

ORIGINAL

WEST CONTRA COSTA
INTEGRATED WASTE MANAGEMENT AUTHORITY

**THIRD AMENDMENT AND RESTATEMENT
OF THE
JOINT EXERCISE OF POWERS AGREEMENT**

March 6, 1995

WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY
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ORIGINAL

WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY

THIRD AMENDMENT AND RESTATEMENT OF THE
JOINT EXERCISE OF POWERS AGREEMENT

THIS THIRD AMENDMENT AND RESTATEMENT OF THE AGREEMENT is entered into as of March 6, 1995, by and among THE CITY OF EL CERRITO, a municipal corporation, 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. This document serves to amend the original Agreement dated April 2, 1991, as amended by Amendment No. 1 dated November 14, 1991, and entered into by the above listed cities and the WEST CONTRA COSTA SANITARY DISTRICT, a public corporation, and restates in full those provisions of that Agreement, except as amended herein, without affecting the ongoing existence of the Authority. Terms beginning with capital letters in this Agreement are defined in Section 1.

B A C K G R O U N D

A. The Act requires, among other things, that certain public agencies in California make adequate provision for Solid Waste management within their jurisdictions in order to divert 25 percent of Solid Wastes by 1995 and to divert 50 percent by the year 2000.

B. The original Agreement empowers the Authority to adopt an SRRE for all or any portion of the area within the Authority's boundary if and to the extent permitted by the Act, and the Act has been amended since the original Agreement to provide for the preparation of a Regional Integrated Waste Management Plan by the

1 Authority.

2 C. Solid Waste generated within the jurisdiction of the
3 Members and remaining after the diversion of Solid Waste in
4 accordance with the Act will require disposal at another landfill
5 after closure of the West Contra Costa Sanitary Landfill.

6 D. The development of an integrated resource recovery
7 facility appears to be a key to achieving the waste diversion goals
8 of the Members, including those set forth in the Act and for
9 arranging for disposal of remaining Solid Waste.

10 E. Each of the Members has the power to plan, acquire,
11 construct, maintain, manage, regulate, operate and control
12 facilities for the collection, transportation, processing and
13 disposal of the Solid Waste generated within its jurisdiction.

14 F. The Members believe that by combining their separate
15 powers they can achieve their waste diversion goals, satisfy the
16 requirements of the Act, and arrange for disposal of remaining
17 Solid Waste more effectively than if they exercise those powers
18 separately.

19 G. The Members intend by this Agreement to exercise their
20 respective powers jointly and to exercise such additional powers as
21 are available to the Authority under the Law for the purpose of
22 achieving their waste diversion goals, complying with the Act,
23 developing integrated resource recovery facilities for the benefit
24 of all the Members and arranging for disposal of remaining Solid
25 Waste.

1 H. The Law permits two or more public agencies to exercise
2 jointly any power that the agencies could exercise separately and
3 also grants certain additional powers to the Authority.

4 I. The Members desire to establish and confer upon a
5 separate legal entity the powers necessary to enable them to
6 establish integrated resource recovery facilities for the benefit
7 of all the Members, to achieve their waste diversion goals, to
8 comply with the Act, and to arrange for disposal of remaining Solid
9 Waste.

10 ACCORDINGLY, THE MEMBERS HEREBY AGREE AS FOLLOWS:

11 SECTION 1. Definitions. The terms defined in this Section
12 that begin in this Agreement with capital letters have these
13 meanings:

14 1.1 "Acceptable Waste and Materials" means Solid
15 Waste and Separated Materials suitable for delivery to the
16 Designated Facility, and Solid Waste and Separated Materials which
17 fall within the definition of "Nonhazardous Solid Waste" set forth
18 in Title 23, Chapter 15, Section 2523(a) of the California Code of
19 Regulations, as amended from time to time. Acceptable Waste and
20 Materials exclude Unacceptable Waste and Hazardous Waste.

21 1.2 "Act" means the California Integrated Waste
22 Management Act of 1989 (California Public Resources Code Sections
23 40000 et seq.) and all regulations adopted under that legislation,
24 as that legislation and those regulations may be amended from time
25 to time.

1 1.3 "Agreement" means this Joint Exercise of Powers
2 Agreement, as it may be amended from time to time.

3 1.4 "Alternate Director" means the person(s)
4 appointed by each Member who may represent that Member at a Board
5 meeting in the absence of a Director from that Member.

6 1.5 "Authority" means the West Contra Costa
7 Integrated Waste Management Authority, a joint exercise of powers
8 Agency created by the Members pursuant to this Agreement.

9 1.6 "Authority - County Contract" means that
10 certain contract between the Authority and Contra Costa County
11 dated May 25, 1993, as amended from time to time.

12 1.7 "Board" means the Board of Directors of the
13 Authority.

14 1.8 "City" means any Member that is a city, and
15 "Cities" means all of the Members that are cities.

16 1.9 "Commercial Operation" means the date specified
17 by Authority for commencement of delivery of Directed Waste and
18 Materials to the Designated Facility.

19 1.10 "County" means Contra Costa County, California.

20 1.11 "Designated Facility" means a Solid Waste
21 Management Facility or Facilities designated from time to time by
22 Authority to receive some or all Directed Waste and Materials.

23 1.12 "Designated Rates" means (i) the rates
24 authorized by the Authority from time to time to be paid at the
25 Designated Facility or Facilities for Directed Waste and Materials
26 received at the Designated Facility or Facilities and/or (ii) any

1 additional amounts determined by the Authority as necessary to
2 provide for the planning and implementation activities of the
3 Authority, to pay other costs and obligations of the Authority, or
4 to implement the Authority - County Contract to the extent such
5 additional amounts are not included by the Authority in the rates
6 authorized to be charged at the Designated Facility or Facilities.

7 1.13 "Directed Waste and Materials" means Acceptable
8 Waste and Materials collected pursuant to a Franchise Agreement, or
9 collected pursuant to any other agreement between a Member and any
10 other party, or collected by a Member, and directed by the
11 Authority to be delivered to a Designated Facility or Facilities.

12 1.14 "Director" means the appointed members of the
13 Board that represent the Cities. For the purposes of voting and
14 quorum, the term Director as used herein shall be read to also
15 include an "Alternate Director" when such person is seated on the
16 Board as the representative of the Member at a Board meeting.

17 1.15 "Fiscal Year" means the period commencing on
18 each July 1 and ending on the following June 30.

19 1.16 "Franchise Agreement" means an agreement
20 between a Member and a party which provide for the collection of
21 Solid Wastes or Separated Materials and an agreement between Contra
22 Costa County and a party which provides for the collection of Solid
23 Wastes or Separated Materials pursuant to the Authority - County
24 Contract.

25 1.17 "Hazardous Waste" means any material,
26 substance, waste or component thereof which poses an actual or

1 potential risk to public health and safety or the environment by
2 virtue of being actually or potentially toxic, corrosive,
3 bioaccumulative, reactive, ignitable, radioactive, infectious or
4 otherwise harmful to public health and safety or the environment,
5 and the handling and exposure of which is regulated under any
6 federal, state or local environmental or health and safety law,
7 excluding small quantities of waste of a type and amount normally
8 found in residential solid waste after implementation of programs
9 for the safe collection, recycling, treatment and disposal of
10 household hazardous waste which are in compliance with Sections
11 41500 and 41802 of the California Public Resources Code.

12 1.18 "Household Hazardous Waste Element (HHWE)"
13 means the household hazardous waste element required to be prepared
14 pursuant to the Act, and as that element may be amended from time
15 to time.

16 1.19 "In Lieu Surcharge" means a charge which may be
17 imposed from time to time by the Authority in the event of shutdown
18 or abandonment of an IRRF and which charges are determined by the
19 Authority in its sole direction as being necessary and for a period
20 of time (i) to repay indebtedness in whole or in part, including
21 letter of credit fees and interest charges, incurred with the
22 approval of the Authority for the construction or modification of
23 an IRRF which indebtedness remains unpaid ("Unpaid Amount") and/or
24 (ii) to pay continuing expenses of the IRRF or Authority.

25 1.20 "IRRF" means an integrated resource recovery
26 facility, including lands on which such facility is located, for

1 receiving, processing, recycling and transportation or transfer of
2 Acceptable Waste and Materials or the recovery of materials for
3 diversion, or any combination thereof, which facility is owned
4 either wholly or in part by the Authority or by a private entity,
5 but in all events is operated for the benefit of the Authority and
6 the residents within the jurisdictional boundaries of the
7 Authority, and within the area subject to said Authority-County
8 Contract.

9 1.21 "IRRF Bonds" means the Authority approved debt
10 securities issued to finance the planning, design and construction
11 of an IRRF and Revenue Bonds approved by the Authority and issued
12 to finance the design and construction of modifications approved by
13 Authority to an IRRF.

14 1.22 "Joint Facilities" means a facility or
15 facilities for the diversion or removal of portions of Solid Waste
16 prior to disposal of Solid Waste, either owned in whole or in
17 part by the Authority or by a Member which (i) is either rate
18 regulated directly by the Authority or the rates are otherwise
19 approved by the Authority, (ii) provides services for all or some
20 of the Members and/or the area subject to the Authority - County
21 Contract, (iii) is operated for the benefit of the residents within
22 the jurisdictional boundaries of the Authority and, the residents
23 within the area subject to the provisions of said Authority -
24 County Contract, and (iv) is operated in a manner which would be
25 consistent with and not adversely affect or interfere with the
26 operations of an existing IRRF and the operations of the Authority.

1 1.23 "Law" means Articles 1, 2 and 4 of Chapter 5 of
2 Division 7 of Title 1 of the California Government Code (California
3 Government Code Sections 6500, et seq.) and all regulations adopted
4 under that legislation, as that legislation and those regulations
5 may be amended from time to time.

6 1.24 "Manager" means the person hired and appointed by
7 the Board as the Authority's Executive Director to administer the
8 affairs of the Authority and to effect the policies of the Board.

9 1.25 "Member" means any of the five signatories to
10 this Agreement and "Members" means all of the five signatories to
11 this Agreement.

12 1.26 "Non-Disposal Facility Element (NDFE)" means
13 the non-disposal facility element required to be prepared pursuant
14 to the Act and as that element may be amended from time to time.

15 1.27 "Revenue Bonds" means revenue bonds, notes,
16 certificates of participation and any other instruments and
17 evidences of indebtedness either (i) issued by the Authority from
18 time to time pursuant to the Law or any other applicable Law in
19 order to finance an IRRF, any Joint Facilities or any Sole Use
20 Facilities or modifications thereto or (ii) approved by the
21 Authority in order to finance an IRRF, any Joint Facilities or any
22 Sole Use Facilities or any modifications thereto.

23 1.28 "Separated Materials" means materials which
24 have been removed from Solid Waste prior to the collection of Solid
25 Waste and which are collected or delivered separately from Solid
26 Waste.

1 1.29 "Sole Use Facilities" means a facility or
2 facilities for the diversion or removal of portions of Solid Waste
3 prior to disposal, owned either by one or more, but not all, of
4 the Members directly or by a private entity, but which in all
5 events is operated in a manner which would be consistent with and
6 not adversely affect or interfere with the operations of an
7 existing IRRF, existing Joint Facilities and the operations of the
8 Authority for the benefit of one or more, but not all, of the
9 Members and which is either rate regulated directly by the
10 Authority or the rates are otherwise approved by the Authority.

