotiations with Recology, Sonoma Compost, and Sonoma Vermiculture. The conversations with Recology and Sonoma Compost were concerned with a new contract to continue operating the current facility, while the efforts with Sonoma Vermiculture involved potential processing of food waste not currently in our organics stream. The negotiations with Recology and Sonoma compost were concluded, and at the May 2012 SCWMA Board meeting those results were presented. The staff recommendation was for SCWMA to enter into a new contract with Sonoma Compost; in order for Board members to solicit input on this significant contract the formal vote was to be held at the June SCWMA meeting. Discussions with Sonoma Vermiculture are still ongoing; the result should not affect the contract for current operations.

## II. DISCUSSION

The current contract between SCWMA and SCC has been in effect since September 1999. As such, in 2011 the SCWMA Board directed Agency staff to conduct a Request for Qualifications (RFQ) process followed by contract negotiations to establish a new agreement. In addition to formulating a new agreement, this process had three goals: establishing new/current pricing for the operation as it currently exists; providing a safety net for continued processing of materials at an alternate location in case the current site must be closed; and generating estimated costs for constructing and operating at a new site.

Eight firms provided responses to the RFQ, and all eight firms were interviewed to examine their experience, qualifications, plans for operations, and preliminary pricing. Three firms were selected for further negotiations: SCC and Recology, Inc. were met with to formalize contract terms and prices, while Sonoma Vermiculture was considered for a separate contract for food waste. The Sonoma Vermiculture arrangement was considered because of their ability to directly address a portion of the 80,000 additional tons of material in the waste stream.

Staff has determined that the SCC proposal provides the best pricing, level of services, and contract terms, and recommends that the Agency enters into a new contract with SCC that will run through February 2017, for continued operations at the current location and with a backup plan in case the site must close. The financial difference between SCC and Recology on an annual basis was about \$1 million in net income. In addition, the contract agreed to with SCC contains acceptable provisions, and reflects similar workable terms currently in place. However, Recology proposed some contract terms, particularly related to liability, that staff found problematic.

The recommended term for the new contract is through February 1, 2012, which is coincident with the end of the Agency's initial 25-year term. It is recognized that the current site of operations may change during that time interval, either because the property owner (county of Sonoma) has some unexpected plan changes where the site would be required for landfilling, or our on-going process to develop a new sites comes to fruition. The contract contains specific language to address early termination in case either of these situations occurs.

During our negotiations with Sonoma Compost Company it became evident that the recent mode of doing shorter term contract extensions of one year at a time limited their ability to make longer-term investment for improvements because of the inherent inability to amortize such expenses over a reasonable time frame. We have discussed making the new contract for either two or three years with annual extensions thereafter to get to February 2017. However, it became clear the best stability possible would be achieved via a contract term direct through February 1, 2017; this would provide the best environment for investments to keep the operation at the maximum efficiency and safety level possible. Furthermore, one of the Board's expressed motivations in initiating this RFQ process was to award a longer term agreement to avoid revisiting the issue every year. Shortening the term and including extension provisions is contrary to that purpose.

In addition, Sonoma Compost Company has proposed a few additional items related to operational enhancements which may be of interest. These include a sorting table to better remove contaminants from the front end, tying into the County's leachate pipeline for disposal of stormwater runoff from the compost facility, and establishing a pilot project at the Central Disposal Site involving contained aerated static piles to compost full food waste. These options would have additional costs, but staff believes they could all be realized where the total financial impact would be less than the current payment matrix with Sonoma Compost. In other words, staff believes that by selecting Sonoma Compost Company, we can potentially improve the environmental performance of our process, increase the purity of our finished product, and gain experience with higher concentrations of food waste ahead of a new composting facility where plans are to accept food waste in greater quantities.

These possible program enhancements are under study, discussion, and further development, and will certainly be discussed with the Board prior to any implementation.

As a side issue, based on input and comments from County staff, we have engaged in

the process with them to set up a separate contractual arrangement for use of the property occupied by the compost site. Currently a three-way agreement between the Agency, the County, and SCC is in place. It is felt two separate agreements, one between the contractor and the Agency for operations, and the second between the Agency and County for use of the property, would be more efficient to manage. Most recently, a draft agreement was developed and given to the County for their further input. We have given the County a letter requesting that the current arrangements for use of the site remain in effect until the new agreement is approved. This was done to bridge the gap in time between the ending of the older three-way agreement and the start of a new two-way property agreement.

### III. FUNDING IMPACT

In Fiscal Year 2010/11, the SCWMA made payments totaling \$2,835,891.77 for the transport and processing of wood waste and yard debris. The SCWMA received \$3,174,850.13 in tipping fees and \$351,529.70 in revenue from the sale of finished products. The net gain (before staff time, County administrative fees, permit fees, transfers to the organics reserve, etc.) was \$690,488.06.

FY 2010/11	Wood Waste	Yard Debris	Total
Tipping Revenues	\$ 169,555.13	\$ 3,005,295.00	\$ 3,174,850.13
Revenue Sharing	\$ 106,203.65	\$ 245,326.05	\$ 351,529.70
Contract Costs	\$ 152,513.61	\$ 2,683,378.16	\$ 2,835,891.77
Net Gain	\$ 123,245.17	\$ 567,242.89	\$ 690,488.06

If the agreement is approved, staff estimates organic processing costs would be reduced by over \$366,000 per year, based on 2011 tonnages and material proportions (please reference the Cost Comparison attachment for more detail).

### IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Approve the new agreement with Sonoma Compost Company for a term through February 2017. Because of the agreement amount, this will require a "Unanimous Vote".

The current agreement with Sonoma Compost Company expires July 15, 2012. If the new agreement is not approved, the current agreement does contain provision for the Board to invoke a one-year extension at current terms. However, following this path would result in approximately \$366,000 less revenue than from the proposed new agreement.

If no decision is reached at all SCC stops accepting materials July 15, 2012.

### V. ATTACHMENTS

Agreement Between Sonoma County Waste Management Agency and Sonoma  
Compost Company (and Exhibits A-C)  
Resolution  
Letter to County  
Cost Comparisons

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA

ORGANIC MATERIAL PROCESSING,  
COMPOSTING AND MARKETING SERVICES  
AGREEMENT BY AND BETWEEN  
THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
AND SONOMA COMPOST COMPANY

June 20, 2012

DRAFT



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Facility Map	Exhibit "A"
List of Operating Equipment	Exhibit "B"
Payment Matrix	Exhibit "C"
Marketing Plan – To be provided by respondent	Exhibit "D"

ORGANIC MATERIAL PROCESSING, COMPOSTING AND MARKETING SERVICES  
AGREEMENT BY AND BETWEEN THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
AND SONOMA COMPOST COMPANY

This Agreement is made and entered into this 20th day of June, 2012, by and between the SONOMA COUNTY WASTE MANAGEMENT AGENCY, a joint powers agency, and Sonoma Compost Company, a California General Partnership. Agency and Contractor are sometimes collectively referred to as the “parties” and singularly, a “party.” Unless otherwise stated, all terms shall have the meanings ascribed to them in Section 1 below.

R E C I T A L S

WHEREAS, Agency desires to continue its Yard Debris Composting and Wood Debris Diversion Program (the “Program”) for the handling and processing of segregated Yard Debris and Wood Debris diverted from the solid waste stream; and

WHEREAS, Contractor represents that it directly has the necessary experience and expertise to receive municipal Yard Debris and Wood Debris, process such materials into marketable products, and market the products; and

WHEREAS, Contractor is willing to operate and maintain a Yard Debris composting and Wood Debris diversion processing facility to receive, handle, and process Agency Yard Debris and Wood Debris for a fee and market the products therefore; and

WHEREAS, Agency and Contractor desire to fulfill part of Agency’s obligation to divert recyclable materials from landfill disposal by converting Agency’s Yard Debris and Wood Debris into valuable commodities thus enhancing the environment and preserving our natural resources; and

WHEREAS, an initial study and mitigated negative declaration have been prepared for the Program in accordance with the California Environmental Quality Act; and

WHEREAS, the County adopted the mitigated negative declaration on March 24, 1992 and a Notice of Determination was filed; and

WHEREAS, Agency and Contractor desire to enter into this Agreement whereby Contractor shall perform Yard Debris composting and Wood Debris diversion processing services related to Agency’s Yard Debris Composting and Wood Debris Diversion Program.

NOW, THEREFORE, Agency and Contractor do hereby agree as follows:

A G R E E M E N T

**1. DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set forth below. Any term may be used in the plural or past tense.

“Aeration.” Aeration shall mean the process of exposing composting material to oxygen in

the air.

“Agency.” Agency shall mean the Sonoma County Waste Management Agency, a joint powers agency comprised of the following members: City of Cloverdale, City of Cotati, City of Healdsburg, City of Petaluma, City of Rohnert Park, City of Santa Rosa, City of Sebastopol, City of Sonoma, County of Sonoma, and Town of Windsor.

“Agency Representative.” Agency Representative shall mean a person or persons assigned by the Agency to manage or oversee the Program.

“Central Disposal Site.” Central Disposal Site shall mean the landfill located on 500 Mechem Road, west of Cotati, which is operated by the County.

“Collector.” Collector shall mean the contractor or contractors who perform collection services for Yard Debris and Wood Debris pursuant to agreements with the Agency’s members.

“Compost.” Compost shall mean stable humus-like product of the composting process that results from having the organic components of the Yard Debris metabolized to a relatively stable intermediates (i.e., the material can be stored without producing a nuisance or can be applied to the soil and not inhibit vegetative development).

“Composting.” Composting shall mean the controlled biological decomposition of organic solid waste.

“Contaminants.” Contaminants shall mean any material not normally produced from gardens or landscapes including, without limitation, brick, rocks, gravel, large quantities of dirt, concrete, sod, and non-organic wastes (i.e., metal, glass or plastic). Contaminants shall not include any Hazardous Materials.

“Contract Year.” Contract Year shall mean the twelve (12) month period from the Start Date, in any calendar year of the term of the Agreement, to the Start Date anniversary in the next calendar year.

“Contractor.” Contractor shall mean Sonoma Compost Company.

“Contractor Improvements.” Contractor Improvements shall mean the improvements made to the Facility by Contractor which are more specifically depicted on Exhibit A attached hereto and incorporated herein.

“County.” County shall mean the County of Sonoma, a political subdivision of the State of California.

“CPI.” CPI shall mean the Consumer Price Index for All Urban Consumers for San Francisco-Oakland-San Jose based on the year 1982-1984 = 100 as published by the U.S. Department of Labor’s Bureau of Labor Statistics.

“Dimensional Lumber.” Dimensional lumber is one type of processed wood used for building, manufacturing, landscaping, and packaging.

“Effective Date.” Effective Date shall mean \_\_\_\_\_, 2012.

“Facility.” Facility shall mean the Yard Debris composting and Wood Debris diversion processing facility located at the Central Disposal Site as more particularly depicted on Exhibit A attached hereto and incorporated herein.

“Finished Products.” Finished Products shall mean wood chips, mulch, compost, and other usable and/or marketable products produced from Yard Debris and Wood Debris.

“Finished Product Revenue.” Finished Product Revenue shall mean the sum of the revenue from Wood Debris Products and Yard Debris Products.

"Food Scraps" means any material that was acquired for animal or human consumption, is separated from the municipal solid waste stream, and that does not meet the definition of "agricultural material." Food material may include material from food facilities as defined in Health and Safety Code section 113785, grocery stores, institutional cafeterias (such as, prisons, schools and hospitals) or residential food scrap collection.

“Hazardous Materials.” Hazardous Materials shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as “hazardous” or “toxic” under any federal, state, local or administrative agency ordinance or law or any material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant, present or potential hazard to human health or safety or to the environment if release into the environment, or any regulation, order, rule or requirement adopted thereunder, as well as any formaldehyde, polychlorinated biphenyl, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids liquefied natural gas or synthetic gas usable for fuel or mixture thereof, radon, asbestos, pressure treated wood and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. section 3011, et seq.

“LEA.” LEA shall mean the Local Enforcement Agent representing and certified by the California Department of Resource Recycling and Recovery to enforce state solid waste facility regulations.

“Marketing Plan.” Marketing Plan shall mean the marketing plan submitted by Contractor and approved by Agency in accordance with Article 8 below.

“New Compost Site.” Alternate site from “Facility” that will be established by the Agency to replace “Facility” at a future date.

“Other Haulers.” Other Haulers shall mean individuals or entities, other than Collectors, who deliver Yard Debris and/or Wood Debris to the Central Disposal Site.

“Operating Days.” Operating Days shall mean all days of the year except New Years Day, Easter Sunday, Independence Day, Labor Day, Thanksgiving and Christmas Day.

“Operating Equipment.” Operating Equipment shall mean the equipment supplied by the Contractor and located at the Facility which is more specifically described in Exhibit B attached hereto and incorporated herein.

“Operating Term.” Operating Term shall mean the period of time from the Start Date to February 1, 2017

“Permit.” CalRecycle Solid Waste Information System permit number 49-AA-0260.

“Post-Operating Term.” Post Operating Term shall mean the period of time from February 1, 2017 to July 1, 2017.

“Pre-Operating Term.” Pre-Operating Term shall mean the period of time between the Effective Date and the Start Date.

“Prepared Yard Debris.” Prepared Yard Debris shall mean green plant debris including grass clippings, leaves, prunings, weeds, branches, brush, portions of wood and other forms of organic waste generated from landscapes and gardens. Prepared Yard Debris shall be processed through a grinder to reduce the delivered yard debris to particles and then shall be passed through a screen to remove foreign material (non-organic) contaminants and producing an average particle size mutually agreeable for use by the City of Santa Rosa as a bulking agent for composting the biosolids remaining after treatment of sewage.

“Program.” Program shall mean the Agency’s Yard Debris Composting and Wood Debris Diversion program for diverting material from the solid waste stream by receiving and processing Yard Debris and Wood Debris into Finished Products.

“RWQCB.” RWQCB shall mean the North Coast Regional Water Quality Control Board.

“Reuse Service.” Reuse service is the recovery of a material, such as dimensional lumber and pallets, for sale for uses similar or identical to its originally intended application.

“Specialty Products.” Specialty Products are new products which entail labor or mechanical processing in excess of that entailed in the manufacture of Finished Products or which involve distinct types of additives or amendments not used in Finished Products described in the Marketing Plan.

“Start Date.” Start Date shall mean June 20, 2012.

“TPD.” TPD shall mean tons per day.

“Test Products.” Test Products are products undergoing a market test prior to inclusion in the marketing plan as Specialty Products.

“Vegetative Food Scraps.” Vegetative Food Scraps shall mean Food Scraps that do not contain any meat or dairy products.

“Windrow.” Windrow shall mean an elongated pile of Composting material.

“Wood Debris.” Wood Debris shall mean dimensional lumber, pallets, shipping dunnage, and similar discarded wood materials.

“Wood Debris Products.” Wood Debris Products shall mean products made from the woody fractions of Yard Debris or Wood Debris which have been mechanically reduced in size and screened for use as various finished bedding, mulch, soil amendments, decorative uses or as fuel to generate electricity.

“Yard Debris.” Yard Debris shall mean green plant debris including grass clippings, leaves, prunings, weeds, branches, brush, tree portions and other forms or organic waste generated from landscapes and gardens. Yard debris may include vegetative food materials up to tonnage/percentage limits set forth in the Permit.

“Yard Debris Products.” Yard Debris Products shall mean Yard Debris that has been processed to generate compost, mulch, or soil amendment.

## **2. SCOPE OF SERVICES**

### **2.1 Receiving, Weighing and Handling.**

**2.1.1 Accounting for Materials Delivered.** All materials delivered by Collectors and Other Haulers for processing by Contractor shall be accounted for by the Agency at the Central Disposal Site. Such material will be categorized by the Agency into one of the following two categories: (1) Wood Debris; or (2) Yard Debris. The Agency will also account for the jurisdictional source for all material delivered to the Central Disposal Site. Wood Debris and Yard Debris will be measured by weight or volume at the Central Disposal Site gate and will be delivered by Collectors and Other Haulers to the Contractor’s receiving area. The load volumes will be converted to tons using mutually agreed upon conversion factors. The conversion factors shall be tested with a frequency and methodology mutually agreed upon by the parties. Should additional material types be permitted for composting in the future, these material types will be categorized appropriately for accounting purposes (e.g. Food Scraps).

**2.1.2 Acceptance of Materials.** Contractor shall accept all materials delivered to the Facility and shall process such materials into Yard Debris Products or Wood Debris Products. With Agency approval, additional materials such as Food Scraps, or other organics feedstock acceptable for composting, may be accepted at the Facility. In the event that Contractor is unable to receive and process acceptable material, Contractor shall be responsible for the cost of removal, transport, disposal and any other costs incurred by the Agency to divert acceptable organic material to other locations as designated by the Agency Representative, provided, however, that Contractor shall not be responsible where Contractor’s inability to receive and process such material is: (i) not caused by either the acts or omissions of Contractor, its employees or agents, or (ii) caused by events beyond Contractor’s reasonable control.

**2.1.3 Determination of Acceptability of Materials.** In the event Contractor believes delivered material is unacceptable for processing due to the presence of Contaminants, Contractor shall first attempt to reach agreement with the individual Collector or Other Hauler who delivered such materials to the Facility. Should Contractor be unable to reach agreement with the particular Collector or Other Hauler responsible for delivering the Contaminants, Contractor shall set the disputed materials in an area adjacent to the processing area so that the Agency Representative can inspect the materials. The Agency Representative shall have forty-eight (48) hours to inspect such materials from the time the Agency Representative receives notice of the disputed materials.



Agency Representative shall determine, in his or her sole discretion, the fractions of Wood Debris, Yard Debris and Contaminants. Once the Agency Representative has made such a written determination, Contractor shall be responsible for the appropriate disposition of the delivered material in a timely manner. Contractor reserves the right to reject Contaminated loads from entry onto the processing area of the Facility.

**2.2 Disposal of Contaminants.** Contractor, at Contractor's sole cost and expense, shall properly dispose of all Contaminants which remain after processing of Yard Debris and Wood Debris; provided, however, that Contractor shall be allowed to dispose of Contaminants at the Central Disposal Site at no cost to Contractor. Contaminants shall not exceed that allowed by the Permit or as allowed by the LEA. Where Contaminants are disposed of at a disposal site other than the Central Disposal Site, Contractor shall dispose of such materials at its own cost and shall insure that the hauling operation for Contaminants is at all times performed in compliance with all federal, state and local permit requirements, laws and regulations.

**2.4 Time of Operation.** Contractor shall accept delivery of Yard Debris and Wood Debris on Operating Days during the hours that the Central Landfill Site is open to the public. Contractor may process Yard Debris and Wood Debris on Operating Days in accordance with the times listed in the Permit.

**2.5 Employee Training.** Contractor shall train processing crews and office staff regarding the requirements of this Agreement before commencing operations. Contractor shall regularly conduct safety training of all employees, particularly those involved in equipment operation. Contractor shall conduct an education program which will train Contractor's employees in the identification of Hazardous Materials. Contractor shall maintain written records of such training.

**2.6 Standard of Care; Compliance with Laws.** Agency has relied upon the special expertise and experience of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all its work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, including without limitation, health and safety requirements, labor requirements, and requirements (including permit conditions) of the California Regional Water Quality Control Board, the Bar Area Air Quality Management District, the California Department of Resources Recycling and Recovery, the LEA, and the County, it being understood that acceptance of Contractor's work by Agency shall not operate as a waiver or release. It is expressly understood and acknowledged by Contractor, that subject to Section 4.2.2, Contractor shall be fully responsible for all environmental compliance related to the Facility or composting operations.

**2.7 Prevailing Wages.** Contractor shall pay to persons performing labor for "public works", as such term is defined in Section 1720(a) of the Labor Code, an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and County to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed. Copies of the prevailing wage rate of per diem wages are on file at the Sonoma County

Department of Transportation and Public Works office and will be made available to any person upon request.

Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of work or labor on such "public works" provided for in the Agreement, provision that subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code Section 1775(b)(1), Contractor shall provide to each subcontractor a copy of Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.

Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5, 1813 and 1815.

### **3. TERM OF AGREEMENT**

**3.1 Term.** The term of this Agreement shall commence on the Effective Date and terminate on July 1, 2017, unless terminated earlier in accordance with the provisions of Section 3.2 below.

**3.2 Termination by Agency.** Agency may terminate or modify this Agreement: (a) for an Event of Default in accordance with the procedures set forth in Article 15; (b) in the event a third party regulator orders a shutdown of sixty (60) days or more of the Facility, (c) with at least twelve (12) months advanced written notice in the event the current site is required to be vacated, or (d) with at least twelve (12) months advanced written notice in the event a new site is to be developed. If termination occurs under 3.2.(c) above, Contractor and Agency shall negotiate in good faith to secure a financial settlement, not to exceed \$300,000.00 during the term of the contract, to reimburse Contractor for unamortized capital expenses incurred by Contractor for the remaining contract period through February 1, 2017.

### **4. COMPENSATION FOR SERVICES**

**4.1 Compensation.** Contractor shall be paid for its services in accordance with the payment matrix which is attached hereto as Exhibit C (hereinafter referred to as the "Payment Matrix"). The applicable rate to use from the Payment Matrix to determine the amount of compensation depends upon the amount of materials received at the Facility each month. Agency shall pay Contractor within twenty five (25) days of receiving an invoice from Contractor in accordance with Section 10.2 below.

**4.1.1 Compensation for Yard Debris.** Compensation for Yard Debris depends upon the use of the Yard Debris Products and the amount processed. Agency shall compensate Contractor for Yard Debris on actual tonnage times the rate identified for the use of the Yard Debris Products.

**4.1.2 Compensation for Wood Debris.** Compensation for Wood Debris depends upon the use of the Wood Debris Products and the amount processed. Agency shall compensate Contractor for Wood Debris on actual tonnage times the rate identified for the use of the Wood

Debris Products.

#### **4.2 Adjustments in Compensation.**

**4.2.1 Unforeseen Events Concerning Environmental Regulations.** In the event that requirements imposed on the Facility by state or local agencies, that are the result of new or revised regulations or requirements proposed and enacted after the Start Date of this Agreement, cause Contractor to have to expend more than One Hundred Thousand Dollars (\$100,000) in the aggregate during the Operating Term, the excess over One Hundred Thousand Dollars (\$100,000) shall be considered pass through costs to the Agency; provided, however, that Agency shall have the right to renegotiate the terms of the Agreement if the new or revised regulations or requirements: (a) require the parties to expend more than One Million Dollars (\$1,000,000) during the first three (3) years of the Operating Term; or (b) are imposed during the final two (2) years of the Agreement, and the estimated amount of the pass through costs to the Agency will create significant impacts to the viability of the organics diversion program (i.e., proposed pass through costs result in a Ten and No/100 Dollar (\$10.00) or greater increase in the tipping fee). Contractor shall have the burden of proving to the Agency, the amount of expense incurred as a result of such new or revised regulation.

**4.2.2 Annual Adjustments.** The rates specified in the Payment Matrix shall be adjusted every twelve (12) months on the first anniversary of the Start Date. The adjustment shall be calculated by increasing the rates set forth in the Payment Matrix by the CPI; provided, however, that in no event shall adjustments in rates exceed three percent (3%) in any twelve (12) month period. In the event that the parties cannot agree on the amount of adjustment under this Section 4.2.2, the dispute shall be resolved in accordance with Section 17 of this Agreement.

#### **4.2.3 Revenue from Finished Products.**

(1) Yard Debris and Wood Debris Products. Finished Product Revenue shall be accounted for and allocated between Wood Debris and Yard Debris materials in accordance with the approved Marketing Plan. Contractor and Agency shall equally share any revenue generated from the sale of finished products.

(2) Specialty Products. Specialty Products will be described in the Marketing Plan submitted by the Contractor annually or more frequently for approval by the Agency. Specialty Products are new products which entail labor or mechanical processing in excess of that entailed in the manufacture of Finished Products or which involve distinct types of additives or amendments not used in Finished Products described in the Marketing Plan. Revenue allocation for Specialty Products will be identified for each individual Specialty Product in the Marketing Plan.

(3) Test Products. Prior to including a product in the Marketing Plan as a Specialty Product, the Contractor will have the opportunity to market test products for viability. The Agency Director will be notified of market testing prior to release of Test Products and commencement of market test. Contractor may conduct a market testing for a maximum of four months with no revenue sharing obligation. Upon completion of successful test marketing of a product, Contractor and Agency Director will negotiate the revenue sharing formula. Payment of the Agency's share of revenue shall begin at the earliest of either: (1) four months after testing begins or (2) notification of the Agency by the Contractor that the product will be included in the next Marketing Plan. Contractor shall include the successful Test Product in the next Marketing Plan submitted to Agency for approval, in the sections pertaining to product description and allocation of revenue.

#### **4.3 Determination of Compensation.** Wood Debris and Yard Debris delivered for

processing will be measured by the County at the Central Disposal Site gate. Material delivered by Collectors or Other Haulers identified as material gathered in a residential yard debris collection program will be weighed and accounted for as Yard Debris, with appropriate compensation to Contractor. Material delivered by Collectors or Other Haulers identified at the gate as Wood Debris will be weighed and accounted for as Wood Debris, with appropriate compensation to Contractor.

**4.4 Agency Product Distribution.** Contractor shall make available to the Agency ten percent (10%) of the Finished Products, as set forth in the Marketing Plan, for Agency use. Distribution shall be among Agency members at the Facility as agreed upon by a majority vote of the Agency. Finished Products allocated to Agency in accordance with this Section and not claimed within forty-five (45) days of notice by Contractor of its availability, shall be marketed by Contractor in the same manner as set forth in the Marketing Plan. In the event unclaimed materials are marketed by Contractor, Contractor shall account for revenue generated from such materials by allocating such revenue to the 50/50 revenue share with the Agency.

**4.5 Taxes.** Contractor shall be fully responsible for and agrees to pay for any and all lawful taxes, general and special assessments, and other charges of every description. Contractor shall make all such payments directly to the assessing authority, before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any, or all, of the above items, in installments (whether or not interest accrues on the unpaid balance), Contractor may, at Contractor's election, utilize the permitted installment method, but shall pay each installment, with any interest, before delinquency. It is expressly understood by the parties that Contractor shall be responsible for those taxes directly related to Contractor's operations and the revenue generated on Contractor's behalf. In no event shall Contractor be responsible for taxes directly related to County Improvements.

**4.6 Liability for Compensation.** Contractor hereby acknowledges that pursuant to Section 18 of Article 16 of the California Constitution, there are certain limits on the Members of the Agency incurring liability under this Agreement. Therefore, notwithstanding anything stated to the contrary herein, Contractor hereby understands, acknowledges and agrees to look solely to the special funds of the Agency which are generated from the collection of tipping fees for Agency programs. In no event shall Agency's obligation to pay Contractor hereunder extend beyond the tipping fees collected by the Agency. It is the intent of the parties that the aforesaid limitation shall not apply to liability that arises from: (a) activities outside the scope of this Agreement; or (b) a breach of this Agreement by Agency that is unrelated to Agency's obligation to compensate Contractor. Agency covenants to take such action as may be necessary to include all monetary obligations due hereunder in its annual budget and annually appropriate an amount necessary to make such compensation payments. In addition, Agency shall have the right to cancel and terminate this Agreement at the end of any fiscal year of the Agency if the Agency is not authorized by state or federal law or regulation to appropriate moneys sufficient to pay the compensation required under this Agreement, provided however, that the parties have a reasonable belief that such future funding will not be forthcoming in the first half of the next fiscal year. The Agency may effect such termination by giving Contractor sixty (60) days prior written notice of termination unless the giving of such advance notice is impractical under the circumstances.

**4.7 Financial Offset for Transportation Costs.** Contractor shall reimburse the Agency Ten Thousand and No/100 Dollars (\$10,000.00) each fiscal year to help offset the cost of transporting yard debris and wood waste from the County transfer stations to the Program at the

Central Disposal Site. Contractor shall make bi-annual payments beginning sixty (60) days after the effective date of this Agreement.

## 5. PROCESSING FACILITY

**5.1 Facility Design.** It is understood that Agency and Contractor have collaborated on the design of the Facility and are hereby satisfied that it will perform as required, subject to the provisions of Section 5.4 below.

**5.1.1 Existing Facility.** Contractor hereby represents and warrants to Agency that it has reviewed the design of the Facility and is satisfied that, it will perform as required and accommodate an average monthly throughput capacity of 300 tons per day and a peak throughput capacity of 623 tons per day.

### **5.2 Facility Improvements.**

**5.2.1 Minimum Requirements.** Contractor shall not make any changes to the Facility that would impair any of the following design parameters:

(a) Throughput Capacity. The Facility shall have a throughput capacity of at least three hundred (300) tons per day (TPD) of total material during each Operating Day. The Facility design must incorporate allowances for scheduled maintenance and repair throughout the year. Facility design shall allow for a peak throughput capacity of six hundred twenty three (623) TPD.

(b) Delivery Area. The tipping area for organic materials delivered by Collectors shall be designed to accommodate any common waste hauling vehicle (packer trucks, roll-offs, etc.) excluding tractor-trailers requiring delivery site hydraulic tippers. The Facility layout shall provide space separate from the primary tipping area where Collector vehicles and Other Hauler vehicles can safely deposit Wood Debris and Yard Debris.

(c) On-site Storage. The Facility shall include adequate storage and transfer equipment for all products generated as a result of the Composting process. The Facility shall have adequate site storage capacity to accept and store unprocessed organic material in the event of processing equipment failure and during routine equipment maintenance. The Facility receiving area will also have a designated site to temporarily store reusable lumber. The Facility shall provide load-out points for Finished Products and Contaminants. Contractor shall maintain the Finished Products storage areas. The storage areas shall be capable of accommodating, subject to the physical constraints of the size of the processing area provided to Contractor, a minimum of: (a) one month of Yard Debris Products at a delivery rate of 288 TPD; and (b) one month of Wood Debris Products at a delivery rate of 12 TPD. The Facility shall incorporate designated storage facilities and receiving areas, including associated processing equipment for nutrient source materials, if deemed necessary by the Contractor. The cost of such nutrient source storage and pumping/handling equipment shall be included in the Payment Matrix.

