



Meeting of the Board of Directors

December 21, 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

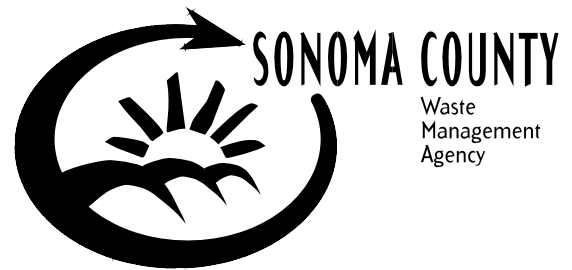
December 21, 2016

Regular Meeting begins at 8:30 a.m.

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Note: This packet is 41 pages total



SONOMA COUNTY WASTE MANAGEMENT AGENCY

Meeting of the Board of Directors

December 21, 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

Agenda

| <u>Item</u> | <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) | Discussion/Action |
| 4.1 Minutes of November 16, 2016 Regular Meeting | |
| <u>Regular Calendar</u> | |
| 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 |
| 6. Discussion and Possible Action on Organic Waste at the Central Disposal Site [Carter] | Yard/Wood |
| 7. Report and Direction Requested on a Project to Inform and Educate on the Background of Solid and Hazardous Waste in Sonoma County [Carter] | Contingency |

8. Boardmember Comments
9. Staff Comments
10. Next SCWMA meeting: 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: November 16, 2016

To: SCWMA Board Members

From: Patrick Carter, SCWMA Executive Director

Executive Summary Report for the SCWMA Board Special Meeting of November 16, 2016

Item 4, Consent Items: Items 4.1 Minutes of the 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, and 4.4 Approval of FY 2016-17 First Quarter Financial Report were approved.

Item 5, Discussion and Possible Action on the Draft Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency: The Board was presented the latest version of the Draft Amended and Restated Joint Exercise of Powers Agreement for the SCWMA. While there was broad agreement on most issues (including an indefinite term with a ten year review of SCWMA programs, a model ordinance approach with indemnity protection for regional policies, and the potential for addressing future organics processing programs through separate agreements for interested members), it was decided to have another discussion on the agreement, with emphasis on voting requirements at a December SCWMA meeting. Staff was given the following direction regarding Section 8.F.: 1) amend the JPA agreement to reflect a supermajority vote requirement for approval of the annual SCWMA Budget and amendments, expenditures of greater than or equal to \$250,000, and incurrence of debt greater than or equal to \$250,000; 2) define a supermajority as 8 of 10 members voting affirmatively on an item; 3) list acquisition of real property or leasing of real property at a contract value of greater than or equal to \$250,000 as a unanimous vote; and 4) moving "Dissolution of the Agency" to a different section of the agreement where it is clear that the authority to dissolve the SCWMA is retained by the member agencies, not the Board of Directors. Staff was given direction to distribute the revised agreement to the City Attorneys and County Council with a request to receive feedback within two weeks. The agreement would be discussed again at the December SCWMA meeting.

Item 6, Approval of First Amendment to the Agreement for Household Hazardous Waste Operations: The First Amendment the Agreement for Household Hazardous Waste Operations, which extended the agreement to the sooner of the end of the SCWMA or June 30, 2019, was approved.

Item 7, Attachments/Correspondence: The attachments/correspondence included the November-December 2016 Outreach Calendar.



To: Sonoma County Waste Management Agency Board Members

From: Patrick Carter, Executive Director

Subject: December 21, 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 November 16, 2016 Meeting:** regular acceptance.

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 revised Draft Amended and Restated Joint Exercise of Powers Agreement is included for review and feedback. Staff believes this draft is a sufficient compromise by removing the unanimous vote requirement for budgetary approval and incurrence of debt greater than \$250,000, but also only assesses the costs for new programs on the members that participate in that program (i.e. if a member does not join the new program, that member does not incur new costs related to that program). **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, directing staff to develop a model staff report and presentation to assist City and County staff, and directing staff to begin the process of presenting the agreement to City Councils and the Board of Supervisors for approval.**
6. **Discussion and Possible Action on the Status of Organic Waste at the Central Disposal Site:** Organic materials (green waste and wood waste) collected at the curb or dropped off by the public are no longer allowed in the Central Disposal Site tipping building. Staff received cost information from the Ratto Group to redirect the collection trucks from the routes to the Redwood Landfill compost site and two other County transfer stations as well as cost information for servicing self-hauling customers at the Central Disposal Site. **Staff recommends amending the agreement with the Ratto Group for Organic Materials Hauling to include the additional cost of providing service for self-haul customers at the Central Disposal Site. Alternatively, staff could begin noticing organics customers that organics disposal will no longer be available at the Central Disposal Site and providing information about alternative disposal locations.**
7. **Report and Direction Requested on Solid Waste Agreements in Sonoma County:** Educating new Board members, City and County staff members, and the public on the behind-the-scenes issues

related to solid and hazardous waste management happens ad hoc. The premise of this item is for the Board to provide direction on this initial thought to develop documentation and presentations/workshops on this subject. **Staff requests direction from the Board regarding the development of a project to inform and educate City and County staff, SCWMA Board members, and members of the public on the background of solid and hazardous waste in Sonoma County.**



