

ORIGINAL

First Amended and Restated Joint Exercise of Powers Agreement South Bayside Waste Management Authority

This First Amended and Restated Joint Exercise of Powers Agreement is entered into this ^{14th} day of ~~DECEMBER~~ 2005, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code) relating to the joint exercise of powers among the County of San Mateo and those cities, and towns listed in Exhibit A and B, hereafter collectively called "Agencies."

RECITALS

A. WHEREAS the Agencies heretofore entered into a Joint Exercise of Powers Agreement on December 9, 1999 (the JPA Agreement). The JPA Agreement was first amended on June 4, 2002 to modify the definition of the Fiscal Year; and

B. WHEREAS the Agencies are responsible for the health and safety of the citizens within their geographic boundaries; and

C. WHEREAS the Agencies regulate Solid Waste, Recyclable Material, and Plant Material Collection in areas under their jurisdiction and award Franchises for Collection to private organization(s), herein called "Collector(s)"; and

D. WHEREAS the Agencies find it in their mutual economic interest to address Solid Waste and Recycling issues on a regional level; and that the costs for planning and implementing Solid Waste and Recycling Programs will be based on a fair and equitable allocation system that considers the relative benefits to each Agency and the additional cost of services provided to each Agency; and

E. WHEREAS the Agencies have used and are committed to owning and using certain regional Facilities located in the City of San Carlos, which are part of the San Mateo County Integrated Waste Management Plan, as approved by the California Integrated Waste Management Board; and

F. WHEREAS the ownership and use of these regional Solid Waste Facilities provides economic benefits to the ratepayers of the Agencies; and

G. WHEREAS the California Integrated Waste Management Act (CIWMA) (California Public Resources Code, §40000 et seq.) requires that the Agencies reduce by fifty (50) percent the amount of Solid Waste they landfill by the end of the year 2000; and

H. WHEREAS the CIWMA requires that the Agencies prepare, adopt, and implement source reduction and recycling elements to meet the fifty (50) percent reduction goal; and

I. WHEREAS the Agencies intend to coordinate their efforts to produce and share Solid Waste, Recyclable Material and Plant Material reports, including program and operational information derived from the operation of regional Facilities, as required by California Public Resources Code, §40000 et seq.; and

J. WHEREAS each Agency has the authority to regulate their Solid Waste, Recyclable Material, and Plant Material stream, including the Collection, Transfer, Transportation, and Processing thereof, and has the authority to establish rates for the conduct of such functions; and

K. WHEREAS Solid Waste from each Agency is landfilled at the Ox Mountain Sanitary Landfill located off State Highway 92, approximately two miles east of Half Moon Bay; and

L. WHEREAS in the absence of a regional Solid Waste Transfer Facility, Solid Waste Collectors would individually have to travel to Ox Mountain to dispose of Solid Waste, which would increase (a) driving distances and times, (b) the size and cost of the Collection vehicles, (c) traffic and congestion on the highways, and (d) the wear and tear on the highways; altogether which would increase the costs to Solid Waste Collection ratepayers; and

M. WHEREAS each Agency has been a member of the South Bayside Waste Management Authority (SBWMA) under a Joint Exercise of Powers Agreement dated December 9, 1999, and has since enjoyed the benefits of such membership, and in accordance with the terms of that agreement has directed its Solid Waste to be Processed at the regional Facility; and

N. WHEREAS modifying the method of Solid Waste, Recyclable Material, and Plant Material Collection, Transfer and Transportation Processing and Disposal could cause disruptions in service to the ratepayers; and

O. WHEREAS California Government Code §6500 et seq. (Joint Exercise of Powers Act) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities; and

P. WHEREAS the Agencies' use of regional Solid Waste, Recyclable Material and Plant Material Collection and Processing Facilities under the SBWMA provides a proven history of economic and environmental benefits to its users; and

Q. WHEREAS the parties to this Agreement wish to continue to possess ownership over these regional Solid Waste Facilities; and

R. WHEREAS each Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control Facilities and operations for the Collection, Transfer, and Transportation, Processing, and Disposal of Solid Waste, Recyclable Material, and Plant Material generated within its jurisdictional boundaries, as well as to create and issue Franchise agreements for such activities; and

S. WHEREAS the Agencies have issued Revenue Bonds to pay for the purchase of these Facilities in March 2000;

NOW, THEREFORE BE IT RESOLVED that the Agencies do hereby establish the South Bayside Waste Management Authority for the purpose of owning, financing, administering, and operating regional Facilities and for administering rates for Solid Waste and diversion programs and do hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit C to this Agreement, which is attached hereto and incorporated by reference.

ARTICLE 2. PURPOSE

2.1 Purpose. This Agreement is entered into pursuant to the Act to provide for the exercise of powers as provided therein, and to provide for the joint exercise of certain powers common to the Agencies. The purpose of this Agreement is to provide for the joint ownership, financing, administration, and operation of the Facilities, and for the joint planning, adoption, financing, administration, management, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area. By entering this joint powers authority, the Agencies earn economic benefits not realized when using alternate means of Transferring and Transportation Processing of Solid Waste, Recyclable Material and Plant Materials and Disposal of Solid Waste. Further, the establishment of this joint powers authority provides for the economic viability and utilization requirement of the Facilities.

ARTICLE 3. CREATION OF AUTHORITY

3.1 Creation. Pursuant to the Act, the Agencies hereby create and establish a public entity to be known as the "South Bayside Waste Management Authority" (SBWMA).

3.2 Separate Entity. The SBWMA shall be a public entity separate from the Agencies, and separate from the SBTSA.

3.3 Assets, Rights, and Liabilities. The assets, rights, debts, liabilities, and obligations of the SBWMA shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies or the SBWMA. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the SBWMA, provided that both the Board and that Agency approve such contract or assumption.

ARTICLE 4. TERM

4.1 Effective Date. This First Amended Agreement shall be dated as of, and become effective on, the date of its execution by the last of the Founding Members (Effective Date).

4.2 Term. This Agreement shall continue at least until December 31, 2019, or such further period of time necessary to repay any revenue bonds issued by the SBWMA, and thereafter shall continue until terminated or dissolved by a vote taken in accordance with Section 10.8 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the SBWMA if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of the SBWMA, including, without limitation, indentures, resolutions, and letter of credit agreements.

ARTICLE 5. BOUNDARIES

5.1 Service Area. The SBWMA shall exercise its powers within its Service Area boundaries, as they may change from time to time. The Service Area shall be the consolidated boundaries of the Agencies as defined in Exhibit C. If an Agency withdraws from the SBWMA, the boundary of the SBWMA shall be modified to exclude the area of the withdrawing Agency. Such withdrawal and redrawing of boundaries shall not prevent any Facilities from being located outside of the boundary of the SBWMA.

ARTICLE 6. MEMBERSHIP REQUIREMENTS OF SBWMA

6.1 Required Powers. Each Member of the SBWMA must at all times have the following powers:

- a. The authority to grant Solid Waste Collection Franchises.
- b. The authority, commitment, and agreement to direct the flow of Solid Waste, Recycling and Plant Material generated within the Member's respective jurisdiction to those Facilities specified by the SBWMA, except as provided in Sections 2.08 and 2.09 of the Uniform Franchise Agreement, Exhibit D hereto, for a period of time which shall minimally be until December 31, 2019, or such further period of time necessary to repay any revenue bonds issued by the SBWMA .
- c. The authority to set rates sufficient to provide for the financing and operation of the SBWMA Facilities.
- d. The authority, by law, to enter into this Joint Powers Agreement (JPA).

6.2 Founding Members. A Founding Member of the SBWMA shall be one who has joined on the formation of the SBWMA December 9, 1999. Founding Members are listed as such in Exhibit A and B hereto.

6.3 Membership. A Member shall, on joining the SBWMA, elect whether to be an Equity Member or a Non Equity Member.

- a. An Equity Member shall have all of the rights and liabilities of a Member of the SBWMA. An Equity Member shall be a Founding Member who, on joining, elects to be an Equity Member, and shall include a New Member who agrees to pay the equity equalizing fees and payments imposed as a condition of membership. Only an Equity Member shall have the right to vote on any matter before the Board and on any matter to be voted on by a Member except as provided in Section 6.3(b).
- b. A Non Equity Member shall not be required to pay an equity equalizing payment, and shall not have the rights and liabilities of Equity Members, particularly under Section 15 Withdrawal and Section 16 on Termination of the JPA. The Non Equity Member shall, however, direct its flow of Solid Waste, Recyclable Material, and Plant Material to the Facilities subject to the exception in Exhibit D hereto, and comply with the terms of the JPA with respect to the flow of Solid Waste, Recyclable Material, and Plant Material. The Non Equity Member shall be entitled to participate in Board Meetings and activities, and receive all notices and information. However, it shall not be entitled to vote on any matter before the Board, or on any other matter unless the right to vote is expressly provided for the Non Equity Member.
- c. Exhibit A hereto shall designate Equity Members and Exhibit B shall designate Non Equity Members.

6.4 All Members. Equity Members and Non-Equity Members shall, during the term of this Agreement, equally have the right to direct the flow of Solid Waste, Recyclable Material, and Plant Material to the Facilities. With respect to the Uniform Franchise Agreement all Equity and Non-Equity Members shall have the right to participate in Board deliberations and negotiations and to vote on all matters, including rates, that are contained therein.

ARTICLE 7. POWERS

7.1 SBWMA Powers. The SBWMA is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as

it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Acquire, construct, finance, refinance, operate, regulate, and maintain Facilities.
- b. Acquire, improve, hold, lease, and dispose of real and personal property of all types.
- c. Enter into agreements to operate Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.
- d. Plan, study, and recommend proper and appropriate Solid Waste Recyclable Material and Plant Material Transfer, Transport and Processing management practices. Research and study issues related to Solid Waste Generation, Collection, Transfer, Processing, Diversion, and Disposal, including but not limited to source reduction, re-use, Recycling, and recovery.
- e. Resolve disputes between the public and any entities providing Solid Waste, Recycling Material, and Plant Material Transfer, Transportation and Processing services.
- f. Plan, design, and implement programs that address CIWMA transfer, processing and diversion requirements.
- g. Educate the public as to Solid Waste, Diversion, and Recycling matters.
- h. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the SBWMA's programs including, but not limited to, Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facility operations and Disposal. Such agreements can be made with any Person, including any Member.
- i. Apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- j. Hire agents and employees.
- k. Sue and be sued in its' own name.
- l. Incur and discharge debts, liabilities, and obligations.
- m. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
- n. Issue and receive loans.
- o. Establish rates and fees at Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.
- p. Require Members to pass-through the cost of the SBWMA's operations to the rates assessed on Facility users.
- q. Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.
- r. Enter into Franchise Agreements for use of the Transfer Station and pay a Franchise fee.
- s. Require Members to direct all of their Solid Waste, Recyclable Materials and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities, except as provided in Exhibit D hereto.

7.1.1 The following powers require the approval of two-thirds of the Members as would be required under Article 17 for an amendment to this JPA Agreement:

- a. Acquisition of real property
- b. Disposal or transfer of any interest in real property
- c. Entering into or amending Franchise Agreements for the operation of the Facilities
- d. Issuance of bonds or notes, or the refinance of such bonds or notes.

ARTICLE 8. GOVERNANCE

8.1 **Board of Directors.** The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each Member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City, or Town Manager or the equivalent position
- b. County, District, City, or Town Assistant Manager or the equivalent position
- c. Finance Director or Assistant Finance Director or the equivalent position
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or the equivalent position.

8.2 **Tenure.** Each Director shall hold office from the first meeting of the Board after appointment by the Member until his or her successor is selected by the Member.

8.3 **Compensation.** Directors shall receive no compensation from the SBWMA for serving on the Board. The SBWMA may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

8.4 **Member Mergers.** If any Member merges with another public entity, the successor public entity shall have one (1) Director position on the Board.

8.5 **Chair.** The Board shall annually select a Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who shall serve without compensation at the pleasure of the Board. The duties of the Chair include, but are not limited to the following:

- a. Conducts Board meetings.
- b. Review and set meeting agendas with the Executive Director.
- c. Signs any and all SBWMA official documents.

8.6 **Vice Chair.** The Board shall annually select a Vice Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who serves without compensation at the pleasure of the Board. The Vice Chair shall act in the absence of the Chair, with full powers of the Chair.

8.7 **Finance Director.** The Board shall select, by a vote taken in accordance with Section 10.8 of this Agreement, a Finance Director from one of the Members to be Finance Director for the SBWMA, who serves at the pleasure of the Board. The duties of the Finance Director include, but are not limited to the following, all in accordance with prudent financial management and California law, including but not limited to California Government Code §6505 et seq.:

- a. Reports to the Chair on any and all SBWMA financial matters.
- b. Serves as the SBWMA's treasurer and controller.
- c. Receives and accounts for any and all SBWMA revenues.

- d. Makes any and all SBWMA investments using sound and prudent investment practices.
- e. Disburses and accounts for any and all SBWMA funds.
- f. Issues or causes to be issued all Revenue Bond payments, according to the payment schedule as part of the Revenue Bonds.
- g. Maintains any and all reserves, as may be required by the Revenue Bonds or any other instruments.
- h. Prepares, within one hundred twenty (120) days after the close of each Fiscal Year, an annual financial report reflecting SBWMA financial activity, including activity associated with the operations of the Facilities, whether such operation is performed by the SBWMA directly or is contracted.
- i. Prepares other financial statements and reports for the SBWMA, as needed.
- j. Causes the annual financial report to be audited by an independent Certified Public Accountant (CPA) currently licensed to practice in the State of California.
- k. Presents the audit report, including the associated management letter, to the Board at the first scheduled Board meeting subsequent to the release of the audit report.

