



# STAFF REPORT – CITY COUNCIL MEETING

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March 15, 2023

**TO:** Honorable Mayor and City Council Members

**FROM:** Emily Sinkhorn, Director of Environmental Services

**PREPARER:** Emily Benvie, Dep. Director of Environmental Services-Com. Svcs.

**DATE:** March 06, 2023

**TITLE:** **Approve Proposed Amendments to Humboldt Waste Management Authority's (HWMA) Joint Powers Agreement and Direct the Mayor to Execute the Restated and Amended Agreement.**

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## **RECOMMENDATION:**

It is recommended that the Council:

- 1) Discuss and Approve Proposed Amendments to HWMA's Joint Powers Agreement; and
- 2) Direct the Mayor to Execute the Restated and Amended Agreement.

## **INTRODUCTION:**

To comply with provisions of SB1383, City staff have been working regionally as a member of the Solid Waste Local Task Force (LTF), as part of an SB1383 Ad-hoc Committee of the LTF, and as a member agency in collaboration with HWMA since December 2020.

There are several concurrent components of developing and implementing SB1383 programs. Adoption of Ordinance No. 1560 was the first 'decision-point' for the Arcata City Council, which occurred on December 21, 2022. The second 'decision-point' for the Arcata City Council is approval of the proposed amendments to HWMA's Joint Powers Agreement (JPA), which is a necessary step to establish regional processing of organics materials. The amendments to the JPA build on the letter of intent to support regional organics processing that the Council authorized on November 16, 2022.

## **DISCUSSION**

At their regular meeting held February 9, 2023, the HWMA Board of Directors unanimously approved proposed amendments to the Humboldt Waste Management Authority's Joint Powers Agreement and established an approval step process for Member Agencies to follow.

HWMA's original Joint Powers Agreement was approved in November 1999 by the cities of Arcata, Blue Lake, Eureka, Ferndale, Rio Dell and the County of Humboldt ("Member Agencies"). The cities of Fortuna and Trinidad are not members of HWMA. The primary purpose of HWMA is to secure and manage long-term agreements related to the disposal of Member Agency's solid waste and assumed responsibility for the closure/post-closure activities of the Cummings Road Landfill,

and related specified powers. Members are required to provide “Flow Control” of solid wastes and direct their franchise waste haulers to deliver solid waste to HWMA. HWMA also provides diversion services to its members including hazardous waste disposal, carpet and mattress recycling and other related diversion services.

Over the years, HWMA’s Joint Powers Agreement has been amended three times; two amendments were non-substantive and didn’t require approval of the Members, and one which was substantive requiring the approval of Member Agencies. With the exception of solid wastes, HWMA does not have Flow Control over other materials such as green waste, curbside collected recyclable or other materials unless specifically designated by a governing body through an agreement or memorandum of understanding.

In the Fall of 2022, Member Agency governing bodies submitted letters of interest that HWMA act in a regional capacity for managing the processing of curbside collected source separated organics for compliance with SB 1383 (Short Lived Climate Pollution Reduction Act). Because the State mandates compliance responsibility to individual jurisdictions, and local jurisdictions are interested in coordinating regionally, HWMA needs to amend the Joint Powers Agreement to incorporate the necessary powers to secure flow control of source-separated organic wastes to implement the new state mandated waste diversion and material management requirements

The HWMA Board approved the attached amendments to the Agreement, and requests that the governing body of each Member review and approve the Restated and Amended Agreement.

The amendments will enable HWMA to secure flow control of designated source separated materials at the future discretion of the Member’s governing body. Further, this amendment process presented an opportunity to update the Agreement, remove outdated artifacts and provide clarifications to the Agreement beyond the matter of source separated organics.

#### Approval Process

The HWMA Board of Directors approved the following process to amend the Agreement:

1. The HWMA Board consider and approve the draft amendment(s), with no less than 70% of the Directors of the Authority Board voting in support of proposed amendments. (Complete with unanimous support)
2. HWMA circulates the preliminary approved document to the governing boards of the Members for consideration and approval by no less than 70% of the Member governing boards.
3. Should Members raise any issues during their deliberation and consideration of the proposed amendments, it is requested that written concerns be addressed to HWMA’s Executive Director for immediate review and possible HWMA Board reconsideration and revision of the draft amendment.
4. After confirmation that all Members have received, considered and taken final action, HWMA will circulate a written instrument for execution by the Members. Once signatures have been received, a final executed copy will then be distributed to the Members.

Attached is the proposed restated and amended Joint Powers Agreement. Additionally, below is a detailed bullet list of the revisions, with rational explanations as identified.

Universal formatting revisions – Standardized the mixture of UPPER cased and Capitalized words, and made uniform use of bold headings for improved document readability.