Minutes of November 16, 2016 Meeting

The Sonoma County Waste Management Agency met on November 16, 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 | John Sawyer |
| City of Cotati | Susan Harvey | City of Sebastopol | Henry Mikus |
| City of Healdsburg | Brent Salmi | City of Sonoma | Madolyn Agrimonti |
| City of Petaluma | Dan St. John | County of Sonoma | Susan Gorin |
| City of Rohnert Park | Don Schwartz | Town of Windsor | Deb Fudge |

Staff Present:

| | | | |
|--------------------|----------------|-------|-----------------|
| Executive Director | Patrick Carter | Staff | Kristin Thigpen |
| Counsel | Ethan Walsh | | Courtney Scott |
| Agency Clerk | Sally Evans | | Felicia Smith |

1. Call to Order Regular Meeting

The meeting was called to order at 8:34 a.m.

2. Agenda Approval

The motion for agenda approval was made by Bob Cox, City of Cloverdale, and seconded by Susan Harvey, City of Cotati.

Vote Count:

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

AYES -10- NOES -0- ABSENT -0- ABSTAIN -0-

Motion passed unanimously.

3. Public Comments (items not on the agenda)

Rick Downey, C&S Waste Solutions, inquired why green waste continued to be transported to the Central Disposal Site after Nov. 1st.

Patrick Carter, Executive Director, noted an update would be provided during staff comments.

4. Consent (w/attachments)

4.1 Minutes of October 19, 2016 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

November 16, 2016 – SCWMA Meeting Minutes

Board Comments:

None.

Public Comments:

None.

The motion for consent calendar approval was made by Henry Mikus, City of Sebastopol, and seconded by Mr. Cox.

Vote Count:

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

AYES -10- NOES -0- ABSENT -0- ABSTAIN -0-

Motion passed unanimously.

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.

Mr. Carter presented the Draft Amended and Restated Joint Exercise of Powers Agreement to the Agency Board and highlighted the goals of the agreement.

Ethan Walsh, Agency Counsel, discussed the changes to the Draft Amended and Restated JPA Agreement and noted most changes were for the purposes of clarification, being proactive, and addressed comments made by County Staff and Counsel. These include:

- 1) Section 4.A., Core Programs, HHW Program on page 6, language to clarify the Agency Board was permitted to change HHW locations.
- 2) Section 4.B.i., Core Programs, Organic Material Program on page 6, language to clarify compost material could be collected from any member jurisdiction, with the exception of Petaluma.
- 3) Top of page 7 to acknowledge composting as one of the Agency's core programs, in which the Agency would play a role. Mr. Walsh noted this added language clarified it would not require a full amendment to the JPA if agencies withdrew from the current programs or the Agency was no longer operating them.
- 4) Section 6.B., Effective Date and Term, Third Term Option on page 9, indefinite term with a check-in to review the terms and conditions of the JPA Agreement every 10 years, was moved to Item 8.G. on page 11 to avoid insinuating it was a 10 year term.

Mr. Walsh referenced Section 10.E., Relationship of Agency and its Members, Withdrawal of Members from the Agency on page 13 and noted Agency Members had the ability to withdraw, without continuing liabilities for agency programs, by providing a minimum of 180 days written notice. Mr. Walsh noted withdrawal would be effective only at the end of a given Fiscal Year, to allow Agency Staff time to make budget and fee adjustments.

Mr. Walsh stated if member agencies were to withdraw from a potential compost program, it could significantly affect the economies of scale, and noted the potential liability for withdrawing from that program would be addressed at the time the program became in existence. Mr. Walsh recommended handling composting in a separate agreement, outside of the JPA. Mr. Walsh added he had conversation with Agency Member Attorneys regarding the agreement and did not foresee any major changes.

Board Comments:

Chair Don Schwartz, City of Rohnert Park, Dan St. John, City of Petaluma, Ms. Harvey, and Henry Mikus, City of Sebastopol made comments and asked questions regarding attorney feedback, term options, and ability to enact ordinances. Mr. Walsh and Mr. Carter addressed the issues.

Chair Schwartz reference page 11 of the Draft JPA Agreement, Unanimous Vote Items, and inquired why it reflected the wishes of the City of Petaluma rather than the wishes of the majority of the Agency Member jurisdictions as provided regarding budget approval, incurrence of debt, and acquisition of real property.

Mr. Walsh responded the City of Petaluma and one of the attorneys from Santa Rosa were looking to keep the unanimous vote on those items. Mr. Walsh noted this was a policy decision.

Chair Schwartz recommended the Approval of Section 8F. i. Amendment of the Agency Budget, Section 8F.ii. Incurrence of debt from public or private lending or financing sources, and 8F.iii. Acquisition of any interest in real property be supermajority vote items, with the exception of Dissolution of the Agency, which would need to be approved by each agency member jurisdiction. Chair Schwartz defined supermajority vote as 7/10. Chair Schwartz suggested amending Section 8F.ii. as follows: "Incurrence of debt equal to or greater than \$250,000." Chair Schwartz noted the Board had also discussed expenditures over \$250,000 requiring a supermajority vote.

