

Meeting of the Board of Directors

November 16, 2016 Regular Meeting Begins at 8:30 a.m.

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

Meeting Agenda and Documents

SONOMA COUNTY WASTE MANAGEMENT AGENCY

Meeting of the Board of Directors

November 16, 2016 Regular Meeting begins at 8:30 a.m.

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Note: This packet is 61 pages total



SONOMA COUNTY WASTE MANAGEMENT AGENCY

Meeting of the Board of Directors

November 16, 2016 8:30 a.m.

Estimated Ending Time 11:30 a.m.

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



Item

<u>Action</u>

- 1. Call to Order Regular Meeting
- 2. Agenda Approval
- 3. Public Comments (items not on the agenda)

<u>Consent</u> (w/attachments)

- 4.1 Minutes of October 19, 2016 Special Meeting
- 4.2 Approval of First Amendment to E-Waste Handling Agreement
- 4.3 Approval of the Second Amendment to the Agreement for Compostable Materials Transport Services
- 4.4 Approval of FY 2016-17 First Quarter Financial Report

Regular Calendar

- 5. Discussion and Possible Action on the Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency [Carter](Attachments) All
- Approval of First Amendment to the Agreement for Household Hazardous Waste
 Operations
 [Carter](Attachments)
 HHW

Discussion/Action

7. Attachments/Correspondence:

7.1 Outreach Calendar November and December 2016

- 8. Boardmember Comments
- 9. Staff Comments
- 10. Next SCWMA meeting: December 21, 2016 or January 18, 2017

11. 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



Date: October 26, 2016

To: SCWMA Board Members

From: Patrick Carter, SCWMA Executive Director

Executive Summary Report for the SCWMA Board Special Meeting of October 19, 2016

Item 2, Closed Session, Conference with Legal Counsel, Public Employee Performance Evaluation, Executive Director: No reportable action was taken.

Item 6, Consent Items: Items 6.1 Minutes of the September 21, 2016 Meeting, 6.2 Year End Financial Report, 6.3 Resolution Supporting Proposition 67, 6.4 First Amendment to the Agreement with C2 Alternative Services for Professional Services to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs, and 6.5 Second Amendment to the Agreement with C2 Alternative Services for Spanish Language Outreach Services were approved.

Item 7, Discussion and Possible Action on Organic Material Hauling: SCWMA staff reported that they were notified that the Central Disposal Site will be unavailable for receipt of organic material as of November 1, 2016 and that alternative solutions needed to be explored. An approach to keep the material at a different location at that site was determined to be too expensive, so SCWMA staff requested information regarding the direct hauling of material from the collection routes to the Redwood Landfill compost facility, bypassing the Central Disposal Site. Staff had not received the requested information at the time of the SCWMA meeting. **Staff was directed to develop standard contract language should a change of agreement language be necessary, to assist in the negotiations regarding direct haul of material with the jurisdictions affected by Central's unavailability, and to assist in presentations of information at City Councils and Board of Supervisors, if necessary.**

Item 8, Attachments/Correspondence: The attachments/correspondence included the October-November 2016 Outreach Calendar.

Item 9, Boardmember Comments: The Board requested the draft JPA Agreement be distributed to the Board at least a week prior to the next SCWMA meeting to allow sufficient time for review.



То:	Sonoma County Waste Management Agency Board Members
From:	Patrick Carter, Executive Director
Subject:	November 16, 2016 Board Meeting Agenda Notes

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 October 19, 2016 Meeting: regular acceptance.
- 4.2 <u>Approval of First Amendment to E-Waste Handling Agreement:</u> This amendment extends the term this agreement with the Ratto Group to February 11, 2018. Staff recommends the Board authorize the Executive Director to sign the First Amendment to the Agreement for E-Waste Handling Services.
- 4.3 <u>Approval of the Second Amendment to the Agreement for Compostable Materials Transport</u> <u>Services:</u> This amendment extends the term of this agreement with the Ratto Group to February 11, 2018 and includes provisions to ensure SCWMA direction on where material is to be delivered is adhered to by the Ratto Group. **Staff recommends the Board pass the resolution authorizing the Executive Director to sign the Second Amendment to the Agreement for Compostable Materials Transport Services with the Ratto Group.**
- 4.4 **Approval of FY 2016-17 First Quarter Financial Report:** This FY 2016/17 First Quarter Financial Report details revenues and expenditures resulting from SCWMA programs. **Staff recommends approval.**

Regular Calendar

- 5. Discussion and Possible Action on the Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency: The Draft Amended and Restated Joint Exercise of Powers Agreement is included for review and feedback. A few issues remain to be resolved including whether the composting program should be included as a Core Program, the term of the agreement, and handling of liability to remaining members if members withdraw or the SCWMA dissolves. Staff recommends the Board provide feedback on the attached Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency, directing staff to incorporate that feedback, and directing staff to begin the process of presenting the agreement to City Councils and the Board of Supervisors for approval.
- 6. <u>Approval of First Amendment to the Agreement for Household Hazardous Waste Operations</u>: The agreement with Clean Harbors for Household Hazardous Waste Operations will expire February 11, 2017, if not extended. The First Amendment would extend this agreement to the sooner of June 30,

2019 or the dissolution of the SCWMA. The amendment also includes a new provision for a CPI adjustment for labor costs. **Staff recommends the Board approve the resolution authorizing the Executive Director to sign the First Amendment to the Agreement for Household Hazardous Waste Operations.**

7. <u>Attachments/Correspondence:</u> The Outreach Events Calendar for November and December 2016 is included. No action is required on this item.



Minutes of October 19, 2016 Meeting

The Sonoma County Waste Management Agency met on October 19, 2016, at the City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California.

Present:

City of Cloverdale	Bob Cox	City of Santa	Rosa	Absent
City of Cotati	Absent	City of Sebas	topol	Henry Mikus
City of Healdsburg	Brent Salmi	City of Sonor	na	Absent
City of Petaluma	Dan St. John	County of So	noma	Susan Klassen
City of Rohnert Park	Don Schwartz	Town of Win	dsor	Deb Fudge
Staff Present:				
Executive Director	Patrick Carter	Staff	Felici	a Smith
Counsel	Ethan Walsh		Sally	Evans
Staff	Kristin Thigpen		Sujat	a Shrivastav

1. Call to Order Regular Meeting

The meeting was called to order at 8:38 a.m.

Courtney Scott

2. Closed Session

No reportable action from closed session.

3. Adjourn Closed Session

4. Agenda Approval

The motion for agenda approval was made by Henry Mikus, City of Sebastopol, and seconded by Bob Cox, City of Cloverdale.

Vote Count:

Cloverdale	Aye	Santa Rosa	Absent
Cotati	Absent	Sebastopol	Aye
Healdsburg	Aye	City of Sonoma	Absent
Petaluma	Aye	County of Sonoma	Aye
Rohnert Park	Ауе	Windsor	Aye

AYES -7- NOES -0- ABSENT -3- ABSTAIN -0-Motion passed.

- 5. Public Comments (items not on the agenda) None.
- 6. **Consent** (w/attachments)

October 19, 2016 - SCWMA Meeting Minutes

- 6.1 Minutes of September 21, 2016 Meeting
- 6.2 Year End Financial Report
- 6.3 Resolution Supporting Proposition 67
- 6.4 First Amendment to the Agreement with C2 Alternative Services for Professional Services to Audit Oil Recycling Centers and Coordinate Oil Recycling Publicity and Programs
- 6.5 Second Amendment to the Agreement with C2 Alternative Services for Spanish Language Outreach Services

Board Comments:

None.

Public Comments:

None.

The motion for consent calendar approval was made by Deb Fudge, Town of Windsor, and seconded by Henry Mikus, City of Sebastopol.

Vote Count:

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

AYES -7- NOES -0- ABSENT -3- ABSTAIN -0-Motion passed.

Regular Calendar

7. Discussion and Possible Action on Organic Material Hauling

Patrick Carter, Executive Director, reported Republic Services notified Agency Staff the tipping floor at the Central Disposal Site would no longer available for the collection of green waste due to the construction of their MRF as of November 1, 2016.

Mr. Carter explained the cost proposed by the Ratto Group and Republic Services to consolidate and transport green waste at an alternate location at the Central Disposal Site was higher than staff anticipated; at \$25 per ton, or an additional cost of approximately one million dollars per year.

Mr. Carter stated Agency staff requested The Ratto Group provide the cost information for hauling the green waste currently taken to the Central Disposal Site directly to the Redwood Landfill compost facility. Mr. Carter noted this would affect Rohnert Park, Cotati, Sebastopol, some unincorporated County areas, and a portion of Santa Rosa.

Mr. Carter explained the Agency would not receive revenues for materials that did not pass through the County's transfer stations but believed the Agency would be able to handle the decreased revenue for the current fiscal year without any rate adjustments. Mr. Carter stated that the lost revenue issue could be addressed in next year's budget.

Board Comments:

Deb Fudge, Town of Windsor, inquired if the southern cities would need to negotiate their contract with The Ratto Group individually to haul the green waste directly to the Redwood Landfill compost facility or if the Agency would be helping insure a fair cost.

Mr. Carter replied he believed the responsibility was individually but proposed Agency staff help facilitate the discussion.

Mr. Mikus inquired what the latest Redwood Landfill published price for organics was in comparison to what the Agency charged at the gate.

Mr. Carter replied the Agency pays \$44.50 per ton when delivering green waste to the Redwood Landfill compost facility (\$58.00 per ton to transport and deliver the material). Mr. Carter noted the gate rate at the Central Disposal Site is approximately \$76.00 per ton.

Mr. Mikus inquired if The Ratto Group preferred to talk with the jurisdictions as a group or individually.

Mr. Carter replied The Ratto Group had not indicated their preference but he would work with The Ratto Group either way.

Chair Don Schwartz, City of Rohnert Park, expressed his appreciation for Agency Staff being ready and willing to assist with the necessary changes. Chair Schwartz noted the City of Rohnert Park would like the Agency to do as much of the work possible; develop standard contract language and negotiate on behalf and in coordination with the city and possibly establish economies of scale. Chair Schwartz inquired if there would be any impact on compliance or diversion requirements as a result and Mr. Carter replied he did not foresee any.

Mr. Mikus inquired if there was a timeline as to when discussions and decisions needed to take place.

Mr. Carter replied the change would need to take place soon, as the tipping floor at the Central Disposal Site would no longer be available for the collection of green waste.

Susan Klassen, County of Sonoma, inquired how much green waste was self-hauled to the Central Disposal Site and how that would be handled.

Mr. Carter replied it was approximately 5,000 tons per year and stated conversation took place with The Ratto Group and Republic Services regarding possibly using a debris box which would be taken to the Redwood Landfill compost facility and not impact other operations at the tipping floor.

Ms. Klassen expressed that having to amend the County franchise agreement to change the rate in order to accommodate a direct haul would be a complex matter, as the living wage ordinance would have to be addressed in order to amend the contract.

Public Comment:

None.

October 19, 2016 - SCWMA Meeting Minutes

The motion for approval of the recommended actions to direct Agency Staff to assist the jurisdictions affected by the unavailability at Central for yard waste, to work on standard contract, financial negotiations, and assisting in discussions with jurisdiction councils was made by Bob Cox, City of Cloverdale, and seconded by Brent Salmi, City of Healdsburg.

Vote Count:

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

AYES -7- NOES -0- ABSENT -3- ABSTAIN -0-Motion passed.

8. <u>Attachments/Correspondence</u>:

8.1 Outreach Calendar September-October 2016

9. Board Member Comments:

Chair Schwartz requested a revised JPA be distributed at least a week prior to the November 2016 Agency board meeting.

10. Staff Comments:

Mr. Carter thanked temporary staff Sujata Shrivastav for her help in the Agency office and welcomed back Agency Clerk Sally Evans. Mr. Carter introduced Waste Management Specialist Courtney Scott.

11. Next SCWMA meeting:

The next SCWMA meeting will be held on November 16, 2016.

12. Adjournment:

The meeting adjourned at 8:57 a.m.

Submitted by: Sally Evans



Agenda Item #:4.2Cost Center:HHWStaff Contact:CarterAgenda Date:11/16/2016Approved By:

ITEM: Approval of First Amendment to E-waste Handling Agreement

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends the Board authorize the Executive Director to sign the First Amendment to the Agreement for E-Waste Handling Services.