11 1.30 "Solid Waste" has the meaning set forth in
12 Section 40191 of the California Public Resources Code as amended
13 from time to time.

14 1.31 "Solid Waste Management Facility" means an
15 IRRF, Joint Facilities, Sole Use Facilities, transfer station,
16 material recovery facility or landfill or any combination thereof.

17 1.32 "Source Reduction and Recycling Element (SRRE)"
18 means a source reduction and recycling element required by the Act
19 as that element may be amended from time to time.

20 1.33 "Unacceptable Waste" means any and all Solid
21 Waste and Separated Materials, excluding Hazardous Waste, the
22 acceptance and handling of which would cause a violation of any
23 permit condition or legal or regulatory requirement; damage or
24 threaten damage to the Designated Facility or Facilities or
25 otherwise materially and adversely affect the operation and
26 maintenance of the Designated Facility or Facilities or present a

1 substantial endangerment to the health or safety of the public or
2 employees working at the Designated Facility or Facilities,
3 provided that, small quantities of waste of a type and amount
4 normally found in residential solid waste after implementation of
5 programs for the safe collection, recycling, treatment and disposal
6 of household hazardous waste which are in compliance with Sections
7 41500 and 41802 of the California Public Resources Code shall not
8 constitute Unacceptable Waste.

9 SECTION 2. Purpose. This Agreement is entered into
10 pursuant to the Law. Its purposes are to provide for the joint
11 exercise of certain powers common to the Members and for the
12 exercise of such additional powers as are conferred by the Law.
13 The Members are each empowered by the Laws of the State of
14 California to exercise the powers specified in this Agreement, to
15 comply with the provisions of the Act and other Laws, and to
16 acquire, construct, finance, refinance, maintain, operate and
17 regulate an IRRF, Joint Facilities and Sole Use Facilities. These
18 common powers shall be exercised for the benefit of any one or more
19 of the Members or otherwise in the manner set forth in this
20 Agreement.

21 SECTION 3. Creation of Authority.

22 3.1 Pursuant to the Law, the Members hereby create and
23 establish an authority and public entity to be known as the "West
24 Contra Costa Integrated Waste Management Authority", it being
25 understood that the Board shall be entitled to change the
26 Authority's name from time to time if it so chooses. The Authority

1 shall be a public entity separate from each of the Members.

2 3.2 The assets, rights, debts, liabilities and
3 obligations of the Authority shall not constitute assets, rights,
4 debts, liabilities or obligations of any of the Members. However,
5 nothing in this Agreement shall prevent any Member from separately
6 contracting for, or assuming responsibility for, specific debts,
7 liabilities or obligations of the Authority, provided that both the
8 Board and that Member approve such contract or assumption.

9 SECTION 4. Term. The Authority shall become effective as
10 of April 1, 1991. It shall continue until terminated or dissolved
11 by a vote taken in accordance with Section 19.1 of this Agreement.
12 However, in no event shall the Members vote to terminate or
13 dissolve the Authority if its termination or dissolution would
14 conflict with or violate the terms or conditions of any Revenue
15 Bonds, IRRF Bonds or related documentation including, without
16 limitation, indentures, resolutions and letter of credit
17 agreements.

18 SECTION 5. Powers.

19 5.1 The Authority is empowered to acquire, construct,
20 finance, refinance, operate, regulate and maintain an IRRF, Joint
21 Facilities and Sole Use Facilities or contract with a private
22 entity to do the same, subject however, to the conditions and
23 restrictions contained in this Agreement. The Authority shall also
24 have the power to plan, study and recommend proper solid waste
25 management consistent with the Act and, if and to the extent
26 permitted by the Act, to adopt and implement an SR&RE for all or

1 any portion of the area included within the Authority's boundary.

2 5.2 The Authority is empowered to prepare, revise,
3 approve and submit a Regional Integrated Waste Management Plan
4 pursuant to the Act to the California Integrated Waste Management
5 Board in lieu of preparation, approval, and submittal of individual
6 SRRE's, HHWE's and NDFE's by individual Members, to specify in said
7 Regional Integrated Waste Management Plan programs to be
8 implemented by any or all Members and the Authority, and to
9 implement programs specified in said Regional Integrated Waste
10 Management Plan for implementation by Authority, and in the event
11 the Authority exercises such power, instead of the individual
12 Members, it shall be responsible for compliance with Article 1
13 (commencing with Section 41780) of Chapter 6 of the Act following
14 approval of a Regional Member Integrated Waste Management Plan by
15 the California Integrated Waste Management Board.

16 5.3 To the full extent permitted by applicable Law, the
17 Authority is authorized, in its own name, to do all acts necessary
18 or convenient for the exercise of such powers that each Member
19 could exercise separately including without limitation, any and all
20 of the following:

- 21 (a) to make and enter into contracts, including
22 contracts with any Member;
- 23 (b) to apply for and accept grants, advances and
24 contributions;
- 25 (c) to employ or contract for the services of
26 engineers, attorneys, accountants, planners,

1 consultants, fiscal agents and other persons
2 and entities;

3 (d) to make plans and conduct studies;

4 (e) to acquire, improve, hold, lease and dispose
5 of real and personal property of all types;

6 (f) to sue and be sued in its own name;

7 (g) to incur and discharge debts, liabilities and
8 obligations;

9 (h) to establish or approve Designated Rates;

10 (i) to hire agents and employees;

11 (j) to exercise the power of eminent domain for
12 the acquisition of real and personal property
13 for an IRRF, Joint Facilities and Sole Use
14 Facilities, or for the acquisition of an IRRF,
15 Joint Facilities or Sole Use Facilities
16 themselves;

17 (k) to issue Revenue Bonds and IRRF Bonds, from
18 time to time, in accordance with all
19 applicable Laws for the purpose of raising
20 funds to finance or refinance the acquisition,
21 construction, improvement, renovation, repair,
22 operation, regulation, modification, or
23 maintenance of an IRRF, Joint Facilities or
24 Sole Use Facilities;

25 (l) to sell or lease an IRRF, Joint Facilities or
26 Sole Use Facilities;

- 1 (m) to loan the proceeds of Revenue Bonds or IRRF
2 Bonds to any person or entity to finance or
3 refinance the acquisition, construction,
4 improvement, renovation, modification, or
5 repair of an IRRF, Joint Facilities or Sole
6 Use Facilities;
- 7 (n) to issue grant or bond anticipation notes for
8 the purpose of financing or refinancing an
9 IRRF, Joint Facilities or Sole Use Facilities;
- 10 (o) to require that the Members direct all of the
11 Solid Wastes and Separated Materials generated
12 and collected within their respective
13 boundaries (or specified portions or specified
14 types of such Wastes and Materials) to the
15 Designated Facility or Facilities as the case
16 may be, it being understood, however, that the
17 Authority is not empowered to require the City
18 of El Cerrito to so direct any Separated
19 Materials collected at the El Cerrito
20 Recycling Center (as it was configured as of
21 April 1, 1991) unless the City of El Cerrito
22 so consents);
- 23 (p) to require each Member to include some or all
24 of the Designated Rates paid to the owner or
25 operator of the Designated Facility or
26 Facilities in connection with the waste stream

1 of that Member directed to the Designated
2 Facility or Facilities, as the case may be, to
3 be "passed through" to or collected from the
4 ratepayers within the boundaries of that
5 Member without reduction, limitation, offset
6 or adjustment of any kind and to require that
7 the Member take such action to direct the
8 collection of said Designated Rates in a
9 timely manner;

10 (q) to require each Member to (i) include an In
11 Lieu Surcharge to be collected from the
12 ratepayers within the boundaries of that
13 Member without reduction, limitation, offset
14 or adjustment of any kind and (ii) provide for
15 payment of amounts collected as an In Lieu
16 Surcharge to the Authority or a party
17 designated by Authority without reduction,
18 limitation, offset or adjustment of any kind
19 and to require that the Member take such
20 action to direct the collection of said
21 Designated Rates in a timely manner;

22 (r) to require each Member to (i) include amounts
23 determined by Authority as necessary to
24 provide for the planning and implementation
25 activities of the Authority, to pay other
26 costs and obligations of the Authority, or to

1 implement the Authority - County Contract set
2 as a portion of Designated Rates) to be
3 "passed through" to or collected from
4 ratepayers within the boundaries of that
5 Member without reduction, limitation, offset
6 or adjustment of any kind and (ii) provide for
7 payment of amounts so collected to the
8 Authority, in the event that such amounts are
9 not paid to the owner or operator of the
10 Designated Facility, without reduction,
11 limitation, offset or adjustment of any kind
12 and to require that the Member take such
13 action to direct the collection of said
14 Designated Rates in a timely manner;

15 (s) to provide that the Authority may covenant
16 with the holders of any Revenue Bonds or IRRF
17 Bonds, and/or lenders providing security for
18 same, on behalf of any such Member to perform
19 such obligations and comply with any
20 agreements that Member may have with the
21 Authority;

22 (t) to determine the type, extent and manner of
23 processing of Solid Waste necessary for the
24 Members to comply with the diversion
25 requirement of the Act and to arrange for said
26 processing through implementation or

1 modification of the Designated Facility, Joint
2 Facilities or Sole Use Facilities or through
3 use of other facilities following receipt of
4 Solid Waste at the Designated Facility; and

5 (u) to implement the Regional Integrated Waste
6 Management Plan and upon approval of such plan
7 to require Members to implement the Regional
8 Integrated Waste Management Plan.

9 5.4 Such powers shall be exercised subject only to the
10 limitations set forth in this Agreement, applicable Law and such
11 restrictions upon the manner of exercising such powers as are
12 imposed by Law upon the Members in the exercise of similar powers.
13 The Authority hereby designates the City of Richmond as the Member
14 required to be designated by Section 6509 of the California
15 Government Code.

16 5.5 If and to the extent the Authority exercises a power
17 granted to it under this Agreement and the exercise of any like
18 power by one or more Members within its or their boundaries would
19 be inconsistent with or likely to interfere or adversely affect
20 such exercise of that power by the Authority, that Member or those
21 Members shall not exercise that power; provided, however, that
22 nothing in this Agreement shall limit a Member's right or that of
23 any commission, Member or other body or authority of any Member to
24 adopt, amend or implement zoning, building, land use or safety
25 ordinances, laws or regulations with respect to real estate located
26 within its boundaries upon which an IRRF, Joint Facility or Sole

1 Use Facility is or will be located.

2 SECTION 6. Boundaries. The boundary of the Authority
3 shall be the consolidated boundaries of the Cities. If a Member
4 withdraws from the Authority, the boundary of the Authority shall
5 be modified to exclude the area of the withdrawing Member. This
6 Section 6 shall not prevent any IRRF, Joint Facilities or Sole Use
7 Facilities from being located outside the boundary of the
8 Authority.

9 SECTION 7. Organization.

10 7.1 The Board. The Authority shall be governed by the
11 Board, which shall exercise or oversee the exercise of all powers
12 and authority on behalf of the Authority.