Deb Fudge, Town of Windsor, stated she was in agreement with Chair Schwartz's recommendations and agreed it was a policy decision.

John Sawyer, City of Santa Rosa, stated he was in agreement with all the sections, with the exception of the acquisition of real property.

Mr. St. John expressed concern with adding provisions to the Board Meetings and Voting Section of the draft amended JPA Agreement without going back through the attorney process and noted the City of Petaluma would not be able to support moving away from the unanimous vote.

Chair Schwartz replied the JPA version before the Board at this meeting did not reflect the policy and direction provided at the last Agency Board meeting but it would not require a major rewrite and was an appropriate conversation.

Mr. St. John recommended continuing the item to get the corrected version before the Agency Board to clearly see what Chair Schwartz was proposing. Mr. St. John noted he was unable to make a decision on this at the time.

Ms. Harvey inquired how the four items in the Unanimous Vote Section ended up there.

Mr. Walsh apologized for any misunderstanding on his part regarding board direction and added he came up with the language in an effort to compromise and get the agreement to a point where all jurisdictions would approve it. Mr. Walsh noted he used the matrix, but deviated from it on a couple instances. Mr. Walsh noted he took into consideration Petaluma's and Santa Rosa's potential showstopper issues and welcomed Board direction.

Chair Schwartz motioned to amend the Draft Amended JPA Agreement Section 8.F., Unanimous Vote Items as follows: to reflect supermajority vote requirement for budget and amendment approval, debt and expenditures equal to or greater than \$250,000. Supermajority be defined as 7 of 10 members. Require unanimous approval for acquisition of real property. Remove Dissolution of the Agency from this section to a section reflecting dissolution needed to return to each Agency member jurisdiction. For Agency Staff to work with Petaluma to present the corrected draft amended JPA agreement to their City Council to determine if they would be participating or not. The information be shared with the rest of the Agency Member jurisdictions. Mr. Cox seconded the motion.

Mr. St. John objected to the removal of the unanimous vote requirement.

Chair Schwartz, Mr. Sawyer, Ms. Harvey, Susan Gorin, County of Sonoma, Brent Salmi, City of Healdsburg, and Mr. Mikus commented in favor of a supermajority vote.

Chair Schwartz stressed the importance of creating a workable voting system. Chair Schwartz suggested adding leasing and acquisition to the motion and have the Revised Draft Amended JPA go to every jurisdiction except Petaluma first for a decision. Chair Schwartz stated he respected Mr. St. John's position, as he had to follow the direction from his council, but felt the Agency Board needed to leave this meeting getting the revised draft amended JPA to the councils and County Board to obtain feedback from them.

Mr. St. John recommended an amendment to the motion defining the supermajority as 8 of 10 members and having a more meaningful discussion to include the attorneys regarding what should go in each category.

Mr. Mikus, Ms. Harvey, Mr. Cox, and Chair Schwartz voiced support for increasing the supermajority to 8 of 10.

Mr. Walsh stated he was in agreement the language in 8.F.iii. needed clarification as follows: Acquisition of an interest in real property or leases in interest in real property that's greater than or equal to \$250,000.

Chair Schwartz made a second amendment to the motion to amend the Draft Amended and Restated Joint Exercise of Powers Agreement Section 8.F., Unanimous Vote Items as follows: to state supermajority vote was required for budget approval or amendment, debt equal to or greater than \$250,000, and expenditure equal to or greater than \$250,000. Supermajority is defined as 8 of 10 members. Unanimous vote for the acquisition of any interest in real property with a value equal to or over \$250,000. Move "Dissolution of the Agency" to another part of the amendment with the expectation a dissolution would go back to the jurisdictions for approval. Mr. Cox seconded the second amendment to the motion.

A straw vote was taken on the motion: All member jurisdictions voted yes with the exception of the City of Petaluma, who voted no.

Mr. Walsh asked for Board direction regarding the three term options.

Ms. Harvey motioned for a straw vote to put “Remain in Effect” in the Effective Date and Term section and the check in in the later section. Madolyn Agrimonti, City of Sonoma, seconded the motion. All member jurisdictions voted yes.

Public Comment:

Rick Downey, C&S Waste Solutions, wanted clarification on the opt-out provision and noted it was his understanding every Agency member jurisdiction, with the exception of Petaluma, committed their waste to Republic Services and, in doing so, set up a rate fee that included green waste in the fees that went to the County. Mr. Downey estimated between 80 and 100 thousand tons of material could potentially leave the system through the opt-out provision, and the County would need to make up for the money used to keep up with the old landfills. Mr. Downey noted yard waste was part of the whole equation.

Mr. Carter responded Agency staff had discussed this with County staff. Mr. Carter noted the County had a sliding scale depending on the amount of material that came in and the MOA fees were adjusted. Mr. Carter noted the County would be able to keep up their closed landfill operations regardless of the green waste tonnage changes.