(d) Minimization of Odors. The Facility shall be designed to minimize odors, especially the migration of odors off-site to adjacent property. It is specifically acknowledged by the Agency, that by their nature, even well designed and operated aerobic composting facilities may occasionally generate odors, perceived by some to be offensive. The Contractor shall not be considered in default if offensive odors are generated occasionally, provided the Facility is operated

according to the provisions of the Agreement and the requirements of applicable permits and regulations. In the event that offensive odors are generated occasionally which result in complaints and Contractor is operating the Facility in accordance with this Agreement and applicable permits and regulations, Contractor shall assist Agency in resolving such complaints.

(e) Fire Control Program. The design of the Facility shall be such that a fire control program can be implemented. The fire control program shall be implemented in accordance with requirements of the appropriate local fire agency, insurance underwriters requirements and all local rules.

(f) Product Test Area. The Facility shall include one or more product test plot areas where growth tests and soil improvement tests can be conducted.

(g) Engineering Standards. The Facility, including, without limitation, the Operating Equipment, shall be designed and constructed to comply with all applicable industrial codes and all applicable code requirements of the American Society of Mechanical Engineers and other technical societies, either as stated or as is standard in industry practice.

**5.3 Facility Operation.** Contractor shall operate the Facility in accordance with the following minimum standards.

**5.3.1 Processing.** Contractor shall provide sufficient equipment for the efficient receipt, handling, and loading of Wood Debris, Yard Debris, reusable lumber, recyclable materials, and Contaminants. Contractor shall operate the Facility and provide equipment redundancy and replacement as necessary to ensure a smooth, continuous operation.

**5.3.2 Housekeeping; Storage.** Contractor shall conduct daily inspections of the Facility for litter, and as needed, Contractor shall clean up the litter at the Facility. To minimize internal and external dust, Contractor shall apply water to the Facility area to control dust. Contractor shall also supply systems for safety and public health protection, including without limitation, a fire control program and provision for vector control. The Compost shall be maintained in an aerobic condition to avoid odors produced by anaerobic conditions. Contractor shall ensure that all materials are only stored as specified in this Agreement and Permit. Unprocessed Yard Debris or Wood Debris shall be stored on-site in accordance with the Permit. Storage is only acceptable to the extent that satisfactory odor, vector, dust, and fire control measures are employed to eliminate nuisance, health, and safety problems. In the event Contractor fails to store materials in an acceptable manner as set forth in this Agreement, Contractor shall defend and indemnify Agency and County from all liability and expense resulting from such failure, including, without limitation, nuisance claims by neighboring land owners.

**5.3.3 Health and Safety.** Contractor shall operate the Facility so as to minimize potential health and safety problems for Contractor and County employees at the Central Disposal Site, users of the Center Disposal Site and neighboring properties. Contractor shall operate and maintain the Facility in a neat and orderly manner and shall police daily, or more frequently if necessary, to prevent litter from blowing off the grounds of the Facility.

**5.3.4 Testing.** Contractor shall be equipped with the necessary testing instruments and shall submit samples of finished product to a state certified laboratory in order to monitor the composting process as required by this agreement as well as applicable state requirements.

**5.3.6 Educational Opportunities.** The Facility shall be operated in a manner that will provide public education opportunities and other appropriate activities as described in the Operating Plan and as mutually agreed upon by the parties.

**5.3.7 Environmental Requirements.** Contractor shall ensure that operation of the Facility will be in compliance with all permit conditions issued for the Program, including without limitation, permits issued by the California Department of Resources Recycling and Recovery, the RWQCB, the Bay Area Air Quality Management District, the LEA, and the County. Contractor shall be responsible for handling any and all inquiries and requests from the various regulatory agencies, including but without limitation, the California Department of Resources Recycling and Recovery, the RWQCB, the Bay Area Air Quality Management District, the LEA, and the County. Notwithstanding anything stated to the contrary herein, a County representative shall be present at any scheduled Facility inspections by the RWQCB.

#### **5.4 Facility Maintenance.**

**5.4.1 Maintenance Obligations of Contractor.** Contractor shall be responsible for maintaining and repairing the Facility, including the working surface on a daily basis. Such obligation shall include maintenance and repair to the Facility that is made necessary as a result of damage caused by third parties, except as specifically excluded in this Section 5.4.

**5.4.2 Maintenance of Working Surface.** The parties hereby understand and acknowledge that the working surface for the Facility has been placed on a landfill and as a result may be prone to maintenance problems resulting from settlement and subsidence that is typically associated with landfills. Contractor shall be responsible for maintaining and repairing the working surface, including damage caused by landfill settling. Contractor shall be responsible for prevention of ponding on any area within the Facility. Contractor shall be responsible for repairing problems with the working surface that are directly related to the structural integrity or performance of the working surface.

**5.4.3 Maintenance of Perimeter Road.** Contractor shall be responsible for maintaining, repairing and replacing all roads within the Facility, except damage directly caused by County employees or contractors. Contractor shall notify County in writing, within forty-eight (48) hours of any damage caused by County employees or its contractors.

**5.4.4 Storm Water Management.** Contractor shall be responsible for maintaining and repairing all culverts, ditches, pipes and ponds within the Facility. Contractor shall not be responsible for providing repairs to the existing two sedimentation ponds due to catastrophic failure or structural flaws (e.g., failure to perform as intended). Maintenance of the ponds shall include regular removal of sediments in order to: (a) comply with regulatory requirements; and (b) ensure the ponds perform as designed. Contractor shall perform daily inspections of the drainage system during the winter season (e.g., October to May) to confirm that the system is functioning properly (e.g., ditches are clean). Contractor shall perform thorough ditch cleaning prior to October 15 of every year.

**5.4.5 Utilities.** Contractor shall be responsible for maintaining, repairing and replacing all utilities within the Facility, except damage directly caused by County employees or contractors. Contractor shall notify County in writing, within forty-eight (48) hours of any damage caused by County employees or its contractors.

## 6. FINISHED PRODUCT STANDARDS

**6.1 Production of Finished Products.** Contractor shall produce marketable Finished Products on a continuous basis and in such a manner that a market for the total amount of Finished Products from the Yard Debris and Wood Debris received for processing at the Facility can be developed. The marketing and distribution of Finished Products, with the exception of the ten percent (10%) provided to Agency, shall be the sole responsibility of the Contractor and shall be in accordance with the approved Marketing Plan.

**6.2 Process Testing.** The Facility shall be equipped with the necessary analytical instruments and equipment to carry out the following, ongoing, routine composting process tests: (a) measuring moisture content; (b) temperature readings; and (c) other tests, mutually agreed upon the parties, to optimize the marketability of the Finished Products. Finished compost product testing and analysis shall include moisture content, organic and inorganic contaminants analysis, maturity/stabilization testing, macro- and micro-nutrient analyses, and microbiological tests which shall be performed by a qualified, independent laboratory. Agency reserves the right to observe sample collections and to collect samples of Finished Product for its own use.

**6.3 Finished Product Standard.** The finished compost product shall maintain physical and chemical specifications such as to: (a) achieve the results required under the Marketing Plan; and (b) comply with all applicable laws, ordinances, regulations, and permit conditions.

## 7. CONTAMINANTS

**7.1 Separation of Contaminants.** Contractor shall visually inspect each load of materials for Contaminants as the load is delivered to Contractor's processing area and shall proceed in strict accordance with this Agreement.

**7.2 Hazardous Materials.** If Hazardous Materials are contained in any of the materials that are accepted at the Facility, Contractor shall remove all identified Hazardous Materials. Where Contractor can identify the individual or entity responsible for bringing the Hazardous Materials to the Facility, Contractor shall request the customer deliver Hazardous Materials to an approved hazardous waste treatment, storage and disposal facility. In the event Contractor and Agency are unsuccessful in getting the individual or entity responsible for delivering the Hazardous Materials to retrieve such materials and properly dispose of the same, Contractor shall be responsible for properly disposing of the Hazardous Materials and the portions of Yard Debris and/or Wood Debris that are contaminated, at Contractor's sole cost and expense, at an approved hazardous waste treatment, storage and disposal facility. In the event Contractor fails to use reasonable diligence in identifying and/or disposing of Hazardous Materials, Contractor shall defend and indemnify Agency and County from all liability and expense resulting from such failure

## 8. MARKETING PLAN

**8.1 Approval of Marketing Plan.** Contractor shall submit a detailed Marketing Plan to Agency for its review and approval at least one hundred twenty (120) days prior to the Start Date. The detailed Marketing Plan shall include: (a) definition of products to be sold; (b) allocation by



percentage weight of products produced from Wood Debris and Yard Debris; (c) records to be generated on product sale revenue and distribution; and (d) allocation of revenue to Contractor and Agency. The approved Marketing Plan shall be revised by Contractor on an annual basis and submitted to the Agency no later than sixty (60) days prior to the commencement of the next Contract Year for its review and approval.

**8.2 Deviations from Approved Marketing Plan.** In the event Contractor deems it necessary to deviate from the approved Marketing Plan, in a manner resulting in a material change affecting revenue to the Agency or the diversion rate resulting from this Program under AB 939, Contractor shall first obtain Agency's prior written consent by submitting documentation to the Agency, at least fourteen (14) calendar days prior to a regular scheduled Agency meeting, which sets forth Contractor's justification for the need to deviate from the approved Marketing Plan. Agency shall consider such request and shall have the absolute discretion to determine, by majority vote, whether to allow Contractor to deviate from the approved Marketing Plan.

## **9. ACCOUNTING AND RECORDS**

**9.1 Maintenance and Audit of Records.** Contractor shall maintain, in its principal office in Sonoma County, full and complete accounting records, prepared in accordance with generally accepted accounting principles, separately reflecting Contractor's revenue and inventory from the receipt of Yard Debris and Wood Debris at the Facility. Contractor shall maintain its accounting records in a manner which clearly and separately identifies the revenues and inventory and separately identifies the tonnage of both Yard Debris and Wood Debris. Such records shall include, without limitation, shipping documents, receiving and delivery logs, invoices, and other documents for revenues and inventory. Such books and records shall be subject to audit and inspection by Agency and its authorized representatives, agents or employees, at any reasonable time as determined by Agency, at Contractor's principal office, for the primary purpose of reviewing operations, verifying tonnages disposed and processed, and substantiating payments made to Contractor by Agency. In the event such audit or inspection reveals that Contractor does not maintain adequate and separate records in accordance with the terms of the Agreement, Agency shall notify Contractor in writing of any alleged deficiencies in the accounting. Contractor shall have fifteen (15) calendar days to correct said deficiencies. If Contractor fails to correct said deficiencies to Agency's reasonable satisfaction, then Agency or its authorized representative, may create such adequate and separate records and Contractor shall reimburse Agency for the costs of such services. All records of Contractor that are not needed to verify compliance with this Agreement and to audit figures used in formula determinations shall be considered confidential and the private property of Contractor. Contractor shall have a reciprocal right to audit County gate records and any other information that directly relate to performance under this Agreement and/or formula determinations.

**9.2 Over-Payments to Contractor.** In the event that an audit or inspection reveals that the amount of compensation paid to Contractor by Agency is greater than the amount actually due to Contractor under the terms of this Agreement, Contractor shall remit such excess compensation to Agency, including interest from the date of over payment at the rate of five percent (5%) per year, within thirty (30) days of invoice by Agency of such excess. If such reimbursement is not made by Contractor within the specified time period, Agency may deduct the monies due to Agency from Contractor's next monthly payment.

**9.3 Under-Payments to Contractor.** In the event an audit or inspection reveals an error on

the part of Agency, such that the amount of compensation paid to Contractor by Agency is less than the amount actually due to Contractor under the terms of this Agreement, Agency shall remit to Contractor such compensation due, including interest from the date of under-payment at the rate of five percent (5%) per year, within thirty (30) days of invoice by Contractor of such under-payment. Interest shall not be due to Contractor if under-payment is due to an incorrect invoice submitted by Contractor or dispute over compensation adjustments.

**9.4 Inspection of Accounts and Records.** Contractor's accounting records as described above, shall be available at Contractor's principal office in Sonoma County at any time during regular office hours for inspection and/or audit by Agency or its authorized representatives, for a period of three (3) years following the termination of this Agreement.

## **10. REPORTS**

**10.1 Daily Reports.** Contractor shall have available for inspection by Agency Representative at the Facility daily logs that are used to support the information contained in all reports.

**10.2 Monthly Reports and invoicing.** The County will provide a monthly tonnage report, on a monthly basis, which shall include information on the following categories of materials: total tons of Yard Debris delivered to the Agency and the Contractor that includes a log of loads of Yard and Wood Debris delivered to the Central Compost site. This tonnage report shall be distributed within 15 days of the end of the month. The Contractor shall submit an invoice to the Agency Representative within 7 days of receiving the tonnage report from the County. The Agency Representative will review Contractor's monthly report and invoice, and notify Contractor of any deficiencies in writing within fifteen (15) working days of receipt of the report. Contractor shall have fifteen (15) working days from Contractor's receipt of notice of deficiencies to correct such deficiencies and resubmit the information to the Agency. Once the Agency Representative has approved the invoice the Agency will submit and pay the agreed upon amount within 15 days Following Agency review of the invoice and after payment of the invoice by the Agency.

Contractor shall submit the monthly report including the following:

- (a) A summary of tonnages for each material received per day;
- (b) Explanation of any changes from the operating plan including the type and amount of processing required by Finished Products. The Composting process report shall also include a brief discussion of operations including moisture addition, additives, amendments, temperature measurements and fluctuations, and type and frequency of aeration;
- (c) A description of any highlights or anomalies associated with this data, including, weather, operations, equipment shutdowns, Yard Debris and Wood Debris material delivered and processed;
- (d) Results of testing programs to include the date and the locations of samples taken, moisture content;
- (e) A summary of the sale and distribution of Finished Products organized by the types of materials sold. Although destination records shall be deemed confidential and shall remain

in Contractor's possession, Agency shall have the right to review and inspect such records for purposes of verifying compensation records or other auditing functions;

(f) Quantities (in tons) of Contaminants landfilled, recovered or recycled;

(g) Record of complaints regarding environmental concerns and Contractor's steps taken to research and resolve complaint;

(h) Record of other problems associated with the Facility and associated operations and considerations and accounts of what is being done to resolve the problem;

(i) Tonnage, volume and composition of Finished Products produced by type;

(j) Volumes of Finished Products due to Agency delivered to Agency by type.

Contractor shall submit all reports to the Local Enforcement Agency, as required by the Permit.

Contractor shall submit monthly invoices. The invoices shall include at a minimum the following:

(a) Tonnage information provided by Agency in Agency's monthly tonnage report;

(b) Processing fees derived from the Payment Matrix and associated with the respective materials;

(c) Total due to Contractor.

**10.3 Annual Reports.** Contractor shall submit annual reports to the Agency Representative within sixty (60) calendar days of the end of each Contract Year. The Agency Representative will review Contractor's annual report and notify Contractor of any deficiencies in writing within thirty (30) working days of receipt of the report. Contractor shall have thirty (30) working days from receipt of notice of deficiencies to correct such deficiencies and resubmit the report to the Agency. The annual report shall include, at a minimum, the following:

(a) A summary of the information contained in the monthly reports and total weight and volume of material processed;

(b) A discussion of the Program, along with measures taken to resolve problems, increase efficiency and increase quality of Finished Products; and

(c) A discussion of the markets for Finished Products and the types of marketing approaches used.

**10.4 Final Report.** Within sixty (60) calendar days of the end of the term of this Agreement, or within sixty (60) calendar days of the earlier termination of this Agreement, Contractor shall submit to Agency Representative a final report. Agency Representative will review Contractor's final report and notify Contractor of any deficiencies in writing within thirty (30) working days of receipt of the report. Contractor shall have thirty (30) working days from the receipt of notice of deficiencies to

correct such deficiencies and resubmit the report to the Agency. The final report shall include at a minimum the following:

- (a) A summary of all the preceding year's data and annual reports; and
- (b) A discussion of the Program, including highlights, problems, and problem resolution.

**10.5 Reports Required by Law.** Contractor shall assist Agency in the preparation of all reports that are required under applicable law concerning the Program.

## **11. CONTRACTOR REPRESENTATIONS**

In order to induce Agency to enter into this Agreement, Contractor represents and warrants, as of the Effective Date, to Agency that the following statements are true, correct and complete:

**11.1 Organization and Good Standing.** Contractor is a duly formed general partnership and that Contractor is in good standing under the laws of the State of California, and that Contractor has all requisite power and authority to carry on the business of the Contractor, to enter into the Agreement and to consummate the transactions hereby contemplated.

**11.2 Authority and Authorization.** Contractor has requisite power and authority to enter into the Agreement and that the execution, delivery and performance of the Agreement have been duly authorized by the governing authority, if any, of Contractor and no other action is requisite to the execution, delivery and performance of the Agreement.

**11.3 Litigation.** There are no actions, suits or proceedings pending or threatened against or affecting Contractor in any court of law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality that might adversely affect the ability of any such person or entity to perform its respective obligations under the Agreement. In addition, Contractor represents and warrants there are no actions, suits, or proceedings pending or threatened against the Facility or operations thereof.

**11.4 Binding Obligation.** The Agreement has been duly authorized, executed and delivered and is valid and legally binding on Contractor.

## **12. INSURANCE; PERFORMANCE BOND**

**12.1 Insurance Requirements.** With respect to the performance of the work hereunder, Contractor shall take out prior to the Start Date and maintain at all times thereafter during the life of the Agreement, and shall require of all its subcontractors, consultants and other agents to maintain, the following policies of insurance:

**12.1.1 Workers' Compensation.** Workers' Compensation Insurance to cover its employees, with statutory limits as required by the Labor Code of the State of California. Each such policy shall be endorsed with the following specific language:

- (a) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency by

registered mail.

**12.1.2 Commercial/Comprehensive General Liability.** Commercial or comprehensive general liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than Two Million Dollars (\$2,000,000) combined single limit for each occurrence. Said comprehensive or commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy.

(a) The Sonoma County Waste Management Agency its members, officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to the Sonoma County Waste Management Agency with respect to any insurance or self-insurance programs maintained by the Agency.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency by registered mail.

**12.1.3 Automobile.** Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

(a) The Sonoma County Waste Management Agency its members, officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to the Sonoma County Waste Management Agency with respect to any insurance or self-insurance programs maintained by the Agency.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency by registered mail.

**12.1.4 Environmental Materials Liability.** Environmental Materials Liability insurance for all activities of Contractor arising out of or in connection with this Agreement in an amount no less

than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said policy shall be endorsed with the following specific language:

(a) The Sonoma County Waste Management Agency its members, officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to the Sonoma County Waste Management Agency with respect to any insurance or self-insurance programs maintained by the Agency.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Waste Management Agency by registered mail.

**12.1.5 Documentation.** The following documentation shall be submitted to the Agency:

(a) On or before the Effective Date, Contractor shall provide satisfactory proof that it will be able to obtain all of the insurance, including, endorsements, required hereunder by the Start Date.

(b) Properly executed Certificates of Insurance clearly evidencing all coverage, limits, and endorsements required above. Said Certificates shall be submitted ninety (90) days prior to the Start Date.

(c) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted with the Certificates of Insurance required under Section 12.1.5(b) above.

(d) Upon Agency's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of such request.

**12.1.6 Policy Obligations.** Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**12.1.7 Material Breach.** If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. Agency at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Agency may purchase such required insurance coverage, and without further notice to Contractor, Agency may deduct from sums due to Contractor any premium costs advanced by Agency for such insurance. These remedies shall be in addition to any other remedies available to the Agency.

**12.2 Faithful Performance Bond.** Contractor shall provide the Agency with a faithful performance bond in the amount of \$1,000,000 in order to secure the Contractor's performance obligations under the Agreement. Such bond shall be executed by a surety company licensed to do business in the State of California. The initial term of the faithful performance bond shall be for one year commencing with the Start Date and shall be renewed on an annual basis until the termination of the Agreement. The condition of the foregoing bond shall be such that if Contractor shall well and truly perform the covenants, promises, undertakings and obligations under the terms of this Agreement, then the obligation of said bond shall be void; otherwise it shall remain in full force and effect. Agency shall be able to collect on said bond for discrepancies or other covered losses discovered up to the time when all Yard Debris and Wood Debris delivered to Contractor under the terms of this Agreement have been processed into Finished Products and all other obligations of Contractor under this Agreement have been satisfied. On or before the Effective Date, Contractor shall provide satisfactory proof that it will be able to obtain the faithful performance bond required hereunder.

### **13. NOTICE**

**13.1 Notices.** All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.

**13.1.1 Method of Delivery.** Notice shall be sufficiently given for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c) When mailed by certified mail with return receipt requested, notice is effective two (2) days following mailing.
- (d) When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective one day following mailing.
- (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on transmission as long as (1) a duplicate copy of the notice is promptly given by certified mail, return receipt requested, or by overnight delivery, or (2) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by fax shall be considered to have been received on the next business day if it is transmitted after 4 p.m. (recipient's time) or on a non-business day.

**13.2 Refused, Unclaimed, or Undeliverable Notices.** Any correctly addressed notice that is delivered pursuant to Section 13.1.1(b), (c), or (d) that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

**13.3 Addresses.** Addresses for purposes of giving notice are set forth below:

CONTRACTOR: Sonoma Compost Company  
550 Mecham Road  
Petaluma, CA 94952

AGENCY: Sonoma County Waste Management Agency  
2300 County Center Drive, Suite B 100  
Santa Rosa, CA 95403

## 14. INDEMNIFICATION

Contractor agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release Agency, its members, officers, agents and employees, from and against any and all actions, claims, damages, liabilities or expenses that may be asserted by any person or entity, including Contractor, arising out of or in connection with the performance of Contractor hereunder, whether or not there is concurrent negligence on the part of the Agency, but excluding liability due to the sole active negligence or sole willful misconduct of the Agency. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts or other employee benefit acts. In addition, Contractor shall be liable to Agency and its members for any loss or damage to Agency property or Agency's members' property arising from or in connection with Contractor's performance hereunder.

## 15. EVENTS OF DEFAULT; REMEDIES

Upon an event of default, Agency shall have the right to foreclose upon the performance bond and may elect at its option to terminate this Agreement, purchase the Operating Equipment and operate the Facility. These remedies shall not be exclusive and Agency shall have the right to seek specific performance of the Agreement. For purposes of this Agreement, an event of default shall be deemed to have occurred upon the happening of any one or more of the following events:

(a) Failure of Contractor to accept Wood Debris and/or Yard Debris on more than:  
(i) thirty (30) Operating Days during any twelve (12) month period; or (ii) ten (10) or more consecutive Operating Days; provided, however, that any failure of the Contractor to accept materials due to problems directly caused by problems with infrastructure at the Central Disposal Site that Agency is specifically required to maintain under the terms of this Agreement, shall not be considered cause for default.

(b) Failure of Contractor to operate the Facility in compliance with the terms of the Agreement.

(c) Receipt by Contractor of any order or notice from any governmental agency that all or any portion of the Contractor Improvements or Operating Equipment have been or are proposed to be performed or used contrary to the terms of any law, ordinance or regulation, which order or notice is not complied with by Contractor within ten (10) days following the issuance thereof, provided that if such order or notice cannot be reasonably complied with within such ten (10) day period, an Event of Default shall not be deemed to have occurred unless Contractor fails to commence compliance within such ten (10) day period or to diligently and in good faith prosecute compliance thereafter, or to complete such compliance within thirty (30) days following written notice from the governmental



agency of such order or notice; or to complete such within a lesser time period if the failure to do so would, in the reasonable determination of the Agency, cause Contractor to be unable to accept Wood Debris and/or Yard Debris for a period of ten (10) or more consecutive Operating Days.

(d) Any failure on Contractor's part to comply with any other covenant or agreement contained in this Agreement (which does not constitute a breach of default that could become an event of default under any other subparagraph of this Section), which failure remains uncured for ten (10) days following written notice thereof by Agency, provided that if any such failure to comply or breach is capable of cure but cannot reasonably be cured within such ten (10) day period, an event of default shall not be deemed to have occurred unless Contractor fails to commence the cure of such failure or breach within such ten (10) day period or to diligently and in good faith prosecute the cure thereafter, or to complete such cure within thirty (30) days following written notice from Agency of such failure or breach.

(e) (i) Contractor shall voluntarily commence any case, proceeding or other action (A) under the Federal Bankruptcy Code, as amended from time to time, or under any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, seeking to adjudicate it a bankrupt or insolvent or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, custodian or other similar official for it or for all or any substantial part of its assets, or Contractor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Contractor any involuntary, proceeding or other action of a nature referred to in clause (i) of this subparagraph (g) which (A) results in the entry of an order for relief of any such adjudication or appointment or (B) remains unstayed and undismissed for a period of sixty (60) days; or (iii) there shall be commenced against Contractor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets, which results in the entry of an order for any such relief which shall not have been vacated, discharged or stayed or bonded pending appeal within thirty (30) days from the entry thereof; or (iv) Contractor shall take any action in furtherance of, or indicating its consent to approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) of this subparagraph (g); or (v) Contractor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vi) any termination or voluntary suspension of the transaction of business of Contractor, or any attachment, execution or other judicial seizure of all or any substantial portion of Contractor's assets which attachment, execution or seizure is not discharged within thirty (30) days.

(f) Any substantial change shall occur in the management or control of Contractor without the prior written approval of Agency.

(g) Any representation or disclosure made to the Agency by Contractor proves to be false or misleading in any material respect on the date as of which made.

## **16. EXPIRATION OF AGREEMENT**

**16.1 Normal Expiration.** Effective upon February 1, 2012, Agency shall stop accepting Yard Debris and Wood Debris. Contractor shall finish processing all existing material on site and to conclude its on-site operations during the Post-Operating Term. Agency shall pay Contractor for processing of materials delivered up to the date that Agency stops accepting such materials.

**16.2 Termination of Agreement.** Should the Agreement be terminated early for an Event of Default, Contractor shall have seven (7) days to vacate the Facility.

**16.3 Condition of Facility.** At the normal expiration or earlier termination of the Agreement, Contractor shall surrender to Agency the possession of the Facility. Contractor shall leave the surrendered Facility and any other property in good condition and repair, normal wear and tear excepted. At the expiration or sooner termination of the term, Contractor shall remove all of the Operating Equipment. The duty imposed by this provision includes, without limitation, the duty to leave the Facility safe and free from debris and hazards. All property that Contractor abandons shall, at Agency's election, become Agency's property at termination. If Contractor fails to surrender the Facility at the expiration or sooner termination of this Agreement, Contractor shall defend and indemnify Agency and County from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding contractor based on or resulting from Contractor's failure to surrender.

## **17. ARBITRATION**

Arbitration may be required for matters for which arbitration is mentioned in this Agreement or where this Section 17 is expressly referred to in this Agreement. For other matters, the party served with notice of arbitration may reject the notice by failing to respond to it, by giving notice of rejection, or by taking action inconsistent with arbitration. Arbitration is initiated and required by giving notice specifying the matter to be arbitrated. If action is already pending on any matter concerning which the notice is given, the notice is ineffective unless given from the expiration of ten (10) days after service of process on the person giving the notice. Arbitration shall be in conformity with and subject to applicable rules and procedures of the American Arbitration Association or JAMS/Endispute, as the parties may agree. If the American Arbitration Association or JAMS/Endispute are not then in existence or for any reason fail or refuse to act, the arbitration shall be in conformity with and subject to provisions of the California Code of Civil Procedure relating to arbitration as they stand amended at the time of the notice. The arbitrator shall be bound by this Agreement. Pleadings and any action pending on the same matter shall, if the arbitration is required or consented to, be deemed amended to limit the issues to those contemplated by the rules prescribed above. Each party shall pay half the cost of arbitration including arbitrator's fees. Attorneys' fees shall be awarded as provided in Section 18 of this Agreement. To the extent permitted by the rules of the American Arbitration Association, JAMS/Endispute, or, if applicable, the California Code of Civil Procedure, in effect at the time of the notice, the parties have hereby established their own rules for selecting arbitrators. There shall be one arbitrator appointed as follows:

(i) A panel of retired judges shall be provided by the American Arbitration Association or JAMS/Endispute. Each party may strike any names up to a maximum, if afforded to both parties would leave one arbitrator for appointment. If less than the maximum are struck, the American Arbitration Association or JAMS/Endispute shall randomly choose from the names remaining.

(ii) If the parties fail to choose an arbitrator, the appointment shall be made by the then presiding Judge of the Superior Court for Sonoma County, acting in his or her individual and non-official capacity, on the application of either party and on ten (10) days notice to the other party. The arbitrator shall issue written findings of fact and conclusions of law, in accordance with California law.

## 18. ATTORNEYS' FEES

If either party brings any claim, suit, action or proceeding (including arbitration) against the other to enforce, protect, or establish any right or remedy arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

## 19. GENERAL PROVISIONS

### 19.1 Assignment.

**19.1.1 Assignment by Contractor.** The experience and expertise of Contractor are material considerations for this Agreement. Contractor shall not assign or transfer, whether voluntarily, involuntarily, or by operation of law, its interest in this Agreement or any part thereof without the prior written approval of Agency. No such assignment or transfer for which Agency's prior written consent is required shall be valid or binding without said prior written approval, and then only upon the condition as such assignee or other successor in interest shall agree in writing to be bound by each and all of the covenants, conditions and restrictions of the Agreement. An attempted assignment or transfer not in compliance with the provisions of this Section 19.1 shall be grounds for Agency's termination of the Agreement. Consent to any assignment or transfer shall not be deemed a waiver of this requirement as to any subsequent assignment or transfer. As used in this Section the term "assignment" shall include a "more than 34% change in ownership of Contractor." A "more than 34% change in ownership of Contractor" shall mean, the transfer of the right to share in more than 34% of the profits of the general partnership or corporation.

