



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number:
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: April 11, 2017

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Susan Klassen 707-565-2231

Supervisorial District(s):

Countywide

Title: Consideration of an Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency

Recommended Actions:

Approve and authorize the Chair to execute the proposed Amended and Restated Joint Exercise of Powers Agreement (JPA) for the Sonoma County Waste Management Agency (SCWMA) to ensure that the County achieves its state mandated waste diversion goals and protects the environment in the most cost efficient manner for rate payers.

Executive Summary:

The SCWMA was formed in 1992 to address state legislation requiring Cities and Counties to divert a minimum of 50% of their waste from landfill disposal by 2000. When the SCWMA first began tracking the total waste stream diverted through re-use and recycling in 1995 it was only 39%. The Countywide diversion rate in 2006 was 64%. Since 2006 the diversion is no longer calculated and reported based on percentage diverted, however, it is estimated that currently over 70% of discarded material is diverted from landfill disposal through re-use and recycling. The SCWMA has been a significant contributor to the efforts to increase diversion, through creation of the Organics Composting program and Household Hazardous Waste Program, and the Education efforts which taught the public the benefits associated with re-use and recycling and changed behavior. The SCWMA's wood waste and yard debris composting program has prevented approximately 2 million tons of material from landfill disposal, which is approximately 6.5 years of Sonoma County landfill disposal at current rates. The SCWMA's household hazardous waste program has diverted 8,741 tons of material since 2003.

The SCWMA's term was originally set for 25 years ending February 2017, however, all members, comprised of one representative from all nine cities and the County, agreed to extend the term an additional year, so that the current term expiration is February 11, 2018. The SCWMA's core programs currently include Wood Waste and Yard Debris (organic material) processing, Household Hazardous Waste (HHW) collection and proper disposal, solid waste education and outreach, and state-required solid waste planning and reporting. If the SCWMA is not extended or replaced, the services the SCWMA provides must be assumed by its members within their jurisdictions.

Discussion:

Background:

The SCWMA Board of Directors, City and County staff, and governing Councils and Boards have been discussing the future of SCWMA programs for over three years. In March 2016, the SCWMA member agencies agreed to extend the term of the JPA for one year from February, 2017 to February, 11, 2018, to allow for discussions to continue to build consensus on the future SCWMA programs. Over this period of time, the efficacy of SCWMA programs were studied and alternative delivery models were studied. Some of the alternatives studied included: member agencies each providing the programs within the jurisdictional areas individually; the County providing all programs and the Cities contracting for service; and using a JPA affiliate with the Regional Climate Protection Authority to provide services. Ultimately consensus was reached by the SCWMA Board that the continuation of the existing SCWMA with a modified JPA was the preferred model. SCWMA staff and counsel, with the input of the Agency board and the member jurisdictions, including City Attorneys and County Counsel have drafted an Amended and Restated Joint Exercise of Powers Agreement. Feedback has been incorporated into the finalized draft JPA (Attachment A). The SCWMA Board unanimously approved this draft for distribution to SCWMA member agencies on December 21, 2016.

Provisions of the proposed Amended and Restated Joint Exercise of Powers Agreement:

The JPA agreement retains the existing core programs (organics, HHW, education/outreach, and planning/reporting), while introducing the following noteworthy provisions:

General Provisions:

Continuing with the current composting program (directing green waste and wood waste to out of county compost facilities) and allowing members to opt into a potential future organics management program

Allowing for HHW collection and processing to continue at the Central Disposal Site and adding flexibility to establish additional sites elsewhere in the county

Allowing members to opt out of additional, non-core programs, and requiring that only participating members incur any additional costs for implementing those programs

Removing the 25 year term (the SCWMA would remain in existence until dissolved), but requiring that a review of SCWMA programs be performed every ten years during a public meeting to determine whether any agreement amendments are necessary

Retaining the unanimous vote requirement for the acquisition of interest in real property with a value of greater than \$250,000