Board Discussion:

Chair Schwartz suggested the JPA, as amended at this meeting, be distributed to all the agency member jurisdiction attorneys for one final review, and comments forwarded to Mr. Walsh within two weeks.

Mr. Walsh suggested he could make the appropriate revisions based on the attorney comments and send it out to the Agency Board with a memo outlining the changes and discussion could take place at a December meeting if needed.

Public Comment:

None.

Chair Schwartz motioned to return the final version of the JPA Agreement to city and county attorneys for final consideration and have the version ready for distribution at the December 21, 2016 meeting. Mr. Sawyer seconded the motion.

Vote Count:

| | | | |
|--------------|-----|------------------|-----|
| Cloverdale | Aye | Santa Rosa | Aye |
| Cotati | Aye | Sebastopol | Aye |
| Healdsburg | Aye | City of Sonoma | Aye |
| Petaluma | Noe | County of Sonoma | Aye |
| Rohnert Park | Aye | Windsor | Aye |

AYES -9- NOES -1- ABSENT -0- ABSTAIN -0-

Motion passed.

Recess 10:15 a.m

Back in session 10:20 a.m.

6. Approval of First Amendment to the Agreement for Household Hazardous Waste Operations

Mr. Carter stated the Agency had this agreement with Clean Harbor since 2014 and was due to expire February 11, 2017. Mr. Carter noted it would extend the agreement to expire the sooner of when the SCWMA expired or June 30, 2019. Mr. Carter noted Clean Harbors requested a CPI adjustment to their labor cost not to exceed 3% in a twelve month period, which would be approximately \$15,000, which would be handled with the Agency's existing fee structure.

Board Member Comments:

Chair Schwartz inquired regarding progress regarding a North County facility for household hazardous waste.

Mr. Carter replied Agency staff was exploring a few possible avenues, but there was nothing to report at this time.

Public Comment:

None.

Mr. Mikus motioned to approve the resolution authorizing the Executive Director to sign the First Amendment to the Agreement for Household Hazardous Waste Operations. Ms. Fudge seconded the motion.

Vote Count:

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

AYES -10- NOES -0- ABSENT -0- ABSTAIN -0-

Motion passed unanimously.

7. Attachments/Correspondence:

7.1 Outreach Calendar November and December 2016

Chair Schwartz asked this item be moved to the consent calendar in the future.

8. Board Member Comments:

Chair Schwartz thanked Mr. Cox for his service on the Board.

Mr. Carter thanked Mr. Cox for his leadership and service on the SCWMA Board and stated he had been a source of stability and thoughtful insight on the Board.

9. Staff Comments:

Mr. Carter announced the deadline for the Request for Information Responses on the future of composting was Monday, November 14, 2016 and sixteen responses were received.

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Mr. Carter stated there was a building permit Republic needed to obtain to begin construction as expected, so the deadline for getting the material off the tipping floor was pushed back to November 28th.

Mr. Carter noted the Agency had not received pricing information yet from The Ratto Group for redirecting the material. Mr. Carter stated he was still working on this, and while the transportation was The Ratto Group's responsibility, it was the goal of the Agency to work together.

10. Next SCWMA meeting:

The next SCWMA meeting will be held on December 21, 2016.

11. Adjournment:

The meeting adjourned at 10:39 a.m.

Submitted by:
Sally Evans



Agenda Item #: 5
Cost Center: All
Staff Contact: Carter
Agenda Date: 12/21/2016
Approved 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, and direct staff to 1) develop a model staff report and presentation to assist City and County staff, and 2) begin the process of presenting the agreement to City Councils and the Board of Supervisors.

II. BACKGROUND

The Board of Directors has discussed the future of Agency programs during many Agency meetings over the past several years. 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. Staff presented the Draft Amended and Restated Agreement at the November 16, 2016, where there was agreement on all issues except voting requirements.

III. DISCUSSION

Staff believes compromise language contained in this revised agreement will satisfy all parties, based on the feedback received at the November 16, 2016 meeting. Agency Counsel has prepared a memo detailing the material changes from the draft the Board reviewed at the prior meeting. To briefly summarize, these changes include:

- Requiring a majority vote of the Board to allow a member which withdrew from the Current Composting Program back into that program.
- Expanding on the Civil Penalties section to allow proportionate payment of penalties, when appropriate.
- Requiring that the cost of implementing Additional Programs be only borne by participating members.
- Requiring a super-majority vote for Agency Budget or amendment approval, incurrence of debt of \$250,000 or more, or authorization of expenditures of \$250,000 or more from a single source within a single fiscal year.
- Requiring a unanimous vote for acquisition of real property (purchase or lease) with a value of \$250,000 or greater.

Staff requests the Board provide feedback on this agreement, and if the agreement becomes

finalized, staff proposes to create a model staff report and presentation to assist SCWMA members in agendaing and preparing their Councils and Board for consideration of this agreement.