**19.1.2 Assignment by Agency.** The Agency, at its sole discretion, reserves the right to assign Agency's rights and obligations under this Agreement to a successor agency or other party.

**19.2 Amendments.** Only the Members of the Agency, by a majority vote, may authorize major extra or changed work or amend this Agreement. The parties expressly recognize that Agency personnel are without authorization to order extra or changed work or waive contract requirements. Failure of Contractor to secure Agency authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the compensation due to such unauthorized work and thereafter the Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without the express and prior written authorization of the Agency.

**19.3 Nondiscrimination.** Contractor shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

**19.4 No Waiver of Breach.** The waiver by Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

**19.5 Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance,

regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**19.6. No Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

**19.7 Applicable Law and Forum.** This Agreement shall be construed and interpreted according to California law and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

**19.8 Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

**19.9 Merger.** This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

**19.10 Time of Essence.** Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of all parties.

“Agency”: SONOMA COUNTY WASTE MANAGEMENT AGENCY

By: \_\_\_\_\_  
Chairperson, SCWMA Board of Directors

“Contractor”: SONOMA COMPOST COMPANY  
a California General Partnership

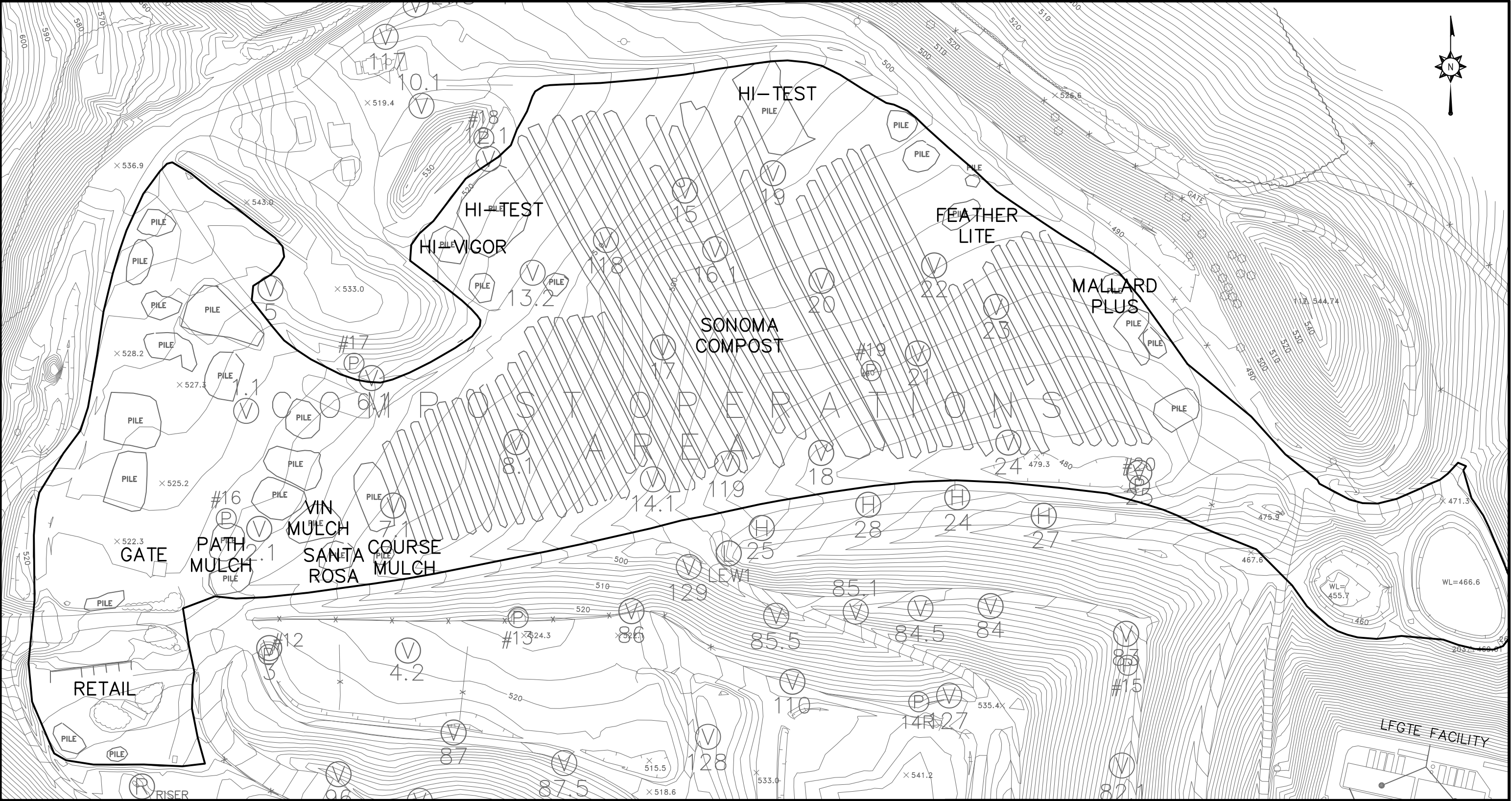
By: \_\_\_\_\_

APPROVED AS TO FORM FOR AGENCY:

\_\_\_\_\_  
Agency Counsel

APPROVED AS TO SUBSTANCE FOR AGENCY:

\_\_\_\_\_  
Agency Executive Director



DESIGNER:	DATE:
DRAFTER: KJF	DATE: 6/30/11
CHECKER:	DATE:
SCALE: 1" = 150'	



<b>SITE PLAN</b>
<b>SONOMA COMPOST</b> <b>SONOMA COUNTY, CALIFORNIA</b>

## **Exhibit B**

### **List of Operating Equipment**

#### **Equipment**

*Equipment utilized under the current Agreement includes:*

- 1 1000 hp Zehr grinder
- 1 Scarab windrow turner
- 2 Erin Star Screens
- 6 3-10 cy Front end loaders
- 3 roll-off trucks and numerous debris boxes
- 2 water trucks
- 1 fork lift
- 1 sweeper
- 1 1 cy front end loader (retail)

#### **Proposed New Equipment**

*Additional new environmental controls related to water quality enhancements include:*

- Additional sediment traps
- Pond Aeration system

*Should the Agency elect to include the Aerated Static Pile (ASP) demonstration project, the following new equipment will be included:*

- 1 Gore system to handle 6.6 TPD food scraps in 40-60 ratio (food to yard debris)
- 1 sort line (6 stations)
- 1 loader

*Additional new environmental controls related to the ASP project include:*

- 16.5 ton per day (40% food scraps/60% yard debris) are processed in the Gore system (75% covered). ASP pilot will encompass 25% of the site at full capacity.

*Additional new environmental controls related to the leachate diversion include:*

- Optional pipeline to have water treated at Laguna Water Treatment Facility.

## Exhibit C Payment Matrix

Product	Net Cost Per Ton		
Wood Debris- Fuel Market			\$18.80
Wood Debris- non Fuel Market			\$20.49
Yard Debris - Processed at Central, 0-175 tpd* & Prepared Yard Debris**			\$26.03
Yard Debris - Processed at Central, 176 + tpd*			\$23.47
Outhaul Rates			
Food Scraps	\$67	ton	Based on 20 ton average loads
Yard/Wood Debris	\$40	ton	Based on 20 ton average loads
Pilot ASP Rates			
Ammortized over 5 years:	\$30	ton	Based on 6.6 tpd food scraps
Amortized over 3 years:	\$50	ton	Based on 6.6 tpd food scraps
Picking Table			
Ammortized over 5 years	add	\$0.66 to net cost per ton	
Ammortized over 3 years	add	\$1.00 to net cost per ton	



RESOLUTION NO.: 2012-

DATED: JUNE 20, 2012

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY") APPROVING SONOMA COMPOST COMPANY TO CONDUCT  
ORGANIC MATERIAL PROCESSING, COMPOSTING AND MARKETING SERVICES

WHEREAS, the Agency has authority under the Agreement between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues to establish and enter into agreements to operate a composting facility; and

WHEREAS, the Agency has administered an agreement to operate a compost facility with Sonoma Compost Company since September 28, 1999; and

WHEREAS, the Agency completed a competitive RFQ process for composting services; and

WHEREAS, the Agency staff determined Sonoma Compost Company was responsive, well qualified, and the least cost participant in the RFQ process;

NOW THEREFORE, BE IT RESOLVED that the Sonoma County Waste Management Agency, hereby approves an Agreement with Sonoma Compost Company to conduct Organic Material Processing, Composting, and Marketing Services and authorizes the Chair to execute the Agreement on behalf of the Agency.

MEMBERS:

--	--	--	--	--
Cloverdale	Cotati	County	Healdsburg	Petaluma
--	--	--	--	--
Rohnert Park	Santa Rosa	Sebastopol	Sonoma	Windsor
AYES --	NOES --	ABSENT --	ABSTAIN --	

SO ORDERED.

The within instrument is a correct copy  
of the original on file with this office.

ATTEST:

DATE:

Debra Dowdell  
Clerk of the Sonoma County Waste Management  
Agency of the State of California in and for the County of Sonoma



June 8, 2012

To: Phil Demery, Sonoma County Director of Transportation and Public Works

From: Henry J. Mikus, Executive Director

Copies: Susan Klassen, Sonoma County Deputy Director of Transportation and Public Works  
Patrick Carter, Sonoma County Waste Management Agency  
Janet Coleson, Esq., Agency Counsel

Subject: Agreement for Use of County Property

Attached please find an initial draft of an “Agreement for the Use of County Property” regarding the compost facility operated by Sonoma Compost Company (SCC) on behalf of the Sonoma County Waste Management Agency (SCWMA) on the County’s Central Disposal Site property as a two party agreement between the County and SCWMA for use of the land. Currently, use of this facility is via a three party contract between SCWMA, SCC, and the County. This new agreement would continue to cover the County’s obligation under the Joint Powers Agreement between SCWMA members (the nine incorporated municipalities and the County) “...to provide... at its Central Landfill Site for... a wood and yard waste Treatment System.”

Through staff discussions with Susan Klassen, Sonoma County Deputy Director of Transportation and Public Works, and Agency Counsel, it was understood there were benefits to creating two new agreements, one between the County and SCWMA for use of the land, and a second between SCC and SCWMA as an operating contract, to replace the current three party contract. An example of the benefit of such a new arrangement to the County would be the elimination of the time and expense to the County from processing amendments to the current agreement which deal solely with details between SCC and SCWMA. As reference there have been eight such amendments in recent years. Also, at the suggestion of the County the new agreement was formulated utilizing other similar existing County land use agreements as a template. Please review the new proposed agreement; we trust it will meet the County’s and the Agency’s needs in this matter.

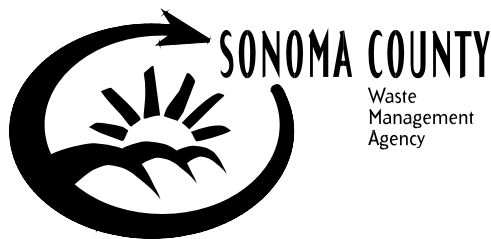
In large part because the existing contract had been in place for a considerable time, SCWMA recently engaged in a competitive process to seek an operator of the compost facility. As such, the SCWMA Board will be considering approval of the new two party agreement for compost operations between SCC and SCWMA at its next Board meeting on June 20, 2012.

SCWMA understands review and approval of any new agreement, including the proposed new one between The County and SCWMA described above, is a process, and takes time. An interim transitional period will likely occur to accommodate the change from current agreement to two new agreements. SCWMA would propose that the provisions of the current agreement regarding use of the land for the compost facility remain in effect during any transition or time frame required for review and approval of the new agreement.

If you have any questions do not hesitate to call. We would be glad to meet to discuss the draft agreement if you so desire.

Cost By Operator, Existing Site							
Material	Baseline			Recology		Sonoma Compost Company	
	2011 Tons	Cost/Ton	Cost/Year	Cost/Ton	Cost/Year	Cost/Ton	Costs/Year
Wood	4,203.62	\$ 24.20	\$ 101,727.60	\$ 35.50	\$ 149,228.51	\$ 20.49	\$ 86,132.17
Wood, Fuel	2,378.89	\$ 22.51	\$ 53,548.81	\$ 35.50	\$ 84,450.60	\$ 18.80	\$ 44,723.13
Yard Debris, <175 TPD	8,574.34	\$ 29.74	\$ 255,000.87	\$ 34.25	\$ 293,671.15	\$ 26.03	\$ 223,190.07
Yard Debris, >175 TPD	83,746.38	\$ 27.18	\$ 2,276,226.61	\$ 34.25	\$ 2,868,313.52	\$ 23.47	\$ 1,965,527.54
<b>Totals</b>			<b>\$ 2,686,503.90</b>		<b>\$ 3,395,663.77</b>		<b>\$ 2,319,572.91</b>
Difference from Baseline:				\$ 709,159.87		\$ (366,930.98)	

Cost By Operator, Outhaul									
Material	Baseline			Recology				Sonoma Compost Company	
	2011 Tons	Cost/Ton	Cost/Year	Tipping Cost/Ton	Estimated Haul Costs/Ton	Total Cost/Ton	Cost/Year	Total Cost/Ton	Costs/Year
Wood	4,203.62	\$ 24.20	\$ 101,727.60	\$ 26.00	\$ 28.31	\$ 54.31	\$ 228,298.60	\$ 40.00	\$ 168,144.80
Wood, Fuel	2,378.89	\$ 22.51	\$ 53,548.81	\$ 26.00	\$ 28.31	\$ 54.31	\$ 129,197.52	\$ 40.00	\$ 95,155.60
Yard Debris, <175 TPD	8,574.34	\$ 29.74	\$ 255,000.87	\$ 26.00	\$ 28.31	\$ 54.31	\$ 465,672.41	\$ 40.00	\$ 342,973.60
Yard Debris, >175 TPD	83,746.38	\$ 27.18	\$ 2,276,226.61	\$ 26.00	\$ 28.31	\$ 54.31	\$ 4,548,265.90	\$ 40.00	\$ 3,349,855.20
Commercial Food	\$ -	N/A	\$ -	\$ 47.00	\$ 28.31	\$ 75.31	Unknown	\$ 67.00	Unknown
<b>Totals</b>			<b>\$ 2,686,503.90</b>				<b>\$ 5,371,434.42</b>		<b>\$ 3,956,129.20</b>
Difference from Baseline							\$ 2,684,930.52		\$ 1,269,625.30



**Agenda Item #:6**  
**Cost Center: HHW**  
**Staff Contact: Steinman**  
**Agenda Date: 6/20/2012**

## **ITEM: Oil Program Contract**

### **I. BACKGROUND**

In May 2003, the Agency entered into an agreement with C<sup>2</sup> Alternative Services to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs. C<sup>2</sup> Alternative Services assists Agency staff to accomplish the goals of the Used Oil Recycling Program, which is currently funded under a Used Oil Block Grant (UBG) and Oil Payment Program (OPP) from the Department of Resources Recycling and Recovery (CalRecycle). Starting in Fiscal Year 12/13, this program will be funded solely by OPP funds.

C<sup>2</sup> Alternative Services is contracted to do the following work:

- conduct required site visits of oil recycling centers
- gather required used oil collection data
- conduct public education campaigns as defined during the contract term
- maintain existing used oil recycling education programs (Eco-Desk voice mail boxes, Recycling Guide)
- serve as liaison with oil recycling centers, e.g., trouble-shoot, assist with CalRecycle paperwork, re-certify centers, keep centers stocked with signs and flyers, develop and distribute logos, etc.
- provide data and assist with annual reporting to CalRecycle
- attend workshops and meetings upon request by Agency staff

This agreement term was for three years with optional annual extensions upon mutual agreement between Agency and Contractor. The current Agreement term is set to expire on June 30, 2012.

At the February 15, 2012 Agency Board meeting, the Agency Board directed staff to develop a Request for Proposal (RFP) for Services to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs and come back to the Board with a Draft RFP.

Staff prepared a Draft RFP, for services through February 11, 2017, which was approved for distribution by the Agency Board on April 18, 2012. The Scope of Work, for a new contract through this RFP, has not changed from the current Agreement to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs. The selected Proposer, from this RFP, would continue implementation of the Agency's existing Oil Program.

### **II. DISCUSSION**

The RFP was distributed as follows:

- Agency website [http://www.recyclenow.org/agency/requests\\_for\\_proposals.asp](http://www.recyclenow.org/agency/requests_for_proposals.asp) posting on April 23, 2012.

- California Household Hazardous Waste Information Exchange (HHWIE) posted on April 23, 2012. This group has 596 members and was formed to give household hazardous waste professionals, including contractors, the ability to better communicate and exchange information.

In response to the RFP, which was due on May 21, 2012, Agency staff received one proposal from the current contractor, C<sup>2</sup> Alternative Services. This Contractor met all of the requirements of the RFP. The Agency has had a long history working with C<sup>2</sup> Alternative Services and is satisfied with their performance and the services they provide.

### III. FUNDING IMPACT

The new Agreement to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs will be funded entirely with OPP funds. The Agency was awarded \$154,350 through OPP2. All funds shall be available for expenditure until June 30, 2013. It is expected that the Agency will continue to receive OPP funds annually.

Historically \$62,825 is allocated to the Oil Contractor for this Agreement through the Household Hazardous Waste Professional Services budget. C<sup>2</sup> Alternative Services' new proposed budget, included in their proposal, is a fixed \$65,000 each Fiscal Year. This would be an increase of \$2,175 per Fiscal Year. The following is the new proposed budget:

Proposed Fiscal Year Budget

<b>Task</b>	<b>Hours @90</b>	<b>Hours @ \$80</b>	<b>Hours @ \$40</b>	<b>Time total</b>	<b>Materials</b>	<b>Expenses</b>	<b>Total each year</b>
I. Site Visits to Centers							\$5,250
II. Gather Center Data							\$4,500
III. Liaison	4	4		\$680		\$100	\$780
IV. Targeted Outreach Campaign (s)	75	65	200	\$19,950	\$20,000	\$500	\$40,450
V. Serve as Primary Contact for Centers	30			\$2,700	\$3,000	\$500	\$6,200
VI. Workshops & Meetings	16	8		\$2,080		\$500	\$2,580
VII. Reporting & Administration	50	4	8	\$5,140		\$100	\$5,240
<b>Total</b>	<b>175</b>	<b>81</b>	<b>208</b>	<b>\$30,550</b>	<b>\$23,000</b>	<b>\$1,700</b>	<b>\$65,000</b>

The annual contract amount as set forth in the C<sup>2</sup> Alternative Services' proposal would be \$65,000, which still remains under the budgeted amount for Oil & Filter Recycling Contractor Costs.

Since this Agreement is reliant on the OPP funds from CalRecycle which are allocated annually, the selected Proposer may only expend the budget for the then-current fiscal year (July 1 to June 30), plus any funds rolled over from the prior fiscal year, regardless of the total value of this Agreement. This language is included in the Agreement.

#### IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Agency staff recommends awarding a Contract to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs, through February 11, 2017, to C<sup>2</sup> Alternative Services and authorizing the Chair to sign the Agreement.

#### V. ATTACHMENTS

C<sup>2</sup> Alternative Services Agreement  
Exhibit A-Scope of Work  
Exhibit B-Payment Terms  
C<sup>2</sup> Alternative Services Contract Resolution

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA

## AGREEMENT FOR PROFESSIONAL SERVICES TO AUDIT OIL RECYCLING CENTERS AND COORDINATE OIL RECYCLING PUBLICITY AND PROGRAMS

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2012 ("Effective Date") is by and between the Sonoma County Waste Management Agency, (hereinafter "Agency"), and C<sup>2</sup> Alternative Services, (hereinafter "Contractor").

### R E C I T A L S

WHEREAS, Contractor represents to Agency that it is a duly qualified firm experienced in public education and related services; and

WHEREAS, in the judgment of the Board of Directors of Agency, it is necessary and desirable to employ the services of Contractor to assist in the implementation of its oil recycling program.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### A G R E E M E N T

#### 1. Scope of Services.

1.1 Contractor's Specified Services. This Agreement is entered into for the purpose of establishing a contract to audit oil recycling centers and coordinate oil recycling publicity and programs. Contractor shall perform services as defined in Exhibit "A", Scope of Services, attached hereto and incorporated herein.

1.2 Cooperation with Agency. Contractor shall cooperate with Agency and Agency staff in the performance of all work hereunder.

1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Agency determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Agency, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Agency to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### 1.4 Assigned Personnel.

- a. Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time Agency, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Agency.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Agency to be key personnel whose services are a material inducement to Agency to enter into this Agreement, and without whose services Agency would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Agency.
- c. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

1.5 Key Personnel. The parties hereby acknowledge that Connie Cloak, Chris Carrieri, and Hugo Mata are key persons whose services are a material inducement to the Agency to enter into this Agreement and without whose services the Agency would not have entered into this Agreement. Connie Cloak, Chris Carrieri, and Hugo Mata shall be the principal persons of Contractor overseeing the scope of services described in Exhibit A attached hereto. In no event shall any other person perform such services unless Contractor has obtained Agency Executive Director's prior written consent thereto.

2. Payment. For all services and incidental costs required hereunder, Contractor shall be paid in accordance with the payment schedule attached hereto as Attachment B. Since this Agreement is reliant on the Oil Payment Program Funds from the Department of Resources Recycling and Recovery which are allocated annually, Contractor may only expend the budget for the then-current fiscal year, plus any funds rolled over from the prior fiscal year, regardless of the total value of this Agreement. The fiscal year for the Agency is from July 1 to June 30. Agency shall withhold ten percent (10%) retainer on all payments. Retainer shall be released upon satisfactory completion of the services set forth in Exhibit A, Scope of Work, at the end of each fiscal year.

3. Term of Agreement. The term of this Agreement shall be from July 1, 2012 to February 11, 2017, unless terminated earlier in accordance with the provisions of Article 4 below.



#### 4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, Agency shall have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days written notice to Contractor.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Agency may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination. In the Event of termination, Contractor, within 14 days following the date of termination, shall deliver to Agency all materials and work product subject to Section 9.9 and shall submit to Agency payment up to the date of termination.

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to Agency, and to defend, indemnify, hold harmless, reimburse and release Agency, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to, attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by Agency to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity arising out of or in connection with the performance of Contractor hereunder, but, to the extent required by law, excluding liability due to the sole negligence or willful misconduct of Agency. If there is a possible obligation to indemnify, Contractor's duty to defend with legal counsel acceptable to Agency, exists regardless of whether it is ultimately determined that there is not a duty to indemnify. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described below:

6.1 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days' prior written notice to the Agency.

6.2 General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than One Million Dollars (\$1,000,000.00) combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

- a. The Agency, its Board of Directors and staff, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
- b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
- c. The insurance provided herein is primary coverage to the Agency with respect to any insurance or self-insurance programs maintained by the Agency.
- d. This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the Agency.

6.3 Deductible and Self Insured Retention. Any deductibles or self-insured retention must be declared to and approved by the Agency. If possible, the insurer shall reduce or eliminate such deductibles or self insured retention as respects the Agency, its members, officers, officials, employees and volunteers; or the Contractor shall provide investigations, claim administration and defense expenses.

6.4 Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the Agency.

6.5 Documentation. The following documentation shall be submitted to the Agency:

- a. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement. Contractor

agrees to maintain current Certificates of Insurance evidencing the above-required coverages, limits, and endorsements on file with the Agency for the duration of this Agreement.

b. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

c. Upon Agency's written request, certified copies of the insurance policies. Said policy copies shall be submitted within thirty (30) days of Agency's request.

6.6 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

6.7 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. Agency, in its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Agency may purchase such required insurance coverage, and without further notice to Contractor, Agency may deduct from sums due to Contractor any premium costs advanced by Agency for such insurance. These remedies shall be in addition to any other remedies available to Agency.

7. Prosecution of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes which do not increase or decrease the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Agency's Executive Director in a form approved by Agency Counsel. All other extra or changed work must be authorized in writing by the Agency Board of Directors.

9. Representations of Contractor.

9.1 Standard of Care. Agency has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices

and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Agency shall not operate as a waiver or release.

9.1.1 Change in Information. Contractor shall notify Agency thirty (30) days prior to any change to the information provided pursuant to Section 10 of Exhibit A, Proposed Scope of Services, that is initiated by Contractor, or within seven (7) days of Contractor becoming aware of a change to the information provided pursuant to Section 10 of Exhibit A that was not initiated by Contractor.

9.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of Agency and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits provided to Agency staff. In the event Agency exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Agency harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Agency is audited for compliance regarding any withholding or other applicable taxes. Contractor agrees to furnish Agency with proof of payment of taxes on these earnings.

9.4 Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement, as well as information provided pursuant to Section 10 of Exhibit A, Proposed Scope of Services, and shall make such documents and records available to Agency for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

9.5 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed by Contractor. In addition, if requested to do so by Agency, Contractor shall complete and file and shall require any other person doing work under Contractor and this Agreement to complete and file a "Statement of Economic Interest" with Agency disclosing Contractor's or such other person's financial interests.

9.6 Nondiscrimination. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.7 AIDS Discrimination. Contractor agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

- 9.8 Assignment Of Rights. Contractor assigns to Agency all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to Agency in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Agency may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Agency. Contractor shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Agency.

9.9 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Agency. Agency shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to Agency all such documents which have not already been provided to Agency in such form or format as Agency deems appropriate. Such documents shall be and will remain the property of Agency without restriction or limitation. Contractor may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Agency.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes

not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 10 limits Agency's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

Agency: Sonoma County Waste Management Agency  
Attention: Lisa Steinman  
2300 County Center Drive, Suite 100 B  
Santa Rosa, CA 95403  
Phone: (707) 565-3632  
FAX: (707) 565-3701

Consultant: C<sup>2</sup> Alternative Services  
Attention: Connie Cloak  
758 Pine St.  
Santa Rosa, CA 95404  
Phone: (707) 568-3783  
Fax: (707) 575-6866

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile, the notice bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail, (2) the sender has a written confirmation of the facsimile transmission, and (3) the facsimile is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

### 13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Agency acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

AGENCY: SONOMA COUNTY WASTE MANAGEMENT AGENCY

By: \_\_\_\_\_  
Nina Regor, Chair

CONTRACTOR: C<sup>2</sup> ALTERNATIVE SERVICES

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO SUBSTANCE BY  
AND CERTIFICATES OF INSURANCE  
ON FILE WITH:

By: \_\_\_\_\_  
Executive Director, SCWMA

APPROVED AS TO FORM FOR AGENCY:

By: \_\_\_\_\_  
Agency Counsel



## **EXHIBIT A**

### **SCOPE OF WORK**

CONTRACTOR shall assist AGENCY staff to accomplish the goals of the Used Oil Recycling Program, which is funded by the Department of Resources Recycling and Recovery's (CalRecycle) Oil Payment Program (OPP). The tasks to be addressed include:

- site visits and data gathering for certified collection centers in Sonoma County, as required by CalRecycle
- assist centers with various aspects of the program
- publicity & education on recycling of used oil and filters
- liaison with related programs
- assist with reporting requirements to CalRecycle

#### **Task I. Site Visits to Used Oil Collection Centers**

The site visits are anonymous field audits of oil recycling centers. The goals are to learn how well collection centers are serving the do-it-yourself public, and to determine compliance with CalRecycle requirements, such as signage and offering the rebate for used oil.

##### **Sub-tasks:**

- A. Use existing methodology, utilizing local car club volunteers.
- B. Conduct visits
- C. Compile results.
- D. Inform the centers of results with individual letters and follow-up as needed.
- E. Problem-solve to correct issues observed during visits.

#### **Task II. Gather Data from Used Oil Collection Centers.**

Interview managers of all collection centers by phone and/or in person, and collect and tabulate log forms where available. Goals are to learn of any questions or issues managers need help with; to complete information gathering required by CalRecycle; and to determine the quantity of oil and oil filters collected from the do-it-yourself public. This will also include gathering information from public-sponsored programs.

##### **Sub-tasks:**

- A. Conduct phone interviews and/or site visits.
- B. Follow-up on any issues or questions.
- C. Compile results of interviews.

#### **Task III. Liaison for Related & Regional Programs**

Examples include but are not limited to: 1) Local storm-water programs; 2) regional Spanish-language and English-learner outreach; 3) curbside oil and filter recycling; and 4) others as they arise. Attend meetings, plan coordinated efforts and allocate budgets subject to approval.

Agreement for Professional Services to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs

#### **Task IV. Program Publicity**

Inform the do-it-yourself public of the importance of recycling used oil and filters and of the locations of used oil collection centers. Audiences may include government and commercial fleet managers (for outreach on re-refined oil); and targeted groups such as high school students; Spanish-speaking or other ethnic resident groups; boaters; multifamily residents; etc.

##### **Sub-tasks:**

- A. Maintain accurate information for existing outreach efforts including the Eco-Desk recorded information (English and Spanish), the Sonoma County Recycling Guide (English and Spanish) and the Earth911.com website.
- B. Develop outreach program ideas such as media releases, ads in local publications, high school programs, special interest groups etc. Research issues and costs and make recommendations.
- C. Implement outreach programs, subject to approval. Utilize existing materials wherever possible.

#### **Task V. Serve as Primary Contact for Collection Centers**

Work with collection center managers to resolve questions, issues, and problems. Examples include illegal after-hours dumping of oil, contaminated oil, confusion regarding requirements and procedures of CalRecycle, etc.

