

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

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2023 (“**Effective Date**”) by and between the CITY OF HERCULES (“**Hercules**”), a municipal corporation hereinafter referred to as “**City**” and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a California joint powers authority (“**Authority**”) (individually “**Party**” and collectively “**Parties**”).

RECITALS

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

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

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

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13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) (“**SB 1383**”), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based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

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

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

for violations of local regulations; and

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

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

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

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

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

AGREEMENT

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

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

3. Definitions.

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

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

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

(d) “**CalRecycle**” or “**Department**” means the California State Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for developing, implementing, and enforcing the SB 1383 Regulations among other duties.

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

(f) “**City’s Representative**” means the City Manager or the City Manager’s designee.

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

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

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

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

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

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

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

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

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

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

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

(r) “**Gray Container**” shall have the same meaning as defined in 14 CCR Section 18982(a)(28). The Parties acknowledge that the City may use the term “Garbage Container” or

“Landfill Container” in its ordinances to refer to what are defined as Gray Containers herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reference to any SB 1383 Regulations used in these definitions shall include the section cited, or any successor regulation.

4. **Authority Responsibilities.** The City hereby delegates to the Authority, and the Authority hereby accepts, the responsibilities enumerated in this Section 4 for compliance with the provisions of SB 1383 Regulations to the extent allowed by law and as specified herein. The Authority is concurrently, with its approval of this MOU, approving MOUs with the other Member Agencies in which it is accepting nearly identical delegations from the other Member Agencies (the “Other MOUs”). It is the Authority’s desire to administer responsibilities so delegated in a uniform fashion across all of the Members, so far as is feasible under the specific circumstances prevailing in each Member Agency. In furtherance of this intent, the Authority, in consultation with the Member Agencies, has developed an initial Workplan, attached as Exhibit A and hereby incorporated by

reference, that details the manner in which it will initially perform its responsibilities under this MOU and the Other MOUs. Each year, in conjunction with the Annual Budget and more often if needed, the Authority Board shall consider and approve any changes to the Workplan, including any amendments to align the Workplan with the Annual Budget and subject to the Executive Director's ability to make administrative changes to the Workplan as described in this Section 4.

The Workplan is intended to be a flexible framework that the Authority Board can revise from time to time as may be necessary or prudent. Authority shall provide City with proposed changes to the Workplan at least ten (10) days prior to approval by the Authority Board so that City may provide any comments or suggestions for the Authority Board's consideration.

The Parties agree that, to the extent permitted by law or regulation, the Authority may perform its responsibilities using its own staff or by contracting with public and private entities according to its Board-approved procurement policy. If Authority contracts with any public or private entity to perform its responsibilities, Authority shall notify City and provide contact information for the contracted entity. Whenever the Workplan is changed, the Authority shall provide the City with an updated version of the Workplan within ten (10) calendar days.

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

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

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

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

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

(ii) Implementation Record. The Authority shall be responsible for maintaining the City's Implementation Record, and making it available to the Department, in accordance with 14 CCR Sections 18985.3 and 18995.2. The Authority shall endeavor to obtain all records required by Chapter 12 and include them in the Implementation Record, and the City shall reasonably cooperate

with the Authority in obtaining such records from the City and third parties, including creating such records if necessary. Authority shall provide City with ongoing electronic access to the Implementation Record through a cloud-based software program, to the extent that the Authority maintains one, through the Term of this MOU. In the event that the Department requests access to the Implementation Record, the Authority shall promptly advise the City of the request.

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

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

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

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

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

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

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

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

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

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

(f) Investigation of Complaints. Where a Complaint: 1) meets the requirements of

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

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

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

(g) Enforcement. The Authority shall function as the Enforcement Agency and enforce Chapter 2 of Title 5 of the Hercules Municipal Code as required by SB 1383 by performing the following actions:

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

(ii) Issuing Notice of Violations to Generators, Haulers, Food Recovery Organizations and Food Recovery Services and Self-Haulers in accordance with 14 CCR 18995.4 and providing a copy of such to City within ten (10) working days of issuance. The Authority may collaborate with City and/or a Hauler before issuance of a Notice of Violation where appropriate. It shall not be appropriate to collaborate with a Hauler where it is the subject of the Enforcement Action. If the violator fails to comply with the Notice of Violation within the deadline set forth therein, the Authority shall refer the matter to City to impose penalties pursuant to the SB 1383 Regulations and it shall function as the Enforcement Agency in that matter thereafter. Authority will provide support to City in carrying out the Enforcement Action, including providing testimonial and other evidence at any hearings, if necessary. If the Authority becomes aware that the violator has complied with the Notice of Violation, the Authority shall so notify the City.

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

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

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

(2) provide sufficient documentation that either:

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

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

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

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

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

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

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

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

(iii) Emergency Circumstances – Waivers for City: The Authority will notify CalRecycle and apply for a waiver to landfill Organics if City experiences a natural disaster, uses a recyclable materials or Organic Waste processing facility that has a temporary operational failure, or

unforeseen operational restrictions have been imposed upon it by a regulatory agency pursuant to 14 CCR 18984.13.