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 **Month/Day/Year** (“**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 ~~6.017~~ 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 ~~6.027.B~~ 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 ~~9.0312.B~~ 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, cafeterias in 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.

DRAFT—FOR DISCUSSION PURPOSES ONLY

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.

J. “Household Hazardous Waste” shall mean waste materials determined by the 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 they must be listed as hazardous in state statutes and regulations, and which are toxic/ignitable/corrosive/reactive, or carcinogenic/mutagenic/teratogenic; ~~which is~~ and are 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 Department of Resources Recycling and Recovery~~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 Members’ jurisdictions ~~of the Members that~~who 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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T.

2. PURPOSE

A. Amended and Restated Agreement. 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. Continuation of the Sonoma County Waste Management Agency as a Separate Public Entity. 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 [JPA Act](#). It is the intent of the Members that under this Agreement the Agency shall continue as a distinct public entity under the [AgencyJPA Act](#) and other applicable law.

C. Core Programs. 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. Additional Programs. 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. General Powers. 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.

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B. **Specific Powers.** 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 in accordance with Section 5 of this Agreement as may be necessary and proper to implement and effectuate the terms, provisions and purposes of this Agreement;

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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. Restriction on Exercise of Powers. Pursuant to the [JPA](#) 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. Household Hazardous Waste Program. 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 or add additional locations 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. Organic Materials Program. 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 jurisdictions of the members that participate in the program (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

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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. A Member that has withdrawn from the Current Composting Program or is not participating as of the Effective Date, may rejoin the Current Composting Program if such request to rejoin is approved by the Agency Board. Even if all Members withdraw from the Current Program, the Agency shall retain the authority set forth in subsection iii below, even if that authority is not exercised. ~~Such~~The withdrawal of all Members from the Current Program shall not constitute an elimination of the Organic Materials Program requiring an amendment to this Agreement.

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~~Members. 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. Education Program. 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. Reporting Program.

i. *Regional Agency.* The Agency is and shall continue to be a Regional

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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, or (d) the Agency and the individual Members which are also responsible for the penalty shall pay the penalty in amounts proportionate to their responsibility for the penalty. Before apportioning a penalty to one or more Members pursuant to this Section, the Agency shall provide written notice to such Members that explains the basis for apportionment of responsibility for the penalty, and shall provide an opportunity for a hearing before the Agency Board prior to assessment of any such penalty.

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. Authority to Develop Additional Programs. 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

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researching and disseminating information to the Members regarding methods to reduce solid waste and increase waste diversion in the region.

B. Approval by Members Prior to Implementation in Specific Jurisdictions. The implementation of 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, including but not limited to ordinances, regulations or similar legislative actions, shall be subject to the approval of 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. Costs of Implementation of Additional Programs. In the event that individual Members approve an additional program developed by the Agency pursuant to this Section and desire that the Agency implement and/or participate in the enforcement of such program within the Member's jurisdiction, each individual Member shall bear the reasonable cost of the Agency's implementation and/or enforcement of any additional program in their respective jurisdictions. The reasonable cost of implementation and/or enforcement within a Member's jurisdiction shall be determined by the Agency and shall be paid by the Member in accordance with the terms of an agreement entered into between the Agency and Member pursuant to Subsection 5.B, or if all Members participate in the additional program such costs of implementation may be paid directly by the Agency. The costs of implementation and/or enforcement of an additional program which shall be borne by individual Members based on this Subsection 5.C specifically exclude the cost of development of the additional program, including but not limited to staff, consultant and legal costs incurred in the research, preparation and drafting of the additional program, environmental analysis required prior to the adoption of the program, including but not limited to analysis in accordance with the California Environmental Quality Act (Public Resources Code §§21000 *et seq.*), and the cost to indemnify, defend and hold harmless individual members that are made party to any claim, suit or similar proceeding challenging the validity of the additional program.

~~ED.~~ Additional Programs Included in Budget. 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. Effective Date. This Agreement shall become effective on _____, 201_, or the date upon which anall authorized representative of each-ofall the Members hashave executed this Agreement, whichever is later. Such date shall be the "Effective Date" for purposes identified herein.

~~B. Term. 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~~

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~~from the Agency.~~

~~Or~~

~~_____ B. Term. 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. Term. 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.

7. AGENCY BOARD

A. Board of Directors. The Agency is governed and administered by a Board of Directors (“Board”) that is composed of one voting seat per Member.

B. Directors and Alternates. 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 or as a Member employee, that Director or Alternative Director position shall become vacant and the governing body of that Member shall appoint a new Director or Alternative Director.

C. Agency Officers. 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. Board Committees. 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. No Personal Liability of Board Members. Under the JPA Act, no Director shall be personally liable for any debts, obligations or liabilities of the Agency, nor subject to any personal

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liability or accountability by reason of the Agency's incurrence of debts, obligations or liabilities.

8. BOARD MEETINGS AND VOTING

A. Regular Meetings. 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. Special Meetings. 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. Call, Notice and Conduct of Meetings. 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. Quorum. Five Board members shall constitute a quorum of the Board.

