

COUNCIL AGENDA: NOVEMBER 4, 2014

SUBJECT: CONSIDER MODIFICATIONS TO THE CONSOLIDATED WASTE MANAGEMENT AUTHORITY (CWMA) JOINT POWERS OF AUTHORITY AGREEMENT

SOURCE: Public Works Department – Field Services Division

COMMENT: The Consolidated Waste Management Authority (CWMA) consisting of the Cities of Visalia, Porterville, Lindsay, Dinuba, Tulare, Exeter, Farmersville and Tulare County was created to act as a regional agency and independent public agency to comprehensively plan, develop, operate, and manage the transformation, diversion, recycling, processing and disposal of solid waste within the members' jurisdictions to meet the State mandated 50% diversion requirements stipulated under Assembly Bill AB 939.

During the last several months a committee of the CWMA Board have met to consider possible amendments to the Joint Powers of Authority (JPA) Agreement. At the request of Supervisor Phil Cox, the County Counsel's Office prepared a draft revision of the Agreement with significant changes. That draft has been reviewed and commented on by the committee members, senior staff, and CWMA General Counsel Steve Kabot. Those discussions identified three significant policy matters which require input and direction from the Board. These items primarily relate to:

1. The extent of the powers of the JPA.

The Agreement states that "in its own name, the Authority can acquire, by condemnation or otherwise, land and/or facilities to construct, manage, maintain or operate any building, works or improvements, including systems, plants, disposal sites, transfer facilities or other facilities for the purposes of collection, disposal, treatment, transformation, diversion, or recycling of solid waste; to set processing, disposal fees and other rates, and to levy and collect fees and charges, including tipping fees and gate fees for Authority owned and/or operated facilities; and to license, franchise, permit and/or contract with qualified persons."

These extensive operational powers exceed the current operational scope of the Authority. The question arose as to the likelihood of any such operational expansion in the future, and if the Board wishes to consider removing said options from the agreement or are they comfortable with

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Item No. 15

the current role of the JPA. At the October 16, 2014, CWMA Board meeting, Supervisor Cox approached the board members with the question of whether the CWMA would be interested in jointly operating the County landfill system, thus necessitating the need for the operational powers to remain in the Agreement.

2. The voting requirements for the Board to act on certain types of matters.

The voting requirements are diverse and complex. The CWMA Board currently has eight (8) members, consisting of one (1) member of each of the city councils or public utility board and one (1) member of the County Board of Supervisors. Five (5) of eight (8) members of the Board constitute a quorum, and a majority of a quorum is all that is needed to approve an action. However, certain actions such as adopting and modifying the budget, acquisition by condemnation of property, and appointment, employment or dismissal of an employee requires two-thirds (2/3) of the Board members approval. A four-fifths (4/5) vote of the Board is required to acquire/lease property and equipment, thus requiring a lesser vote to acquire real property by condemnation than it does by purchase or lease. Finally, a unanimous vote of the Board is required to engage in bonding and the formation of assessment districts.

The changes proposed would modify the quorum definition to fifty percent (50%) plus one (1) of the members of the Board, and acquisition by condemnation of property would require a four-fifths vote.

3. The formula used to determine the allocation of financial responsibility among the members.

The formula for applying charges to members currently varies. The CWMA budget is partially funded by member contributions as determined by the Authority, and is currently based on tonnage delivered to the landfill. Currently, the Board may allocate any additional costs for assessments for extraordinary costs among the members in proportion to the population, as well as division of assets upon termination of the JPA. The question is whether there should be specific methods for allocation, or does the Board want to retain the language giving them the authority to determine how costs should be allocated.

A copy of the Agreement with the proposed changes is attached for Council's review and comment. City staff does not think the CWMA should reduce the powers as discussed in Item #1. There may come a time in the future when the JPA wants to open a facility and if the language from the JPA Agreement is now eliminated, it would require revising the JPA Agreement again.

RECOMMENDATION: That the City Council:

1. Direct staff to communicate to the CWMA Board the Council's desire to retain the powers of the JPA discussed in Item #1;
2. Approve the quorum definition to be 50% + 1 and acquisition by condemnation of property would require 4/5th vote discussed in Item #2; and
3. Approve changing the formula used to determine the allocation of financial responsibility among members be based on landfill tonnages discussed in Item #3.

