

**FIFTH AMENDMENT AND RESTATEMENT  
JOINT EXERCISE OF POWERS AGREEMENT  
OF THE WEST CONTRA COSTA INTEGRATED  
WASTE MANAGEMENT AUTHORITY**

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**AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT OF THE  
WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY**

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is entered into as of \_\_\_\_\_, 2019, and is by and among the CITY OF EL CERRITO (“El Cerrito”), a municipal corporation and charter city, the CITY OF HERCULES, a municipal corporation, the CITY OF PINOLE, a municipal corporation, the CITY OF RICHMOND, a municipal corporation and charter city, and the CITY OF SAN PABLO, a municipal corporation hereinafter referred to individually as “Member” and collectively as “Members.” This Agreement amends and restates the Joint Powers Agreement dated April 2, 1991, as amended by Amendment No. 1 dated November 14, 1991, Amendment and Restatement No. 2 dated December 21, 1993, Amendment and Restatement No. 3 dated March 6, 1995, and Amendment No. 4 on March 10, 2011(together, the “Original Agreement”), and restates in full the provisions of the Original Agreement, except as amended herein, without affecting the ongoing existence of the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY (“Authority”).

RECITALS

A. California Government Code section 6500 *et seq.* (“Law”) provides for agreements between two or more public agencies to jointly exercise any power common to the contracting parties, subject to certain mandatory provisions contained therein;

B. The State of California has enacted the California Integrated Waste Management Act of 1989 at California Public Resources Code section 40000 *et seq.* (“Act”) mandating that municipalities divert material from landfills and promulgating regulations promoting material reuse and recycling.

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C. Pursuant to this authority, the Members entered into the Original Agreement to establish and confer upon a separate legal entity the powers necessary to: (i) form a Regional Agency to report as a single entity the annual regional compliance with the Act's reporting requirements; (ii) implement regional waste reduction and recycling diversion programs; (iii) to increase the diversion of waste from disposal facilities; and (iv) develop an integrated resource recovery facility ("IRRF") to achieve the Members' waste diversion goals, to comply with the Act, and to arrange for processing of and disposal of remaining waste.

D. The County and the Authority entered into a contract on May 25, 1993 ("Authority-County Contract") in order to facilitate development of an integrated resource recovery facility ("IRRF") to be partially located in the unincorporated area of the County, provide for the continued disposal of waste generated in the unincorporated areas of the County encompassed by the District, divert such waste through the use of an IRRF and provide for regulation of the IRRF.

E. Pursuant to the Agreement, the County appointed an ex-officio non-voting Director to the Authority's Board of Directors, the Authority approved IRRF bonds, an IRRF was developed and the bonds were repaid.

F. The Members recognize that many Authority activities are based upon the waste tonnage generated by the Members and that the City of Richmond generates a substantially greater amount of tonnage in all categories of waste than other Members. Therefore, although Authority programs are available to all Members regardless of the waste tonnage generated by a particular Member, the Members commit to make a good faith effort to provide Richmond with funding, materials and services commensurate with its contribution to the Authority's budget.

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G. Prior to 2014, the iterations of the Original Agreement addressed IRRF bonds and development including the contract with West County Resource Recovery Inc. for IRRF operation and administration. The Authority's involvement with these activities has now concluded. Nonetheless, the Authority continues to operate as a Regional Agency and to manage the post-collection processing and disposal activities of the Members. This Agreement is intended to be consistent with those activities and is further intended to provide a structure for the Authority to both meet new legislative mandates and provide the necessary flexibility to address Members' needs post 2024.

H. The Members further intend that this Agreement reflect the changes that have occurred since the execution of the Third Amendment Restatement in 1995, to exercise their respective powers jointly and to exercise such additional powers as are available to the Authority under the Law for the purpose of achieving their waste diversion goals and complying with the Act.

### ACCORDINGLY, THE MEMBERS HEREBY AGREE AS FOLLOWS:

**SECTION 1. Definitions.** The terms defined in this Section have the following meanings:

1.1. Act. "Act" means the California Integrated Waste Management Act of 1989, California Public Resources Code sections 40000 *et seq.*) and all regulations adopted under that legislation, and the subsequent legislation and regulations provided for in Division 30 of the Public Resources Code *et seq.*, as amended from time to time.

1.2. Agreement. "Agreement" means this Joint Exercise of Powers Agreement, as it may be amended from time to time, including the Fifth Amendment to and Restatement of the West Contra Costa Integrated Waste Management Authority Joint Exercise of Powers Agreement.



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1.3. Alternate Director. “Alternate Director” means the person(s) appointed by each Member who is authorized to represent the Member at a Board meeting in the absence of the Member’s Director.

1.4. Approved Facilities. “Approved Facilities” means a solid waste management facility or facilities, such as a MRF, transfer station, composting or other type of processing facility, designated from time to time by the Authority to receive some or all Directed Waste and Materials.

1.5. Approved Rates. “Approved Rates” means the rates or charges authorized by the Authority from time to time to be paid at the Approved Facilities for Directed Waste and Materials received at the Approved Facility to pay for operational costs and other obligations of the Authority.

1.6. Authority. “Authority” means the West Contra Costa Integrated Waste Management Authority, a joint exercise of powers Agency created by the Members pursuant to the Agreement.

1.7. Board. “Board” means the Board of Directors of the Authority.

1.8. City. “City” means any Member that is a city; “Cities” means all Members that are cities.

1.9. Contractor. “Contractor” means “Contractor” as defined in the PCA or the PCAs as the context may require.

1.10. Core Services. “Core Services” means any service, program or project the Authority is expected to perform through the termination of the current Post Collection Agreement and potentially thereafter listed in Section 2 herein.

1.11. County. “County” means Contra Costa County, California.

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1.12. Directed Waste and Materials. “Directed Waste and Materials” means materials collected pursuant to a Franchise Agreement, or collected by a Member pursuant to any other agreement between a Member and other party and directed by the Authority to be delivered to an Approved Facilities.

1.13. Director. “Director” means the elected person that is appointed by a Member to represent that Member on the Board. For the purposes of voting and quorum, the term “Director” shall be read to also include an “Alternate Director” when such person is seated on the Board as the representative of the Member at a Board meeting.

1.14. El Cerrito Recycling Services. “El Cerrito Recycling Services” means both the collection of Recyclable Materials at the El Cerrito Recycling and Environmental Resource Center and the collection of Recyclable Materials through or by El Cerrito whether directly or by contract.

1.15. Executive Director. “Executive Director” means the person hired or appointed by the Board as the Authority’s Executive Director to administer the affairs of the Authority and to effect the policies of the Board or his or her designee.

1.16. Facility. “Facility” means a facility or facilities for the transfer, processing, diversion or removal of portions of Solid Waste prior to disposal, owned either by one or more of the Members directly or by a private entity.

1.17. Fiscal Year. “Fiscal Year” means the period commencing on each July 1 and ending on the following June 30.

1.18. Franchise Agreement. “Franchise Agreement” means an agreement between a Member and a third party that provides for the collection of Solid Waste, and related services, or if additional specific authorization is provided to the Authority for a particular Member’s solid

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waste collection activities, an agreement between the Authority and a third party that provides for collection of Solid Waste and related services.

1.19. Hazardous Materials or Hazardous Waste. “Hazardous Materials” or “Hazardous Waste” means materials that, by reason of their quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined and/or regulated as a Hazardous Waste, toxic waste, hazardous chemical substance or mixture, or asbestos under any applicable local, state or federal law or regulation, or:

(a) “Hazardous Waste” pursuant to section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with section 25800) of Division 20 of the California Health & Safety Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by sections 25110.02, 25115, and 25117 of the California Health & Safety Code (California Hazardous Waste Control Act), California Health & Safety Code section 25100 *et seq.* including 23 CCR sections 2521 and 2522;

(b) Materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 *et seq.* as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980);

(c) Materials regulated under the Toxic Substances Control Act, 15 U.S.C. section 2601 *et seq.*, as amended, and related federal, state and local laws and regulations, including the California Hazardous Substances Account Act, California Health & Safety Code section 25300, *et seq.*;

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(d) Materials regulated under the Comprehensive Environmental Response, Compensations and Liability Act, 42 U.S.C. section 9601, *et seq.*;

(e) Materials regulated under any future or additional or substitute federal, state or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste; or

(f) If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of “hazardous waste” for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition is employed for the purposes of this Agreement.

1.20. Household Hazardous Waste (HHW). “Household Hazardous Waste” or “HHW” means Hazardous Waste generated incidental to owning or maintaining a place of residence. HHW does not include waste generated in the course of operating a business activity at a residence.

1.21. Law. “Law” means the Joint Exercise of Powers Act, Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government Code sections 6500, *et seq.*) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

1.22. Member. “Member” means any of the Member agency signatories to this Agreement and “Members” means all of the Member agency signatories to this Agreement.

1.23. MRF. “MRF” means a materials recovery facility, including lands on which such facility is located, for receiving, processing, recycling and transportation or transfer of Solid Waste for processing, recovery or diversion, or any combination thereof.

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1.24. Non-Core Service. “Non-Core Service” means any service, program or project which is not listed as Core Services and not included in Section 2 herein.

1.25. Non-Disposal Facility Element (NDFE) “Non-Disposal Facility Element” or “NDFE” means the non-disposal facility element required to be prepared pursuant to the Act and as that element may be amended from time to time.