##### **Sub-tasks:**

- A. Maintain contact with center managers; make sure they know who to call for help.
- B. Answer questions and concerns that arise during interviews or as initiated by center managers.
- C. Assist any new or prospective centers with logistics. This may include developing new centers, including researching needs for new equipment, etc.
- D. Provide centers with contamination detectors ("sniffers"), signs, and other program materials as needed.
- E. Contact each certified collection center as it becomes due for re-certification to provide assistance and answer questions and concerns.
- F. Keep centers stocked with Recycling Guides (English and Spanish) and information on the Household Hazardous Waste Facility, to provide information on management of contaminated oil and oil filters.
- G. Maintain the program to assist certified centers to obtain rebates from CalRecycle. This includes sending participating centers a rebate form each quarter, answering questions and seeking information from CalRecycle on their behalf.
- H. Receive and pay bills for oil filter collection and recycling from participating used oil collection centers.

#### **Task VI. Workshops and Meetings**

##### **Sub-tasks:**

- A. Meet with AGENCY staff as needed, by phone and in person.
- B. Attend informational workshops and meetings sponsored by CalRecycle and others where information relevant to oil recycling is being disseminated.

Agreement for Professional Services to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs

## **Task VII. Reporting**

### **Sub-tasks:**

- A. In addition to reports documenting specific tasks, draft portions of the AGENCY's Annual Report and Progress Reports required by CalRecycle related to performed work, as requested by staff.
- B. Maintain records including time logs, receipts, etc. as required by CalRecycle.

## **Exhibit B Payment Terms Schedule**

Agency shall pay Consultant the following amounts upon completion and acceptance of stated tasks and receipt of deliverables that coincide with said tasks set forth in Exhibit A to the Agreement. Agency shall withhold ten percent (10%) retainer on all payments. Retainer shall be released upon satisfactory completion of the services set forth in Exhibit A at the end of each fiscal year.

A progress report, detailing work completed under each task, shall be submitted with each invoice. Payments shall be made to Consultant by Agency within thirty (30) days after receipt of an invoice and upon the approval by Agency's contract manager that tasks and submittals are acceptable. All payment requests shall be directed to:

Lisa Steinman  
Sonoma County Waste Management Agency  
2300 County Center Dr., Suite B100  
Santa Rosa, CA 95403

All tasks shall be billed as percent complete of lump-sum budgets as detailed in the budget table below. Time shall be billed by C2: Alternative Services principals Connie Cloak & Chris Carrieri at \$90 per hour and by Director of Media and Bilingual Outreach Hugo Mata at \$80 per hour. Staff time for tasks such as event outreach, data collection, and clerical tasks shall be billed at \$40 per hour.

Material costs for large items such as printing, advertising, display materials, etc. will be incurred only with prior approval and within the budget limits. Material costs including collection of filters from used oil collection centers will be passed through without markup.

Expenses include mileage and other travel expenses as allowed by Department of Resources Recycling and Recovery's (CalRecycle) Oil Payment Program, fax at \$1 per page, copies at \$0.10 per page, color copies at \$1 per page, digital images at \$0.50 each, phone, postage, and incidentals at cost. English as Second Language classes on used oil recycling are charged at \$275 each class. Hotline calls for curbside used oil recycling are charged at \$10 each.

<b>BUDGET TABLE</b>	
<b>Task</b>	
I. Site Visits to Centers	\$5,250.00
II. Gather Center Data	\$4,500.00
III. Liaison	\$780.00
IV. Targeted Outreach Campaign (s)	\$40,450.00
V. Serve as Primary Contact for Centers	\$6,200.00
VI. Workshops & Meetings	\$2,580.00
VII. Reporting & Administration	\$5,240.00
<b>Total</b>	<b>\$65,000.00</b>

RESOLUTION NO.:

DATED: June 20, 2012

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY") AUTHORIZING AN AGREEMENT WITH C<sup>2</sup> ALTERNATIVE SERVICES  
("CONTRACTOR") FOR PROFESSIONAL SERVICES TO AUDIT OIL RECYCLING  
CENTERS AND COORDINATE OIL RECYCLING PUBLICITY AND FOR PROGRAMS

WHEREAS, Contractor represents to Agency that it is a duly qualified firm  
experienced in public education and related services; and

WHEREAS, in the judgment of the Board of Directors of Agency, it is  
necessary and desirable to employ the services of Contractor to assist in the  
implementation of its oil recycling program.

NOW, THEREFORE, BE IT RESOLVED that the Sonoma County Waste  
Management Agency hereby authorizes the Agency, Chairman of the Board to execute an  
Agreement through February 11, 2017 with C<sup>2</sup> Alternative Services.

MEMBERS:

--	--	--	--	--
_____ Cloverdale	_____ Cotati	_____ County	_____ Healdsburg	_____ Petaluma
--	--	--	--	--
_____ Rohnert Park	_____ Santa Rosa	_____ Sebastopol	_____ Sonoma	_____ Windsor

AYES -- NOES -- ABSENT -- ABSTAIN --

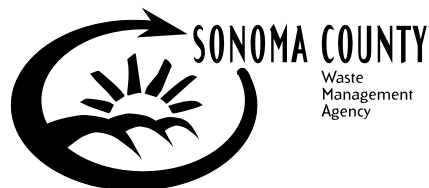
SO ORDERED

The within instrument is a correct copy  
of the original on file with this office.

ATTEST:

DATE:

\_\_\_\_\_  
Debra Dowdell  
Clerk of the Sonoma County Waste Management Agency  
Agency of the State of California in and for the  
County of Sonoma



**Agenda Item #: 7**  
**Cost Center: Education**  
**Staff Contact: Chilcott**  
**Agenda Date: 6/20/2012**

## **ITEM: Spanish Language Outreach Services Contract Award**

### **I. BACKGROUND**

Spanish Language Outreach is part of the implementation of one of the objectives in the Countywide Integrated Waste Management Plan (CIWMP) to encourage waste diversion in non-English speaking communities. Reflecting the goals in the CIWMP, the Agency implemented its first Spanish Language Outreach Program through award of a two-year Eco-Desk Spanish Language Pilot Project. The majority of the funding for the Spanish Language Outreach Services Contract has historically been paid through the UBG program and the new OPP program, which are state grant programs that involve used oil recycling.

Date	Action/notes	Funding CalRecycle Grant Used Oil OPP	Funding Agency Education
2006 (Oct)	<b>C<sup>2</sup> Awarded two-year contract for Spanish Language Eco-Desk Pilot Project</b> (Expired March 31, 2008)	\$12,500 (FY 06-07)  \$12,500 (FY 07-08)	\$7,500 (FY 06-07)  \$7,500 (FY 07-08)
2008 (Jan)	<b>Agency Board approved an extension of C<sup>2</sup> Agreement for the Spanish Language Eco-Desk Pilot Project from March 31, 2008 to June 30, 2008</b> to correspond with FY Budgeting (no cost implications) + requested staff to go out to bid.		
2008 (Apr-May)	<b>RFQ distributed/received for Spanish Language Outreach Services</b> The RFQ was based on lessons learned from the Spanish Language Eco-Desk Pilot Project. In response to the RFQ two proposals were received: 1) C <sup>2</sup> and 2) Calif. Human Development		
2008 (June)	<b>C<sup>2</sup> Awarded two-year contract for Spanish Language Outreach Services</b> (Contract expired June 30, 2010) Contract Scope of Work requires Used Oil Recycling education to meet CalRecycle Grant/ OPP terms & conditions.	\$15,000 (FY 08-09)  \$15,000 (FY 09-10)	\$9,000 (FY 08-09)  \$9,000 (FY 09-10)
2010 (Apr-May)	<b>RFP distributed/received for Spanish Language Outreach Services</b> In response to the RFP one proposals was received from C <sup>2</sup>		
2010 (June)	<b>C<sup>2</sup> Awarded two-year contract for Spanish Language Outreach Services</b> (Contract expires June 30, 2012) Contract Scope of Work requires Used Oil Recycling education to meet CalRecycle Grant OPP terms & conditions.	\$18,886 (FY 10-11)  \$18,886 (FY 11-12)	\$5,114 (FY 10-11)  \$5,114 (FY 11-12)
2012 (May)	<b>RFP distributed/received for Spanish Language Outreach Services</b> In response to the RFP one proposals was received from C <sup>2</sup>		

At the February 15, 2012 meeting, Board members approved the Work Plan for FY 12-13 which allocated \$24,000 for Spanish Language Outreach funded by the HHW Cost Center with CalRecycle Grant OPP funding (\$18,886) and the Education Cost Center (\$5,114). At that meeting, the Board also directed staff to develop an RFP for Spanish Language Outreach Services. The draft RFP was approved for distribution at the April 18, 2012 Board meeting. The FY 12-13 Agency Budget, which included the figures developed in the Work Plan, was also approved by the Board on April 18, 2012.

## II. DISCUSSION

The RFP was distributed as follows:

- Agency website [http://www.recyclenow.org/agency/requests\\_for\\_proposals.asp](http://www.recyclenow.org/agency/requests_for_proposals.asp) posting on April 20.
- Latino Service Providers Sonoma County posting in the April 27, 2012 e-newsletter. It was also posted on their facebook page <https://www.facebook.com/pages/Latino-Service-Providers-Sonoma-County/139690706074506?ref=ts> that week and on their website [www.latinoserviceproviders.org](http://www.latinoserviceproviders.org)
- California Household Hazardous Waste list serve posting on April 23, 2012.

In response to the RFP, which was due May 21, 2012, Agency staff received one proposal from the current contractor, C<sup>2</sup> Alternative Services. Agency staff has had a long history with C<sup>2</sup> Alternative Services, particularly working with Hugo Mata on Spanish Language activities, and has been pleased with their performance.

The new outreach and budget plan, addressing a fixed annual budget of \$24,000 is very similar in scope and allocation to C<sup>2</sup> Alternative Services work plan for FY 10-11 and FY 11-12. Allocations of time and materials are allocated as follows:

Tasks	Budget annually FY 12-13
Media and community based social marketing including determining optimal outreach audience, organizing media packages, developing promotional.	\$17,570
Answer Eco-Desk Spanish language calls, log calls into provided database, consult with Agency staff, monitor data to determine with outreach methods are generating calls.	\$1,840
Assist Agency staff with Spanish-language outreach	\$2,880
Reporting and administration	\$1,710
Total for one year	\$24,000

Agency staff expects the outreach plan and budget for FY 13-14 to be similar.

## III. FUNDING IMPACT

This is a two-year agreement from July 1, 2012 to June 30, 2014, with annual extensions based on mutual agreement. The Work Plan for FY 12-13 allocates \$24,000 for Spanish Language Outreach funded by the HHW Cost Center with CalRecycle Used Oil Grant money (\$18,886) and the Education Cost Center (\$5,114). It is anticipated that a similar level of funding will be available in the FY13-14 budget.

#### IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Agency staff recommends awarding a two-year contract for Spanish Language Outreach Services to C<sup>2</sup> Alternative Services and authorizing the Chair to sign the agreement. The annual contract amount as set forth in the C2 proposal would be \$24,000, which matches the approved budget for this work.

#### V. ATTACHMENTS

C<sup>2</sup> Alternative Services Agreement  
Exhibit A-Scope of Work and Budget  
Exhibit B-Payment Terms  
C<sup>2</sup> Alternative Services Contract Resolution

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA



## AGREEMENT FOR PROFESSIONAL SERVICES SPANISH LANGUAGE OUTREACH SERVICES

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2012 ("Effective Date") is by and between the Sonoma County Waste Management Agency, (hereinafter "Agency"), and and C<sup>2</sup> Alternative Services, a (hereinafter "Contractor").

### R E C I T A L S

WHEREAS, Contractor represents that it is duly qualified and experienced in Spanish Language Outreach Services for Used Motor Oil/Filter and Solid Waste Recycling and related services; and

WHEREAS, in the judgment of the Board of Directors of Agency, it is necessary and desirable to employ the services of Contractor to conduct Spanish Language outreach activities in Sonoma County.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### A G R E E M E N T

#### 1. Scope of Services.

1.1 Contractor's Specified Services. This Agreement is entered into for the purpose of establishing a contract for Spanish Language Outreach Services. Contractor shall perform services as defined in Exhibit A.

1.2 Cooperation with Agency. Contractor shall cooperate with Agency and Agency staff in the performance of all work hereunder.

1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Agency determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Agency, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Agency to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### 1.4 Assigned Personnel.

- a. Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time Agency, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Agency.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Agency to be key personnel whose services are a material inducement to Agency to enter into this Agreement, and without whose services Agency would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Agency.
- c. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

2. Payment. Contractor shall pay Agency in accordance with Exhibit B which sets out the payment terms.

3. Term of Agreement. The term of this Agreement shall be July 1, 2012 to June 30, 2014, with annual extensions upon mutual agreement unless terminated earlier in accordance with the provisions of Article 4, below.

#### 4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, Agency shall have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days written notice to Contractor.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Agency may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

#### 4.3 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to Agency all materials and work product subject to Section 9.9 and shall submit to Agency payment up to the date of termination.

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to Agency, and to defend, indemnify, hold harmless, reimburse and release Agency, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to, attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by Agency to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity arising out of or in connection with the performance of Contractor hereunder, but, to the extent required by law, excluding liability due to the sole negligence or willful misconduct of Agency. If there is a possible obligation to indemnify, Contractor's duty to defend with legal counsel acceptable to Agency, exists regardless of whether it is ultimately determined that there is not a duty to indemnify. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described below:

6.1 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days' prior written notice to the Agency.

6.2 General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than One Million Dollars (\$1,000,000.00) combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

- a. The Agency, its Board of Directors and staff, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

c. The insurance provided herein is primary coverage to the Agency with respect to any insurance or self-insurance programs maintained by the Agency.

d. This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the Agency.

6.3 Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the Agency.

6.4 Documentation. The following documentation shall be submitted to the Agency:

a. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Certificates of Insurance evidencing the above-required coverages, limits, and endorsements on file with the Agency for the duration of this Agreement.

b. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

c. Upon Agency's written request, certified copies of the insurance policies. Said policy copies shall be submitted within thirty (30) days of Agency's request.

6.6 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

6.7 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. Agency, in its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Agency may purchase such required insurance coverage, and without further notice to Contractor, Agency may deduct from sums due to Contractor any premium costs advanced by Agency for such insurance. These remedies shall be in addition to any other remedies available to Agency.

7. Prosecution of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes which do not increase or decrease the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Agency's Executive Director in a form approved by Agency Counsel. All other extra or changed work must be authorized in writing by the Agency Board of Directors.

9. Representations of Contractor.

9.1 Standard of Care. Agency has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Agency shall not operate as a waiver or release.

9.1.1 Change in Information. Contractor shall notify Agency thirty (30) days prior to any change to the information provided pursuant to Section 10 of Exhibit A, Proposed Scope of Services, that is initiated by Contractor, or within seven (7) days of Contractor becoming aware of a change to the information provided pursuant to Section 10 of Exhibit A that was not initiated by Contractor.

9.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of Agency and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits provided

to Agency staff. In the event Agency exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Agency harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Agency is audited for compliance regarding any withholding or other applicable taxes. Contractor agrees to furnish Agency with proof of payment of taxes on these earnings.

9.4 Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement, as well as information provided pursuant to Section 10 of Exhibit A, Proposed Scope of Services, and shall make such documents and records available to Agency for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

9.5 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed by Contractor. In addition, if requested to do so by Agency, Contractor shall complete and file and shall require any other person doing work under Contractor and this Agreement to complete and file a "Statement of Economic Interest" with Agency disclosing Contractor's or such other person's financial interests.

9.6 Nondiscrimination. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.7 AIDS Discrimination. Contractor agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

- 9.8 Assignment Of Rights. Contractor assigns to Agency all rights throughout the world in perpetuity in the nature of copyright, trademark, patent,

right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to Agency in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Agency may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Agency. Contractor shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Agency.

9.9 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Agency. Agency shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to Agency all such documents which have not already been provided to Agency in such form or format as Agency deems appropriate. Such documents shall be and will remain the property of Agency without restriction or limitation. Contractor may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Agency.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 10 limits Agency's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

Agency: Sonoma County Waste Management Agency  
Attention: Karina Chilcott  
2300 County Center Drive, Suite 100 B  
Santa Rosa, CA 95403  
Phone: (707) 565-3668  
FAX: (707) 565-3701

Consultant: C<sup>2</sup> Alternative Services  
Attention: Connie Cloak  
758 Pine St. Phone: 707-568-3783  
Santa Rosa, CA 95404 Fax: 707-575-6866

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile, the notice bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail, (2) the sender has a written confirmation of the facsimile transmission, and (3) the facsimile is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

### 13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Agency acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Agency acknowledge that they



have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

AGENCY: SONOMA COUNTY WASTE MANAGEMENT AGENCY

By: \_\_\_\_\_  
Chair

CONTRACTOR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO SUBSTANCE BY  
AND CERTIFICATES OF INSURANCE  
ON FILE WITH:

By: \_\_\_\_\_  
Executive Director, SCWMA

APPROVED AS TO FORM FOR AGENCY:

By: \_\_\_\_\_  
Agency Counsel

DRAFT

**Scope of Work and budget  
Spanish Outreach Services**

TASKS		Units	Unit Price	C2 Hrs @ \$90	C2 Hrs @ \$80	C2 Hrs @ \$40	Time Hrs Total	Time \$ Total	Materials	Expenses	Total Cost
<b>I. Media and Community Based Social Marketing</b>											
A.	Maintain and develop relationships with appropriate available media. Determine optimal reach to target audience using available budget; solicit rates and special packages where available from media outlets; develop promotional ideas, prepare press releases.			2	16		18	\$1,460.00	\$6,000.00		\$7,460.00
B.	Interviews, media appearances, feature stories: continue to develop and make use of opportunities in both print and broadcast media. Includes general recycling, promotion of the hotline, and other topics. Interview opportunities may include both Hugo Mata of C2, and Agency staff or others with specific expertise, in which case Hugo may act as interpreter. Time to be pro-rated with other regional related projects wherever possible.				16		16	\$1,280.00		\$100.00	\$1,380.00
C.	Person to person outreach through such venues as events; businesses and other locations frequented by Spanish-speaking people; day labor centers; community leaders; etc. Includes events arranged by Agency staff. Time to be pro-rated with other regional related projects wherever possible.			2	20	100	122	\$5,780.00	\$2,500.00	\$450.00	\$8,730.00
<b>task total</b>				<b>4</b>	<b>52</b>	<b>100</b>	<b>156</b>	<b>\$8,520.00</b>	<b>\$8,500.00</b>	<b>\$550.00</b>	<b>\$17,570.00</b>
<b>II. Answer hotline calls</b>											
A.	Calls will be answered by bilingual staff (Spanish/ English) 9am to 5pm Monday-Friday. Messages left outside these hours will be answered the following business day. All calls will be logged in the Agency- provided Access database.	120	\$10.00					\$0.00			\$1,200.00
B.	Consult SCWMA staff and other sources to obtain information for callers.				4		4	\$320.00			\$320.00
C.	Monitor data to determine which outreach methods/ media are generating calls.				4		4	\$320.00			\$320.00
<b>task total</b>					<b>8</b>		<b>8</b>	<b>\$640.00</b>			<b>\$1,840.00</b>
<b>III. Assist Agency staff with Spanish-language outreach</b>											
A.	Assist in preparation and manage distribution of the Spanish Recycling Guide to residents in Sonoma County.			2	10	25	37	\$1,980.00		\$100.00	\$2,080.00
B.	Provide translation services as needed.				10		10	\$800.00			\$800.00
<b>task total</b>				<b>2</b>	<b>20</b>	<b>25</b>	<b>47</b>	<b>\$2,780.00</b>	<b>\$0.00</b>	<b>\$100.00</b>	<b>\$2,880.00</b>
<b>IV. Reporting and Administration</b>											
A.	Record-keeping including any forms required by CalRecycle or other grantors.			4	4		8	\$680.00		\$30.00	\$710.00
B.	Progress reports as required for reporting to the Sonoma County Waste Management Agency Board Members and for the CalRecycle Used Oil Payment Program; communications with staff.			4	8		12	\$1,000.00			\$1,000.00
<b>task total</b>				<b>8</b>	<b>12</b>	<b>0</b>	<b>20</b>	<b>\$1,680.00</b>		<b>\$30.00</b>	<b>\$1,710.00</b>
<b>TOTAL ALL TASKS:</b>				<b>14</b>	<b>92</b>	<b>125</b>	<b>231</b>	<b>\$13,620.00</b>	<b>\$8,500.00</b>	<b>\$680.00</b>	<b>\$24,000.00</b>

## **Exhibit B Payment Terms Schedule**

Agency shall pay Consultant the following amounts upon completion and acceptance of stated tasks and receipt of deliverables that coincide with said tasks set forth in Exhibit A to the Agreement. Agency shall withhold ten percent (10%) retainer on all payments. Retainer shall be released upon satisfactory completion of the services set forth in Exhibit A at the end of each fiscal year.

A progress report, detailing work completed under each task, shall be submitted with each invoice. Payments shall be made to Consultant by Agency within thirty (30) days after receipt of an invoice and upon the approval by Agency's contract manager that tasks and submittals are acceptable. All payment requests shall be directed to:

Karina Chilcott  
Sonoma County Waste Management Agency  
2300 County Center Dr., Suite B100  
Santa Rosa, CA 95403

All tasks shall be billed as percent complete of lump-sum budgets as detailed in the budget table below. Time shall be billed by C2: Alternative Services principals Connie Cloak & Chris Carrieri at \$90 per hour and by Director of Media and Bilingual Outreach Hugo Mata at \$80 per hour. Staff time for tasks such as event outreach, data collection, and clerical tasks shall be billed at \$40 per hour.

Material costs for large items such as printing, advertising, display materials, etc. will be incurred only with prior approval and within the budget limits. Material costs including collection of filters from used oil collection centers will be passed through without markup.

Expenses include mileage and other travel expenses as allowed by Department of Resources Recycling and Recovery's (CalRecycle) Oil Payment Program, fax at \$1 per page, copies at \$0.10 per page, color copies at \$1 per page, digital images at \$0.50 each, phone, postage, and incidentals at cost. Hotline calls for curbside used oil recycling are charged at \$10 each.

<b>BUDGET TABLE</b>	
<b>Task</b>	
I. Media and Community Based Social Marketing	\$17,570.00
II. Answer hotline calls	\$1,840.00
III. Assist Agency staff with Spanish-language outreach	\$2,880.00
IV. Reporting and Administration	\$1,710.00
<b>Total</b>	<b>\$24,000.00</b>

DATED: JUNE 20, 2012

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY") APPROVING C2 ALTERNATIVE SERVICES TO CONDUCT SPANISH  
LANGUAGE OUTREACH SERVICES

WHEREAS, the Agency, as the AB939 regional agency, is responsible for the  
Countywide Integrated Waste Management Plan; and

WHEREAS, the Sonoma Countywide Integrated Waste Management Plan includes as  
one of its objectives the identification of effective communication strategies and to implement  
programs to encourage behaviors that reduce, reuse, and recycle products and materials in  
non-English speaking communities; and

WHEREAS, the Agency staff completed a competitive RFP process for Spanish  
Language Outreach Services; and

WHEREAS, only one proposal from C<sup>2</sup> Alternative Services was received; and

WHEREAS, Agency payment to C<sup>2</sup> Alternative Services shall not exceed \$48,000 for the  
term of July 1, 2012 through June 30, 2014; and

WHEREAS, the Agency's FY 12-13 Budget has adequate funds in the HHW Cost Center  
(\$18,886) and the Education Cost Center (\$5,114) to fund the outreach program.

WHEREAS, it is anticipated that the Agency's FY 13-14 Budget will allocate a similar  
amount from the HHW Cost Center and Education Cost Center to fund this outreach program.

WHEREAS, the Agreement allows for annual extensions upon mutual agreement; and

NOW THEREFORE, BE IT RESOLVED that the Sonoma County Waste Management  
Agency, hereby approves an Agreement with C<sup>2</sup> Alternative Services to conduct Spanish  
Language Outreach Services and authorizes the Chair to execute the Agreement on behalf of  
the Agency.

MEMBERS:

--	--	--	--	--
Cloverdale	Cotati	County	Healdsburg	Petaluma
--	--	--	--	--
Rohnert Park	Santa Rosa	Sebastopol	Sonoma	Windsor
AYES --	NOES --	ABSENT --	ABSTAIN --	

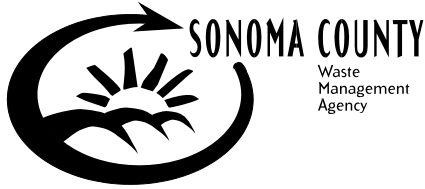
SO ORDERED.

The within instrument is a correct copy  
of the original on file with this office.

ATTEST:

DATE:

\_\_\_\_\_  
Debra Dowdell  
Clerk of the Sonoma County Waste Management  
Agency of the State of California in and for the County of Sonoma



**Agenda Item #: 8**  
**Cost Center: All**  
**Staff Contact: Mikus**  
**Agenda Date: June 20, 2012**

## **Item: Joint Powers Agreement Expiration**

### **I. Background**

In 1992, prompted by AB 939, California's Integrated Waste Management Act of 1989, the Sonoma County Waste Management Agency (SCWMA, or the Agency) was formed as a Joint Powers Agency (JPA) comprised of the incorporated cities of Sonoma County plus the County of Sonoma. The current list of member jurisdictions is made up of ten (10) local governments, comprised of the nine (9) cities and town plus the County of Sonoma. The Town of Windsor was not an original member but joined the Agency shortly after its July 1992 incorporation.

Statutory authority for Joint Powers Authorities or Agencies is found in California Government Code Sections 6500-6536, as well as some decisional law. This statutory scheme gives public agencies the authority to enter into agreements to jointly exercise common powers; thus a JPA may exercise the powers common to its members. The Agency does not have any power or authority greater than that of its members.

A "Joint Powers Agreement" was developed and adopted to set forth "...terms and provisions..." for the Agency to operate under. Section 20 states that "The term of this Agreement shall be for twenty-five (25) years." This section also states that "This Agreement may be extended from year to year thereafter by mutual agreement of the Participants." Thus, the agency Agreement would otherwise cease in 2017 without some sort of renewal in place. Adoption of approving resolutions by the members' governing bodies occurred by February 1992, and the Agency had its first Board meeting in April 1992.

The original Joint Powers Agreement, specifically Section 4, sets forth Agency membership as follows: "The Joint Powers Agency created by this Agreement shall have one member from Sonoma County and one member from each City that joins the Agency (each of whom shall be an elected Councilmember, County Supervisor or appointee)." Further in Section 4 the Agreement states, "An appointee shall be an employee of the city or county making the appointment."

As stated in the Agency Agreement, AB 939 "...requires Participants to divert recyclable and recoverable materials from the waste stream and to cooperate to achieve their diversion goals." Thus the Agency members decided to form the Agency to "...cooperate with each other... so as to carry out, in an efficient manner, these objectives." The Agency Agreement defined four specific areas of responsibility for the Agency related to waste diversion: yard waste, wood waste, household hazardous waste, and public education.

The First Amendment to the Agreement occurred in January 1996. This Amendment added a new Section 27 to the Agreement which established the Agency as a “Regional Agency” pursuant to Public Resources Code Section 40970 et seq., to act on behalf of its members to perform the necessary solid waste planning and reporting functions. Thus regional solid waste planning and reporting responsibilities were added to the list of agency functions.

The original Agreement and the subsequent First Amendment were enacted by resolutions adopted by each of the member jurisdictions’ governing bodies.

In addition to the Agency Agreement, “Rules of Governance of the Sonoma County Waste Management Agency” were adopted by a resolution of the Board (No. 92-002 dated April 15, 1992) to establish parameters for conduct of Board meetings. Minor changes have been made since, with the last changes made by an approval via a “Consent” item vote at the December 20, 2006 Board meeting.

## II. Discussion

In recognition of the approaching 25 year term end of the original Agency Agreement in 2017, at its March 21, 2012 meeting the Board asked staff to prepare background information preparatory to a discussion at the April 18, 2012 Board meeting regarding renewing, extending, or revising the Agency Agreement. Also, the Board Executive Committee requested that this information include a list of potential policy issues for the discussion.

Logic would suggest that the Agency continue its existence and service to its member jurisdictions and the community. In very basic terms, Agency programs provide consistency and efficiency across jurisdictional lines that would be difficult and expensive to replicate individually by its members.

One provision of the current JPA Agreement, in particular, has been the topic of much discussion by the Board. This is the unanimous vote requirement for adoption of an annual budget, capital expenditures (historically interpreted to mean all expenditures) greater than \$50,000, or approval of any program beyond yard and wood waste, household hazardous waste and public education. Some options have been provided for discussion purposes and these include keeping the unanimous vote requirement, meaning all directors must be present and vote to approve specified types of actions, but alter the types of actions requiring a unanimous vote. Some types of actions that might require a unanimous vote include purchase of real property and/or expenditure of funds greater than a specified limit, such as \$250,000 or \$350,000 during the fiscal year, or adoption of additional programs.

Another option could be eliminating the unanimous vote requirement and instead, include a super majority vote set at  $\frac{3}{4}$  or 75% of the membership (8 of 10 members) must approve certain types of actions such as purchase of real property or expenditure of funds over specified amounts.

Finally, simply eliminating the unanimous vote requirement and providing that a majority of a quorum is sufficient to approve any type of action, is an option.

Other areas of concern include the renewal term and the Board representation. Staff and Agency Counsel's recommendation is to remove the sunset clause and provide a mechanism for ending the Agency at any time the Board deems necessary. As well, staff/counsel recommend leaving the Board representation as it is since this provides the greatest degree of flexibility for the Members. Currently, the Member jurisdictions may select their representative as either a member of the jurisdiction's governing body or an employee of the jurisdiction.

The attached draft is for discussion purposes. It uses a more modern format and attempts to address issues and areas of concern left silent in the current Agreement.