13 7.2 Directors.

14 (a) The Board shall consist of eight Board
15 Members, a Director from each City (other
16 than the City of Richmond), three Directors
17 from City of Richmond and a non-voting ex
18 officio member from the County. Upon
19 execution of this Agreement, the Members shall
20 appoint (and the County shall be invited to
21 appoint) their representatives to the Board
22 and one person as an alternate to serve in the
23 case of absence or conflict of an appointed
24 Director. Directors and Alternate Directors
25 that have been duly appointed and are serving
26 at the time of the restatement of this

1 Agreement may continue to serve in that
2 capacity without further action of the Member.

3 (b) Each Director and alternate shall hold office
4 from the first meeting of the Board after
5 appointment by the Members until his or her
6 successor is selected by the Member that
7 elected that Director. Each Director and
8 alternate shall serve at the pleasure of the
9 Member that he or she represents and may be
10 removed at any time, without cause, in the
11 sole discretion of that Member. However, a
12 Member shall not remove a Director or
13 Alternate Director unless, before the next
14 meeting of the Board, it also appoints a
15 replacement Director or alternate.

16 (c) Each Director and Alternate Director shall be
17 an elected official of the governing body of
18 the Member that he or she represents. The ex
19 officio County Board member shall also be an
20 elected official of the governing body of the
21 County. If a Director or Alternate Director
22 ceases holding any such elected position, he
23 or she shall then cease to serve as a Director
24 or alternate. The Authority and the Board
25 shall be entitled to rely on a written notice
26 from the City Clerk (in the case of the

1 Cities), and the County Clerk (in the case of
2 the County) as conclusive evidence of the
3 appointment and removal of Directors and
4 alternates representing that Member or the
5 County as the case may be.

6 7.3 Principal Office. The principal office of the
7 Authority shall be established by the Board within the boundary of
8 the Authority and the address of the principal office shall
9 initially be 1 Alvarado Square, San Pablo, California 94806. The
10 Board may change that principal office upon giving at least 15
11 days' notice to each Member and to the California Integrated Waste
12 Management Board.

13 7.4 Officers. The Authority shall have seven officers:
14 a Chair, a Vice Chair, a Manager, a General Counsel, a Secretary,
15 a Treasurer and a Controller. The Manager, General Counsel,
16 Secretary, Treasurer and Controller shall not be employees of a
17 Member during the period that he or she serves as an officer of the
18 Authority unless, in the case of the Secretary, Treasurer and
19 Controller, the Board takes specific action to authorize use of a
20 Member's employee in that capacity. None of the officers (including
21 the Chair or Vice Chair) shall be an employee or otherwise be
22 affiliated with the owner of an IRRF (if an IRRF is privately owned
23 in whole or in part) or the operator of an IRRF. The Board shall
24 select a Chair and a Vice Chair from among the Directors who shall
25 hold office for a period of one year commencing July 1 of each
26 Fiscal Year. However, the first Chair and the first Vice Chair

1 shall hold office from the date of appointment to the June 30
2 occurring in the calendar year after the calendar year in which
3 they are appointed. At no time shall the Chair and the Vice Chair
4 be representatives of the same Member. No person shall serve
5 consecutive terms as the Chair and no person shall serve
6 consecutive terms as the Vice Chair. Successive Chairs shall not
7 be representatives of the same Member.

8 7.5 Chair. The Chair shall preside at meetings of the
9 Board, call meetings to order, adjourn meetings, announce the
10 business and the order it is to be acted upon, recognize persons
11 entitled to speak, put to a vote all questions moved and seconded,
12 announce results of votes, maintain the rules of order, execute
13 documents and official actions on behalf of the Board when duly
14 approved, and carry out other duties set forth in any bylaws
15 adopted by the Board. Notwithstanding the foregoing, any Voting
16 Director shall be entitled to place any matter reasonably related
17 to the business of the Authority on the agenda for any meeting of
18 the Board.

19 7.6 Vice Chair. The Vice Chair shall serve as Chair in
20 the absence of the regularly elected Chair.

21 7.7 Manager. The Board shall employ or contract for the
22 services of a manager (the "Manager") who shall be the chief
23 administrative officer of the Authority. The Manager shall have a
24 background in public management, solid waste management or a
25 related field. The Manager shall plan, organize and direct the
26 administration and operations of the Authority, shall advise the

1 Board on policy matters, shall recommend an administrative
2 structure to the Board, shall hire and discharge administrative
3 staff, shall develop and recommend budgets, shall reply to
4 communications on behalf of the Authority, shall approve payments
5 of amounts duly authorized by the Board, shall carry out such other
6 duties that may be assigned to the Manager by the Board from time
7 to time and shall attend meetings of the Board.

8 7.8 General Counsel. The Board shall employ or contract
9 for the services of a General Counsel who shall be the legal
10 officer of the Authority. The General Counsel shall advise the
11 Authority on legal matters.

12 7.9 Secretary. The Authority shall employ or contract
13 for the services of a Secretary who shall prepare, distribute and
14 maintain minutes of meetings of the Board and any committees of the
15 Board. The Secretary shall also maintain the official records of
16 the Authority and shall file notices as required by Section 16 of
17 this Agreement.

18 7.10 Treasurer. The Authority shall employ or contract
19 for the services of a Treasurer who shall:

20 (a) report to the Manager;

21 (b) receive and provide for the receipt of all
22 funds of the Authority and place them in the
23 treasury to the credit and for the account of
24 the Authority;

25 (c) be responsible, upon an official bond, for the
26 safekeeping and disbursement of all funds of

1 the Authority;

2 (d) pay, when due, out of funds of the Authority,
3 all sums payable on outstanding Revenue Bonds
4 and other indebtedness of the Authority;

5 (e) pay any other sums duly authorized for
6 payment from funds of the Authority;

7 (f) verify and report in writing on the twenty-
8 fifth day of July, October, January and April
9 of each year to the Board and each Member, as
10 of the end of the preceding month, the amount
11 of funds held for the Authority, the amount of
12 receipts since the last report and the amount
13 paid out since the last report;

14 (g) invest the Authority's funds in the manner
15 provided by Law and collect interest thereon
16 for the account of the Authority;

17 (h) arrange for a certified public accountant,
18 acceptable to the Controller, to conduct an
19 annual audit of the accounts and records of
20 the Authority; and

21 (i) attend meetings of the Board as requested by
22 the Manager or the Board of Directors.

23 7.11 Controller. The Authority shall employ or contract
24 for the services of a Controller. The Controller shall report to
25 the Board. The Controller shall approve the certified public
26 accountant selected to conduct the annual audit of the accounts and

1 records of the Authority, participate in the annual audit and shall
2 review said annual audit and certify by signature that said annual
3 audit is satisfactory to the Controller. In each case, the minimum
4 requirements of the audit shall be those prescribed by the State
5 Controller for special districts under Section 26909 of the
6 California Government Code, as it may be amended or replaced from
7 time to time, and shall conform to generally accepted auditing
8 standards. The records and accounts of the Authority shall be
9 audited annually, and a report thereof shall be filed as a public
10 record with the Authority, each Member and the County's Auditor not
11 later than six months after the Fiscal Year under examination. The
12 costs of the audit shall be borne by the Authority.

13 7.12 Access to Property. The Manager and Treasurer are
14 hereby designated as the persons who have charge of and access to
15 the property of the Authority. Each such person shall file with
16 the Authority an official bond in an amount to be fixed by the
17 Board. The costs of those bonds shall be paid by the Authority.

18 7.13 Officers, Employees and Agents. None of the
19 officers, agents or employees employed or hired by the Authority
20 shall by reason thereof become officers, agents or employees of any
21 Member. The Authority may contract with any Member for any
22 services, subject to approval by a majority of the Voting Directors
23 who do not represent that Member. None of the persons whose
24 services are supplied by a Member shall by reason thereof become an
25 employee of the Authority.

1 7.14 Other Managers. Subject to final approval by the
2 Board, the Manager may select one or more persons or firms to
3 manage the acquisition, construction, maintenance, operation,
4 regulation or implementation of an IRRF, Joint Facilities, Sole Use
5 Facilities or SR&RE. Any such person or firm shall report
6 regularly to the Manager and, if requested, to the Board, on the
7 progress, execution and status of the matters for which that person
8 or firm has been assigned responsibility. Such persons or firms
9 may be authorized to subcontract with engineers, consultants and
10 other parties, subject to concurrence of the Board or the Manager
11 and consistent with the rules and regulations of the California
12 Integrated Waste Management Board. Nothing in this Section 7.14
13 shall by implication prevent the Authority or the Manager from
14 appointing or hiring additional persons or firms to perform or
15 oversee these or any other task.

16 SECTION 8. Meetings of the Board.

17 8.1 Regular Meetings. The Board shall hold at least
18 four regular meetings each year. The date upon which, and the hour
19 and place at which, each regular meeting shall be held shall be
20 fixed by resolution of the Board.

21 8.2 Special Meetings. Special meetings of the Board may
22 be called in accordance with the provisions of Section 54956 of the
23 California Government Code.

24 8.3 Notice of Meetings. All meetings of the Board shall
25 be held subject to the provisions of the California Ralph M. Brown
26 Act (Sections 54950 et seq. of the California Government Code) and

1 other applicable Laws of the State of California.

2 8.4 Minutes. The Secretary shall cause minutes of all
3 meetings of the Board and any committees of the Board to be kept
4 and shall, promptly after each meeting, cause a copy of the minutes
5 to be forwarded to each Director.

6 8.5 Quorum. A majority of the Directors shall
7 constitute a quorum for the transaction of business of the Board,
8 except that Directors constituting less than a quorum may adjourn
9 any meeting.

10 8.6 Voting. Subject to Sections 7.13, 18, and 22.2,
11 each Director shall have one vote on all matters presented to the
12 Board for a vote. The member appointed by the County shall be ex
13 officio and shall not vote. The Board shall specify by resolution,
14 from time to time, what types of decisions shall be presented to
15 the Board for a vote and what types of decisions shall be delegated
16 to the Manager. Except as provided in Sections 7.13, 11.2(a)(3),
17 18, 19.1 and 22.2, the vote of a majority of the Voting Directors
18 shall constitute the act of the Board.

19 8.7 ByLaws. The Board from time to time may adopt
20 bylaws for the conduct of its affairs, provided that they are not
21 inconsistent with this Agreement.

22 8.8 Budget.

23 (a) A general budget for the Authority's operations
24 shall be adopted by the Board for the ensuing
25 Fiscal Year prior to June 1 of each year. The
26 budget shall include sufficient detail to

1 constitute an operating guideline, the anticipated
2 sources of funds, and the anticipated expenditures
3 to be made for the operations of the Authority and
4 the administration, maintenance and operating costs
5 of an IRRF or Joint Facilities. Any budget for
6 Sole Use Facilities shall be maintained separately.
7 Approval of the budget by the Board shall
8 constitute authority for the Manager to expend
9 funds for the purposes outlined in the approved
10 budget, but subject to the availability of funds on
11 hand as determined by the Treasurer.