1.26. Post Collection Agreement (PCA). “Post Collection Agreement” or “PCA” means the Agreement entered into between the Authority and West County Resources Recovery, Inc., West Contra Costa Sanitary Landfill, Inc., Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. and Keller Canyon Landfill Company for post collection recycling and disposal services dated October 10, 2013, including any amendments or successor agreements thereto. Post Collection Agreement as used herein shall also refer to any subsequent agreements between the Authority and a solid waste enterprise or enterprises for post collection services as approved by Members.

1.27. Post Collection Agreements (PCAs). “Post Collection Agreements” or “PCAs” means, collectively, (a) the Post Collection Agreement and (b) the agreement between the City of El Cerrito and West County Resources Recovery, Inc., West Contra Costa Sanitary Landfill, Inc., Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. and Keller Canyon Landfill Company for post collection recycling and disposal services effective January 1, 2014 or any successor agreement between El Cerrito and a solid waste enterprise or enterprises for post collection services.

1.28. Recyclable Materials. “Recyclable Materials” means materials that can be reused, or remanufactured or processed for one or more forms of reuse.

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1.29. Solid Waste. “Solid Waste” means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes; Recyclable Materials; discarded home and industrial appliances; manure; vegetable or animal solid and semisolid wastes; and other discarded solid and semisolid wastes, as defined in California Public Resources Code section 40191, as that section may be amended from time to time and as may be limited by applicable law. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, low-level radioactive waste, or medical waste.

1.30. Source Reduction and Recycling Element (SRRE). “Source Reduction and Recycling Element” or “SRRE” means a source reduction and recycling element required by the Act, as that element may be amended from time to time.

### **SECTION 2. Purpose.**

This Agreement is entered into pursuant to the Act for the purpose of the Members maintaining an existing Regional Agency to collectively regulate post-collection services and combine disposal and diversion of Solid Waste for determining compliance with the Act and (i) plan, study, recommend and have the authority to implement proper solid waste management activities and programs consistent with the Act, (ii) to enable it to report and track programs under the Act on a regional basis, (iii) address future diversion mandates, to allow for efficient operation of diversion programs on a region-wide basis, and (iv) to allow for the development of Regional Integrated Waste Management Plans including a Source Reduction and Recycling Element, Household Hazardous Waste Element, and Non-Disposal Facility Element. The Members are each empowered by the laws of the State of California to exercise the powers specified in this Agreement, to comply with the provisions of the Act and other laws. These

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common powers shall be exercised for the benefit of any one or more of the Members or otherwise in the manner set forth in this Agreement. The Members are also empowered to acquire, construct, finance, refinance, maintain, operate and regulate Facilities and the Authority may undertake such activities subject to authorization by the Members' legislative bodies as set forth herein.

2.1. Core Services. Although the Authority may undertake additional Non-Core Service activities subject to unanimous vote of the Board as set forth herein, the Members desire to identify the following Core Services the Authority is expected to perform through the termination of the current Post Collection Agreement, and potentially thereafter:

(a) Ensure that the Post Collection Agreement ("PCA") terms are being met by the Contractor as that term is defined in the PCA, including, but not limited to:

(1) Track and confirm expected diversion rates at the approved organic materials, dry materials, construction and demolition, and recyclable materials processing facilities;

(2) Track and confirm contracted level of service at the transfer station and other post-collection facilities and by the household hazardous waste program;

(3) Track and confirm expected level of service for education and outreach services for schools, including West Contra Costa Unified School District ("WCCUSD"), in the Authority's service area;

(4) Track and confirm compliance with applicable law, permits, Facility requirements and best management practices, including proper records management, provision of insurance and similar requirements; and

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(5) Track and confirm all recycling and diversion programs performed by Contractor pursuant to the PCA.

(b) Validate post collection rates to ensure accuracy, reasonableness and consistency with the methodology formula described in Exhibit B.

(c) Validate the accuracy of information stated in quarterly, annual, and other reports submitted by the Contractor to the Authority.

(d) Seek to reduce costs to Members in future post collection solid waste activities and agreements.

(e) Seek to increase the benefits to Members in future post collection solid waste activities and agreements.

(f) Negotiate the lowest possible rates for Members and customers.

(g) Monitor and coordinate compliance with the Act, Assembly Bill 1826 (2014), Assembly Bill 341 (2011), Senate Bill 1383 (2016), and other State solid waste related legislation and regulatory requirements

(1) Collect and submit information from Members to update Electronic Annual Report (EAR) and update and upload other required reports;

(2) Report annual waste and diversion tonnages to the Board and Members;

(3) Maintain and update regional SRRE, NDFE and Household Hazardous Waste Element (HHWE);

(4) Coordinate and assist WCCUSD Source Reduction and Recycling Compliance; and



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(5) Coordinate with CalRecycle staff to schedule on-site Member meetings.

(h) Operate Household Hazardous Waste Programs (“HHWP”), including the following:

- (1) Act as the HHWP public agency permittee;
- (2) Determine desired level of service after consultation with Members and communicate desired levels to all HHWP contractors;
- (3) Manage HHW budget and monitor Contractor’s HHW costs for consistency with the approved budget;
- (4) Manage contract for HHW Facility and any satellite or mobile events;
- (5) Confirm and report that expected levels of service are being maintained;
- (6) Monitor Contractor’s compliance with applicable law, permits and best management practices, including proper reporting, records management and retention, provision of insurance and similar requirements;
- (7) Operate a motor oil recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events; and
- (8) Implement and oversee a pharmaceutical collection and disposal program and battery recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events.

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(i) Administration and oversight of day to day Authority operations including providing support services to the Board as well as providing human resources, information technology and financial services to the Authority and its staff.

(j) Conduct public outreach and education within existing budgeted funding and staffing levels beyond existing Contractor efforts including:

(1) Outreach and education regarding HHW, pharmaceutical collection and disposal program, and battery recycling program; and

(2) Multi-family and commercial recycling and organics outreach and education ensuring that El Cerrito shall equally benefit from such Authority efforts.

(k) Monitor and analyze relevant legislation within existing budgeted funding and staffing levels including:

(1) Provide timely updates and recommendations to the Board on proposed legislation that will likely affect local government solid waste and diversion programs;

(2) Provide analysis to enable the Board to take actions to support or oppose proposed legislation;

(3) Submit comments on the proposed legislation to the lead agency creating the legislation; and

(4) Coordinate with Members in interpreting and implementing new laws and regulations, ensuring that all Members shall equally benefit from such Authority efforts.

2.2. Future Services. In the future and post 2025, the Authority may continue to provide the Core Services or other such services as Members request, consistent with the powers set forth herein, and such authority and responsibility shall be subject to further delegation or

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authorization of the Members. Upon delegation or authorization, the Authority may continue to provide Core Services, a portion of Core Services, or other services, including, but not limited to potential procurement and negotiations of future post collection agreements.

2.3. Non-Core Services. Non-Core Service shall be approved by a unanimous vote of the Board.

### **SECTION 3. Creation of Authority.**

3.1. Pursuant to the Law, the Members created and established the Authority in 1991 as a public entity separate from each of the Members.

3.2. The assets, rights, debts, liabilities and obligations of the Authority shall not constitute assets, rights, debts, liabilities or obligations of any of the Members, to the fullest extent allowed by Government Code section 6508.1 and other applicable law. However, if Member liability exists, a Member shall be liable even if its representative did not vote in favor of the action that created the liability, except as specified in Section 5.4. Nothing in this Agreement shall prevent any Member from separately contracting for, or assuming responsibility for, specific debts, liabilities or obligations of the Authority, provided that both the Board and that Member agency approve such contract or assumption.

**SECTION 4. Term.** The Authority has become effective as of April 1, 1991. It shall continue until terminated or dissolved by a vote taken in accordance with Section 16 of this Agreement.

### **SECTION 5. Powers.**

5.1. The Authority shall have the power to plan, study and recommend proper solid waste management consistent with the Act and, if and to the extent permitted by the Act, to

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adopt and implement an SRRE for all or any portion of the area included within the Authority's boundary.

5.2. The Authority is empowered to prepare, revise, approve and submit a Regional Integrated Waste Management Plan pursuant to the Act to the California Environmental Protection Agency, Department of Resources Recycling and Recovery ("CalRecycle") in lieu of preparation, approval, and submittal of individual SRREs, HHWEs and NDFEs by individual Members, to specify in said Regional Integrated Waste Management Plan programs to be implemented by any or all Members and the Authority, and to implement programs specified in said Regional Integrated Waste Management Plan for implementation by the Authority, and in the event the Authority exercises such power, instead of the individual Members, it shall be responsible for compliance with Article 1 (commencing with section 41780) of Chapter 6 of the Act following approval of a Regional Member Integrated Waste Management Plan by the California Integrated Waste Management Board.

