

MERCED COUNTY REGIONAL WASTE MANAGEMENT AUTHORITY
SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Second Amended and Restated Joint Powers Agreement is made this _____ day of _____, 2006, between the County of Merced, the City of Merced, the City of Los Banos, the City of Atwater, the City of Livingston, the City of Dos Palos, and the City of Gustine. This Agreement supersedes the original Joint Powers Agreement dated April 11, 1972, as amended and restated September 12, 1995, and thereafter amended May 16, 2000. Terms beginning with capital letters are defined in Exhibit A. The County and cities are collectively referred to as the Agencies. The Authority shall continue pursuant to the Act.

RECITALS

1. The Agencies are responsible for the health and safety of their citizens, and to that end regulate Solid Waste, Recyclable Material, and Plant Material Collection in areas under their jurisdiction and, except for the City of Merced which is a municipal collector, they award franchises for Collection to private organizations, all of which are referred to as Collectors.
2. The Agencies find it in their mutual economic interest to address Solid Waste and Recycling issues on a regional level so that the costs for planning and implementing Solid Waste and Recycling programs are based on a fair and equitable allocation system that considers all the relevant factors.
3. Each Agency has been a Member of the Merced County Solid Waste Policy Board and has enjoyed the benefits of such Membership and has directed that its Solid Waste be processed at the Facilities.
4. Solid Waste from each Agency is land-filled at either the Billy Wright Landfill west of the City of Los Banos or at the Highway 59 Landfill north of the City of Merced.

5. The Agencies wish to possess common ownership over the Facilities which shall be formally transferred to the Authority at the next permit review by the CIWMB.

6. Each Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control Facilities and operations for the Collection, 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.

7. The California Joint Exercise of Powers Law (Government Code section 6500, et seq.) permits two or more public agencies to exercise jointly any power that the agencies could exercise separately and also grants certain additional powers to a Joint Powers Authority.

8. The Agencies desire to establish and confer upon a separate legal entity, the Merced County Regional Waste Management Authority, the powers necessary to enable them to expand and operate Solid Waste Facilities for the benefit of all the Agencies, to achieve their waste Diversion goals, to comply with the California Integrated Waste Management Act, and to arrange for Disposal of remaining Solid Waste.

9. The Agencies intend for the Authority to issue Revenue Bonds and other indebtedness to pay for the operation, construction, acquisition, rehabilitation and expansion of Solid Waste Facilities.

WHEREFORE, the Agencies do continue the Joint Powers Authority now known as the Merced County Regional Waste Management Authority for the purpose of owning, financing, administering, and operating Solid Waste Facilities and for administering rates for Solid Waste and Diversion programs and do agree as follows:

ARTICLE 1. DEFINITIONS

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

ARTICLE 2. PURPOSE

2.1 This Agreement is made pursuant to the Act to provide for the joint exercise of certain powers common to the Agencies and the additional powers granted under the Act. The purpose of this Agreement is to provide for the joint planning, adoption, 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 Agreement, the Agencies earn economic benefits not realized when using alternate means of Transport and Processing of Solid Waste, Recyclable Material and Plant Materials and Disposal of Solid Waste. Further, the continuation of the Authority provides for the economic viability and utilization of the Facilities.

ARTICLE 3. CONTINUATION OF AUTHORITY

3.1 Continuation. Pursuant to the Act, the Agencies continue the public entity known as the Merced County Regional Waste Management Authority.

3.2 Separate Entity. The Authority shall be a public entity separate from the Agencies.

3.3 Assets, Rights and Liabilities. The assets, rights, debts, liabilities, and obligations of the Authority shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies. However, nothing in this Agreement shall prevent any Agency from separate contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the Authority, 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 Agency to adopt it.

4.2 Term. This Agreement shall continue at least until December 31, 2036, or until such time as all Revenue Bonds and other indebtedness and the interest thereon shall have been paid in full, and thereafter shall continue until terminated or dissolved by a vote taken in accordance with Article 14 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the Authority 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 Authority, including, without limitation, indentures, resolutions, and letter of credit agreements.

