



City of
Los Banos
At the Crossroads of California

ADDENDUM NO.2

April 24, 2020

Proposal for
Residential and Commercial Garbage, Recyclable Material
And Organic Waste Collection Services

City of Los Banos
Publics Works Department
411 Madison Avenue
Los Banos, CA 93635
209-827-7056

William Via, MPA
Public Works Operations Manager

Please note the following changes and/or additions to be the above referenced Request for Proposal. The Proposer is required to acknowledge receipt of Addendum No. 2. Signed acknowledgement must be included with the Proposal.

1. Question Submission Deadline

As a result of the mandatory Pre-Proposal Meeting being postponed a week, the deadline to submit questions to the City has been extended until 4:00 p.m. PT on April 30, 2020.

2. Merced County Regional Waste Management Authority (MCRWA)

The City of Los Banos is a member agent of the MCRWA. This affects the Proposers as the solid waste, recyclables, and green waste material collected in the City is flow controlled to the MCRWA's facilities. Currently, MCRWA does not have a facility that can accept food waste or mixed green and food waste. The Proposer is responsible for delivering collected food and/or mixed green and food waste to a facility that is fully permitted to process those materials. In the future, should the MCRWA develop an Organics processing facility that can accept food waste and/or mixed green and food waste, and flow control all organic waste to their facilities, the selected contractor will have to comply, and the service rates adjusted accordingly.

The following is information regarding the MCRWA facilities relevant to the Proposers.

▪ Billy Wright Landfill

Address: 17173 South Billy Wright Road
Los Banos, CA 93635

Phone Number (209) 826-1163

Hours: 7:00 am – 3:30 pm Monday through Friday
8:00 am – 12:00 pm Saturday

Rates: <https://mcrwma.org/DocumentCenter/View/67/Billy-Wright-Disposal-Site-Rates-PDF?bidId=>

▪ Highway 59 Landfill

Address: 7040 North Highway 59
Merced, CA 95348

Phone Number (209) 723-4481 (extension #210)

Hours: 7:00 am – 3:30 pm Monday through Saturday
8:00 am – 12:00 pm Saturday

Rates: <https://mcrwma.org/DocumentCenter/View/68/Highway-59-Disposal-Site-Rates-PDF?bidId=>

3. Deletion of RFP Sections 3.16 Recycling Revenues and 3.17 Compost Revenues

The following two points explain the specific section of the JPA Agreement between the City and the MCRWA:

- Section 7.1 (p) of the JPA Agreement requires that all of the garbage, recyclable material and green waste collected from a member agent is directed to the MCRWA facilities mentioned in section 1 of this addendum.

- Section 7.1 (n) of the JPA gives MCRWA the right to set rates and fees for all material collected.

These two sections prevent the selected Contractor from processing and marketing material on their own and keeping any of the revenue. Section 3.16 and 3.17 are deleted from the RFP.

The full JPA Agreement is attached to this addendum.

4. Deletion of HHW Drop-Off Site Requirement

As MCRWA currently operates a HHW facility at their Billy Wright location, and conducts two (2) mobile HHW collection events within the City annually, this is no longer a required service.

5. Service Data (Table 2)

The following table includes the complete Service Data of the City's current collection operation. This service data was pulled from the City Systems as of April 2020

TABLE 2			
Service Recipient Data			
Residential Cart Service Recipients			
Garbage	1 Cart	Extra Carts	*Estimate based on total garbage
64-Gallon	10,974	349	
96-Gallon	281	3	
Recycle	1 Cart	Extra Carts	
96-Gallon	*11,255	7	
Green waste	1 Cart	Extra Carts	
96-Gallon	*11,255	19	
Carts Collected from City Facilities			
<i>Please note that the City's Current System does not track the number of recyclable or green waste carts collection at City Facilities</i>			
96-Gallon Carts	1/Week	2/Week	Total Carts
Garbage			
Recycle	4 for City Hall		
Green waste			
Bins Collected from City Facilities			
<i>Please note that the City's Current System does not track the number of recyclable or green waste bin collection at City Facilities</i>			
Building Name	Service Type	Service Level	Service Days
City Buildings			
Police Annex	3 cubic yard bin	1 time per week	
Scripps/165	1 ½ cubic yard bin	1 time per week	
Public Works-Madison	3 cubic yard bin	3 times per week	Mon. Wed. Fri.
Airport	1 cubic yard bin	1 timer per week	