5.3. To the full extent permitted by applicable Law, the Authority is authorized, in its own name, to do all acts necessary or convenient for the exercise of the following powers that each Member could exercise separately:

- (a) To make and enter into contracts, including contracts with any Member;
- (b) To apply for and accept grants, gifts, donations, loans, advances and contributions;
- (c) To employ or contract for the services of engineers, attorneys, accountants, planners, consultants, fiscal agents and other persons and entities;
- (d) To make plans and conduct studies;
- (e) To acquire, improve, hold, lease and dispose of real and personal property;

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- (f) To sue and be sued in its own name;
- (g) To incur and discharge debts, liabilities and obligations;
- (h) To establish or approve Approved Rates;
- (i) To hire, manage and fire agents and employees;
- (j) To require that the Members direct all of the Directed Waste generated

and collected within their respective boundaries (or specified portions or specified types of such Wastes and Materials) to the Approved Facility until December 31, 2024, and potentially thereafter as the case may be; however, that the Authority is not empowered to require El Cerrito to so direct any Solid Waste collected by its collector or collected as part of El Cerrito Recycling Services unless El Cerrito so consents;

(k) To require each Member other than El Cerrito to include some or all of the Approved Rates paid to the owner or operator of the Approved Facilities in connection with the waste stream of that Member directed to the Approved Facilities, to be “passed through” to or collected from the ratepayers within the boundaries of that Member;

(l) Subject to a unanimous vote of the Board, to require each Member to (i) include fees which may be imposed from time to time by the Authority and to be collected from the ratepayers within the boundaries of that Member which fees are determined by the Authority in its sole discretion as being necessary for a period of time to pay continuing expenses of the Authority under circumstances where the revenue received from the Approved Rates is not available or inadequate ; and (ii) provide for payment of such fees collected to the Authority or a party designated by the Authority without reduction, limitation, offset or adjustment and to require that the Member take such action to direct the collection of such fees in a timely manner;

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(m) Subject to a unanimous vote of the Board, to require a Member to (i) include amounts determined by Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority to be “passed through” to or collected from ratepayers within the boundaries of that Member regardless of how that Member collects fees; and (ii) provide for payment of amounts to the Authority, in the event that such amounts are not paid to the owner or operator of the Approved Facility, and to require that the Member take such action to direct payment of its portion of funding otherwise provided for in said Approved Rates in a timely manner;

(n) To determine the type, extent and manner of processing of Solid Waste necessary for the Members to comply with the diversion requirement of the Act and to arrange for said processing through implementation or modification of an Approved Facility, or through use of other facilities;

(o) To implement the Regional Integrated Waste Management Plan and upon approval of such plan to require Members to implement the Regional Integrated Waste Management Plan; and

(p) To educate the public as to Solid Waste, diversion and recycling matters.

5.4. To the full extent permitted by applicable law, the Authority is authorized, in its own name, to exercise the following powers that each Member could exercise separately, subject to additional prior written authorization by the affected Member’s legislative body:

(a) To enter into new regional agreements binding on its Members;

(b) To acquire, construct, finance, refinance, operate, regulate and maintain Facilities or contract with a private entity to do the same, subject, however, to the conditions and restrictions contained in this Agreement, including the following:

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(1) Prior to any substantial Authority involvement in the planning for such a facility, the Facility shall be conceptually approved by the Board.

(2) Following such initial approval, each Member's governing body shall determine whether or not it will participate in the Facility. All costs associated with the Facility shall be borne exclusively by the participating Members.

(3) Nonparticipating members will not be entitled to use the Facilities. Subject to a unanimous vote of the participating members, a nonparticipating Member may become a participating member on such terms as may be determined by the Board.

(4) Both the Board and the governing body of the jurisdiction in which the Facility would be located (the "Host") must approve the Facility prior to its construction or acquisition.

(5) The Authority shall not exercise the power of eminent domain in order to acquire real and personal property necessary and convenient to the development of a Facility, but it may request that the Host acquire such property.

(c) To issue revenue bonds, notes, certificates of participation, or any other instrument evidencing indebtedness, from time to time, in accordance with all applicable laws, for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation, modification, or maintenance of Facilities;

(d) To enter into agreements to regulate or operate a Facility;

(e) To lease Facilities;

(f) To enter into regional post collection processing or franchise agreements for the period beginning in 2025 or later;

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(g) To adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement; and

(h) To require that the Members direct all of the Solid Wastes generated and collected within their respective boundaries (or specified portions or specified types of such Directed Wastes and Materials) to the Approved Facility for the period beginning in 2025 or later.

5.5. The powers specified in this Section 5 shall be exercised subject only to the limitations set forth in this Agreement, applicable law and such restrictions upon the manner of exercising such powers as are imposed by law upon the Members in the exercise of similar powers. The Members do not specifically delegate any additional powers to the Authority without the express authorization of each Member's governing body. Nothing in this Section shall prevent the Authority from providing additional services to Members pursuant to an agreement or agreements between or among the Authority and a Member or Members, in which the Member or Members agree(s) to compensate the Authority for the provision of such services.

5.6. The Authority hereby designates San Pablo, a general law city, as the Member required to be designated by section 6509 of the California Government Code.

5.7. Although the Authority has not entered into Franchise Agreements to date, nothing in this Agreement prevents it from so doing. However, if the Authority wished to enter into Franchise Agreements in the future, the Board would have to authorize it to exercise such authority and it shall be conditioned upon prior authorization by the affected Member's legislative body as set forth in Section 5.3(i).

**SECTION 6. Boundaries.** The boundary of the Authority shall be the consolidated boundaries of the Members as set forth in Exhibit A attached hereto and incorporated herein. If



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a new Member joins or a Member withdraws from the Authority, the boundary of the Authority shall be modified to include or exclude the area of the new or withdrawing Member. This Section 6 shall not prevent any Facilities from being located outside the boundary of the Authority.

### **SECTION 7. Organizations.**

7.1. The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on behalf of the Authority.

7.2. Directors.

(a) The Board shall consist of a Director from each Member, except that the City of Richmond shall have three Directors, and a non-voting ex officio member from the County. Upon execution of this Agreement, each Member shall appoint its representative Director(s) to the Board and one (1) person as an Alternate Director to serve in the case of absence of or recusal by an appointed Director. Directors and Alternate Directors who have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without further action of the Member.

(b) Each Director and Alternate Director shall hold office from the first meeting of the Board after appointment by the Members until his or her successor is selected by the Member agency of that Director. Each Director and Alternate Director shall serve at the pleasure of the Member that he or she represents and may be removed at any time, without cause, in the sole discretion of that Member. However, a Member shall not remove a Director or Alternate Director unless, before the next meeting of the Board, it also appoints a replacement Director or Alternate Director.

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(c) Each Director and Alternate Director shall be an elected official of the governing body of the Member that he or she represents. If a Director or Alternate Director ceases holding any such elected position, he or she shall then cease to serve as a Director or Alternate Director. The Authority and the Board shall be entitled to rely on a written notice from the City Clerk as conclusive evidence of the appointment and removal of Directors and Alternate Directors representing that Member. If a Member appoints and/or removes a Director or Alternate, written notice of such action shall be provided to both the Authority Executive Director and Clerk of the Board at least seventy-two (72) hours prior to the next regularly scheduled Board meeting.

7.3. Principal Office. The principal office of the Authority shall be established by the Board within the boundary of the Authority and the address of the principal office shall initially be 13831 San Pablo Avenue, San Pablo, California 94806. The Board may change that principal office upon giving at least fifteen (15) days' prior written notice to each Member and to the California Integrated Waste Management Board.

7.4. Officers. The Authority shall have seven (7) officers: a Chair, a Vice Chair, an Executive Director, Treasurer, Controller, a General Counsel and a Secretary. The Board may designate additional officers such as managers by resolution and those additional officers shall be subject to the same rules and conditions applicable to the seven (7) officers set forth herein. The Executive Director, Treasurer, Controller, General Counsel, and Secretary shall not be employees of a Member during the period that he or she serves as an officer of the Authority, unless the Board has taken or takes specific action to authorize use of a Member's employee in that capacity. None of the officers (including the Chair or Vice Chair) shall be an employee or otherwise be affiliated with the operator of an Approved Facility or any integrated waste

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management company which provides services to the Authority or a Member. The Board shall select a Chair and a Vice Chair from among the Directors and shall hold office for a period of one (1) year commencing on a date designated by resolution of the Board. No person shall serve consecutive terms as the Chair and no person shall serve consecutive terms as the Vice Chair. Successive Chairs shall not be representatives of the same Member. Successive Vice Chairs shall not be representatives of the same Member.

7.5. Chair. The Chair shall preside at meetings of the Board, call meetings to order, adjourn meetings, announce the business and the order it is to be acted upon, recognize persons entitled to speak, put to a vote all questions moved and seconded, announce results of votes, maintain the rules of order, execute documents and official actions on behalf of the Board when duly approved, and carry out other duties set forth in any bylaws adopted by the Board. Notwithstanding the foregoing, any Director shall be entitled to place any matter related to the business of the Authority on the agenda for any meeting of the Board, subject to reasonable procedures adopted by the Board of Directors.

7.6. Vice Chair. The Vice Chair shall serve as Chair in the absence of the regularly elected Chair.

7.7. Executive Director. The Board shall employ or contract for the services of an Executive Director who shall be the chief administrative officer of the Authority. The Executive Director shall have a background in public management, solid waste management or a related field. The Executive Director shall plan, organize and direct the administration and operations of the Authority, shall advise the Board on policy matters, shall recommend an administrative structure to the Board, shall hire and discharge administrative staff, shall develop and recommend budgets, shall reply to communications on behalf of the Authority, shall approve

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payments of amounts duly authorized by the Board, shall carry out such other duties that may be assigned to the Executive Director by the Board from time to time and shall attend meetings of the Board.