ATTACHMENT: JPA Agreement

2014 DRAFT REVISED
"AMENDED AND RESTATED JOINT POWERS AGREEMENT"
CONSOLIDATED WASTE MANAGEMENT AUTHORITY

THIS AGREEMENT is entered into as of _____ between
the CITIES OF VISALIA, PORTERVILLE, LINDSAY, DINUBA, TULARE (including its Board
Public Utilities Commissioners), EXETER, FARMERSVILLE, and the COUNTY of TULARE
(COUNTY) hereinafter collectively referred to as Members, with reference to the following:

- A. On December 8, 1999 the CITIES OF VISALIA, PORTERVILLE, LINDSAY, DINUBA, and TULARE entered into a Joint Powers Agreement forming the Consolidated Waste Management Authority (CWMA).
- B. On November 26, 2002 Cities of EXETER, FARMERSVILLE and WOODLAKE joined the CWMA as equal members.
- C. On December 15, 2005, the City of Woodlake submitted their desire to withdraw from the CWMA and on January 26, 2006 was formally accepted by CWMA by approval of Resolution No. 2006-01.
- D. On the November 17, 2005, CWMA Board approved Resolution No. 2005-04 accepting the COUNTY'S desire to join the CWMA, subject to the terms and conditions set forth below.
- E. On the _____, 2014, The Board approved Resolution No. 2014-____ amending the Revised "Amended and Restated Joint Powers Agreement" Consolidated Waste Management Authority of April 27, 2006.
- F. The Members intend by this Agreement to create a Joint Powers Authority ("the Authority") to act as a regional agency and independent public agency to comprehensively plan and develop recycling programs to comply with the Act operate and manage the, transformation, diversion, recycling, processing and disposal of solid waste within the Members' jurisdictions the, transformation,

REVIEWED

- October 16, 2014 – Discussed at CWMA Board meeting. Staff to review the agreement with their legal counsel and governing boards.
- September 23, 2014 – Review by Subcommittee.
- September 3, 2014 Review by CWMA Sr. Staff and General Counsel Steve Kabot.
- August 21, 2014 Agreement revised by CWMA Subcommittee and General Counsel Steve Kabot.
- July 2, 2014 Agreement discussed by Senior Staff and General Counsel Steve Kabot.
- June 30, 2014 Combined CWMA Subcommittee & TC Counsel comments.

1 ~~diversion, recycling, processing and disposal of solid waste within the Members'~~
2 ~~jurisdictions;~~

3 G. The Members further intend by this Agreement to provide for the funding
4 reasonably anticipated to be necessary for the above purposes.

5 H. Members are authorized to enter into this Agreement pursuant to Government
6 Code §6500 et seq. and Public Resources Code §40970 et seq.

7 I. The Members intend that the Authority be the responsible party for compliance
8 with Article 1 (Commencing with Section 41780) of Chapter 6 of the Public
9 Resources Code.

10 J. The City of Tulare by charter has a Board of Public Utilities Commissioners to
11 which responsibility has been delegated for solid waste management, and which
12 must thereby also be a signatory to this Agreement.

13
14 **ACCORDINGLY, IT IS AGREED:**

15 1. **CREATION OF SEPARATE AGENCY:** There is hereby created a regional agency
16 which is an agency separate from the parties to the Agreement, and which is responsible for the
17 administration of the Agreement, to be known as "Consolidated Waste Management Authority"
18 (CWMA). Within thirty (30) days of the effective date of this Agreement, the parties shall cause a
19 notice of this Agreement to be prepared and filed with the office of the California Secretary of
20 State as required by Government Code §6503.5.

21 2. **DEFINITIONS:** Unless otherwise required by the context, the following terms shall
22 have the following meanings:

23 a. "Act" shall mean the California Integrated Waste Management Act of 1989
24 [AB 939](#) (California Public Resources Code Sections 40000 et seq.) and all
25 regulations adopted under that legislation, as that legislation and those
26 regulations may be amended from time to time.

- 1 b. "Authority" shall mean the Consolidated Waste Management Authority, which is
2 the public and separate authority created by this Agreement;
- 3 c. "Board" or "Board of Directors" shall mean the Board of Directors of CWMA as
4 provided in this Agreement to govern and administer the Authority.
- 5 d. "Member" shall mean any of the signatories of this Agreement and "Members"
6 shall mean all of the signatories to this Agreement.
- 7 e. "Solid Waste" shall mean all putrescible and nonputrescible solid, semi-solid and
8 liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial
9 wastes, demolition and construction wastes, abandoned vehicles and parts
10 thereof, discarded home and industrial appliances, dewatered, treated, or
11 chemically fixed sewage sludge which is not hazardous waste, manure,
12 vegetable or animal solid and semisolid wastes, and other discarded solid and
13 semisolid wastes, ~~including special wastes as defined in Public Resources Code~~
14 §41450, but not including hazardous wastes, low-level radioactive waste, or
15 medical waste, as more particularly defined in Public Resources Code §40191
16 as it may be amended from time to time.
- 17 f. "Solid waste landfill" or "solid waste disposal site" shall mean ~~a disposal facility~~
18 ~~that accepts, or has accepted, solid waste for land disposal~~
19 the place, location, tract of land, area, or premises in use, intended to be used,
20 or which has been used, for the disposal of solid wastes as more particularly
21 defined in Public Resources Code §40122 as it may be amended from time to
22 time.
- 23 g. "SRRE" shall mean a Source Reduction and Recycling Element as required by
24 the Act as that element may be amended from time to time.
- 25 h. "NDFE" shall mean a Non-Disposal Facility Element as required by the Act as
26 that element may be amended from time to time.