E. Voting—Regular Items. 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. ~~Unanimous~~Super-Majority Vote Items. A ~~unanimous~~super-majority vote, which for purposes of this Agreement constitutes a vote of 8/10 of all ~~Board~~ members of the Board (currently 8 of 10 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 in an amount of \$250,000 or more;

iii. ~~Acquisition of any interest in real property;~~ Authorization of expenditures of \$250,000 or more to a single source within a single fiscal year.

~~iv. Dissolution of the Agency.~~

G. Unanimous Vote Items. A unanimous vote is required for the Agency to acquire any interest in real property with a value of \$250,000 or more.

GH. Public Meeting for Periodic Review of Agreement. 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

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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. [This section shall not preclude the Members from making amendments of this Agreement at other times as deemed necessary or appropriate by the Members, in accordance with Section 13.B of this Agreement.](#)

9. OPERATIONS AND MANAGEMENT.

A. Executive Director. The Agency may appoint an Executive Director, from time-to-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. Legal Counsel and Other Officers. 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. Treasurer, Controller and Annual Audit. 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. Employees and Management. 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. Other Agency Services. 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

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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. Rules of Governance. 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. Conflict of Interest Code. 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. Separate Public Entity. 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. Name. The Agency may change its name at any time through adoption of a resolution of the Board of Directors.

C. Liabilities. 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 even if a majority of the Members agree to assume the debt, liability or obligation of the Agency.

D. Indemnity. 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~~ the Agency's programs. Notwithstanding the foregoing, the sole negligence, gross negligence, or intentional acts of any Member is exempted from the indemnification provided by this Section 10. ED.

E. Withdrawal of Members. Any Member shall 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

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~~given the~~ Fiscal Year in which the one hundred eighty (180) day written notice period is completed. 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 interests 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. Continuing Obligations upon Withdrawal. 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 which remain in the Agency and subject to 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. Approval by Members. 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).

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B. No Limitation on Members. 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. Establishment of Funds. 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. Fiscal Year. The Fiscal Year of the Agency shall be from July 1 to June 30.

C. Budget. 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. Waste Management Agency Fees. 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.

E. Current Composting Program Fee. The 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. Additional Fees. 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. Agreements with Individual Member Agencies. In the event that a Member does not provide its jurisdiction's waste to the County of Sonoma's waste disposal system and therefore

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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. Insurance. The Agency shall be required to obtain insurance, or join a self-insurance 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. All amounts coverages and provisions of the insurance policies identified in this subsection H shall be subject to the approval of Agency Counsel.

13. MISCELLANEOUS PROVISIONS

A. Agreement Complete. 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. Amendment. 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. Successors and Assigns. 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. Execution in Counterparts. 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. Member Authorization. The governing bodies of the Members have each authorized execution of this Agreement, as evidenced by their respective signatures below.

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F. Notices. 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. Severability and Validity of Agreement. 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.

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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

DRAFT—FOR DISCUSSION PURPOSES ONLY

EXHIBIT A

NOTICE INFORMATION FOR MEMBERS

| | |
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| Summary report: Litéra® Change-Pro 7.5.0.135 Document comparison done on 12/14/2016 2:57:04 PM | |
| Style name: Default Style | |
| Intelligent Table Comparison: Active | |
| Original DMS: iw://iManage/iManage/29307286/6 | |
| Modified DMS: iw://iManage/iManage/29307286/9 | |
| Changes: | |
| <u>Add</u> | 44 |
| Delete | 38 |
| Move From | 1 |
| <u>Move To</u> | 1 |
| <u>Table Insert</u> | 0 |
| Table Delete | 0 |
| <u>Table moves to</u> | 0 |
| Table moves from | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| Format changes | 0 |
| Total Changes: | 84 |



Memorandum

To: Sonoma County Waste Management Agency Board of Directors
From: Ethan Walsh
Agency Counsel
Date: December 14, 2016
Re: Final Edits to Amended and Restated Joint Exercise of Powers Agreement

At the November Agency Board meeting, by a 9-1 vote, the Board directed Agency staff to do the following:

1. Revise the draft Amended and Restated Joint Exercise of Powers Agreement (the "Agreement") to provide for an indefinite term with a 10 year check-in to determine if amendments to the Agreement are necessary or desirable (this was one of multiple term options);
2. Revise the "Unanimous Vote" provision of the Agreement to provide that only acquisitions of interest in real property with a value of greater than \$250,000 be subject to a unanimous vote;
3. Add language to the Agreement providing that adoption of the budget, expenditures of more than \$250,000, and incurrence of debt in an amount greater than \$250,000 be subject to a super majority vote of 8 out of 10 board members; and
4. Direct Agency counsel to make those revisions and circulate the Agreement to the Members' respective attorneys for any final comments and suggested edits.

Agency Counsel made the revisions as directed by the Board, and recirculated to the Members' counsel. We received some additional comments, which are incorporated into this most current draft. Most of the suggested edits are stylistic and/or clean up edits, but there are a few substantive changes. The proposed substantive changes are outlined below, and the Board can decide whether or not to include them in the final version to be forwarded to the Members for approval.