ARTICLE 5. BOUNDARIES

5.1 Service Area. The Authority shall exercise its powers within its Service Area. If an Agency withdraws from the Authority, the boundary of the Authority 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 Service Area.

ARTICLE 6. MEMBERSHIP REQUIREMENTS

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

a. The authority, commitment and agreement to direct the flow of Solid Waste, Recycling and Plant Material generated within the Member's respective jurisdiction to the Authority's Solid Waste Facilities for a period of time which shall minimally be until December 31, 2036, or such further period of time necessary to repay certain Revenue Bonds and other indebtedness to be issued by the Authority to expand and operate the Facilities.

b. The authority to set rates sufficient to provide for the financing and operation of the Authority Facilities.

c. The authority, by law, to enter into this Agreement.

ARTICLE 7. POWERS

7.1 Authority Powers. The Authority 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, subject only to such restrictions upon the manner and exercise of such power as are imposed upon the County of Merced in the exercise of similar powers:

(a) Acquire, construct, rehabilitate, expand, finance, refinance, operate, regulate, and maintain Facilities.

(b) Acquire, improve, hold, lease, and dispose of real and personal property of all types.

(c) Select the Operator and contract for the operation of Solid Waste, Recyclable Material, and Plant Material Transport and Processing Facilities.

(d) Plan, study, and recommend proper and appropriate Solid Waste Recyclable Material and Plant Material, Transport and Processing management practices. Research and study issues related to Solid Waste generation, Collection, 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 transportation and Processing services.

(f) Plan, design, and implement programs that address Processing and Diversion requirements of the CIWMA.

(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 Authority's programs, including, but not limited to, Solid Waste, Recycling Material and Plant Material, Transport and Processing Facility operations and Disposal. Such agreements can be made with any person, including any Member.

(i) Accept gifts, donations, advances and contributions and act as regional lead jurisdiction/applicant and grant administrator for grants, including block grants, in the name of Members/regional participants.

(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 incur other forms of indebtedness, and make associated covenants, for designated purposes, subject to the provisions and limitations of the California Constitution and the Government Code.

(n) Establish rates and fees at Solid Waste, Recyclable Material and Plant Material Transport and Processing Facilities.

(o) Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.

(p) To the extent permitted by law, require Members to direct all of their Solid Waste, Recyclable Material and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities.

(q) Implement programs as directed by the Board, such as, but not limited to, the following programs on behalf of the Member Agencies: 1) regional material recovery site locations at the Highway 59 Landfill and Billy Wright Landfill including buyback/drop-off centers; 2) regional yard waste composting facilities; 3) Construction and Demolition Recycling transfer facilities; 4) a Countywide Recycling market development zone; 5) a Countywide education and public information program to be performed by Merced County Association of Governments in accordance with the approved budget/work program; and 6) other programs not inconsistent with this Agreement.

(r) By majority vote of the Board, add new Member Agencies from within the County of Merced.

(s) Member Agencies hereby assign to the Authority their rights and obligations with respect to the facilities (including the right to collect charges for use of the facilities) as of the effective date.

(t) Any additional power granted to joint exercise of powers agencies under the Act.

(u) All powers necessary to the exercise of the enumerated powers.

ARTICLE 8. MEMBER AGENCIES

8.1 Obligations of Member Agencies.

(a) Ensure that waste Collected by Collectors within their jurisdiction is disposed of in a Facility.

(b) Implement the specific Diversion programs selected for implementation in the regional source reduction and Recycling element adopted by the Authority.

(c) Share Solid Waste Diversion percentages to meet the waste reduction mandates of the CIWMA provided that they fully participate in programs identified in subparagraph (b) above.

(d) Delegate to the Authority disposal and non-disposal responsibilities over Solid Waste.

(e) Subject to Article 11, each Member of the Authority shall be liable for civil penalties which may be imposed against it by the CIWMB. With regard to penalties imposed against the Authority, the Board shall have the authority, subject to the limitations of Article 11, to assess the Members.