- 1 i. "HHWE" shall mean Household Hazardous Waste Element as required by the
2 Act as that element may be amended from time to time.
- 3 j. "Transfer facility" shall mean a facility, together with necessary accessory
4 facilities, used for the receiving, processing, recycling and transportation of solid
5 waste, and the recovery of materials from solid waste, as more particularly
6 defined in Public Resources Code §40200 as it may be amended from time to
7 time.
- 8 k. "CIWMP" shall mean County Integrated Waste Management Plan as required by
9 the Act as that plan may be amended from time to time.
- 10 l. "CalRecycle" shall mean California Department of Resources Recycling and
11 Recovery, formerly known as the California Integrated Waste Management
12 Board.

13 3. PURPOSE: The Authority is formed with the sole purpose and intent of jointly
14 measuring disposal reduction by the member agencies and of facilitating the development of joint
15 programs and projects that provide economies of scale and to exercise additional powers as are
16 conferred by law in order to meet the requirements of the Act.

17
18 The Members will be responsible for implementation of their own operations and
19 programs that can be most cost-effectively handled at the regional level by maximizing local
20 resources, private sector participation and contract services, to including but not limited to, the
21 establishment or approval of fees, the collection of solid waste, and transfer stations.

22
23 The duties and responsibilities of each Member are described in the County
24 Integrated Waste Management Plan (CIWMP) which is hereby incorporated in this Agreement.
25

26 ~~The purpose of the Authority is to provide for the joint exercise of certain powers common to the~~
27 ~~Members and for the exercise of such additional powers as are conferred by law in order to meet~~
28 ~~the requirements of the Act. The Members are each empowered by the laws of the State of~~
29 ~~California to exercise the powers specified in this Agreement and to comply with the provisions of~~
30 ~~the Act and other laws. These common powers shall be exercised for the benefit of any one or~~
31 ~~more of the Members or~~ otherwise in the manner set forth in this

1 Agreement.

2 The Members will be responsible for implementation of their programs and enter this agreement
3 with the intent to operate the Authority in compliance with the requirements of the Act with a
4 minimum level of staff, addressing those operations and programs that can be most cost-
5 effectively handled at the regional level by maximizing local resources, private sector participation
6 and contract services. The duties and responsibilities of each Member are described in the
7 County Integrated Waste Management Plan (CIWMP) which is hereby incorporated in this
8 agreement. The Authority is formed with the sole purpose and intent of jointly measuring disposal
9 reduction by the member agencies and of facilitating the development of joint programs and
10 projects that provide economies of scale. The members will exercise independent power within
11 their own jurisdiction, to including but not limited to, the establishment or approval of fees, the
12 collection of solid waste landfills and the administration of landfills and transfer stations.

13 4. POWERS: The Authority is hereby authorized, in its own name, to exercise any power
14 common to the parties as to solid waste management within the boundaries of the Member
15 jurisdictions, and to thereby perform all acts necessary to accomplish its purpose as stated in this
16 Agreement, ~~except as may be otherwise provided in this agreement in this Agreement, including,~~
17 ~~but not limited to, the following:~~
18 collection, disposal, treatment, transformation, diversion, or recycling of solid waste:

19 ~~The Members are each empowered by the laws of the State of California to exercise~~
20 ~~the powers specified in this Agreement and to comply with the provisions of the Act and other~~
21 ~~laws. These common powers shall be exercised for the benefit of any one or more of the~~
22 ~~Members or otherwise in the manner set forth in this Agreement.~~

23 ~~The Authority and each of its Members is hereby authorized, in its own name, to exercise any~~
24 ~~power common to the parties as to solid waste management within the boundaries of the Member~~
25 ~~jurisdictions, and to thereby perform all acts necessary to accomplish its purpose for the benefit~~
26 ~~of any one or more of the Members as stated in this Agreement, except as may be otherwise~~
27 ~~provided in this Agreement including but not limited to the following:~~