Additionally, City of Petaluma staff has raised concerns regarding the Board's decision to remove certain items from the unanimous vote requirement. Agency staff and the Board Chair engaged in discussion with Petaluma staff to come up with a solution that would lessen Petaluma's concerns. As a result of those discussions, Agency counsel drafted proposed language, which is included in Section 5.C of the most recent draft of the Agreement. The reasoning behind this language is also outlined in more detail below.

Substantive Revisions to Draft Agreement

1. Withdrawal from Current Composting Program. (Section 4.B.ii, on p. 7) The draft Agreement allows Members to withdraw from the current composting program, which consists of hauling compostable materials to composting facilities outside Sonoma County. The city attorneys for Petaluma and Sonoma both suggested that Members that withdraw should have the option of rejoining the current composting program, if desired.

Agency staff is not opposed to allowing members to rejoin, provided that the Agency Board is willing to allow a member to rejoin. There could conceivably be a situation where a member sought to rejoin the current composting program, but because of a lack of capacity at the facilities currently used by the Agency, it would be very costly for the Agency to secure sufficient contracts to accommodate the member seeking to rejoin the program. In that instance, the Board may not be willing to allow a member to rejoin, since the added cost could be spread to all members.

To address the comments from the attorneys for Sonoma and Petaluma, we proposed language that would allow a withdrawing member to rejoin the current composting program, if approved by the Agency Board.

2. Civil Penalties. (Section 4.D.ii, p. 8) Several of the attorneys raised questions regarding the section that provides for allocation of civil penalties for violations of the Integrated Waste Management Act, and wanted to ensure that there was a process in place to address concerns about the manner in which penalties were allocated. This language was carried over from the original JPA Agreement, and had been incorporated into the Agreement so that the Agency could be designated as a Regional Agency responsible for reporting under the IWMA. In response to the concerns raised, Agency Counsel added language providing that the Agency would have the ability to apportion penalties on a proportionate basis based on responsibility, and to give members written notice and an opportunity for a hearing before the Board before the penalties are allocated. This is consistent with the process provided for under the IWMA.

3. Approval by Members Prior to Implementation of Additional Programs. (Section 5.B, p. 9) The revisions to this Section are intended to make clear that the Additional Programs that are subject to approval in individual jurisdictions include ordinances and similar legislative actions. Additionally, the previous draft provided that in the event that the Agency entered into agreements with individual jurisdictions for implementation of additional programs, Board members would not vote on agreements involving their own agency. This provision could result in added complication, if the Agency were to enter into an agreement with multiple members. This situation does not involve a conflict of interest under the law, and therefore we recommend that this requirement also be deleted.

4. Costs of Implementation of Additional Programs. (Section 5.C, p. 9) This section was added as a proposed amendment to address the City of Petaluma's concerns. The City of Petaluma was concerned in part that the majority of the Board (which in some cases may not represent the majority of the population in Sonoma County) could vote to take action on a program that may not benefit all the members, particularly in the case of an additional program where not all members opted to participate. If this were the case, Petaluma was concerned that all members would bear the cost of the program, while only some members would receive the benefit.

Once an Additional Program is developed, if some but not all of the members choose to participate in that program, it does make sense that only the participating members should pay for the implementation of that program. Therefore, the proposed language in Section 5.C provides that if some, but not all, of the members choose to participate in an additional program and have the Agency implement that program for them, those members will need to pay the Agency for the cost of implementation.

It is important to note that this would not include the cost of developing the additional program, which would be shared by all members and would be paid for out of the Agency fee charged against solid waste received in the County. All members would benefit from the development of a program, even if they ultimately chose not to adopt it, and therefore should share in the cost of development. It would also not include the indemnification of individual members from a challenge to the additional program. So, if the Agency developed a model ordinance and that model ordinance was adopted by members as an additional program, the Agency would still indemnify the individual member against any legal challenges to that ordinance, even if not all members choose to participate in the program.

5. Supermajority Approvals of Expenditures. (Section 8.F.iii) The Board directed that a supermajority vote be required for expenditures of greater than \$250,000. One city attorney noted that the term "expenditures" is vague, and that the Agency could potentially piecemeal expenditures for goods and services into multiple contracts in order to avoid the \$250,000 threshold for supermajority votes. In order to address that, Agency counsel proposed that the supermajority requirements be applied to: "Authorization of expenditures of \$250,000 or more to a single source within a single fiscal year."

This is intended to make clear expenditures within a fiscal year cannot be piecemealed in order to avoid the supermajority requirement. The language also makes clear that the supermajority vote is triggered when the expenditure is authorized. In other words, the Board would require a supermajority vote for a contract that authorized expenditures of \$250,000 or more, but the actual payment would not have to come back to the Board for a super-majority approval.