### III. Funding Impact

None currently. Funds have been allocated in the upcoming fiscal year budget (FY 12-13) for staff and legal expense in developing the framework for extension/renewal of the Agency term.

### IV. Recommended Action / Alternatives to Recommendation

Provide staff and counsel with guidance for next steps.

### V. Attachments

Proposed Amended and Restated Agreement  
Original JPA Agreement  
First Amendment to the Agreement  
Rules of Governance

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA



**AMENDED AND RESTATED  
JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE  
CITIES OF SONOMA COUNTY AND THE COUNTY OF SONOMA  
CREATING AN AGENCY KNOWN AS THE  
SONOMA COUNTY WASTE MANAGEMENT AGENCY**

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”), dated for reference as of \_\_\_\_\_, 20\_\_, (“Effective Date”) is entered into by the County of Sonoma, a political subdivision of the State of California (“County”), the City of Cloverdale, a municipal corporation (“Cloverdale”), the City of Healdsburg, a municipal corporation (“Healdsburg”), the Town of Windsor, a municipal corporation (“Windsor”), the City of Santa Rosa, a municipal corporation, (“Santa Rosa”), the City of Sebastopol, a municipal corporation, (“Sebastopol”), the City of Sonoma, a municipal corporation (“Sonoma”), the City of Rohnert Park, a municipal corporation, (“Rohnert Park”), the City of Cotati, a municipal corporation (“Cotati”), and the City of Petaluma, a municipal corporation (“Petaluma”). The Cities, the Town and the County are sometimes individually referred to herein as “Member” and collectively as “Members.”

**RECITALS**

1. The Members are “public agencies” under the provisions of the Joint Exercise of Powers Act that authorizes the joint exercise of powers common to public agencies, Government Code Section 6500 et seq.

2. By September 9, 1992, all Members had entered into that certain Agreement titled “Agreement Between The Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues (Wood Waste, Yard Waste, Household Hazardous Waste, and Public Education)” (“Original Agreement”). That Original Agreement created a separate public entity, the Sonoma County Waste Management Agency (“SCWMA” or “Agency”), based upon the following facts and circumstances:

A. Changes in the requirements for waste treatment and disposal have created an urgent need for new and innovative approaches in the treatment and disposal of waste generated within the boundaries of the Members;

B. A mutually cooperative Joint Powers Agreement will protect the health and safety of the citizens, preserve and enhance the environment, and provide for recycling, diversion, and disposal of waste generated within Members’ boundaries;

C. The California Integrated Waste Management Act of 1989 (“AB 939”), requires Members to divert recyclable and recoverable materials from the waste stream and to cooperate to achieve diversion goals. It is the intent of the Members to cooperate with each other, as reflected in this Agreement, so as to carry out these objectives.

D. Members have agreed on the formation of a Joint Powers Agency to deal with wood, yard, and household hazardous waste issues and education in the manner set forth in this Agreement. Members will continue to discuss other waste management issues and endeavor

to reach agreement on those issues after which this Agreement will be amended by mutual written consent.

E. By the Agreement, the Members intend to jointly exercise their powers to achieve common objectives.

3. On January 24, 1996, the Members entered into that certain agreement titled "First Amendment to Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues" ("First Amendment"). This First Amendment, among other things, defined the term Regional Agency and declared the Members' desire to use the structure of the Agency as a Regional Agency for purposes of Section 40971 of the California Public Resources Code, the Integrated Waste Management Act. As a result of this First Amendment, all Members were deemed to be Members of the Regional Agency.

4. The term of the Original Agreement was for twenty-five (25) years with a provision for extending the Original Agreement by mutual agreement of the Members on a year by year basis. Since the end of the term of the Original Agreement is approaching, and in light of the evolution of the Agency over the past twenty years and the perceived need for modifications to the Original Agreement, the Members have determined that it is desirable and in the public interest to revise and to restate their delegation of authority to the previously established Sonoma County Waste Management Agency. The revisions to and restatement of that delegation of authority are fully set forth in this Amended and Restated Joint Exercise of Powers Agreement.

5. It is intended by the Parties that this Agreement shall be amendatory of the Original Agreement, including the First Amendment, and shall restate, amend and supersede the Original Agreement and First Amendment in their entirety as of the Effective Date. Upon its effective date, this Amended and Restated Joint Exercise of Powers Agreement shall govern the relationship of the public agencies that comprise the Sonoma County Waste Management Agency.

6. The Members intend to continue to exercise their common powers and authority through the Agency to protect the health and safety of the citizens, preserve and enhance the environment, and provide for recycling, diversion, education, and disposal of waste generated within Members' boundaries.

NOW, THEREFORE, the Members hereto agree as follows:

## **SECTION I. PURPOSE**

This Agreement is made under the provisions of the Joint Exercise of Powers Act, Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Act"). Each of the Members possesses the powers to achieve the goals described in the above recitals. In authorizing the joint exercise of their common powers, this Agreement provides for the planning and implementation of programs and services to divert recyclable and recoverable materials from the waste stream, including, but not limited to, wood, yard and other compostable waste, and household hazardous waste, as defined in the California Public Resources Code, provide education for those who use the services of the Agency, prepare

and implement regional planning documents and other required documentation, provide monitoring and reporting as required by the Public Resources Code and the Integrated Waste Management Act of 1989, and provide other such services and programs as determined by the Board of Directors. Members hereby covenant with each other to participate and cooperate in the implementation of the Agency's duties and programs and to maximize use and avoid duplication of effort in any program undertaken by the Agency.

## **SECTION II. AUTHORITY**

### **A. Creation of the Agency**

Pursuant to the Act, there was created in 1992 and continues to be a public entity, separate and apart from the Members hereto, known as the "Sonoma County Waste Management Agency," hereinafter referred to as "SCWMA" or the "Agency." The Agency is a public entity that is separate and apart from the County and Cities that are the Members of the Agency. The debts, liabilities, and obligations of the Agency shall not constitute the debts, liabilities, or obligations of any Member. The Agency cannot require any Member to contribute money or services to the Agency without the consent of the respective legislative body of each Member. The Agency will defend, indemnify, and hold harmless each Member for liabilities arising as a result of this Agreement or arising out of Agency's negligence, but the liabilities of Members, due to their own acts, omissions, or negligence either prior to creation of Agency or afterwards, shall not be assumed by the Agency.

### **B. Board of Directors**

The Agency is governed by a Board of Directors, hereinafter referred to as the "Board." The Board is composed of directors who are appointed by the Members' governing bodies. There shall be one director and one alternate from each Member and that director and alternate shall be either a member of the Members' governing body or an employee of the Member.

A Member's alternate director may, in the absence of the Member's director, attend any meeting of the Board, be counted as part of the quorum and vote on all matters coming before the Board at that meeting.

Directors and alternate directors shall serve without compensation. Each director or alternate director may be reimbursed for necessary expenses by their Member jurisdiction as determined by the Member's policies.

### **C. Operation of the Board**

The Board will constitute the policy-making body of the Agency. All powers of the Agency will be exercised by and through the Board, except as may be expressly delegated to others in accordance with this Agreement, or by direction of the Board.

The Board has adopted Rules of Governance to address topics including, but not limited to, conduct of meetings, appointment of subcommittees and election of officers. Such Rules of Governance may be amended by the Board from time to time, as required.

Regular meetings of the Board will be held not less frequently than quarterly.

The fiscal year of the Agency shall be the 12-month period beginning July 1 of one year and ending June 30 of the following year. For each fiscal year, the Board shall adopt an operating budget that is consistent with the funding ability of the Agency.

D. Voting

A majority of a quorum of the Board is sufficient for action. Certain types of actions, however, have the following specific voting requirements.

**OPTIONS:**

- 1) **The Agency may have a unanimous vote requirement, meaning all directors must be present and vote to approve specified types of actions. Some types of actions that might require a unanimous vote include purchase of real property and/or expenditure of funds greater than a specified limit, such as \$250,000 or \$350,000 during the fiscal year, or adoption of additional programs.**
- 2) **The Agency may not have a unanimous vote requirement and a majority of a quorum would be sufficient for any type of action.**
- 3) **The Agency may have a voting requirement of a super majority set at 3/4 or 75% of the membership (8 out of 10 members) for specified types of actions such as purchase of real property, expenditure of funds greater than a specified limit, such as \$250,000 or \$350,000 during the fiscal year.**

Voting shall be by directors or alternate directors present at a meeting. No proxy votes are authorized. Voting will be by voice vote, except that any director or alternate director may request a roll-call vote.

**SECTION III. TERM**

This Amended and Restated Agreement is effective on the earlier of either the date the tenth Member's governing body approves and executes this Agreement or six months from the date the second Member's governing body approves and executes this Agreement (Effective Date written above), and it shall continue in full force and effect until terminated by mutual consent of the Members, effective when the next to the last Member's governing body has executed a termination document, provided that all liabilities of the Agency have been satisfied and all assets of the Agency have been distributed.

**SECTION IV. WITHDRAWAL OR REMOVAL OF A PARTY**

- A. At the end of any fiscal year, any Member may withdraw as a Member of this Agreement by notifying the Board in writing prior to January 1 of that same fiscal year.

- B. The withdrawing Member shall reaffirm its intent to withdraw from the Agency by March 1 of that fiscal year. This notification will be considered binding and irrevocable unless unanimously decided otherwise by the Board.
- C. Upon receipt of a Party's reaffirmation to withdraw from the Agency as described above in paragraph (B), any remaining Member may also declare its intent to withdraw from the Agency. The deadline for each remaining Member to give written notice of withdrawal shall be April 1 of that fiscal year.
- D. The withdrawing Member shall continue to be responsible for its allocable share of all costs, charges, assessments, liabilities, and contingencies incurred by the Agency through the end of the fiscal year. If a Member(s)' regular funding source to the Agency is interrupted prior to the end of the fiscal year, the Member shall be responsible for direct payment to the Agency of that Member(s)' allocable share of the regular funding.
- E. A Member's participation in the Agency may be involuntarily terminated at any time upon recommendation of the Board and upon the vote of two-thirds of all directors, as well as the approval of the legislative body of two-thirds of the Members. Involuntary termination shall have the effect of terminating the Member's participation in the Agency. Termination will be effective at the end of the fiscal year in which the action is taken or upon such date as the remaining Members may specify. If a Member is involuntarily terminated, reserve accounts shall be established pursuant to paragraph (F) of this section as though the Member was voluntarily withdrawing. A terminated Member shall continue to be responsible for payment of all Agency costs and liabilities allocable to or incurred by that Member through the effective date of termination. Grounds for involuntary termination include, but are not limited to, the following:
  - 1. Failure or refusal to participate in the Agency's funding source or to provide direct payment to the Agency to a degree sufficient to cover that Member's allocable share of the costs, obligations, and liabilities of the Agency as provided below in Section 11 (B).
  - 2. Such other grounds as may be determined by the Board upon the vote of two-thirds of all directors, as well as the approval of the legislative body of two-thirds of the Members.
- F. Upon the voluntary withdrawal or involuntary termination of a Member, the Board may establish a reserve account for that Member to provide for anticipated expenses and liabilities not included in the Agency's budget that may have arisen or that may arise during the period of that Member's participation in the Agency. The amount remaining in the reserve account will be returned to the withdrawing or terminated Member after all expense claims and liabilities against that Member have been fully paid and satisfied.

## **SECTION V. DISPOSITION OF PROPERTY AND FUNDS**

- A. Upon the Agency's dissolution, or the complete rescission or other termination of this Agreement by all Members, the Board shall, with the approval of all Members, determine the disposition of any real or personal property, funds, and other assets remaining in the Agency after all obligations have been satisfied. Such disposition shall be conducted in a manner that provides a proportionate return to each Member based upon each Member's investment in those properties and assets. Each Member's pro rata share shall be determined in the same manner as for a withdrawing or terminated Member provided below in paragraph (B).
- B. If a Member is terminated or withdraws from the Agency, and the Agency has a financial obligation to that withdrawing or terminated Member, the Board, with the approval of the remaining Members, shall satisfy the withdrawing or terminated Member's pro rata share of the total assets of the Agency, less obligations, including any requirement to pay funds into a reserve account as provided in Section 4(F). A withdrawing or terminated Member's pro rata share is defined as the total regular or special payments, charges, assessments or contributions made by that Member, divided by the total regular and special payments, charges, assessments or contributions made by all Members from the inception of the Agency to the date of the Member's withdrawal or termination.
- C. In the event of the withdrawal or termination of a Member, the Board shall determine whether the Agency's satisfaction of that Member's pro rata share of Agency assets shall be made through a transfer of property or through a payment of funds. That transfer or payment must be made within a reasonable time following a Member's withdrawal or termination.
- D. The current fair market value of Agency properties and assets shall be determined by the Board. If the withdrawing or terminated Member disputes the current fair market value of Agency properties and assets as determined by the Board, then the current fair market value of those properties and assets shall be determined by a panel of three disinterested and qualified appraisers. To this panel, one appraiser shall be appointed by the governing body of the withdrawing or terminated Member, and one appraiser shall be appointed by the remaining Members of the Board. The two appointed appraisers shall jointly select a third appraiser. The fees of each appraiser shall be shared equally by the Agency and by the withdrawing or terminated Member.

## **SECTION VI. POWERS AND FUNCTIONS**

The Agency shall have the powers common to the Members and is empowered and authorized, in its own name, to adopt and implement such rules and regulations, in any form, as may be necessary to effect the purposes of this Agreement, and to perform all acts necessary for the joint exercise of common powers for these purposes, including, but not limited to, any or all of the following:

- i. To employ agents and employees, to establish salaries and benefits, and to contract for professional services.
- ii. To make and enter into contracts and leases.
- iii. To incur debts, obligations, and liabilities; provided, however, that the debts, obligations, and liabilities incurred by the Agency shall not be, either individually or collectively, debts, obligations, or liabilities of the Members.
- iv. To contract for, acquire, convey, construct, manage, maintain, and operate buildings and improvements.
- v. To acquire and to convey, real and personal property.
- vi. To apply for and receive funds, contributions, grants, property or equipment from sources, including, but not limited to, federal, state, local, private or non-profit entities or individuals.
- vii. To invest money that is not needed for immediate necessities, as the Board determines to be advisable, in the same manner and upon the same conditions that apply to other local agencies as specified in Section 53601 of the California Government Code.
- viii. To purchase insurance coverage, including fidelity bonds and directors' liability coverage, to join insurance pooling programs, or to develop and maintain a self-insurance reserve.
- ix. To sue and be sued in its own name and to defend and hold harmless the Members.
- x. To issue bonds as specified in Section 12.
- xi. To perform all other acts that are reasonable and necessary to exercise and implement the above-specified powers and purposes of this Agreement.

These powers shall be exercised in the manner provided in the Act and as expressly set forth herein and are subject to the restrictions upon the manner of exercising such powers that are imposed upon the County of Sonoma in the exercise of similar powers. Notwithstanding the generality of the foregoing, the Agency shall have no power to bind the Members to any monetary obligations other than those expressly authorized by the mutual consent of the Members.

## **SECTION VII. LIABILITY OF THE MEMBERS**

No Member, whether individually or collectively, shall have any liability for the Agency's debts, liabilities, or obligations, including without limitation the following:

- A. Liabilities attributable to any act or omission of the Agency, or any act or omission of the Agency's officers, agents, employees, contractors, or subcontractors.
- B. The payment of wages, benefits, or other compensation to the Agency's officers, agents, employees, contractors, or subcontractors, unless otherwise provided by contractual arrangement.
- C. The payment of workers' compensation or indemnity to officers, agents, or employees of the Agency for any injury or illness arising out of the performance of this Agreement, unless otherwise provided by contractual arrangement.
- D. Should civil penalties be imposed on the Agency, Agency staff shall research the reason for the civil penalties by any means, including, but not limited to, review of landfill disposal origin data, review of hauler origin data, performance of a solid waste disposal study, performance of a solid waste characterization study and/or performance of a solid waste diversion study. Agency shall cooperate with Members, the responsible Member(s) and regulators to identify corrective steps that might be taken prior to assessment of penalties, if any. The Agency shall assign responsibility for payment of any civil penalties as follows:
  - i. the Agency shall pay the entire penalty; or
  - ii. an individual Member is responsible for the assessment of the civil penalty and that the entire penalty shall therefore be imposed upon that member for payment of the penalty; or
  - iii. multiple Members, but not all Members, are responsible for the assessment of the penalty and that the penalty therefore shall be allocated equally upon those responsible Members.
- E. Should the Agency be dissolved for any reason, or should a Member withdraw or be removed from the Agency, each Member or the ex-Member shall be responsible for complying with the requirements of the California Integrated Waste Management Act within their respective jurisdictional boundaries in accordance with the programs set out in the Agency's documents.
- F. Each Member is responsible for implementing and meeting the mandated diversion requirements within its jurisdictional boundaries.

## **SECTION VIII. FINANCING**

- A. Currently, the Agency is financed and the Agency's programs are funded through a tip fee surcharge on refuse entering the County of Sonoma's waste disposal system, which the County of Sonoma collects and remits to Agency. In addition, the Agency receives all revenues accruing in connection with the composting of wood and yard waste from Members. This financing arrangement shall continue



until such time as Agency approves and fully implements an alternate financing mechanism.

- B. The Agency may issue bonds or other evidences of indebtedness as authorized by the Act including, but not limited to, revenue bonds, bond anticipation notes, certificates of participation, and lease purchase agreements, hereinafter collectively referred to as “Bonds,” in order to obtain funding that may be required to finance the acquisition of real property, the construction of facilities, the acquisition of vehicles and other capital equipment, and other obligations as determined by the Board. The power of the Agency to issue Bonds shall only be exercised upon the approval and authorization by unanimous vote of the Board of Directors. Bonds may be issued in more than one series and shall be sold by competitive bidding or by private sale, to the extent permitted by law, and shall not constitute a debt, liability, or obligation of any Member to this Agreement. The services of bond counsel, financial consultants, and other consultants and advisors may be used by the Agency in connection with the issuance and sale of Bonds. The fees and expenses of such counsel, consultants, and advisors shall be paid from the proceeds of the sale of Bonds.
- C. To the extent not covered by the duties assigned to a trustee appointed under any resolution of the Board authorizing the Agency’s issuance of Bonds, the Agency Treasurer shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles or by the provisions of any resolution authorizing the Agency’s issuance of Bonds. The books and records of the Agency maintained by the Executive Director or Treasurer shall be open to inspection at all reasonable times by representatives of the Members.
- D. Any trustee appointed under any resolution or indenture that authorizes the issuance of Bonds by the Agency shall be required to establish suitable funds, furnish financial reports, and provide appropriate accounting procedures to carry out the provisions of said resolution or indenture and this Agreement.
- E. The Agency may set fees or charges for the services it provides to any non-Member, other entity or person who wants to participate in any Agency program.

## **SECTION IX. AGENCY FUNDS**

- A. Until such time as the Agency Board determines otherwise, the Treasurer of the County of Sonoma shall assume the duties required by the laws of the State of California, including the duties described in Section 6505.5 of the California Government Code on behalf of the Agency. The Agency shall reimburse the County of Sonoma for the cost of fulfilling these duties.
- B. Until such time as the Agency Board determines otherwise, the Auditor of the County of Sonoma shall prepare a financial statement of the Agency’s accounts, records and financial affairs for the preceding fiscal year. The Agency shall reimburse the County of Sonoma for the cost of performing such audit.

- C. The Agency's Executive Director is hereby designated as the person responsible for the monies and property of the Agency.

## **SECTION X. AGENCY'S EXISTING AND CONTINUING PROGRAMS**

### **A. Composting Program**

Agency operates a Program at the Central Landfill for the composting, primarily of wood and yard waste, ("Composting Program"). The Agency separately contracts with an operator to process the materials delivered to the site from any source within Sonoma County. The Composting Program shall continue to exist and operate in compliance with all applicable laws, rules and regulations and in substantially the same manner as on the Effective Date of this Agreement, until modified by the Agency Board. Members shall continue to cause wood and yard waste generated within their jurisdictions to be delivered to the Composting Program. Agency shall continue to have the right to dispose of any useable product resulting from the Composting Program as Agency sees fit and in accordance with any contract(s) it may have with an operator. If Agency is unable to dispose of any product of the Composting Program to third parties, each Member agrees to pick up, transport and take back the remaining product in proportion to the amount that Member delivered to the Composting Program site.

### **B. Household Hazardous Waste Program**

Agency operates a Program at the Central Landfill for the collection and storage of household hazardous waste, as defined by the California Public Resources Code ("HHW Program"). The Agency separately contracts with an operator to collect, sort, storage, package and transfer the household hazardous waste collected by designated haulers and other entities approved by Agency, and from members of the public who are residents of a Member agency. HHW generated by small quantity generators will be accepted, but shall be financed entirely by the generators using the service. The HHW Program shall continue to exist and operate in compliance with all applicable laws, rules and regulations and in substantially the same manner as on the Effective Date of this Agreement, until modified by the Agency Board.

### **C. Education for those Using the Agency's Services**

The Agency provides information and education to those using the Agency's services ("Education Program") in order to maximize use of the Agency's programs and further the purpose and goals of the Agency. The Education Program shall continue to exist and operate in compliance with all applicable laws, rules and regulations and in substantially the same manner as on the Effective Date of this Agreement, until modified by the Agency Board or Executive Director.

### **D. Regional Planning**

The Agency is a Regional Agency pursuant to Section 40971 of the California Public Resources Code and the Integrated Waste Management Act. All Members are deemed to be Members of the Regional Agency. The Agency is and shall be responsible for creating, updating and maintaining all required or mandated regional planning documents.

## **SECTION XI. COUNTY'S EXISTING AND CONTINUING OBLIGATIONS**

- A. In addition to the obligations of the Members elsewhere specified in this Agreement, the County of Sonoma agreed in the Original Agreement to provide the following support and subsidies to the Agency:
  - 1. A site, free of charge, at the Central Landfill for the purpose of household hazardous waste collection and storage, referred to as the HHW Program.
  - 2. A site, free of charge, at the Central Landfill for the composting, primarily of wood and yard waste, referred to as the Composting Program.
- B. Such support and subsidies shall continue until the earlier of either the Agency notifying the County of Sonoma that it no longer requires such site or sites and vacating the site or sites, or the original sunset date of the Agency, \_\_\_\_\_, 2017.
- C. Should operations cease on either or both of the HHW and Composting Program sites, the Agency shall have no further right to use the site or sites on which operations ceased. If Agency ceases to use either or both sites, the Agency, at its expense, will return the site or sites to the County in a substantially similar condition as when Agency first began using the site or sites and with the exception of any improvements, which are or shall become the property of the County of Sonoma. Should the County of Sonoma require, the Agency will provide for and pay for monitoring tests at the site(s).
- D. Agency may contract with the County of Sonoma, or any other Member, for provision of services and property, including, but not limited to, rent for office or other space, staffing of Agency with County employees, and telecommunication and information system services.

## **SECTION XII. AGENCY'S EXISTING ASSETS, LIABILITIES AND OBLIGATIONS**

All assets, liabilities, obligations, contracts, agreements, accounts, real and personal property belonging to or incurred by the Agency at the time just prior to the Effective Date of this Agreement shall not change by virtue of the execution of this Agreement and shall remain as they existed just prior to the Effective Date of this Agreement.

The Agency has and shall continue to maintain liability insurance of at least two million dollars for as long as this Agreement is in effect and for at least one (1) year thereafter. This insurance shall name each of the Members as additional insured for any liability arising out of Agency's activities. The amount of insurance may be adjusted up or down as the Agency Board determines is appropriate. Agency may elect to establish a self-insurance program.

### SECTION XIII. GENERAL PROVISIONS

#### A. Notices.

Any notices required or authorized to be given under this Agreement must be in writing and must be delivered in person or by certified or registered mail, postage prepaid, addressed to the attention of the Executive Director of the Agency and to the City Clerk, Town Clerk or County Clerk of each of the Members at their respective addresses set forth below:

If to the Agency: Sonoma County Waste Management Agency  
2300 County Center Drive, Suite B-100  
Santa Rosa, CA 95403  
Attn. Executive Director

If to the City of Cloverdale: City of Cloverdale  
124 N. Cloverdale Blvd  
Cloverdale, CA 95425  
Attn. City Clerk

If to the City of Healdsburg: City of Healdsburg  
401 Grove St  
Healdsburg, CA 95448  
Attn. City Clerk

If to the Town of Windsor: Town of Windsor  
9291 Old Redwood Highway, Suite 400  
Windsor, CA 95492  
Attn. Town Clerk

If to the City of Santa Rosa: City of Santa Rosa  
100 Santa Rosa Ave  
Santa Rosa, CA 95404  
Attn. City Clerk

If to the City of Sebastopol: City of Sebastopol  
7120 Bodega Ave  
P.O. Box 1776  
Sebastopol, CA 95473  
Attn. City Clerk

If to the City of Rohnert Park: City of Rohnert Park  
130 Avram Ave  
Rohnert Park, CA 94928  
Attn. City Clerk

If to the City of Sonoma:

City of Sonoma  
No. 1 The Plaza  
Sonoma, CA 95476  
Attn. City Clerk

If to the City of Cotati:

City of Cotati  
201 W Sierra Ave  
Cotati, CA 94931  
Attn. City Clerk

If to the City of Petaluma:

City of Petaluma  
11 English St  
Petaluma, CA 94952  
Attn. City Clerk

If to the County of Sonoma:

County of Sonoma  
575 Administration Dr., Room 100A  
Santa Rosa, CA 95403  
Attn. County Clerk

The Agency or any Member may designate a different address by giving notice to the Agency and to the other Members in accordance with the provisions of this paragraph.

- B. Governing Law. This Agreement is made and will be construed and interpreted in accordance with the laws of the State of California.
- C. Headings. The section and paragraph headings contained in this Agreement are solely to facilitate ease of reference and are not intended to define, limit, or describe the scope of any provision of this Agreement.
- D. Consent. Whenever any consent or approval is required by this Agreement, that consent or approval may not be unreasonably withheld or delayed.
- E. Amendments. This Agreement may be amended at any time, or from time to time, by one or more supplemental agreements executed by all Members to this Agreement, either as required to implement any provisions of this Agreement, or for any other purpose.
- F. Enforcement Authority. The Agency is authorized to take any legal or equitable actions, including but not limited to injunctive relief and specific performance, as may be necessary to enforce this Agreement.
- G. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of

the remaining provisions of this Agreement will not be affected by that determination.

- H. Successors. This Agreement is binding upon and inures to the benefit of the successors of the Members. No Member may assign any right or obligation under this Agreement without the prior written consent of the other Members.
- I. New Members. Upon approval by the Board and by the legislative bodies of each of the Members, additional public agencies may become Members of the Agency and parties to this Agreement.
- J. Execution in Counterparts. This Agreement may be executed by the Members in one or more counterparts, all of which will collectively constitute one document and agreement.
- K. Filing With Secretary of State. The Agency Executive Director is directed to file with the office of the California Secretary of State a notice of the adoption of this Agreement within 30 days after its effective date, as required by California Government Code Section 6503.5.

TO EFFECTUATE THIS AGREEMENT, each of the Members has caused this Agreement to be executed and attested by its duly authorized officers on the date set forth below the authorized signature.

**CITY OF CLOVERDALE**

**CITY OF HEALDSBURG**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
City Attorney

**TOWN OF WINDSOR**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Town Attorney

**CITY OF SEBASTOPOL**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**CITY OF SANTA ROSA**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**CITY OF ROHNERT PARK**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**CITY OF SONOMA**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**CITY OF COTATI**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**CITY OF PETALUMA**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**COUNTY OF SONOMA**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Executive Officer – Clerk of the  
Board of Supervisors

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Counsel



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COPY

AGREEMENT  
BETWEEN  
THE CITIES OF SONOMA COUNTY  
AND  
SONOMA COUNTY  
FOR A  
JOINT POWERS AGENCY  
TO DEAL WITH WASTE MANAGEMENT ISSUES  
(Wood Waste, Yard Waste,  
Household Hazardous Waste, and Public Education)  
  
(Exhibits Attached)

REVISION DATE: 2-11-92

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## AGREEMENT

This is an Agreement between the Cities of the County of Sonoma and Sonoma County to create a Joint Powers Agency (referred to as "Agency") consisting of the Cities and County of Sonoma to deal with waste management issues such as wood waste, yard waste, household hazardous waste, and public education.

This Agreement is made upon the date last signed below between the various cities of Sonoma County who are signators to this Agreement (referred to as "Cities") and Sonoma County (referred to as "County"), all of which are collectively referred to as "Participants."

## RECITALS

This Agreement is predicated on the following facts:

A. Increases in the populations of Participants and changes in the requirements for waste treatment and disposal have created an urgent need for new and innovative approaches in the treatment and disposal of waste generated within the boundaries of Participants.

B. A mutually cooperative Joint Powers Agreement will protect the health and safety of the citizens, preserve and enhance their environment, and provide for recycling, diversion, and disposal of waste generated within Participants;

C. The California Integrated Waste Management Act of 1989 (AB939), among other things, requires Participants to divert recyclable and recoverable materials from the waste stream and to cooperate to achieve their diversion goals. Following this principle, it is the intent of Participants to cooperate with each other as reflected in this Agreement so as to carry out, in an efficient manner, these objectives.

D. Participants have agreed on a Joint Powers Agency to deal with wood, yard, and household hazardous waste issues and public education in the manner set forth in this Agreement. Participants will continue to discuss other waste management issues and endeavor to reach agreement on those issues after which this Agreement will be amended by mutual written consent.

E. At the present time, Sonoma County anticipates the adoption of an ordinance restricting or prohibiting the disposal of yard waste and wood waste at the Central Landfill Site due to the fact that alternative technologies are available other than disposal at the Central Landfill. In addition, pursuant to AB939, 25% of the waste stream must be diverted by 1995. This Joint Powers Agreement will assist in that effort.