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28
29 a. To make and/or assume contracts;

- 1 b. To employ agents, employees, consultants and such other persons or firms as it
2 may deem necessary;
- 3 c. To acquire by condemnation or otherwise, construct, manage, maintain or
4 operate any building, works or improvements, including systems, plants,
5 disposal sites, transfer facilities or other facilities for the purposes of collection,
6 disposal, treatment, transformation, diversion, or recycling of solid waste;
- 7 d. To incur debts, liabilities or obligations, subject to the limitations provided in this
8 Agreement;
- 9 e. To sue and be sued in its own name;
- 10 f. To apply for and accept grants, advances and contributions;
- 11 g. To ~~set~~ ~~make recommendations for processing~~, set disposal fees and other
12 rates, and to levy and collect fees and charges, including tipping fees and gate
13 fees as provide by this Agreement, or as permitted by law for Authority owned
14 and/or operated facilities.
- 15 h. To ~~adopt~~ recommend ordinances and resolutions as authorized by law to its
16 members;
- 17 ~~i. To issue bonds in any manner authorized by law;~~
- 18 j. To adopt an annual budget by June 30;
- 19 k. To exercise the authority otherwise vested in any party to this Agreement to
20 apply for State or Federal funding to defray any of the costs of operation of the
21 Authority;
- 22 l. To take such actions as are deemed necessary to address transformation,
23 reduction, recycling and diversion goals for solid waste as mandated by the Act,
24 or as deemed desirable by the Authority;
- 25 m. To ~~require~~ to require and compile appropriate reports from agencies,
26 organizations and businesses which collect recyclables and;

Commented [AM1]: CWMA Sr. Staff 9-3-14
Replace "make recommendations for processing" with "set" given
the current Powers.

Board needs to determine if the Powers remain the same or if they
are to be narrowed

1 n. To license, franchise, permit and/or contract with qualified persons, including,
2 but not limited to, independent haulers consultants or any Member of the
3 Authority, and to provide any service required by the Authority to accomplish its
4 purpose.

5 The Authority shall have no responsibility for the operation of the Tulare County Solid
6 Waste Enterprise Fund to include, but not be limited to, the operation of the Tulare County
7 landfills and transfer stations, the establishment of reserves or for the setting of tipping or
8 gate fees.

9 **5. OBLIGATIONS OF AUTHORITY:** No debt, liability or obligation of the Authority shall
10 constitute a debt, liability or obligation of any of the Members, except as otherwise provided in
11 this Agreement.

12 **6. DESIGNATION OF ADMINISTERING AGENCY:** The powers of the Authority
13 provided in this Agreement shall be exercised in the manner provided by law for the exercise of
14 such powers by the Members.

15 **7. ORGANIZATION:**

16 a. **GOVERNING BOARD:** The Authority shall be governed by a Board of Directors
17 which shall be composed of one (1) sitting member of each of the city councils,
18 or in the case of the City of Tulare, a member of its Board of Public Utilities, and
19 one (1) sitting member of the Tulare County Board of Supervisors. In addition,
20 each of the parties may designate an alternate Member of the Board who may
21 participate as a Member of the Board only when the principal Member is absent.
22 An alternate Member of the Board shall be a member of the legislative body of
23 the member which he or she represents. Directors and alternates shall serve
24 without compensation, except that they may be reimbursed for reasonable out-
25 of-pocket expenses associated with their service on the Board as authorized by
26 the Board.

- 1 b. TERM: The Members from the city councils and the COUNTY and the alternates
2 shall serve at the pleasure of the legislative body which appointed them.
- 3 c. MEETINGS: Regular meetings of the Board shall be held at least quarterly, on
4 such dates and times and at such locations as the Board shall fix by resolution.
5 Special meetings of the Board shall be called in accordance with Government
6 Code §54596. All meetings shall comply with the provisions of the Ralph M.
7 Brown Act (Government Code §54950 at seq.)
- 8 d. QUORUM: ~~Five (5)~~ Fifty percent (50%) of the Members of the Board plus one (1)
9 shall constitute a quorum in order to conduct business.
- 10 e. VOTING: A simple majority of the quorum shall be required for the adoption of a
11 resolution, ordinance or other action of the Board, except that
- 12 (a) a majority vote of less than a quorum may vote to adjourn;
- 13 (b) any of the following actions shall require a vote of two-thirds (2/3) of the
14 authorized members of the board (as opposed to a quorum):
- 15 (1) Adoption of an annual budget; is
- 16 (2) Any modification of the annual budget;
- 17 (3) Contracts up to \$25,000 and for terms of up to two (2) years, which
18 are otherwise not subject to a four fifths (4/5) vote as hereinafter
19 provided;
- 20 (4) Admission of additional members;
- 21 (5) Appointment, employment, or dismissal of an employee, including
22 any independent contractor who functions as an employee.
- 23 (6) Obtain reimbursement from any member for failure to implement
24 programs identified in their SRRE, NDFE and HHWE;
- 25 (7) Compromise or payment of any claim against the Authority;
- 26 (8) ~~To acquire by condemnation property not owned by the Members;~~