### 7.8. Treasurer.

(a) The Treasurer shall be selected and approved by the Board, and the individual selected to serve as Treasurer shall also serve as the appointee under California Government Code section 6505.6. If the Treasurer herein designated can no longer serve as Treasurer, then the Authority may appoint a successor Treasurer via Board resolution. The Treasurer shall be the depository and have custody of all the funds of the Authority from whatever source.

(b) The Treasurer shall do all of the following:

(1) Receive all funds of the Authority and place it in the treasury to the credit of the Authority;

(2) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority funds so held by him or her;

(3) Pay, when due, out of funds of the Authority held by him or her, all sums payable on outstanding bonds and coupons of the Authority;

(4) Pay any other sums due from the Authority from Authority funds, or any portion thereof, only upon warrants of the Controller;

(5) Verify and report in writing on the first day of July, October, January, and April of each year to the Authority and Members the amount of funds he or she holds for the Authority, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

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(c) The governing body of the same Member as the Treasurer shall determine charges to be made against the Authority for the services of the Treasurer and Controller.

7.9. Controller. Pursuant to California Government Code section 6505.5, the Authority designates the Treasurer appointed pursuant to Section 7.8 herein to be the Controller. If the Controller herein designated can no longer serve as Controller, then the Authority may appoint a successor Controller via Board resolution. The Controller shall draw warrants to pay demands against the Authority when the demands have been approved by any person authorized to so approve in this Agreement.

7.10. General Counsel. The Board shall employ or contract for the services of a General Counsel who shall be the legal officer of the Authority. The General Counsel shall advise the Authority on legal matters.

7.11. Secretary. The Board shall select and employ or contract for the services of a Secretary who shall prepare, distribute and maintain minutes of meetings of the Board and any committees of the Board. The selection of the Secretary may be delegated to the Executive Director. The Secretary shall also maintain the official records of the Authority and shall file notices as required by Section 18 of this Agreement.

7.12. Access to Property. The Executive Director is hereby designated as the person who has charge of and access to the property of the Authority. The Executive Director shall file with the Authority an official bond in an amount to be fixed by the Board. The costs of those bonds shall be paid by the Authority.

7.13. Officers, Employees and Agents. None of the officers, agents or employees employed or hired by the Authority shall by reason thereof become officers, agents or employees of any Member. The Authority may contract with any Member for any services, subject to

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approval by a majority of the Directors who do not represent that Member. None of the persons whose services are supplied by a Member shall by reason thereof become an employee of the Authority.

### **SECTION 8. Meetings of the Board.**

8.1. Regular Meetings. The Board shall hold a minimum of four (4) regular meetings each year. The date upon which, and the hour and place at which, each regular meeting shall be held shall be fixed by resolution of the Board. Board meetings shall be conducted in accordance with the rules of conduct set forth in Rosenberg's Rules.

8.2. Special Meetings. Special meetings of the Board may be called in accordance with the provisions of section 54956 of the California Government Code.

8.3. Notice of Meetings. All meetings of the Board shall be held subject to the provisions of the California Ralph M. Brown Act (sections 54950 *et seq.* of the California Government Code) and other applicable laws of the State of California.

8.4. Minutes. The Secretary shall cause minutes of all meetings of the Board and any standing committees of the Board to be kept and shall, promptly after each meeting, cause a copy of the minutes to be forwarded to each Director.

8.5. Quorum. A quorum for the transaction of business of the Board shall require the presence of Directors that represent a majority of the total membership of the Board, except that Directors constituting less than a quorum may adjourn any meeting. For purposes of establishing a quorum and voting at Board meetings, Alternate Directors that are entitled to vote pursuant to Section 7.2 shall be considered as "Directors."

8.6. Voting. Each Director shall have one vote on all matters presented to the Board for a vote. The Board shall specify by resolution, from time to time, what types of decisions

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shall be presented to the Board for a vote and what types of decisions shall be delegated to the Executive Director. Where this Agreement requires an unanimous vote, the action shall require the unanimous vote of the total membership of the Board (7 votes as of the date of this Agreement). Unless otherwise identified in this Agreement, all Board actions require a majority vote of the total membership of the Board (4 votes as of the date of this Agreement).

8.7. Bylaws. The Board from time to time may adopt by resolution bylaws or other procedures for the conduct of its affairs, provided that they are not inconsistent with this Agreement.

8.8. Budget. A general budget for the Authority's operations shall be adopted by the Board for the ensuing Fiscal Year prior to June 30 of each year. The budget shall include sufficient detail to constitute an operating guideline, the anticipated sources of funds, and the anticipated expenditures to be made for the operations of the Authority including HHW Programs. Approval of the budget by the Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand.

8.9. Reserves.

(a) The Authority establishes the following three (3) funds: 1) an Operating Fund; 2) an Operating Reserve Fund; and 3) a Recycling Fund Reserve. The Operating Reserve Fund limit is initially set at 67% of the annual operating budget.

(b) Any amounts which accumulate in Operating Reserve Fund in excess of the limit will be rolled over into the Recycling Reserve Fund account during the annual budget process. The Board shall adopt policies and procedures by resolution to address operation and management of both Reserve Funds, including the Recycling Reserve Fund limit, procedures for

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replenishment of reserves and the periodic Board consideration of use of the excess Recycling Fund Reserves.

(c) Excess Recycling Fund Reserves. Any potential excess in the Recycling Fund Reserve shall be dispersed to Members, used for rate reduction or subsidy, or to fund special projects. Reserve fund procedures and policies have been adopted by Resolution 18-02. The funding amounts of the Operating Reserve Fund and the reserve fund policies may only be modified in the future through adoption of a resolution subject to a unanimous vote of the Board.

(d) The Board may from time to time create and fund a Liability Reserve Fund for potential or anticipated future liabilities, such as CalPERS Unfunded Actuarial Accrued Liability (“UAAL”) and Other Post-Employment Benefits (“OPEB”) obligations.

8.10. Committees. The Board may create or designate committees, which typically shall be ad hoc committees. A committee would consist of two or three Directors, and Alternates may not serve on committees. An ad hoc committee would be subject to a one year term from its date of creation and shall typically be limited in scope to the single purpose for which it was created by the Board. In the event of a vacancy on an ad hoc committee, the Chair shall designate a replacement committee member. Permanent standing committees may be created by unanimous vote of the Board.

(a) All committee meetings shall be held subject to the provisions of the California Ralph M. Brown Act (sections 54950 *et seq.* of the California Government Code), although certain ad hoc committee meetings need not be public meetings in accord with said act.

(b) All committees shall serve only in an advisory capacity to the Board and shall not independently take action on any issue unless the Board has specifically delegated such authority to the committee by resolution.



**SECTION 9. Operating Fund Revenues and Other Sources of Funds.**

9.1. The Authority may seek to obtain funding for its current scope of activities as well as the scope of activities it is authorized to undertake by law by pursuing various sources of funds including, but not limited to, imposition of fees under the Act to the extent practically available, sale of energy from organic waste, sale of recycled commodities and/or a waste importation or exportation mitigation fee(s) and such other methods as set forth in Section 5.3.

9.2. The Authority may establish a joint operating fund which may receive funds from the Members or other sources. The fund shall be used to pay all administrative, operating and other non-capital expenses incurred by the Authority. In the event that the Board requires contributions from the Members any such payments shall be made in such manner and at such times as approved by a unanimous vote of the Board.

9.3. All moneys in the operating fund shall be paid out for the purposes for which the fund was created upon authorization of the Board, or within the expenditure authority of the Executive Director provided by the Board by time to time.

**SECTION 10. Records and Accounts.** This Section is intended to ensure strict accountability of all funds of the Authority and to provide accurate reporting of receipts and disbursements of such funds. The Authority shall maintain accurate and correct books of account showing in detail the costs and expenses of any acquisition and construction and the maintenance, operation, regulation and administration of a Facility and all financial transactions of the Members relating to any Facility including any HHW Facility. The books of account shall correctly show any receipts and any costs, expenses or charges to be paid by all or any of the Members. The books of account shall be open to inspection at all times by a representative or agent of any of the

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Members. The Authority shall adopt a records management program to provide for the maintenance and disposal of records consistent with the requirements of State Law.

### **SECTION 11. Implementation of the Act.**

11.1. Intent. It is the intent of all Members to form a regional agency, as defined by Public Resources Code section 40181, and for the Authority to undertake the responsibilities of a regional agency pursuant to the powers of the Authority as set forth, *supra*, in Sections 5.1 and 5.2.

#### 11.2. Submittal of Elements by Members.

(a) Any Member choosing to exercise its authority to undertake an SRRE, HHWE or NDFE individually, or to respond individually to a notice of deficiency, may do so by providing a resolution of the governing body of the Member to the Authority and each other Member within ten (10) days of adoption of said resolution.

(b) Each Member so electing to exercise the prerogatives provided in Section 11.2(a) or receiving a written notice from the Authority, shall be solely responsible for compliance with the requirements of the Act upon adoption of the Member resolution required by Section 11.2(a), or receipt of the notice from the Authority.

#### 11.3. Compliance Monitoring.

(a) The Authority may establish a fair and equitable basis for determination of the amount of waste disposed of from within the Members' jurisdiction and this method shall be used to determine the maximum amount of disposal allowable under the Act for the area included in the boundaries of the Authority.