(f) Member Agencies may make contributions and advances and be repaid therefor pursuant to Section 6504 of the Act.

ARTICLE 9. OPERATIONS OF FACILITIES

9.1 Solid Waste Handling and Disposal. Subject to policy direction by the Authority Board, the Operator shall manage, operate and administer the Facilities and execute the Solid Waste Recycling and Disposal responsibilities associated therewith. The Operator shall possess the power to contract and acquire property, both real and personal, to be held in the name of the Authority for the Authority's benefit, to employ agents and employees and develop, maintain and operate sites and Facilities for the purposes set forth in this Agreement. The Authority and the County of Merced Public Works Department Solid Waste Division shall enter into a written agreement relating to the Operator functions described in this Article 9.

9.2 Solid Waste Diversion. The Operator is designated as the administering agency for implementing regional agency programs and reporting and tracking Solid Waste Diversion programs on behalf of the Member Agencies.

9.3 Facility Use and Planning. The Operator will prepare a development plan, the operational requirements and ultimate use plan for the Facilities and will be the applicant of record for disposal standards to be assigned Facilities by regulatory agencies. The Operator will plan and install the necessary physical features for the Facilities, such as landscaping, fencing, water supply, access roads,

and scales. The Operator shall furnish the personnel and equipment and shall operate the Facilities using the best approved standards and practices.

9.4 Payment of Fees. The Operator shall refuse to permit any Person, firm or public agency the right to dispose of refuse at Facilities if such Person, firm or public agency fails to pay the required fees or comply with the rules and regulations established by the Authority and enforced by the Operator.

9.5 Solid Waste From Outside the Service Area. Subject to Authority approval the Operator may permit Disposal of Solid Waste from an area outside the Service Area if the origin of said Solid Waste is duly reported in conformity with the CIWMB disposal reporting system, and if in the opinion of the Operator, accepting such Solid Waste at the Facility would not be detrimental to the operation of the Facility.

9.6 Budget/Work Plan. The Operator shall prepare and submit for Authority Board approval a yearly budget/work plan for the ensuing fiscal year. In accordance with the approved budget/work plan, the Operator has the authority to approve warrants for payment by the Auditor from the Solid Waste Enterprise Fund on deposit with the Treasurer. Notwithstanding the foregoing, the Operator shall be authorized to make emergency expenditures which shall thereafter be reported at the next Authority Board meeting.

9.7 Solid Waste Disposal Fees. The Authority shall establish fees, classes and surcharges at levels sufficient to 1) repay the Operator the current cost of maintenance, including administration and overhead; 2) pay for the cost of capital equipment; 3) reimburse the Operator for all authorized costs associated with the Budget and Work Plan, reimburse the Operator for all authorized costs associated with operation of the Facilities from the Solid Waste Enterprise Fund; pay civil penalties which are validly assessed by the CIWMB; 4) pay all debt service of

Revenue Bonds and other indebtedness and compliance with all bond related covenants; and 5) provide for all other future capital needs..

ARTICLE 10. ORGANIZATION

10.1 The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on its behalf. The Board shall meet not less than once yearly and all meetings shall be called, noticed and conducted subject to the Brown Act.

10.2 Directors.

(a) The Board shall consist of each of the five Merced County Supervisors and one elected legislative official from each of the other Member Agencies. As of the date hereof, there are 11 voting Members. No Person shall be eligible for appointment to the Board unless he or she is serving in an elective position. Each of the city Agencies may appoint one elective Person as an alternate to serve in the absence of an appointed director. Directors and alternate Directors who have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without any further action of the Member Agency.

(b) Each Director shall hold office from the first meeting of the Board after appointment by the Member Agency until his or her successor is selected by such Member Agency.

10.3 Principal Place of Business. The principal place of business of the Authority shall be located at 369 W. 18th Street, Merced, California, 95340.