12 (b) A budget for the acquisition or construction of an
13 IRRF or Joint Facilities shall be adopted by the
14 Board before the Authority commits any acquisition
15 or construction funds. It may be amended if and
16 when determined by the Board. Approval of an IRRF
17 or Joint Facilities budget shall constitute
18 authority for the Manager (or any trustee or other
19 fiduciary appointed by the Authority) to receive
20 state or federal grant funds and proceeds of
21 Revenue Bonds or IRRF Bonds and to expend funds for
22 the acquisition and construction of an IRRF or
23 Joint Facilities.

24 (c) Budgets governing the acquisition or construction
25 of Sole Use Facilities shall be adopted by the
26 affected Member or Members and appropriate accounts

1 shall be established and designated as such
2 Member's or Members' fund. Disbursement of such
3 funds by the Authority shall be made only upon
4 receipt of written authorization from the finance
5 officer of the affected Member or Members.
6 Receipts and disbursements for the acquisition or
7 construction of Sole Use Facilities may also be
8 made directly by the affected Member or Members, in
9 which case such budgets shall not be a part of the
10 budget of the Authority.

11 SECTION 9. Joint Operating Fund and Contributions.

12 9.1 The Authority shall establish a joint operating
13 fund. The fund shall be used to pay all administrative, operating
14 and other non-capital expenses incurred by the Authority. Within
15 10 days after the date of this Agreement, each Member shall deposit
16 into that fund, in cash, the amount specified after that Member's
17 name on Exhibit A to this Agreement. Thereafter and continuing
18 until Commercial Operation, or withdrawal or termination occurs
19 pursuant to the conditions set forth in Sections 17 and 18
20 respectively of this Agreement, each Member shall be obligated to
21 pay into the joint operating fund that Member's share of the
22 approved Authority budget to a maximum of SIXTY FOUR THOUSAND
23 DOLLARS (\$64,000) per Director per year. Such payments shall be
24 made in such manner and at such times as approved by the Board.

25 9.2 All moneys in the joint operating fund shall be
26 paid out by the Treasurer for the purposes for which the fund was

1 created upon authorization by the Chair of the Board and approval
2 by the Controller and Manager of demands for payment, or as
3 otherwise authorized by resolution of the Board filed with the
4 Treasurer.

5 9.3 No Member shall be obligated to make any other
6 contributions of funds to the Authority or pay any other amounts on
7 behalf of the Authority, other than as required by this Section 9,
8 without that Member's consent evidenced by a written instrument
9 signed by a duly authorized representative of that Member.

10 SECTION 10. Records and Accounts. This Section and
11 Sections 7.10 and 7.11 are intended to insure strict accountability
12 of all funds of the Authority and to provide accurate reporting of
13 receipts and disbursements of such funds. The Authority shall
14 maintain accurate and correct books of account showing in detail
15 the costs and expenses of any acquisition and construction and the
16 maintenance, operation, regulation and administration of an IRRF
17 or Joint Facilities and all financial transactions of the Members
18 relating to an IRRF or Joint Facilities. The books of account
19 shall correctly show any receipts and any costs, expenses or
20 charges to be paid by all or any of the Members. The books of
21 account shall be open to inspection at all times by a
22 representative or agent of any of the Members. In addition, if
23 required by any resolution authorizing the issuance of Revenue
24 Bonds or IRRF Bonds, the Authority shall maintain appropriate
25 books, records, accounts and files relating to each project as
26 required by such resolution which shall be open to inspection by

1 holders of Revenue Bonds or IRRF Bonds if and to the extent, and in
2 the manner, provided in the resolution approving the Revenue Bonds
3 or IRRF Bonds.

4 SECTION 11. Implementation of the Act.

5 11.1 Intent

6 It is the intent of the Members to form a
7 regional agency as defined by Public Resources Code §40181 and for
8 the Authority to undertake the responsibilities of a regional
9 agency pursuant to the powers of the Authority as set forth, supra,
10 in §5.2.

11 11.2 Submittal of Elements by Members

12 (a) The Members agree that, following
13 CIWMB approval of this Agreement, that Members shall refrain from
14 submitting a SRRE, HHWE, or NDFE for a Member's jurisdiction prior
15 to:

16 (1) The date that the Regional Plan
17 or elements thereof are required to be submitted to CIWMB by the
18 Authority including any time extensions granted by CIWMB, or

19 (2) One hundred twenty (120) days
20 following the issuance of a notice of deficiency by CIWMB to the
21 Authority pursuant to Section 41810 or the Act, or

22 (3) Receipt of a written notice from
23 the Authority, approved by a majority of the Board of Directors
24 representing a majority of the Members, that the Authority either
25 does not intend to submit a Regional Plan or required element
26 thereof by the date required by the Act (including time

1 extensions), or does not intend to correct deficiencies identified
2 by CIWMB in the Regional Plan or required elements thereof, due to
3 the failure of one or more of the members to perform their
4 obligations under this agreement or to implement programs and
5 actions specified in the Regional Plan.

6 (b) Any Member choosing to exercise its
7 authority to undertake a SRRE, HHWE or NDFE individually, or
8 respond individually to a notice of deficiency, may do so
9 consistent with the terms of Section 11.2(a)(1) or Section
10 11.2(a)(2) by providing a resolution of the governing body of the
11 Member to the Authority and each other Member within ten (10) days
12 of adoption of said resolution.

13 (c) Each Member so electing to exercise
14 the prerogatives provided in Section 11.2(a)(1) or Section
15 11.2(a)(2) or receiving a written notice from the Authority,
16 pursuant to Section 11.2(a)(3) shall be solely responsible for
17 compliance with the requirements of the Act upon adoption of the
18 member resolution required by Section 11.2(b), or receipt of the
19 notice from the Authority required by Section 11.2(a)(3).

20 11.3 Compliance Monitoring

21 (a) The Authority may establish a fair
22 and equitable basis for determination of the amount of waste
23 disposed of from within each Member's jurisdiction and this method
24 shall be used to determine the maximum amount of disposal allowable
25 under the Act for the area included the boundaries of the
26 Authority.

1 (b) The Authority shall be entitled to
2 cause the Solid Waste of each Member to be monitored in order to
3 determine compliance with the Act.

4 (c) The Authority shall be responsible
5 for compiling and submitting disposal information from haulers and
6 operators required to be submitted by CIWMB pursuant to California
7 Code of Regulations, Title 14, Division 7, Chapter 9, Article 9/0
8 or successor regulations and Members agree to require their
9 respective haulers to submit such information to the Authority.

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

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

18 11.4 Contingency Plans

19 Consistent with §40975(b)(3) of the Public
20 Resources Code, the Authority hereby establishes a Contingency Plan
21 which provides for compliance with the Act by each Member Agency in
22 the event the Authority, as the regional agency, is dissolved, or
23 the Authority continues its role as a regional agency. The
24 Contingency Plan is as set forth in Sections 18 and 19 of this
25 Agreement, dealing with Withdrawal and Termination, respectively.
26

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.

(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 CIWMB regulations and assign responsibility for implementation of said programs among the Authority and the Members.

(c) The Regional Plan, following approval by CIWMB, shall be included in this Agreement by this reference.

(d) Notwithstanding Section 19 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 CIWMB.

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

(f) Each Member agrees 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 co-ordinate its education and public information activities with respect to Solid

1 Waste and household hazardous waste with the activities of the
2 Authority and to conduct such activities in a manner consistent
3 with the education and public information program contained in the
4 Regional Plan.

5 11.6 Grants and Financial Assistance

6 (a) Each Member agrees to co-operate with
7 the Authority as necessary to enable the Authority to apply for and
8 receive grant funds and other financial assistance that may be
9 available to a Member for development of the Regional Plan or for
10 implementation of programs and actions assigned to the Authority in
11 the Regional Plan in order to minimize costs which must be borne by
12 ratepayers.

13 SECTION 12. Direction of Solid Waste and Separated
14 Materials

15 12.1 The Members agree that the Authority shall have
16 sole authority to (i) determine the suitability of Solid Waste and
17 Separated Materials for delivery to the Designated Facility or
18 Facilities and (ii) direct the delivery of all or a portion of
19 Solid Waste and Separated Materials generated within the respective
20 Member's jurisdictions (Directed Waste and Materials) and that no
21 Member shall take any action to direct the delivery of said
22 Directed Waste and Materials in any manner inconsistent with the
23 terms of this Agreement and Exhibit "B" to this Agreement.

24 12.2 The Authority shall concurrently notify in
25 writing each Member and the other party to each Member's Franchise
26 Agreement of the date upon which delivery of Directed Waste and

1 Materials to the Designated Facility is to commence.

2 12.3 The Authority shall concurrently notify in
3 writing each Member and the other party to each Member's Franchise
4 Agreement of the need to temporarily suspend delivery of Directed
5 Waste and Materials, or portions thereof, to the Designated
6 Facility.

7 12.4 The Authority shall designate the Solid Waste
8 Management Facility to receive the remaining Directed Waste and
9 Materials received at an IRRF which is not diverted from disposal
10 by the IRRF, and shall also have the authority to designate the
11 Solid Waste Management Facility or Facilities to receive Directed
12 Waste and Materials in the event that delivery of Directed Waste
13 and Materials to the IRRF must be permanently discontinued as a
14 result of abandonment of the IRRF.

15 12.5 The Authority shall not refuse to direct the
16 delivery of any Directed Waste and Materials collected from within
17 a Member's jurisdiction to an IRRF, provided that if the IRRF is
18 unable to accept all Directed Waste and Materials from all Members
19 and all Directed Waste and Materials from the area subject to the
20 Authority - County Contract, the Authority may direct delivery of
21 a portion of the Directed Waste and Materials collected from within
22 each Member's jurisdiction and from within the area subject to the
23 Authority - County Contract to other Designated Facility or
24 Facilities.

25 12.6 The amount of Directed Waste and Materials
26 directed to other Designated Facility or Facilities by the

1 Authority pursuant to Section 12.5 of this Agreement shall be
2 determined by the Authority and either (i) said amount shall be a
3 fair and equitable portion of the entire amount of Directed Waste
4 and Materials from each Member's jurisdiction and from the area
5 subject to the Authority - County Contract or (ii) the Designated
6 Rate during the period of delivery of Directed Waste and Materials
7 to the other Designated Facility or Facilities shall not be
8 increased for any Member as a result of the delivery of any
9 Directed Waste and Materials to such other Facility or Facilities.

10 SECTION 13. Designated Rates

11 13.1 The Authority shall be solely responsible for
12 the approval of rates for the Designated Facility or Facilities,
13 Joint Facilities and Sole Use Facilities established pursuant to
14 this Agreement and each Member hereby delegates, assigns and/or
15 otherwise transfers to the Authority any powers that each Member
16 may have with respect to the franchising of, regulation of,
17 approval or establishing of rates for the Designated Facility or
18 Facilities, Joint Facilities or Sole Use Facilities.

19 13.2 The Authority shall establish or approve rates
20 to be charged at a Designated Facility or Facilities, including
21 potentially Joint or Sole Use Facilities, established pursuant
22 to this Agreement, in amounts sufficient to provide for the
23 efficient operation of such facilities, , to discharge all
24 indebtedness and liabilities relating to the acquisition and
25 construction of such facilities (including, without limitation,
26 any Revenue Bonds or IRRF Bonds issued in connection therewith).