(b) The Authority shall be entitled to cause the Solid Waste of the Members to be monitored in order to determine compliance with the Act.

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(c) The Authority shall be responsible for compiling and submitting disposal information from haulers and operators required to be submitted by CalRecycle pursuant to California Code of Regulations, Title 14, Division 7, Chapter 9, Article 9 or successor regulations and the Members agree to require their respective haulers to submit such information to the Authority.

(d) The Authority shall monitor the implementation of the Regional Plan by the Authority and the Members and shall periodically report to the Members the status of compliance with the requirements of the Act and status of implementation of the Regional Plan.

(e) The Authority shall report to the Members the substantial failure of the Authority, a Member or other party to implement applicable provisions of the Regional Plan.

(f) The Authority will implement the Act's programs and demonstrate compliance with the monitoring and reporting requirements related to Assembly Bill 341 (2011), Assembly Bill 1826 (2014), and any other future State mandates related to solid waste handling within the Member boundaries.

11.4. Contingency Plans. Consistent with section 40975(b)(3) of the Public Resources Code, the Authority hereby establishes a Contingency Plan which provides for compliance with the Act by each of the Members in the event the Authority, as the regional agency, is dissolved, or the Authority continues its role as a regional agency. The Contingency Plan is as set forth in Sections 15 and 16 of this Agreement, dealing with Withdrawal and Termination, respectively.

### 11.5. Regional Plan.

(a) The Regional Plan and amendments thereto shall be developed in consultation with the Members and approved by the Authority Board of Directors and submitted or resubmitted to CalRecycle as may be needed.

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(b) The Regional Plan shall identify source reduction, recycling, composting, education and public information, household hazardous waste and other programs required by the Act or CalRecycle regulations and assign responsibility for implementation of said programs among the Authority and the Members.

(c) The Regional Plan, and subsequent amendments or revisions thereto, following approval by CalRecycle, shall be included in this Agreement by this reference.

(d) Notwithstanding Section 16 of this Agreement, the Regional Plan may from time to time be amended by a majority vote of the Authority Board of Directors and all such amendments shall become a part of the Regional Plan upon approval by CalRecycle.

(e) The Members shall make a good faith effort to implement programs and actions specified in the Regional Plan approved by CalRecycle for implementation by that Member.

(f) The Members agree to provide the Authority information specific to its jurisdiction that is not readily available elsewhere as required by the Authority to prepare and implement the Regional Plan.

(g) Each Member agrees to coordinate its education and public information activities with respect to Solid Waste and household hazardous waste with the activities of the Authority and to conduct such activities in a manner consistent with the education and public information program contained in the Regional Plan.

11.6. Grants and Financial Assistance. Each Member agrees to cooperate with the Authority as necessary to enable the Authority to apply for and receive grant funds and other financial assistance that may be available to a Member for development of the Regional Plan or

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for implementation of programs and actions assigned to the Authority in the Regional Plan in order to minimize costs which must be borne by ratepayers.

### **SECTION 12.** Authority Established Rates.

12.1. The Authority shall be solely responsible for the approval of rates for services at an Approved Facility designated pursuant to this Agreement and each Member hereby delegates, assigns and/or otherwise transfers to the Authority any powers that each Member that has its Designated Waste processed at an Approved Facility may have with respect to the regulation of, approval or establishing rates or charges for that designated waste.

12.2. The Authority shall establish or approve rates to be charged at an Approved Facility, in amounts sufficient to provide the revenues necessary to meet the contractual obligations for use of Approved Facilities.

12.3. The Authority may from time to time elect to include as an additional amount in the rates established or otherwise approved for an Approved Facility, or a portion of the amounts so determined from, as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, in which case the amounts so included will be paid to the Authority by the operator of an Approved Facility.

12.4. The Members recognize that (i) Approved Rates will likely be established as a unit charge per unit weight of Solid Waste and Materials; and (ii) that each Member that uses that Approved Facility may be required to pass such rates through for collection from ratepayers as a part of the collection rate (e.g. a unit charge per can per month). Accordingly, the Members hereby agree that the Authority shall establish a fair and equitable basis for conversion of Approved Rates to a collection rate and that each Member shall include in the collection rates the amount approved by the Authority for collection from ratepayers. That portion of the

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Approved Rates that is paid to the Authority is to be used to fund Authority activities that benefit all Members. A Member, in an alternative manner, may elect to fund or provide its share of the costs and obligations of the Authority set forth in Section 12.5, if its Directed Waste does not go to the Approved Facility and/or an alternative funding method is approved by the Board. El Cerrito, which has executed a separate Post Collection Agreement from the one defined in Section 1.26, shall contribute its portion of the Authority budget and HHWP costs based on its proportional share of the Members' "Inbound Solid Waste," "Inbound Organics and Food Scraps," "Inbound Mixed C&D/Concrete," "Inbound Residential Recycling," "Commercial Recycling," "Industrial Recycling," and "El Cerrito Commercial Dry Waste Processing" tonnage reported by the Contractor for the twelve-month period (historically August 1 to July 31) used by the Authority for the purposes of establishing the Post-Collection Rate pursuant to Section 5.4 of the PCA.

12.5. The Authority shall evaluate the accuracy of the Authority's prior conversion of Approved Rates to the unit charge collection rate that is included in the collection rate for each Member's jurisdiction. The Authority may use a balancing account concept from rate setting period to rate setting period to account for overages and underages. A unanimous vote shall be required for any Board action to modify the current rate setting methodology described in Exhibit B.

12.6. The Authority shall notify each Member and the other party to the Member's Franchise Agreement of the amount of said Approved Rates and the portion of collection rates corresponding to Approved Rates. The Authority shall also notify any Member agency that is not subject to the Approved Rates the portion of the required Authority revenues which must be funded by that Member.

**SECTION 13. Apportionment of Penalties.**

**13.1. Penalties Arising from Authority Failure.**

(a) Any penalties assessed against the Authority by CalRecycle, to a maximum of Fifty Thousand Dollars (\$50,000) per day, which are the result of the Authority's failure to either (i) submit an adequate Regional Plan or required element thereof; or (ii) make a good faith effort to implement the programs or actions specified in the Regional Plan for implementation by the Authority, shall be paid by the Authority.

(b) Any penalties assessed against a Member by CalRecycle, which are the result of an Authority's failure to either (i) submit an adequate Regional Plan or required element thereof; or (ii) implement the programs or actions specified in the Regional Plan for implementation by the Authority, shall be paid by the Authority.

(c) Any penalties paid by the Authority pursuant to Section 13.1(a) or Section 13.1(b) of this Agreement shall be paid out of Authority funds including potentially its Operating or Recycling Reserve Funds and, to the extent necessary, collected in the rates or charges assessed against each Member based upon their proportionate shares of the Members' aggregate solid waste tonnage (calculated using the Members' "Inbound Solid Waste," "Dry Waste," and "Construction and Demolition" tonnage as shown in the last three Annual Reports submitted by the Contractor pursuant to the PCAs.)

(d) The Members shall only be liable for payment of any penalties assessed against the Authority by CalRecycle which are not paid by the Authority and which are not paid by an individual Member pursuant to Section 13.2 below..

**13.2. Penalties Arising from a Member's Failure.**

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(a) Any penalties assessed against the Authority by CalRecycle, which are the result of a Member's failure to implement programs or actions specified in the Regional Plan for implementation by the Member shall be paid by the Authority; and

(1) The Authority may recover any amounts, including penalties assessed by CalRecycle and the Authority's costs incurred as a result of CalRecycle's actions leading to and including the assessment and appeal of said penalties, by imposing a surcharge on the Directed Waste and Materials and all other waste delivered to an Approved Facility from within the jurisdiction of the failing Members who have not fully reimbursed the Authority.

(2) In lieu of collection of the penalty by the Authority through the surcharge, described in Section 13.2(a)(1) above, the Member may reimburse the Authority within thirty (30) days of Authority's payment of the penalties, the amount of penalties paid plus the Authority's costs incurred and associated with CalRecycle actions leading to and including the assessment and appeal of said penalties.

(b) Any penalties which are assessed directly against a Member as a result of the Member's failure to either (i) implement the programs or actions specifically identified in the Regional Plan for implementation by the Member; or (ii) to exercise its prerogatives under Section 11.2 of this Agreement; or (iii) to perform its obligations under Section 11.5 of this Agreement, shall be paid by the Member and neither the Authority nor any other Member shall be obligated to pay said penalties or any costs associated with the assessment or appeal of said penalties.

(c) In the event that failure of one or more Members to perform their obligations under this Agreement or to implement programs or actions specified in the Regional Plan for implementation by the Member causes the Authority or other Members to be unable to



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implement the Regional Plan, the failing Member shall pay any penalties assessed against the Authority or other Member(s) by CalRecycle as a result of the failure.

(d) Upon notification of any such violation or claim, the Member or Members shall take such prompt, corrective action as is necessary to meet the requirements.

13.3. Nothing in this Section shall preclude one or more Members or the Authority from imposing or establishing additional incentives to meet waste diversion requirements.

**SECTION 14.** Disposition of Assets at Dissolution. Subject to the then applicable requirements of the Law (currently Sections 6511 *et seq.* of the California Government Code), upon dissolution of the Authority, the assets of the Authority remaining after payment of, and adequate provision for, all debts, liabilities and obligations of the Authority shall be divided in accordance with a resolution adopted by a unanimous vote of the Board at the time of the dissolution.