10.4 Officers.

(a) The Board shall select a Chair and a Vice Chair from among the Directors who shall hold office for a period of one year commencing July 1st. The Chair and Vice Chair shall alternate between the Chair of the Merced County Board

of Supervisors and a city Agency Member. The positions shall rotate and there shall be no consecutive terms.

(b) Executive Director. The Authority Board shall utilize an Executive Director who shall be the chief executive officer of the Authority. In lieu of special appointment, the Executive Director shall be the Executive Director of the Merced County Association of Governments.

(c) Secretary. The Authority Board shall utilize the services of a Secretary who in lieu of special appointment shall be the Secretary of the Merced County Association of Governments.

(d) General Counsel. In the absence of special appointment by the Authority Board, the General Counsel of Merced County Association of Governments shall serve as General Counsel to the Authority.

10.5 Designation of Law. As required by section 6509 of the Act, and in the absence of conflicting procedural rules, ordinances and resolutions adopted by the Authority Board, the procedural rules, ordinances and resolutions of the County of Merced are the governing law for the Authority.

ARTICLE 11. FINANCIAL MATTERS

11.1 Financial Matters.

(a) Budget. Prior to July, the Board shall adopt an annual budget for the ensuing Fiscal Year.

(b) Treasurer. The County Treasurer of Merced County shall be the Treasurer of the Authority and pursuant to Government Code section 6505.5 and shall do all of the following:

(1) Provide for the transfer of funds held in the County Solid Waste Enterprise Fund to the Authority Solid Waste Enterprise Fund (other than funds required by law to follow title or permits).

(2) Receive and receipt for all money of the Authority and place it in the treasury of the Treasurer so designated to the credit of the Authority as The Solid Waste Enterprise Fund.

(3) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority money so held by him or her.

(4) Pay, when due, out of The Solid Waste Enterprise Fund, all sums payable with respect to outstanding Revenue Bonds and other indebtedness of the Authority.

(5) Pay any other sums due from the Authority only upon warrants of the public officer performing the functions of auditor or controller who has been designated by this Agreement.

(6) Verify and report in writing on the first day of July, October, January and April of each year to the Authority and to the Agencies the amount of money in the Solid Waste Enterprise Fund, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

(c) Auditor. The County Auditor-Controller of Merced County is designated to perform the functions of Auditor of the Authority and pursuant to Government Code section 6505.5 shall do all of the following:

(1) Make or contract to make an annual audit of the accounts and records of the Authority. The minimum standards of the audit shall be those prescribed for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing practices. A report of the audit shall be filed as public record with each of the Agencies within 12 months of the end of the Fiscal Year under examination. Any costs in making an audit in accordance with this Agreement shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

(2) Draw warrants to pay demands against the Authority when the demands have been approved by any Person authorized to so approve in this Agreement.

(3) File an official bond with Merced County in an agreed amount pursuant to section 6505.1 of the Act.

(d) Penalties.

(1) Any penalties assessed against the Authority by CIWMB which are not Diversion related, shall be paid by the Authority.

(2) Any penalties assessed against the Authority by CIWMB which are Diversion related, shall be paid by the Authority and assessed against and collected from Member Agencies based upon a formula pursuant to which one-third of the penalty will be assessed equally against each Member Agency, one-third will be assessed or credited based on each Member Agency's per capita program Diversion and one-third based on each Member jurisdiction's population.

(3) Any penalties assessed against a Member Agency by CIWMB directly for either Diversion or nondiversion related acts or omissions, shall be paid by such Member Agency.

(4) The foregoing penalty structure may not cover all penalty issues which arise. Accordingly, despite the fact that substantive changes to the Agreement generally require the approval of each Member Agency, penalty provisions not covered by (1) – (3) above may be added by a two-thirds vote of the Board.

(e) Insurance.

(1) The Authority shall maintain general liability insurance relating to its functions as the policy making body dealing with Solid Waste, Recyclable Material, and Plant Material in the Service Area and shall indemnify,

protect, defend and hold harmless all of the Member Agencies therefrom. This indemnity shall include Environmental Laws as herein defined.