8.8 Other Officers. The Board may create or eliminate other officers not specifically mentioned in Sections 8.5–8.7 of this Agreement from time to time, as the Board deems necessary, upon majority vote. Such officers shall serve without compensation.

8.9 Employee Status. None of the officers, agents, or employees employed or hired by the SBWMA shall by reason thereof become officers, agents, or employees of any Member. The SBWMA may contract with any Member for any services, upon a vote in accordance with Section 10.8 of this Agreement; however, none of the Persons whose services are supplied by a Member shall by reason thereof become an employee of the SBWMA.

8.10 Executive Director. The position of Executive Director is created. The Executive Director is appointed by the Board and serves at the will of the Board. The duties of the Executive director include, but are not limited to the following:

- a. Administers any and all meeting agendas, including compliance with noticing requirements and meeting locations, as provided under California Government Code §54950-54962 (Brown Act).
- b. Causes accurate minutes and records to be taken of all meetings in accordance with California law, including but not limited to California Government Code §54957.2 et seq.
- c. Has authority to appoint, remove, promote, demote, supervise, and determine compensation of any and all SBWMA employees in accordance with Board approved salary ranges.
- d. Manages any and all SBWMA contracts or agreements, including but not limited to, the Facilities operating agreement.
- e. Approves any and all SBWMA payments in conformance with Board approved appropriations.
- f. Attends all Board meetings.
- g. Prepares and submits to the Board an annual budget.
- h. Performs such other duties as the Board shall require.

8.10.1 The Executive Director shall be bonded with a corporate surety to be approved by the Board.

8.10.2 The Executive Director shall receive such compensation as the Board shall from time to time determine.

ARTICLE 9. VACANCIES

9.1 Director Vacancies. Should a vacancy occur on the Board due to the separation from service by a Director from a Member, the person who is acting in the capacity of the former Director with the Member shall temporarily assume the duties of the former Director until such time as the Member appoints a permanent Director. Such temporary Director shall have the full powers and authority of a permanent Director.

9.2 Officer Vacancies. Should a vacancy occur among any officer authorized in Article 8 of this Agreement, the Board shall elect a new officer at its next scheduled Board meeting.

ARTICLE 10. MEETINGS

10.1 Regular Meetings. The Board shall schedule by Resolution regular monthly meetings during each Fiscal Year.

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

10.3 Notice of Meetings. All meetings of the Board shall be held subject to the provisions of California Government Code §54950-54962 (Brown Act) and other applicable laws of the State of California.

10.4 Meeting Location. All meetings of the Board must be held within the Service Area at a location determined by the Chair, except that the Board may hold a special meeting outside the Service Area upon an affirmative vote in accordance with Section 10.8 of this Agreement.

10.5 Minutes. The Chair shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Chair shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

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

10.7 Voting Rights. Each Member is entitled to cast one vote on any matter presented to the Board for a vote.

10.8 Voting Requirement. The vote of two thirds (2/3) of the Directors present shall constitute the act of the Board, unless otherwise provided in this Agreement.

10.9 Conduct of Meetings. Meetings of the Board shall be conducted by the Chair, or in the Chair's absence by the Vice Chair. In the absence of both the Chair and the Vice Chair, meetings shall be conducted by the Director in attendance who represents the largest Member, by population.

ARTICLE 11. BYLAWS

11.1 Bylaws. The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out the SBWMA's purpose.

ARTICLE 12. FUNDING

12.1 Debts and Liabilities. The SBWMA's debts, liabilities, and obligations shall not be debts, liabilities, or obligations of any of the Members, and each Member's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the Members hereto may agree.

12.2 SBWMA Activities. Unless otherwise authorized by the Board, all costs associated with SBWMA activities shall be paid by the Facilities' users. The SBWMA shall be solely responsible for determining the amount of any charge to recover these pass-through costs. The Members hereby agree to pass any such charge as approved by the SBWMA, to users as part of the Solid Waste, Recyclable Material, and Plant Material and Transfer and Transport and Processing rate, without reduction, limitation, offset, or adjustment of any kind.

12.3 SBWMA Records and Accounts. The Finance Director shall maintain accurate and correct books of account showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers for SBWMA financial transactions.

12.4 Facilities Records and Accounts. The Finance Director shall maintain or cause to be maintained accurate and correct books of account of the Facilities' operations showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers.

12.5 Revenue Bond Payments. The revenue stream pledged to the Revenue Bonds may in no way be used for any purpose other than to make payment on the indebtedness associated with those bonds. Such revenues are not in any way considered revenues to the Agencies, and may not be used for any other purpose unless and until such Revenue Bonds are defeased or repaid in full.

12.6 Franchise Fee Payments. Monthly, SBWMA shall distribute to the City of San Carlos, from funds received from Contractor, one twelfth (1/12th) of the annual franchise fee agreed to by the SBWMA and the City of San Carlos for the operation of the Facilities.

12.7 Priority of Distribution of Funds Received by SBWMA. Monthly, the SBWMA shall receive funds from the Contractor of the Facilities under Section 6.04 of the Agreement for the Operation of the South Bayside Waste Management Authority's Transfer Station and Recyclery. The SBWMA shall distribute the funds received in accordance with the following priority:

- a. Debt Service Payments.
- b. Contributions to Reserves.
- c. Management Costs.
- d. Payment of Franchise Fees to the City of San Carlos.
- e. Such other distribution as authorized by the Board.

ARTICLE 13. SBWMA ADMINISTRATION POWERS

13.1 Assertion of Authority. The Members shall not engage in any action that would duplicate, circumvent, by-pass, or supersede the SBWMA's powers, as expressed in this Agreement.

13.2 Facility Operator. The Members agree that the SBWMA shall have sole authority to operate or contract for the operation of the Facilities, and have sole authority to direct the delivery of all or a portion of each Member's Solid Waste, Recyclable Material, and Plant

Material to the Facilities, except as provided in Exhibit D hereto. No Member shall take any action in any manner, inconsistent with the terms of this Agreement.

13.3 Operating Records. The SBWMA will cause the Facilities' Contractor to maintain accurate, timely, and complete records of operations at the Facilities, as necessary to comply with any CIWMA or other State requirements, or this Agreement.

13.4 Operations Reporting. The SBWMA shall cause the Facilities' Contractor to compile information and report on any of its Facilities operations, in accordance with the CIWMA and this Agreement.

13.5 Solid Waste Reporting. The SBWMA shall cause the Facilities' Contractor to compile and report to the CIWMA and other State of California agencies data on Solid Waste accepted at the Facilities, all on behalf of the Members.

13.6 Require Compliance with Laws. The SBWMA shall require the Facilities Contractor to operate said Facilities in compliance with all Federal, State, and local laws, Environmental Laws, guidelines, and regulations, as may exist, or as may exist from time to time.

13.7 Bond Payment Review. The SBWMA shall at least annually review the Revenue Bond payment history and payment projections to the end of bond repayment.

13.8 Bond Management. The SBWMA shall periodically consider defeasing the Revenue Bonds and refinancing any existing debt to the economic benefit of the Members, as market conditions allow.

13.9 Bond Reserves. The SBWMA shall maintain at least the minimum reserve fund requirements specified in the Revenue Bond covenants.

13.10 Asset Reserves. The SBWMA shall establish and maintain an asset replacement reserve fund at a level at least adequate to finance appropriate and ordinary asset replacement at the Facilities.

13.11 Annual Inspection. At least annually, the SBWMA shall inspect or cause to be inspected by a qualified and licensed civil engineer all of its Facilities, including all property, land, equipment, and other items owned by the SBWMA.

13.12 Attributing Solid Waste. The SBWMA shall establish a fair and equitable method of attributing Solid Waste, Recyclable Materials, and Plant Materials to the Members that are delivered to the Facilities.

13.13 Miscellaneous. The SBWMA may operate programs, conduct analyses, and perform studies from time to time, all in support of the purposes under this Agreement, as the Board so approves.

13.14 Member Cooperation. Members agree to cooperate in the accumulation of information supporting goals approved by the Board, as provided in this Agreement.

ARTICLE 14. PENALTIES

14.1 Apportionment of Penalties. Any penalties assessed by regulatory authorities against the SBWMA shall be paid by the SBWMA.

ARTICLE 15. WITHDRAWAL FROM SBWMA

15.1 Withdrawal Conditions. A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the

date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.

- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

ARTICLE 16. TERMINATION

16.1 Termination Requirements. This Agreement may only be terminated by consent of all Equity Members, and upon full and complete liquidation of all liabilities, including, but not limited to, the Revenue Bonds. Upon the date of termination (hereinafter "Termination Date"), payment of any and all obligations and division of any and all assets of the SBWMA shall be conducted subject to the then-applicable requirements of the law (currently California Government Code §6511 et seq.), pursuant to the following:

- a. In the event of termination of the SBWMA where there is a successor public entity that will conduct all of the activities of the SBWMA and will assume all of its obligations, any and all SBWMA assets and liabilities remaining upon termination of the SBWMA shall be transferred to the successor public agency.
- b. If there is no successor public agency that would conduct the SBWMA's activities, all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Member's ratepayers' total contribution during the Term of this Agreement. A reference to ratepayers' contribution means payment of Collection fees under each jurisdiction's respective Uniform Franchise Agreement.
- c. If there is a successor public agency that would conduct some of the SBWMA's activities, then the Board shall allocate the SBWMA's assets and liabilities between the successor public agency and the Members. In this case, the Members' portion of the allocation shall be allocated based on Section 16.1(b).
- d. In the event the SBWMA is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Members or any successor shall be final.
- e. The obligations of the SBWMA terminate on the Termination Date, and each Member shall pay all amounts owed to the SBWMA prior to that date. In the event of default by a Member with regard to payment of amounts due, the obligation to pay all sums due to the SBWMA shall survive and remain in full force after the Termination Date.
- f. By unanimous agreement of Equity Members, Equity Members may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 16.1.

ARTICLE 17. AMENDMENTS

17.1 Amendment Requirements. Subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity Members of the SBWMA.

17.2 Signature Requirements. Signatures shall not be required on any effective amendment by those Members, if any, whose Directors did not approve the amendment; however, such Members shall nonetheless be bound by the amendment as if it were approved by all Members.

ARTICLE 18. FILINGS

18.1 Filing with Secretary of State. The Chair shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and 53051.

ARTICLE 19. NOTICES

19.1 Notices to Agencies. All notices to the Agencies shall be deemed to have been given to the Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

19.2 Notices to SBWMA. All notices to the SBWMA shall be deemed to have been given to the SBWMA when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chair, Vice Chair, and Finance Director of the SBWMA during usual business hours at the principal office, or to the Person apparently in charge of that office.

ARTICLE 20. SUCCESSORS AND ASSIGNMENTS

20.1 Assignments. This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member. No Member may assign any right or obligation hereunder without the written consent of all other Members.

ARTICLE 21. SEVERABILITY

21.1 Severability. If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

ARTICLE 22. ARTICLE HEADINGS

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

THEREFORE THE AGENCIES LISTED IN EXHIBITS A AND B HERETO AND EXECUTING THIS AGREEMENT BY SIGNING EITHER AS AN EQUITY MEMBER IN EXHIBIT A OR NON EQUITY MEMBER IN EXHIBIT B HEREBY ENTER INTO THIS AGREEMENT.