- Spelling corrections throughout the document
- Inserted “**Amended and Restated**” language, as well as recitals.
- Remove artifact(s) that were in the original (e.g. Section 6.5 “Possible Future Responsibilities and”)
- Inserted missing Section labels (e.g. “Powers” and “Notices”)
- Removed “**Financial Assurances**” definition as the original purpose for the definition is now an artifact. Originally Members had to provide Financial Assurances when HWMA took out the first \$7 million bond to purchase the Transfer Station. That bond, and a subsequent one in 2005, were paid off in 2015 and there are no significant outlying long term debts.
- Addition of the term “**Flow Control**” and definition
- Addition of the term “**Household Hazardous Waste**” and definition. HWMA began providing HHW services in 2002 after the County transferred mobile collection responsibility to HWMA. Over the years HWMA constructed, improved and established the Permanent Household Hazardous Waste Collection Facility.
- Revised the term “**Indenture**” to be universal instead of the specific reference to a now-defunct trust used for the now complete construction closure costs of the Cummings Road Landfill.
- **Revenue Bonds** – expanded to include financing purposes to include “...*plant, site existing or planned...leased, and constructed, maintained...*”
- Updated the term “**Solid Waste**” per State approved revision in 2019 contained in CA Public Resources Code 40191
- Addition of the term “**Source Separated Materials**” which are designated to the Authority by an action of the governing member and the HWMA Board of Directors. Then inserted “Designated Source Separated Materials” where appropriate throughout the document. This broad term is inclusive of any source separated material including organics, recycling, green waste, hazardous waste or other materials to meet State diversion requirements, and the Member Agency retains discretion as to whether to designate to the Authority for management.
- Updated “**Transfer Facility**” definition
- Technical Assistance Committee – clarification that representatives are comprised of Integrated Waste Management staff of Members of the Authority – *not the AB 939 Integrated Waste Management Local Task Force.*
- **2.2 ”Additions”** – Revisions include:
  - Heading change to “**Member Additions**” to better explain the section purpose.
  - Proposed revision transfers authority to add members by a supermajority action of the HWMA Board of Directors following confirmation of convenances. This revision is consistent with existing Section 8.3 Voting (7) and Section 10 Withdrawal authority.
  - Revised to include timeline for prospective members applying so that HWMA can process and prepare/adopt fiscal year budgets and that new Members be assessed prorated share of assets and liabilities
- **Section 2.3** – This did not have a heading in the original JPA. “**Flow Control**” was added to clarify this section’s purpose.
- **Section 4.3 Board** – Added reference to the “Ralph M. Brown Act”.
- **Section 4.6 “Technical Advisory Committee”** clarifying edits. This is in addition to existing Section 8.2 “Officers and Committees” provision that the Board of Directors may establish ad hoc, standing, advisory committees at their discretion.

- **Section 6** – Added Section title “**Powers**”
  - Removed the “quarry” reference in original document. There was no “quarry” but an area where soil was removed for daily cover when the landfill was operational.
  - Added reference to the timber property purchased by HWMA in 2017.
- **6.4 “Noncompetition”** – Removed. This provision was specific to a request by the City of Arcata and the now defunct Arcata Community Recycling Center in 1999. Any facility proposed to be developed or operated outside of Hawthorne Street Transfer Station will require an action by the Board of Directors and concerns/objections could be raised through those processes.
- **New Section 6.4 “Possible Future Responsibilities”** added “...or expansion to a Regional Agency per PRC 40975”. The Regional Agency reference makes the JPA consistent with the approved “2013-2023 Strategic Plan”.
- **7.6 “Insurance”** Removed the original section in its entirety along with the detailed language specifying coverage levels. Once the JPA is amended, HWMA will present policy language for adoption into HWMA’s Policy Handbook, Section 1000. This will better enable regular review and updating as necessary without requiring amendment of insurance coverage requirements to all Members for approval. The proposed language provides umbrella verbiage addressing Insurance.
- **Section 8 “Code of Conduct”** replaced with “**Bylaws, Officers and Voting**” because that what the section actually addresses.
- **Section 9 “Term”** revised
- **Section 11.2 Revenue Bonds** – expanded to include “...or other instruments of indebtedness”. This will enable long-term or short term loans as necessary.
- **Section 12 “Amendments”** revised to include a clear process for the steps to amend the JPA and voting requirement of Directors and Members.
- **Section 14** – added heading “**Notices**” and removed each of the city/county names/ mailing addresses for brevity.
- **New Section 22 “Effective Date”** for the amended and restated Agreement.

**POLICY IMPLICATIONS:**

The proposed amendments to the Joint Powers Agreement are consistent with the City’s efforts to comply with SB1383.

**ENVIRONMENTAL REVIEW (CEQA):**

In 2019 CalRecycle adopted an EIR analyzing potential environmental impacts from the expected compliance responses of regulated entities, such as the City of Arcata, to the SB 1383 regulations. Amending the HWMA Joint Powers Agreement will enable the City to come into compliance with the state’s SB 1383 regulations, and potential environmental impacts from approval of the Joint Powers Agreement amendments are within the scope of CalRecycle’s adopted EIR for SB 1383 implementation.

**BUDGET/FISCAL IMPACT:**

This JPA Amendment will not have an immediate budget/fiscal impact to the City or rate paying customers. Future actions needed to develop organics processing infrastructure and services will have fiscal impacts, which will be evaluated when future actions are proposed.

**ATTACHMENTS:**

A. Proposed HWMA JPA Amendments February 9 2023 (PDF)

B. Letter of Commitment From the City of Arcata Dedicating Flow Control of Source Separated Organics (PDF)