**SECTION 15.** Withdrawal.

15.1. Requirements for Withdrawal. A Member may withdraw from the Authority subject to the following:

(a) Notice of Withdrawal. A Member seeking to withdraw from the Authority shall notify the Authority and each of the Members, by personal delivery in the manner required by Section 18, by presenting (“Notice of Withdrawal”) a resolution adopted by its governing body setting forth its intent to withdraw from the Authority to the Board. The resolution shall set forth the effective date of the withdrawal (“Withdrawal Date”), which shall be no sooner than one hundred eighty (180) days from the Notice of Withdrawal. The Board may by unanimous vote authorize a Withdrawal Date that is sooner than 180 days from the Notice of Withdrawal.

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(b) Defined Terms. For the purposes of this Section 15, the terms defined in this subsection have the following meanings:

(1) “Allocated Funds” means the funds allocated to meet all of the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the Withdrawal Date that are payable in the fiscal year in which a notice of withdrawal is provided.

(2) “Long-term Liabilities” means the Authority’s existing debts, financial obligations, and liabilities incurred, earned, or expected to be earned by the Withdrawal Date that become due after the fiscal year in which the Notice of Withdrawal is provided. Long-term Liabilities include, but are not limited to, CalPERS and OPEB UAAL and office leases, if any. The calculation of the CalPERS and OPEB UAAL shall reflect the reserve funds set aside for meeting those obligations.

(3) “Pro Rata Share” means a Member’s proportionate share of the Members’ aggregate solid waste tonnage (calculated using the Members’ “Inbound Solid Waste,” “Dry Waste,” and “Construction and Demolition” tonnage as shown in last three Annual Reports submitted by the Contractor pursuant to the PCA).

(4) “Reserve Policy” means Authority Resolution No. 18-02, *Resolution of the Board of Directors of the West Contra Costa Integrated Waste Management Authority Requiring the Establishment of Financial Reserves*, adopted on June 14, 2018.

(5) “Unallocated Funds” means the portion of Authority reserve funds that have not been either (a) set aside for the purpose of meeting specific Authority Long-term Liabilities or (b) allocated in the Authority budget.

(c) Satisfaction of Pro Rata Share of Long-term Liabilities.

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(1) Within ninety (90) days following receipt of a Notice of Withdrawal pursuant to Section 15.1(a), the Authority shall notify each of the Members, pursuant to Section 18, of its determination of the Allocated Funds, Unallocated Funds, Long-term Liabilities, and the Pro Rata Share. In determining the Long-term Liabilities, the Board of Directors shall, based on the recommendation of an actuary, determine the amount of any Authority UAAL as of the Withdrawal Date.

(2) On or before the Withdrawal Date, and as a condition precedent to the withdrawal's effectiveness, the withdrawing Member must pay to the Authority its Pro Rata Share of Long-term Liabilities. If the Authority determines, under Section 15.2(b), that the withdrawing Member is entitled to a disbursement of Unallocated Funds, the withdrawing Member may direct the Authority to deduct the payment required by this Subsection from its disbursement of Unallocated Funds.

(d) Termination of Withdrawal Process. A withdrawing Member may terminate the withdrawal process at any time before the withdrawal is effective by notifying the Authority and each of the Members, by personal delivery in the manner required by Section 18. The withdrawing Member shall be liable for all third-party costs incurred by the Authority for processing the withdrawal, which shall be payable within 60 days of the notice of termination of the withdrawal process.

### 15.2. Disbursement of Unallocated Funds Upon Withdrawal.

(a) On or before the Withdrawal Date, the Authority shall disburse to the withdrawing Member its Pro Rata Share of the portion of the Unallocated Funds that are in excess of the Operating Fund Target Reserve and the Recycling Fund Target Reserve, as both are described in the Reserve Policy.

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(b) Within 45 days following its adoption of a budget that reflects the departure of the withdrawing Member, the Authority shall disburse to the withdrawing Member its Pro Rata Share of the portion of the Operating Fund Reserve and the Recycling Fund Reserve that exceed, respectively, the recalculated Operating Fund Target Reserve and the recalculated Recycling Fund Target Reserve, pursuant to the Reserve Policy.

15.3. Obligations Following Withdrawal Date. A Member which has withdrawn from the Authority shall not be liable for the payment of Authority expenses accruing beyond the Withdrawal Date, and shall have no right to reimbursement of any assets or monies of the Authority once disbursement of any Unallocated Funds pursuant to Section 15.2(b), if any, has been effectuated.

15.4. Effect of Withdrawal on Agreement. The withdrawal of a Member shall have no effect on the continuance of this Agreement among the remaining Members and the Agreement shall remain in full force and effect with respect to the remaining Members.

15.5. Member and Authority's Obligations Under the Act.

(a) The withdrawing Member shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit an SRRE, HHWE, and NDFE to CalRecycle for the Member's jurisdiction to CalRecycle for approval. The withdrawing Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;

(b) The Authority shall, not later than one hundred twenty (120) days prior to the Withdrawal Date, prepare and submit a revised Regional Plan which reflects the withdrawal of the Member to CalRecycle for approval.

(c) The withdrawing Member shall pay (i) all costs incurred by Authority in preparing a revised Regional Plan; and (ii) all amounts owed to the Authority for penalties

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assessed against the Authority or the withdrawing Member including the Authority's costs incurred and associated with CalRecycle actions leading to and including the assessment of said penalties.

(d) The withdrawing Member shall be responsible for compliance with the Act the earlier of: (i) the date of the withdrawing Member's submittal of the documents to CalRecycle; or (ii) the date of the Authority's submittal of the revised Regional Plan to CalRecycle; or (iii) the Withdrawal Date.

### **SECTION 16. Amendments Including Termination.**

16.1. This Agreement may only be amended by a written instrument approved by a majority of the Directors which then shall be approved by all of the Member's governing bodies.

16.2. The Agreement may only be terminated or other action leading to dissolution of the Authority may only be effectuated through adoption of a resolution by a minimum 2/3 vote of all Directors which then shall be approved by a minimum of 2/3 of the Members' governing bodies. Given the current membership and Board seats, to reach the 2/3 threshold, five Directors and four Members would have to vote to adopt the resolution.

16.3. For termination of this Agreement during any period where the Authority is operating as a Regional Agency, the written instrument required by Section 16.2 of this Agreement shall include, but not be limited to, all of the following requirements:

(a) A date certain that this Agreement will be terminated (hereinafter "Termination Date");

(b) Each Member shall, not later than one hundred twenty (120) days prior to the Termination Date, prepare and submit an SRRE, HHWE, and NDFE for the Member's

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jurisdiction to CalRecycle for approval and that each Member shall be solely responsible for preparation of its SRRE, HHWE and NDFE;

(c) Each Member, prior to the Termination Date, shall promptly pay, within a reasonable time, all amounts owing to the Authority or CalRecycle for penalties assessed by CalRecycle, including the Authority's costs incurred and associated with CalRecycle actions leading to and including the assessment of said penalties;

(d) Each Member shall be solely responsible for compliance with the Act the earlier of: (i) the date of submittal of the documents required by Section 15.5(d) to CalRecycle; or (ii) the specified Termination Date; and

16.4. The obligations of the Authority terminate on the Termination Date, and each member shall pay all amounts owed to the Authority prior to that date; however, in the event of default by a Member with regard to payment of amounts due, the obligation to pay all sums due to the Authority shall survive and remain in full force after the Termination Date.

**SECTION 17. Filing with the Secretary of State.** The Secretary shall file all required notices with the Secretary of State in accordance with California Government Code sections 6503.5 and 53051.

**SECTION 18. Notices.**

18.1. All notices which any Member or the Authority may wish to give in connection with this Agreement shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Member or Authority, 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 Member or Authority at its principal office, or to such other

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address as the Authority or Member may designate from time to time by written notice given in the manner specified in this Section.

18.2. Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery (but twenty-four (24) hours after such delivery in the case of notices of special meetings of the Board) or two (2) days after mailing if deposited in the United States mail.

18.3. Members agree to provide the Authority with the official notification requirements of the Franchise Agreement for use by the Authority and agree to provide Authority with any changes in said notification requirements.

### **SECTION 19. Successors and Assigns.**

19.1. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Members.

19.2. However, no Member shall assign any of its rights under this Agreement except to a duly formed public entity organized and existing under the Laws of the State of California approved by a majority of the Directors who do not represent the assigning Member.

19.3. No assignment shall be effective unless and until the Authority, the Members and the proposed assignee comply with all then applicable requirements of Law relating to changes in the composition of entities such as the Authority.

**SECTION 20. El Cerrito Recycling Services.** It is acknowledged by the Members that the El Cerrito Recycling and Environmental Resource Center was in existence and operating before the formation of the Authority, and this Agreement is not intended to alter the operations of the Center. Accordingly, the El Cerrito Recycling and Environmental Resource Center shall not be considered a Facility for the purposes of this Agreement. The City of El Cerrito operates both

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the Recycling Center and a curbside collection program for Recyclable Material. The City of El Cerrito also has entered into agreements relating to the collection, processing and disposal of its Solid Waste, green waste and Recyclable Materials and the flow of such wastes are not controlled by the Authority. In particular, the Authority may not direct Recyclable Materials collected as part of El Cerrito Recycling Services except as separately agreed to by the Authority and El Cerrito. In addition, the costs of operating the El Cerrito Recycling Services shall not be included in the calculation of Approved Rates for Directed Waste and Materials collected within El Cerrito.