EXHIBIT A
EQUITY MEMBERS

TOWN OF ATHERTON

James H. Rolene
BY:
TITLE: City Manager

CITY OF BURLINGAME

BY:
TITLE:

CITY OF FOSTER CITY

BY:
TITLE:

CITY OF MENLO PARK

Michael Dindler
BY:
TITLE: Mayor

CITY OF SAN CARLOS

Mark Lavin
BY:
TITLE: City Manager

WEST BAY SANITARY DISTRICT

BY:
TITLE:

CITY OF BELMONT

BY:
TITLE:

CITY OF EAST PALO ALTO

Abhinav D. Jones
BY:
TITLE: City Manager

TOWN OF HILLSBOROUGH

Thomas M. Kettle
BY:
TITLE: Mayor

CITY OF REDWOOD CITY

BY:
TITLE:

CITY OF SAN MATEO

Jan Epstein
BY:
TITLE: Mayor

COUNTY OF SAN MATEO

Jan Lavin
BY:
TITLE:

**EXHIBIT A
EQUITY MEMBERS**

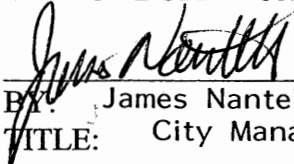
TOWN OF ATHERTON

BY:
TITLE:

CITY OF BELMONT

BY:
TITLE:

CITY OF BURLINGAME



BY: James Nantell
TITLE: City Manager

CITY OF EAST PALO ALTO

BY:
TITLE:

CITY OF FOSTER CITY

BY:
TITLE:

TOWN OF HILLSBOROUGH

BY:
TITLE:

CITY OF MENLO PARK

BY:
TITLE:

CITY OF REDWOOD CITY

BY:
TITLE:

CITY OF SAN CARLOS

BY:
TITLE:

CITY OF SAN MATEO

BY:
TITLE:

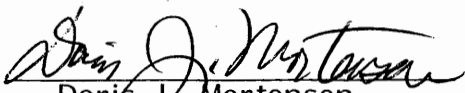
WEST BAY SANITARY DISTRICT

BY:
TITLE:

COUNTY OF SAN MATEO

BY:
TITLE:

ATTESTED:



Doris J. Mortensen
City Clerk
City of Burlingame

**EXHIBIT A
EQUITY MEMBERS**

TOWN OF ATHERTON

BY:
TITLE:

CITY OF BELMONT

BY:
TITLE:

CITY OF BURLINGAME

BY:
TITLE:

CITY OF EAST PALO ALTO

BY:
TITLE:

CITY OF FOSTER CITY

Rick Wykoff

BY: Rick Wykoff
TITLE: Mayor
ATTEST: *Shereka Calic*, City Clerk
CITY OF MENLO PARK

TOWN OF HILLSBOROUGH

BY:
TITLE:

BY:
TITLE:

CITY OF SAN CARLOS

BY:
TITLE:

BY:
TITLE:

CITY OF SAN MATEO

BY:
TITLE:

WEST BAY SANITARY DISTRICT

BY:
TITLE:

COUNTY OF SAN MATEO

BY:
TITLE:

**EXHIBIT A
EQUITY MEMBERS**

TOWN OF ATHERTON

BY:
TITLE:

CITY OF BURLINGAME

BY:
TITLE:

CITY OF FOSTER CITY

BY:
TITLE:

CITY OF MENLO PARK

BY:
TITLE:

CITY OF SAN CARLOS

BY:
TITLE:

WEST BAY SANITARY DISTRICT

BY:
TITLE:

CITY OF BELMONT

BY:
TITLE:


CITY OF EAST PALO ALTO

BY:
TITLE:

TOWN OF HILLSBOROUGH

BY:
TITLE:

CITY OF REDWOOD CITY


BY: *ED EVERETT*
TITLE: *CITY MANAGER*

CITY OF SAN MATEO

BY:
TITLE:

COUNTY OF SAN MATEO

BY:
TITLE:

EXHIBIT C
DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below in this Exhibit C.

Act

“Act” means the California Joint Exercise of Powers Act (California Government Code §6500 et. seq.).

Agency/Agencies

“Agency/Agencies” means the public entities which are or have been Members of the SBTSA and/or the SBWMA.

Agreement

“Agreement” means this joint exercise of powers agreement, as it may be amended from time to time.

Board

“Board” means the governing Board of Directors of the SBWMA, comprising one Director from each of the Members, as described in Article 8 of this Agreement.

Chair

“Chair” means the SBWMA Chair of the Board, as described in Section 8.5 of this Agreement.

CIWMA

“CIWMA” means the California Integrated Waste Management Act of 1989 (California Public Resources Code, §40000 et seq.), and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

CIWMA Board

“CIWMA” means the California Integrated Waste Management Board, created under the provisions of the CIWMA, whose duties include implementing the CIWMA.

Collect/Collection

“Collect/Collection” means to take physical possession, transport and remove Solid Waste, Recyclable Materials, and Plant Materials within and from the Service Area.

Collector

“Collector” means a private organization which holds a franchise from an Agency for Solid Waste Collection.

Contractor

“Contractor” shall mean the entity the SBWMA contracts with to operate the Facilities.

County

“County” means the County of San Mateo, California.

Director

“Director” means the appointed representative from each Member who serves on the governing Board of Directors.

Disposal

“Disposal” means the ultimate disposition of Solid Waste received by Collector at a landfill in Full Regulatory Compliance.

Diversion

“Diversion” means the separation of materials from the overall Solid Waste stream and whose disposition is for reuse or Recycling and not landfill disposal.

Effective Date

“Effective Date” means the effective date of this Agreement, which is December 9, 1999, as provided in Section 4.1.

Environmental Laws

“Environmental Laws” means all federal and state statutes; and all county, local, and Agency ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000 et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

Executive Director

“Executive Director” means the person appointed by the Board as the executive officer and director of the SBWMA.

Facility/Facilities

“Facility/Facilities” means any plant or site, existing or planned, owned or leased, and constructed, maintained, operated, or used for purposes of performing under this Agreement. As of the Effective Date, the Facilities are: the San Carlos Transfer Station and the San Mateo Recyclery, located at 225, 229, and 333 Shoreway Road, in San Carlos, California.

Fiscal Year

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

Founding Member

“Founding Member” means any one of the public entities listed in Exhibit A and B attached hereto.

Franchise

“Franchise” means the special right granted by the Agencies to operate a public utility for Solid Waste Collection and Processing services within the Service Area.

Full Regulatory Compliance

“Full Regulatory Compliance” means compliance with all applicable permits for a Facility such that the Contractor will at all times maintain the ability to fully comply with its obligations under this Agreement.

Legislation

“Legislation” means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

Member

“Member” means any one of the public entities listed in Exhibit A (Equity Members) or Exhibit B (Non Equity Members) attached hereto, and any public entity that becomes a New Member in accordance with Section 6.3 of this Agreement.

Person

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

Plant Materials

“Plant Materials” means a subset of Recyclable Materials consisting of grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six [6] inches in diameter), and similar organic materials generated at residential commercial, industrial and institutional properties within the Service Area, separated and set out for Collection, processing, and Recycling. Plant Materials does not include materials not normally produced from gardens or landscapes, such as, but not limited to, palm fronds, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes and oil. Diseased plants and trees are also excluded from Plant Materials.

Process/Processing

“Process/Processing” means the Recycling, reuse, reformation, reconstituting, or otherwise manipulation of Solid Waste in preparation for its ultimate use or disposal.

Rate Year

“Rate Year” means the period commencing on January 1 and ending on the following December 31.

Recyclable Materials

“Recyclable Materials” means discarded materials that are re-used, re-manufactured or processed.

Recycling

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be re-used, re-manufactured or processed. The Collection, transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

Revenue Bonds

“Revenue Bonds” means those certain revenue bonds titled “South Bayside Waste Management Authority (San Mateo County, California) Solid Waste System Revenue Bonds, Series 2000,” and issued in the amount of \$20,090,000 on March 1, 2000.

SBWMA

“SBWMA” means the South Bayside Waste Management Authority, a joint powers authority created under Government Code §6500 et seq. by this Agreement.

SBTSA

“SBTSA” means the South Bayside Transfer Station Authority, a joint powers authority created in 1982.

Service Area

“Service Area” means the collective territory within, and, if applicable, outside the Member’s boundaries with respect to which the Member exercises franchising authority for the Collection of Solid Waste, Recyclable Materials, and Plant Materials which territory is shown on a map on file in the office of the Chair, to which reference is hereby made for the description of said area.

Solid Waste

“Solid Waste” means all putrescible and nonputrescible solid, semisolid, and liquid wastes, as defined in California Public Resources Code §40191, as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable Materials, or Plant Materials.

Term

“Term” means the period of time specified in Article 4 of this Agreement.

Transfer

“Transfer” means the process of transferring Solid Waste from collection vehicles to transfer vehicles.

Transport

“Transport” means the transportation of Solid Waste in either collection or transfer vehicles.

Uniform Franchise Agreement

“Uniform Franchise Agreement” means the franchise agreement negotiated by the SBWMA with BFI Waste Systems of North America, Inc. or its successor, for the Collection of Solid Waste, Recyclable Materials, and Plant Materials in each Agency, as amended.

Exhibit D

Exceptions to the SBWMA power to direct Members' Solid Waste, Recyclable Materials, and Plant Materials to the Facilities.

The following sections are excerpts from the Uniform Collection Agreement adopted by SBWMA member entities and details the exceptions to the SBWMA's power to direct Members' Solid Waste, Recyclable Materials, and Plant Materials to the Facilities:

2.07 Scope of Franchise. Subject to Section 2.08, the Franchise granted to Contractor shall be exclusive for all Solid Waste, residential Recyclable Materials and residential Plant Materials generated in the Service Area, except where otherwise precluded by Federal, State and local laws and regulations or where other current programs provide for Collection and handling of Household Hazardous Waste.

2.08 Limitations to Scope. The Agreement for the Collection, transportation, processing, and Disposal of Solid Waste, residential Recyclable Materials, and residential Plant Materials granted to Contractor shall be exclusive except as to the following materials listed in this Section. The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials and Plant Materials listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from Agency which is otherwise required by law:

- a. Other recyclers shall maintain the right to charge a fee, to Collect without a fee, to accept donated Recyclable Materials and to pay the service recipient for Recyclable Materials for the Collection of Source Separated Recyclable Materials and Plant Materials from commercial, industrial, multi-family and institutional generators located in the Service Area. For the purposes of this Agreement, Source Separated loads are loads that consist of less than 10% by weight or volume of Solid Waste, whichever is less. It will be the responsibility of Contractor to provide enforcement of this provision. If Contractor can document that other recyclers are servicing Collection Containers that contain less than 90% Source Separated Recyclable Materials or Plant Materials, it shall report the location and the name of the recycler to the Agency and the SBWMA, along with Contractor's evidence of the violation of the exclusiveness of this Agreement.
- b. Solid Waste, Recyclable Materials, and Plant Materials, which are removed from any Premises by the Waste Generator, and which are transported personally by the Owner or occupant of such Premises (or by his or her employees or a contractor whose removal of the Solid Waste, Recyclable Materials and/or Plant Materials are incidental to the service being performed.

- c. Recyclable Materials and Plant Materials which are Source Separated at any Premises by the Waste Generator and donated to youth, civic, or charitable organizations;
- d. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code;
- e. Plant Materials removed from a Premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service and for no additional or separate fee;
- f. Non-putrescible Waste from roll-off/debris boxes;
- g. Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- h. By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and,
- i. Hazardous Waste and Designated Waste regardless of its source.

This grant to Contractor of an exclusive right and privilege to Collect, transport, or process and dispose of Solid Waste, certain residential Recyclable Materials, and certain residential Plant Materials shall be interpreted to be consistent with state and federal laws, now and during the term of the Agreement, and the scope of this exclusive right shall be limited by applicable state and federal laws with regard to the matters contained in this Agreement. In the event that future interpretations of current law or new laws, regulations, interpretations or trends limit the ability of Agency to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that Agency shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

2.09 Additional Services and Modifications to Service.

2.09.1 General. Agency may direct Contractor to perform additional services (including new diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, targeted routing, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which Agency may direct. Contractor shall be entitled to an adjustment in its compensation in accordance with Article 6 for providing such additional or modified services.

2.09.2 New Diversion Programs. Contractor shall present, within 30 days of a request to do so by Agency, a proposal to provide additional or expanded diversion services. At a minimum, the proposal shall contain a complete description of the following:

- a. Collection methodology to be employed (equipment, manpower, etc.).

- b. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- c. Labor requirements (number of employees by classification).
- d. Type of materials containers to be utilized.
- e. Provision for program publicity/education/marketing.
- f. Estimate of the tonnage to be diverted and the methodology for determining that diverted tonnage.
- g. Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

2.09.3 Agency's Right to Permit Others to Provide Services. Contractor acknowledges and agrees that Agency may permit other Persons besides Contractor to provide additional Solid Waste services not otherwise contemplated under Section 2.07 and 2.08 of this Agreement. If Contractor and Agency cannot agree on terms and conditions of such services in one hundred twenty (120) days from the date when Agency first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that Agency may permit Persons other than Contractor to provide such services.

Joint Exercise of Powers Agreement
South Bayside Waste Management Authority
(SBWMA)

October 13, 1999 – Final Version

ORIGINAL

Joint Exercise of Powers Agreement
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

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Joint Exercise of Powers Agreement

South Bayside Waste Management Authority

This Agreement is entered into this 9th day of December, 1999, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code) relating to the joint exercise of powers among the County of San Mateo and those cities, and towns listed in Exhibit A and B, hereafter collectively called "Agencies."