Requiring a supermajority vote (8/10) for the adoption of the SCWMA annual budget or budget amendments, authorization of expenditures of \$250,000 or more to a single source within a single fiscal year, and incurrence of debt from public or private lending or financing sources in an amount of \$250,000 or more

County Specific Provisions of Interest:

Terms from the existing JPA that *obligated* the County of Sonoma to provide locations at the Central Landfill, for Composting and HHW and to provide staff services including the executive director, agency

staff and support services from the county have been removed or modified such that those issues are handled through separate agreements, licenses, or leases. The staffing services agreements allow the County to terminate with appropriate notice. The language of the proposed JPA provides flexibility to the SCWMA to select other locations for programs and make different arrangements for staffing and offices should they chose to do so in the future.

A more detailed description of the Key Terms of the proposed JPA is attached as Attachment B. A table with a side by side comparison of the existing and proposed JPA agreements is included as Attachment C.

Any changes to the agreement proposed by the County Board of Supervisors would need to be approved by all other participating members, including members who may have already approved this agreement.

Support for Recommendation:

In July 2016, the Agency received a report prepared by R3 Consultants that looked at the pros and cons of continuation of the SCWMA. This report is on file with the Clerk. Members of the County Board of Supervisors acting in their role as the County representative on the SCWMA Board and staff have reviewed this report and have participated in three years of discussion on the issues. Additionally, staff reviewed the policy goals that were adopted by the County City Solid Waste Advisory Group (SWAG), led by Supervisors Zane and Rabbitt, of protecting the environment, increasing diversion, reducing greenhouse gas emissions, managing our own waste stream in-county, and achieving cost efficiencies for rate payers. Continuation of the SCWMA will help meet those goals.

The continuation of this regional agency will assure that a cost effective Household Hazardous Waste Collection program, which will protect these products from ending up in our environment, will continue to serve all of the jurisdictions in Sonoma County. It will ensure that regional planning focused on increased diversion continues and that new programs such as a mandatory commercial recycling, and mandatory organics are implemented consistently throughout the County through the development of model ordinances. It will also help ensure that Outreach and Education, when programs are implemented, is robust and consistent, for all businesses and residents.

The continuation of the SCWMA through approval of the JPA will achieve cost efficiencies. The Consultant, R3, prepared an analysis of costs, allocated by jurisdiction, for the Agency to provide programs to the Cities and the County (other than Compost, which is a tip fee for service funded program). They were also tasked with estimating the costs to the individual jurisdictions to provide the services themselves, if there was no Agency. The Agency's Consultant report to the Agency concluded that the Agency spends approximately \$215,000 annually to provide the County with the HHW, Education, Planning and Reporting programs and that the County would spend that amount, as well as, an additional \$156,000 to \$166,000 annually for a total of up to \$381,000 per year to provide those programs to the unincorporated County residents.

For these reasons staff recommends that the Board of Supervisors approve the proposed JPA agreement.

Status of the Project to re-establish In-County Composting Program(s):

From 2007 to 2016, the SCWMA was engaged in a process to identify, study, permit, and build a new compost site to replace the temporary compost site at the Central Disposal Site. The process ended in 2016, when, as a result of settling CEQA-based litigation, the new site was removed from further

consideration. On September, 2016, the SCWMA issued a Request for Information to determine the level of interest from the private sector to identify and offer long term organics processing capacity for Sonoma County's green, wood, and food waste. That process resulted in 16 responses, an indication of strong interest. The SCWMA is currently working to develop a Request for Proposals with a schedule to complete the process and have agreements ready for adoption by October 2017.

The proposed JPA allows for members to withdraw from the current compost program with written 90 day notice. Any new composting program will be implemented through separate agreements between the participating parties, and the provider (s) and each member of the JPA will have the option to participate, or address composting in any other manner of the choosing. Therefore, the Board of Supervisors will have full flexibility to address composting in the future as they might direct, if the RFP process of JPA does not provide the Board with a project that meets the needs of the unincorporated County residents.