6. Indemnity. (Section 10.D, p. 13) The revisions to this section are intended to make clear that the Agency will indemnify the Members in the event of any lawsuits or similar claims made in connection with the Agency's programs. It is my understanding that the Agency is intended to protect its members from liability in connection with these programs, and therefore this broad



indemnity is appropriate. The previous version required a demonstration of negligence on the part of the Agency, which could raise questions regarding whether the indemnity was triggered and require both the Agency and its members to incur legal costs. These edits are intended to make clear that the Agency will be responsible for all such claims.



Agenda Item #: **6**
Cost Center: **Yard/Wood**
Staff Contact: **Carter**
Agenda Date: **12/21/2016**
Approved By:

ITEM: **Discussion and Possible Action on Organic Waste at the Central Disposal Site**

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends amending the agreement with the Ratto Group for Organic Materials Hauling to include the additional cost of providing service for self-haul customers at the Central Disposal Site.

Alternatively, staff could begin noticing organics customers that organics disposal will no longer be available at the Central Disposal Site and providing information about alternative disposal locations.

II. BACKGROUND

Republic Services, which operates the transfer stations informed SCWMA that the transfer station tipping floor at the Central Disposal Site would not be available when construction of the Materials Recovery Facility (MRF) began. The construction date was pushed back several times, but as of December 12, 2016 organic materials are no longer allowed on the tipping floor at the Central Disposal Site.

SCWMA staff has held many discussions with Republic Services and the Ratto Group staff on the subject of transferring organic material delivered to Central, and staff was provided with preliminary cost information on November 29, 2016. Information regarding the cost to provide service for self-haul customers was provided on December 6, 2016.

III. DISCUSSION

The Ratto Group provided cost information for two scenarios, 1) transporting material directly from the curbside routes to the Redwood Landfill compost facility and 2) redirecting curbside route trucks to the Sonoma and Healdsburg transfer stations instead of the Central Disposal Site. SCWMA staff sent the information to staff from the affected jurisdictions, and the general response was that those jurisdictions wanted the Ratto Group to make proposals directly with those jurisdictions, since those jurisdictions control the disposition of that material through their franchise agreements. SCWMA staff communicated the need to have a direct dialogue to the Ratto Group staff.

In the interest of continuing to provide a service to organics self-haul customers, SCWMA staff agreed in concept to a proposal to provide short term disposal options for those customers at the Central Disposal Site. Self-haul customers would deposit their loads directly into debris boxes near the tipping floor, and the Ratto Group would service those boxes several times per day. Staff acknowledged there is an additional cost for this service, as there is additional equipment and

labor associated with these tasks, but has not finished negotiations with the Ratto Group regarding those costs. As the December 12 deadline loomed, the Ratto Group decided to proceed with the understanding that the SCWMA would compensate them for this work. Staff proposes to continue negotiations with the Ratto Group regarding the compensation rate for this additional work and return at the January 18, 2017 SCWMA meeting with an amendment to the Organic Material Hauling agreement with the Ratto Group.

IV. FUNDING IMPACT

Funding impacts will depend on the rate negotiated with the Ratto Group. From the preliminary proposal, staff believes the collection, transport, and disposal of this material may slightly exceed the \$58/ton the SCWMA receives as revenue for this material, but due to the relatively low amount of this material received (estimated at 5,000 tons per year, or an overrun of about \$30,000 per year), staff does not believe a rate adjustment will be necessary for the current fiscal year.

V. ATTACHMENTS

None



Agenda Item #: 7
Cost Center: Contingency
Staff Contact: Carter
Agenda Date: 12/21/2016
Approved By:

ITEM: **Report and Direction Requested on a Project to Inform and Educate on the Background of Solid and Hazardous Waste in Sonoma County**

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff requests direction from the Board regarding the development of a project to inform and educate City and County staff, SCWMA Board members, and members of the public on the background of solid and hazardous waste in Sonoma County.

II. BACKGROUND

Proper handling and disposal of solid waste (garbage, recyclables, and organic waste) and household hazardous waste is complex. The industry is highly regulated, there are many parties involved, and there are a number of agreements in place that are unique to Sonoma County such as waste delivery agreements, the Master Operating Agreement, and the existing and future Joint Exercise of Powers Agreements. Staff believes there would be value in the creation of a presentation and documentation which examines the various parties, agreements, and complexities of solid and hazardous waste management in Sonoma County. Such documentation does not currently exist.

III. DISCUSSION

Though SCWMA staff provides information to new Board members and is available to existing Board members and the public to distill solid and hazardous waste information, documentation available on the SCWMA website could more conveniently convey that information. A workshop or series of workshops could be developed to further explore specific topics of interest.

Staff requests Board direction regarding this potential project. Staff does not have the resources currently to implement this project, so staff would seek contractor assistance. Staff has not developed a scope of work or a budget for this project at this point, as staff has not received Board direction on this project.

IV. FUNDING IMPACT

Funding impacts have not been determined at this point. However, the Contingency Reserve currently has a balance of \$263,432 which is more than sufficient to cover the potential costs of this program. Currently, the Contingency Reserve is funding staff and Agency Counsel time to update the JPA Agreement and future costs for that project are estimated to be less than \$20,000 for the remainder of the fiscal year.