II. BACKGROUND

The SCWMA manages electronic waste (E-waste), as E-waste is a household hazardous waste. E-waste is collected at all the County Transfer Stations (Annapolis, Central Healdsburg, Guerneville and Sonoma). The E-waste is transported and consolidated at the Central Disposal Site for packing and loading through an E-waste Handling Services contract between the SCWMA and the Ratto Group. The current agreement with the Ratto Group expires February 2017.

III. DISCUSSION

Staff negotiated a First Amendment to the agreement with the Ratto Group to extend the term to February 11, 2018. No other sections were amended. Staff believes the SCWMA is getting good value out of the agreement, as the reimbursement from RCS Refining (which receives this material) offsets the cost of this agreement, and allows this program to continue to be offered without cost to the public.

IV. FUNDING IMPACT

An amendment to the agreement with the Ratto Group has already been included in the current fiscal year budget. There would be no new funding impacts resulting from approving this amendment.

V. ATTACHMENTS

First Amendment to the Agreement with The Ratto Group of Companies, Inc. for Electronic Waste Handling Services Resolution

FIRST AMENDMENT TO AGREEMENT FOR E-WASTE HANDLING SERVICES AT SONOMA COUNTY DISPOSAL SITES

This First Amendment to Agreement for E-Waste Handling Services ("First Amendment") is made as of the 16th day of November, 2016, by the Sonoma County Waste Management Agency ("Agency") and The Ratto Group of Companies, Inc. ("Contractor").

RECITALS

- A. Agency and Contractor entered into that certain Agreement for E-Waste Handling Services (the "Agreement") dated November 18, 2015.
- B. The Agreement contains an expiration date of February 11, 2017. The Agency and Contractor desire to extend the term of the Agreement to expire on February 11, 2018.

AMENDMENT

1. <u>Amendment to Section 3</u>. Section 3 of the Agreement is hereby amended in its entirety to read as follows:

"3. <u>Term of Agreement</u>. The term of this Agreement shall commence on the Effective Date and terminate on February 11, 2018, unless terminated earlier in accordance with the provisions of Article 4 below.

- ///
- ///
- [Remainder of page intentionally left blank]
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- ///
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2. <u>No Other Changes</u>. Except as amended by this First Amendment, all other terms and conditions in the Agreement shall remain unchanged and shall continue on in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement for E-Waste Handling Services on the day and year first above written.

AGENCY:

CONTRACTOR:

SONOMA COUNTY WASTE MANAGEMENT AGENCY The Ratto Group of Companies, Inc.

By:		Ву:
	Patrick Carter, Executive Director	
		lts:
Date:		Date:

APPROVED AS TO FORM:

By:____

Ethan Walsh, Agency Counsel

RESOLUTION NO.: 2016-

DATED: November 16, 2016

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY ("SCWMA") AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN THE FIRST AMENDMENT TO THE AGREEMENT WITH THE RATTO GROUP FOR E-WASTE HANDLING SERVICES

WHEREAS, the SCWMA and The Ratto Group entered into a certain agreement for E-Waste Handling Services on November 18, 2015; and

WHEREAS, the term of the aforementioned agreement will expire on February 11, 2017 unless amended by the SCWMA; and

WHEREAS, the SCWMA desires to extend the term of this agreement to February 11, 2018;

NOW, THEREFORE, BE IT RESOLVED that Board of Directors of the SCWMA approves of this First Amendment to this Agreement with The Ratto Group, extending the term of the agreement to February 11, 2018.

BE IT FURTHER RESOLVED Board authorizes the Executive Director to sign the First Amendment to this Agreement with The Ratto Group.

MEMBERS:

Cloverdale	Cotati	County	Healdsburg	Petaluma
 Rohnert Park	 Santa Rosa	 Sebastopol	 Sonoma	 Windsor
AYES: NOES	5: ABSENT: -	- ABSTAIN:		
	SO C	DRDERED.		
The within instrumer of the original on file				
ATTEST:	DATE:			
Sally Evans				
Clerk of the Sonoma Agency of the State of County of Sonoma	-	-		



Agenda Item #:4.3Cost Center:OrganicsStaff Contact:CarterAgenda Date:11/16/2016Approved By:

ITEM: Approval of the Second Amendment to the Agreement for Compostable Materials Transport Services

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends the Board pass the resolution authorizing the Executive Director to sign the Second Amendment to the Agreement for Compostable Materials Transport Services with the Ratto Group.

II. BACKGROUND

The SCWMA has arrangements for both the hauling and disposal of wood waste and green waste delivered to the County-owned transfer stations (delivery of those materials to the transfer stations is covered by individual franchise agreements). With the closure of the compost facility at the Central Disposal site in October 2015, all compostable material covered by the SCWMA has been disposed of at four out-of-county compost facilities. The agreement with the Ratto Group to transport the compostable materials to those facilities will expire on February 1, 2017, unless extended by mutual agreement.

III. DISCUSSION

While SCWMA staff believes the Ratto Group provides adequate service, staff believes it is necessary to clarify the Ratto Group's obligation to deliver material to locations as directed by SCWMA staff. Therefore the agreement includes an extension of the term to February 11, 2018 and additional language regarding the routing of trucks and the need for communication should a change in routing be necessary.

IV. FUNDING IMPACT

Continued transport of compostable materials is included in the current fiscal year budget. There would be no new funding impacts resulting from approving this amendment.

V. ATTACHMENTS

Second Amendment to the Agreement with The Ratto Group of Companies Compostable Materials Transport Services Resolution

SECOND AMENDMENT TO AGREEMENT FOR COMPOSTABLE MATERIALS TRANSPORT SERVICES

This Second Amendment to Agreement for Compostable Materials Transport Services ("Second Amendment") is made as of the 16th day of November, 2016, by the Sonoma County Waste Management Agency ("Agency") and The Ratto Group of Companies, Inc. ("Contractor").

RECITALS

- A. Agency and Contractor entered into that certain Agreement for Compostable Materials Transport Services (the "Agreement") dated September 17, 2014.
- B. Agency and Contractor amended the Agreement (the "First Amendment") on June 24, 2015.
- C. Agency maintains separate agreements with other parties to ensure disposal capacity, and Contractor's delivery of material to specific sites affects Agency's ability to maintain the aforementioned agreements.
- D. The Agreement contains an expiration date of February 1, 2017. The Agency and Contractor desire to extend the term of the Agreement to expire on February 11, 2018.

AMENDMENT

1. Amendment to Section 3. Section 3.2 of the Agreement is hereby amended in its entirety to read as follows:

3.2 <u>Cooperation with Agency</u>. Contractor shall cooperate with Agency and Agency staff in the performance of all work hereunder. Cooperation shall include, but is not limited to, Contract receipt and adherence to Agency direction regarding delivery of compostable materials to specific disposal sites, communication between Agency and Contractor when deviations from the agreed upon delivery schedule are necessary, and Contractor ensuring its management and dispatch staff are trained to ensure delivery of compostable materials and in the allowed quantities to Agency-specified disposal sites.

2. Amendment to Section 4. Section 4.6 of the Agreement is hereby amended in its entirety to read as follows:

4.6 Payment of Tipping Fees at Disposal Facility. The Agency shall pay all tipping fees due, including all governmental fees, for delivery of compostable materials by Contractor to each Disposal Facility. Agency shall indemnify and hold Contractor harmless from any and all liability to each Disposal facility for tipping fees, government fees. The Agency shall enter into such agreements with each Disposal facility as may be reasonably necessary to facilitate the

performance of this Agreement. Agency shall be responsible to communicate any commitments of material to any or all disposal sites. Contractor shall be responsible to deliver compostable materials to Agency-specified sites, not to exceed the amounts specified by the Agency, unless agreed upon by Agency Contract Manager. Failure for Contractor to adhere to Agency direction of material may result in Liquidated Damages, as specified in Section 12.

3. <u>Amendment to Section 5</u>. Section 5 of the Agreement is hereby amended in its entirety to read as follows:

"5 <u>Term of Agreement</u>. 5.1 The term of this Agreement shall be from Effective Date to February 11, 2018 unless terminated earlier in accordance with the provisions of Section 6 below.

4. Amendment to Section 12. Section 12.2 of the Agreement is hereby amended in its entirety to read as follows:

12.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Compostable Materials Collection and Transportation service is of utmost importance to Agency and that Agency has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, Agency and its members will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which Agency will suffer. Therefore, without prejudice to Agency's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to Agency that reasonably could be anticipated and that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the following amounts:

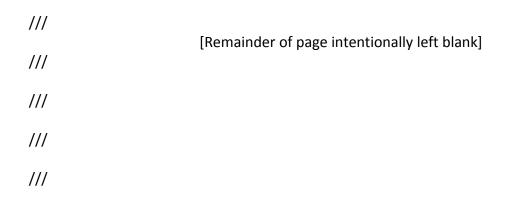
Liquid	Liquidated Damages			
Item		Amount		
Α.	Failure to submit monthly report to Agency in accordance with Article 4.2	\$100 per calendar day of delay		
В.	Failure to notify Agency in writing of any regulatory violation, order or similar notice that could impact Contractor's ability to collect and transport Compostable Materials or potentially affect Agency's liability.	\$300 per calendar day of delay		

C.	Failure to maintain proper covers on transport vehicles	\$500 per occurrence
	Failure to adhere to Agency-specified disposal locations and material quantities	\$100 per occurrence

Agency may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives or investigation of third parties.

Before assessing Liquidated Damages for Items A and B in the Liquidated Damages Table above, Agency Contract Manager shall give Contractor notice of its intention to do so and a reasonable opportunity to cure, not more than ten calendar days (the "LD Notice"). No Liquidated Damages will be imposed if Contractor cures within the time allowed by the LD Notice. Agency may impose Liquidated Damages on Contractor and Contractor will not have the right to cure in the event that Contractor is subject to the imposition of Liquidated Damages hereunder for the same failure to perform more than once in any twelve month period. The LD Notice will include a brief description of the incident(s) and non-performance. The Agency Contract Manager may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. Agency Contract Manager may, within ten (10) calendar days after issuing the notice, request a meeting with Contractor. Agency Contract Manager may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. Agency Contract Manager will provide Contractor with a written explanation of his or her determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 12.4. The decision of Agency Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

Liquidated damages for Item C in the Liquidated Damages Table above shall be imposed by Agency on Contractor for each occurrence. Contractor shall not have a period of time in which to cure Liquidated Damages related to Item C. Contractor shall have the right to appeal the assessment of Liquidated Damages to the Agency Executive Director. The decision of the Agency Executive Director shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.



5. <u>No Other Changes</u>. Except as amended by this Second Amendment, all other terms and conditions in the Agreement and First Amendment shall remain unchanged and shall continue on in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the Agreement for Compostable Materials Hauling Services on the day and year first above written.

AGENCY:	CONTRACTOR:
SONOMA COUNTY WASTE MANAGEMENT AGENCY	The Ratto Group of Companies, Inc.
By: Patrick Carter, Executive Director	By: Its:
Date:	Date:
APPROVED AS TO FORM:	

By:____

Ethan Walsh, Agency Counsel

RESOLUTION NO.: 2016-

DATED: November 16, 2016

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY ("SCWMA") AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN THE SECOND AMENDMENT TO THE AGREEMENT WITH THE RATTO GROUP FOR COMPOSTABLE MATERIALS TRANSPORT SERVICES.

WHEREAS, the SCWMA and The Ratto Group entered into a certain agreement on September 17, 2014 for The Ratto Group to transport compostable materials on behalf of the SCWMA; and

WHEREAS, the term of the aforementioned agreement will expire on February 11, 2017 unless amended by the SCWMA; and

WHEREAS, the SCWMA desires to extend the term of the agreement to February 11, 2018;

NOW, THEREFORE, BE IT RESOLVED that Board of Directors of the SCWMA approves of this Second Amendment to this Agreement with The Ratto Group, extending the term of the agreement to February 11, 2018.

BE IT FURTHER RESOLVED Board authorizes the Executive Director to sign the Second Amendment to this Agreement with The Ratto Group.