## JOINT POWERS AGREEMENT

NOW, THEREFORE, Participants agree as follows:

### Section 1. Definitions

Agency. The Joint Powers Agency created by this Agreement consisting of Cities and County.

City. The various cities of Sonoma County whose signatures appear at the end of this Agreement.

County. Sonoma County.

Household Hazardous Waste. As defined by the California Integrated Waste Management Board.

Licensed Hauler. "Licensed Hauler" means any organization licensed to haul refuse by a Participant.

Participants. The Cities and County of Sonoma who are participating in this Agreement.

Products. Products mean the products including compost of the wood waste and yard waste Treatment System.

Treatment System. The system used to process yard and wood waste.

Wood Waste. "Wood waste" means solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, process or storage of raw wood materials, or construction and demolition activities.

Yard Waste. "Yard waste" means any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, pruning, brush, and weeds.

### Section 2. Purpose of Agreement

The purpose of this Agreement is to create Agency and to describe the terms and provisions by which Agency will deal with four (4) programs - namely, (1) household hazardous waste and (2) wood waste and (3) yard waste that otherwise would go to the Central Landfill. Agency shall also have a (4) public education function. Each Participant executing this Agreement may elect to participate in any or all of the Agency programs. From time to time, Participants may agree, in writing, to additional duties and responsibilities and programs beyond those set forth in this Agreement.

### Section 3. Covenant of Cooperation in Waste Program

Participants do hereby covenant with each other to take all reasonable actions for orderly treatment of household hazardous, wood, and yard waste under the terms of this Agreement and to comply with all reasonable requirements of Federal and State Entities having jurisdiction over the

processing and treatment of household hazardous, wood, and yard waste. Participants also hereby covenant with each other to take all reasonable actions to avoid duplication or conflict of efforts in any waste program undertaken by the Agency.

Section 4.           Composition of Joint Powers Agency

The Joint Powers Agency created by this Agreement shall have one member from Sonoma County and one member from each City that joins the Agency (each of whom shall be an elected Councilmember, County Supervisor or appointee). Any city may, at its option, elect to join the Agency and have one (1) vote. An appointee shall be an employee of the city or county making the appointment. Each member shall have one vote. A quorum shall consist of one-half or more of the members. The majority vote of a quorum is sufficient for action. Provided, however, a unanimous vote of the total membership (i.e., all members must approve) shall be required for action on (1) major program expansion(s) or (2) capital expenditures greater than \$50,000, or (3) adoption of annual budgets. A "major program expansion" means any program or plan for anything beyond yard and wood waste, household hazardous waste, and public education.

The members of the Agency shall hold their first meeting within forty-five (45) days after execution of the Joint Powers Agreement by all Participants at which time it shall, in compliance with the Brown Act, establish a regular meeting date and take such other action as it deems appropriate to organize itself for the orderly conduct of business. The JPA will contract with Sonoma County for staff services with the Recycling, Marketing, and Integrated Solid Waste Manager.

Section 5.           County to Provide Sites at Central Landfill

Provided that all regulatory requirements of Federal and State agencies are first met, the County agrees to provide, free of charge as a subsidy, sites at its Central Landfill Site for the purpose of household hazardous waste collection and storage and for a wood and yard waste Treatment System. After first consulting with the Agency, the County shall provide such sites as County finds reasonably suited and located for the needs of the Agency. A map together with the conditions of use shall be drawn delineating the boundaries of the two sites; the boundaries may be amended by mutual agreement between the Agency and the County in order to meet future needs. Should operations cease on either or both of the existing sites, then Agency shall have no further right to use the existing site(s) where use has ceased. If Agency ceases to use either or both site(s), Agency, at its expense, will remove all wastes and Products so that the site(s) is returned to County in a completely clean condition. Agency, at its expense, shall perform such monitoring tests as County's Public Works Director requests to examine the conditions at the site(s) and the areas around the site(s).

Such tests may occur during the term of this Agreement or afterward.

Section 6. County to Provide Site Improvements

The County, using tipping fee revenue, will provide reasonable site improvements.

Section 7. Agency to Arrange for Operator and Equipment

Agency will arrange for an operator with the necessary equipment to process yard waste and wood waste delivered to the site. In addition, Agency will arrange for a hazardous household waste operator to perform a collection, recycling and disposal services for Participants electing to participate. Wood and yard waste will be accepted from all sources within Sonoma County; household hazardous waste will be accepted only from licensed haulers and other entities approved by Agency and from members of the public that are residents of a Participant of the Agency. Small quantity generator hazardous waste (as defined by California Legislation or by the Agency with the unanimous concurrence of each Participant) will be included but will be entirely financed by the business using the service. A special fee and method and hours of operation will be established by the Agency for this service.

Section 8. Household Hazardous Waste Acceptance Area

Household hazardous waste will be received from the residents of Participants in a receiving area at the facility. The public will be met by trained personnel who will inspect the delivered waste and determine whether they are acceptable household hazardous wastes. If unidentified (unlabeled) waste are found the delivery person will be requested to provide information to assist in determining the type of material. Times and dates for acceptance of household hazardous waste from Public will be determined by Agency.

The waste received will be sorted into materials that must be disposed of and those that can be reused. Those materials that must be disposed of will be prepared for transportation to disposal facilities. Those wastes received that can be reused will be inventoried for use, exchange, reuse or shipped to a recycling facility. Materials remaining in inventory for a period of time determined to be appropriate by Agency will be disposed of or handled as the Agency determines appropriate.

Section 9. Joint Powers Agency to Administer Treatment System and Household Hazardous Waste Storage and Disposal

The Agency shall administer and execute the Agreement and do all acts necessary for the exercise of said common power for that purpose.

The Agency shall administer, operate, manage, and control the Treatment System and the household (and any other) hazardous waste storage and disposal system in an efficient and economical manner and maintain and preserve them in good repair and working order, all in accordance with sound engineering practices. Agency shall treat and dispose of all wood and yard waste received and shall collect, recycle, store, and dispose all household (and any other) hazardous waste received under the terms of this Agreement in such manner as to comply with all applicable laws, rules and regulations.

Section 10.     Financing - Household Hazardous Waste Storage and Disposal

The cost of startup, maintenance and operation may be paid by the tipping fee process with special cost center established for Household Hazardous Waste and hazardous small quantity generator business waste. County will provide financing to construct and operate the facility by collecting a tonnage tipping fee on all refuse entering the Landfill. The hazardous business waste program, if JPA establishes program, will set a fee schedule to cover all costs including capital startup, operating, maintenance, and disposal fees.

Section 11.     Role of Participants in Collection of Wood, and Yard Waste

Each Participant shall cause wood waste and yard waste generated within its jurisdiction (that could not be diverted otherwise) to go to the Central Landfill to be delivered to the Treatment System and shall take such actions as are appropriate and necessary to accomplish that result. The Joint Powers Agency shall establish standards for the quality of yard and wood waste acceptable for delivery to the Treatment System and may also approve diversions of wood waste and yard waste to alternative treatment systems.

If and when wood and yard waste is treated in the Treatment System and results in useable products (hereinafter referred to as "Products"), then Agency shall have the right to dispose of the Products as it sees fit and in accordance with any contract(s) it may have with an Operator.

Agency shall separately account for all costs of handling and disposing yard waste and wood waste so that the costs of each are known.

Section 12.     Request for Proposals for Composting, Wood Waste, Tree Stumps and Yard Waste

In the mutual interest of all Participants a Request for Proposals for Composting Wood Waste, Tree Stump and Yard Waste Program at the Central Landfill has been prepared for distribution to potential proposers. This RFP is in accordance



with the requirement that the Agency arrange for Operation and Equipment in Section 7. The proposals received will be reviewed by a committee of Participants for recommendation to the full Agency membership. The general wording of the RFP is included in Exhibit "B."

Section 13.      Financing - Yard and Wood Waste

The cost of startup, maintenance and operation will be paid through the tipping fee process with a special cost center established for each. County agrees to assist JPA in developing a financing program to construct treatment system and provide startup cash and to install weighing devices for yard and wood waste at Central Landfill to determine the amount of each Participant's use of the Treatment System. The County agrees to collect a tonnage tipping fee on refuse entering landfill sufficient to pay for all capital improvements and other startup costs of the wood waste and yard waste program. The Agency shall receive all revenues accruing in connection with the Treatment System, and then use them to defray operation and maintenance (O&M) expense of the wood or yard waste Treatment System.

Section 14.      Joint Powers Agency Authority to Adopt Regulations

Participants agree that the primary purpose of this Agreement are to create an Agency to treat wood waste and yard waste and to collect, store, and dispose of household hazardous waste and to educate the public regarding waste issues. The Joint Powers Agency may, from time to time, adopt uniform rules and regulations to carry out these purposes.

Section 15.      Commencement of Operation

After execution of this Agreement by the Participants, they shall cooperate with each other so that Agency can swiftly begin to carry out its mission.

Section 16.      Estimation and Payment of O&M Cost.

For each fiscal year the Agency shall prepare separate O&M budgets for (1) household hazardous waste collection, storage, and disposal countywide program and (2) the yard waste Treatment System and (3) wood waste Treatment System and (4) the education program. These budgets, and any other budgets Agency may prepare, shall require the unanimous approval of the total membership of Agency Agreement.

The Agency shall set fees for the services it provides to any non-Participant, other entity, or person participating in any Agency program.

Section 17. Agency to Accept and Participants to Deliver Yard and Wood Waste

Agency agrees that during the term of this Agreement it will receive wood and yard waste from each of the Participants. Participants agree that during the term of this Agreement each Participant will deliver the Exhibit A wood and yard waste tonnage as a minimum. The Exhibit A tonnage is 25% of the wood and yard waste from each participant as identified in the 1991 Waste Characterization Study. If a participant is unable to deliver the established minimum tonnage they may deliver whatever amount they so choose but they will not have a vote in the operation of that particular item (either yard waste or wood waste). The Participants will cooperate with each other to maximize use of the System and to promote its use. If Agency is unable to dispose of the Products of the System to third parties, each Participant agrees to pick up, transport, and take back the remaining Products in proportion to the amounts delivered to the System. For example, if Agency is able to dispose of one-half of the Products to third parties and one City delivers one-fifth of the total amount of the wood and yard waste to the Treatment System, then that City agrees to pick up, transport, and take back one-tenth of the total amount of the Products produced by the System.

Section 18. Public Education -- Allocation of Costs

Agency shall develop a public education program in consultation with the Participants. The public education program shall be designed to maximize the utilization of the yard and wood waste Treatment System and the household hazardous waste facility. In addition, the Agency may develop educational programs designed to divert the maximum amount of materials from disposal at the Central Landfill site. The County agrees to collect a tonnage tipping fee on refuse entering landfill sufficient to pay all capital improvement costs and all operating costs of the program.

Section 19. Reimbursement of County Costs for Information System and Regulatory Compliance Costs.

County agrees to provide an information system capable of tracking each load of yard and wood waste. Agency agrees the County will be reimbursed from the Cost Center established in the enterprise landfill tipping fee account for reasonable costs of maintaining that information system in the amount determined by the County's Public Works Director.

Agency agrees to reimburse County for County's costs, as determined by its Public Works Director, incurred to form the Agency. Once formed, Agency agrees to reimburse County for all new or additional costs incurred by County as a result of the

activities of the Agency. Such costs include, but are not limited to, the following: (1) the cost of obtaining required permits from regulatory agencies and the cost of complying with the requirements and conditions of those permits; (2) cost of operating a storm water treatment facility, if needed to prevent excess nitrogen from entering the water from the compost. (3) any cleanup costs (including monitoring costs) incurred as a result of Agency activities for as long as required.

#### Section 20. Term of This Agreement

The term of this Agreement shall be for twenty-five (25) years. This Agreement shall take effect and begin on the date the Agreement is executed by the last Participant to execute the Agreement. This Agreement may be extended from year to year thereafter by mutual agreement of the Participants.

Should any city desire to withdraw from the JPA a ninety (90) day notice shall be submitted in writing to the Agency. A penalty as set by the JPA and adjusted from time to time to reflect the impact on the JPA shall be paid by the City to the Agency for the withdrawal.

#### Section 21. Records and Accounts

Agency will keep proper books and records including, but not limited to, types and quantities of wastes received from each jurisdiction which, upon written request, shall be subject to inspection by any duly authorized representative of Participants. Agency will cause the books and records to be kept, and audit to be made, in accordance with the statutory requirements for Joint Powers Agencies. The Agency will make quarterly reports of System operations and of all receipts to and disbursements from the Agency. One copy of the report shall be given to each Participant. The expense of these audits and reports and all recordkeeping and accounting costs shall be an operation and maintenance cost of the Joint Powers Agency.

#### Section 22. Liabilities and Limitations of Parties

Agency agrees to maintain and operate the Treatment System in a competent and diligent manner to the end that requirements set by the California Integrated Waste Management Board and any other agency having jurisdiction thereof are met. In the event of litigation concerning alleged failure to meet performance requirements, Participants and Agency shall cooperate in the defense. Agency shall assume liability for cost of litigation, settlement of claim, and of any penalty unless it is determined by a court of law, arbitration, or other legal process, that the alleged failure was caused by the negligence, malfeasance, or other culpable act(s) of another. Liabilities of Participants, due to their own acts or negligence prior to creation of Agency, will not be assumed by the Agency.

Agency agrees to indemnify Participants against all liability arising out of Agency's negligence.

Section 23. Insurance

The Agency shall maintain liability insurance so long as this Agreement is in effect and for at least one (1) year thereafter, which insurance shall name each of the Participants as an additional insured for any liability arising out of Agency's activities. The expense of such insurance shall be a proper operation and maintenance charge. This insurance shall provide coverage to an initial policy limit of two million dollars and shall be adjusted up or down as requested by the County Risk Manager at least once each year prior to JPA budget preparation. Provided that all Participants unanimously concur, Agency may elect to establish a self-insurance program.

Section 24. Severability

If any section, subsection, sentence, clause, phrase or word of this Agreement, or the application thereof, to either party, or to any other person or circumstance is for any reason held invalid, it shall be deemed severable and the validity of the remainder of the Agreement or the application of such provision to the other party, or to any other persons or circumstances shall not be effected thereby. Each party hereby declares that it would have entered into this Agreement and each section, subsection, sentence, clause, phrase and word thereof irrespective of the fact that one or more section, subsection, sentence, clause, phrase or word, or the application thereof to either party or any other person or circumstances be held invalid.

Section 25. Non-Tipping Fee Funding Sources

The Agency may apply for and receive funds or property or equipment from non-tipping fee sources such as, but not limited to, advance disposal fees, federal or state grant or loan programs, private contributions, and the like. Such funds, property, or equipment shall be used for any program properly authorized by Agency.

Section 26. Amendments to Agreement

This Agreement may be amended by a written amending Agreement signed by all Participants.

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

[REDACTED]

[REDACTED]

ATTESTED:

CITY OF ROHNERT PARK

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF CLOVERDALE

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

CITY OF SANTA ROSA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK



ATTESTED:

CITY OF SEBASTOPOL

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF CLOVERDALE

\_\_\_\_\_  
City Clerk

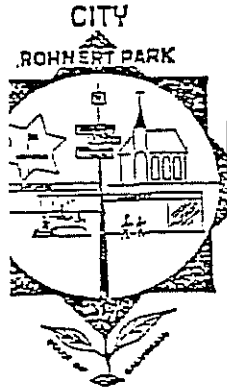
By \_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_



IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

CITY OF SANTA ROSA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

\_\_\_\_\_  
City Clerk

ATTESTED:

CITY OF SONOMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF CLOVERDALE

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

CITY OF SANTA ROSA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF CLOVERDALE

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_



IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

CITY OF SANTA ROSA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

\_\_\_\_\_

City Clerk

*12/1*  
\_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

CITY OF SANTA ROSA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

\_\_\_\_\_  
City Clerk

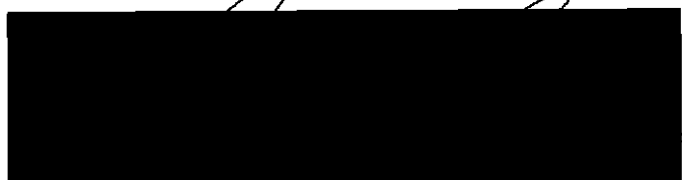
By \_\_\_\_\_

ATTESTED:

CITY OF CLOVERDALE

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_



CITY OF PETALUMA



ATTESTED:



CITY OF COTATI



ATTESTED:

CITY OF HEALDSBURG

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

COUNTY OF SONOMA

\_\_\_\_\_  
County Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF COTATI

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF HEALDSBURG

[Redacted Signature]

\*  
By

[Redacted Signature]

ATTESTED:

COUNTY OF SONOMA

[Redacted Signature]

[Redacted Signature]

ATTESTED:

CITY OF COTATI

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

CITY OF HEALDSBURG

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

ATTESTED:

COUNTY OF SONOMA

\_\_\_\_\_  
County Clerk

By \_\_\_\_\_

  
City Clerk

# EXHIBIT A

## Wood Waste

<u>Participant</u>	<u>Minimum Tonnage (25% of Waste Generation Study Data for each partici- pant done by Emcon Assoc)</u>	<u>% of Tonnage</u>
Unincorporated County	12,083	53.52
Cloverdale	237	1.05
Cotati	232	1.03
Healdsburg	694	3.07
Petaluma	1,722	7.63
Rohnert Park	1,074	4.76
Santa Rosa	5,200	23.03
Sebastopol	658	2.91
Sonoma	<u>677</u>	<u>3.00</u>
	22,577	100%

## Yard Waste

<u>Participant</u>	<u>Minimum Tonnage (25% of Waste Generation Study Data for each partici- pant done by Emcon Assoc)</u>	<u>% of Tonnage</u>
Unincorporated County	7,529	37.49
Cloverdale	288	1.43
Cotati	464	2.31
Healdsburg	483	2.40
Petaluma	2,496	12.43
Rohnert Park	1,423	7.08
Santa Rosa	6,342	31.58
Sebastopol	623	3.10
Sonoma	<u>438</u>	<u>2.18</u>
	20,086	100%

Gurule/Reports/Wood/Haz/Public Ed/12/05/91

## EXHIBIT "B"

### REQUEST FOR PROPOSALS FOR COMPOSTING, WOOD WASTE, AND YARD WASTE

The Cities of Sonoma County and the County of Sonoma have entered into a joint powers agreement to divert wood waste, yard waste, and tree stumps from the Sonoma County Central Landfill for more positive uses. In addition to saving valuable landfill space, the entities have the goal of gaining maximum recycling and diversion credits toward meeting the goals of AB 939. AB 939 requires that each city and county in California reduce their waste stream by 25% by 1995 and 50% by 2000 by recycling, reuse, diversion and source reduction.

Proposals are to be requested from interested parties to provide the full services necessary to divert the maximum amount of wood wastes, yard wastes, and tree stumps from the landfill and market the materials or products resulting from this diversion.

#### STRUCTURE OF AGREEMENT

The successful proposer will enter into an agreement with the Joint Powers Agency. The agreement will require the proposer to cooperate with and take direction from the County Public Works Director and his designees, including the Recycling, Marketing, and Solid Waste Manager. Additionally, the proposer must comply with all conditions of permits required for proposed activities.

#### SOURCE OF MATERIALS

Materials for the program will come from the following sources:

1. Four of the cities, Santa Rosa, Petaluma, Rohnert Park and Healdsburg, will provide yard waste material from a curbside pick up program. Residents will separate yard wastes into special containers which will be picked up by the franchise hauler for each city. This material will be delivered by the haulers to Central Landfill or other location specified by the successful proposer that meets with the Joint Powers Agency's (JPA's) approval and has the proper zoning and permits. The County is moving to secure permits that would allow wood chipping, yard waste shredding, and composting at the Central Landfill at 500 Mecham Road, Petaluma.

2. Self haul vehicles and debris boxes coming to the Central Landfill. At the Central Landfill a spotter will be on site to ensure that the yard wastes and wood wastes would be diverted from the waste stream and set aside for processing under this program. Specific location will be established for the materials which can be chipped or shredded on site or taken to another location for processing.

#### REUSABLE MATERIALS

The Central Landfill currently has a reuse yard for sale of reusable materials. The proposer will be required to set aside for resale reusable material received for processing. Reusable materials include dimensional lumber building materials, landscaping materials, furniture and other similar materials.

#### MARKETING AND END USE OF MATERIALS

Proposals shall include a plan for the marketing, sales and end use of the materials. Proposals shall include existing markets that proposer has for the various materials and plans for the marketing and sales of all the materials to be generated and produced by the program. Proposals shall include a plan to avoid or utilize wood containing hazardous materials such as creosote, CCA, pentachlorophenol, glues or other common potential contaminants. Since the end use of the product will affect AB 939, the marketing plan shall identify end use and the expected percentage and tonnage of AB 939 credit the cities and County will get under the proposal. Firm contracts for specific materials and viability of the purchaser of the materials will be identified.

#### INFORMATION AVAILABLE TO PROPOSERS

The cities and the County have available the Solid Waste Generation Study (SWGS) that was prepared by Emcon Associates to meet the requirements of AB 939. The SWGS contains information on yard waste and wood waste generated by each entity. This information is made available for purposes of scope of the project and is not a guarantee that these weights of materials will be available for the program. Weights and amounts of materials will be the subject of discussion with the proposer selected for negotiations. Proposals shall assume a minimum annual tonnage of 20,000 tons wood waste and 20,000 tons yard waste and shall be capable of expanding to three (3) times the minimum annual tonnage.

The County has available the number and size of tree stumps disposed of at the Central Landfill during a recent twelve-month period.

In addition to this information, the cities and County will make available other information that is requested that falls within the Public Records Act.

#### PROPOSAL EVALUATION

Proposals will be evaluated and from those proposals a number of the proposers will be selected for an interview by a committee. Each proposer selected for an interview will be given a proposed form of contract for approval which will be considered at the interview. Following the interviews, the committee will rate the proposals in order of recommendation for negotiation. After receiving authorization from the JPA, negotiations will be entered into with the number one rated firm. If negotiations are unsuccessful with the number one rated firm, negotiations will be entered into with the second rated firm and so on.



RESOLUTION NO. 92-006

Dated: June 17, 1992

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY") ESTABLISHING POLICIES FOR THE ADMINISTRATION OF THE  
AGENCY

---

WHEREAS, the Agency must establish policies for administration of the Agency's financial and operational business; and

NOW, THEREFORE, BE IT RESOLVED that the Members of the Agency hereby adopt the following financial and operational policies for administration of the Agency:

1. The Director of the Agency shall have the authority to authorize the payment of all administrative and minor expenses to the extent that such expenses have been provided for under Agency's adopted budget(s). The Director shall provide the Members with a monthly summary of all expenses incurred and authorized to be paid in accordance with this policy. For purposes of this policy "minor expense" shall mean any expense less than Five Thousand Dollars (\$5,000.00). All other expenses shall be first authorized by a majority vote of the Members. Notwithstanding anything stated to the contrary above, all expenses that exceed \$50,000 shall be authorized by a unanimous vote of the Members.

2. The Director shall provide the members with a monthly report from the County Auditor summarizing all the expenses incurred in connection with that certain Memorandum of Understanding for Staff Services between the Agency and the County for the previous month.

3. Each Agency program shall have a start-up budget associated with putting such program into operation. The start-up budgets may include, without limitation, the following types of expenditures: administration salary and benefits; communications; liability insurance; printing; supplies; professional services; rental of equipment; building rental; small tools; enforcement agency fees; training; travel; and repayment of loans. Upon the unanimous approval by the Agency of any such start-up budget, a surcharge shall be established by the Agency and the Agency shall request the County Board of

COPY

RESOLUTION NO. 94-015

Dated: September 21, 1994

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY") CLARIFYING RESOLUTION NO. 92-006 DATED JUNE 17, 1992  
WHICH ESTABLISHED POLICIES FOR THE ADMINISTRATION OF THE AGENCY

---

WHEREAS, the Agency has adopted Resolution No. 92-006 which establishes policies for the administration of the Agency's financial and operational business; and

WHEREAS, the Members of the Agency desire to amend paragraph 1 of the policies in order to clarify that the Director of the Agency shall have the authority to authorize the payment of "minor expenses" less than \$5,000.00 including without limitation, items such as computers, printers, filing cabinets, office supplies, equipment rental, advertising services, training, travel, conference fees, and other similar administrative services and supplies.

NOW, THEREFORE, BE IT RESOLVED that the Members of the Agency hereby amend the financial and operational policies for administration of the Agency to read as follows:

1. The Director of the Agency shall have the authority to authorize the payment of all administrative and minor expenses to the extent that such expenses have been provided for under Agency's adopted budget(s). The Director shall provide the Members with a monthly summary of all expenses incurred and authorized to be paid in accordance with this policy. For purposes of this policy "minor expense" shall mean any expense less than Five Thousand Dollars (\$5,000.00) and includes, without limitation, items such as computers, printers, filing cabinets, office supplies, equipment rental, advertising services, training, travel, conference fees, and other similar administrative services and supplies. All other expenses shall be first authorized by a majority vote of the Members. Notwithstanding anything stated to the contrary above, all expenses that exceed \$50,000 shall be authorized by a unanimous vote of the Members.

2. The Director shall provide the members with a monthly report from the County Auditor summarizing all the expenses incurred in connection with that certain Memorandum of Understanding for Staff Services between the Agency and the County for the previous month.

SLB779

-1-

The within instrument is a correct copy  
of the original on file with this office.

COPY

RESOLUTION NO. 95-002

Dated: January 18, 1995

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY  
("AGENCY"), RATIFYING THE NAME OF THE AGENCY

---

WHEREAS, although the name of the Agency is on file with the State of California, the Members of the Agency never formally adopted the name; and

WHEREAS, the County Auditor has recommended that the Members of the Agency ratify the name chosen for the joint powers agency that has been in effect since April 15, 1992.

NOW THEREFORE BE IT RESOLVED that the Members hereby ratify the name of the joint powers agency, "Sonoma County Waste Management Agency", that has been in effect since the very first meeting of the Agency.


MEMBERS:

<u>AYE</u>	<u>AYE</u>	<u>AYE</u>	<u>AYE</u>	<u>AYE</u>
Sonoma	County	Cloverdale	Cotati	Windsor
<u>AYE</u>	<u>AYE</u>	<u>AYE</u>	<u>ABSENT</u>	<u>AYE</u>
Santa Rosa	Sebastopol	Petaluma	Healdsburg	Rohnert Park

AYES -9- NOES -0- ABSTAIN -0- ABSENT -1-

SO ORDERED.

The within instrument is a correct copy  
of the original on file with this office.

  
Management Agency of the State of California,  
in and for the County of Sonoma.

FIRST AMENDMENT TO  
AGREEMENT BETWEEN THE CITIES OF SONOMA COUNTY AND SONOMA COUNTY  
FOR A JOINT POWERS AGENCY TO DEAL WITH WASTE MANAGEMENT ISSUES

This First Amendment (the "Amendment"), dated as of January 24, 1996 is by and between the Cities of the County of Sonoma and the County of Sonoma. All capitalized terms used herein shall, unless otherwise defined, have the meaning ascribed to those terms in the existing agreement.

RECITALS

WHEREAS, the Cities of the County of Sonoma and the County of Sonoma entered into that certain Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues ("Agreement"); and

WHEREAS, Section 40970 and following of the California Public Resources Code allows for jurisdictions to create regional agencies for the purpose of implementing, monitoring and reporting programs to meet the goals established by the Integrated Waste Management Act of 1989; and

WHEREAS, the Participants will realize savings in staff time and resources to meet the monitoring and reporting requirements of the Integrated Waste Management Act of 1989 if the Agreement is amended to form such a regional agency.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Section 1 of the Agreement (Definitions) is hereby revised to add the following new definitions:

"Act. The term "Act" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.) and all regulations adopted under that legislation and any amendments to that legislation and regulations."

"Regional Agency. The term "Regional Agency" means the designation of the Sonoma County Waste Management Agency as a "Regional Agency" by the California Integrated Waste Management Board in compliance with Section 40975 of the Public Resources Code."

2. The following new section shall be added to the end of the Agreement as follows:

"Section 27. Regional Agency

Formation of Regional Agency. The Participants hereby desire to use the structure of the Agency as a Regional Agency for purposes of Section 40971 of the Act. As a result, all Participants are hereby deemed to be member agencies of the Regional Agency.

Civil Penalties. The Agency shall research the cause for which civil penalties are being levied. Research may include, but is not limited to, any of the following: review of landfill disposal origin data, review of hauler origin data, performance of a solid waste disposal study, performance of a solid waste characterization study and/or performance of a solid waste diversion study. Agency shall coordinate with responsible Participant(s) of the Regional Agency and the California Integrated Waste Management Board to identify corrective steps that might be taken prior to assessment of penalties, if any. The Agency shall assign responsibility for payment of any civil penalties as follows:

- (a) that the Agency shall pay the entire of the penalty; or
- (b) that an individual Participant is responsible for the assessment of the civil penalty and that the entire penalty shall be therefore imposed upon that Participant for payment of the penalty; or
- (c) that multiple Participants, but not all Participants, are responsible for the assessment of the penalty and that the penalty shall be therefore allocated equally and imposed upon those responsible Participants.

Contingency Plan. Should the Regional Agency be dissolved for any reason, each Participant shall be responsible for complying with the requirements of the Act within their respective jurisdictional boundaries in accordance with the programs set out in the Regional Agency documents, such as Integrated Waste Management Plan Summary, Siting Element, and Annual Reports for the Source Reduction and Recycling Element and Household Hazardous Waste Element, as they apply to individual jurisdictions.

Participant's Duties and Responsibilities. Each Participant is responsible for implementing the programs set forth in Regional Agency documents as they apply to individual jurisdictions, and each Participant is responsible for meeting the diversion requirements of the Act within its jurisdictional boundaries.