RECITALS

A. WHEREAS the Agencies are responsible for the health and safety of the citizens within their geographic boundaries; and

B. WHEREAS the Agencies regulate Solid Waste, Recyclable Material, and Plant Material, Collection in areas under their jurisdiction and award Franchises for Collection to private organization(s), herein called "Collector(s)"; and

C. WHEREAS the Agencies find it in their mutual economic interest to address Solid Waste and Recycling issues on a regional level; and that the costs for planning and implementing Solid Waste and Recycling Programs will be based on a fair and equitable allocation system that considers the relative benefits to each Agency and the additional cost of services provided to each Agency, and;

D. WHEREAS the Agencies have used and are committed to owning and using certain regional Facilities located in the City of San Carlos, which are part of the San Mateo County Integrated Waste Management Plan, as approved by the California Integrated Waste Management Board; and

E. WHEREAS the ownership and use of these regional Solid Waste Facilities provides economic benefits to the ratepayers of the Agencies; and

F. WHEREAS the California Integrated Waste Management Act (CIWMA)(California Public Resources Code, §40000 et seq.) requires that the Agencies reduce by fifty (50) percent the amount of Solid Waste they landfill by the end of the year 2000; and

G. WHEREAS the CIWMA requires that the Agencies prepare, adopt, and implement source reduction and recycling elements to meet the fifty (50) percent reduction goal; and

H. WHEREAS the Agencies intend to coordinate their efforts to produce and share Solid Waste, Recyclable Material and Plant Material reports, including program and operational information derived from the operation of regional Facilities, as required by California Public Resources Code, §40000 et seq.; and

I. WHEREAS each Agency has the authority to regulate their Solid Waste, Recyclable Material, and Plant Material, stream, including the Collection, Transfer, Transportation, and Processing thereof, and has the authority to establish rates for the conduct of such functions; and

J. WHEREAS Solid Waste from each Agency is landfilled at the Ox Mountain Sanitary Landfill located off State Highway 92, approximately two miles east of Half Moon Bay; and

K. WHEREAS in the absence of a regional Solid Waste Transfer Facility, Solid Waste Collectors would individually have to travel to Ox Mountain to dispose of Solid Waste, which would increase (a) driving distances and times, (b) the size and cost of the Collection vehicles, (c) traffic and congestion on the highways, and (d) the wear and tear on the highways; altogether which would increase the costs to Solid Waste Collection ratepayers; and

L. WHEREAS the Agencies desire to act in the public interest to reduce the need for Collection, Transfer and Transportation, Processing, and Disposal rate increases and mitigate any adverse effect on the County's highway system in particular and the environment in general; and

M. WHEREAS each Agency has been a member of the South Bayside Transfer Station Authority (SBTSA) under an agreement dated June 22, 1982, and has since enjoyed the benefits of such membership, and in accordance with the terms of that agreement has directed its Solid Waste to be Processed at the regional Facility; and

N. WHEREAS modifying the method of Solid Waste, Recyclable Material, and Plant Material, Collection, Transfer and Transportation Processing and Disposal could cause disruptions in service to the ratepayers; and

O. WHEREAS California Government Code §6500 et seq. (Joint Exercise of Powers Act) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities; and

P. WHEREAS the Agencies' use of regional Solid Waste, Recyclable Material and Plant Material Collection and Processing Facilities under the SBTSA provides a proven history of economic and environmental benefits to its users; and

Q. WHEREAS the parties to this Agreement wish to possess ownership over these regional Solid Waste Facilities; and

R. WHEREAS each Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control Facilities and operations for the Collection, Transfer, and Transportation, Processing, and Disposal of Solid Waste, Recyclable Material, and Plant Material generated within its jurisdictional boundaries, as well as to create and issue Franchise agreements for such activities; and

S. WHEREAS the Agencies intend to issue Revenue Bonds to pay for the purchase of these Facilities;

NOW, THEREFORE BE IT RESOLVED that the Agencies do hereby establish the South Bayside Waste Management Authority for the purpose of owning, financing, administering, and operating regional Facilities and for administering rates for Solid Waste and diversion programs and do hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit C to this Agreement, which is attached hereto and incorporated by reference.

ARTICLE 2. PURPOSE

2.1 Purpose. This Agreement is entered into pursuant to the Act to provide for the exercise of powers as provided therein, and to provide for the joint exercise of certain powers common to the Agencies. The purpose of this Agreement is to provide for the joint ownership, financing, administration, and operation of the Facilities, and for the joint planning, adoption, financing, administration, management, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area. By entering this joint powers authority, the Agencies earn economic benefits not realized when using alternate means of Transferring and Transportation Processing of Solid Waste, Recyclable Material and Plant Materials and Disposal of Solid Waste. Further, the establishment of this joint powers authority provides for the economic viability and utilization requirement of the Facilities.

ARTICLE 3. CREATION OF AUTHORITY

3.1 Creation. Pursuant to the Act, the Agencies hereby create and establish a public entity to be known as the “South Bayside Waste Management Authority” (SBWMA).

3.2 Separate Entity . The SBWMA shall be a public entity separate from the Agencies, and separate from the SBTSA.

3.3 Assets, Rights, and Liabilities . The assets, rights, debts, liabilities, and obligations of the SBWMA shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies or the SBTSA. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the SBWMA, provided that both the Board and that Agency approve such contract or assumption.

ARTICLE 4. TERM

4.1 Effective Date. This Agreement shall be dated as of, and become effective on, the date of its execution by the last of the Founding Members (Effective Date).

4.2 Term. This Agreement shall continue at least until December 31, 2019, and thereafter shall continue until terminated or dissolved by a vote taken in accordance with Section 10.8 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the SBWMA if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of the SBWMA, including, without limitation, indentures, resolutions, and letter of credit agreements.

ARTICLE 5. BOUNDARIES

5.1 Service Area. The SBWMA shall exercise its powers within its Service Area boundaries, as they may change from time to time. The Service Area shall be the consolidated boundaries of the Agencies as defined in Exhibit C. If an Agency withdraws from the SBWMA, the boundary of the SBWMA shall be modified to exclude the area of the withdrawing Agency. Such withdrawal and redrawing of boundaries shall not prevent any Facilities from being located outside of the boundary of the SBWMA.

ARTICLE 6. MEMBERSHIP REQUIREMENTS OF SBWMA

6.1 Required Powers. Each Member of the SBWMA must at all times have the following powers:

- a. The authority to grant Solid Waste Collection Franchises.
- b. The authority, commitment, and agreement to direct the flow of Solid Waste, Recycling and Plant Material generated within the Member's respective jurisdiction to those Facilities specified by the SBWMA, except as provided in Sections 2.08 and 2.09 of the Uniform Franchise Agreement, Exhibit D hereto, for a period of time which shall minimally be until December 31, 2019 or such further period of time necessary to repay certain revenue bonds to be issued by the SBWMA to acquire the Facilities.
- c. The authority to set rates sufficient to provide for the financing and operation of the SBWMA Facilities.
- d. The authority, by law, to enter into this Joint Powers Agreement (JPA).

6.2 Founding Members. A Founding Member of the SBWMA shall be one who joins on the formation of the SBWMA. Founding Members shall be listed as such in Exhibit A and B hereto.

6.3 Membership. A Member shall, on joining the SBWMA, elect whether to be an Equity Member or a Non Equity Member.

- a. An Equity Member shall have all of the rights and liabilities of a Member of the SBWMA. An Equity Member shall be a Founding Member who, on joining, elects to be an Equity Member, and shall include a New Member who agrees to pay the equity equalizing fees

and payments imposed as a condition of membership. Only an Equity Member shall have the right to vote on any matter before the Board and on any matter to be voted on by a Member except as provided in Section 6.3(b).

- b. A Non Equity Member shall not be required to pay an equity equalizing payment, and shall not have the rights and liabilities of Equity Members, particularly under Section 15 Withdrawal and Section 16 on Termination of the JPA. The Non Equity Member shall, however, direct its flow of Solid Waste, Recyclable Material and Plant Material to the Facilities subject to the exception in Exhibit D hereto, and comply with the terms of the JPA with respect to the flow of Solid Waste, Recyclable Material and Plant Material. The Non Equity Member shall be entitled to participate in Board Meetings and activities, and receive all notices and information. However, it shall not be entitled to vote on any matter before the Board, or on any other matter unless the right to vote is expressly provided for the Non Equity Member.
- c. Exhibit A hereto shall designate Equity Members and Exhibit B shall designate Non Equity Members.

6.4 All Members. Equity Members and Non-Equity Members shall, during the term of this Agreement, equally have the right to direct the flow of Solid Waste, Recyclable Material and Plant Material to the Facilities. Any discontinuance of use of the Facilities in whole or in part, shall be applied equally to all members.

6.5 All Members. With respect to the Uniform Franchise Agreement all Equity and Non-Equity Members shall have the right to participate in Board deliberations and negotiations and to vote on all matters, including rates, that are contained therein.

ARTICLE 7. POWERS

7.1 SBWMA Powers. The SBWMA is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Acquire, construct, finance, refinance, operate, regulate, and maintain Facilities.
- b. Acquire, improve, hold, lease, and dispose of real and personal property of all types.

- c. Enter into agreements to operate Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.
- d. Plan, study, and recommend proper and appropriate Solid Waste Recyclable Material and Plant Material Transfer, Transport and Processing management practices. Research and study issues related to Solid Waste generation, Collection, Transfer, Processing, Diversion, and Disposal, including but not limited to source reduction, re-use, Recycling, and recovery.
- e. Resolve disputes between the public and any entities providing Solid Waste, Recycling Material and Plant Material Transfer, Transportation and Processing services.
- f. Plan, design, and implement programs that address CIWMA transfer, processing and diversion requirements.
- g. Educate the public as to Solid Waste, Diversion and Recycling matters.
- h. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the SBWMA's programs including, but not limited to, Solid Waste, Recyclable Material and Plant Material Transfer, Transport and Processing Facility operations and Disposal. Such agreements can be made with any Person, including any Member.
- I. Apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- j. Hire agents and employees.
- k. Sue and be sued in its own name.
- l. Incur and discharge debts, liabilities, and obligations.
- m. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
- n. Issue and receive loans.
- o. Establish rates and fees at Solid Waste, Recyclable Material and Plant Material Transfer, Transport and Processing Facilities.
- p. Require Members to pass-through the cost of the SBWMA's operations to the rates assessed on Facility users.
- q. Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.

- r. Enter into Franchise Agreements for use of the Transfer Station and pay a Franchise fee.
- s. Require Members to direct all of their Solid Waste, Recyclable Materials and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities, except as provided in Exhibit D hereto.

ARTICLE 8. GOVERNANCE

8.1 Board of Directors. The SBWMA is governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each Member must select its Director from among the following positions, or their designate:

- a. County, City, or Town Manager
- b. County, City, or Town Assistant Manager
- c. Finance Director
- d. Public Works Director

8.2 Tenure. Each Director shall hold office from the first meeting of the Board after appointment by the Member until his or her successor is selected by the Member.

8.3 Compensation. Directors shall receive no compensation from the SBWMA for serving on the Board. The SBWMA may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

8.4 Member Mergers. If any Member merges with another public entity, the successor public entity shall have one (1) Director position on the Board.

8.5 Chair. The Director from the City of San Carlos is the Chair of the Board and shall serve without compensation, except that if the City of San Carlos withdraws from the SBWMA, the Board shall select a Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who would serve without compensation at the pleasure of the Board. The duties of the Chair include, but are not limited to the following:

- a. Administers any and all meeting agendas, including compliance with noticing requirements and meeting locations, as provided under California Government Code §54950-54962 (Brown Act).
- b. Conducts Board meetings.
- c. Causes accurate minutes and records to be taken of all meetings, in accordance with California law, including but not limited to California Government Code §54957.2 et seq.

- d. Decides issues of tie votes.
- e. Supervises any and all SBWMA employees.
- f. Manages any and all SBWMA contracts or agreements, including but not limited to, the Facilities operating agreement.
- g. Approves any and all SBWMA payments in conformance with Board approved appropriations.
- h. Signs any and all SBWMA official documents.

8.6 Vice Chair. The Board shall select a Vice Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who serves without compensation at the pleasure of the Board. The Vice Chair shall act in the absence of the Chair, with full powers of the Chair.

8.7 Finance Director. The Board shall select, by a vote taken in accordance with Section 10.8 of this Agreement, a Finance Director from one of the Members to be Finance Director for the SBWMA, who serves without compensation at the pleasure of the Board. The duties of the Finance Director include, but are not limited to the following, all in accordance with prudent financial management and California law, including but not limited to California Government Code §6505 et seq.:

- a. Reports to the Chair on any and all SBWMA financial matters.
- b. Serves as the SBWMA's treasurer and controller.
- c. Receives and accounts for any and all SBWMA revenues.
- d. Makes any and all SBWMA investments using sound and prudent investment practices.
- e. Disburses and accounts for any and all SBWMA funds.
- f. Issues or causes to be issued all Revenue Bond payments, according to the payment schedule as part of the Revenue Bonds.
- g. Maintains any and all reserves, as may be required by the Revenue Bonds or any other instruments.
- h. Prepares, within one hundred twenty (120) days after the close of each Fiscal Year, an annual financial report reflecting SBWMA financial activity, including activity associated with the operations of the Facilities, whether such operation is performed by the SBWMA directly or is contracted.
- i. Prepares other financial statements and reports for the SBWMA, as needed.
- j. Causes the annual financial report to be audited by an independent Certified

Public Accountant (CPA) currently licensed to practice in the State of California.

- k. Presents the audit report, including the associated management letter, to the Board at the first scheduled Board meeting subsequent to the release of the audit report.

8.8 Other Officers. The Board may create or eliminate other officers not specifically mentioned in Sections 8.5–8.7 of this Agreement from time to time, as the Board deems necessary, upon majority vote. Such officers shall serve without compensation.

8.9 Employee Status. None of the officers, agents, or employees employed or hired by the SBWMA shall by reason thereof become officers, agents, or employees of any Member. The SBWMA may contract with any Member for any services, upon a vote in accordance with Section 10.8 of this Agreement; however, none of the Persons whose services are supplied by a Member shall by reason thereof become an employee of the SBWMA.

ARTICLE 9. VACANCIES

9.1 Director Vacancies. Should a vacancy occur on the Board due to the separation from service by a Director from a Member, the person who is acting in the capacity of the former Director with the Member shall temporarily assume the duties of the former Director until such time as the Member appoints a permanent Director. Such temporary Director shall have the full powers and authority of a permanent Director.

9.2 Officer Vacancies. Should a vacancy occur among any officer authorized in Article 8 of this Agreement, the Board shall elect a new officer at its next scheduled Board meeting.

9.3 Director Absence. Should an appointed Director be absent from a meeting he/she may send a representative to act in her/his place, with all the powers, etc. of the appointed Director.

ARTICLE 10. MEETINGS

10.1 Regular Meetings. The Board shall schedule by Resolution at least two (2) regular meetings each Fiscal Year.

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

10.3 Notice of Meetings. All meetings of the Board shall be held subject to the provisions of California Government Code §54950-54962 (Brown Act) and other applicable laws of the State of California.