1 13.3 The Authority may from time to time elect to
2 include as an additional amount in the rates established or
3 otherwise approved for the Designated Facility, Joint Facilities or
4 Sole Use Facilities established pursuant to this Agreement all or
5 a portion of the amounts determined from time to time by the
6 Authority as necessary to provide for the planning and
7 implementation activities of the Authority, to pay other costs and
8 obligations of the Authority, or to implement the Authority -
9 County Contract, in which case the amounts so included will be paid
10 to the Authority by the operator of the Designated Facility, Joint
11 Facilities or Sole Use Facilities.

12 13.4 The Authority may from time to time elect to
13 require Members to include a sufficient amount in the collection
14 rates established by the Members to cover Authority costs and to
15 require the Cities' Franchised Contractor to pay to the Authority
16 such amounts determined from time to time by the Authority as
17 necessary to provide for all or a portion of the costs for
18 planning and implementation of activities of the Authority, to pay
19 any other costs or financial obligations of the Authority or to
20 implement the Authority - County Contract.

21 13.5 The Authority may include in all amounts
22 determined from time to time by the Authority as necessary to
23 provide for the planning and implementation activities of the
24 Authority, to pay other costs and obligations of the Authority, or
25 to implement the Authority - County Contract in addition to rates
26 approved by the Authority for the Designated Facility or Facilities



1 in the Designated Rates.

2 13.6 The Members recognize that (i) Designated Rates
3 will likely be established as a unit charge per unit weight of
4 Acceptable Waste and Materials, and (ii) that each Member is
5 required to pass such rates through for collection from ratepayers
6 as a part of the collection rate (e.g. a unit charge per can per
7 month). Accordingly, the Members hereby agree that the Authority
8 shall establish a fair and equitable basis for conversion of
9 Designated Rates to a collection rate and that each Member shall
10 include in the collection rates the amount approved by the
11 Authority for collection from ratepayers without reduction,
12 limitation, offset or adjustment of any kind whatsoever.

13 13.7 The Authority shall establish a fair and
14 equitable basis for the conversion required by Section 13.5 of this
15 Agreement by resolution and shall, not less frequently than every
16 two (2) years, review such conversion and either (i) find that the
17 conversion continues to be fair and equitable or (ii) revise the
18 conversion so that a fair and equitable conversion is restored.

19 13.8 The Authority shall evaluate the accuracy of
20 the Authority's prior conversion of Designated Rates to the unit
21 charge collection rate that is included in the collection rate for
22 each Member's jurisdiction. The Authority shall use a balancing
23 account concept from rate setting period to rate setting period to
24 account for overages and underages, to the extent the overages and
25 underages are directly attributable to the Authority's
26 determination of the conversion. The evaluation will be based on

1 the actual amount paid by the collector at the Designated Facility
2 or Facilities pursuant to the Collection Agreement and the revenues
3 generated (based on billings to rate payers) from that component of
4 the collection rate set by the Authority. The overage or underage
5 will be reflected in the unit charge to be included in the
6 collection rate for the next rate period.

7 13.9 In the event that the Authority determines for
8 any reason that an allocation of Directed Waste and Materials among
9 the Members and the area subject to the Authority - County Contract
10 is necessary, the Authority shall develop and approve fair and
11 equitable allocations for the Directed Waste and Materials
12 delivered to and the residue waste and materials taken from the
13 Designated Facility or Facilities.

14 13.10 The Authority shall establish the
15 allocations provided by Section 13.8 of this Agreement by
16 resolution and shall, not less frequently than every two (2) years
17 review such allocation and either (i) find that the allocations
18 continue to be fair and equitable or (ii) revise the allocations so
19 that fair and equitable allocations are restored.

20 13.11 The Authority shall determine the
21 reasonable and necessarily prudent costs associated with the
22 establishment and operation of the existing Interim Recycling
23 Center and beginning upon the date of Commercial Operation the
24 amounts so determined by Authority will be included in the
25 Designated Rates.

1 13.12 The Authority shall notify each Member and
2 the other party to the Member's Franchise Agreement of the amount
3 of said Designated Rate and the collection rate corresponding to
4 said Designated Rate.

5 SECTION 14. In Lieu Surcharge

6 14.1 The Authority shall be solely responsible for
7 determining the amount of any In Lieu Surcharge and the Members
8 hereby agree to pass the In Lieu Surcharge through to ratepayers as
9 a collection rate (e.g. a unit charge per can per month) approved
10 by the Authority without reduction, limitation, offset or
11 adjustment of any kind.

12 14.2 The Authority shall consider the potentially
13 available sources of revenue, assets and courses of action
14 (including those revenues, assets and actions set forth below) in
15 determining whether to impose an In Lieu Surcharge and the amount
16 of such In Lieu Surcharge.

17 (a) In the case of a privately owned IRRF:

- 18 (1) All debt service reserves and other reserves
19 available for repayment of such indebtedness and
20 (2) The owner of an IRRF is indebted to the letter of
21 credit provider for the Unpaid Amount, and
22 (3) The ability of the owner of an IRRF to repay any
23 portion of the Unpaid Amount, and
24 (4) Either:
25 (i) the letter of credit provider has commenced to
26 exercise and is diligently pursuing remedies it has

1 with respect to the owner of the IRRF (including
2 without limitation foreclosing on all security
3 posted for the owner's obligations with respect to
4 the letter of credit), or

5 (ii) alternative arrangements satisfactory to the
6 Authority, in its absolute sole discretion, have
7 been made to ensure that all of the assets of the
8 IRRF owner have been applied to discharge the
9 indebtedness, and

10 (5) The Authority is required by the terms and
11 conditions of an IRRF financing approved by the
12 Authority to establish the charge.

13 (b) In the case of a publicly owned IRRF:

14 (1) All debt service reserves and other reserves
15 available for repayment of such indebtedness have
16 been applied to repay such indebtedness, and

17 (2) The letter of credit provider, if any, has
18 discharged in full the entire obligation of the
19 issuer of the IRRF Bonds and the IRRF Bonds are
20 retired, and

21 (3) The Authority is required by the terms and
22 conditions of an IRRF financing approved by the
23 Authority to approve the charge.

24 14.3 The Authority shall concurrently notify in
25 writing each Member and the other party to each Member's Franchise
26 Agreement of the need for an In Lieu Surcharge and said notice

1 shall include the Authority's certification that the conditions
2 specified in Section 14.2 have been considered.

3 14.4 The Authority shall, by resolution, establish
4 a fair and equitable basis for the allocation of any In Lieu
5 Surcharge among the Member's and the area subject to the Authority
6 - County Contract and shall not less frequently than every two (2)
7 years review such basis and either (i) determine that such basis
8 continues to be fair and equitable or (ii) revise the basis of
9 allocation such that a fair and equitable allocation is restored.

10 14.5 The Authority may require all amounts included
11 in the In Lieu Charge collected through the Member's collection
12 rates to be paid directly to the Authority, or another party
13 designated by the Authority, at the times and in the manner as
14 directed by the Authority, without reduction, limitation, offset or
15 adjustment of any kind.

16 SECTION 15. Franchise Agreements and Covenants

17 15.1 Member Franchise Agreements and any covenants
18 provided by Members apart from Franchise Agreements shall contain
19 provisions which materially conform to the provisions set forth in
20 Exhibit B, attached hereto.

21 15.2 The Members agree that the provisions of Member
22 Franchise Agreements related in any way to the Designated Facility
23 shall not be amended without the consent of the Authority and any
24 said amendments shall be acceptable to the Authority.

25 15.3 The Members agree that the Authority and any
26 lender providing security for IRRF Bonds shall be afforded

1 reasonably adequate opportunity to review any amendment to the
2 Franchise Agreement prior to its approval and execution by a
3 Member.

4 15.4 The Members agree to require the services
5 identified in the Regional Plan as being provided under a Member's
6 Franchise Agreement to be performed in accordance with the
7 provisions of the Regional Plan.

8
9 SECTION 16. Apportionment of Penalties

10 16.1 Penalties Arising From Authority Failure

11 (a) Any penalties assessed against the
12 Authority by CIWMB, to a maximum of Fifty Thousand Dollars
13 (\$50,000) per day, which are the result of the Authority's failure
14 to either (i) submit an adequate Regional Plan or required element
15 thereof, or (ii) make a good faith effort to implement the programs
16 or actions specified in the Regional Plan for implementation by the
17 Authority, shall be paid by the Authority.

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

24 (c) Any penalties paid by the Authority
25 pursuant to Section 16.1(a) or Section 16.1(b) of this Agreement
26 shall be apportioned prorata at 20 percent each among the Members

1 and shall be included in Designated Rates.

2 (d) Members shall only be liable for payment
3 of any penalties assessed against the Authority by CIWMB which are
4 not paid by the Authority.

5 16.2 Penalties Arising From a Member's Failure

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

10 (1) The Authority may recover any
11 amounts, including penalties assessed by the CIWMB and the
12 Authority's costs incurred as a result of the CIWMB actions leading
13 to and including the assessment and appeal of said penalties, by
14 imposing a surcharge on the Directed Waste and Materials and all
15 other waste delivered to the Designated Facility from within the
16 jurisdiction of the Member(s) who have not fully reimbursed the
17 Authority.

18 (2) In lieu of collection of the penalty
19 by the Authority through the surcharge, described in Section
20 16.2(a)(1) above, the Member may reimburse the Authority within
21 thirty (30) days of Authority's payment of the penalties, the
22 amount of penalties paid plus the Authority's costs incurred and
23 associated with CIWMB actions leading to and including the
24 assessment and appeal of said penalties, and

25 (3) In the event that two or more Members
26 fail to implement programs or actions specified in the Regional

1 Plan, the failing Members may reimburse the Authority in proportion
2 to their relative responsibility, pursuant to the terms of Section
3 16.2(a)(2) above, or the Authority will collect said costs and
4 penalties through the use of the surcharge described in Section
5 16.2(a)(1) above.

6 (4) Neither the Authority nor a Member
7 shall be obligated to pay, nor a Member required to reimburse the
8 Authority, if the Member has demonstrated to the satisfaction of
9 CIWMB to have made a good faith effort to implement the programs
10 and actions specified in the Regional Plan, and

11 (b) Any penalties which are assessed directly
12 against a Member as a result of the Member's failure to either (i)
13 implement the programs or actions specifically identified in the
14 Regional Plan for implementation by the Member or (ii) to exercise
15 its prerogatives under Section 11.1 of this Agreement or (iii) to
16 perform its obligations under Section 11.5 of this Agreement, shall
17 be paid by the Member and neither the Authority nor any other
18 Member shall be obligated to pay said penalties or any costs
19 associated with the assessment or appeal of said penalties.

20 (c) In the event that failure of one or more
21 Members to perform their obligations under this Agreement or to
22 implement programs or actions specified in the Regional Plan for
23 implementation by the Member causes the Authority or other Members
24 to be unable to implement the Regional Plan, the failing Member(s)
25 shall pay any penalties assessed against the Authority or other
26 Member(s) by CIWMB as a result of the failure.