Status of Jurisdictional Approval of the proposed JPA:

For the proposed JPA for the SCWMA to become effective, all participating members must approve the agreement in the same form. The agreement has been reviewed by attorneys representing all Sonoma County cities, and the County, and all legal concerns were addressed in this final draft. The SCWMA Board of Directors reviewed and approved for distribution the attached agreement for the SCWMA at the December 21, 2016 SCWMA Board of Directors meeting. As of the time of this writing seven cities have approved the proposed JPA; Cloverdale, Cotati, Healdsburg, Sebastopol, Sonoma, Windsor, Petaluma and Rohnert Park. City of Santa Rosa has tentatively scheduled to consider this item on April 18, 2017.

Prior Board Actions:

October 18, 2016: The Board of Supervisors accepted an informational report on the SCWMA project related to composting and the future of the SCWMA.

March 1, 2016: The Board of Supervisors approved a one-year extension to the existing JPA for the SCWMA to Feb. 11, 2018 and provided feedback to staff as to the future of the Agency programs.

June 23, 2015: The Board of Supervisors provided direction to staff regarding policy preferences related to the future of the SCWMA.

Strategic Plan Alignment

The continuation and expansion of regional programs, such as Composting, Household Hazardous Waste and Recycling help protect the environmental and address climate action goals.

Fiscal Summary			
Expenditures	FY 16-17 Adopted	FY 17-18 Projected	FY 18-19 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
<p>There are no additional funding impacts expected from the approval of the Amended and Restated Joint Exercise of Powers Agreement for the SCWMA, as the funding sources for that agency (tipping fee surcharges, grants, and agreement-defined contributions) are not expected to change in the FY 2017-18 Fiscal Year.</p> <p>The Agency hired a Consultant to analyze the costs, allocated by jurisdiction, spent by the Agency to provide programs to the Cities and the County (other than Compost, which is a tip fee for service funded program). They were also asked to estimate the costs to the individual jurisdictions to provide the services themselves, if there was no Agency. The Agency's Consultant, R3, in their July 12 report to the Agency estimated that the Agency spends approximately \$215k annually to provide the County with these programs and that the County would spend that amount, as well as, an additional \$156k to \$166k/year for a total of up to \$381k/year to provide those programs to the unincorporated County residents.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			

Attachments:

Attachment A: Amended and Restated Joint Exercise of Powers Agreement

Attachment B: Memo summarizing key agreement provisions

Attachment C: Comparison of Existing and Proposed Agreement Provisions

Related Items “On File” with the Clerk of the Board:

Report on SCWMA Alternatives dated July 12, 2016, by R3 Consulting Group, Inc.

**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 March 1, 2017 (“**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**”).

G. The Members desire to continue to jointly exercise 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 7 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 7.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 12.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.

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; 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 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 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 Members’ jurisdictions 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.

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 JPA 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.

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; 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 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. 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 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 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 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 in individual jurisdictions, 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.

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.

D. 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 March 1, 2017, or the date upon which all authorized representative of all the Members have executed this Agreement, whichever is later. Such date shall be the “Effective Date” for purposes identified herein.

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 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. Super-Majority Vote Items. A super-majority vote, which for purposes of this Agreement constitutes a vote of 8/10 of all 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. Authorization of expenditures of \$250,000 or more to a single source within a single fiscal year;
- iv. Any increase in fees or imposition of any new fees.

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.

H. 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 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 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 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.D.

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 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, and the Agency shall remain in operation provided that there are at least two Members which remain in the Agency and subject to this Agreement.

G. Dissolution. The Agency may be dissolved at any time upon the unanimous 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).

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 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 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.

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.

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.