MEMBERS:

Cloverdale	Cotati	County	Healdsburg	Petaluma		
Rohnert Park	Santa Rosa	Sebastopol	Sonoma	Windsor		
AYES: NOE	AYES: NOES: ABSENT: ABSTAIN:					
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ATTEST:	DATE:					
	County Waste Mana of California in and fo	-				

County of Sonoma



Agenda Item #:4.4Cost Center:AllStaff Contact:CarterAgenda Date:11/16/2016Approved by:

ITEM: Approval of FY 2016-17 First Quarter Financial Report

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends approving the FY 2016-17 First Quarter Financial Report on the Consent Calendar.

II. BACKGROUND

In accordance with the requirement in the joint powers agreement the Sonoma County Waste Management Agency (SCWMA) staff make quarterly reports to the Board of Directors of Agency operations and of all receipts to and disbursements from the SCWMA, this report covers the First Quarter of FY 16-17 (July 1, 2016 - September 30, 2016).

The FY 2016-17 First Quarter Financial Report contains the actual amounts spent or received to date at the end of the quarter. It is important to not draw many conclusions in the year-to-date figures, as very little of the fiscal year has passed. Second and Third Quarter Reports provide a better picture of the SCWMA's financial position.

III. DISCUSSION

Relatively few revenues have been realized in FY 2016/17 First Quarter. The SCWMA has received one payment of the SCWMA surcharge, no interest allocations, and few other income sources. Tipping fee/surcharge payments from the County have been received and will appear on the Second Quarter Financial Report.

With regard to expenditures, all accounts are currently projected to stay within budget limits, with the exception of Other Professional Services. Other Professional expenditures represent uses of the City County Payment Program grant, which will be offset by grant revenues in the State Other Funding account. Staff will track the budget appropriations in this account and will request budget adjustments in the future if necessary.

IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends approving the FY 2016-17 First Quarter Financial Report on the Consent Calendar.

V. ATTACHMENTS

FY 2016-17 First Quarter Financial Report

2300 County Center Drive, Suite B 100, Santa Rosa, California 95403 Phone: 707.565.2231 Fax: 707.565.3701

Expenditu		Fina	l Budget	A	ctual YTD		Remaining Balance	% Remaining
Revenue		~	200.044	~		4		400.000/
42358	State Other Funding	\$	289,341	\$		\$	289,341	100.00%
42601	County of Sonoma	\$	6,526,050	\$	•	\$	6,376,104	97.70%
44002	Interest on Pooled Cash	\$	30,323	\$		\$	30,323	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	• • •		8,995	0.00%
46029	Donations/Contributions	\$	249,950	\$		\$	242,210	96.90%
46200	PY Revenue - Miscellaneous	\$	-	\$		\$	(3,746)	0.00%
47101	Transfers In - within a Fund	\$	96,938	\$	-	\$	96,938	100.00%
All Reven	ues	\$	7,192,602	\$	152,438	\$	7,040,164	97.88%
Expenditu	ire Accounts							
51041	Insurance - Liability	\$	12,000	\$	10,623	\$	1,377	11.48%
51201	Administration Services	\$	827,544	\$		\$	775,384	93.70%
51205	Advertising/Marketing Svc	\$	14,000	\$		\$	14,000	100.00%
51206	Accounting/Auditing Services	\$	22,000	\$		\$	22,000	100.00%
51200	Client Accounting Services	\$	13,138	\$		\$	13,138	100.00%
51207	County Counsel - Legal Advice	\$	306,000	\$		\$	302,211	98.76%
51211	Outside Counsel - Legal Advice	\$	-	\$		\$	(4,554)	0.00%
51212	Engineer Services	\$	12,500	\$		\$	12,500	100.00%
51215	Training Services	\$ \$	2,000	ې \$		ې \$	2,000	100.00%
	Other Professional Services	ې \$	160,196	ې \$		ې \$		
51249				-		•	128,254	80.06%
51401	Rents and Leases - Equipment	\$ ¢	3,000	\$		\$	2,347	78.22%
51421	Rents and Leases - Bldg/Land	\$ ¢	15,025	\$		\$	10,517	70.00%
51801	Other Services	\$	-	\$,	\$	(5,760)	0.00%
51803	Other Contract Services	\$	5,931,214	\$	•	\$	5,331,723	89.89%
51901	Telecommunication Data Lines	\$	6,720	\$		\$	5,982	89.01%
51902	Telecommunication Usage	\$	950	\$		\$	811	85.38%
51904	ISD - Baseline Services	\$	20,141	\$		\$	16,481	81.83%
51906	ISD - Supplemental Projects	\$	-	\$		\$	(540)	0.00%
51909	Telecommunication Wireless Svc	\$	1,800	\$		\$	1,514	84.10%
51911	Mail Services	\$	1,600	\$		\$	1,445	90.33%
51915	ISD - Reprographics Services	\$	500	\$		\$	500	100.00%
51916	County Services Chgs	\$	19,880	\$		\$	19,880	100.00%
51919	EFS Charges	\$	4,000	\$		\$	4,000	100.00%
51922	County Car Expense	\$	3,000	\$		\$	2,985	99.51%
52091	Memberships/Certifications	\$	10,350	\$	9,150	\$	1,200	11.59%
52111	Office Supplies	\$	30,230	\$	1,504	\$	28,726	95.03%
52162	Special Department Expense	\$	50,000	\$	-	\$	50,000	100.00%
52163	Professional Development	\$	2,500	\$	-	\$	2,500	100.00%
57011	Transfers Out - within a Fund	\$	96 <i>,</i> 938	\$	-	\$	96,938	100.00%
57015	Transfers Out - All Others	\$	2,724	\$	-	\$	2,724	100.00%
All Expen	ditures	\$	7,569,950	\$	729,667	\$	6,840,283	90.36%
All Expen	ditures	\$	7,569,950	\$	729,667	\$	6,840,283	
All Reven		\$	7,192,602	\$			7,040,164	

lı	ndividual SCWMA Funds	Fir	nal Budget	Ac	tual YTD		emaining Balance	% Remaining
78101	SCWMA - Wood Waste							-
Revenue A	Accounts							
42601	County of Sonoma	\$	290,000	\$	-	\$	290,000	100.00%
44002	Interest on Pooled Cash	\$	190	\$	-	\$	190	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	(667)	\$	667	0.00%
All Revenu	Jes	\$	290,190	\$	(667)	\$	290,857	100.23%
Expenditu	re Accounts							
51041	Insurance - Liability	\$	1,080	\$	956	\$	124	11.48%
51201	Administration Services	\$	20,147	\$	551	\$	19,596	97.27%
51206	Accounting/Auditing Services	\$	500	\$	-	\$	500	100.00%
51207	Client Accounting Services	\$	1,182	\$	-	\$	1,182	100.00%
51803	Other Contract Services	\$	260,000	\$	29,198	\$	230,802	88.77%
51904	ISD - Baseline Services	\$	3,531	\$	633	\$	2,898	82.07%
51916	County Services Chgs	\$	1,789	\$	-	\$	1,789	100.00%
57011	Transfers Out - within a Fund	\$	1,506	\$	-	\$	1,506	100.00%
57015	Transfers Out - All Others	\$	454	\$	-	\$	454	100.00%
All Expend	litures	\$	290,189	\$	31,338	\$	258,851	89.20%
All Expend All Revend Net Cost		\$ \$ \$	290,189 290,190 (1)	\$ \$ \$	31,338 (667) 32,005	\$ \$ \$	258,851 290,857 (32,006)	

I	ndividual SCWMA Funds	F	inal Budget	A	ctual YTD	I	Remaining Balance	% Remaining
78102	SCWMA - Yard Debris							
Revenue	Accounts							
42601	County of Sonoma	\$	4,524,000	\$	-	\$	4,524,000	100.00%
44002	Interest on Pooled Cash	\$	4,906	\$	-	\$	4,906	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	(183)	\$	183	0.00%
All Reven	ues	\$	4,528,906	\$	(183)	\$	4,529,089	100.00%
Expenditu	ire Accounts							
51041	Insurance - Liability	\$	1,800	\$	1,593	\$	207	11.48%
51201	Administration Services	\$	127,342	\$	7,158	\$	120,184	94.38%
51206	Accounting/Auditing Services	\$	6,000	\$	-	\$	6,000	100.00%
51207	Client Accounting Services	\$	1,971	\$	-	\$	1,971	100.00%
51211	County Counsel - Legal Advice	\$	5,000	\$	323	\$	4,678	93.55%
51801	Other Services	\$	-	\$	3,981	\$	(3,981)	0.00%
51803	Other Contract Services	\$	4,367,500	\$	550,110	\$	3,817,390	87.40%
51901	Telecommunication Data Lines	\$	960	\$	233	\$	727	75.71%
51904	ISD - Baseline Services	\$	6,017	\$	1,055	\$	4,962	82.46%
51911	Mail Services	\$	600	\$	-	\$	600	100.00%
51916	County Services Chgs	\$	2,982	\$	-	\$	2,982	100.00%
52111	Office Supplies	\$	1,600	\$	-	\$	1,600	100.00%
57011	Transfers Out - within a Fund	\$	6,226	\$	-	\$	6,226	100.00%
57015	Transfers Out - All Others	\$	908	\$	-	\$	908	100.00%
All Expen	ditures	\$	4,528,906	\$	564,453	\$	3,964,453	87.54%
All Expen All Reven Net Cost		\$ \$ \$	4,528,906 4,528,906 -	\$ \$ \$	564,453 (183) 564,636	\$	3,964,453 4,529,089 (564,636)	

l	ndividual SCWMA Funds	Fir	nal Budget	Ac	tual YTD		emaining Balance	% Remaining
78103	SCWMA - Organics Reserve							_
Revenue A	Accounts							
44002	Interest on Pooled Cash	\$	14,035	\$	-	\$	14,035	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	(4,129)	\$	4,129	0.00%
47101	Transfers In - within a Fund	\$	7,732	\$	-	\$	7,732	100.00%
All Reven	Jes	\$	21,767	\$	(4,129)	\$	25,896	118.97%
Expenditu	re Accounts							
51201	Administration Services	\$	62,652	\$	-	\$	62,652	100.00%
51206	Accounting/Auditing Services	\$	2,500	\$	-	\$	2,500	100.00%
51211	County Counsel - Legal Advice	\$	250,000	\$	32	\$	249,968	99.99%
51213	Engineer Services	\$	12,500	\$	-	\$	12,500	100.00%
51803	Other Contract Services	\$	50 <i>,</i> 000	\$	5 <i>,</i> 922	\$	44,078	88.16%
52111	Office Supplies	\$	1,000	\$	-	\$	1,000	100.00%
52162	Special Department Expense	\$	50,000	\$	-	\$	50,000	100.00%
All Expend	ditures	\$	428,652	\$	5,954	\$	422,698	98.61%
All Expend All Revend Net Cost		\$ \$ \$	428,652 21,767 406,885	\$ \$ \$	5,954 (4,129) 10,083	\$ \$ \$	422,698 25,896 396,802	

I	ndividual SCWMA Funds	F	inal Budget	A	ctual YTD	I	Remaining Balance	% Remaining
78104	SCWMA - HHW							•
Revenue /	Accounts							
42358	State Other Funding	\$	149,341	\$	-	\$	149,341	100.00%
42601	County of Sonoma	\$	1,335,399	\$	116,958	\$	1,218,441	91.24%
44002	Interest on Pooled Cash	\$		\$	-	\$	1,208	100.00%
44050	Unrealized Gains and Losses	\$		\$	(1,524)	\$	1,524	0.00%
46029	Donations/Contributions	\$	221,141	\$	7,740	\$	213,401	96.50%
46200	PY Revenue - Miscellaneous	\$	-	\$	6,230	\$	(6,230)	0.00%
All Reven	Jes	\$	1,707,089	\$	129,405	\$	1,577,684	92.42%
•	re Accounts							
51041	Insurance - Liability	\$		\$		\$	634	11.48%
51201	Administration Services	\$		\$	16,808	\$	223,247	93.00%
51205	Advertising/Marketing Svc	\$	12,000	\$	-	\$	12,000	100.00%
51206	Accounting/Auditing Services	\$		\$	-	\$	7,500	100.00%
51207	Client Accounting Services	\$	6,043	\$	-	\$	6,043	100.00%
51211	County Counsel - Legal Advice	\$		\$	43	\$	9 <i>,</i> 957	99.57%
51225	Training Services	\$	500	\$	-	\$	500	100.00%
51249	Other Professional Services	\$		\$	2,045	\$	130,151	98.45%
51421	Rents and Leases - Bldg/Land	\$	7,000	\$	1,225	\$	5,775	82.50%
51803	Other Contract Services	\$	1,181,000	\$	8,941	\$	1,172,059	99.24%
51901	Telecommunication Data Lines	\$		\$	117	\$	1,803	93.93%
51902	Telecommunication Usage	\$	200	\$	13	\$	187	93.63%
51904	ISD - Baseline Services	\$	3,531	\$	633	\$	2,898	82.07%
51911	Mail Services	\$	-	\$	97	\$	(97)	0.00%
51915	ISD - Reprographics Services	\$	500	\$	-	\$	500	100.00%
51916	County Services Chgs	\$	9,145	\$	-	\$	9,145	100.00%