10.4 Meeting Location. All meetings of the Board must be held within the Service Area at a location determined by the Chair, except that the Board may hold a special meeting outside the Service Area upon an affirmative vote in accordance with Section 10.8 of this Agreement.

10.5 Minutes. The Chair shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Chair shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

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

10.7 Voting Rights. Each Member is entitled to cast one vote on any matter presented to the Board for a vote.

10.8 Voting Requirement. The vote of two thirds (2/3) of the Directors present shall constitute the act of the Board, unless otherwise provided in this Agreement.

10.9 Conduct of Meetings. Meetings of the Board shall be conducted by the Chair, or in the Chair's absence by the Vice Chair. In the absence of both the Chair and the Vice Chair, meetings shall be conducting by the Director in attendance who represents the largest Member, by population.

ARTICLE 11. BYLAWS

11.1 Bylaws. The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out the SBWMA's purpose.

ARTICLE 12. FUNDING

12.1 Debts and Liabilities. The SBWMA's debts, liabilities, and obligations shall not be debts, liabilities, or obligations of any of the Members, and each Member's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the Members hereto may agree.

12.2 SBWMA Activities. Unless otherwise authorized by the Board, all costs associated with SBWMA activities shall be paid by the Facilities' users. The SBWMA shall be solely responsible for determining the amount of any charge to recover these pass-through costs. The Members hereby agree to pass any such charge as approved by the SBWMA, to users as part of the Solid Waste, Recyclable Material and Plant Material and Transfer and Transport and Processing rate, without reduction, limitation, offset, or adjustment of any kind.

12.3 SBWMA Records and Accounts. The Finance Director shall maintain accurate and correct books of account showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers for SBWMA financial transactions.

12.4 Facilities Records and Accounts. The Finance Director shall maintain or cause to be maintained accurate and correct books of account of the Facilities' operations showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers.

12.5 Revenue Bond Payments. The revenue stream pledged to the Revenue Bonds may in no way be used for any purpose other than to make payment on the indebtedness associated with those bonds. Such revenues are not in any way considered revenues to the Agencies, and may not be used for any other purpose unless and until such Revenue Bonds are defeased or repaid in full.

12.6 Franchise Fee Payments. Monthly, SBWMA shall distribute to the City of San Carlos, from funds received from Contractor, one twelfth (1/12th) of the annual franchise fee agreed to by the SBWMA and the City of San Carlos for the operation of the Facilities.

12.7 Priority of Distribution of Funds Received by SBWMA. Monthly, the SBWMA shall receive funds from the Contractor of the Facilities under Section 6.04 of the Agreement for the Operation of the South Bayside Waste Management Authority's Transfer Station and Recyclery. The SBWMA shall distribute the funds received in accordance with the following priority:

- a. Debt Service Payments.
- b. Contributions to Reserves.
- c. Management Costs.
- d. Payment of Franchise Fees to the City of San Carlos.

ARTICLE 13. SBWMA ADMINISTRATION POWERS

13.1 Assertion of Authority. The Members shall not engage in any action that would duplicate, circumvent, by-pass, or supersede the SBWMA's powers, as expressed in this Agreement.

13.2 Facility Operator. The Members agree that the SBWMA shall have sole authority to operate or contract for the operation of the Facilities, and have sole authority to direct the delivery of all or a portion of each Member's Solid Waste, Recyclable Material, and Plant Material to the Facilities, except as provided in Exhibit D hereto. No Member shall take any action in any manner, inconsistent with the terms of this Agreement.

13.3 Operating Records. The SBWMA will cause the Facilities' Contractor to maintain accurate, timely, and complete records of operations at the Facilities, as necessary to comply with any CIWMA or other State requirements, or this Agreement.

13.4 Operations Reporting. The SBWMA shall cause the Facilities' Contractor to compile information and report on any of its Facilities operations, in accordance with the CIWMA and this Agreement.

13.5 Solid Waste Reporting. The SBWMA shall cause the Facilities' Contractor to

compile and report to the CIWMB and other State of California agencies data on Solid Waste accepted at the Facilities, all on behalf of the Members.

13.6 Require Compliance with Laws. The SBWMA shall require the Facilities Contractor to operate said Facilities in compliance with all Federal, State, and local laws, Environmental Laws, guidelines, and regulations, as may exist, or as may exist from time to time.

13.7 Bond Payment Review. The SBWMA shall at least annually review the Revenue Bond payment history and payment projections to the end of bond repayment.

13.8 Bond Management. The SBWMA shall periodically consider defeasing the Revenue Bonds and refinancing any existing debt to the economic benefit of the Members, as market conditions allow.

13.9 Bond Reserves. The SBWMA shall maintain at least the minimum reserve fund requirements specified in the Revenue Bond covenants.

13.10 Asset Reserves. The SBWMA shall establish and maintain an asset replacement reserve fund at a level at least adequate to finance appropriate and ordinary asset replacement at the Facilities.

13.11 Annual Inspection. At least annually, the SBWMA shall inspect or cause to be inspected by a qualified and licensed civil engineer all of its Facilities, including all property, land, equipment, and other items owned by the SBWMA.

13.12 Attributing Solid Waste. The SBWMA shall establish a fair and equitable method of attributing Solid Waste, Recyclable Materials and Plant Materials to the Members that are delivered to the Facilities.

13.13 Miscellaneous. The SBWMA may operate programs, conduct analyses, and perform studies from time to time, all in support of the purposes under this Agreement, as the Board so approves.

13.14 Member Cooperation. Members agree to cooperate in the accumulation of information supporting goals approved by the Board, as provided in this Agreement.

ARTICLE 14. PENALTIES

14.1 Apportionment of Penalties. Any penalties assessed by regulatory authorities against the SBWMA shall be paid by the SBWMA.

ARTICLE 15. WITHDRAWAL FROM SBWMA

15.1 Withdrawal Conditions. A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts,

obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.

- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

ARTICLE 16. TERMINATION

16.1 Termination Requirements. This Agreement may only be terminated by consent of all Equity Members, and upon full and complete liquidation of all liabilities, including, but not limited to, the Revenue Bonds. Upon the date of termination (hereinafter “Termination Date”), payment of any and all obligations and division of any and all assets of the SBWMA shall be conducted subject to the then-applicable requirements of the law (currently California Government Code §6511 et seq.), pursuant to the following:

- a. In the event of termination of the SBWMA where there is a successor public entity that will conduct all of the activities of the SBWMA and will assume all of its obligations, any and all SBWMA assets and liabilities remaining upon termination of the SBWMA shall be transferred to the successor public agency.
- b. If there is no successor public agency that would conduct the SBWMA’s activities, all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Member’s ratepayers’ total contribution during the Term of this Agreement. A reference to ratepayers’ contribution means payment of Collection fees under each jurisdiction’s respective Uniform Franchise Agreement.
- c. If there is a successor public agency that would conduct some of the SBWMA’s activities, then the Board shall allocate the SBWMA’s assets and liabilities between the successor public agency and the Members. In this case, the Members’ portion of the allocation shall be allocated based on Section 16.1(b).
- d. In the event the SBWMA is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Members or any successor shall be final.
- e. The obligations of the SBWMA terminate on the Termination Date, and each Member shall pay all amounts owed to the SBWMA prior to that date. In the event of default by a Member with regard to payment of amounts due, the

obligation to pay all sums due to the SBWMA shall survive and remain in full force after the Termination Date.

- f. By unanimous agreement of Equity Members, Equity Members may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 16.1.

ARTICLE 17. AMENDMENTS

17.1 Amendment Requirements. Subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity Members of the SBWMA.

17.2 Signature Requirements. Signatures shall not be required on any effective amendment by those Members, if any, whose Directors did not approve the amendment; however, such Members shall nonetheless be bound by the amendment as if it were approved by all Members.

ARTICLE 18. FILINGS

18.1 Filing with Secretary of State. The Chair shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and 53051.

ARTICLE 19. NOTICES

19.1 Notices to Agencies. All notices to the Agencies shall be deemed to have been given to the Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

19.2 Notices to SBWMA. All notices to the SBWMA shall be deemed to have been given to the SBWMA when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chair, Vice Chair, and Finance Director of the SBWMA during usual business hours at the principal office, or to the Person apparently in charge of that office.

ARTICLE 20. SUCCESSORS AND ASSIGNMENTS

20.1 Assignments. This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member. No Member may assign any right or obligation hereunder without the written consent of all other Members.

ARTICLE 21. SEVERABILITY

21.1 Severability. If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

ARTICLE 22. ARTICLE HEADINGS

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

THEREFORE THE AGENCIES LISTED IN EXHIBITS A AND B HERETO AND EXECUTING THIS AGREEMENT BY SIGNING EITHER AS AN EQUITY MEMBER IN EXHIBIT A OR NON EQUITY MEMBER IN EXHIBIT B HERBY ENTER INTO THIS AGREEMENT.

EXHIBIT A

EQUITY MEMBERS

TOWN OF ATHERTON

Donald F. Huluszky
BY:
TITLE: city manager

CITY OF BELMONT

Sherwin Williams
BY: Sherwin Williams
TITLE: Asst to the City Manager

CITY OF BURLINGAME

Rahn A. Becker
BY: Rahn A. Becker
TITLE: Assistant City Manager

CITY OF EAST PALO ALTO

Monica Hudson
BY: Monica Hudson
TITLE: city manager

CITY OF FOSTER CITY

Deborah E. G. Wilder
BY: Deborah E. G. Wilder
TITLE: Mayor

TOWN OF HILLSBOROUGH

Martha Dubon
BY: MARTHA DUBON
TITLE: ASST. TO THE CITY MANAGER

CITY OF MENLO PARK

Jawet M. Dolan
BY: JAWET M. DOLAN
TITLE: City Manager

CITY OF REDWOOD CITY

Bl Pm
BY:
TITLE: Finance Director

CITY OF SAN CARLOS

Michael P. Garvey
BY: MICHAEL P. GARVEY
TITLE: CITY MANAGER

CITY OF SAN MATEO

Archie E. Perry
BY: ARCHIE E. PERRY
TITLE: DIRECTOR OF PUBLIC WORKS

WEST BAY SANITARY DISTRICT

Smithy Dwyer
BY:
TITLE: Acting District Manager

COUNTY OF SAN MATEO

Nancy Griffin
BY:
TITLE: President, Board of Supervisors

EXHIBIT B

NON EQUITY MEMBERS

TOWN OF ATHERTON

BY:
TITLE:

CITY OF BURLINGAME

BY:
TITLE:

CITY OF FOSTER CITY

BY:
TITLE:

CITY OF MENLO PARK

BY:
TITLE:

CITY OF SAN CARLOS

BY:
TITLE:

WEST BAY SANITARY DISTRICT

BY:
TITLE:

CITY OF BELMONT

BY:
TITLE:

CITY OF EAST PALO ALTO

BY:
TITLE:

TOWN OF HILLSBOROUGH

BY:
TITLE:

CITY OF REDWOOD CITY

BY:
TITLE:

CITY OF SAN MATEO

BY:
TITLE:

COUNTY OF SAN MATEO

BY:
TITLE:

EXHIBIT C

DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below in this Exhibit C.

Act

“Act” means the California Joint Exercise of Powers Act (California Government Code Section 6500 et. seq.).

Agency/Agencies

“Agency/Agencies” means the public entities which are or have been Members of the SBTSA and/or the SBWMA.

Agreement

“Agreement” means this joint exercise of powers agreement, as it may be amended from time to time.

Board

“Board” means the governing Board of Directors of the SBWMA, comprising one Director from each of the Members, as described in Article 8 of this Agreement.

Chair

“Chair” means the SBWMA Chair of the Board, as described in Section 8.5 of this Agreement.

CIWMA

“CIWMA” means the California Integrated Waste Management Act of 1989 (California Public Resources Code, §40000 et seq.), and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

CIWMB

“CIWMB” means the California Integrated Waste Management Board, created under the provisions of the CIWMA, whose duties include implementing the CIWMA.

Collect/Collection

“Collect/Collection” means to take physical possession, transport and remove Solid Waste, Recyclable Materials and Plant Materials within and from the Service Area.

Collector

“Collector” means a private organization which holds a franchise from an Agency for Solid Waste Collection.

Contractor

“Contractor” shall mean the entity the SBWMA contracts with to operate the Facilities.

County

“County” means the County of San Mateo, California.

Director

“Director” means the appointed representative from each Member who serves on the governing Board of Directors.

Disposal

“Disposal” means the ultimate disposition of Solid Waste received by Collector at a landfill in Full Regulatory Compliance.

Diversion

“Diversion” means the separation of materials from the overall Solid Waste stream and whose disposition is for reuse or Recycling and not landfill disposal.

Effective Date

“Effective Date” means the effective date of this Agreement, which is December 9, 1999, as provided in Section 4.1.

Environmental Laws

“Environmental Laws” means all federal and state statutes; and all county, local, and Agency ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the

California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000 et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

Facility/Facilities

“Facility/Facilities” means any plant or site, existing or planned, owned or leased, and constructed, maintained, operated, or used for purposes of performing under this Agreement. As of the Effective Date, the Facilities are: the San Carlos Transfer Station and the San Mateo Recyclery, located at 225, 229, and 333 Shoreway Road, in San Carlos, California.