1 (d) In the event that failure of one or more
2 members to perform their obligations under this Agreement or to
3 implementation programs or actions specified in the Regional Plan
4 for implement by the Member do not cause the Authority or other
5 Members to be unable to implement the Regional Plan, the failing
6 Member(s) shall not be required to pay any penalties assessed by
7 CIWMB in excess of Ten Thousand Dollars (\$10,000) per day.

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

11 16.3 Nothing in this Section shall preclude one or more
12 Members or the Authority from imposing or establishing additional
13 incentives to meet waste diversion requirements.

14 16.4 Members shall only be liable for payment of any
15 penalties assessed against the Authority by CIWMB which are not
16 paid by the Authority.

17 SECTION 17. Disposition of Assets at Dissolution. Subject
18 to the then-applicable requirements of Law (currently Sections 6511
19 et seq. of the California Government Code), upon dissolution of
20 the Authority, the assets of the Authority remaining after payment
21 of or adequate provision for all debts, liabilities and obligations
22 of the Authority shall be divided among the then-Members in
23 accordance with an agreement among them or, in the absence of such
24 an agreement, in the following proportions: three-sevenths to the
25 City of Richmond and one-seventh to each of the other Cities. Any
26 assets that are not conveniently divisible shall be sold at a duly

1 noticed auction, in which case the net proceeds from the sale shall
2 be divided among the then-Members in accordance with that agreement
3 or, in the absence of such an agreement, those same portions.

4 SECTION 18. Withdrawal.

5 (a) Agreement Required. A Member may not
6 withdraw from the Authority unless it has entered into an agreement
7 with the Authority, approved by a majority of the Voting Directors
8 who do not represent that Member, permitting the Member to withdraw
9 and specify the terms and impact of its withdrawal.

10 (b) Implication of IRRF Bonds. If IRRF
11 Bonds or Revenue Bonds are outstanding, no withdrawal shall be
12 effective unless and until the Authority and Members (i) comply
13 with any then-applicable requirements of Law relating to changes in
14 the composition of entities such as the Authority with debt
15 securities outstanding, and (ii) all the terms and conditions of
16 all Revenue Bonds or IRRF Bonds and related documentation
17 (including without limitation, indentures, resolutions and letter
18 of credit agreements) have been complied with or otherwise
19 satisfied.

20 (c) Implication of the Act.

21 (1) If a Member wishes to withdraw
22 from the Authority while such Authority is operating as a regional
23 agency, the agreement for withdrawal set forth above shall include,
24 but not be limited to, all of the following:

25 (a) An effective date for the
26 withdrawal of the Member (hereinafter "Withdrawal Date"),

1 (b) A provision providing that
2 the withdrawing Member Agency shall, not later than one hundred
3 twenty (120) days prior to the Withdrawal Date, prepare and submit
4 an SRRE, HWWE, and NDFE to CIWMB for the Member's jurisdiction to
5 CIWMB for approval and that each withdrawing Member Agency shall be
6 solely responsible for preparation of its SRRE, HWWE and NDFE,

7 (c) The Authority shall, not
8 later than one hundred twenty (120) days prior to the Withdrawal
9 Date, prepare and submit a revised Regional Plan which reflects the
10 withdrawal of the Member to CIWMB for approval,

11 (d) The withdrawing Member
12 shall pay (i) all costs incurred by Authority in preparing a
13 revised Regional Plan and (ii) all amounts owed to the Authority
14 for penalties assessed against the Authority or the withdrawing
15 Member including the Authority's costs incurred and associated with
16 CIWMB actions leading to and including the assessment of said
17 penalties,

18 (e) The withdrawing Member
19 shall be responsible for compliance with the Act the earlier of (i)
20 the date of the withdrawing Member's submittal of the documents
21 required by Section 11.3(1)(b) to CIWMB or (ii) the date of the
22 Authority's submittal of the revised Regional Plan to CIWMB, or
23 (iii) the Withdrawal Date, and

24 (f) Notwithstanding the
25 specified Withdrawal Date, withdrawal of a Member from membership
26 in the Authority shall not become effective until all amounts owed

1 to the Authority are paid by the withdrawing member.

2 SECTION 19. Amendments Including Termination.

3 19.1 This Agreement may only be amended or
4 terminated by a written instrument approved by a majority of the
5 member agencies representing a majority of the Directors' seats.
6 No amendment, including termination of the Agreement or other
7 action leading to dissolution of the Authority, may occur until
8 the requirements imposed on the Authority and Member agencies by
9 the terms or conditions of all Revenue Bonds or IRRF Bonds and
10 related documentation (including without limitation, indentures,
11 resolutions and letter of credit agreements) have been met or
12 otherwise satisfied.

13 19.2 Signatures shall not be required on any such
14 amendment or termination by those Members, if any, whose
15 representatives on the Board did not approve the amendment or
16 termination, but such Members shall nonetheless be bound by the
17 amendment or termination if it was approved as required by this
18 Agreement.

19 19.3 (a) For termination of this Agreement
20 during any period where the Authority is operating as a Regional
21 Agency, the written instrument required by Section 19.1 of this
22 Agreement shall include, but not be limited to, all of the
23 following requirements:

24 (1) A date certain that this
25 Agreement will be terminated (hereinafter "Termination Date"),
26

1 (2) Each Member shall, not later
2 than one hundred twenty (120) days prior to the Termination Date,
3 prepare and submit an SRRE, HHWE, and NDFE for the Member's
4 jurisdiction to CIWMB for approval and that each Member shall be
5 solely responsible for preparation of its SRRE, HHWE and NDFE,

6 (3) Each Member, prior to the
7 Termination Date, shall promptly pay, within a reasonable time, all
8 amounts owing to the Authority or CIWMB for penalties assessed by
9 CIWMB, including the Authority's costs incurred and associated with
10 CIWMB actions leading to and including the assessment of said
11 penalties,

12 (4) Each Member shall be solely
13 responsible for compliance with the Act the earlier of (i) the date
14 of submittal of the documents required by Section 19.3(a)(2) to
15 CIWMB or (ii) the specified Termination Date, and

16 (5) The obligations of the Authority
17 terminate on the Termination Date, and each member shall pay all
18 amounts owed to the Authority prior to that date; however, in the
19 event of default by a member agency with regard to payment of
20 amounts due, the obligation to pay all sums due to the Authority
21 shall survive and remain in full force after the Termination Date.

22 19.4 Notwithstanding the foregoing, no amendment,
23 withdrawal or termination shall require any Member to contribute
24 any funds to the Authority or become directly or contingently
25 liable for any debts, liabilities or obligations of the Authority,
26 other than those for which the Member was liable immediately prior

1 to the amendment, withdrawal or termination, without the consent of
2 that Member evidenced in a written instrument signed by a duly
3 authorized representative of that Member.

4 SECTION 20. Filing with the Secretary of State. The
5 Secretary shall file all required notices with the Secretary of
6 State in accordance with California Government Code Sections 6503.5
7 and 53051.

8 SECTION 21. Notices.

9 21.1 All notices which any Member or the Authority
10 may wish to give in connection with this Agreement shall be in
11 writing and shall be served by personal delivery during usual
12 business hours at the principal office of the Member or Authority,
13 to an officer or person apparently in charge of that office, or by
14 depositing the same in the United States mail, postage prepaid, and
15 addressed to the Member or Authority at its principal office, or to
16 such other address as the Authority or Member may designate from
17 time to time by written notice given in the manner specified in
18 this Section.

19 21.2 Service of notice pursuant to this Section
20 shall be deemed complete on the day of service by personal delivery
21 (but 24 hours after such delivery in the case of notices of special
22 meetings of the Board) or two days after mailing if deposited in
23 the United States mail.

24 21.3 Members agree to provide the Authority with the
25 official notification requirements of the Franchise Agreement for
26 use by the Authority and agree to provide Authority with any

1 changes in said notification requirements.

2 SECTION 22. Successors and Assigns.

3 22.1 This Agreement shall be binding upon and
4 shall inure to the benefit of the permitted successors and assigns
5 of the Members.

6 22.2 However, no Member shall assign any of its
7 rights under this Agreement except to a duly formed public entity
8 organized and existing under the Laws of the State of California
9 approved by a majority of the Directors who do not represent the
10 assigning Member.

11 22.3 No assignment shall be effective unless
12 and until the Authority, the Members and the proposed assignee
13 comply with (i) all then-applicable requirements of Law relating to
14 changes in the composition of entities such as the Authority and
15 (ii) if and when any Revenue Bonds or IRRF Bonds are outstanding,
16 with the terms and conditions of all Revenue Bonds or IRRF Bonds
17 and related documentation including, without limitation,
18 indentures, resolutions and letter of credit agreements.

19 SECTION 23. El Cerrito Recycling Center. It is
20 acknowledged by the members that the El Cerrito Recycling Center
21 was in existence and operating before the formation of the
22 Authority, and this Agreement is not intended to alter the
23 operations of the El Cerrito Recycling Center. Accordingly, the El
24 Cerrito Recycling Center shall not be considered a Sole Use
25 Facility or Joint Use Facility for the purposes of this Agreement.
26 Further, so long as any recyclable materials collected at the El

1 Cerrito Recycling Center, as it was configured on April 2, 1991,
2 are not directed to the IRRF pursuant to §5.2(o) of this Agreement,
3 the Authority shall not include in the Designated Rates charged for
4 Directed Waste collected within the City of El Cerrito the costs
5 associated with operation and maintenance of the Interim Recycling
6 Center, unless the City of El Cerrito consents to such inclusion.

7 SECTION 24. Third Party Beneficiaries

8 24.1 The Authority shall be a third party
9 beneficiary of this Agreement entitled to exercise all rights of
10 and benefits accruing to the Authority that are specified in this
11 Agreement.

12 24.2 Except as provided in accordance with
13 Section 5.3(s), there shall be no other third party beneficiaries
14 of this Agreement.

15 SECTION 25. Severability. Should any part, term or
16 provision of this Agreement be decided by a final judgment of a
17 court or arbitrator to be illegal or in conflict with any law of
18 the State of California or otherwise be unenforceable or
19 ineffectual, the validity of its remaining parts, terms and
20 provisions shall not be affected.

21 SECTION 26. West Contra Costa Solid Waste Management
22 Authority. Upon execution of this Agreement, the Authority shall
23 be the successor Member to the West Contra Costa Solid Waste
24 Management Authority in all matters affecting the Members or the
25 Authority.

1 SECTION 27. Section Headings. All section headings
2 contained in this Agreement are for convenience and reference.
3 They are not intended to define or limit the scope of any provision
4 of this Agreement.

5 SECTION 28. Arbitration

6 28.1 All disputes that arise in connection with
7 the interpretation or performance of this Agreement shall be
8 resolved on an equitable basis by a single arbitrator under the
9 commercial arbitration rules of the American Arbitration
10 Association.

11 28.2 The arbitrator's decision shall be final
12 and binding on the Authority, all Members and all former Members
13 involved or affected by the dispute.