Ir	dividual SCWMA Funds	Fi	nal Budget	A	ctual YTD	F	Remaining Balance	% Remaining
52091	Memberships/Certifications	\$	10,200	\$	9,000	\$	1,200	11.76%
52111	Office Supplies	\$	2,000	\$	-	\$		100.00%
57011	Transfers Out - within a Fund	\$, 77,325	\$	-	\$	77,325	100.00%
57015	Transfers Out - All Others	\$	454	\$	-	\$	454	100.00%
All Expend			1,707,089	\$	43,807	-	1,663,282	97.43%
All Expend All Revenu		-	1,707,089	-	43,807	-	1,663,282	
Net Cost	es	\$ \$	1,707,089 -		129,405 (85,597)		1,577,684 85,597	
78105 Revenue A	SCWMA - HHW Facility Reserve							
44002	Interest on Pooled Cash	\$	344	\$	-	\$	344	100.00%
44050	Unrealized Gains and Losses	\$ \$	-	\$	(96)		96	0.00%
All Revenu	es	\$	344	\$	(96)	•	440	127.90%
All Expend	itures							
All Revenu	es	\$	344	\$	(96)	\$	440	
Net Cost		\$	(344)	\$	96	\$	(440)	
78106 Revenue A	SCWMA - HHW Operating							
44002	Interest on Pooled Cash	\$	8,247	\$	-	\$	8,247	100.00%
44050	Unrealized Gains and Losses		-	\$	(1,643)		1,643	0.00%
47101	Transfers In - within a Fund	\$ \$	77,325	\$	-	\$	77,325	100.00%
All Revenu	es	\$	85,572	\$	(1,643)	\$	87,215	101.92%
All Expend	itures							
All Revenu Net Cost	es	\$ \$	85,572 (85,572)	\$ \$	(1,643) 1,643	\$ \$	87,215 (87,215)	

	Individual SCWMA Funds	Fir	nal Budget	Ac	tual YTD	Remaining Balance		% Remaining
78107	SCWMA - Education							
Revenue	Accounts							
42358	State Other Funding	\$	140,000	\$	-	\$	140,000	100.00%
42601	County of Sonoma	\$	333 <i>,</i> 850	\$	29,239	\$	304,611	91.24%
44002	Interest on Pooled Cash	\$	245	\$	-	\$	245	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	(421)	\$	421	0.00%
46029	Donations/Contributions	\$	25,535	\$	-	\$	25,535	100.00%
46200	PY Revenue - Miscellaneous	\$	-	\$	(2,484)	\$	2,484	0.00%
All Rever	nues	\$	499,630	\$	26,335	\$	473,295	94.73%
Exnendit	ure Accounts							
51041	Insurance - Liability	\$	2,400	\$	2,125	\$	276	11.48%
51201	Administration Services	\$	289,742	\$	20,352	\$	269,390	92.98%
51201	Advertising/Marketing Svc	\$	2,000	\$		\$	2,000	100.00%
51205	Accounting/Auditing Services	\$	3,000	\$	_	\$	3,000	100.00%
51200	Client Accounting Services	\$	2,628	\$	_	\$	2,628	100.00%
51211	County Counsel - Legal Advice	\$	30,000	\$	3,392	\$	26,608	88.69%
51211	Outside Counsel - Legal Advice	\$	-	\$	1,875	\$	(1,875)	0.00%
51225	Training Services	\$	1,500	\$	_,0,0	\$	1,500	100.00%
51249	Other Professional Services	\$	28,000	\$	29,897	\$	(1,897)	-6.78%
51401	Rents and Leases - Equipment	\$	3,000	\$	653	\$	2,347	78.22%
51421	Rents and Leases - Bldg/Land	\$	8,025	\$	3,283	\$	4,742	59.09%
51801	Other Services	\$	-	\$	1,779	\$	(1,779)	0.00%
51803	Other Contract Services	\$	72,714	\$	5,320	\$	67,394	92.68%
51901	Telecommunication Data Lines	\$	3,840	\$	389	\$	3,451	89.88%
51902	Telecommunication Usage	\$	750	\$	126	\$	624	83.17%
51904	ISD - Baseline Services	\$	3,531	\$	706	\$	2,825	80.01%
51906	ISD - Supplemental Projects	\$	-	\$	540	\$	(540)	0.00%
51909	Telecommunication Wireless	\$	1,800	\$	286	\$	1,514	84.10%
51911	Mail Services		1,000	\$	58	\$	942	94.18%
51916	County Services Chgs	\$ \$	3,976	\$	-	\$	3,976	100.00%
51919	EFS Charges	\$	4,000	\$	-	\$	4,000	100.00%
51922	County Car Expense	\$ \$	3,000	\$	15	\$	2,985	99.51%
52091	Memberships/Certifications	\$	150	\$	150	\$	-	0.00%
52111	Office Supplies	\$	24,630	\$	1,504	\$	23,126	93.90%
52163	Professional Development	\$	2,500	\$	-	\$	2,500	100.00%
57011	Transfers Out - within a Fund	\$	6,990	\$	-	\$	6,990	100.00%
57015	Transfers Out - All Others	\$	454	\$	-	\$, 454	100.00%
All Exper		\$	499,630	\$	72,450	\$	427,180	85.50%
All Exper All Rever		\$ \$	499,630 499,630	\$ \$	72,450 26,335	\$ \$	427,180 473,295	
Net Cost	1405	\$		\$ \$	20,333 46,115	\$	47 <i>3,293</i> (46,115)	

Individual SCWMA Funds		Final Budget		Actual YTD		Remaining Balance		% Remaining
78108	SCWMA - Planning							
Revenue	Accounts							
42601	County of Sonoma	\$	42,801	\$	3,749	\$	39 <i>,</i> 052	91.24%
44002	Interest on Pooled Cash	\$	21	\$	-	\$	21	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	(88)	\$	88	0.00%
46029	Donations/Contributions	\$	3,274	\$	-	\$	3,274	100.00%
All Rever	iues	\$	46,096	\$	3,661	\$	42,435	92.06%
Expendit	ure Accounts							
51041	Insurance - Liability	\$	1,200	\$	1,062	\$	138	11.48%
51201	Administration Services	\$	30,718	\$	2,593	\$	28,125	91.56%
51206	Accounting/Auditing Services	\$	1,000	\$	-	\$	1,000	100.00%
51207	Client Accounting Services	\$	1,314	\$	-	\$	1,314	100.00%
51211	County Counsel - Legal Advice	\$	1,000	\$	-	\$	1,000	100.00%
51904	ISD - Baseline Services	\$	3,531	\$	633	\$	2,898	82.07%
51916	County Services Chgs	\$	1,988	\$	-	\$	1,988	100.00%
57011	Transfers Out - within a Fund	\$	4,891	\$	-	\$	4,891	100.00%
57015	Transfers Out - All Others	\$	454	\$	-	\$	454	100.00%
All Exper	ditures	\$	46,096	\$	4,288	\$	41,808	90.70%
All Exper	ditures	\$	46,096	\$	4,288	\$	41,808	
All Rever		\$	46,096	\$	3,661	\$	42,435	
Net Cost		\$	-	\$	627	\$	(627)	

I	ndividual SCWMA Funds	Fina	al Budget	Ac	tual YTD	emaining Balance	% Remaining
78109	SCWMA - Contingency Fund						U
Revenue /	Accounts						
44002	Interest on Pooled Cash	\$	1,127	\$	-	\$ 1,127	100.00%
44050	Unrealized Gains and Losses	\$	-	\$	(244)	\$ 244	0.00%
47101	Transfers In - within a Fund	\$	11,881	\$	-	\$ 11,881	100.00%
All Reven	ues	\$	13,008	\$	(244)	\$ 13,252	101.88%
Expenditu	re Accounts						
51201	Administration Services	\$	56,888	\$	4,698	\$ 52 <i>,</i> 190	91.74%
51206	Accounting/Auditing Services	\$	1,500	\$	-	\$ 1,500	100.00%
51211	County Counsel - Legal Advice	\$	10,000	\$	-	\$ 10,000	100.00%
51212	Outside Counsel - Legal Advice	\$	-	\$	2,679	\$ (2 <i>,</i> 679)	0.00%
52111	Office Supplies	\$	1,000	\$	-	\$ 1,000	100.00%
All Expend	ditures	\$	69,388	\$	7,377	\$ 62,011	89.37%
All Expend	ditures	\$	69 <i>,</i> 388	\$	7,377	\$ 62,011	
All Reven	ues	\$	13,008	\$	(244)	\$ 13,252	
Net Cost		\$	56,380	\$	7,621	\$ 48,759	

Fund Balances

	FY 15/1	6	FY 16/17 First			Fund Balance		
Fund	Ending		Quarter Fund			Goal		
	Balance	é		Balance	Goal			
Wood Waste	\$ 194,8	36	\$	162,831	\$	43,235		
Yard Debris	\$ 1,373,2	29	\$	808,593	\$	678,266		
Organics Reserve	\$ 2,166,3	19 9	\$	2,156,236	\$	-		
ннพ	\$ 745,4	28	\$	831,026	\$	244,397		
HHW Closure Reserve	\$ 69,5	83	\$	69,487	\$	68,000		
HHW Operating Reserve	\$ 1,662,7	41 5	\$	1,661,098	\$	600,000		
Education	\$ 294,4	10	\$	248,295	\$	49,219		
Planning	\$ 30,7	61	\$	30,134	\$	4,075		
Contingency Reserve	\$ 279,2	29	\$	271,608	\$	133,234		



Agenda Item #:5Cost Center:AllStaff Contact:CarterAgenda Date:11/16/2016Approved By:

ITEM: Discussion and Possible Action on the Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends the Board provide feedback on the attached Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency, directing staff to incorporate that feedback, and directing staff to begin the process of presenting the agreement to City Councils and the Board of Supervisors for approval.

II. BACKGROUND

The Board of Directors has discussed the future of Agency programs during many Agency meetings over the past several years. As of July 12, 2016, all SCWMA member jurisdictions had passed a resolution extending the existing JPA agreement by one year to February 2018. At the July 20, 2016 meeting, following a facilitated discussion by R3 Consulting Group, the Board of Directors directed staff to discuss a draft Amended and Restated Joint Exercise of Powers agreement with the City Attorneys and County Counsel, and return at a future SCWMA meeting with an agreement in final form.

III. DISCUSSION

Agency Counsel has prepared a memo (attached) detailing the efforts to bring the draft agreement to this stage and highlighting the major points of the draft. Though most of the memo details the rationale behind the language in the agreement, staff is seeking direction on three issues before finalizing the agreement: 1) whether the composting program should be considered a Core Program since Core Program can only be added or removed through JPA amendment, 2) whether the Board supports an indefinite term with a 10 year check-in, and 3) the handling liability to members in the event of member withdrawal and/or SCWMA dissolution.

Regarding issue 1), the existing compost program is a Core Program and that it is appropriate to be listed as such in the agreement and that the potential future organics program would be subject to a subsequent agreement if it is handled by the SCWMA. Staff believes the current language allows for flexibility and would not require an agreement amendment in the scenario that the SCWMA no longer provides transport or disposal for compostable materials.