(2) The Operator shall, directly or indirectly, maintain general liability insurance relating to its contractual obligations pursuant to this Agreement, specifically including its operation of the Facilities and shall indemnify, protect, defend and hold harmless all other Agencies therefrom. This indemnity shall include Environmental Laws as herein defined.

(3) Each Agency shall directly or indirectly maintain general liability insurance relating to Collection and Transport of Solid Waste, Recyclable Material, and Plant Material from its jurisdiction to the Facilities and shall indemnify, protect, defend and hold harmless all of the other Agencies therefrom. This indemnity shall include Environmental Laws as herein defined.

(4) Notwithstanding Government Code section 895, et seq., liability imposed on the Operator, Authority, or any Member, relating to operation of the Facilities, shall be apportioned proportionately among all Member Agencies based upon population.

ARTICLE 12. WITHDRAWAL FROM THE AGENCY

12.1 Withdrawal Conditions. A Member may not withdraw from the Authority 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 and other indebtedness, if any, as determined by the Board.

b. The provision to the Authority of a written notice of intent to withdraw from the Authority at least twelve (12) months prior to the end of the current Fiscal Year, specifying the date on which the Member intends to withdraw.

c. The approval of such withdrawal by a two-thirds affirmative vote of the Board.

ARTICLE 13. TERMINATION

13.1 Termination Requirements. This Agreement may only be terminated by consent of all Members, and upon full and complete liquidation of all liabilities, including, but not limited to, the Revenue Bonds and other indebtedness, if any. Upon the date of termination ("Termination Date"), payment of any and all obligations and division of any and all assets of the Authority shall be conducted subject to the then applicable requirements of the law (currently Section 6511, et seq., of the Act) as follows:

(a) In the event of termination of the Authority where there is a successor public entity that will conduct all of the activities and assume all of its obligations, any and all Authority assets and liabilities remaining upon termination shall be transferred to the successor public agency.

(b) If there is no successor public agency that would conduct the Authority's activities, all assets and liabilities, including surplus money, shall be apportioned to each Member in proportion to population.

(c) If there is a successor public agency that would conduct some of the Authority's activities, then the Board shall allocate the Authority's assets and liabilities, including surplus money, between the successor public agency and the Members. In such case the Member's portion of the allocation shall be based on subparagraph (b) above.

(d) By unanimous agreement of the Members, assets and liabilities may be disposed of, divided or distributed on a basis different from that established in this Article 13.

ARTICLE 14. BYLAWS

14.1 Bylaws. Bylaws may be adopted by the Board pursuant to which meetings of the Board shall be called. The Bylaws shall contain appropriate provisions for the transaction of business and describe the duties and powers of the Chair and Vice Chair and such other officers as may be appointed. The Bylaws may be amended from time to time by majority vote of the Board after notice in accordance with the Bylaws.

ARTICLE 15. AMENDMENTS

15.1 This Agreement may only be amended by the affirmative vote of two-thirds of the Members of the Board of Directors, except that Article 13 may not be amended without the agreement of all the Members. Furthermore, no amendment may add to the duties or obligations of a Member without the agreement of such Member.

ARTICLE 16. MISCELLANEOUS

16.1 Filing with the Secretary of State. All notices required by Government Code §§6503.5 and 53051 shall be filed with the California Secretary of State.

16.2 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each Member.

Notwithstanding the foregoing, no Member may assign any right or obligation hereunder without the written consent of all other Members.

16.3 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 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.

16.4 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.