**TABLE 2
Service Recipient Data**

Animal Shelter	1 cubic yard bin	2 times per week				
Police Station	3 cubic yard bin	1 time per week				
1000 G Street	3 x 3 cubic yard bins	2 times per week	Tuesday & Thursday			
City Hall	1 ½ cubic yard bin	1 time per week	Thursday			
Fire Stations						
Fire Station #1	3 cubic yard bin	2 times per week				
Fire Station #2	1 cart	1 time per week				
Parks						
Colorado	3 cubic yard bin	3 times per week				
Senior League	3 cubic yard bin	2 times per week				
Pacheco Park	2 x 3 cubic yard bins	2 times per week				
Pacheco Park	3 cubic yard bin	1 time per week				
Recreation Center						
Community Center	6 cubic yard bin	2 times per week				
Commercial Bin Service Recipients						
Garbage	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
64-Gal	53	-	-	-	-	-
96-Gal	162	-	-	-	-	-
1 CY	16	7	4	-	-	-
1.5 CY	74	22	9	-	-	-
3 CY	100	58	51	14	19	6
6 CY	21	17	6	5	10	4
8 CY	-	-	-	-	-	-
Recycling	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
96-Gallon	53	-	-	-	-	-
1.5 CY	30	-	-	-	-	-
3 CY	91	-	-	-	-	-
6 CY	29	-	-	-	-	-
On-Call Bin	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
3 CY	-	-	-	-	-	-
6 CY	-	-	-	-	-	-

6. Current Service Provider Employee Data (Table 5)

The following table includes the current Service Provider's (Republic) Employee Data.

TABLE 5 Employee Data of Current Contractor							
Job Title	Rate of Pay	Union Code	Number of Employees	Sick Leave (Days)	Holidays (Days)	Health @\$1032, Pension @\$208 per month	Vacation (Days)
Residential Garbage Driver	\$21.00	Local 386	3	6	8	\$1,240	See below
Residential Recycle Driver	\$21.00	Local 386	2	6	8	\$1,240	See below
Residential Green Waste Driver	\$21.00	Local 386	2	6	8	\$1,240	See below
Roll Off Driver Class B CDL	\$21.00	Local 386	1	6	8	\$1,240	See below
Commercial Garbage Driver	\$21.00	Local 386	2	6	8	\$1,240	See below
Commercial Recycle Driver	\$21.00	Local 386	1	6	8	\$1,240	See below
Commercial Green Waste Driver	\$21.00	Local 386	1	6	8	\$1,240	See below
Pool Drivers	\$21.00	Local 386	2	6	8	\$1,240	See below

Pension:			CBA Vacation Schedule	
Compensation is paid to a maximum of (2080) hour per calendar year.	Annual Contribution	Monthly Contribution	Year	Vacation Days
Effective February 1, 2018 the Company will contribute \$1.00	\$2,080	\$173.33	Year 1	5
Effective February 1, 2019 the Company will contribute \$1.00	\$2,080	\$173.33	Year 3	10
Effective February 1, 2020 the Company will contribute \$1.20	\$2,496	\$208.00	Year 5	15
Effective February 1, 2021 the Company will contribute \$1.40	\$2,912	\$242.67	Year 12	20
Effective February 1, 2022 the Company will contribute \$1.55	\$3,224	\$268.67	Year 25	25

7. Residential Route Maps

The residential route map is attached to this Addendum.