Regarding issue 2), some attorneys have expressed concern about an indefinite term with a 10 year check-in as it may complicate long term obligations like flow commitments, licenses, or other agreements. This is a policy issue, and many Board members had indicated a preference toward

the concept of this term type at the July 20, 2016 meeting. The other alternative terms are indefinite with no required check-in (though members retain the right to withdraw from the SCWMA), and a 25 year fixed term. Staff believes all term types are feasible, and while an indefinite term would be staff's preference, the addition of a mandatory check-in every ten years would work as long as liability issues related to withdrawal and/or dissolution were adequately addressed in the agreements that created the liabilities.

Issue 3 relates to how the agreement addresses liabilities such as long term flow commitments, lease agreements, or long term agreements in the event that a member or multiple members withdrew from the SCWMA or if the SCWMA were to dissolve. Staff is working with the jurisdiction which raised this concern and hopes to have clarifying language at this meeting.

IV. FUNDING IMPACT

Staff time and legal counsel related to this task are well within budget allocations and are expected to remain so throughout the entire fiscal year.

V. ATTACHMENTS

Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency Memo RE: Draft Amended and Restated Joint Exercise of Powers Agreement

DRAFT—FOR DISCUSSION PURPOSES ONLY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR THE SONOMA COUNTY WASTE MANAGEMENT AGENCY

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is made and entered into as of ("Effective Date"), by and among the County of Sonoma, a political subdivision of the State of California, the City of Cotati, a California municipal corporation, the City of Cloverdale, a California municipal corporation, the City of Healdsburg, a California municipal corporation, the City of Petaluma, a California municipal corporation, the City of Rohnert Park, a California municipal corporation, the City of Santa Rosa, a California municipal corporation, the City of Sebastopol, a California municipal corporation, the City of Sonoma, a California municipal corporation, and the Town of Windsor, a California municipal corporation (collectively "Members" and each individually a "Member").

RECITALS

A. The Members are authorized and empowered to contract with each other for the joint exercise of powers pursuant the Joint Exercise of Powers Act (Government Code Section 6500 *et seq.*) (the "**JPA Act**").

B. The California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000 *et seq.*) (the "Integrated Waste Management Act") requires Members to divert recyclable and recoverable materials from the waste stream and to cooperate to achieve certain waste diversion goals.

C. On or before September 9, 1992, the Members 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 (Wood Waste, Yard Waste, Household Hazardous Waste, and Public Education) (the "**Original Agreement**") to enable the Members to jointly exercise their powers to address issues related to the management of wood waste, yard waste and household hazardous waste and to provide public education related to waste diversion within the Members' jurisdictions.

D. The Original Agreement created a separate public entity known as the Sonoma County Waste Management Agency (the "**Agency**") to implement the purposes of the Original Agreement.

E. On January 24, 1996, the Members entered into that certain First Amendment to Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues (the "**First Amendment**").

F. On March 27, 2014, the Members entered into that certain "Second Amendment to Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues (the "**Second Amendment**").

DRAFT—FOR DISCUSSION PURPOSES ONLY

G. The Members desire to continue to jointly exercise their common powers and authority through the Agency and to amend and restate the terms of Original Agreement as amended by the First Amendment and the Second Amendment, as with respect to the terms and provisions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, the Members hereby agree as follows:

1. **DEFINITIONS**

As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

A. "Agreement" means this Amended and Restated Sonoma County Waste Management Agency Joint Exercise of Powers Agreement.

B. "Agency" shall mean the Sonoma County Waste Management Agency, which is a separate entity created by this Agreement pursuant to the provisions of California Government Code sections 6500 *et seq*.

C. "Board of Directors" or "Board" shall mean the governing body of the Agency as established by Section 6.01 of this Agreement.

D. "Bylaws" shall mean the bylaws adopted by the Board of Directors pursuant to Section 9.05 of this Agreement to govern the day-to-day operations of the Agency.

E. "Director" and "Alternate Director" shall mean a Director or Alternate Director appointed by a Member pursuant to Section 6.02 of this Agreement.

F. "First Amendment" shall have the meaning set forth in Recital E.

G. "Fiscal Year" shall mean that period of 12 months established as the Fiscal Year of the Agency pursuant to Section 9.03 of this Agreement.

H. "Food Waste" shall mean a waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption; and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food facilities as defined in Health and Safety Code section 113789 (such as restaurants), food processing establishments as defined in Health and Safety Code section 111955, grocery stores, institutional cafeterias (such as, prisons, schools and hospitals), and residential food scrap collection. Food waste does not include any material that is required to be handled only pursuant to the California Food and Agricultural Code and regulations adopted pursuant thereto.

I. "Hazardous Waste" shall mean waste as defined in Section 40141 of the Public Resources Code and Section 25117 Health and Safety Code that is, waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following: (i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; (ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

"Household Hazardous Waste" shall mean waste materials determined by the J. California Department of Resources Recycling and Recovery, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be of such a nature that be hazardous they must listed as in state statutes and regulations, toxic/ignitable/corrosive/reactive, or carcinogenic/mutagenic/teratogenic; which is discarded from householders as opposed to businesses.

K. "Integrated Waste Management Act" shall mean the California Integrated Waste Management Act of 1989, set forth at California Public Resources Code Section 40000 *et seq.*, including all laws and regulations supplemental thereto, as they may be amended from time to time.

L "JPA Act" shall mean the Joint Exercise of Powers Act, set forth at California Government Code, sections 6500, *et seq.*, including all laws and regulations supplemental thereto, as they may be amended from time to time.

M. "Member" or "Members" shall mean the eligible agencies as listed in the preamble of this Agreement, above.

N. "Original Agreement" shall have the meaning set forth in Recital C.

O. "Regional Agency" shall mean the designation of the Sonoma County Waste Management Agency as a "Regional Agency" by the California Integrated Waste Management Board in compliance with Public Resources Code Section 40975.

P. "Residential Food Waste" shall mean Food Waste generated by people residing within the jurisdictions of the Members that own or occupy single family homes or residential structures with no more than four separate residential living units.

Q. "Second Amendment" shall have the meaning set forth in Recital F.

R. "Wood Waste" shall mean 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.

S. "Yard Waste" shall mean 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.

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2. PURPOSE

A. <u>Amended and Restated Agreement</u>. The purpose of this Agreement is to modify and amend the Original Agreement with respect to the purposes, membership, governance, administration and operation of the Agency, and to allow the Agency to continue operations for an extended term as set forth herein. The terms and provisions of this Agreement replace the Original Agreement as amended by the First Amendment and the Second Amendment in its entirety. Unless expressly stated herein, this Agreement does not affect any of the Agency's contracts, debts, revenues, claims, obligations, policies, procedures or bylaws that pre-date this Agreement, which will continue to remain in full force and effect in accordance with their terms and/or applicable law.

B. <u>Continuation of the Sonoma County Waste Management Agency as a Separate</u> <u>Public Entity</u>. The Members created the Agency as a distinct public entity, separate and apart from the Members, pursuant to and in accordance with the provisions of the Act. It is the intent of the Members that under this Agreement the Agency shall continue as a distinct public entity under the Agency and other applicable law.

C. <u>Core Programs</u>. The Agency has the authority to provide the following core programs to the Members: (1) Provide for the recycling and disposal of Household Hazardous Waste from the Members' jurisdictions (the "Household Hazardous Waste Program"); (2) provide services and programs to provide for or facilitate the diversion of organic material, including but not limited to Yard Waste and Wood Waste (the "Organic Materials Program"); (3) provide education regarding recycling, composting and other methods of waste diversion to Members and the public (the "Education Program"); and (4) conduct, prepare and submit all monitoring and reporting as a Regional Agency as required pursuant to the Integrated Waste Management Act (the "Reporting Program"). The Agency may not add to or eliminate these core programs except by amendment of this Agreement. The Core Programs are further described in Section 4 of this Agreement.

D. <u>Additional Programs</u>. The Agency may conduct additional planning activities and development of regional programs that are related to the furtherance of increasing waste diversion within the Members' jurisdictions, provided that implementation of any regional program or plan developed by the Agency within any individual Member's jurisdiction shall be subject to the review and approval of the Member's governing body. The Additional Programs are further described in Section 5 of this Agreement.

3. POWERS

A. <u>General Powers</u>. The Agency shall have the powers common to the Members to this Agreement that are necessary or convenient to the implementation and ongoing operation of the Core Programs and Additional Programs, as well as other powers accorded to it by law, subject to the restrictions set forth herein.

B. <u>Specific Powers</u>. The Agency is authorized in its own name to perform all acts necessary for the exercise of common powers to carry out this Agreement, including but not

limited to the following:

- i. To make and enter into contracts;
- ii. To employ agents and employees;

iii. To obtain legal, financial, accounting, technical and other services as needed to carry out its purposes;

iv. To acquire, construct, manage, maintain and operate any buildings, works, or improvements;

- v. To acquire, hold, lease or dispose of property;
- vi. To incur debts, liabilities, and obligations;

vii. To impose, levy, collect or cause to be collected, to receive and use charges and fees as provided by law;

viii. To accumulate operating and reserve funds and invest the same as allowed by law for the purposes of the Agency.

ix. To apply for, accept and receive all permits, grants, loans or other aids from any federal, state or local public agency;

x. To receive donations of property, funds, services and other forms of financial assistance from any person, entity or agency;

xi. 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 Government Code.

xii. To sue and be sued in its own name;

xiii. To promulgate, adopt and enforce any by-laws, rules, regulations, policies and procedures as may be necessary and proper to implement and effectuate the terms, provisions and purposes of this Agreement; and

xiv. To carry out any power necessary or incidental to the foregoing powers in the manner and according to the procedures provided for under the law applicable to the Members to this Agreement and to perform all other acts necessary or proper to fully carry

out the purposes of this Agreement.

C. <u>Restriction on Exercise of Powers</u>. Pursuant to the Act, all common powers exercised by the Agency shall be exercised in a manner consistent with, and subject to, the restrictions and limitations upon the exercise of such powers as are applicable to the County of Sonoma.

4. CORE PROGRAMS

A. <u>Household Hazardous Waste Program</u>. Pursuant to a license agreement between the Agency and the County of Sonoma, the Agency operates a program at the Sonoma County Central Landfill (the "**Central Landfill**") for the collection and storage of Household Hazardous Waste. The Agency separately contracts with an operator to collect, sort, store, package and transfer the Household Hazardous Waste collected by designated haulers and other entities approved by the Agency, and from members of the public who are residents of a Member. Hazardous Waste generated by small quantity generators may be accepted, but shall be funded entirely by the generators using the service. The Household Hazardous Waste 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, provided that the Agency Board shall be permitted to change the location of the program from time to time, as deemed necessary or convenient by the Agency Board, and to make other changes to the program as necessary to ensure continued compliance with all applicable laws, rules and regulations.

B. <u>Organic Materials Program</u>. The Agency has the authority to operate a program for the diversion of organic material, including but not limited to yard waste and wood waste.

i. Current Program. As of the Effective Date, the Agency operates a program for the collection and processing of Yard Waste, Residential Food Waste and Wood Waste received at the Central Landfill or the Annapolis, Guerneville, Healdsburg and Sonoma Transfer Stations (collectively, the "Transfer Stations") from any source within the Members' jurisdictions, with the exception of the City of Petaluma (the "Current Composting Program"). The Current Composting Program is and shall continue to be funded by a tonnage disposal fee levied against Yard Waste, Residential Food Waste and Wood Waste received at the Central Landfill and the Transfer Stations. The Agency shall continue to operate the Current Composting Program, provided that the Agency may from time to time change the locations at which the Yard Waste, Residential Food Waste and Wood Waste are received, until such time that: (i) The Agency and/or individual Members have developed and implemented an alternative program or programs that provides for the diversion of organic material, including, at a minimum, Yard Waste, Residential Food Waste and Wood Waste, for all of the Members as contemplated in Section 4.B.iii below, or (ii) each of the Members has withdrawn from the Current Composting Program, as permitted under Section 4.B.ii below.

ii. *Withdrawal from Current Program*. Any of the Members may withdraw from the Current Composting Program upon ninety (90) days written notice to the Agency.