14 28.3 The Authority, any Member and any former
15 Member that is party to the dispute may enforce any award, order or
16 judgment of the arbitrator in any court of competent
17 jurisdiction.
18

1 IN WITNESS WHEREOF, the Members have caused this Agreement to
2 be duly executed and attested by their respective officers, duly
3 authorized so to act, as of the date set forth in the first
4 paragraph of this Agreement.

CITY OF EL CERRITO

5
6
7 ATTEST:

8
9
10 Linda M. Giddings
11 City Clerk

[Signature]
Mayor

12 APPROVED AS TO FORM:

13 [Signature]
14
15 City Attorney
16

CITY OF HERCULES

ATTEST:

Kary Rodson
City Clerk

Beth Bartke
Mayor

APPROVED AS TO FORM:

Craig Labadie
City Attorney

CITY OF PINOLE

ATTEST:

David Ferrell
City Clerk, Deputy

Patte Murray
Mayor

APPROVED AS TO FORM:

Kimberly
City Attorney

CITY OF RICHMOND

ATTEST:

Eula M. Barnes
City Clerk

Rosemary M. Corbin
Mayor

APPROVED AS TO FORM:

Michael D. [Signature]
City Attorney

CITY OF SAN PABLO

ATTEST:

Kathleen M. [Signature]
City Clerk

Barbara L. Vigil
Mayor

APPROVED AS TO FORM:

[Signature]
City Attorney

CONSENT of Union Bank, as "Bank Agent"
A California Banking Corporation

Julie Bloomfield
By:

3-10-95
Date

Julie Bloomfield - AVO
Printed Name and Title

EXHIBIT A

1		
2		
3		
4		
5		
6		
7	City of El Cerrito	\$25,000
8		
9	City of Hercules	25,000
10		
11	City of Pinole	25,000
12		
13	City of Richmond	75,000
14		
15	City of San Pablo	25,000
16		
17		
18		
19		\$175,000
20		

1 EXHIBIT B

2 **REQUIREMENTS FOR FRANCHISE AGREEMENTS AND COVENANTS**

3 **MADE APART OF FRANCHISE AGREEMENTS**

4 **PREAMBLE**

5 A. The City has certain obligations ("Obligations") with
6 respect to the clean, safe and efficient management of Solid Wastes
7 and the processing and diversion of Solid Wastes under the
8 California Integrated Waste Management Act, as amended, and other
9 relevant laws and regulations.

10 B. At present, the City has directed the Contractor to
11 dispose of Solid Wastes at the West Contra Costa Sanitary Landfill
12 ("WCCSL") which is the closest, but which is expected to close
13 within several years. To dispose of the Solid Wastes in an
14 economical and efficient manner at a more distant landfill after
15 the closure of WCCSL, it is necessary and appropriate to first
16 process the Solid Wastes in a clean, safe and sanitary manner at a
17 transfer station for subsequent disposal at such landfill.

18 C. City and Contractor desire to provide for the diversion
19 of Solid Wastes from landfills under the California Integrated
20 Waste Management Act, as amended, and other relevant laws and
21 regulations and to provide for the transfer and disposal of
22 remaining Solid Wastes at a more distant landfill following closure
23 of the WCCSL.

24 D. The West Contra Costa Integrated Waste Management
25 Authority ("Authority") has been formed under the laws of the State

1 of California to, among other things, provide for the
2 implementation of an Integrated Resource Recovery Facility to be
3 operated for the benefit of the Authority and the residents within
4 the jurisdictional boundaries of the Authority, and pursuant to the
5 Authority - County Contract, the residents within the area subject
6 to said Contract.

7 E. The City is a signatory to the Joint Powers Agreement
8 creating the Authority and the Second Amendment and Restatement of
9 the Joint Exercise of Powers Agreement, and is thereby a member of
10 the Authority and obligated to comply with the provisions of said
11 Joint Powers Agreement.

12 Accordingly, the City has determined that in order (i) to
13 provide for the clean, safe and efficient management of Solid
14 Wastes, and (ii) to meet the Obligations, it is the best interest
15 of the City to Enter into this Amendment

16 **1. DEFINITIONS**

17 1.01 **"Agreement"** means the Franchise Agreement as amended by
18 this Amendment.

19 1.02 **"Amendment"** means this Amendment.

20 1.03 **"Authority"** means the West Contra Costa Integrated Waste
21 Management Authority, a joint exercise of powers authority
22 established and existing pursuant to Government Code Section 6500
23 et seq., or any successor entity and shall have the same meaning as
24 defined in the Joint Power Agreement.

1 1.04 "Authority - County Contract" means that certain contract
2 between the Authority and Contra Costa County dated May 25, 1993,
3 as amended from time to time and shall have the same meaning as
4 defined in the Joint Powers Agreement.

5 1.05 "Closing Date of the IRRF Financing" means the date of
6 initial delivery of the IRRF Bonds to the original purchasers of
7 the IRRF Bonds.

8 1.06 "Designated Facility" means a Solid Waste Management
9 Facility or Facilities designated from time to time by Authority to
10 receive some or all Directed Wastes and materials and shall have
11 the same meaning as defined in the Joint Powers Agreement.

12 1.07 "Designated Rates" means (i) the rates as authorized by
13 Authority from time to time to be paid for Directed Waste and
14 Materials received at the Designated Facility or Facilities and/or
15 (ii) any additional amounts determined by the Authority as
16 necessary to provide for the planning and implementation activities
17 of the Authority, to pay other costs and obligations of the
18 Authority, or to implement the Authority - County Contract to the
19 extent such additional amounts are not included by the Authority
20 in the rates authorized to be charged at the Designated Facility or
21 Facilities and shall have the same meaning as defined in the Joint
22 Powers Agreement.

23 1.08 "Directed Waste and Materials" means Solid Waste and
24 Separated Materials, or portions or types of such waste or
25 materials (including recyclables) collected pursuant to this

1 Agreement and directed by the Authority to be delivered to the
2 Designated Facility or Facilities and shall have the same meaning
3 as defined in the Joint Powers Agreement.

4 1.9 **"Franchise Agreement"** means that certain agreement by and
5 between City and Contractor dated _____, as
6 existing prior to this Amendment.

7 1.10 **"In Lieu Surcharge"** means a surcharge as determined from time
8 to time by Authority in the event of shutdown or abandonment of an
9 IRRF as this term is defined in the Joint Powers Agreement .

10 1.11 **"Interim Recycling Center"** means the existing facility
11 generally located northwesterly of the intersection of an extension
12 of Garden Tract Road and Parr Boulevard and established for the
13 processing of source separated Solid Waste.

14 1.12 **"IRRF" or "Integrated Resource Recovery Facility"** means
15 an integrated resource recovery facility, including land on which
16 such facility is located, for receiving, processing, recycling and
17 transportation or transfer of Acceptable Waste and Material, or the
18 recovery of materials for diversion, or any combination thereof,
19 which facility is owned either wholly or in part by the Authority
20 or by a private entity, but in all events is operated for the
21 benefit of the Authority and the residents within the
22 jurisdictional boundaries of the Authority, and within the area
23 subject to said Authority - County Contract and shall have the same
24 meaning as defined in the Joint Powers Agreement.

1 1.13 "IRRF Bonds" means the Authority-approved debt securities
2 issued to finance the planning, design, construction and
3 performance testing of an Integrated Resource Recovery Facility and
4 additional indebtedness, as approved by the Authority, to finance
5 the improvements or modifications to an Integrated Resource
6 Recovery Facility.

7 1.14 "Joint Powers Agreement" means the joint exercise of
8 powers agreement creating the Authority and that certain Second
9 Amendment and Restatement of the Joint Powers Agreement by and
10 among the Cities of El Cerrito, Hercules, Pinole, Richmond and San
11 Pablo, including any subsequent amendments thereto.

12 1.15 "Solid Waste" shall mean all materials subject to
13 collection pursuant to the Agreement more particularly as set forth
14 on _____ of the Agreement.

15 1.16 "Solid Waste Management Facility" shall mean an
16 Integrated Resource Recovery Facility, or transfer station or
17 material recovery facility or landfill or combination thereof.

18 2. DIRECTION OF SOLID WASTE

19 2.01 Notwithstanding any other provision of the Agreement,
20 City has control and authority to direct Contractor to deliver
21 Solid Wastes, or portions or types of such Wastes, to the
22 Designated Facility. The City hereby directs the Contractor to
23 deliver all Directed Waste and Materials, including without
24 limitation all Directed Waste and Materials collected by the
25 Contractor hereunder to the Designated Facility or Facilities

1 commencing upon receipt of notice from Authority.

2 2.02 Contractor agrees it shall deliver Directed Waste to the
3 Designated Facility or Facilities as specified by the Authority
4 upon City and Contractor's receipt of direction from Authority, and
5 said deliveries shall begin upon the date specified by Authority in
6 its notification to City and Contractor and continue until City and
7 Contractor receive notice from Authority to suspend delivery of
8 Directed Waste to the Designated Facility.

9 2.03 Suspension of delivery of some or all Directed Wastes to
10 the Designated Facility shall occur only upon receipt of notice
11 from the Authority and shall be for no longer period than specified
12 by Authority.

13 2.04 Contractor shall comply with all of the rules and
14 regulations of the Designated Facility or Facilities, including
15 without limitation, rules governing the types and characteristics
16 of Solid Waste that may or may not be acceptable for delivery to
17 the Designated Facility or Facilities, the manner of delivery of
18 Solid Wastes, the payment of Designated Rates, and payment of any
19 costs arising at the Designated Facility or Facilities due to
20 failure of Contractor to comply with rules and regulations of the
21 Designated Facility or Facilities.

22 2.05 Nothing in this Amendment shall affect the rights of City
23 or Contractor with respect to the direction of Solid Waste until
24 such Waste is directed by Authority as contemplated herein.
25 Further, nothing in this Amendment shall be construed to affect the

1 rights of the City or Contractor with respect to the direction of
2 the waste stream in the event that the Authority at any time
3 thereafter permanently discontinues direction of the Directed Waste
4 to a Designated Facility or Facilities.

5 2.06 Contractor covenants and agrees that it will not
6 purchase, dispose or recycle, offer to purchase, dispose or recycle
7 or contract for the purchase, disposal or recycling of, directly
8 or indirectly, any Solid Waste (or portions or types of such Solid
9 Waste) which would otherwise be collected pursuant to the Agreement
10 and delivered to the Designated Facility or Facilities and that it
11 will not otherwise divert, or cause to be diverted or allow to be
12 diverted, in any way, Solid Waste to any use, any other Solid Waste
13 Management Facility or other party without the approval of the
14 Authority.

15 3. DESIGNATED RATES

16 3.01 Contractor shall, without regard to the amount collected
17 pursuant to Section 3.03 of this Amendment, pay over to the
18 operator of the Designated Facility or Facilities, without
19 reduction, limitation, offset, or adjustment of any kind, all
20 amounts owing in accordance with Designated Rates for Directed
21 Waste and Materials delivered to said Designated Facility or
22 Facilities and said payments shall be made at the times and in the
23 manner specified by the Authority.