COUNTY OF SONOMA

Chair
Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Assistant County Counsel

CITY OF SANTA ROSA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF ROHNERT PARK

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF SEBASTOPOL

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF SONOMA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF CLOVERDALE

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF PETALUMA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF COTATI

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF HEALDSBURG

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TOWN OF WINDSOR

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A

NOTICE INFORMATION FOR MEMBERS

COUNTY OF SONOMA:

County of Sonoma
Attn: County Administrator
575 Administration Drive
Suite 104A
Santa Rosa, CA 95403

CITY OF SANTA ROSA

City of Santa Rosa
Attn: City Manager
100 Santa Rosa Avenue
Room 10
Santa Rosa, CA 95404

CITY OF ROHNERT PARK

City of Rohnert Park
Attn: City Manager
130 Avram Avenue
Rohnert Park, CA 94928

CITY OF SEBASTOPOL

City of Sebastopol
Attn: City Manager
7120 Bodega Avenue
P.O. Box 1776
Sebastopol, CA 95473

CITY OF SONOMA

City of Sonoma
Attn: City Manager
No. 1, the Plaza
Sonoma, CA 95476

[CONTINUED ON NEXT PAGE]

CITY OF CLOVERDALE

City of Cloverdale
Attn: City Manager
124 North Cloverdale Blvd.
Cloverdale, CA 95425

CITY OF PETALUMA

City of Petaluma
Attn: City Manager
11 English Street
Petaluma, CA 94952

CITY OF COTATI

City of Cotati
Attn: City Manager
201 West Sierra Avenue
Cotati, CA 94932-4217

CITY OF HEALDSBURG

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

TOWN OF WINDSOR

Town of Windsor
Attn: Town Manager
9291 Old Redwood Highway
P.O. Box 100
Windsor, CA 95492-0100



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Memorandum

To: Patrick Carter
From: Ethan Walsh
Agency Counsel
Date: January 13, 2017
Re: Amended and Restated Joint Exercise of Powers Agreement

I. Introduction

This memorandum summarizes the key provisions of the Amended and Restated Joint Powers Agreement (“the “JPA Agreement”) that the Sonoma County Waste Management Agency (“Agency”) Board directed staff to pass on to the Members, for consideration by their legislative bodies. I have also enclosed a document that compares some of the key provisions of this Agreement to the Original Joint Powers Agreement, as it has been amended to date.

II. Key Terms of Draft Agreement

A. Core Programs. (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. Household Hazardous Waste Program: (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. Composting Program: (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



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operating its current program of hauling compostable materials received from member agencies for so long as this service is needed.

ii. *Withdrawal from Current Program:* (Section 4.B.ii) This section 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. A member that has withdrawn may rejoin the Current Program, but only if approved by a majority vote of the Board.

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.

3. Education Program. (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. Reporting Program. (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. Additional Programs: (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.

Additionally, once an Additional Program is developed, if some, but not all of the members choose to participate in that program and have the Agency implement that program for them, those members will need to pay the Agency for the cost of implementation. 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. 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.

C. Term: (Section 6.B) This section provides that the Agency shall remain in existence until it is dissolved (i.e., no fixed term). This is in contrast to the Original Agreement, which included a 25 year term, at the end of which the Agency would be dissolved. The JPA agreement does include a separate section providing that the Agency shall conduct a public meeting every ten years 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. (Section 8.H) This section does not require the Members to make any amendments, nor does it prevent the Members from making amendments at another time.

D. Directors and Alternates: (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. Supermajority Vote Items. (Section 8.F) The Board will need an 8/10 to approve any of the following items: (i) Approval or amendment of the Agency budget; (ii) incurrence of debt greater than \$250,000; (iii) expenditures in an amount greater than \$250,000; and any increases or adoption of new fees. Additionally, the Board will need unanimous approval of acquisition of any interest in real property with a value of greater than \$250,000. These sections are changed from the original agreement, which required a unanimous vote for major project expansions, approval of the budget, and capital expenditures of greater than \$50,000.



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F. Withdrawal of Members. (Section 10.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.

G. Dissolution of the Agency. (Section 10.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. Agreements with Individual Member Agencies. (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. Provisions Removed from the Current JPA Agreement. 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.