Planning and Monitoring Documents. The Source Reduction and Recycling Elements, Household Hazardous Waste Elements, the Non-Disposal Facility Elements, and the Countywide Integrated Waste Management Plan Summary and Siting Element shall serve as the planning and monitoring documents for the Regional Agency until such time as they are replaced by regional planning documents. The County's document shall serve as the document for the City of Windsor. Henceforth, all necessary documentation shall be created by the Regional Agency."

3. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall be construed to modify, invalidate or otherwise affect any provision of the Agreement or any right of Agency arising thereunder.

4. This Amendment shall be governed by and construed under the internal laws of the State of California, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

ATTESTED:

CITY OF CLOVERDALE

by \_\_\_\_\_

ATTESTED:

CITY OF \_\_\_\_\_

by \_\_\_\_\_

ATTESTED:

CITY OF HEALDSBURG

by \_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

by \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK

by \_\_\_\_\_

ATTESTED:

CITY OF SANTA ROSA

by \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

by \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

by \_\_\_\_\_

ATTESTED:

CITY OF WINDSOR

by \_\_\_\_\_

ATTESTED:

COUNTY OF SONOMA

by \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

[Redacted]

CITY OF CLOVERDALE

by [Redacted]

ATTESTED:

CITY OF COTATI

\_\_\_\_\_

by \_\_\_\_\_

ATTESTED:

CITY OF HEALDSBURG

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by \_\_\_\_\_

ATTESTED:

CITY OF PETALUMA

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by \_\_\_\_\_

ATTESTED:

CITY OF ROHNERT PARK

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by \_\_\_\_\_

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by \_\_\_\_\_

ATTESTED:

CITY OF SEBASTOPOL

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by \_\_\_\_\_

ATTESTED:

CITY OF SONOMA

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by \_\_\_\_\_

ATTESTED:

CITY OF WINDSOR

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by \_\_\_\_\_

ATTESTED:

COUNTY OF SONOMA

\_\_\_\_\_

by \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

[Redacted]

A. [Redacted]

ATTESTED:

CITY OF CLOVERDALE

by \_\_\_\_\_

ATTESTED:

CITY OF COTATI

by \_\_\_\_\_

CITY OF HEALDSBURG

by \_\_\_\_\_

ATTESTED:

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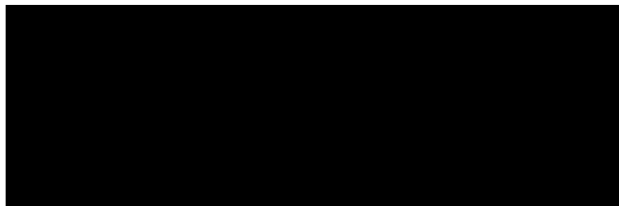
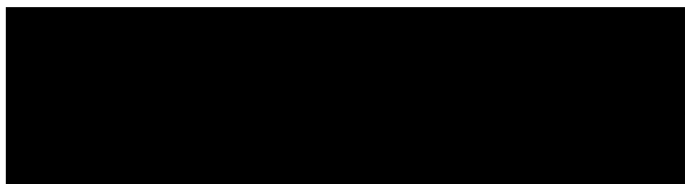
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FIRST AMENDMENT TO  
AGREEMENT BETWEEN THE CITIES OF SONOMA COUNTY AND SONOMA COUNTY  
FOR A JOINT POWERS AGENCY TO DEAL WITH WASTE MANAGEMENT ISSUES

This First Amendment (the "Amendment"), dated as of January 24, 1996 is by and between the Cities of the County of Sonoma and the County of Sonoma. All capitalized terms used herein shall, unless otherwise defined, have the meaning ascribed to those terms in the existing agreement.

RECITALS

WHEREAS, the Cities of the County of Sonoma and the County of Sonoma entered into that certain Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues ("Agreement"); and

WHEREAS, Section 40970 and following of the California Public Resources Code allows for jurisdictions to create regional agencies for the purpose of implementing, monitoring and reporting programs to meet the goals established by the Integrated Waste Management Act of 1989; and

WHEREAS, the Participants will realize savings in staff time and resources to meet the monitoring and reporting requirements of the Integrated Waste Management Act of 1989 if the Agreement is amended to form such a regional agency.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Section 1 of the Agreement (Definitions) is hereby revised to add the following new definitions:

"Act. The term "Act" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.) and all regulations adopted under that legislation and any amendments to that legislation and regulations."

"Regional Agency. The term "Regional Agency" means the designation of the Sonoma County Waste Management Agency as a "Regional Agency" by the California Integrated Waste Management Board in compliance with Section 40975 of the Public Resources Code."

2. The following new section shall be added to the end of the Agreement as follows:

"Section 27. Regional Agency

Formation of Regional Agency. The Participants hereby desire to use the structure of the Agency as a Regional Agency for purposes of Section 40971 of the Act. As a result, all Participants are hereby deemed to be member agencies of the Regional Agency.



Civil Penalties. The Agency shall research the cause for which civil penalties are being levied. Research may include, but is not limited to, any of the following: review of landfill disposal origin data, review of hauler origin data, performance of a solid waste disposal study, performance of a solid waste characterization study and/or performance of a solid waste diversion study. Agency shall coordinate with responsible Participant(s) of the Regional Agency and the California Integrated Waste Management Board to identify corrective steps that might be taken prior to assessment of penalties, if any. The Agency shall assign responsibility for payment of any civil penalties as follows:

- (a) that the Agency shall pay the entire of the penalty; or
- (b) that an individual Participant is responsible for the assessment of the civil penalty and that the entire penalty shall be therefore imposed upon that Participant for payment of the penalty; or
- (c) that multiple Participants, but not all Participants, are responsible for the assessment of the penalty and that the penalty shall be therefore allocated equally and imposed upon those responsible Participants.

Contingency Plan. Should the Regional Agency be dissolved for any reason, each Participant shall be responsible for complying with the requirements of the Act within their respective jurisdictional boundaries in accordance with the programs set out in the Regional Agency documents, such as Integrated Waste Management Plan Summary, Siting Element, and Annual Reports for the Source Reduction and Recycling Element and Household Hazardous Waste Element, as they apply to individual jurisdictions.

Participant's Duties and Responsibilities. Each Participant is responsible for implementing the programs set forth in Regional Agency documents as they apply to individual jurisdictions, and each Participant is responsible for meeting the diversion requirements of the Act within its jurisdictional boundaries.

Planning and Monitoring Documents. The Source Reduction and Recycling Elements, Household Hazardous Waste Elements, the Non-Disposal Facility Elements, and the Countywide Integrated Waste Management Plan Summary and Siting Element shall serve as the planning and monitoring documents for the Regional Agency until such time as they are replaced by regional planning documents. The County's document shall serve as the document for the City of Windsor. Henceforth, all necessary documentation shall be created by the Regional Agency."

3. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall be construed to modify, invalidate or otherwise affect any provision of the Agreement or any right of Agency arising thereunder.

4. This Amendment shall be governed by and construed under the internal laws of the State of California, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their respective governing officials duly authorized by resolution of their respective legislative bodies.

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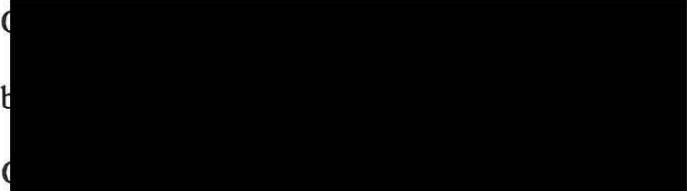
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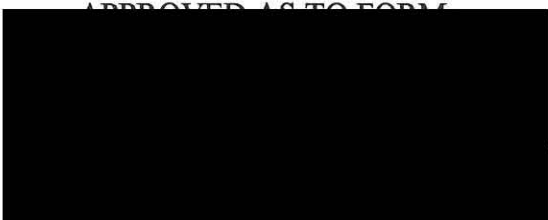
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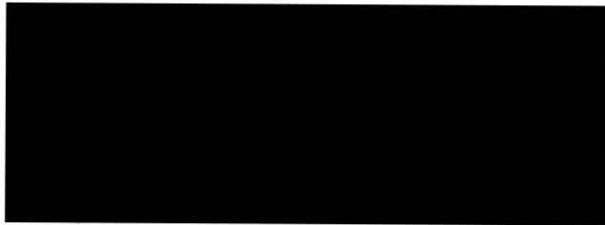
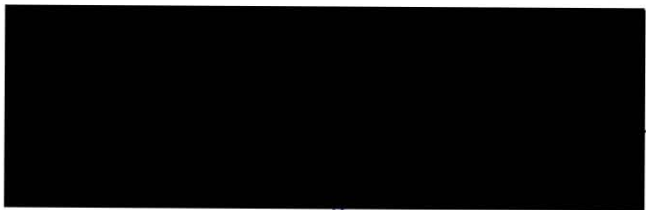
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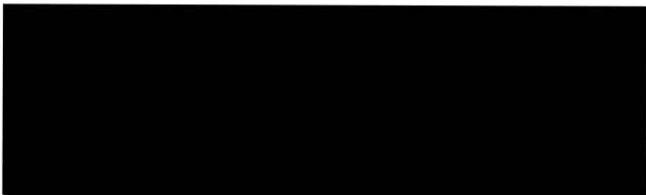
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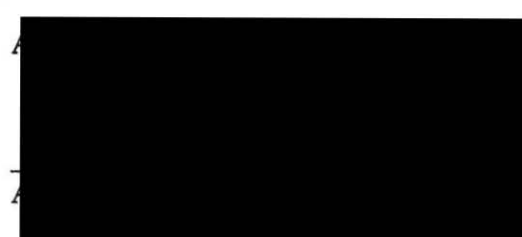
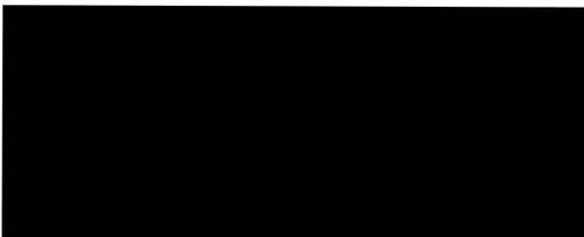
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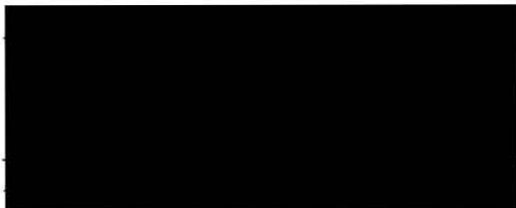
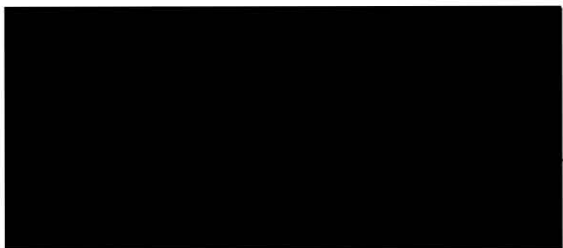
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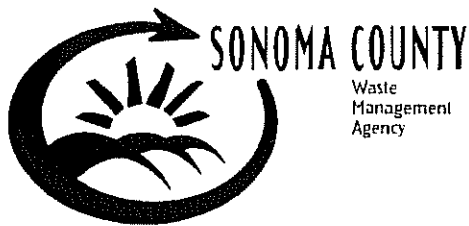
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**Agenda Item #** 5.2  
**Cost Center:** All  
**Staff Contact:** Ken Wells  
**Agenda Date:** 12/20/2006

**ITEM: Amend SCWMA Rules of Governance**

**I. BACKGROUND**

The Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues, approved February 11, 1992, states in Section 4. Composition of Joint Powers Agency, "A quorum shall consist of one-half or more of the members", which is five members. Further, Section 4 of the Agreement states "The majority vote of a quorum is sufficient for action."

The Rules of Governance approved by the Board at the April 15, 1992 meeting contain language (Rule 7) defining a quorum as a majority (6) of the members and that an action is binding if a majority of all members concur.

**II. DISCUSSION**

In order to resolve these conflicts the Rules of Governance need to be amended in order to be consistent with the Agreement and define a quorum as one-half or more of the Agency members with a majority vote of a quorum sufficient for action.

**III. FUNDING IMPACT**

There is no funding impact to the Agency budget for amending the Rules of Governance.

**IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION**

Staff recommends amending the Rules of Governance to define a quorum of the Agency Board of Directors as being one-half (five) or more of the members and a majority vote of a quorum being sufficient for action.

**RULES OF GOVERNANCE  
OF THE  
SONOMA COUNTY WASTE MANAGEMENT AGENCY ("AGENCY")**

RULE 1: The Director, in consultation with the Chair, shall prepare an agenda for each meeting of the Agency. The agenda shall contain a brief general description of each item of business to be discussed at the meeting. At least 72 hours before a regular meeting, the Director shall post the agenda in a location that is freely accessible to members of the public during regular business hours.

RULE 2: Whenever possible, staff shall deliver a copy of the agenda for any regular meeting to each member of the Agency ten (10) days in advance of such meeting.

RULE 3: Unless otherwise provided by law, the Agency may make any disposition of a matter properly before it that it deems advisable.

RULE 4: The Chair shall preserve order and decorum and shall decide questions of order subject to an appeal to the Agency.

RULE 5: All questions of law shall be referred to the Agency's counsel for an opinion.

RULE 6: Each agenda shall provide an opportunity for members of the public to address the Agency directly on items of interest to the public that are within the subject matter jurisdiction of the Agency. The total time allocated for public testimony on any particular issue shall be 10 minutes. Any person desiring to address the Agency shall, when recognized by the Chair, speak from the rostrum and give his or her name and address to the Clerk and limit his or her statement to 5 minutes. In order to facilitate the business of the Agency, the Chair may further modify the time of each such address.

RULE 7: ~~A majority~~ One half or more of the members of the Agency constitute a quorum for the transaction of business. No act of the Agency shall be valid or binding unless a majority of a quorum ~~all members~~ concur therein. Provided, however, that a unanimous vote of all members of the Agency is required for action on: (a) major program expansion(s); (b) capital expenditures greater than \$50,000; ~~or~~ and (c) adoption of annual budgets.

RULE 8: A member may initiate voting on a matter by requesting the Chair to call for the question.

RULE 9: Members may vote "aye," "no," or "abstain."

RULE 10: A vote of "abstain" does not constitute concurrence and does not constitute a "no" vote.

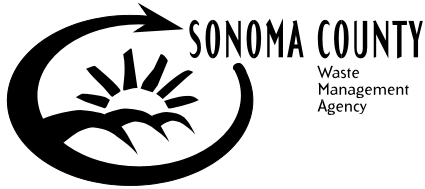
RULE 11: Emergency meetings and special meetings shall be called as provided in Sections 54956 and 54956.5 of the Government Code. Closed sessions shall not be scheduled nor conducted without prior consultation with the Agency's counsel.

RULE 12: At the first meeting in each calendar year the Agency shall elect a Chair and a Vice-Chair and a Chair Pro Tempore. When the Chair is absent, his or her duties shall be assumed Vice-Chair. If both the Chair and the Vice-Chair are absent, the Chairman Pro Tempore shall perform the duties of the Chair.

RULE 13: The Chair may, from time to time, appoint such subcommittees of the Agency as are necessary and convenient.

RULE 14: These rules shall be reviewed by the Agency at the first meeting in each calendar year.

RULE 15: The Chair, Vice-Chair, and the Chair Pro Tempore shall serve at the will and pleasure of the Agency.



**Agenda Item #: 9**  
**Cost Center: Planning**  
**Staff Contact: Mikus/Carter**  
**Agenda Date: 6/20/2012**

## **ITEM: Carryout Bags Ordinance Report**

### **I. BACKGROUND**

The SCWMA Board of Directors requested staff to provide carryout bag legislation updates at each SCWMA meeting subsequent to the March 2008 meeting. Since that meeting staff has researched developments within California and out-of-state legislation regarding paper and plastic carryout bags.

At the May 18, 2011 SCWMA meeting, the Board directed staff to present the three options for addressing carryout bags developed by staff to the Board of Supervisors and nine councils so those decision-making bodies could give direction to their respective SCWMA representative regarding action on one of those options.

At the February 18, 2012 SCWMA meeting, the Board directed staff to begin outreach meetings throughout the county to receive feedback on the carryout bag waste reduction effort and using the San Jose carryout bag ordinance parameters as the starting point for the discussion.

At the April 18, 2012 SCWMA meeting, the Board directed staff to return at the May 2012 SCWMA meeting with a draft ordinance noting where the ordinance would be different as a countywide or model ordinance.

By the May 2012 SCWMA meeting, all member jurisdictions had indicated their support for this project to move forward. When Agency staff visited our member jurisdictions' governing bodies during 2011, one of the assurances provided was that if all members did agree to continue working to developing a single-use carryout bag ordinance, the agency would return to present the draft ordinance and seek members' input.

### **II. DISCUSSION**

During the Board's discussion at the May meeting, it became apparent that despite all member jurisdictions' desire for the project to move forward, there were diverging thoughts as to what the best method of enactment for the ordinance would be. Some favored SCWMA doing a "Model" ordinance and CEQA work that members could use as a basis and enact individually. This sentiment had two motivations: jurisdictions' hesitation to relinquish "sovereignty", or concerns about enforcement within their boundaries. Other members favored an Agency "Regional" ordinance, because of this method's minimal cost to jurisdictions plus their individual very low level of legal risk. Under the Regional ordinance, SCWMA would incur all costs of ordinance work including CEQA documentation, and be responsible for dealing with any legal challenges.

Agency Counsel has provided a solution to the question regarding enforcement. The Agency could adopt a separate "Administrative Enforcement" ordinance. Member jurisdictions who wished to perform their own enforcement within their boundaries could adopt this "Administrative Enforcement" ordinance which would allow them to do their own enforcement on an Agency regional bag ban.

Thus, at the May Board meeting staff was directed to prepare a "White Paper" that would discuss the provisions contained in the draft ordinance, and compare the advantages and disadvantages for either the "Model" or "Regional" methods for enacting the ordinance. Staff was also asked to present and discuss both the draft ordinance and the "White Paper" to the governing bodies of the Agency's

member jurisdictions. The aim for these presentations was to solicit comment on the draft ordinance, and to begin to bring resolution to the question of which enactment path to follow. This "White Paper" together with a summary and a presentation have been prepared and are attached for the Board's examination.

It is important for the question of "Model" or "Regional" ordinance method to be settled quickly. The dilemma is that some Cities have clearly indicated they cannot afford the expense of following the "Model" route. Two steps in the project's progress will require "Unanimous Vote" approvals to move ahead: selection of an environmental consultant to do the required CEQA analysis due to the likely amount of the contract's cost (greater than \$50,000), and the vote on the final ordinance if the "Regional" method is chosen. The danger is that if the method of enactment is not resolved, SCWMA could be forced to expend considerable funds for project work only to have the project terminated without conclusion.

### III. FUNDING IMPACT

Staff estimates the CEQA costs will decrease significantly, bringing total project costs down to a range of \$80,000 to \$150,000.

### IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

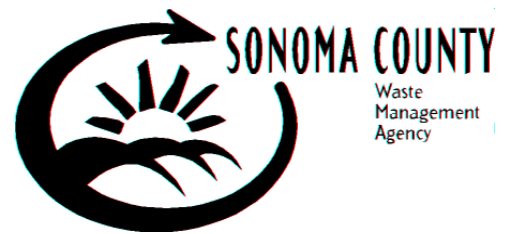
Staff recommends the Board review and approve the attached "White Paper", summary, and presentation for use in meeting with member jurisdictions' governing groups.

### V. Attachments

Carryout Bag "White Paper" titled *Analysis of Carryout Bag Ordinance: Type and Provisions*  
"White Paper" Summary  
Powerpoint Presentation  
Draft Carryout Bag Waste Reduction Ordinance

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA





## **Analysis of Carryout Bag Ordinance: Type and Provisions**

Date: May 29, 2012

To: SCWMA Member Jurisdictions

From: Henry Mikus, SCWMA Executive Director

### **Purpose of Ordinance:**

A carryout bag reduction ordinance under consideration by the Sonoma County Waste Management Agency (SCWMA) is primarily concerned with reducing the amount of waste associated with carryout bags through prohibition of plastic carryout bags and the imposition of a \$0.10-\$0.25 minimum charge on recycled content paper bags. The expected result is a switch in consumer behavior to using reusable carryout bags and/or declining to use any carryout bag for the transport of goods from the point of sale to the point of use.

There are a number of potential ancillary benefits to such actions including reduced maintenance associated with landfill and recycling center equipment, reduced litter, reduced environmental impact associated with the resource extraction and manufacture of carryout bags not designed for multiple reuse, and reduced harm to wildlife.

### **Current Project Progress:**

All ten SCWMA member jurisdictions have indicated support, in varying degrees, for this project. During this recent Spring, a series of stakeholder meetings were held throughout our membership area, where numerous options for inclusion in an ordinance were presented and discussed. At these meetings public commentary was solicited and received. Utilizing input from these meetings, plus examples of successful ordinances in effect elsewhere, a draft ordinance has been developed. The SCWMA Board has asked staff to return to our member jurisdictions for commentary and input. Also under evaluation is which type of ordinance, regional (applying to Sonoma County's 9 cities plus the unincorporated county areas) or model, should be utilized, as there is some divergent opinion among our member jurisdictions as to which path is the preferred method of implementation. Some members prefer the model ordinance because they would retain some control, with concerns about the enforcement method a part of this sentiment. However, other members favor the regional method because the reduced expense and risk this method would provide for them. The grocery industry has indicated quite strongly that they prefer the regional approach.

### **Summary of Draft Ordinance:**

The SCWMA Board directed staff to prepare a preliminary draft ordinance to generate a policy discussion on how inclusive or limited a ban should be. This draft was created using ordinances from other jurisdictions in the state that have not been challenged. Following is a brief description of the preliminary draft ordinance.

Any retail establishment that sold merchandise, clothing, food or personal items would be prohibited from providing a single-use bag to the customer at the point of sale for the purpose of transporting the merchandise out of the establishment. The retail establishment, however, would be able to provide a recycled paper bag for sale to the customer at no less than 10 cents per bag. This cost would increase to 25 cents per bag a year after the ordinance initially took effect. A restaurant or other business that receives 90% of its revenue from the sale of prepared food would be exempt from this prohibition. Certain types of bags also would be exempt. These would include bags used to transport produce, bulk food or meat from the department or area in a store to the point of sale, bags to hold prescription medication dispensed from a pharmacy, and bags used to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag.

#### Commentary on Ordinance Details:

The ordinance would apply at point of sale to carry-out single-use bags at retail establishments. Food service providers would not be included, and so-called “produce” or “meat” bags would also not be included, in order to avoid any possible concern over food contamination issues.

Implementing a ban on plastic bags while allowing the use of paper bags for a fee has been the most successful route for avoiding challenge on environmental grounds. The fee on paper bags would be retained by the merchants, and would not be income to SCWMA or any other local government. SCWMA has received some information from merchants that the 10-cent fee per bag nearly covers their expense. Also, the commercial sector, whether individual merchants or trade associations, has been clear that regional consistency is vital to their support.

#### Ordinance Type:

Regarding the potential type of local carryout bag waste reduction ordinance, three options were initially under consideration:

- A single, countywide ordinance enacted by the SCWMA
- A model ordinance adopted separately by each member jurisdiction, if they desire
- An individual member jurisdiction ordinance tailored to the individual jurisdiction, if they desire.

At this point in the project’s progress, either the regional or model ordinance types are considered viable.

The countywide, model, and individual ordinance approaches were examined in terms of level of effort (staff time and/or direct costs) to the SCWMA, level of effort to the member jurisdictions, consistency of ordinances within Sonoma County, and amount of risk via exposure to legal challenge.

#### Countywide SCWMA Ordinance

The SCWMA is composed of all nine incorporated cities and the unincorporated County of Sonoma resulting in a jurisdictional boundary of the entirety of Sonoma County. As a Joint Powers Agency, the SCWMA has the ability to exercise the powers common to its members,

all of which have the ability to adopt ordinances.

Adopting a countywide carryout bag waste reduction ordinance would have the greatest level of effort required of the SCWMA. The SCWMA would be responsible for entering into an agreement with a consultant to prepare a California Environmental Quality Act (CEQA) document analyzing the environmental impacts on this project, use SCWMA staff and legal counsel to prepare the ordinance for adoption, defend the ordinance from legal challenge, and to enforce the ordinance in the event of non-compliance.

On the subject of enforcement, the SCWMA would also need to adopt an administrative citation ordinance in order to issue monetary administrative citations. In the alternative, it is possible for each jurisdiction that wants to do their own enforcement to adopt the Agency's adopted ordinance in order to use their own enforcement mechanisms.

A countywide carryout bag ordinance requires the least level of effort, expense, and risk, of the three options, for the member jurisdictions.

	SCWMA Countywide	Model	Individual
Expenditure of SCWMA Funds	Greatest	Less	Least
Expenditure of Member Funds	Least	Greater	Greatest
Likelihood of Consistency	Greatest	Equal – to – Less	Least
Main Impediments	Unanimous vote on consultant cost AND adoption, concern about jurisdictional sovereignty	Unanimous vote on consultant cost, cost to members, unlikely to be adopted uniformly	Cost to members, unlikely to be adopted uniformly

A countywide carryout bag ordinance would ensure the most consistency of the ordinance's provisions through the entire county. This issue is of great importance to businesses which have stores in multiple jurisdictions. The single most consistent comment received from the commercial sector on an ordinance has been support for regional consistency.

As a SCWMA ordinance, it is the SCWMA's responsibility to defend an ordinance from legal challenge, and the SCWMA is prepared to vigorously defend such an ordinance without requesting monetary or legal assistance from its member jurisdictions. A legal challenge delivered to a member jurisdiction would not be valid under a SCWMA regional ordinance.

#### SCWMA Model Ordinance

The second method would be for the SCWMA to draft an ordinance which would be uniformly adopted throughout Sonoma County via individual actions by SCWMA member jurisdictions.

This approach would involve a lesser level of effort on the part of SCWMA staff and legal counsel, as the SCWMA would only be responsible for creating a draft model ordinance, hiring a consultant to create a CEQA document for the project, certifying the CEQA document, and defending the basic, common CEQA document from legal challenge. The level of effort for

ordinance implementation would be shifted to member jurisdiction staff and legal counsel.

Member jurisdiction staff would be responsible for reviewing the ordinance for adoption, preparing any necessary CEQA documents, enforcing the ordinance, and defending their ordinance from legal challenge. Thus a model ordinance shifts the risk of litigation to the member jurisdictions. The SCWMA would continue to defend any legal challenge to the basic CEQA document prepared to examine the environmental impacts on a countywide basis. However, the risk related to any subsequent CEQA document and adoption of the ordinance by a member jurisdiction would be borne by the member jurisdictions. There is precedent from the primary litigant for these types of ordinances to target jurisdictions which do not have the resources or staff to defend their ordinance from a legal challenge as a means to nullify an ordinance. It would not be the SCWMA's responsibility to reimburse or provide in-kind services to the member jurisdictions to complete those tasks.

The single biggest negative to using a model ordinance approach exists because some member jurisdictions have indicated they would not participate if this project required use of member jurisdiction funds. Thus it is possible the model ordinance route would result in ordinances to be in effect in some jurisdictions, but not in others.

If the model ordinance could be adopted uniformly by all member jurisdictions, there is a negligible impact on consistency. However, a member jurisdiction may choose to slightly alter the parameters of the model ordinance or choose not to adopt the ordinance altogether, which would have a negative effect on the ordinance's consistency.

#### Individual Member Jurisdiction Ordinances

Some of our member jurisdictions have expressed an interest in proceeding with non-uniform, individual single-use bag ordinances, but only in the event no action occurs to enact either a regional or model ordinance. Reasons cited have been the large individual expense and effort, the high level of risk to legal challenge involved, and the lack of consistency. However, if agreement between all cannot be reached on either the regional agency route, or use of a model ordinance, this may become the only option for any jurisdiction that wishes to continue. This is a scenario to which multi-jurisdictional businesses and business groups have expressed opposition, and it is likely that other supporters of the countywide model would oppose this approach.

#### Conclusions:

The countywide, SCWMA ordinance involves the least cost overall and the least risk of legal exposure to the member jurisdictions, and the greatest potential for countywide consistency of the three options. However, there are some concerns from member jurisdictions of the SCWMA encroaching on their territorial sovereignty, particularly related to enforcement. Given this item requires unanimous support of the SCWMA's member jurisdictions, there is also concern that one vote of opposition at the time of ordinance adoption could result in the unnecessary expenditure of SCWMA funds for this project.

If there is no consensus on the countywide approach, the next logical approach would be the model ordinance. There would be no conflict regarding enforcement, as each jurisdiction would be responsible for enforcing their ordinance. However, given there have been some

jurisdictions expressing their reservations to expend any funds to complete this project, it is very likely the ordinance would not be adopted uniformly throughout the county, resulting in diminished consistency. The only real benefit to this approach over the individual ordinance approach would be that some, but not all, of the CEQA costs would be borne by the SCWMA.

DRAFT



## **Summary:**

### **Analysis of Carryout Bag Ordinance: Type and Provisions**

Date: May 29, 2012

To: SCWMA Member Jurisdictions

From: Henry Mikus, SCWMA Executive Director

On behalf of its 10 member jurisdictions (the 9 cities plus the unincorporated areas of Sonoma County) the Sonoma County Waste Management Agency (SCWMA) has been engaged in studying and developing a single-use carryout bag ordinance. All 10 SCWMA members have expressed support for the project's continued work. Most recently, SCWMA conducted numerous "stakeholder meetings" to explain the project to our community and solicit public comment. This input was then used to develop an initial draft ordinance, which is now being distributed to our member jurisdictions for their comments.