Upon withdrawal from the Current Program, the withdrawing Member shall no longer be permitted to deliver Yard Waste, Residential Food Waste and Wood Waste to the Central Landfill or Transfer Stations for processing.

iii. Alternative Organic Materials Programs. The Agency shall have the authority, at the direction of the Agency Board, to solicit information and/or request proposals for alternative programs for diversion of organic materials to serve some or all of the Member Agencies. The Agency shall serve as a resource to its Members in developing solutions for the diversion of organic materials that will serve the region, either through the development of a single regional organic materials program or multiple programs serving individual Members or groups of Members, including providing advice and expertise to such Members, as directed by the Agency Board. The Agency shall further have the ability to develop and implement an alternative organic materials program that serves the Members or a portion of the Members, provided that any such program shall be implemented through a separate agreement or amendment to this Agreement, and shall be approved by the governing board of each participating Member, and any Member that is not participating in such a future organic materials program shall not have any obligations, financial or otherwise, pursuant to such future organic materials program.

C. <u>Education Program</u>. The Agency provides information and education to individuals using the Agency's services and individuals who live or work in the Members' jurisdictions in order to maximize use of the Agency's programs, encourage recycling and other forms of waste diversion, and otherwise further the purpose and goals of the Agency. The Education Program shall continue to exist and the Agency shall continue to operate such program in compliance with all applicable laws, rules and regulations in furtherance of the Agency's purposes and goals, as directed by the Agency Board.

D. <u>Reporting Program</u>.

i. *Regional Agency*. The Agency is and shall continue to be a Regional Agency for purposes of Section 40971 of the Integrated Waste Management Act, and the Members are member agencies of the Regional Agency, and shall conduct all reporting required for a Regional Agency in accordance with the Integrated Waste Management Act.

ii. *Civil Penalties.* In the event any civil penalties are levied against the Agency pursuant to the Integrated Waste Management Act, 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 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: (a) The Agency shall pay the entire penalty, or (b) an individual Member is responsible for the assessment of the civil penalty and the entire penalty shall therefore be imposed upon that member for payment of

the penalty; or (c) multiple Members, but not all Members, are responsible for the assessment of the penalty and the penalty therefore shall be allocated equally upon those responsible Members.

iii. *Contingency Plan.* Should the Agency be dissolved for any reason, or should a Member withdraw from this Agreement, each Member or the former Member shall be responsible for complying with the requirements of the Integrated Waste Management Act within their respective jurisdictional boundaries in accordance with the programs set out in the Agency's documents.

iv. *Members' Duties and Responsibilities*. Each Member is responsible for implementing and meeting the mandated diversion requirements within its jurisdictional boundaries.

5. ADDITIONAL PROGRAMS

A. <u>Authority to Develop Additional Programs</u>. The Agency has the authority to develop and implement additional programs that are related to the Agency's overarching purpose of increasing waste diversion in the jurisdictions of the Members. The types of additional programs authorized under this section include, but are not limited to, development of model ordinances related to waste diversion which may be considered by the legislative bodies of the Members; implementation of waste diversion programs in Member jurisdictions that are adopted pursuant to such model ordinances; development of or participation in regional plans or efforts to reduce the amount of recyclable, compostable or hazardous materials in the region's solid waste stream; and researching and disseminating information to the Members regarding methods to reduce solid waste and increase waste diversion in the region.

B. <u>Approval by Members Prior to Implementation in Specific Jurisdictions</u>. Any additional programs developed pursuant to this Section 5 that can be implemented in individual jurisdictions (such as a proposed ordinance) shall be approved by such Member prior to implementation of such program in the Member's jurisdiction. The Agency additionally may enter into agreements with individual Members to implement and/or participate in the enforcement of such programs. Any such agreement shall be approved by the Board, provided that the Director that is appointed by the Member entering into such agreement shall not participate in the vote on the agreement.

C. <u>Additional Programs Included in Budget</u>. The cost of development and/or implementation of any additional programs pursuant to this Section 5 shall be included in the Agency Budget.

6. EFFECTIVE DATE AND TERM

A. <u>Effective Date</u>. This Agreement shall become effective on _____, 201_, or the date upon which an authorized representative of each of the Members has executed

this Agreement, whichever is later. Such date shall be the "Effective Date" for purposes identified herein.

B. <u>Term</u>. This Agreement shall remain effective until the Agency is dissolved pursuant to the provisions set forth in Section 10.F, subject to the rights of individual Members to withdraw from the Agency.

Or

B. <u>Term</u>. The term of this Agreement shall be for twenty-five (25) years, commencing on the Effective Date. The term of the Agreement may be extended from year to year thereafter by mutual agreement of the Members.

Or

B. <u>Term</u>. The Agreement shall remain effective until the Agency is dissolved pursuant to the provisions set forth in Section 10.F, subject to the rights of individual Members to withdraw from the Agency. Notwithstanding the foregoing, the Board shall conduct a public meeting not less than once every ten (10) years following the Effective Date to review the terms and conditions of this Agreement and discuss whether any amendments to this Agreement are necessary or advisable. At such public meeting the Executive Director and Agency Counsel shall make a report to the Board recommending any amendments to the Agreement, and if directed by the Board shall draft proposed amendments to this Agreement for consideration by the governing boards of each Member.

7. AGENCY BOARD

A. <u>Board of Directors</u>. The Agency is governed and administered by a Board of Directors ("Board") that is composed of one voting seat per Member.

B. <u>Directors and Alternates</u>. Each Member shall appoint one Director and at least one Alternate Director to the Board. One of the Alternate Directors, as directed by the Member, shall serve and assume the rights and duties of the Director when the Director is unable to attend a Board meeting. The Primary and Alternate Directors shall be either an elected or appointed members of the Member's governing body, or an employee of the Member. Directors and Alternate Directors shall serve at the pleasure of the Member appointing them and they may be removed at any time, with or without cause, in the sole discretion of the Member. Each Director and Alternate Director shall hold office until their successor is selected by the Member and the Agency has been notified of the succession. In the event that a Director or Alternate Director loses their position as a member of their appointing body's governing body, that Director or Alternative Director or Alternative Director.

C. <u>Agency Officers</u>. The Board of Directors shall select, from among themselves, a Chair who shall be the presiding officer of all Board of Directors meetings, a Vice Chair who shall serve in the absence of the Chair and a Chair Pro Tempore who shall serve in the absence of both the Chair and the Vice Chair. In addition, the Board of Directors shall appoint a Clerk (who need not be a Director) to be responsible for keeping the minutes of all meetings of the Board and posting agendas.

D. <u>Board Committees</u>. The Board of Directors may from time to time appoint one or more advisory committees or establish standing or ad hoc committees to assist in carrying out the purposes and objects of the Authority. The Board shall determine the purpose and need for such committees.

E. <u>No Personal Liability of Board Members</u>. Under the JPA Act, no Director shall be personally liable for any debts, obligations or liabilities of the Agency, nor subject to any personal liability or accountability by reason of the Agency's incurrence of debts, obligations or liabilities.

8. BOARD MEETINGS AND VOTING

A. <u>Regular Meetings</u>. The Board shall hold its regular meetings pursuant to a meeting schedule as established by resolution of the Board, but may cancel such regular meetings as it deems necessary or appropriate.

B. <u>Special Meetings</u>. Special meetings of the Board may be called by the Chair or as provided for in the Rules of Governance adopted by the Board.

C. <u>Call, Notice and Conduct of Meetings</u>. All meetings of the Board shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code section 54950 *et seq*.

D. <u>Quorum</u>. Five Board members shall constitute a quorum of the Board.

E. <u>Voting—Regular Items</u>. An affirmative vote of at least a majority of the Board members attending a meeting is required for the Agency to take any action.

F. <u>Unanimous Vote Items</u>. A unanimous vote of all Board members is required for the Agency to take action on any of the following items:

- i. Approval or amendment of the Agency Budget;
- ii. Incurrence of debt from public or private lending or financing sources;

- iii. Acquisition of any interest in real property;
- iv. Dissolution of the Agency.

9. OPERATIONS AND MANAGEMENT.

A. <u>Executive Director</u>. The Agency may appoint an Executive Director, from timeto-time as and when it deems appropriate. If appointed, the Executive Director shall serve at the pleasure of the Board of Directors and his or her duties and responsibilities shall be set forth via a vote of the Board.

B. <u>Legal Counsel and Other Officers</u>. The Agency may appoint Agency Legal Counsel who shall serve at the pleasure of the Board via a vote of the Board. Subject to the limits of the Agency's approved budget, the Board shall also have the power to appoint and contract via a vote of the Board for the services of other officers, consultants, advisers and independent contractors as it may deem necessary or convenient for the business of the Agency, all of whom shall serve at the pleasure of the Board.

C. <u>Treasurer, Controller and Annual Audit</u>. The Sonoma County Auditor-Controller-Treasurer-Tax Collector shall act as the Treasurer and Controller for the Agency. The Treasurer and Controller shall perform all usual and customary duties of their offices for the Agency, including but not limited to receiving all deposits, issuing warrants per direction, and other duties specified in Government Code section 6505.5. The Board may transfer the responsibilities of the Treasurer and/or Controller to any other person or entity as the law may provide at the time (see e.g., Government Code section 6505.5). The Board shall cause an independent annual audit to be made by a certified public accountant, or public accountant, in compliance with Government Code section 6505.

D. <u>Employees and Management</u>. In addition to, or in lieu of, hiring employees, the Agency may engage one or more Members to manage any or all of the business of the Agency or to provide employees to manage any or all of the business of the Agency on terms and conditions acceptable to the Board of Directors. Any Member so engaged shall have such responsibilities and shall be compensated as set forth in the agreement for such Member's services entered into by and between such Member and the Agency, which agreement shall be approved by the Board. Notwithstanding the foregoing, the Director appointed by the Member providing such services shall not vote on the agreement to provide such services.

E. <u>Other Agency Services</u>. The Agency may further engage one or more Members to provide additional services and resources as necessary or desirable for the administration of the Agency, including but not limited to building use, administrative services, purchasing, human resources, purchasing and other administrative services. Any Member so engaged shall have such responsibilities and shall be compensated as set forth in the agreement for such Member's services entered into by and between such Member and the Agency, which agreement shall be approved by the Board. Notwithstanding the foregoing, the Director appointed by the Member providing such services shall not vote on the agreement to provide such services.

F. <u>Rules of Governance</u>. The Board shall adopt Rules of Governance governing the conduct of meetings and the day-to-day operations of the Agency, which Rules of Governance may be amended from time to time.

G. <u>Conflict of Interest Code</u>. The Board shall adopt and file a Conflict of Interest Code pursuant to the provisions of the Political Reform Act of 1974.

10. RELATIONSHIP OF AGENCY AND ITS MEMBERS

A. <u>Separate Public Entity</u>. In accordance with California Government Code Sections 6506 and 6507, the Agency shall be a public entity separate and apart from the parties to this Agreement.

B. <u>Name</u>. The Agency may change its name at any time through adoption of a resolution of the Board of Directors.

C. <u>Liabilities</u>. In accordance with Government Code section 6508.1, the debts, liabilities and obligations of the Agency shall not be debts, liabilities or obligations of the individual Members unless the governing board of a Member agrees in writing to assume any of the debts, liabilities or obligations of the Agency. A Member who has not agreed to assume an Agency debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation of the Agency.

D. <u>Indemnity</u>. Funds of the Agency may be used to defend, indemnify, and hold harmless the Agency, each Member, each Director, and any officers, agents and employees of the Agency for their actions taken within the course and scope of their duties while acting on behalf of the Agency. To the fullest extent permitted by law, the Agency agrees to save, indemnify, defend and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are attributable in whole or in part, to negligent acts or omissions of the Agency or its employees, officers or agents or the employees, officers or agents of any Member, while acting within the course and scope of an Member relationship with the Agency. Notwithstanding the foregoing, the sole negligence, gross negligence, or intentional acts of any Member is exempted from the indemnification provided by this Section 10.C.

E. <u>Withdrawal of Members</u>. Any Member shall the have the ability to withdraw by providing a minimum of one hundred eighty (180) days written notice of its intention to withdraw to the Agency and the other Members, which withdrawal shall be effective only at the end of a given Fiscal Year. Subject to the terms of any lease or license agreement, any Member who withdraws from the Agency shall retain any real property interests already owned by such Member. Upon withdrawal, the withdrawing Member shall not be entitled to distribution of any Agency property or assets; rather the Agency shall retain all property and assets used by the

Agency in furtherance of its purpose under this Agreement. Upon withdrawal of a Member, the Agency shall have no further obligation to provide any of the programs described in Section 2.C and 2.D to that Member. In the event of a withdrawal, this Agreement shall continue in full force and effect among the remaining members as set forth in Section 5.E below.