24 3.02 Contractor shall, without regard to the amount collected
25 pursuant to Section 3.03 of this Amendment, pay over to Authority,

1 without reduction, limitation, offset or adjustment of any kind,
2 all amounts authorized by Authority in accordance with Designated
3 Rates which are in addition to the rates authorized to be charged
4 at the Designated Facility or Facilities and said payment shall be
5 made at the times and in the manner specified by the Authority.

6 3.03 Notwithstanding any other provision of the Agreement, and
7 in addition to all rates and charges otherwise allowed under the
8 Agreement, Contractor shall collect from all residential and non-
9 residential customers whose Solid Waste is delivered to the
10 Designated Facility or Facilities the collection rate amounts
11 specified by the Authority for such services and no more.

12 3.04 Collection of the amount authorized by Section 3.03 of
13 this Amendment is hereby authorized to begin upon the date that
14 Contractor commences delivery of Directed Wastes to the Designated
15 Facility.

16 **4. IN LIEU SURCHARGE**

17 4.01 Notwithstanding any other provision of the Agreement, and
18 in addition to all rates and charges otherwise allowed under the
19 Agreement, Contractor shall collect from all residential and non-
20 residential customers an In Lieu Surcharge when and if such In Lieu
21 Surcharge is authorized by the Authority and such collection shall
22 be in such amounts and at such times as specified by the Authority.

23 4.02 Contractor agrees to pay over to the Authority or another
24 party designated by Authority, without reduction, limitation,
25 offset or adjustment of any kind, all amounts collected pursuant to

1 Section 4.01 of this Amendment at the times and in the manner
2 required by the Authority.

3 4.03 All amounts collected by Contractor pursuant to Section
4 4.01 of this Amendment, including interest earnings on said
5 amounts, shall be held in trust by Contractor for benefit of the
6 Authority or other party designated by Authority.

7 4.04 All amounts collected by Contractor as an In Lieu
8 Surcharge shall be deposited in a segregated account ("In Lieu
9 Surcharge Account").

10 4.05 The date of collection of the amount authorized by
11 Section 4.01 of this Amendment shall begin upon the date specified
12 from time to time by Authority as the effective date of an In Lieu
13 Surcharge and continue for the period specified in Authority's
14 notification to City and Contractor of the Authority's
15 authorization of an In Lieu Surcharge.

16 **5. SECURITY INTEREST**

17 5.01 Contractor and City agree to take all such action as may
18 be required to grant and perfect a security interest in the In Lieu
19 Surcharge Account established pursuant to Section 4.04 of this
20 Amendment, including interest earnings thereon, to the Authority or
21 the Authority's assignee.

22 5.02 Contractor warrants and represents that it has not
23 granted a security interest in, or otherwise encumbered, the In
24 Lieu Surcharge Account or funds required to be deposited therein
25 and covenants not to grant any other security interest in said

1 amounts.

2 5.03 It is understood and agreed that Contractor shall have no
3 title or other interest in the In Lieu Surcharge Account except as
4 trustee; that Contractor has no right to retain, disburse, use,
5 apply or encumber funds required to be collected as an In Lieu
6 Surcharge and is expressly prohibited from doing so except as
7 disbursement of funds is expressly provided for in Section 4.02 of
8 this Amendment; and that Contractor shall not commingle its own
9 funds or other funds with the In Lieu Surcharge Account.

10 **6. AUTHORITY AS THIRD PARTY BENEFICIARY**

11 6.01 The provisions of this Amendment are expressly declared
12 to be intended for the benefit of the Authority, in addition to
13 City and Contractor.

14 6.02 The Authority is an intended third party beneficiary of
15 this Amendment and shall have the right to pursue all available
16 legal and equitable remedies to enforce the provisions of this
17 Amendment.

18 **7. SALVAGE RIGHTS**

19 All salvage rights granted to Contractor by the Franchise
20 Agreement are hereby deleted from the Agreement during any period
21 where the Authority directs City and Contractor to deliver Directed
22 Waste to the Designated Facility or Facilities.

23 **8. INTERIM RECYCLING CENTER**

24 8.01 The parties acknowledge that a portion of the rates being
25 collected under the Franchise Agreement for the establishment and

operation of the Interim Recycling Center will be included in Designated Rates beginning on the date specified by Authority for commencement of delivery of Directed Waste to the Designated Facility.

8.02 City and Contractor agree that Authority shall determine the amounts being collected under the Franchise Agreement for the establishment and operation of the Interim Recycling Center and that, upon commencement of delivery Directed Wastes to a Designated Facility, all said amounts will be a part of Designated Rates and shall not otherwise be collected under the Agreement.

8.03 The provisions of this Section 8 shall not be applicable to the City of El Cerrito.

9. BOOKS AND RECORDS

9.01 Contractor shall keep adequate books and records of the revenue from rates and fees charged pursuant to Article 3 and Article 4 hereof and the Contractor's expenses incurred in accordance with Article 3 and Article 4 hereof. Contractor shall make available its records respecting such revenue and expenses during business hours upon reasonable notice.

9.02 Contractor shall make quarterly reports to the Authority of its revenue and expenses set forth in Section 9.01.

9.03 Contractor shall make quarterly reports to the Authority on the amount of Solid Waste collected by the Company hereunder and the disposition of said Solid Waste. Such reports shall be in such form and detail as may be required for the City and/or the

1 Authority to accurately report compliance with Solid Waste
2 diversion requirements.

3 9.04 Contractor shall either (a) keep adequate books and
4 records showing disposition of all Solid Waste collected pursuant
5 to the Agreement and allow Authority to inspect same during normal
6 business hours upon reasonable notice, or (b) implement Solid Waste
7 allocation methods and procedures approved from time to time by the
8 Authority. The Contractor shall cooperate with and assist the
9 Authority in the Authority's development of Solid Waste allocation
10 methods and procedures.

11 **10. MISCELLANEOUS PROVISIONS**

12 10.01 In furtherance of the representations, warranties and
13 covenants contained in this Amendment, whenever and so often as
14 requested by Authority or any assignee thereof, City and Contractor
15 agree to promptly execute and deliver or cause to be delivered all
16 such other and further assurances, documents or instruments and
17 promptly do so or cause to be done all such other and further
18 things as may be necessary or reasonably required in order to
19 further and more fully vest in the Authority, or its assignee, all
20 advantages, benefits, interest, powers, privileges and rights to
21 be conferred upon Authority by this Amendment.

22 10.02 Both parties and their respective legal counsel have
23 independently reviewed this Amendment and agree that any rule that
24 ambiguities are to be construed against the drafting party shall
25 not apply.

1 10.03 This written Amendment contains all of the
2 representations and sets forth the complete agreement of the
3 parties with respect to the subject matter hereof. Except as
4 specified in this Amendment, any prior correspondence, drafts,
5 memoranda, agreements, warranties or representations with respect
6 to the subject matter of this Amendment are superseded in total by
7 this Amendment.

8 10.04 In the event of conflict between this Amendment and the
9 other provisions of the Agreement, this Amendment shall control and
10 if any term or provision of the Agreement or other agreement
11 between the City and Contractor could be construed to in any way be
12 in conflict with the provisions of this Amendment, the provisions
13 of this Amendment shall control.

14 10.05 If for any reason, any Solid Waste that is subject to
15 collection pursuant to the Agreement is held not to be subject to
16 collection under the Agreement by the State or Federal Legislature,
17 or a court, agency or administrative authority (other than City,
18 Authority, or Contractor) with jurisdiction over the parties, the
19 parties intend that the Agreement shall remain in effect with
20 respect to any Solid Waste not so identified.

21 10.06 Nothing in this Amendment shall prevent the City from
22 directing Contractor to deliver Solid Wastes to the West Contra
23 Costa Sanitary Landfill prior to the Authority's direction to begin
24 delivery of Directed Waste to the Designated Facility or
25 Facilities.

Exhibit B to WCCIWMA
Third Amendment and
Restatement of the JPA

1 10.07 Nothing in this Amendment is intended to alter the rights
2 of City and Contractor with respect to collection of Solid Waste,
3 rather, this Amendment is intended to address only those matters
4 specifically set forth herein.

5 **11. NOTICES**

6 A copy of any notice required or permitted under the
7 Agreement which pertains directly or indirectly with the subject
8 matter of this Amendment shall be provided to Authority
9 concurrently with the delivery of said notice to the other party
10 and said notices shall be addressed to: West Contra Costa
11 Integrated Waste Management Authority, One Alvarado Square, San
12 Pablo, California 94806, Attention: Executive Director, Fax. No.
13 (510) 236-1636, or other such address or Fax Number as the
14 Authority may specify in writing to the parties.

15 **12. EFFECTIVE DATE**

16 This Amendment shall become effective upon the Closing
17 Date of the IRRF Financing, provided said closing date occurs prior
18 to March 31, 1994. The provisions of Section 2, 3 and 7 of this
19 Amendment shall expire and cease to be of further force and effect
20 at such time as the Authority ceases to have the right, whether by
21 contract or otherwise, to require City to deliver Solid Waste to
22 the Designated Facility or Facilities. Any expiration of such
23 provision shall not affect any other provisions of the Agreement,
24 which shall remain in full force and effect in accordance with
25 their other applicable terms without giving further effect to such
26 expired provisions.



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**FOURTH AMENDMENT TO THE
WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT**

This Fourth Amendment to the Joint Exercise of Powers Agreement (Agreement) is entered into effective March 10, 2011 by and among the City of Richmond, a municipal corporation, The City of Hercules, a municipal corporation, the City of Pinole, a municipal corporation, the City of El Cerrito, a municipal corporation, and the City of San Pablo, a municipal corporation.

The above listed cities entered into an original agreement dated April 2, 1991. Except as amended, all other terms, conditions and provisions of the Agreement remain unchanged.

ACCORDINGLY, THE MEMBERS AGENCIES HEREBY AGREE AS FOLLOWS:

Section 1. Section 7.4 of the Agreement is hereby amended and revised to state as follows:

“7.4 Officers. The Authority shall have seven officers: a Chair, a Vice Chair, a Manager, a General Counsel, a Secretary, a Treasurer and a Controller. The Manager, General Counsel, Secretary, Treasurer and Controller shall not be employees of the Member during the period that he or she serves as an officer of the Authority unless, in the case of the Secretary, Treasurer and Controller, the Board takes specific action to authorize use of a Member’s employee in that capacity. None of the officers (including Chair and Vice Chair) shall be an employee or otherwise be affiliated with the owner of the IRRF (if an IRRF is privately owned in whole or in part) or the operator of the IRRF. The Board shall select a Chair and Vice Chair from among the Directors who shall hold office for a period of one year commencing February 1 of each calendar year. At no time shall the Chair and Vice Chair be representatives of the same Member. No person shall serve consecutive terms as the Chair and no person shall service consecutive terms as Vice Chair. Successive Chairs shall not representatives of the same Member.”

Section 2. The Fourth Amendment shall constitute the written instrument of approval required by Section 19 of the Third Amendment and Restatement of the Joint Exercise of Powers Agreement (Agreement) dated as of March 6, 1995.

IN WITNESS WHEREOF, the Members have caused this Fourth Amendment to be duly executed and attested by their respective officers, duly authorized so to act, as of the date set forth in the first paragraph of the Fourth Amendment.