The draft ordinance includes provisions for banning the point of sale distribution of single-use plastic bags, and imposition of a \$.10 fee for sale of paper bags. Any retail establishment that sold merchandise, clothing, food or personal items would be included, while restaurants would be exempt. Special types of bags, such as those used to segregate food or merchandise to avoid contamination, would also not be affected by the ban.

The ordinance method, either done regionally by SCWMA, or as a model ordinance adopted by the member jurisdictions individually, also has yet to be determined. The regional method provides the greatest consistency across jurisdictional boundaries, and minimizes expense and risk to the member jurisdictions, as the expense of the project including litigation would be borne by SCWMA. A model ordinance would provide the adopting members with individual control, but would require them to bear significant expense and exposure to risk.

Some member jurisdictions prefer the model route because they would not relinquish control. However, other members prefer the regional approach because they are unwilling to expend their own funds and because of their exposure to risk.

The enforcement mechanism also requires further discussion. Some jurisdictions are reluctant to allowing enforcement action within their boundaries by others. However, steps can be taken, by adoption of a separate SCWMA administrative enforcement ordinance that could in turn be adopted by individual members, that would allow member jurisdictions to conduct their own enforcement activities on a regional ban.



# Single Use Carryout Bags Ban

# Project Update

- All 10 member jurisdictions have said they wish the project to move forward.
- Agency has held 9 “Stakeholder Meetings” to explain the project and get public input. Input has been overwhelmingly positive.
- Based on public comments, and using other jurisdictions’ successful efforts as a model, a “Draft Ordinance” has been created. It is presented today for review and comment.



# Brief Ordinance Description

- Involves single-use bags at point of sale.
- Ban on plastic.
- Fee on paper, \$.10 per bag initially, money goes to merchant.
- Covers all retail establishments.
- NOT restaurants.
- NOT produce or meat bags.

# Method of Ordinance

- Regional, by SCWMA
  - Consistent across boundaries (supported by grocers)
  - SCWMA bears expense and defends challenges
  - Jurisdictions relinquish control
- Model ordinance, individual jurisdictions adopt
  - Jurisdictions bear expense and risk
  - Consistency between jurisdictions may suffer
- Draft ordinance will serve either method.

# Method Issue

- Some members hesitant to give up control; favor “Model “ method
- Some members cannot afford expense or risk; favor “Regional” method
- SCWMA would like resolution in order to avoid project expense if consensus cannot be reached

# Enforcement

- SCWMA would have enforcement responsibility under Regional ordinance
- Some jurisdictions do not wish to give up enforcement ability within their boundaries
- Adopting an agency “Administrative Enforcement” ordinance that jurisdictions could then adopt themselves would allow them to do enforcement within their boundaries.

# Follow-up contacts:

- [henry.mikus@sonoma-county.org](mailto:henry.mikus@sonoma-county.org)
- 707-565-3788
- [patrick.carter@sonoma-county.org](mailto:patrick.carter@sonoma-county.org)
- 707-565-3687

# SONOMA COUNTY WASTE MANAGEMENT AGENCY

## ORDINANCE NO. 2012- 1

### AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY ESTABLISHING A WASTE REDUCTION PROGRAM FOR CARRYOUT BAGS

### THE BOARD OF DIRECTORS OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY DOES ORDAIN AS FOLLOWS:

#### SECTION 1.

#### **“GENERAL PROVISIONS**

##### **Title.**

This Ordinance is known and may be cited as the Waste Reduction Program for Carryout Bags.

##### **Purpose and Intent.**

It is the intent of the Sonoma County Waste Management Agency (“Agency”), a ten member joint powers agency established pursuant to California Government Code Section 6500, in adopting this Ordinance to exercise the members’ common powers and pursuant to Section 14 of the Joint Powers Agreement, to adopt regulations promoting a uniform program for reducing waste by decreasing the use of single use carryout bags.

##### **Defined Terms and Phrases.**

For the purposes of this Ordinance, the words, terms and phrases as defined herein shall be construed as hereinafter set forth, unless it is apparent from the context that a different meaning is intended:

- A. “Customer” means any Person obtaining goods from a Retail Establishment.
- B. “Nonprofit Charitable Reuser” means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- C. “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.

- D. "Prepared Food" means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. Prepared Food does not include any raw or uncooked meat product.
- E. "Recycled Paper Bag" means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) Post-consumer Recycled Material; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of Post-consumer Recycled content.
- F. "Post-consumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post-consumer Recycled Material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- G. "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- H. "Retail Establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the Customer; and is located within or doing business within the geographical limits of the County of Sonoma, including the nine incorporated cities and town. Retail Establishment does not include Public Eating Establishments or Nonprofit Charitable Reusers.
- I. "Reusable Bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A Reusable Bag provided by a Retail Establishment shall be designed and manufactured to withstand repeated uses over a period of time; made from a material that can be cleaned and disinfected; and shall not contain lead, cadmium, or any other heavy metal in toxic amounts.
- J. "Single-Use Carryout Bag" means a bag, other than a Reusable Bag, provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-Use Carryout Bags do not include bags without handles provided to the Customer (1) to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or

contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.

### **Single-Use Carryout Bags.**

- A. On and after July 1, 2013, no Retail Establishment shall provide a Single-Use Carryout Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Ordinance.
- B. On and after July 1, 2013, a Retail Establishment may make available for sale to a Customer a Recycled Paper Bag for a minimum charge of ten cents (\$0.10).
- C. On and after July 1, 2014, a Retail Establishment may make available for sale to a Customer a Recycled Paper Bag for a minimum charge of twenty-five cents (\$0.25).
- D. Notwithstanding this Section, no Retail Establishment may make available for sale a Recycled Paper Bag unless the amount of the sale of the Recycled Paper Bag is separately itemized on the sales receipt.

### **Recordkeeping and Inspection.**

Every Retail Establishment shall keep complete and accurate record or documents of the purchase and sale of any Recycled Paper Bag by the Retail Establishment, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the Agency during regular business hours by any Agency employee or contractor authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Retail Establishment address. The provision of false information including incomplete records or documents to the Agency shall be a violation of this Ordinance.

### **Enforcement.**

The Executive Director of the Agency, or his or her designee, shall have primary responsibility for enforcement of this Ordinance. The Executive Director is authorized to make all necessary and reasonable rules and regulations with respect to the enforcement of this Ordinance. All such rules and regulations shall be consistent with the provisions of this Ordinance.

Anyone violating or failing to comply with any provision of this Ordinance shall be guilty of an infraction. The Agency may seek legal, injunctive, administrative or other equitable relief to enforce this Ordinance. The remedies and penalties provided in this Section are cumulative and not exclusive and nothing in this Section shall preclude the Agency from pursuing any other remedies provided by



law. In addition to any relief available to the Agency, the Agency shall be entitled to recover reasonable attorneys' fees and costs incurred in the enforcement of this Ordinance.

**Penalties.**

Violations of this Ordinance shall be punishable as follows:

First Violation: \$100

Second Violation within one year of the First Violation: \$200

Third and subsequent Violation(s) within one year of the First Violation: \$500

Each violation of this Ordinance or each day a violation exists shall be considered a separate offense.

**Severance.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or in any manner in conflict with the laws of the United States or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors of the Sonoma County Waste Management Agency hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or in any manner in conflict with the laws of the United States or the State of California.

SECTION 2. A summary of this Ordinance shall be printed and published twice in the Santa Rosa Press Democrat, a newspaper of general circulation, printed and published in the City of Santa Rosa, County of Sonoma.

SECTION 3. This Ordinance shall be effective on July 1, 2013. A summary of this Ordinance shall, within fifteen (15) days after passage, be published with the names of the Directors voting for and against it.

**INTRODUCED** at a regular meeting of the Board of Directors of the Sonoma County Waste Management Agency on the \_\_\_\_ day of \_\_\_\_\_, 2012, and

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES: Directors: \_\_\_\_\_

NOES: Directors: \_\_\_\_\_

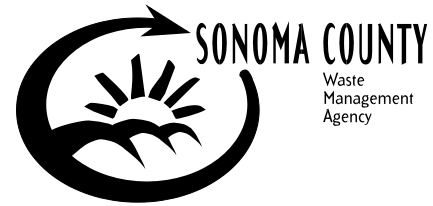
ABSENT: Directors: \_\_\_\_\_

ABSTAIN: Directors: \_\_\_\_\_

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
AGENCY CLERK



**To:** Sonoma County Waste Management Agency Board Members

**From:** Henry Mikus, Executive Director

**Subject:** June 20, 2012 Agenda Notes

**Please note that two agenda items, nos. 5 & 6, will require a “Unanimous Vote”.**

### **Consent Calendar**

These items include routine financial and administrative items and **staff recommends that they be approved en masse by a single vote.** Any Board member may remove an item from the consent calendar for further discussion or a separate vote by bringing it to the attention of the Chair.

- 4.1 Minutes of the May 16, 2012 Board meeting: regular approval.
- 4.2 MCR Container Expenditure: During our outreach conversations with commercial organizations on recycling, the need for suitable containers has been identified. We have developed a comprehensive list of containers desired. The Board had reserved approximately \$100,000 of the total grant amount for the mandatory commercial recycling education project; this would be a purchase of approximately \$17,000. The list of recipients has approximately 60 organizations, and includes about a half-dozen multi-family complexes and the regional library system.
- 4.3 Eighth Amendment to Petaluma HHW Services Agreement: The agreement between the Agency and the City of Petaluma for them to pay us the tip fee surcharge on waste they have chosen to out-haul had typically been renewed on an annual basis. It was presented that way at last month's meeting, but at the suggestion of our Petaluma member was pulled, and staff were instructed to revise the term to three years. The agreement is presented again with that three year time frame included in its language.

### **Regular Calendar**

- 5. Compost Operations Contract: This is the follow-up discussion on this item from the most recent Board meeting. Sonoma Compost Company (SCC) is the recommended contractor. It is planned that all our Board members will have been able to report on and solicit input for this very significant contract from our member jurisdictions. SCC met all

requirements through the RFQ process and subsequent contract negotiations. Financially, SCC's proposed cost package had an approximately \$1 million net income advantage compared to the other firm selected for negotiations, Recology. Approval of this contract would settle operations for composting through February 1, 2017. The new agreement contains a termination clause to cover either the possibility we would have to vacate the current site prematurely, or if a new site is finished and available prior to February 1, 2017. Also, pricing would be in place to provide the Agency a "safety net" via a program to outhaul materials in case we must vacate our current site prior to our completion of constructing a new compost site. This item would require a Unanimous Vote.

**Recommended Action: Approve Sonoma Compost Company for a new composting operating contract through February 1, 2017 via a Unanimous Vote.**

6. Oil Program Services Contract: We only received one response to our RFQ solicitation, which was from our current contractor, C2 Alternative Services. The proposal was complete, we have been satisfied with the performance of C2 thus far, and the cost was just slightly higher than current contract pricing. We recommend using C2 for the new contract. **Recommended Action: Approve C2 Alternative Services for a new Oil Program Services contract. The new contract would extend through February 11, 2017. This will require a Unanimous Vote.**
  
7. Spanish Language Outreach Contract: Our current contractor, C2 Alternative Services, was the only respondent to our RFP. Their performance on the current contract has been entirely satisfactory, and their submittal on the new contract was complete. Their pricing will keep the cost for this work within the approved budget for the upcoming fiscal year. We would recommend approving C2 for the new contract which is for two years with possible extensions on mutual agreement. **Recommended Action: Approve C2 Alternative Services for a new Spanish Language Outreach Two-Year Contract with several possible extensions so that the contract could extend through February 2017.**
  
8. Joint Powers Agreement Expiration: Per the Board's request at the April meeting, we have developed a draft agreement which is being presented for its initial review. Since the plan is for us to present the draft agreement to our member jurisdictions for input, we are working on a presentation that would be available to go along with the agreement when we meet with them.
  
9. Carryout Bags Draft Ordinance Report: Per the Board's request, we have developed a "White Paper" for presentation to our member jurisdictions. The paper discusses the relative merits and factors for utilizing either a regional Agency ordinance, or a model ordinance for individual adoption by our members. Frankly, the choice of vehicle for the ordinance is a key consideration, as there is divergent opinion among our members on which route to follow. Some members prefer the model ordinance because they would retain some control, with concerns about the enforcement method a part of this sentiment. However, other members favor the countywide method because their individual expense, and most importantly, their exposure to the risk of litigation, would be minimal. The paper also gives descriptive information about the several provisions contained in the ordinance. Several cities have already scheduled us to speak to their councils, as the Board's desire was for us to make the rounds and be able to discuss the feedback we receive at the

September meeting. Because of calendar considerations, Windsor scheduled us for June 6 (in advance of this June 20 Board meeting) so the Board's Executive Committee reviewed the paper just for that presentation. **Recommended Action: Approve the White Paper for further distribution.**

10. Attachments/Correspondence: There are three items this month presented under "Reports by Staff and Others"
  - 10.2.a Outreach Events Calendar: This is our regular, updated listing of Outreach Events listing events planned for June, July, and August 2012.
  - 10.2.b MCR Project Report: A written report is provided to brief the Board on accomplishments, current activities, and plans for the Mandatory Commercial Recycling outreach project.
  - 10.2.c Extra Oil Grant Expenditures Report: A monthly report has been prepared to document the month's expenditures using the extra oil grant money.
  - 10.2.d Styrofoam Collection at Agency Monthly E-waste Events: An introductory report is presented to provide background information and progress on the potential to accept Styrofoam materials for recycling concurrent with our monthly E-Waste collection events.

#### **Other Topics:**

SWAG: Please note that there is no spot in the agenda for the monthly SWAG update report. SWAG is taking a multiple month break from its regular meeting schedule. SWAG has not met since our last Agency Board meeting, so there is nothing to report on. SWAG is taking this break in meetings primarily while the County prepares a landfill plan as a start point for future SWAG discussions.

Summer Meeting Schedule: We often cancel the July meeting to be able to take a summer break, and the small number of potential agenda items for meetings across summer certainly would accommodate this. However, there is some sentiment to skip the August meeting rather than July. We have been polling the Board to see what their choice might be. With all members responding, three wish to skip August, one favors skipping July, and the other six expressed having no preference. I would recommend cancelling the August meeting. The time frame for re-circulating the compost site draft EIR is not a factor, as currently the most likely target date for completion is mid-August so that this would not need to be on our agenda until September.

**June 2012 Outreach Events**

<b><u>Day</u></b>	<b><u>Time</u></b>	<b><u>Event</u></b>
1	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
5	4 - 8 PM	Community Toxics Collection, Bodega Bay
6	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
6	3 PM	Sonoma Compost Tour, World Friends Ukraine Delegation
6	5-8:30pm	Wednesday Night Market, Santa Rosa
8	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
8	5:30-8:30pm	Cloverdale Downtown Farmers Market, Cloverdale
11	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
12	4 - 8 PM	Community Toxics Collection, Cloverdale
13	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
13	5-8:30pm	Wednesday Night Market, Santa Rosa
15	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
15	5:30-8:30pm	Cloverdale Downtown Farmers Market, Cloverdale
16	2-9pm	Festival Campesino, Santa Rosa
19	4 - 8 PM	Community Toxics Collection, Santa Rosa, SW
20	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
20	5-8:30pm	Wednesday Night Market, Santa Rosa
20-24	noon-10 PM	Sonoma Marin Fair, Petaluma
21	4 - 5 PM	Compost tour: Northern California Recycling Association
22	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
22	5:30-8:30pm	Cloverdale Downtown Farmers Market, Cloverdale
26	4 - 8 PM	Community Toxics Collection, Petaluma
27	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
27	5-8:30pm	Wednesday Night Market, Santa Rosa
28, 29	10-10:30 AM	Compost Tour: North Valley School
29	8:30-4:30pm	DMV Used Motor Oil and Filter Outreach, Santa Rosa
29	5:30-8:30pm	Cloverdale Downtown Farmers Market, Cloverdale

### **July 2012 Outreach Events**

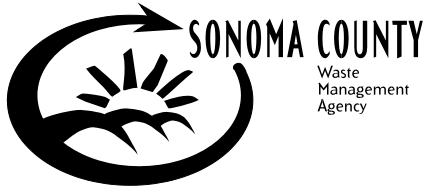
<b><u>Day</u></b>	<b><u>Time</u></b>	<b><u>Event</u></b>
3	4 - 8 PM	Community Toxics Collection, Kenwood
10	4 - 8 PM	Community Toxics Collection, Windsor
11	5 – 8:30 PM	Wednesday Downtown Market, Santa Rosa
17	4 - 8 PM	Community Toxics Collection, Santa Rosa SE
24	4 - 8 PM	Community Toxics Collection, Larkfield
27-31	11 AM – 10 PM	Sonoma County Fair, Santa Rosa
29-31	All day	US Biochar Conference, Rohnert Park, Sonoma Compost Tour
31	4 - 8 PM	Community Toxics Collection, Oakmont

### **August 2012 Outreach Events**

<b><u>Day</u></b>	<b><u>Time</u></b>	<b><u>Event</u></b>
1-12	11 AM – 10 PM	Sonoma County Fair, Santa Rosa
1	All day	US Biochar Conference, Rohnert Park, Sonoma Compost Tour
7	4 - 8 PM	Community Toxics Collection, Rohnert Park
14	4 - 8 PM	Community Toxics Collection, Sebastopol
21	4 - 8 PM	Community Toxics Collection, Guerneville
28	4 - 8 PM	Community Toxics Collection, Santa Rosa NE

### **September 2012 Outreach Events**

<b><u>Day</u></b>	<b><u>Time</u></b>	<b><u>Event</u></b>
4	4 - 8 PM	Community Toxics Collection, Healdsburg
8	2pm-8pm	19th Annual Cloverdale Car and Motorcycle Show, Cloverdale
11	4 - 8 PM	Community Toxics Collection, Santa Rosa NW
11-13	All day	Compost Booth, Heirloom Festival, Santa Rosa
15	1pm-6pm	Mexican Independence Celebration, Wells Fargo Center, Santa Rosa
18	4 - 8 PM	Community Toxics Collection, Sonoma
25	4 - 8 PM	Community Toxics Collection, Santa Rosa SE



**Agenda Item #: 10.2.b**  
**Cost Center: Education**  
**Staff Contact: Mikus/Carter**  
**Agenda Date: 6/20/2012**

**Item: Update Report on MCR Project**

**I. BACKGROUND**

Mandatory Commercial Recycling (MCR) was contemplated originally as a part of The California Air Resources Board (ARB) Scoping Plan for the California Global Warming Solutions Act of 2006 (AB 32, Núñez, Chapter 488, Statutes of 2006). However, California AB 341, passed in late 2011, superseded this initial effort, and placed the MCR program under CalRecycle. MCR regulations are planned to be in effect by July, 2012, and are to apply to commercial entities (including businesses, non-profits, strip malls, government offices & schools) that generate 4 or more cubic yards of trash per week; this also includes multifamily residential complexes with 5 units or more.

Utilizing grant funding, SCWMA has started an MCR outreach educational program that is targeting the groups affected by these regulations to help them achieve compliance with as little difficulty as possible, and prior to the compulsory start date. As single-stream recycling is defined in all the jurisdiction franchise agreements, the Agency's outreach effort targets single-stream recycling where cardboard, paper, bottles and cans are mixed together. The program also is documenting MCR activities, both extant and new, to comply with state reporting requirements.

A status report on MCR project activities to date is presented below.

**II. DISCUSSION**

All mailing have been completed for a total of over 13,300 outgoing letters. We are in week 14 of 17 total weeks. We have received approximately 2,000 postcard responses (with counts still rising), in addition to 156 phone responses and 103 email responses – a response rate of about 17%. To date, we have completed 678 site visits. In addition to visits, and as part of our visits, we have distributed English and Spanish "Recycle Guides," plus two sizes of posters developed for this program, for businesses to use in educating employees/residents. Well over 6,300 such printed materials have been distributed. The large range of types of commercial entities that have participated in our outreach efforts is still quite varied.

**III. FUNDING IMPACT**

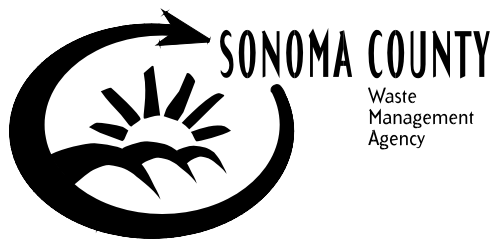
The MCR project is currently operating within budget.

**IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION**

None required.

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA





**Agenda Item #:10.2.c**  
**Cost Center: HHW**  
**Staff Contact: Steinman**  
**Agenda Date: 6/20/2012**

**ITEM: Update Report on Extra Oil Grant Expenditures**

**I. BACKGROUND**

At the January 18, 2012 Agency Board meeting, the Board approved delegating the signing authority to the Agency Executive Director for FY 11-12 oil program related expenses in the amount of \$67,041. All funding for oil related expenses will be provided through the Department of Resources Recycling and Recovery's (CalRecycle) Used Oil Block Grant, Cycle 15 and Oil Payment Program.

**II. DISCUSSION**

Staff is providing this report each month in an effort to update the Board members on how the funds are being spent.

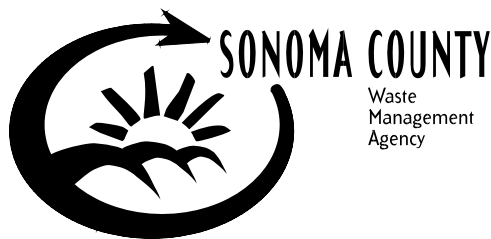
Oil filter recycling containers were purchased as giveaways for the Oil and Filter Pledge Program. The cost for 500 oil recycling containers was \$4,069.92. These specific containers were approved for purchase by CalRecycle and have been purchased by the Agency's Oil Contractor in the past for this specific outreach program. The oil filter recycling containers are distributed at events throughout the County. They are also distributed during outreach to the public at both of the Sonoma County DMV locations. Each recipient is asked to complete a pledge form that verifies that he/she is a Do It Yourself (DIY) oil changer; lives in Sonoma County; and promises to recycle both oil and filters. This outreach effort has received a very positive response from the public.

Bilge absorbent pillows were purchased for use by recreational boaters at Spud Point Marina. The cost for 600 pads was \$1,152.23.

An ad promoting used oil and filter collection was placed in the Bohemian's annual June Green theme issue published on June 13, 2012. The cost for the ad was \$509.

A final update will be provided to the Board at the next Agency Board meeting.

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA



**Agenda Item #:10.2.d**  
**Cost Center: Education**  
**Staff Contact: Chilcott**  
**Agenda Date: 6/20/2012**

**ITEM: Styrofoam Collection at Agency Monthly E-waste Events**

**I. BACKGROUND**

Agency staff is studying an opportunity to provide Styrofoam recycling in conjunction with our monthly E-Waste Collection events. This report is provided to give some history and other pertinent background on Styrofoam and its recycling as a preface to further, more detailed discussion as a regular agenda item at an upcoming Board meeting.

Definition: Styrofoam is a trademark of The Dow Chemical Company for closed-cell extruded Polystyrene foam. Polystyrene (PS) is labeled with the chasing arrow symbol #6.

According to the Department of Resources Recycling and Recovery (CalRecycle), of the 66 million tons of solid waste generated by Californians each year, approximately one-third is packaging. Styrofoam, defined in the 2007 Sonoma County Waste Characterization Study as "Remainder/Composite (R/C) Plastic" includes PS#6 foam drinking cups, produce trays, foam meat and pastry trays, foam packing blocks, packing peanuts, foam plates and bowls. The R/C Plastics category is 1.52% or 5,693.9 tons of the waste stream.

Public inquires about where to drop-off formed Styrofoam are common. To date in 2012, of the 1032 calls received at the Eco-Desk, 19 inquires were documented as residents and businesses wanting to recycle Styrofoam blocks. In addition, staff is in regular correspondence with a Santa Rosa manufacturer who fills a 4 cubic yard dumpster per week with block PS material.

On January 31, 2012, the Agency's Eco-Desk phone received a call from a Windsor resident wanting to dispose of large blocks of Styrofoam. The Eco-Desk informed them that while Styrofoam packaging peanuts can get reused at a number of local mail stores (UPS Stores, etc.), there are no local collection opportunities for Styrofoam. The closest are mail-back or drop-off options in the Bay Area. On April 13, 2012, the same resident called again saying they had discovered a local solution to getting their Styrofoam recycled. By contacting Dart, a manufacturer of Styrofoam products, they had intercepted Dart's Petaluma trucking/distributing company for backhaul to Dart's recycling plant in Lodi, CA. The enthusiastic resident also advocated for the Agency's help in establishing a permanent public recycling opportunity for the material.

As requested by the public and by Board members, since 2000 Agency staff has attempted to assist in establishing a public drop-off for Styrofoam at public and private drop-off recycling centers. Historical barriers to collection included: 1) the material needs to be clean and dry which requires special handling and/or storage under cover; 2) markets for the material (either collected in its expanded version or chemically densified) are weak; and, 3) the proximity of Sonoma County to the Bay Area recycling locations does not justify transportation costs. In addition, local garbage companies have not been interested in collecting Styrofoam material curbside.

Ordinances and extended producer responsibility (EPR) efforts work to restrict the use of PS:

- California cities and counties -- takeout food-service containers made of PS have been a target of bans in the state. Some 36 cities and three communities in California have banned them. For a list of locations, see [http://www.cawrecycles.org/issues/plastic\\_campaign/polystyrene/local](http://www.cawrecycles.org/issues/plastic_campaign/polystyrene/local)
- Local ordinance--Sonoma County (adopted 1989) Use of expanded polystyrene foam food packaging is banned on County premises. Title 19, Section 19.6-1 of municipal code <http://library.municode.com/index.aspx?clientId=16331&stateId=5&stateName=California>
- There are no California laws that ban the use of PS packaging. In 2009, AB 1358 Polystyrene Food Packaging Ban bill died with the close of the legislative session.
- For Extended Producer Responsibility (EPR) efforts, reducing PS use is included in discussions about reducing packaging waste in general.

At the May 16, 2012 Agency Board meeting, the two-year agreement to conduct monthly E-waste collection was awarded to Goodwill Industries of the Redwood Empire (GIRE). A strength in the GIRE proposal was the convenience to the public as GIRE accepts household items, in addition to E-waste at their events. Agency staff noted that one of the unsuccessful proposals, On-Site Electronics Recyclers working with Dart, offered collection of Styrofoam at E-waste events.

According to CalRecycle staff, Dart, with production plants in Lodi and Corona, CA, is the only vendor providing recycling services for food service and non-food service PS in conjunction with E-waste events. In 2010, the company received the Waste Reduction Award Program (WRAP) award from CalRecycle. The EPS Industry Alliance [http://www.epspackaging.org/index.php?option=com\\_content&view=article&id=4&Itemid=12](http://www.epspackaging.org/index.php?option=com_content&view=article&id=4&Itemid=12), a trade organization, sponsors recycling programs for non-food service polystyrene, but would not include food-contact products.

In addition, local solid waste providers, including North Bay Corporation, M&M Services and Industrial Carting were contacted about their level of interest in collection of Styrofoam. None are currently collecting the material and there is little expressed interest.

## II. DISCUSSION

In concept, Styrofoam collection could be added to some or all Agency and GIRE monthly E-waste collection events. The agreement with Dart would be that they would provide, at no cost to the Agency and/or GIRE, plastic collection bags used at the event to collect Styrofoam materials. After the event, GIRE staff would be expected to back haul the material, which would likely tuck in the overhead space of their trucks, to their warehouse. From there, Dart would pick up the material. No Dart staff would be present at events and there would be no charge for this service.

Styrofoam products that could potentially be accepted by Dart are food service and non-food service foam with the #6 chasing arrow symbol. Food service foam cannot be placed in the same bag as non-food service foam. No straws or lids are allowed.

- Most packaging foam: molded forms and shapes. *No flame-retardant material or packaging peanuts.*

- Foam cups and containers, egg cartons and meat trays. Cups do not need to be rinsed, but must be empty, *no food remnants*. See <http://www.calihome4foam.com/> for more information.

Dart claims that the amount of material received at collection events varies with advertising, length of notification, and time of year. Material collected could fill a trailer or just a pick-up truck. Dart operates drop-off locations in California and nationally (for a map, see <http://www.dart.biz/recycle>), school foam lunch tray recycling, community clean up event partnerships, processes foam collected through curbside recycling programs and has an ongoing E-waste event partnership with On-Site. A key focus for Dart has been to work with municipalities, haulers, and MRFs to foster more curbside recycling programs.

Dart sells its recycled polystyrene to manufacturers who reprocess it into products such as foam packaging and peanuts, egg cartons, building insulation, video cassettes, toys, and office desk products. The PS foam Dart recycles at the Corona plant is used by Timbron International Inc. in Stockton, CA, to make interior moldings, and by Nepco Industrial Co. Ltd. to make high-end picture frames at its plant in Chino, CA. See <http://www.dart.biz/recycle> for more information.

#### **Potential advantages of collecting Styrofoam at E-waste collection events:**

- Public convenience, and fulfilling the public's request, for collection of a material currently not recycled in Sonoma County. The benefit is the reduction in landfilled waste.
- Potentially more participants at Agency-sponsored E-waste events. With a proliferation of E-waste events being conducted in Sonoma County by various organizations, collection of a unique material aids with event advertising.

#### **Potential disadvantages of collecting Styrofoam at E-waste collection events:**

- According to CalRecycle, DART is in a push to demonstrate that PS foam can be recycled in order to head off legislation banning foamed food service ware. Contributing to DART's success could undermine the Agency's support for extended producer responsibility efforts and future local ban efforts.
- Additional effort for GIRE staff to handle the material and Agency staff to manage a new agreement.

Thus far, only very preliminary discussions have taken place with GIRE, Agency staff and Dart. Partners seem intrigued by the concept. Agency staff will keep the Agency Board informed as a regular agenda item at an upcoming Board meeting.

Approved by: \_\_\_\_\_  
Henry J. Mikus, Executive Director, SCWMA