**SECTION 21. Third Party Beneficiaries.** The Authority shall be a third-party beneficiary of this Agreement entitled to exercise all rights of and benefits accruing to the Authority that are specified in this Agreement.

**SECTION 22. Severability.** Should any part, term or provision of this Agreement be decided by a final judgment of a court or arbitrator to be illegal or in conflict with any law of the State of California or otherwise be unenforceable or ineffectual, the validity of its remaining parts, terms and provisions shall not be affected.

**SECTION 23. Section Headings.** All section headings contained in this Agreement are for convenience and reference. They are not intended to define or limit the scope of any provision of this Agreement.

**SECTION 24. Dispute Resolution.**

24.1. **Informal Resolution.** Should a dispute arise in connection with the interpretation or performance of this Agreement, the provisions of this Section 24 shall apply. A Member shall give the Authority and Members written notice of such dispute. The parties shall attempt to resolve their disputes informally to the maximum extent possible. In the event such dispute



is not resolved within thirty (30) days of such notice, either party may propose the appointment of a mediator for advice and a non-binding mediation, and the other party or parties shall attend such mediation. If the dispute is not resolved through mediation, within sixty (60) days thereafter, then any party may refer it to arbitration.

24.2. Arbitration. All disputes that arise in connection with the interpretation or performance of this Agreement that are not resolved pursuant to the informal procedures of Section 24.1, shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association.

24.3. Binding Arbitration. The arbitrator's decision shall be final and binding on the Authority, all Members and all former Members involved or affected by the dispute.

24.4. Enforcement. The Authority, any Member and any former Member that is party to the dispute may enforce any award, order or judgment of the arbitrator in any court of competent jurisdiction.

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**CITY OF EL CERRITO**

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

**CITY OF HERCULES**

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

**CITY OF PINOLE**

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

**CITY OF RICHMOND**

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

**[SIGNATURES CONTINUED ON THE NEXT PAGE]**

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**CITY OF SAN PABLO**

ATTEST:

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

\_\_\_\_\_  
Mayor

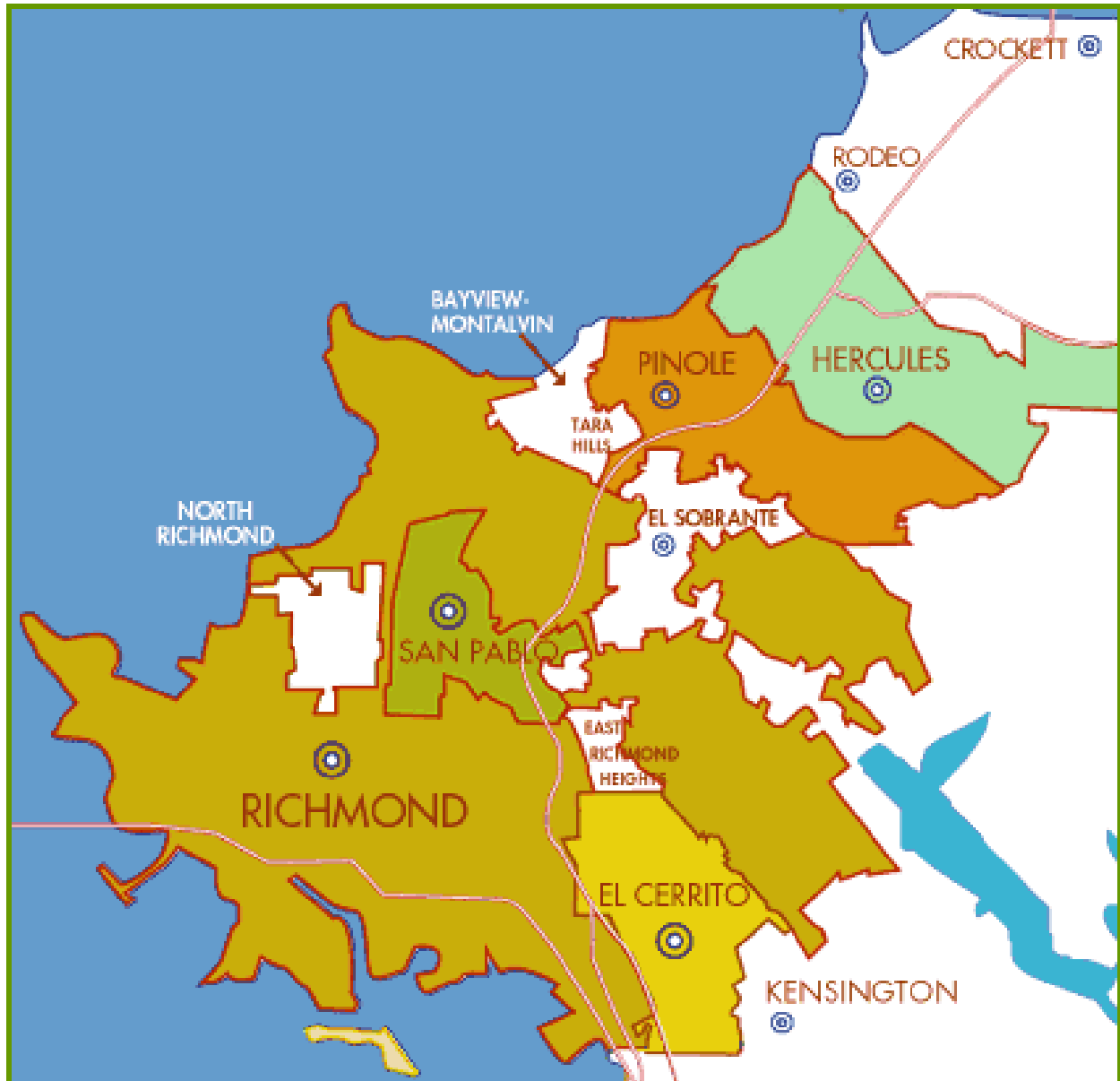
APPROVED AS TO FORM:

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

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Exhibit A  
Boundaries



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Exhibit B

Rate Setting Methodology

## Exhibit B

### Summary Formulas and Full Description of RecycleMore Post-Collection Rate Calculation Methodology

*Exhibit B describes and shows formulas used in the current methodology for calculating RecycleMore Post-Collection Rates. All 2018 Sample Calculation figures stated in Exhibit B are directly referencing the Approved 2018 Richmond Sanitary Service Area Post-Collection Rate Calculation, shown in the table below.*

#### Approved Richmond Sanitary Service Area Post-Collection Rate Calculation

	\$	92.02	Blended per ton	157,980	total tons	=	14,537,960.88	Annual Revenue
	Residential				Commercial	Industrial		
	20-Gallon	35-Gallon	60/65-Gallon	95/100-Gallon	Per Cubic Yard	Per Ton	TOTAL	
2018 Rates	\$ 5.08	\$ 8.91	\$ 16.57	\$ 24.86	\$ 9.66	\$ 140.17	\$ 140.17	
2018 Tonnage Basis	45,214				25,406	33,099	103,719	
2017 % of Tons	44%				24%	32%		
2018 Unit Basis***	59,280				368,500	33,099		
2018 Revenue Requirement	\$	6,337,578.32			\$ 3,561,051.74	\$ 4,639,330.83	\$ 14,537,960.88	
2017 Rate	\$	4.86	\$ 8.52	\$ 15.85	\$ 23.78	\$ 10.35	\$ 137.90	\$ 137.90
2018 Rate	\$	5.08	\$ 8.91	\$ 16.57	\$ 24.86	\$ 9.66	\$ 140.17	\$ 140.17
\$ Increase/(Decrease)	\$	0.22	\$ 0.39	\$ 0.72	\$ 1.08	\$ (0.69)	\$ 2.27	\$ 2.27
% Increase/(Decrease)		4.5%	4.6%	4.5%	4.5%	-6.7%	1.6%	1.6%

### Step 1: Calculate the Richmond Sanitary Service (RSS) Annual Post-Collection Revenue Requirement

#### DESCRIPTION:

The RSS Annual Post-Collection Revenue Requirement is calculated as:

\$92.02, which is the RecycleMore Board approved Blended Per-Ton Rate calculated as described in Section 5 of the Post-Collection Agreement (PCA) between RecycleMore and Republic Services (Republic) times 157,979.54, which is the Total Number of All Tons Collected by RSS<sup>1</sup> and reported by Republic for the twelve-month period from August 1 of the prior year through

<sup>1</sup> Pursuant to the franchise agreements between RSS and Hercules, Pinole, Richmond and San Pablo and Contra Costa County.

July 31 of the present year, and is inclusive of Solid Waste (Trash), Dry Waste, Construction and Demolition Debris (C&D), Recycling and Organics.