16.5 Conflict of Interest Code. The Authority shall adopt a conflict of interest code.

16.5 Arbitration. The parties desire to avoid the expense and delay associated with litigation, and therefore agree to submit any and all disputes which cannot be resolved by a good-faith effort to meet and confer to binding arbitration pursuant to the following terms. Despite the fact that such binding arbitration is pursuant to contract, it shall be conducted based on local (Merced County) and state rules of judicial arbitration. There shall be one arbitrator. He or she shall be chosen from the then active list of arbitrators maintained by the Merced County Superior Court Arbitration Administrator. The party seeking arbitration shall commence the case with a letter request which shall set forth, in clear and concise terms, the nature of the dispute and shall further list three names from the above-mentioned list of arbitrators agreeable to the requesting party. Within five days the other party shall select one of the listed attorneys, or submit a list of three names to the requesting party, who may within five days select one of the other parties' listed attorneys. If the parties cannot agree on the arbitrator, they shall submit the issue of appointment to the Presiding Judge of the Merced County Superior Court as though it is an ex parte hearing. None of the previously listed attorneys may be selected as an arbitrator. The arbitrator shall set the matter for hearing within sixty (60) days of his or her appointment. After submission of the matter the arbitrator shall issue a decision within ten (10) days. The decision of the arbitrator shall be final and binding, and may be enforced as a judgment in the Merced County Superior Court.

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

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COUNTY OF MERCED

By: _____
Chair – Board of Supervisors

ATTEST:
COUNTY CLERK

By: _____
Deputy County Clerk

APPROVED AS TO FORM:

By: _____
County Counsel

CITY OF MERCED
A Municipal Corporation

By: _____
City Manager

ATTEST:
JAMES G. MARSHALL, CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CITY OF ATWATER
A Municipal Corporation

By: _____
City Manager

ATTEST:
CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CITY OF LOS BANOS
A Municipal Corporation

By: _____
City Manager

ATTEST:
CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CITY OF LIVINGSTON
A Municipal Corporation

By: _____
City Manager

ATTEST:
CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CITY OF GUSTINE
A Municipal Corporation

By: _____
City Manager

ATTEST:
CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

CITY OF DOS PALOS
A Municipal Corporation

By: _____
City Manager

ATTEST:
CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A

DEFINITIONS

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

Act

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

Agency/Agencies

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

Agreement

“Agreement” means this Second Amended and Restated Joint Exercise of Powers Agreement, as it may be amended from time to time.

Auditor

“Auditor” means the Auditor-Controller of the County of Merced.

Authority

“Authority” means the Merced County Regional Waste Management Authority.

Board

“Board” means the governing Board of Directors of the Authority, consisting of the five Members of the Merced County Board of Supervisors and one Mayor or Council person from each of the six incorporated municipal Agencies, for a total of 11 Directors as more fully described in Article 10 of this Agreement.

Chair

“Chair” means the Chair of the Authority Board, as described in Article 10 of this Agreement and the Bylaws.

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 enterprise which holds a franchise from an Agency for Solid Waste Collection and the City of Merced, a Municipal Collector.

Director

“Director” means the Agency representatives who serve on the governing Board of Directors.

Disposal

“Disposal” means the ultimate disposition of Solid Waste received by Collector at a Facility 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 _____, 2006.

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 limitations, 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 and includes any future Facility. As of the Effective Date, the Facilities are: The Billy Wright Landfill, located west of the City of Los Banos, and the Highway 59 Landfill, located north of the City of Merced.

Fiscal Year

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

Franchise

“Franchise” means the special right granted by an Agency 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 Operator 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 B and any public entity that becomes a new member in accordance with this Agreement.

Operator

“Operator” shall mean the entity the Authority contracts with to operate the Facilities. As of the Effective Date the Operator is the Merced County Public Works Department Solid Waste Division.

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.

Recyclable Materials

“Recyclable Materials” means discarded materials that are reused, remanufactured or processed.

Recycling

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be reused, remanufactured 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 revenue bonds to be issued by the Authority.

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.

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.

Solid Waste Enterprise Funds

“Solid Waste Enterprise Fund” is the funds maintained by the Treasurer resulting from collection of solid waste disposal fees at the facilities.

Term

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

Transport

“Transport” means the transportation of Solid Waste.

Treasurer

“Treasurer” means the Merced County Treasurer.

EXHIBIT B

MEMBERS

County of Merced
City of Merced
City of Los Banos
City of Atwater
City of Livingston
City of Gustine
City of Dos Palos