8. List of Proposal Participants

The following companies were present during the Mandatory Pre-Proposal Conference Call:

- a) Republic Services
- b) Green Waste Recovery
- c) Gilton Solid Waste Management
- d) Turlock Scavenger
- e) Caglia Environmental
- f) Mid-Valley Disposal
- g) Waste Management
- h) Garden City Sanitation
- i) Olcese Waste Services

Print Company Name

Print Name

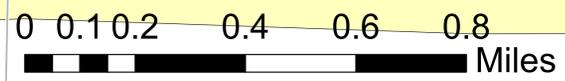
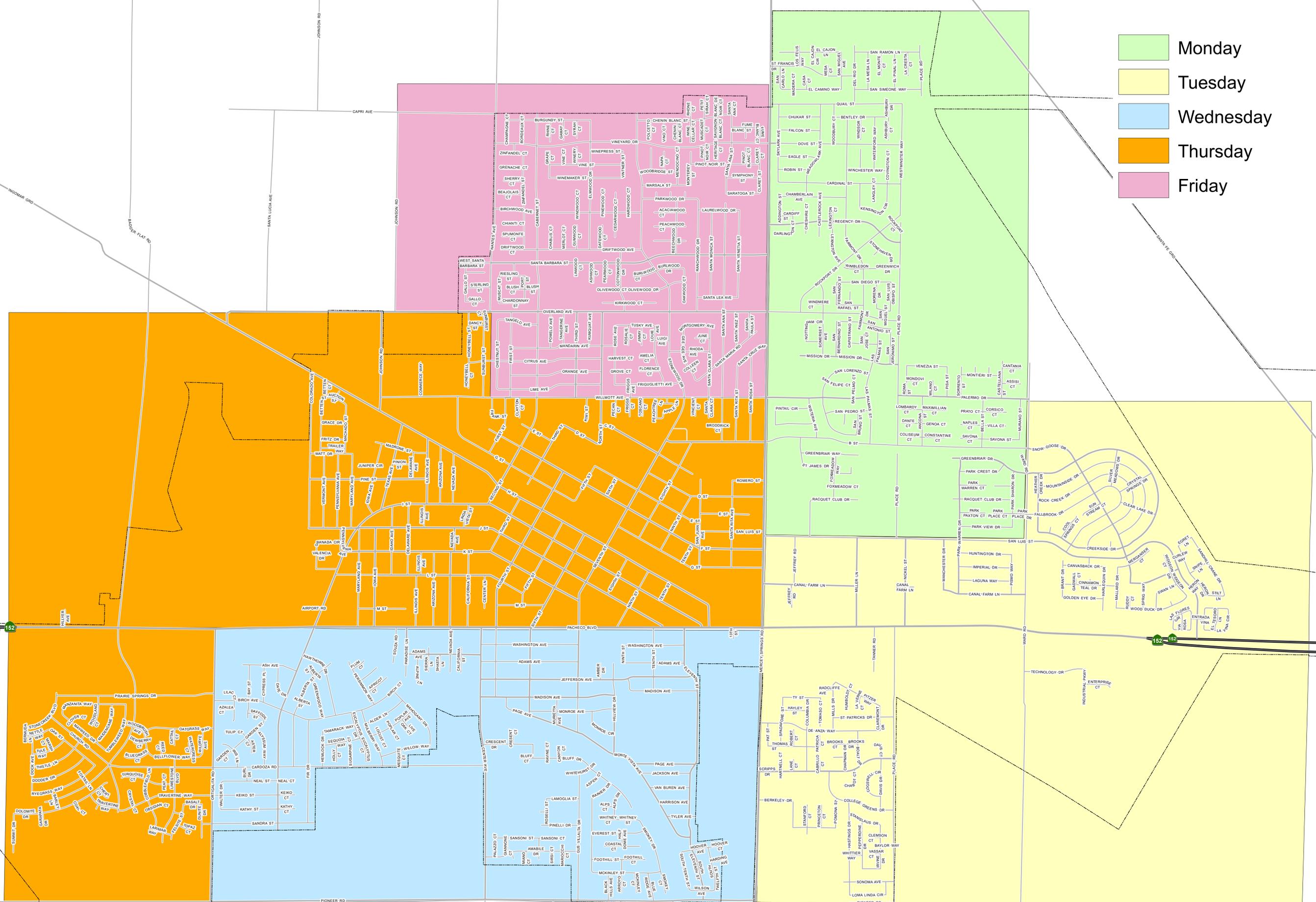
Signature

Date

CITY OF LOS BANOS Residential Trash Pick-up Schedule

Trash Pick-up Schedule

- Monday
- Tuesday
- Wednesday
- Thursday
- Friday



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

This Third Amended and Restated Joint Powers Agreement is effective this 18th day of July, 2013, 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 on January 16, 2007, and thereafter amended on August 16, 2007 and December 13, 2012. 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 and to share Solid Waste Diversion percentages to meet the waste reduction mandates of the CIWMA, as a region.