1 (c) A four-fifths (4/5) vote of the Board (as opposed to a quorum) is required
2 for the following actions:

3 (1) The acquisition or lease of real property or equipment in excess of
4 one (1) year lease term.

5 (2) Contracts in excess of \$25,000 or a two (2) year term;

6 (3) To acquire by condemnation property not owned by the Members;

7 And (d) unanimous vote of the Board (as opposed to a quorum) is required for
8 the:

9 (1) The issuance, execution or delivery of bonds;

10 (2) The formation of an assessment district or other similar financing
11 mechanism.

12 f. MINUTES: The Board shall cause minutes of all meetings to be prepared, and
13 shall cause a copy of the minutes to be delivered to each member of the Board,
14 and filed with the governing body of each party, as soon as practicable after
15 each meeting.

16 g. RULES: The Board shall adopt such other bylaws, rules and regulations for the
17 conduct of its business as it shall deem necessary or desirable consistent with
18 the provisions of this Agreement.

19 h. OFFICERS: The officers of the Authority shall be a Chairperson,
20 Vice-Chairperson, and Secretary, ~~Treasurer, Auditor,~~ and such other officers as
21 the Board shall designate. The election of officers will take place at the first
22 meeting of a new fiscal year. The Authority may employ or otherwise retain the
23 services of a Treasurer and Auditor. The Treasurer is designated as the
24 depository for the Authority. The Treasurer shall be formally designated by a
25 resolution adopted by the Board of Directors stating the effective date of the
26 appointment and the term of the appointment.

1 i. BONDING: The Board shall designate the public officer or officers or person or
2 persons who have charge of, handle, or have access to any property of the
3 Authority, and shall require such public officer or officers or person or persons to
4 file an official bond in an appropriate amount to be fixed by the Board.

5 **8. ACCOUNTABILITY, REPORTS AND AUDITS:** There shall be strict accountability of
6 all funds, and the Auditor shall report any and all receipts and disbursements to the Board with
7 such frequency as shall reasonably be required by the Board. In addition, the Auditor shall either
8 make or contract with a certified public accountant to make an annual audit of the accounts and
9 records of the Authority as required by Government Code §6505. In each case, the minimum
10 requirements of the audit shall be those prescribed by the State Controller for special districts
11 pursuant to Government Code §26909, and shall conform to generally accepted accounting
12 principles. The auditor shall be formally designated by a resolution adopted by the Board of
13 Directors stating the effective date of the appointment and the term of the appointment.

14 **9. OPERATING BUDGET:** The Board shall approve an operating budget as required to
15 conduct its business in a manner consistent with the purposes of the Authority. ~~In addition to~~
16 ~~normal operating requirements, the budget shall address the capital costs of developing future~~
17 ~~solid waste facilities.~~

18 **10. CONTRIBUTIONS:** The Authority shall have the power to establish a joint operating
19 fund. The fund shall be used to pay all administrative, operating and other expenses incurred by
20 the Authority. Funding shall be from Member contributions as determined by the Authority and
21 other sources. No Member shall be obligated to make any contributions of funds to the Authority
22 for facilities to be established in accordance with this Agreement or pay any other amounts on
23 behalf of the Authority without that Member's consent evidenced by a written instrument signed
24 by a duly authorized representative of the Member.