F. <u>Continuing Obligations upon Withdrawal</u>. The withdrawal of one or more Members shall not terminate this Agreement or result in the dissolution of the Agency. This Agreement shall remain in full force and effect among the remaining members, following the withdrawal or termination of any Member, and the Agency shall remain in operation provided that there are at least two Members remaining in this Agreement.

G. Dissolution. The Agency may be dissolved at any time upon the unanimous vote of the Board and approval of the Members' governing boards. However, the Agency shall not be dissolved until all debts and liabilities of the Agency have been eliminated. Upon dissolution of the Agency, each Member shall receive its proportionate share of any remaining assets after all Agency liabilities and obligations have been paid in full. Each Member's proportionate share of such remaining assets shall be determined by the Agency Treasurer based upon the estimated total population of each Member in proportion to the total estimated population of all Members at the time of dissolution. The estimated population of the Members shall be determined based on the estimated population report published by the California State Department of Finance, or if such report is no longer published, by such other method of determining population as agreed upon by the Members. The distribution of remaining assets may be made "in kind" or assets may be sold and the proceeds thereof distributed to the Members. This distribution shall occur within a reasonable time after dissolution. No former member that previously withdrew shall be entitled to a distribution upon dissolution.

11. AUTHORITY RETAINED BY MEMBERS

A. <u>Approval by Members</u>. This Agreement requires specific approval from the legislative bodies of the Members for certain actions provided for under this Agreement. These actions include:

i. Implementation of an Additional Program in a Member's jurisdiction (Section 2.D, Section 5).

- ii. Approval of an alternative organic materials program (Section 4.B.iii).
- iii. Dissolution of the Agency (Section 10.G).
- iv. Amendment of this Agreement (Section 13.B).

B. <u>No Limitation on Members</u>. Nothing in this Agreement shall be construed as a limitation on the legislative authority or constitutional police powers of the Members.

12. FINANCIAL PROVISIONS

A. <u>Establishment of Funds</u>. The Agency shall establish and maintain such funds and accounts as may be required by general accepted public agency accounting practices. The

Agency shall maintain strict accountability of all funds and report all receipts and disbursements of the Agency on no less than a quarterly basis.

B. <u>Fiscal Year</u>. The Fiscal Year of the Agency shall be from July 1 to June 30.

C. <u>Budget</u>. Prior to the end of each Fiscal Year, the Board shall adopt a budget for the Agency for the ensuing Fiscal Year. The Board may authorize mid-year budget adjustments, as needed.

D. <u>Waste Management Agency Fees</u>. The Agency's programs are funded in part through a tip fee charge on waste entering the County of Sonoma's waste disposal system to fund the cost of the programs and services provided by the Agency, which the County of Sonoma collects and remits to the Agency (the "**Waste Management Agency Fee**"). The County, either directly or through its Contractor, shall continue to collect and remit such Waste Management Agency Fee to the Agency for the term of this Agreement, unless and until the Agency provides written notice directing the County to cease collecting such fee. The County's obligation to collect and remit the Waste Management Agency Fee shall survive the County's withdrawal from the Waste Management Agency.

Current Composting Program Fee. The E. Current Composting Program is primarily funded by a tip fee that is charged to all Yard Waste, Wood Waste and Residential Food Waste received at the Central Landfill and the Transfer Stations (the "Current Composting Program Fee"). The County, either directly or through its Contractor, shall continue to collect and remit the Current Composting Program Fee to the Agency for so long as the Agency is operating the Current Composting Program, unless and until the Agency provides written notice to the County to cease collecting the Current Composting Program Fee. At such time that the Agency ceases its operation of the Current Composting Program, the Agency shall provide written notice to the County, and the County shall have no further obligation to collect and remit the Current Composting Program Fee to the Agency. The County's obligation to collect and remit the Waste Management Agency Fee shall survive the County's withdrawal from either the Current Composting Program or the Waste Management Agency.

F. <u>Additional Fees</u>. The Agency may establish, levy and collect such other fees or surcharges for services provided by the Agency in furtherance the Core Programs and Additional Programs to fund the Agency's costs of providing such services, as permitted by law.

G. <u>Agreements with Individual Member Agencies</u>. In the event that a Member does not provide its jurisdiction's waste to the County of Sonoma's waste disposal system and therefore does not contribute to the Waste Management Agency Fee, Agency may, at its discretion, enter into separate agreements with such individual Members to make available some or all of the Core Programs and Additional Programs in exchange for direct compensation from the Member for the costs of the Programs provided.

H. <u>Insurance</u>. The Agency shall be required to obtain insurance, or join a selfinsurance program in which one or more of the Members participate, appropriate for its operations. Any and all insurance coverages provided by the Agency, and/or any self-insurance programs joined by the Agency, shall name each and every Member as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named

insured in the performance of this Agreement. Minimum levels of the insurance or self-insurance program shall be set by the Agency in its ordinary course of business. The Agency shall also require all of its contractors and subcontractors to have insurance appropriate for their operations.

13. MISCELLANEOUS PROVISIONS

A. <u>Agreement Complete</u>. This Agreement constitutes the full and complete agreement of the Members. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement that are not set forth in writing herein.

B. <u>Amendment</u>. This Agreement may be amended from time to time by the unanimous consent of the Members, acting through their governing bodies. Such amendments shall be in the form of a writing signed by each Member.

C. <u>Successors and Assigns</u>. The rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Agency then in effect. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Members hereto. This section does not prohibit a Member from entering into an independent agreement with another agency regarding the financing of that Member's contributions to the Agency or the disposition of proceeds, which that Member receives under this Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Agency or the Members under this Agreement.

D. <u>Execution in Counterparts</u>. This Agreement may be executed in counterparts, each counterpart being an exact duplicate of all other counterparts, and all counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto.

E. <u>Member Authorization</u>. The governing bodies of the Members have each authorized execution of this Agreement, as evidenced by their respective signatures below.

F. <u>Notices</u>. Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the Members hereto on Exhibit "A" of this Agreement, or to such other changed addresses communicated to the Agency and the Members in writing.

G. <u>Severability and Validity of Agreement</u>. Should the participation of any Member to this Agreement, or any part, term or provision of this Agreement be decided by the courts or the legislature to be illegal, in excess of that Member's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each Member hereby agrees it would have entered into this Agreement upon the same remaining terms as provided herein.

IN WITNESS WHEREOF, the Members hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

SIGNATURE LINES

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EXHIBIT A

NOTICE INFORMATION FOR MEMBERS

BEST BEST & KRIEGER

Memorandum

To:	Sonoma County Waste Management Agency Board of Directors
From:	Ethan Walsh
	Agency Counsel
Date:	November 9, 2016
Re:	Draft Amended and Restated Joint Exercise of Powers Agreement

I. <u>Introduction</u>

At its July meeting, the Board directed Agency Counsel to prepare an Amended and Restated Joint Powers Agreement that would allow the Sonoma County Waste Management Agency (the "Agency") to continue its operations beyond its current extended expiration in February 2018. Enclosed is the draft Agreement that I have prepared for the Board's consideration (the "draft JPA Agreement").

I have had two separate meetings with city attorneys and county counsel to discuss the draft JPA Agreement. The first meeting was held to discuss the agreement in concept, and focused on the proposed terms that were outlined in the July 14, 2016 memorandum provided to the Agency Board. The second meeting was held last week, following circulation of a draft of the agreement to the city attorney/county counsel group. At both meetings the attorneys provided helpful comments and suggestions, which have been incorporated into this draft, to the extent possible.

Not all the attorneys were able to attend both meetings. However, I have kept the entire group apprised of the Agency's process and urged them to let me know if they believed there were legal deficiencies with the draft agreement that needed to be addressed. In general, the comments from the attorneys have been favorable, and no one has indicated that the draft JPA Agreement presents significant legal hurdles that would prevent the Agreement from moving forward. Several of the attorneys did note, however, that while they reviewed the draft agreement from a legal perspective, they did want to discuss the draft agreement with their City staff to get feedback on the policy issues raised in the draft JPA Agreement. County Counsel did pose some questions and comments that merit additional discussion. These comments are noted in this memo for the Board's consideration. Additionally, Agency Counsel will continue discussions with County Counsel to discuss these comments and any additional comments that come forward between now and the November 16 Board meeting.

Many of these policy issues will likely be addressed during the Agency Board's discussion of this item. However, there is also benefit from receiving the feedback of all the members and their staff, and trying to incorporate suggestions that benefit all the members. For that reason, it is my recommendation that the Board direct Agency Counsel and Executive Director to put the draft Agreement into final form for consideration by the member agencies, but give the Agency Counsel and Executive Director the latitude to make minor edits to the draft agreement to respond to suggestions from the members' staff.

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The remainder of this memorandum outlines the key substantive terms of the draft JPA Agreement.

II. Key Terms of Draft Agreement

A. <u>Core Programs</u>. (Section 4) The Agency's core programs include: (1) Household Hazardous Waste Recycling Program; (2) Composting Program; (3) Education Program; and (4) Reporting Program.

1. <u>Household Hazardous Waste Program</u>: (Section 4.A) This section largely tracks the language in the current JPA agreement and allows that the HHW Program will continue as is. The one significant change is that the description of this program allows that while the program is currently operated at the Central Landfill, that location may be moved as deemed necessary or appropriate by the Board. This language is intended to give the Board flexibility to relocate the program if needed during the life of the Agency.

2. <u>Composting Program</u>: (Section 4.B) This Section contains the most significant changes to any of the Core Programs.

i. *Current Program:* (Section 4.B.i) The draft JPA Agreement provides that the Agency may continue to operate its current composting program, which consists of the collection and processing of yard waste, residential food waste and wood waste at the Central Landfill and Transfer Stations (Section 4.B.i). This language is intended to ensure that the Agency has the authority to continue operating its current program of hauling compostable materials received from member agencies for so long as this service is needed.

Withdrawal from Current Program: (Section 4.B.ii) This section ii. allows that members can withdraw from the current program with ninety (90) days written notice to the Agency. We recognize that some of the member agencies are exploring different options for composting, and may want to enter into an alternative arrangement separate from the other members. This withdrawal provision is intended to give all members the flexibility to transition to a different option, while still allowing the other members to continue with the existing program for as long as necessary. The compost program is funded from tipping fees collected from compost delivered to the Central Landfill and Transfer Stations. So if an individual member withdraws, that member will no longer be charged for composting. Further, the Agency is only charged for the compost materials delivered to the various out of county composting facilities utilized as part of the current program. These factors allow for a fairly straight forward transition if a member or members withdraw from the Current Program.

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iii. Alternative Composting Programs: (Section 4.B.iii) This section provides the Agency with the authority to develop an alternative program for composting to serve all or some of the Agency's members. However, any alternative program would have to be developed through a separate agreement between the participating members, or through an additional amendment to the JPA Agreement. This gives the Agency the ability to take the lead in developing a composting solution for the region, and the flexibility to either implement a program itself, or allow member agencies to develop a program or programs to meet their needs.

County comments on Composting Program: County Counsel questioned whether the Composting Program should be a "Core Program," based on the County's understanding that the composting program would be an option, but not an obligation of the member agencies. County Counsel also raised concerns that the authority to develop "Alternative Composting Programs" is not sufficiently specific, as would be needed to ensure stability and sustainability for those programs. Agency Counsel response: The intent in including Composting as a "Core Program" is to make clear that the Agency has a continuing obligation to operate the current program, and to play a role in developing a new program. The language describing the program indicates that the Agency will continue to operate the program until all the Members have an alternative means of providing composting services to their members. The language on the nature of any future "Alternative Composting Programs" is vague, but it is intentionally so because it is too soon to predict exactly how those alternative programs will be structured. However, this section also states that an alternative composting program may only be developed through an additional amendment to the JPA Agreement, or a separate agreement between the participating members. At the time that such an agreement is developed, the Members can and should address the specific nature of that program to ensure long term sustainability as County Counsel suggests.