**FORMULAS:**

Blended Per-Ton Rate (rounded to the nearest cent) ***TIMES***

Total Number of All Tons Collected 8/1 to 7/31 ***EQUALS***

**RSS Annual Post-Collection Revenue Requirement**

**2018 SAMPLE CALCULATION:**

$\$92.02 \times 157,979.54 \text{ tons} = \$14,537,960.88^2$

**Step 2: Calculate the Revenue Requirement per Sector**

**DESCRIPTION:**

The Revenue Requirement per Sector (Residential, Commercial, Industrial) is calculated as:

The RSS Annual Post-Collection Revenue Requirement as calculated in Step 1, times each Sector's percentage of the total Solid Waste (Trash), Dry Waste and C&D reported by Republic for the twelve-month period from August 1 of the prior year through July 31 of the present year.

These tonnages are a subset of the total number of all tons used in Step 1 in that recycling and organics tonnages are not included. For example, the total number of all tons used in Step 1 in 2018 was 157,979.54 tons, whereas the total solid waste (trash), dry waste and C&D tonnage was 103,718.67, with the difference between the two being 54,260.87 tons of recycling and organics, which are not counted for the purposes of calculating the Revenue Requirement per Sector.

**FORMULAS:**

**Residential Sector**

RSS Annual Post-Collection Revenues Requirement ***TIMES***

Residential Sector Total Tons of Trash, Dry Waste and C&D ***DIVIDED BY***

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<sup>2</sup> The Blended Per-Ton Rate used in prior years and in the 2018 Post-Collection Rate calculation was not rounded to the nearest cent, and as a result the RSS Annual Post-Collection Revenue Requirement shown above is an insignificant \$683.61 higher than the product of \$92.02 times 157,979.54.

All Sector Total Tons of Trash, Dry Waste and C&D **EQUALS**

**Residential Sector Revenue Requirement**

Commercial Sector

RSS Annual Post-Collection Revenues Requirement **TIMES**

Commercial Sector Total Tons of Trash, Dry Waste and C&D **DIVIDED BY**

All Sector Total Tons of Trash, Dry Waste and C&D **EQUALS**

**Commercial Sector Revenue Requirement**

Industrial Sector

RSS Annual Post-Collection Revenues Requirement **TIMES**

Industrial Sector Total Tons of Trash, Dry Waste and C&D **DIVIDED BY**

All Sector Total Tons of Trash, Dry Waste and C&D **EQUALS**

**Industrial Sector Revenue Requirement**

**2018 SAMPLE CALCULATION:**

Residential Sector: \$14,537,960.88 X 45,214.40 tons / 103,718.67 tons = **\$6,337,578.32**

Commercial Sector: \$14,537,960.88 X 25,405.73 tons / 103,718.67 tons = **\$3,561,051.74**

Industrial Sector: \$14,537,960.88 X 33,098.54 tons / 103,718.67 tons = **\$4,639,330.83**

**Step 3: Calculate the Unit Basis per Sector**

**DESCRIPTION:**

The Unit Basis per Sector is expressed in monthly 35-Gallon Equivalents (Residential), Annual Cubic Yards (Commercial), and Annual Tons (Industrial) and is based on tonnage and detailed cart counts and cubic yard information reported by RSS and Republic, each of which are calculated per the following:

For the Residential Sector, the total number of residential Solid Waste (Trash) collection carts by gallon size (20, 35, 60/65, and 95/101) reported as of September 30 of the current year are multiplied by the 35-Gallon Equivalent factor for each cart size, yielding an equivalent number of 35-gallon carts. The 35-



Gallon Equivalent factors for each cart size are calculated as the ratio of gallon size divided by 35 and are shown in the table below. In 2018, the total number of 35-Gallon Equivalents was calculated at 59,280.

Trash Cart Size	35-Gallon Equivalents
20-gallon	0.57
35-gallon	1.00
60/65-gallon	1.86
95/101-gallon	2.79

For the Commercial Sector, the annual cubic yards are calculated as twelve (12) times the total commercial cubic yards per month on September 30. For the 2018 rate calculation, this number was 30,708 times 12, yielding 368,500 annual cubic yards.

For the Industrial Sector, the annual tons are the total industrial of Solid Waste (Trash), Dry Waste and C&D as shown in Step 2 (33,098.54 tons)

## FORMULAS:

### Residential Sector

Total Number of 20-gallon Trash carts ***TIMES 0.57 PLUS***

Total Number of 35-gallon Trash carts ***PLUS***

Total Number of 60/65-gallon Trash carts ***TIMES 1.86 PLUS***

Total Number of 95/101-gallon Trash carts ***TIMES 2.79 EQUALS***

**Residential Sector Unit Basis**

### Commercial Sector

Total Number of Commercial Cubic Yards per Month ***TIMES 12 EQUALS***

**Commercial Sector Unit Basis**

### Industrial Sector

Industrial Sector Total Tons of Trash, Dry Waste and C&D ***EQUALS***

**Industrial Sector Unit Basis**

## 2018 SAMPLE CALCULATION:

### Residential Sector

8,486 20-gallon carts  $\times 0.57 = 4,849$  35-Gallon Equivalents +

47,197 35-gallon carts  $\times 1 = 47,197$  35-Gallon Equivalents +

3,000 60/65-gallon carts  $\times 1.86 = 5,571$  35-Gallon Equivalents +

597 95/101-gallon carts  $\times 2.79 = 1,663$  35-Gallon Equivalents =

**59,280 35-Gallon Equivalents as Residential Unit Basis**

### Commercial Sector

30,708 cubic yards  $\times 12 = 368,500$  Annual Cubic Yards as Commercial Sector Unit Basis

### Industrial Sector

**33,098.54 tons as the Industrial Sector Unit Basis**

## Step 4: Calculate the Post-Collection Rate Per Sector

### DESCRIPTION:

For the Residential Sector, the base Post-Collection Rate is calculated for the 35-Gallon Trash cart as the Residential Sector Revenue Requirement, divided by the Residential Sector Unit Basis, divided by 12 months. The Post-Collection Rates for the 20-Gallon, 65-Gallon and 95/101-Gallon Trash carts are calculated based on the percentage increase in the 35-Gallon Post-Collection Rate for the coming rate year times the 20-Gallon, 60/65-Gallon and 95/101-Gallon Post-Collection Rates in the current rate year.

For the Commercial and Industrial Sectors, the Post-Collection Rate is simply the Revenue Requirement for each sector divided by the Unit Basis for each sector.

### FORMULAS:

#### Residential Sector

Residential Sector Revenue Requirement ***DIVIDED BY***

Residential Sector Unit Basis ***DIVIDED BY***

**12 EQUALS**

**Coming Rate Year 35-Gallon Post-Collection Rate**

Coming Rate Year 35-Gallon Post-Collection Rate ***DIVIDED BY***

Current Rate Year 35-Gallon Post-Collection Rate ***MINUS***

**Percentage Increase in the 35-Gallon Post-Collection Rate**

20-Gallon, 60/65-Gallon, and 95/101-Gallon Current Rate Year Post-Collection Rates ***TIMES***

Percentage Increase in the 35-Gallon Post-Collection Rate ***EQUALS***

**Coming Rate Year 20-Gallon, 60/65-Gallon and 95/101-Gallon Post-Collection Rates**

Commercial Sector

Commercial Sector Revenue Requirement ***DIVIDED BY***

Commercial Sector Unit Basis ***EQUALS***

**Commercial Per-Cubic Yard Post-Collection Rate**

Industrial Sector

Industrial Sector Revenue Requirement ***DIVIDED BY***

Industrial Sector Unit Basis ***EQUALS***

**Industrial Per Ton Post-Collection Rate**

**2018 SAMPLE CALCULATION:**

Residential Sector

$\$6,337,578.32 / 59,280 \text{ 35-Gallon Equivalents} / 12 = \text{\$8.91 Coming Rate Year 35-Gallon Post-Collection Rate}$

$\$8.91 / \$8.52 \text{ Current Rate Year 35-Gallon Post-Collection Rate} = \text{104.56\% Annual Increase in 35-Gallon Post-Collection Rate}$

$\$4.86 \text{ Current Year 20-Gallon Post-Collection Rate} \times 104.56\% = \text{\$5.08 Coming Rate Year 20-Gallon Post-Collection Rate}$

$\$15.85 \text{ Current Year 60/65-Gallon Post-Collection Rate} \times 104.56\% = \text{\$16.57 Coming Rate Year 60/65-Gallon Post-Collection Rate}$

$\$23.78$  Current Year 95/101-Gallon Post-Collection Rate  $\times 104.56\% =$   **$\$24.86$  Coming Rate Year 95/101-Gallon Post-Collection Rate**

Commercial Sector

$\$3,561,051.74 / 368,500 =$   **$\$9.66$  Commercial Per Cubic-Yard Post-Collection Rate**

A commercial customer with a two-yard container, picked up once per week, pays  $\$83.72$  per month in Post-Collection Rates based on:

$\$9.66$  Commercial Per Cubic Yard Post-Collection Rate  $\times 2$  cubic yards per week  $\times 52$  weeks per year  $/ 12$  months =  **$\$83.72$  per month in Commercial Post-Collection Rates**

Industrial Sector

$\$4,639,330.83 / 33,098.54 =$   **$\$140.17$  Industrial Per Ton Post-Collection Rate**

An industrial customer with a thirty (30) yard container with contents weighing 5 tons would pay  $\$700.85$  each time the container is serviced based on:

$\$140.17$  Industrial Per Ton Post-Collection Rate  $\times 5 =$   **$\$700.85$  in Industrial Post-Collection Rates**