25 ~~**11. ISSUANCE OF BONDS:** If the Board should decide by a unanimous vote that it will~~
26 ~~be necessary to acquire, construct, improve and finance a project for the purposes of the~~

1 ~~disposal, treatment, transformation, diversion or recycling of solid waste, the Authority may issue~~
2 ~~bonds, including revenue bonds for that purpose as authorized by Government Code §6540 et~~
3 ~~seq.~~

4 **12. ASSESSMENTS FOR EXTRAORDINARY COSTS:** In the event the Authority should
5 experience an unanticipated need to pay for extra-ordinary costs, or to pay for any and all costs
6 of litigation or indemnification as provided in this Agreement, and to the extent that such costs
7 cannot otherwise be reasonably funded through use of reserves on hand or through the other
8 revenue sources authorized by this Agreement, the Board may allocate the additional costs,
9 whether actually incurred or estimated to be necessary, among the Members in proportion to the
10 ~~population~~ amount of solid waste landfilled,

11 **Suggested Language:** among the Members in a method approved by the Board,
12 contained within the boundaries ~~then~~ of the current of the Members as last determined by the
13 California Department of Finance. The Members agree that they will then contribute their
14 proportionate share of the additional costs within a reasonable period of time as determined by
15 the Board.

16 **13. INVESTMENT OF SURPLUS FUNDS:** The Authority may invest any money in the
17 treasury that is not required for its immediate necessities in the same manner, and upon the
18 same conditions, as any local agency may do pursuant to Government Code §53601

19 **14. FISCAL YEAR:** The fiscal year for the Authority shall extend from July 1 to June 30 of
20 each year.

21 **15. CONTRACT FOR LEGAL COUNSEL AND STAFFING:** The Authority shall employ or
22 contract for the services of legal counsel who shall advise the Authority on legal matters.

23 The Authority may also employ its own Executive Director and administrative staff, or
24 it may contract with any Member for that purpose.

25 **16. RESTRICTIONS ON OPERATIONS:** The Authority may not regulate tipping or gate
26 fees for authority-owned facilities that are different for any one party to this agreement (or its

1 residents) than any other party (or its residents) without the consent of the affected members.
2 Under no circumstances shall the Authority assume responsibility for hazardous waste disposal
3 sites, which includes all contiguous land and structures, other appurtenances, and
4 improvements on the land used for the treatment, transfer, storage, resource recovery,
5 disposal, or recycling of hazardous waste. A hazardous waste facility may consist of one or
6 more treatment, transfer, storage, resource recovery, disposal, or recycling hazardous waste
7 management units, or combinations of these units (California Health and Safety Code
8 §25117.1). ~~as defined by Health and Safety Code §25117.1.~~

9 **17. CIVIL PENALTIES:** Any civil penalties which are imposed pursuant to the Act by the
10 ~~California Integrated Waste Management Board~~ CalRecycle will be paid by the Authority. In the
11 event that a Member or Members fail(s) to implement the programs identified in the CIWMP or
12 fulfill its obligations under this Agreement, the Authority may request reimbursement for any civil
13 penalties assessed by the ~~California Integrated Waste management Board~~ CalRecycle as a
14 result of this action, from the offending Member or Members.

15 If it is determined that a Member has failed to fulfill its obligation under this
16 Agreement, which failure results in the imposition of penalties by the ~~California Integrated Waste~~
17 ~~Management Board~~ CalRecycle, such member shall be obligated to pay all incurred penalties
18 and costs of enforcement including but not limited to attorney's fees and costs.

19 **18. WITHDRAWAL:** Any Member may withdraw from the Authority by filing with the
20 Authority a written notice to withdraw one hundred eighty (180) days prior to the date of
21 withdrawal. The withdrawal of the Member shall have no effect on the continuance of this
22 Agreement among the remaining Members. The withdrawing Member shall remain responsible
23 for its proportionate share of the then Fiscal Year's operating budget. Except upon vote by the
24 Board to terminate the Authority, any Member that withdraws as provided herein shall be
25 proportionately liable for all the outstanding obligations or debts incurred by the Authority,

1 including remaining unfunded capital expenditures incurred or approved prior to the date of
2 written notice of withdrawal of such Member. The assets contributed by the withdrawing member
3 or the value of the assets at the date of withdrawal will be returned to the withdrawing member.

4 The effective date withdrawal shall be June 30.

5 **19. TERM AND TERMINATION:** This Agreement shall become effective, and the
6 Authority shall come into existence, on the date that the last of the named parties executes the
7 Agreement. The Agreement, and the Authority, shall thereafter continue in full force and effect
8 until the governing bodies of the parties unanimously elect to terminate the Agreement.

9 Upon effective election to terminate this Agreement, the Board shall continue to act as
10 a board to wind up and settle the affairs of the Authority. The Board shall adequately provide for
11 the known debts, liabilities and obligations of the Authority, and shall then distribute the assets of
12 the Authority among the Members, as follows:

- 13 a. The assets contributed by each Member, or the value thereof as of the date of
14 termination shall be distributed to that entity.
- 15 b. The remaining assets shall then be distributed in proportion to the population
16 contained within the boundaries then current of the Members as last determined
17 by the California Department of Finance.