COMPARISON OF KEY JPA TERMS

Terms	Original JPA Agreement	Amended and Restated JPA Agreement
Core Programs	(1) Household hazardous waste (2) Wood waste (3) Yard waste (4) Public education and (5) Regional reporting of waste diversion	Core programs are essentially the same: (1) Household hazardous waste (2) diversion of organic materials (includes yard waste and wood waste) (3) Public education (4) Regional reporting
Additional Programs	Agency can implement "non-core programs", including adoption of ordinances. Participants may elect to either participate or not participate in non-core programs.	Agency has the authority to implement Additional Programs related to its overarching purpose of increasing waste diversion in the Member's jurisdictions. Additional programs may include adoption of <u>model</u> ordinances to be considered by individual jurisdictions, implementation of the programs adopted by model ordinances, and development or participation in regional plans related to waste diversion.
Composting Program	County is required to provide a site free at the Central Landfill for wood and yard waste composting. (Sec. 5) All Members are required to cause all wood waste and yard waste to go to Central Landfill for treatment.	Agency will continue to operated its current composting program, which consists of hauling organic waste from the Central landfill and transfer stations to out-of-county facilities. Members can withdraw from the current composting program with 90 days written notice. Agency will additionally work on developing an alternative program for composting or other forms of organic materials diversion. Any new composting program will be implemented through separate agreements between the parties, and each Member will have the option to participate, address composting in some other manner.
Household Hazardous Waste Program	County is required to provide a site free at the Central Landfill for HHW acceptance. The HHW program is available to residents of all member agencies.	Acknowledges that the HHW program is currently operated at the Central Landfill pursuant to a license agreement with the County, but allows that the Location may move, or additional locations may be added from time to time.

Terms**Original JPA Agreement****Amended and Restated JPA Agreement**

Adoption of Ordinances	The Agency has the authority to adopt ordinances to implement programs related to waste diversion. Each agency can decline to participate in the program adopted by ordinance.	The Agency can develop additional programs, which may include <u>model</u> ordinances. If the Agency choose to implement the terms of model ordinances, it can enter into individual agreements with members, and agree to indemnify the member for implementation of the ordinances.
Cost of Additional Programs	While each member can decide whether or not to participate in "non-core" programs, non-participation does not reduce a member's fiscal participation.	The cost of development of additional programs will be paid out of general Agency funds. If the Agency develops an additional program, and some but not all of the members participate, then each member that participates will be responsible for the costs of implementing the program in its own jurisdiction.
Board Representation	10 member Board of Directors. One vote per jurisdiction. Board members are elected officials or staff, as determined by member governing boards.	Same
Voting Requirements	Unanimous vote required for budget approval, capital expenditure over \$50,000, and major program expansions. All other votes are majority.	8/10 vote required for approval or amendment of the budget, incurrence of debt of \$250,000 or more, expenditures of \$250,000 or more, any increase or imposition of new fees. Unanimous vote required for acquisition of real property valued at \$250,000 or more. All other votes are majority.
Term of JPA Agreement	JPA agreement has a 25 year term (has been extended by one year).	JPA agreement will continue in effect until the Agency is dissolved by the action of the Members. However, the Agency Executive Director conduct a public meeting at least once every 10 years to review the Agreement, to see whether updates are necessary.

Terms**Original JPA Agreement****Amended and Restated JPA Agreement**

Withdrawal of Members	Not addressed.	Allows that any member can withdraw from the Agency with a minimum of 180 days written notice, with the withdrawal effective at the end of the fiscal year in which the 180 notice period ends. Withdrawing members do not receive a distribution of assets or have any further obligations to the Agency
Dissolution of Agency	Not addressed.	Agency may be dissolved by the unanimous approval of the Members' boards. The Agency shall not be dissolved until all debts and liabilities have been eliminated and paid in full. The remaining assets of the Agency will be distributed to the members on a proportionate basis, based on each member's population at the time of dissolution.