5. City Responsibility. City shall be responsible for all other applicable SB1383 and SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein, including the Workplan as it may be amended from time to time pursuant to Section 4. If the City requests that the Authority accept an additional SB 1383 Regulation Responsibility or perform an additional Requirement listed in the Workplan, the Parties shall meet and confer regarding the request and implementation, if the Authority is willing to do so. Any changes to the Workplan shall comply with the provisions of Section 4.

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

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

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

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

9. Apportionment of Penalties.

(a) Any penalties assessed against the City by CalRecycle that are the result of an

Authority's failure to satisfy its obligations under the following provisions of this Agreement and its alleged failure to comply with the corresponding provision of the SB 1383 Regulations shall be paid by the Authority:

- (i) Subdivision (a)(i) of Section 4 (14 CCR §§ 18985.1 and 18985.2)
 - (ii) Subdivision (b)(i) of Section 4 (14 CCR § 18992.3)
 - (iii) Subdivision (b)(ii) of Section 4 (14 CCR §§ 18985.3 and 18995.2)
 - (iv) Subdivision (b)(iii) of Section 4 (14 CCR § 18994.1)
 - (v) Subdivision (c) of Section 4 (14 CCR §§ 18991.1–18991.2)
 - (vi) Subdivision (d) of Section 4 (14 CCR §§ 18992.1 and 18992.2), with the express indication that the Authority shall not be required to pay a penalty arising from the City's failure to expand capacity.
 - (vii) Subdivision (e) of Section 4 (14 CCR §§ 18995.3(a)-(b))
 - (viii) Subdivision (f) of Section 4 (14 CCR §§ 18995.3(c)-(e))
 - (ix) Subdivision (g)(i) of Section 4 (14 CCR §§ 18995.1)
 - (x) Subdivision (g)(ii) of Section 4 (14 CCR §§ 18995.4) with the express indication that the Authority is not required to pay a penalty arising from an alleged failure to commence an action to impose penalties pursuant to 14 CCR sections 18997.1 and 18997.2 as the Authority's responsibility under subdivision (g) of Section 4 does not extend to commencing such actions.
 - (xi) Subdivision (h) of Section 4 (14 CCR §§ 18984.11) with the express indication that the Authority is not required to pay a penalty arising from the City's granting of a waiver that is alleged not to be consistent with 14 CCR § 18984.11.
- (b) For avoidance of doubt, the Parties hereby indicate that any penalties arising from SB 1383 Regulations requirements not expressly delegated to and accepted by the Authority as set forth herein shall not be payable by the Authority.
- (c) In the event that the Authority pays any penalties assessed against the City by CalRecycle that are the result of the alleged failure to comply with Subdivision (a)(i) of Section 4, the Authority shall be entitled to allocate a reasonable portion of the penalty to the City if the Authority had provided compliant educational materials to the City for approval, and the City failed to approve them.
- (d) Nothing in this Section shall prevent either the City or the Authority (on the City's behalf when the Authority is obligated to pay the penalty) from challenging CalRecycle enforcement activities. In the event that the Authority intends to challenge CalRecycle's imposition of a penalty imposed on the City, the City shall reasonably cooperate and assist the Authority in its legal challenge. Without limiting the generality of the foregoing, the City shall promptly share any Notices of Violation or accusation issued pursuant to 14 CCR 18997.5 that it receives related to any

alleged violations that subdivision (a) would require the Authority to pay.

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

10. Termination. Either Party may terminate this MOU upon giving at least one hundred and eighty (180) calendar days' prior written notice to the other Party in the manner set forth in Section 10. The parties expressly acknowledge, notwithstanding anything to the contrary in this Agreement, including specifically Section 7, and/or in the past or then-present Authority budgets, that the Authority shall have no obligation after termination to fund the City's compliance with the provisions of SB 1383 Regulations delegated to the Authority pursuant to this Agreement. If City terminates the MOU effective at the end of a rate year, the Authority will, in conjunction with its action that November to approve the following year's rate structure, and the Authority Board will calculate the amount due Pinole to reimburse it for its share of unspent compliance funds based on its percentage share of volume in the rate model during the prior year. The rate model adopted for the following year's rate structure shall not require the City or customers in the City to pay for any SB 1383 compliance activities undertaken by Authority.

11. Notice. All notices shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Party, to an officer or person apparently in charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to the Party at its principal office, or to such other address as the Party may designate from time to time by written notice given in the manner specified in this Section.

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

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

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

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

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

16. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or

other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

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

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

[Signatures on following page]

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

ATTEST:

CITY OF HERCULES

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney
ATTEST:

**WEST CONTRA COSTA INTEGRATED
WASTE MANAGEMENT AUTHORITY**

Board Secretary

Board Chair

APPROVED AS TO FORM:

Authority Counsel

5001258.5

Summary report: Litera Compare for Word 11.5.0.74 Document comparison done on 9/14/2023 1:10:35 PM	
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Intelligent Table Comparison: Active	
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Delete	62
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<u>Move To</u>	0
<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:	140