18 The distribution of assets shall be made in-kind to the extent possible by returning to
19 each Member those assets contributed by such parties to the Authority; however, no party shall
20 be required to accept transfer of an asset in kind,

21 Notwithstanding any other provision by the Board for payment of all known to debts,
22 liabilities and obligations of the Authority, each of the Members shall remain liable for any and all
23 such debts, liabilities, and obligations in proportion to the population amount of solid waste
24 landfilled,

25 **Suggested Language:** among the Members in a method approved by the Board,
26 contained within the boundaries of the current Members as last determined by the California

Commented [AM2]: CWMA Sr. Staff 9-3-14
Need to decide what/how the remaining assets will be distributed.

The Board changed the method in which the Member dues are calculated. Member dues are based on landfilled waste tonnage.
City-County or Bottle Bill Funds are based on Population.

Commented [AM3]: CWMA Sr. Staff 9-3-14
Board needs to decide what/how the remaining debts, liabilities, and obligations will be distributed.

In 2011 (CWMA Resolution 2011-02), The Board changed the method in which the Member dues are calculated. Member dues are based on landfilled waste tonnage.
City-County (Bottle Bill Funds) are based on Population.

The Board may choose to use the Suggested Language and then adopt a policy that determines how the remaining funds are to be distributed.
Or, the Board may choose to specify how the remaining Member Dues and Bottle Bill Funds are distributed in the agreement language.

1 Department of Finance as of the effective date of termination of the Agreement.

2 Upon termination of the Authority, each Member shall continue to assume its full
3 responsibility to comply with the requirements of Part 2 of Division 30 (commencing with Section
4 40900) of the Public Resources Code, including, but not limited to Article 1 (commencing with
5 Section 41780); shall continue to implement any source reduction, recycling, and composting
6 programs included in their SRREs, NDFEs, and HHWEs which may be amended from time to
7 time and are subject to revision approved by the California Integrated Waste Management Board;
8 and shall report and track its own disposal and diversion programs as required by law.

9 **20. INDEMNIFICATION/CONTRIBUTION:** The Authority shall hold harmless, defend and
10 indemnify the Members, and their agents, officers and employees from and against any liability,
11 claims, actions, costs, damages or losses of any kind, including death or injury to any person
12 and/or damage to property (including property owned by any Member), arising out of the activities
13 of the Authority, or its agents, officers and employees under this Agreement. The foregoing
14 indemnification obligations shall continue beyond the term of this Agreement as to any acts or
15 omissions occurring before or under this Agreement or any extension of this Agreement.

16 To the extent that the Authority is unable or unwilling to hold harmless, defend and
17 indemnify any party to this Agreement as provided in this Section, such party shall be entitled to
18 contribution from each of the other parties in proportion to the population contained within the
19 boundaries of the Member as last determined by the California Department of Finance as of the
20 date that the obligation of the Authority for such indemnification is liquidated.

21 **21. INSURANCE:** The Authority shall obtain insurance for the Board members and
22 general liability and environmental insurance containing liability in such amounts as the Board
23 shall determine will be necessary to adequately insure against the risks of liability that may be
24 incurred by the Authority. The Members, their officers, directors and employees, shall be named
25 as additional insureds.

26 **22. CLAIMS:** All claims against the Authority, including, but not limited to, claims by public

Commented [AM4]: CWMA Sr. Staff 9-3-14
Need to decide population or solid waste landfilled See note in
Section 19.

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1 officers and employees for fees, salaries, wages, mileage, or any other expenses, shall be filed
2 within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part
3 3, Division 3.6 of Title I of the Government Code, which describes the appropriate content of a
4 claim.

5 **23. ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire
6 agreement among the parties as to its subject matter and no prior oral or written understanding
7 shall be of any force or effect. No part of this Agreement may be modified without the written
8 consent of all of the parties.

9 **24. HEADINGS:** Section headings are provided for organizational purposes only and do
10 not in any manner affect the scope, meaning or intent of the provisions under the headings.