Fiscal Year

“Fiscal Year” means the period commencing on each October 1 and ending on the following September 30.

Founding Member

“Founding Member” means any one of the public entities listed in Exhibit A and B attached hereto.

Franchise

“Franchise” means the special right granted by the Agencies to operate a public utility for Solid Waste Collection and Processing services within the Service Area.

Full Regulatory Compliance

“Full Regulatory Compliance” means compliance with all applicable permits for a Facility such that the Contractor will at all times maintain the ability to fully comply with its obligations under this Agreement.

Legislation

“Legislation” means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

Member

“Member” means any one of the public entities listed in Exhibit A (Equity Members) or Exhibit B (Non Equity Members) attached hereto, and any public entity that becomes a New Member in accordance with Section 6.3 of this Agreement.

Person

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

Plant Materials

“Plant Materials” means a subset of Recyclable Materials consisting of grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six [6] inches in diameter), and similar organic materials generated at residential commercial, industrial and institutional properties within the Service Area, separated and set out for Collection, processing, and Recycling. Plant Materials does not include materials not normally produced from gardens or landscapes, such as, but not limited to, palm fronds, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes and oil. Diseased plants and trees are also excluded from Plant Materials.

Process/Processing

“Process/Processing” means the Recycling, reuse, reformation, reconstituting, or otherwise manipulation of Solid Waste in preparation for its ultimate use or disposal.

Rate Year

“Rate Year” means the period commencing on January 1 and ending on the following December 31.

Recyclable Materials

“Recyclable Materials” means discarded materials that are re-used, re-manufactured or processed.

Recycling

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be re-used, re-manufactured or processed. The Collection, transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

Revenue Bonds

“Revenue Bonds” means those certain revenue bonds titled “South Bayside Waste Management Authority (San Mateo County, California) Solid Waste System Revenue Bonds, Series 2000,” and issued in the amount of \$20,090,000 on March 1, 2000.

SBWMA

“SBWMA” means the South Bayside Waste Management Authority, a joint powers authority created under Government Code §6500 et seq. by this Agreement.

SBTSA

“SBTSA” means the South Bayside Transfer Station Authority, a joint powers authority created in 1982.

Service Area

“Service Area” means the collective territory within, and, if applicable, outside the Member’s boundaries with respect to which the Member exercises franchising authority for the Collection of Solid Waste, Recyclable Materials, and Plant Materials which territory is shown on a map on file in the office of the Chair, to which reference is hereby made for the description of said area.

Solid Waste

“Solid Waste” means all putrescible and nonputrescible solid, semisolid, and liquid wastes, as defined in California Public Resources Code S40191, as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable Materials, or Plant Materials.

Term

“Term” means the period of time specified in Article 4 of this Agreement.

Transfer

“Transfer” means the process of transferring Solid Waste from collection vehicles to transfer vehicles.

Transport

“Transport” means the transportation of Solid Waste in either collection or transfer vehicles.

Uniform Franchise Agreement

“Uniform Franchise Agreement” means the franchise agreement negotiated by the SBWMA with BFI Waste Systems of North American, Inc. or its successor, for the Collection of Solid Waste, Recyclable Materials and Plant Materials in each Agency, as amended.

Exhibit D

Exceptions to the SBWMA power to direct Members' Solid Waste, Recyclable Materials and Plant Materials to the Facilities.

The following sections are excerpts from the Uniform Collection Agreement adopted by SBWMA member entities and details the exceptions to the SBWMA's power to direct Members' Solid Waste, Recyclable Materials and Plant Materials to the Facilities:

2.07 Scope of Franchise. Subject to Section 2.08, the Franchise granted to Contractor shall be exclusive for all Solid Waste, residential Recyclable Materials and residential Plant Materials generated in the Service Area, except where otherwise precluded by Federal, State and local laws and regulations or where other current programs provide for Collection and handling of Household Hazardous Waste.

2.08 Limitations to Scope. The Agreement for the Collection, transportation, processing, and Disposal of Solid Waste, residential Recyclable Materials, and residential Plant Materials granted to Contractor shall be exclusive except as to the following materials listed in this Section. The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials and Plant Materials listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from Agency which is otherwise required by law:

- A. Other recyclers shall maintain the right to charge a fee, to Collect without a fee, to accept donated Recyclable Materials and to pay the service recipient for Recyclable Materials for the Collection of Source Separated Recyclable Materials and Plant Materials from commercial, industrial, multi-family and institutional generators located in the Service Area. For the purposes of this Agreement, Source Separated loads are loads that consist of less than 10% by weight or volume of Solid Waste, whichever is less. It will be the responsibility of Contractor to provide enforcement of this provision. If Contractor can document that other recyclers are servicing Collection Containers that contain less than 90% Source Separated Recyclable Materials or Plant Materials, it shall report the location and the name of the recycler to the Agency and the SBWMA, along with Contractor's evidence of the violation of the exclusiveness of this Agreement.
- B. Solid Waste, Recyclable Materials and Plant Materials, which are removed from any Premises by the Waste Generator, and which are transported personally by the Owner or occupant of such Premises (or by his or her employees or a contractor whose removal of the Solid Waste, Recyclable Materials and/or Plant Materials are incidental to the service being performed
- C. Recyclable Materials and Plant Materials which are Source Separated at any Premises by the Waste Generator and donated to youth, civic, or charitable organizations;

- D. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code;
- E. Plant Materials removed from a Premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service and for no additional or separate fee;
- F. Non-putrescible Waste from roll-off/debris boxes;
- G. Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- H. By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and,
- I. Hazardous Waste and Designated Waste regardless of its source.

This grant to Contractor of an exclusive right and privilege to Collect, transport, or process and dispose of Solid Waste, certain residential Recyclable Materials, and certain residential Plant Materials shall be interpreted to be consistent with state and federal laws, now and during the term of the Agreement, and the scope of this exclusive right shall be limited by applicable state and federal laws with regard to the matters contained in this Agreement.. In the event that future interpretations of current law or new laws, regulations, interpretations or trends limit the ability of Agency to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that Agency shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

2.09 Additional Services and Modifications to Service

2.09.1 General. Agency may direct Contractor to perform additional services (including new diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, targeted routing, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which Agency may direct. Contractor shall be entitled to an adjustment in its compensation in accordance with Article 6 for providing such additional or modified services.

2.09.2 New Diversion Programs. Contractor shall present, within 30 days of a request to do so by Agency, a proposal to provide additional or expanded diversion services. At a minimum, the proposal shall contain a complete description of the following:

- A. Collection methodology to be employed (equipment, manpower, etc.).
- B. Equipment to be utilized (vehicle number, types, capacity, age, etc.)
- C. Labor requirements (number of employees by classification).
- D. Type of materials containers to be utilized.
- E. Provision for program publicity/education/marketing.
- F. Estimate of the tonnage to be diverted and the methodology for determining that diverted tonnage.

G. Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

2.09.3 Agency's Right to Permit Others to Provide Services. Contractor acknowledges and agrees that Agency may permit other Persons besides Contractor to provide additional Solid Waste services not otherwise contemplated under Section 2.07 and 2.08 of this Agreement. If Contractor and Agency cannot agree on terms and conditions of such services in one hundred twenty (120) days from the date when Agency first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that Agency may permit Persons other than Contractor to provide such services.

**FIRST AMENDMENT
TO THE SOUTH BAYSIDE
WASTE MANAGEMENT AUTHORITY (SBWMA)
JOINT POWERS AGREEMENT**

This is the First Amendment to the SBWMA Joint Exercise of Powers Agreement which was effective December 9, 1999 (the Agreement).

Whereas, the Agreement provides for a fiscal year of October 1st through September 30th, which coincided with the fiscal year of the prior waste management JPA knows and the South Bayside Transfer Station Authority (SBTSA).

Whereas, the member entities desire to change the fiscal year dates for the SBWMA to a July 1st- June 30th cycle to be consistent with the member entities' fiscal years to facilitate both the auditing and budgeting process.

Therefore, it is agreed as follows:

1. The Agreement is amended to provide that the Fiscal Year, as defined in Exhibit C to the Agreement is modified to read as follows:

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

2. In all other respects the Agreement is reaffirmed.
3. This amendment shall be effective when approved and executed by two-thirds (2/3) of the twelve (12) member entities.

EXHIBIT A
EQUITY MEMBERS

Town of Atherton

By: _____
Title: _____
Date: _____

City of Belmont

By: _____
Title: _____
Date: _____

City of Burlingame

By: _____
Title: _____
Date: _____

City of East Palo Alto

By: _____
Title: _____
Date: _____

City of Foster City

By: _____
Title: _____
Date: _____

Town of Hillsborough

By: _____
Title: _____
Date: _____

City of Menlo Park

By: _____
Title: _____
Date: _____

City of Redwood City

By: _____
Title: _____
Date: _____

City of San Carlos

By: _____
Title: _____
Date: _____

City of San Mateo

By: _____
Title: _____
Date: _____

West Bay Sanitary District

By: _____
Title: _____
Date: _____

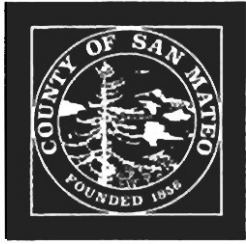
County of San Mateo

By: _____
Title: _____
Date: _____

SBWMA**JURISDICTIONS ACTION ON AMENDING JPA FOR FISCAL YEAR:
(need 8 to approve – 2/3)**

	City Council meeting	Action
Town of Atherton	May 15, 2002	Approved
City of Belmont		
City of Burlingame	June 3, 2002	
City of Foster City	June 17, 2002	
Town of Hillsborough	May 13, 2002	Approved
City of East Palo Alto	May 7, 2002	Approved
City of Menlo Park	<i>June 18</i>	
City of Redwood City		
City of San Carlos	May 13, 2002	Approved
City of San Mateo	June 3, 2002	
West Bay Sanitary District	May 20, 2002	Approved
County of San Mateo	<i>June 4</i>	

Department of Public Works



COUNTY OF SAN MATEO

555 COUNTY CENTER, 5TH FLOOR • REDWOOD CITY • CALIFORNIA 94063-1665 • PHONE (650) 363-4100 • FAX (650) 361-8220

BOARD OF SUPERVISORS

MARK CHURCH
RICHARD S. GORDON
JERRY HILL
ROSE JACOBS GIBSON
MICHAEL D. NEVIN

NEIL R. CULLEN
DIRECTOR

August 22, 2002

Ms. Lisa Costa-Sanders, Administrative Assistant
South Bayside Waste Management Authority
600 Elm Street
San Carlos, CA 94070

AUG 26 2002

Dear Lisa:

Re: Redefinition of the SBWMA's Fiscal Year

Enclosed for your records please find one copy of the resolution that the San Mateo County Board of Supervisors adopted on July 23, at the recommendation of the SBWMA, wherein the Board consents to changing the definition of "Fiscal Year" contained in the Joint Exercise of Powers Agreement of the SBWMA to the period commencing on each July 1 and ending on the following June 30.

Very truly yours,

Don Williams
Waste & Environmental Services Manager

Enclosure

cc: Brian Lee (via email)

065452

Resolution No. _____

Board of Supervisors, County of San Mateo, State of California

* * * * *

Resolution Consenting to Redefining the Beginning and End of the South Bayside Waste Management Authority's Fiscal Year

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the Joint Exercise of Powers Agreement (JPA) for the South Bayside Waste Management Authority (SBWMA), a joint powers authority of which the County of San Mateo is a member jurisdiction, was entered into on December 9, 1999; and

WHEREAS, the SBWMA staff has recommended that member jurisdictions of the SBWMA amend the JPA to change the definition of "Fiscal Year" from "the period commencing on each October 1 and ending on the following September 30" to "the period commencing on each July 1 and ending on the following June 30."; and

WHEREAS, this Board has considered the recommendation of the SBWMA staff.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that this Board of Supervisors consents to changing the definition of "Fiscal Year" contained in the Joint Exercise of Powers Agreement of the SBWMA to "the period commencing on each July 1 and ending on the following June 30."

* * * * *

Handwritten mark

RESOLUTION NO. 2002- 49

**RESOLUTION OF THE CITY OF SAN CARLOS
AUTHORIZING AMENDMENT TO SOUTH BAYSIDE WASTE MANAGEMENT
AUTHORITY (SBWMA) JOINT POWERS AGREEMENT TO CHANGE FISCAL YEAR
COMMENCEMENT DATE**

WHEREAS, the Joint Exercise of Powers Agreement (JPA) for the South Bayside Waste Management Authority (SBWMA) was entered into on December 9, 1999; and

WHEREAS, the SBWMA recommends jurisdictions amend the JPA to change the definition of "Fiscal Year"; and

WHEREAS, the SBWMA recommends the definition of "Fiscal Year" be changed from "the period commencing on each October 1 and ending on the following September 30" to "the period commencing on each July 1 and ending on the following June 30".

NOW, THEREFORE, BE IT RESOLVED that the San Carlos City Council agrees to amend the JPA and change the definition of "Fiscal Year" to "the period commencing on each July 1 and ending on the following June 30" in the SBWMA JPA .