3. <u>Education Program</u>. (Section 4.C) The Agency will continue to operate its education program as it has in the past. The new language is not intended to change the Agency's existing program.

4. <u>Reporting Program</u>. (Section 4.D) The Agency will continue to serve as a Regional Agency and conduct mandated reporting for the member agencies as required under the Integrated Waste Management Act. The language in this section regarding civil penalties, contingency plans, and members' duties and responsibilities is taken from the First Amendment to the current JPA Agreement, which originally established the Agency as a regional agency for reporting purposes. This language does not make changes to the Agency's existing reporting program.

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B. <u>Additional Programs</u>: (Section 5) The Agreement allows that the Agency can develop and implement additional regional programs related to waste diversion for the member agencies. These types of programs could include the development of ordinances or programs on a regional basis that would further the Agency's waste diversion goals. However, these programs would only be implemented in jurisdictions that actually approved the program or ordinance. This section allows the Agency to continue to develop and implement programs similar to the plastic bag ban, but also allows individual members to retain their legislative authority to decide whether or not they want to adopt these programs in their jurisdiction. Further, funding for any of these additional programs would be incorporated into the Agency budget, so that the Board members can ensure that the Agency is not spending an undue amount of resources on these additional programs.

C. <u>Term</u>: (Section 6.B) This section includes three different options that the Board can recommend for the term of the Agency: (1) the Agency shall remain in existence until it is dissolved (i.e., no fixed term); (2) a term of 25 years, with the ability to extend on a year to year basis (i.e., equivalent to the current term); or (3) the Agency shall remain in effect until it is dissolved, but every 10 years the Agency shall conduct a public meeting to review the terms of the Agreement, and the Executive Director and Agency Counsel will make a recommendation on whether any amendments to the Agreement are needed.

<u>County Counsel Comments on Term</u>: County Counsel indicated that the County would support either of the first two options, but would not support the third option.

D. <u>Directors and Alternates</u>: (Section 7.B) The Board composition will remain the same, with each member having one spot on the Board, and the members having the option of appointing an elected official or staff member, at their discretion.

E. <u>Unanimous Vote Items</u>. (Section 9.F) The Board will need a unanimous vote to approve any of the following items: (i) Approval or amendment of the Agency budget; (ii) incurrence of debt; (iii) acquisition of any interest in real property; and (iv) dissolution of the Agency. These sections ensure that the Board members must unanimously agree on any decision that will have a significant financial impact on the Agency. I did eliminate the requirement for a unanimous vote on capital expenditures of \$50,000 or more , because it seemed unnecessary since any such expenditure should be factored into the budget, which already requires a unanimous vote.

F. <u>Withdrawal of Members</u>. (Section 11.E) The draft JPA Agreement provides that any Member may withdraw from the Agency upon one hundred eighty (180) days written notice to the Agency and the other Members, provided that the withdrawal can only be effective at the end of a given Fiscal Year. The Agreement provides that in the event a Member withdraws, the Agency will have no obligation to disburse any property or assets to the withdrawing member, and the Agency shall have no further obligation to the withdrawing Member.

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<u>County Counsel Comments on Withdrawal</u>: County Counsel asked what would happen to the liabilities of the Agency upon withdrawal of a Member, and asked whether withdrawing members would be relieved of any ongoing obligation for long-term liabilities of the Agency. County Counsel was concerned that withdrawal of one or more members would place an unreasonable burden upon remaining members if one member was permitted to withdraw without bearing their fair share of liabilities into the future.

Agency Counsel Response: The reason for this approach is that the Agency has historically been funded solely by tipping fees and grant funding. The Members have not made direct financial contributions to the Agency, but have instead paid fees on compostable materials and solid waste in exchange for the Agency's services. The Agency has funded its liabilities with these fees and other resources. To the extent that a Member withdraws from the Agency, the Agency would no longer be providing services to the Member, and the Agency would reduce its expenses and liabilities accordingly. The Agency does not currently have any long term debts or similar obligations. In the event that the Agency incurs such debts in the future (possibly to finance a new composting operation), then it would need provide security for those debts or liabilities. In that case, the Agency may have to seek some longer term commitments from its members, through flow commitments or some other means. The Agency's liabilities could be addressed through separate agreements with the participating members, which would bind those members whether or not they withdrew from the Agency. I will discuss this issue further with County Counsel and the City Attorney group and if necessary will propose additional language to address the concerns raised.

G. <u>Dissolution of the Agency</u>. (Section 11.G) The draft JPA Agreement includes a provision allowing for the dissolution of the Agency. The Agency can be dissolved by a unanimous vote of the Board and approval of the Members' governing boards, provided that the Agency will not be dissolved until all its debts and liabilities are eliminated. If the Agency has remaining assets after all debts and liabilities are eliminated, those are divided amongst the members on a pro rata basis, based on the population of the member agencies.

H. <u>Agreements with Individual Member Agencies</u>. (Section 12.G) In addition to including the Agency's authority to continue to collect the Waste Management Fees, Composting Fees, and any fees adopted in the future to fund its programs, the amended and restated JPA Agreement grants explicit authority for the Agency to enter into individual agreements with member agencies to make available some or all of the Core Programs and Additional Programs in exchange for direct compensation. This is intended to grant the Agency more explicit authority to enter into arrangements similar to the Agency's existing relationship with the City of Petaluma.

I. <u>Provisions Removed from the Current JPA Agreement</u>. The current JPA Agreement includes certain provisions that require the County to provide sites for the operation of the composting operation and household hazardous waste sites at the Central Landfill. These provisions are not included in the new draft JPA Agreement. The County and Agency both



recognized that the current JPA Agreement does not have sufficient detail regarding the terms pursuant to which the Agency can use the Central Landfill, and therefore entered into separate License Agreements that govern the use of property at the Central Landfill. Given that the Agency has separate, detailed agreement that govern the Agency's use of the County's property, it is unnecessary to include those provisions as a term of the JPA. Further, the Agency should retain flexibility to relocate both the composting and household hazardous waste recycling programs as necessary. Rather than specifying a location for these programs, the draft JPA Agreement gives the Agency additional discretion by not committing to a specific location.



Agenda Item #:6Cost Center:HHWStaff Contact:CarterAgenda Date:11/16/2016Approved By:

ITEM: Approval of First Amendment to the Agreement for Household Hazardous Waste Operations

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends the Board approve the resolution authorizing the Executive Director to sign the First Amendment to the Agreement for Household Hazardous Waste Operations.

II. BACKGROUND

The management of household hazardous waste (HHW) generated by Sonoma County residents and businesses (Conditionally Exempt Small Quantity Generators) is a core function of the SCWMA. The SCWMA entered into an agreement with Clean Harbors Environmental Services on May 21, 2014 to provide HHW operations on behalf of the SCWMA. That agreement is set to expire on February 11, 2017 unless extended.

III. DISCUSSION

Staff requested Clean Harbors to extend the agreement to expire the sooner of when the SCWMA expires or June 30, 2019. Clean Harbors requested an annual CPI adjustment to the Program Operation Fee, which is not currently in the agreement. Staff believes a CPI adjustment, not to exceed 3% in any twelve month period, is reasonable. As the CPI adjustment was not previously discussed by this Board, staff is seeking approval from the Board to amend this agreement.

IV. FUNDING IMPACT

Continuing HHW operations services for the remainder of the current fiscal year is included in the current budget. Cost increases due to CPI adjustments would be dealt with in future fiscal years, but would not exceed \$15,000 in first adjustment.

V. ATTACHMENTS

First Amendment to the Agreement with Clean Harbors Environmental Services for Household Hazardous Waste Operations Resolution

FIRST AMENDMENT TO AGREEMENT FOR HOUSEHOLD HAZARDOUS WASTE OPERATIONS

This First Amendment to Agreement for Household Hazardous Waste Operations ("First Amendment") is made as of the 16th day of November, 2016, by the Sonoma County Waste Management Agency ("Agency") and Clean Harbors Environmental Services, Inc. ("Contractor").

RECITALS

- A. Agency and Contractor entered into that certain Agreement for Household Hazardous Waste Operations (the "Agreement") dated May 21, 2014.
- B. The Agreement contains an expiration date of February 11, 2017. The Agency and Contractor desire to extend the term of the Agreement to expire on June 30, 2019.

AMENDMENT

1. <u>Amendment to Section 1</u>. Section 1 of the Agreement is hereby amended to include the following definitions:

"Adjustment Date". Adjustment Date shall mean July 1st of each year, commencing July 1, 2017.

"CPI Factor". CPI Factor shall mean the increase, if any, in the San Francisco/Oakland/San Jose All Urban Consumer Price Index ("CPI") during the preceding year. The CPI Factor shall be determined pursuant to a ratio, the denominator of which is the CPI for the last calendar month immediately preceding the prior Adjustment Date and the numerator of which is the CPI for the calendar month immediately preceding the then current Adjustment Date.

2. <u>Amendment to Section 3</u>. Section 3 of the Agreement is hereby amended in its entirety to read as follows:

"3. <u>Term of Agreement</u>. The term of this Agreement shall commence on the Effective Date and terminate on the sooner of June 30, 2019 or the expiration of the Sonoma County Waste Management Agency, unless terminated earlier in accordance with the provisions of Article 13 below.

3. <u>Amendment to Section 4</u>. Section 4.6 of the Agreement is hereby added and shall read as follows:

"4.6 Adjustment to Payment. The Personnel costs listed in Exhibit A-1 Mobilization Cost Sheet shall be adjusted annually on the Adjustment Date by the CPI Factor, provided, however, that in no case shall such adjustment exceed three percent (3%) in any twelve month period."

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4. <u>No Other Changes</u>. Except as amended by this First Amendment, all other terms and conditions in the Agreement shall remain unchanged and shall continue on in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement for Household Hazardous Waste Operations on the day and year first above written.

AGENCY:

CONTRACTOR:

SONOMA COUNTY WASTE MANAGEMENT AGENCY Clean Harbors Environmental Services, Inc.

Ву:	Ву:
Patrick Carter, Executive Director	lts:
Date:	Date:
APPROVED AS TO FORM:	

By:____

Ethan Walsh, Agency Counsel

RESOLUTION NO.: 2016-

DATED: November 16, 2016

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY ("SCWMA") AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN THE FIRST AMENDMENT TO THE AGREEMENT WITH CLEAN HARBORS ENVIRONMENTAL SERVICES ("CHES") FOR HOUSEHOLD HAZARDOUS WASTE OPERATIONS.

WHEREAS, the SCWMA and CHES entered into a certain agreement on May 21, 2014 for CHES to perform household hazardous waste operations on behalf of the SCWMA; and

WHEREAS, the term of the aforementioned agreement will expire on February 11, 2017 unless amended by the SCWMA; and

WHEREAS, the SCWMA is satisfied by the performance of required tasks by CHES;

NOW, THEREFORE, BE IT RESOLVED that Board of Directors of the SCWMA approves of this First Amendment to this Agreement with CHES.

BE IT FURTHER RESOLVED Board authorizes the Executive Director to sign the First Amendment to this Agreement with CHES.

MEMBERS:

Cloverdale	Cotati	County	Healdsburg	Petaluma
Rohnert Park	Santa Rosa	Sebastopol	Sonoma	Windsor
AYES: NOES	5: ABSENT: -	- ABSTAIN:		
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ATTEST:	DATE:			
	County Waste Mana of California in and fo			

County of Sonoma



Agenda Item #: **7.1** Agenda Date: **11/16/2016**

ITEM: Outreach Calendar Nov – Dec 2016

Nov 2016 Outreach Events

Day	Time	Event
1	4 PM – 8 PM	Community Toxics Collection – Guerneville
5	12PM-4PM	Community Market Sustainbility Harvest Fair -Santa Rosa
5	10 AM-3 PM	End of the Harvest Fair/Binational Health Week at Wells Fargo Center-Santa Rosa
8	4 PM – 8 PM	Community Toxics Collection – Windsor
15	4 PM – 8 PM	Community Toxics Collection – Oakmont
29	4 PM – 8 PM	Community Toxics Collection – Santa Rosa, NE

Dec 2016 Outreach Events

Day	Time	Event
6	4 PM – 8 PM	Community Toxics Collection – Sebastopol
13	4 PM – 8 PM	Community Toxics Collection – Kenwood