11 **25. NOTICES:** Except as may be otherwise required by law, any notice to be given shall
12 be written and shall be either personally delivered sent by facsimile transmission, emailed or sent
13 by first class mail, postage prepaid and addressed as follows:

14 **Consolidated Waste Management Authority**
15 425 W. Oak Avenue, Suite 101
16 Visalia CA 93292
17 (559) 713-4404
18 FAX: (559) 713-4817

19
20 **MEMBERS:**

21
22
23 City of Dinuba
24 405 E. El Monte Way
25 Dinuba, CA 93618
26 Fax No.: (559) 591-5902 / Confirming No.: (559) 591-5906

27
28
29 City of Lindsay
30 P.O. Box 369
31 Lindsay CA 93247
32 Fax No.: (559) 562-5748 / Confirming No.: (559) 562-5945 7102

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35 City of Porterville
36 291 N. Main Street
37 Porterville, CA 93257
38 Fax No.: (559) 781-6437 / Confirming No.: (559) 782-7460

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City of Tulare
411 E. Kern Ave.
Tulare CA 93274
Fax No.: (559) 685-2398 / Confirming No.: (559) 684-4200

City of Visalia 707 W. Acequia
Visalia CA 93277
Fax No.: (559) 730-7043 / Confirming No.: (559) 738-4314

City of Exeter
P.O. Box 237
Exeter, CA 93221
Fax No.: (559) 562-3516 / Confirming No.: (559) 592-3318

City of Farmersville
909 W. Visalia Rd.
Farmersville, CA 93223
Fax No.: (559) 747-67241 Confirming No.: (559) 747-0458

~~City of Woodlake (member until June 30, 2006)
350 N. Valencia Blvd.
Woodlake, CA 93286
(Fax No.: (559) 564-8776 / Confirming No.: (559) 564-2317~~

County of Tulare
2800 W. Burrel Ave.
Visalia, CA 93291
(Fax No.: ~~(559) 733-6318~~(559) 733-6898 / Confirming No.: ~~(559) 733-6534~~ (559) 636-5000

Notice delivered personally ~~or~~ sent by facsimile transmission, emailed is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Any party may change the above address by giving written notice pursuant to this Section.

26. CONSTRUCTION: This Agreement reflects the contributions of all parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

27. NO THIRD PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the

1 parties to this Agreement do not intend to provide any other party with any benefit or enforceable
2 legal or equitable right or remedy.

3 **28. WAIVERS:** The failure of any party to insist on strict compliance with any provision of
4 this Agreement shall not be considered a waiver of any right to do so, whether for that breach or
5 any subsequent breach.

6 **29. EXHIBITS AND RECITALS:** The recitals and the Exhibits to this Agreement are fully
7 incorporated into and are integral parts of this Agreement.

8 **30. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is
9 subject to all applicable laws and regulations. If any provision of this Agreement is found by any
10 court or other legal authority, or is agreed by the parties, to be in conflict with any code or
11 regulation governing its subject, the conflicting provision shall be considered null and void. If the
12 effect of nullifying any conflicting provision is such that a material benefit of the Agreement to any
13 party is lost, the Agreement may be terminated at the option of the affected party. In all other
14 cases the remainder of the Agreement shall continue in full force and effect.

15 **31. FURTHER ASSURANCES:** Each party agrees to execute any additional documents
16 and to perform any further acts which may be reasonably required to affect the purposes of this
17 Agreement.

18 **32. COUNTERPARTS:** This Agreement may be signed in one or more counterparts, each
19 of which shall be deemed an original, but all of which together shall constitute one and the same
20 instrument.

21 **33. AMENDMENT:** This document may be amended with a unanimous vote by its
22 Members.

23 **THE PARTIES**, having read and considered the above provisions, indicate their agreement
24 by their authorized signatures below.

1 CITY OF DINUBA Signature page

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____

CITY OF DINUBA

By _____
Mayor

ATTEST
Clerk of the City of Dinuba

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CITY OF EXETER Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated _____ CITY OF EXETER

By _____
Mayor

ATTEST
Clerk of the City of Exeter

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CITY OF FARMERSVILLE Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____ CITY OF FARMERSVILLE

By _____
Mayor

ATTEST
Clerk of the City of Farmersville

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CITY OF LINDSAY Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____

CITY OF LINDSAY

By _____
Mayor

ATTEST
Clerk of the City of Lindsay

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CITY OF PORTERVILLE Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____ CITY OF PORTERVILLE
By _____
Mayor

ATTEST
Clerk of the City of Porterville

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CITY OF TULARE Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____ CITY OF TULARE

By _____
President, Board of Public Utilities Commissioners

ATTEST
Secretary, Board of Public Utilities Commissioners

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COUNTY OF TULARE Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____ COUNTY OF TULARE

By _____
Chairman, Tulare County Board of Supervisors

ATTEST
Clerk of the Board

Approved to Form
County Counsel

Deputy Date _____

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CITY OF VISALIA Signature page

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Dated: _____ CITY OF VISALIA

By _____
Mayor

ATTEST
Chief Deputy Clerk of the City of Visalia