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Carlos at a regular meeting thereof held on the 13th day of May, 2002, by the following vote:

AYES, COUNCILMEMBERS: KING, DOHERTY, GROCOTT, DAVIDS, EATON

NOES, COUNCILMEMBERS: NONE

ABSENT, COUNCILMEMBERS: NONE


Christine D. Boland, CITY CLERK

APPROVED: 
Donald M. Eaton, MAYOR

WEST BAY SANITARY DISTRICT

RESOLUTION NO. 1486 (2002)

MAY 24 2002

Resolution Amending the Joint Exercise of Powers Agreement for the South Bayside Waste Management Authority

The District Board of West Bay Sanitary District finds and determines as follows:

WHEREAS, the Joint Exercise of Powers Agreement (JPA) for the South Bayside Waste Management (SBWMA) was entered into on December 9, 1999; and

WHEREAS, the SBWMA recommends jurisdictions amend the JPA to change the definition of "Fiscal Year"; and

WHEREAS, the SBWMA recommends the definition of "Fiscal Year" be changed from "the period commencing on each October 1 and ending on the following September 30" to "the period commencing on each July 1 and ending on the following June 30"; and

NOW, THEREFORE, BE IT RESOLVED that the District Board of the West Bay Sanitary District agrees to amend the JPA and change the definition of "Fiscal Year" to "the period commencing on each July 1 and ending on the following June 30" in the SBWMA JPA.

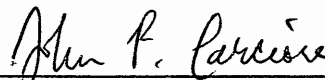
Passed and adopted by the District Board of the West Bay Sanitary District at a Special Meeting thereof held on the 20th day of May, 2002, by the following vote:

Ayes: CARCIONE, WALKER, SHEPHERD, KNIGHT, LOMAX

Noes: NONE

Abstain: NONE

Absent: NONE



President of the District Board of the
West Bay Sanitary District of San Mateo
County, State of California

Attest:



Secretary of the District Board of the
West Bay Sanitary District of San Mateo
County, State of California

RESOLUTION NO. 2002-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY
AMENDING THE JOINT EXERCISE OF POWERS AGREEMENT FOR THE SOUTH
BAYSIDE WASTE MANAGEMENT AUTHORITY

CITY OF FOSTER CITY

WHEREAS, the Joint Exercise of Powers Agreement (JPA) for the South Bayside Waste Management Authority (SBWMA) was entered into on December 9, 1999; and

WHEREAS, the SBWMA recommends jurisdictions amend the JPA to change the definition of "Fiscal Year"; and

WHEREAS, the SBWMA recommends the definition of "Fiscal Year" be changed from "the period commencing on each October 1 and ending on the following September 30" to "the period commencing on each July 1 and ending on the following June 30"; and

NOW, THEREFORE, BE IT RESOLVED that the Foster City Council agrees to amend the JPA and change the definition of "Fiscal Year" to "the period commencing on each July 1 and ending on the following June 30" in the SBWMA JPA.

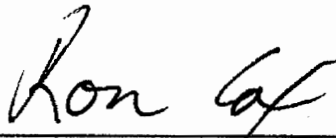
PASSED AND ADOPTED as a Resolution of the City Council of the City of Foster City at the Regular Meeting held on the 17th day of June, 2002, by the following vote:

AYES: Councilmembers Harter, Townsend, Wilder, Wykoff, and Mayor Cox

NOES: None

ABSENT: None

ABSTAIN: None



RON COX, MAYOR

ATTEST:



THERESE L. TAHIR, CITY CLERK
BY DORIS L. PALMER, DEPUTY CITY CLERK

07/01/02

COPY

RESOLUTION NO. 14452

RESOLUTION OF THE CITY OF REDWOOD CITY AMENDING THE JOINT EXERCISE OF POWERS AGREEMENT FOR THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

WHEREAS, the Joint Exercise of Powers Agreement (JPA) for the South Bayside Waste Management Authority (SBWMA) was entered into on December 9, 1999; and

WHEREAS, the SBWMA recommends jurisdictions amend the JPA to change the definition of "Fiscal Year"; and

WHEREAS, the SBWMA recommends the definition of "Fiscal Year" be changed from "the period commencing on each October 1 and ending on the following September 30" to "the period commencing each July 1 and ending on the following June 30."

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF REDWOOD CITY, AS FOLLOWS:

1. That the City Council of Redwood City agrees to amend the JPA and change the definition of "Fiscal Year" to "the period commencing on each July 1 and ending on the following June 30" in the SBWMA JPA.

* * *

Passed and adopted by the Council of the City of Redwood City at a Regular

Meeting thereof held on the 1st day of July, 2002 by the following votes:

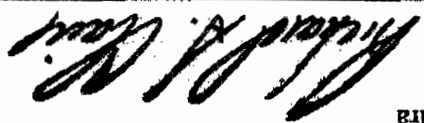
AYES, and in favor of the passage and adoption of the foregoing resolution,

Council members: Hartnett, Jordan, Pierce, and Ruskin

NOES: None

ABSTAIN: None

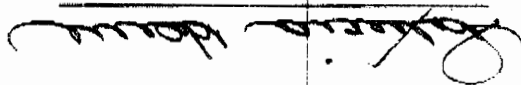
ABSENT: Claire, Howard, Ira



RICHARD S. CLAIRE

Mayor of the City of Redwood City

Attest:

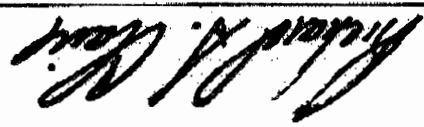


Patricia Howe

City Clerk of Redwood City

I hereby approve the foregoing

resolution this 3rd day of July, 2002.



RICHARD S. CLAIRE

Mayor of the City of Redwood City



2201 Walnut Avenue, Suite 280
Fremont, California 94538-2334
Telephone: 510/713-3270
Fax: 510/713-3294
www.hfh-consultants.com

Fremont
Newport Beach
Sacramento

Memorandum

Date: May 28, 1998

To: Mike Garvey
Bob Lanzone, Esq.
William Euphrat
Bob Feyer, Esq.
Ed Schilling

Fm: Bob Hilton

Subj.: Preliminary Draft JPA Agreements

Hilton Farnkopf & Hobson, LLC was asked by the South Bayside Transfer Station Authority to prepare two preliminary draft joint powers agreements. These are for a joint powers authority which will own the Solid Waste Facilities (the South Bayside Transfer Station Authority) and a joint powers authority that will direct its waste to the Solid Waste Facilities but will not be an owner (the South Bayside Solid Waste Authority). I have summarized the agreements below and attached each of the agreements to this memorandum.

Summary of South Bayside Transfer Station Authority Agreement

Purpose: To provide for the joint financing, ownership administration and operation of the Solid Waste Facilities.

Term: December 1998 to at least 2018. After this date, termination upon vote of the members.

Membership: Founding members. New members upon vote of 2/3 of members.

Membership Requirement: Authority to Grant Solid Waste Franchise and a Member of the SBSWA.

Withdrawal from Membership: Not permitted before liquidation of obligations (including revenue bonds), 120 notice prior to end of year, unanimous vote.

Powers of SBTSA: Broad powers are provided but not required to be performed.

Governance: Board of Directors comprised of Manager, Asst. Manager, Finance Director, Public Works Director.
Chair: City Manager of San Carlos
Vice Chair: By Vote
Finance Director: By Vote

Meetings: Minimum of twice annually.

Bylaws: Adopted by Board.

Funding: Operating Costs - a surcharge on facilities rates.
Capital Costs - Revenue Stream from facilitates rates.

Summary of South Bayside Solid Waste Authority Agreement

Purpose: To provide for the joint planning, adoption, financing, administration, management, review, monitoring, enforcement and reporting of solid waste activities.

Term: December. 1998 to at least 2018. After this date, termination upon vote of the members.

Membership: Founding members. New members upon vote of 2/3 of members.

Membership Requirement: Authority to Grant Solid Waste Franchise and a Member of the SBSWA.

Withdrawal from	Not permitted before liquidation of obligations, 120 day
Membership:	notice, prior to end of year, unanimous vote.
Powers of SBSWA:	Broad powers are provided but not required to be performed.
Governance:	Board of Directors comprised of Manager, Asst. Manager, Finance Director, Public Works Director. Chair: City Manager of San Carlos Vice Chair: By Vote Finance Director: By Vote
Meetings:	Minimum of four annually.
Bylaws:	Adopted by Board.
Funding:	Operating Costs - a surcharge on collection rates.

These documents are obviously important and they will be central to the financing of the Solid Waste Facilities. Therefore, it is very important that we incorporate your comments before distributing it to the SBTSA Members. I would appreciate receiving your comments by June 12, if possible. Please call me if you require a few extra days.

(By the way, I've received comments on the previous agreements I distributed from Bill Euphrat and Bob Lanzone (on the Purchase Agreement). Bob Feyer expects to get me comments next week. I have not heard from Ed Schilling. I would appreciate receiving the remaining comments by June 5. If this is not possible, please call me.)



500 Laurel Street, Menlo Park, California 94025-3486 (650) 321-0384 (650) 321-4265 FAX

CARL F. SCHRADER, P.E.
District Manager

In reply, please refer to our
File No. 1390.3

Hand-Delivered

October 29, 1999

Ms. Lisa Costa-Sanders
City of San Carlos
600 Elm Street
San Carlos, CA 94070

RE: Joint Powers Authority Agreement

Dear Lisa:

At the regular meeting of October 25, 1999, the District Board of West Bay Sanitary District adopted a resolution approving the Joint Powers Agreement for the South Bayside Waste Management Authority as an Equity Member.

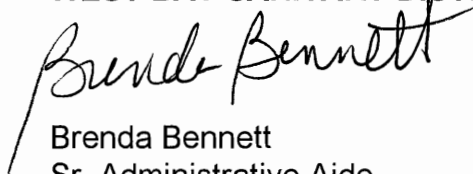
The Agreement with original signature of David Knight, President, is enclosed.

Please forward us a copy of the final Agreement.

Thank you.

Very truly yours,

WEST BAY SANITARY DISTRICT


Brenda Bennett
Sr. Administrative Aide

cc: CFS

Encls: (1)

I hereby certify the attached to be a true and correct copy of Resolution No. 1370 (99)
"Resolution of the District Board of the West Bay Sanitary District Approving Joint Powers
Agreement for the South Bayside Waste Management Authority," adopted by the District
Board of the West Bay Sanitary District at a Regular Meeting held on the 25th day of October,
1999.

A handwritten signature in black ink, appearing to read "Carl F. Schrader", written over a horizontal line.

Carl F. Schrader
Deputy Secretary of the
West Bay Sanitary District

WEST BAY SANITARY DISTRICT

RESOLUTION NO. 1370 (99)

RESOLUTION OF THE DISTRICT BOARD OF THE WEST BAY SANITARY DISTRICT APPROVING JOINT POWERS AGREEMENT FOR THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

WHEREAS, the West Bay Sanitary District (the District) is a member of the South Bayside Transfer Station Authority (SBTSA), a joint powers authority created by a joint exercise of powers agreement under California Government Code §§ 6500 et seq. in 1982, and

WHEREAS, the SBTSA has heretofore exercised regulatory authority for its members with respect to the San Carlos Transfer Station and the San Mateo Recyclery located at 225, 229 & 333 Shoreway Rd., in San Carlos, California (the Facilities), and

WHEREAS, the SBTSA has also exercised regulatory authority for its members with respect to the collection and disposal of solid waste and recyclable material by private collectors, and

WHEREAS, the SBTSA has option to acquire the Facilities from BFI Waste Systems of North America, Inc. (BFI) and an agreement for acquisition of the Facilities has been negotiated, and

WHEREAS, it has been determined by the SBTSA members that a new joint exercise of powers agreement should be entered into in establishing a new joint powers authority (JPA) by those members who desire to obtain financing and operate the Facilities, and also to continue to regulate collection of solid waste, recyclable material and plant material as those are defined in the new JPA agreement, and

WHEREAS, pursuant to California Government Code §§ 6500 et. seq. a new JPA is to be established with the name of the South Bayside Waste Management

Authority (SBWMA), pursuant to a joint exercise of powers agreement under California Government Code §§ 6500 et seq., (the JPA Agreement), a copy of which agreement is attached hereto as Exhibit A.

WHEREAS, the District Board determines that it is in the best interests of the health, safety, and welfare of the District to enter into the JPA Agreement to establish the SBWMA.

NOW, THEREFORE, BE IT RESOLVED that: the District Board of the West Bay Sanitary District approves the Joint Powers Agreement for the South Bayside Waste Management Authority.

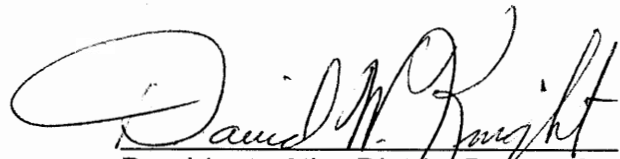
PASSED AND ADOPTED by the District Board of West Bay Sanitary District at a regular meeting thereof held on the 25th day of October 1999, by the following vote:

AYES: HALBO, HARRISON, AND KNIGHT

NOES: CARCIONE AND VAN CREVELD

ABSENT: NONE

ABSTAIN: NONE



President of the District Board of
the West Bay Sanitary District, San
Mateo County, State of
California

Attest:



Secretary of the District Board of
the West Bay Sanitary District,
San Mateo County, State of
California



RECEIVED
DEC 1 1999
SAN CARLOS
PLANNING DEPT.