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 separately 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 13 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) 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.

(d) 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 Member's respective source reduction and Recycling element or the regional source reduction and Recycling element if adopted by the Authority.

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

(d) Subject to Article 11(e), 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(e), to assess the Members.

(e) 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 Board, the Authority shall manage, operate and administer the Facilities and execute the Solid Waste Recycling and Disposal responsibilities associated therewith.

9.2 Solid Waste Diversion. The Authority is 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 Authority will prepare a development plan for operational requirements and an ultimate use plan for the Facilities and will be the applicant of record for disposal standards assigned Facilities by regulatory agencies. The Authority will plan and install the necessary physical features for the Facilities, such as landscaping, fencing, water supply, access road and scales. The Authority shall furnish the personnel and equipment and shall operate the Facilities using the best approved standards and practices.

9.4 Payment of Fees. The Authority 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 and enforced by the Authority.

9.5 Solid Waste From Outside the Service Area. The Authority 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 Authority, accepting such Solid Waste at the Facility would not be detrimental to the operation of the Facility.

9.6 Budget/Work Plan. The Authority shall prepare and submit for Board approval a yearly budget/work plan for the ensuing fiscal year. In accordance with the approved budget/work plan, the Authority may approve warrants or payment by the Auditor from the funds on deposit with the Treasurer. Notwithstanding the foregoing, the Authority 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 and charges at levels sufficient to:

(a) Pay the current cost of maintenance, including administration and overhead;

(b) Pay the cost of improvements and equipment;

(c) Pay all authorized costs associated with the budget plan, reimburse all authorized costs associated with operation of the Facilities, and pay civil penalties which are validly assessed by the CIWMB;

(d) Pay all debt service of Revenue Bonds and other indebtedness in compliance with all bond related covenants; and

(e) Provide 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. The Executive Director shall plan, organize and direct the administration and operations of the Authority.

(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 Chief Financial Officer of Merced County Association of Governments shall be the Treasurer of the Authority pursuant to Government Code section 6505.6 and shall do all of the following:

(1) Receive and receipt for all funds of the Authority and place them in the treasury of the Treasurer so designated to the credit of the Authority;

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

(3) Pay, when due, all sums payable with respect to outstanding Revenue Bonds and other indebtedness of the Authority; and

(4) 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.

(c) Auditor. The Chief Financial Officer of Merced County Association of Governments shall perform the functions of Auditor of the Authority pursuant to Government Code section 6505.6 and shall do all of the following:

(1) Contract for 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 that purpose.

(2) Draw warrants to pay demands made against the Authority when the demands have been approved by any authorized Person.

(3) Provide an official bond or insurance policy with the Authority 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) Liability Insurance.

(1) The Authority shall maintain general liability insurance, environmental insurance coverage and vehicle insurance coverage relating to its ownership and operation of the Facilities.

(2) The Authority shall, directly or indirectly, maintain liability insurance or self-insurance relating to its contractual obligations pursuant to this agreement, covering its management, operation and administration of the Facilities and shall indemnify, protect, defend and hold harmless all other agencies from claims and suits arising from the operation of the Facilities. The indemnity herein shall include Environmental Laws directly relating to the operation of the Facilities.

(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 Authority, or any Member, relating to operation of the Facilities, shall be apportioned proportionately among all Member Agencies based upon population.

(f) Investment Policy. The Investment Policy of the Authority shall be the Investment Policy of MCAG.

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. The liabilities of a withdrawing

Member shall specifically include those resulting from acts or omissions when the withdrawing Member was a participating Member of the Authority.

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 by the Authority 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 Members 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 Board Members have caused this Agreement to be duly executed and attested by the Board Chair as of the date set forth below.

Date: July 18, 2013

MERCED COUNTY REGIONAL
WASTE MANAGEMENT AUTHORITY

By: _____
Jerry O'Banion, Chair

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 Chief Financial Officer of Merced County Association of Governments.

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 July 18, 2013.

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 Authority 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.

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.

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 Chief Financial Officer of Merced County Association of Governments (“MCAG”).

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