November 29, 1999

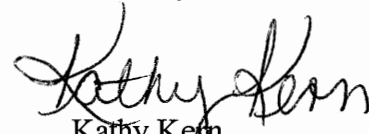
Ms. Lisa Costa Sanders
City of San Carlos
600 Elm Street
San Carlos, CA 94070

Dear Ms. Sanders:

Enclosed please find a copy of Resolution No. 8648 approving the Joint Powers Agreement for the South Bayside Waste Management Authority. I have enclosed an executed copy of Exhibit A. Please forward a fully executed copy of Exhibit A and Exhibit B at your earliest convenience.

Also enclosed is a copy of Resolution No. 8651 approving the Franchise Agreement with BFI Waste Systems of North America, Inc. for solid waste, recyclable materials and plant materials collection services. Please return a fully executed copy of the signature page.

Sincerely,


Kathy Kern
Belmont City Clerk

sh
cc: Sherwin Williams

RESOLUTION NO. 8648**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BELMONT APPROVING JOINT POWERS AGREEMENT
FOR THE SOUTH BAYSIDE WASTE MANAGEMENT
AUTHORITY**

WHEREAS, the City of Belmont is a member of the South Bayside Transfer Station Authority (SBTSA), a joint powers authority created by a joint exercise of powers agreement under California Government Code §§ 6500 et seq. in 1982, and

WHEREAS, the SBTSA has heretofore exercised regulatory authority for its members with respect to the San Carlos Transfer Station and the San Mateo Recyclery located at 225, 229 & 333 Shoreway Rd., in San Carlos, California (the Facilities), and

WHEREAS, the SBTSA has also exercised regulatory authority for its members with respect to the collection and disposal of solid waste and recyclable material by private collectors, and

WHEREAS, the SBTSA has an option to acquire the Facilities from BFI Waste Systems of North America, Inc. (BFI) and an agreement for acquisition of the Facilities has been negotiated, and

WHEREAS, it has been determined by the SBTSA members that a new joint exercise of powers agreement should be entered into in establishing a new joint powers authority (JPA) by those members who desire to obtain financing and operate the Facilities, and also to continue to regulate collection of solid waste, recyclable material and plant material as those are defined in the new JPA agreement, and

WHEREAS, pursuant to California Government Code §§ 6500 et. seq. a new JPA is to be established with the name of the South Bayside Waste Management Authority (SBWMA), pursuant to a joint exercise of powers agreement under California Government Code §§ 6500 et seq., (the JPA Agreement), a copy of which agreement is attached hereto as Exhibit A.

WHEREAS, the City Council determines that it is in the best interests of the health, safety, and welfare of the City of Belmont to enter into the JPA Agreement to establish the SBWMA.

NOW, THEREFORE, BE IT RESOLVED that: the City Council of the City of Belmont approves the Joint Powers Agreement for the South Bayside Waste Management Authority.

EXHIBIT A
EQUITY MEMBERS

TOWN OF ATHERTON

BY:
TITLE:

CITY OF BURLINGAME

BY:
TITLE:

CITY OF FOSTER CITY

BY:
TITLE:

CITY OF MENLO PARK

BY:
TITLE:

CITY OF SAN CARLOS

BY:
TITLE:

WEST BAY SANITARY DISTRICT

BY:
TITLE:

CITY OF BELMONT

Susan Westman
BY: Susan Westman
TITLE: City Manager

CITY OF EAST PALO ALTO

BY:
TITLE:

TOWN OF HILLSBOROUGH

BY:
TITLE:

CITY OF REDWOOD CITY

BY:
TITLE:

CITY OF SAN MATEO

BY:
TITLE:

ARTICLE 19. NOTICES

19.1 Notices to Agencies. All notices to the Agencies shall be deemed to have been given to the Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

19.2 Notices to SBWMA. All notices to the SBWMA shall be deemed to have been given to the SBWMA when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chair, Vice Chair, and Finance Director of the SBWMA during usual business hours at the principal office, or to the Person apparently in charge of that office.

ARTICLE 20. SUCCESSORS AND ASSIGNMENTS

20.1 Assignments. This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member. No Member may assign any right or obligation hereunder without the written consent of all other Members.

ARTICLE 21. SEVERABILITY

21.1 Severability. If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

ARTICLE 22. ARTICLE HEADINGS

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

RESOLUTION NO. 8651**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING THE FRANCHISE AGREEMENT WITH BFI WASTE SYSTEMS OF NORTH AMERICA, INC. FOR SOLID WASTE, RECYCLABLE MATERIALS AND PLANT MATERIALS COLLECTION SERVICES**

WHEREAS, the City of Belmont has heretofore had franchise agreements with BFI Systems of North America, Inc. (BFI) for the collection of solid waste, recyclable material and plant materials as defined in those agreements, including a Uniform Franchise Agreement dated September 25, 1987, and

WHEREAS, attached as Exhibit A hereto is a new agreement with BFI entitled "Agreement For Refuse, Recycling and Plant Material Collection Services," (the Franchise Agreement), and

WHEREAS, the Franchise Agreement contains terms and conditions for evaluation of the performance of BFI, including rate comparability, customer satisfaction, and implementation of new and expanded diversion programs, and

WHEREAS, the term of the Franchise Agreement is for an initial period of six years from January 1, 2000 to December 31, 2006 and is only extended on condition of the City's affirmative evaluation of BFI's performance under the Franchise Agreement, and

WHEREAS, the Franchise Agreement shall only go into effect and supersede the City's existing Uniform Franchise Agreement and related recycling agreement and solid waste agreement in the event the South Bayside Waste Management Authority (SBWMA), an entity created by joint exercise of powers agreement pursuant to California Government Code §§ 6500 et. seq., successfully acquires the San Carlos Transfer Station and San Mateo Recyclery properties owned by BFI, on or before January 1, 2000.

WHEREAS, the City Council determines that the Franchise Agreement is in the best interest of the health, safety and welfare of the City of Belmont.

NOW, THEREFORE, BE IT RESOLVED that: the City Council of the City of Belmont hereby 1) exercises its options under the Uniform Franchise Agreement to terminate the same agreement, and 2) approves the Franchise Agreement (Exhibit A hereto) and authorizes the City Manager to execute the same with all action taken herein to be effective only on close of escrow by the South Bayside Waste Management Authority for acquisition of the real property and personal property known as the San Carlos Transfer Station and San Mateo Recyclery under that agreement entitled, "Agreement for The Sale And Purchase of Real Property And Personal Property Between South Bayside Transfer Station Authority and BFI of North America, Inc. In Respect To The San Carlos Transfer Station And San Mateo Recyclery And Joint Escrow Instructions.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on November 9, 1999 by the following vote:

AYES, COUNCILMEMBERS: Della Santina, Cook, Hahn, Rianda, Feierbach

NOES, COUNCILMEMBERS: None

ABSTAIN, COUNCILMEMBERS: None

ABSENT, COUNCILMEMBERS: None

Kathy Kern
CLERK of the City of Belmont

APPROVED:

Arlo Francis
MAYOR of the City of Belmont

1 such provision shall not affect any of the remaining provisions of this Agreement which
2 shall be enforced as if such invalid or unenforceable provision had not been contained
3 herein.

4
5 **14.07 Exhibits.** Each of Exhibits identified as Exhibit "A" through "N" is
6 attached hereto and incorporated herein and made a part hereof by this reference.
7

8 **14.08 Attorneys' Fees.** The prevailing party in any action brought to enforce the
9 terms of this Agreement or arising out of this Agreement may recover its reasonable
10 costs and attorneys' fees expended in connection with such an action from the other
11 party.
12

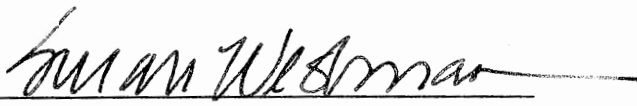
13 **14.09 Compilation of Information for State Law Purposes.** Contractor shall
14 compile information on amounts of Solid Waste delivered to the Facilities and other
15 information, which the Agency may reasonably request.
16

17 **14.10 Definitions.** Capitalized terms used in this Agreement without definition
18 have the meanings specified in Exhibit A, unless the context clearly requires otherwise.
19

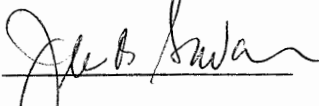
20 **14.11 Counterparts.** This Agreement may be executed in counterparts, each of
21 which shall be deemed to be an original.
22

23 IN WITNESS WHEREOF, Agency and Contractor have executed this Agreement as of
24 the day and year first above written.
25

26
27 ATTEST: _____
28 Secretary
29

30
31 By 
32 Agency Manager
33
34
35
36

37 APPROVED AS TO FORM: _____
38 ("CONTRACTOR")

39  By: _____
40 Agency Attorney Name:
41
42
43

1 unfavorable decision, ruling or finding, in any single case or in the aggregate, would
2 materially adversely affect the performance by Contractor of its obligations hereunder
3 or which, in any way, would adversely affect the validity or enforceability of this
4 Agreement or which would have a material adverse effect on the financial condition of
5 Contractor or any surety guaranteeing Contractor's performance under this Agreement,
6 which has not been waived by the SBWMA in writing.
7

8 **13.05 No Adverse Judicial Decisions.** To the best of Contractors knowledge,
9 after reasonable investigation, there is no judicial decision that effects the validity of this
10 Agreement and may subject this Agreement to legal challenge.
11

12 **13.06 Ability to Perform.** Contractor possesses the business, professional, and
13 technical expertise to manage, handle, treat, store and dispose of the Solid Waste, and
14 possesses the equipment, plant, and employee resources required to perform this
15 Agreement.
16

17
18 **ARTICLE 14**
19 **MISCELLANEOUS PROVISIONS**
20

21 **14.01 Entire Agreement.** This Agreement, including the Exhibits, represents the
22 full and entire Agreement between the parties with respect to the matters covered
23 herein.
24

25 **14.02 Section Headings.** The article headings and section headings in this
26 Agreement are for convenience of reference only and are not intended to be used in the
27 construction of this Agreement nor to alter or affect any of its provisions.
28

29 **14.03 References to Laws and Other Agreements.** All references in this
30 Agreement to laws shall be understood to include such laws as they may be
31 subsequently amended or recodified, unless otherwise specifically provided. This
32 Agreement supersedes any and all agreements heretofore entered into by the parties.
33

34 **14.04 Interpretation.** This Agreement, including the exhibits attached hereto,
35 shall be interpreted and construed reasonably and neither for nor against either party,
36 regardless of the degree to which either party participated in its drafting.
37

38 **14.05 Agreement.** This Agreement may not be modified or amended in any
39 respect except by a writing signed by the parties. Any conflict between the body of the
40 Agreement and the exhibits shall be resolved in favor of the Agreement.
41

42 **14.06 Severability.** If any non-material provision of this Agreement is for any
43 reason deemed to be invalid and unenforceable, the invalidity or unenforceability of

1 such provision shall not affect any of the remaining provisions of this Agreement which
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25

26
27 ATTEST: _____
28 Secretary

29
30
31 By *Susan Westman*
32 Agency Manager
33
34
35
36

37 APPROVED AS TO FORM: _____
38 ("CONTRACTOR")

39 *Jack Swar* By: _____
40 Agency Attorney Name:
41
42
43

1 unfavorable decision, ruling or finding, in any single case or in the aggregate, would
2 materially adversely affect the performance by Contractor of its obligations hereunder
3 or which, in any way, would adversely affect the validity or enforceability of this
4 Agreement or which would have a material adverse effect on the financial condition of
5 Contractor or any surety guaranteeing Contractor's performance under this Agreement,
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43 reason deemed to be invalid and unenforceable, the invalidity or unenforceability of

RESOLUTION NO. 5-2006

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLINGAME
APPROVING THE FIRST AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT FOR
THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA) AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AGREEMENT**

RESOLVED, by the City Council of the City of Burlingame:

WHEREAS, in Resolution No. 122-1999, the City Council approved the transformation of the South Bayside Transfer Station Authority (SBTSA) into the South Bayside Waste Management Authority (SBWMA) to own and operate the San Carlos Transfer Station; and

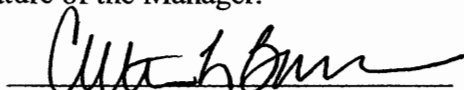
WHEREAS, the Joint Exercise of Powers Agreement (JPA) for the South Bayside Waste Management Authority (SBWMA) was entered into on December 9, 1999; and

WHEREAS, the member agencies duly amended the JPA on June 4, 2002 to change the definition of "Fiscal Year"; and

WHEREAS, the SBWMA Board recommends member agencies approve the First Amended and Restated Joint Exercise of Powers Agreement to: 1) Establish the position of Executive Director; 2) Include items that require member agency approval; 3) Clarify member agency staff positions for Board membership; and 4) Have the Board annually select the Chair,

NOW, THEREFORE, IT IS RESOLVED AND ORDERED:

1. The Amended and Restated Joint Exercise of Powers Agreement for the South Bayside Waste Management Authority as presented to the City Council on January 17, 2006, is approved.
2. The City Manager is authorized and directed to execute the Amended and Restated Agreement.
3. The Clerk is directed to attest to the signature of the Manager.


MAYOR

I, DORIS MORTENSEN, City Clerk of the City of Burlingame, do hereby certify that the foregoing resolution was introduced at a regular meeting of the City Council held on the 17th day of January, 2006, and was adopted thereafter by the following vote:

AYES: COUNCILMEMBERS: **BAYLOCK, COHEN, KEIGHRAN, NAGEL, O'MAHONY**
NOES: COUNCILMEMBERS: **NONE**
ABSENT: COUNCILMEMBERS: **NONE**


CITY CLERK