

AMERICAN CANYON CITY AGREEMENT NO. 98-11
AND FIFTH AMENDMENT TO
NAPA COUNTY AGREEMENT NO. 3312,
NAPA CITY AGREEMENT NO. 6536, AND
VALLEJO CITY AGREEMENT NO.

SOUTH NAPA WASTE MANAGEMENT AUTHORITY/
NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY
JOINT POWERS AGREEMENT

THIS FIFTH AMENDMENT to South Napa Waste Management Authority Joint Powers Agreement ("Amendment") is entered into as of this 5th day of May, 1998, by and between the COUNTY OF NAPA, a political subdivision of the STATE OF CALIFORNIA, the CITY OF AMERICAN CANYON, the CITY OF NAPA and the CITY OF VALLEJO, municipal corporations (hereinafter referred to collectively as "Parties").

RECITALS

WHEREAS, on or about March 17, 1993, the COUNTY OF NAPA and the CITY OF VALLEJO created the South Napa Waste Management Authority (hereinafter referred to as "Authority") pursuant to the South Napa Waste Management Authority Joint Exercise of Powers Agreement (hereinafter referred to as "Agreement"); and

WHEREAS, by the First Amendment of the Agreement, the City of Napa joined the Authority; and

WHEREAS, the Second Amendment of the Agreement clarified the responsibility of the parties in regard to directing the solid waste stream to the transfer facility; and

WHEREAS, the Third Amendment of the Agreement resolved the ambiguities related to the acquisition of the American Canyon Sanitary Landfill by the Authority; and

WHEREAS, the Fourth Amendment of the Agreement clarified certain aspects of the Agreement having a bearing on the Authority's contract for services for operation of the transfer facility, transportation and disposal of the waste processed at the transfer facility; and

WHEREAS, the Authority now desires to add the City of American Canyon as a member of the Authority, clarify their powers concerning hazardous waste collection activities, and change its name to the Napa-Vallejo Waste Management Authority; and

WHEREAS, pursuant to SECTION 2.2 (entitled "Additions") of the Agreement, the City of American Canyon has entered into an agreement satisfactory to the Authority which directs its franchised hauler to deliver all solid wastes collected under such franchise to the Authority's transfer facility for processing, transportation and disposal.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct.
2. Exhibit A of the Agreement as amended by the first, second, third and fourth Amendments is hereby further amended to read in full as set forth in Exhibit A-5, attached hereto and incorporated by reference herein.
3. Pursuant to SECTION 2.1, "South Napa Waste Management Authority", the name of the AUTHORITY is hereby changed to "Napa-Vallejo Waste Management Authority".
4. This Amendment shall be effective on June 1, 1998.

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as of the date first above written.

CITY OF AMERICAN CANYON:

By Roger Cypher
ROGER CYPHER, Mayor of the City of American Canyon

DATED 6/4/98

By [Signature]
ATTEST: Clerk of the City Council of
American Canyon

By William Doh
APPROVED AS TO FORM:
American Canyon City Attorney

CITY OF VALLEJO:

By Gloria Exline
GLORIA EXLINE, Mayor of the City of Vallejo

DATED 5-19-98

By [Signature]
ATTEST: Clerk of the City Council of
Vallejo

By [Signature]
APPROVED AS TO FORM:
Vallejo Canyon City Attorney

CITY OF NAPA:

By Ed Henderson
ED HENDERSON, Mayor of the City of Napa

DATED 5/11/98

By Paula Adams
ATTEST: Clerk of the City Council of
Napa County

By [Signature]
APPROVED AS TO FORM:
Napa City Attorney

By Jed Christensen
Napa City Finance Director

By _____

COUNTY OF NAPA:

By Vince Ferriole
VINCE FERRIOLE, Chairman of the Napa County Board of Supervisors

DATED MAY 05 1998

By Jeri Sisson, Deputy
ATTEST: Clerk of the Board of Supervisors of
Napa County

By [Signature]
APPROVED AS TO FORM:
Napa County Counsel

APPROVED MAY 05 1998
BOARD OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

BY M. Price Deputy

NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT

SECTION 1. DEFINITIONS

The terms defined in this Section that are capitalized in this AGREEMENT have the following meanings:

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

"AGREEMENT" means this joint exercise of powers agreement, as it may be amended from time to time.

"AUTHORITY" means the NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY, a joint exercise of powers authority created by the MEMBERS pursuant to this AGREEMENT.

"BOARD" means the BOARD of DIRECTORS of the AUTHORITY.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (Public Law No. 96-510, 94 Stat.2767).

"DIRECTOR" means the representative appointee of a MEMBER to the BOARD.

"FISCAL YEAR" means the period commencing on each July 1 and ending on the following June 30.

"GOVERNMENT CODE" means Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government Code Sections 6500 et seq.) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

"LANDFILL" means the American Canyon Sanitary Landfill.

"MANAGER" means the person, MEMBER agency or firm hired or contracted by the BOARD as the AUTHORITY'S administrative officer to manage the affairs of the AUTHORITY and to effect the policies of the BOARD.

"MEMBER" means any of the governing bodies of the signatories to this AGREEMENT and "MEMBERS" means all of the governing bodies of the signatories to this AGREEMENT collectively.

"PLEDGE OF REVENUES" means a financial assurance mechanism as defined in 14 California Code of Regulations section 18281(r) by which the AUTHORITY promises to make specified, identified future revenues of facilities under its ratemaking control available to pay future postclosure maintenance costs of a solid waste facility.

"REVENUE BONDS" means revenue bonds, notes, certificates of participation or any other instruments or evidences of indebtedness issued, executed, or delivered by the AUTHORITY from time to time pursuant to the GOVERNMENT CODE or any other applicable law in order to finance the TRANSFER FACILITY and/or any financial aspects of closed landfill maintenance.

"SERVICE AREA" means those areas from which the TRANSFER FACILITY will accept SOLID WASTE for processing, transportation, and disposal. The TRANSFER FACILITY need not be located within the SERVICE AREA. The SERVICE AREA shall include all areas within the Cities of Napa, American Canyon and Vallejo and within Napa County Garbage Service Zone One (as defined in the December 18, 1990 Napa County Franchise Agreement No. 882), the unserved areas adjacent to Napa County Garbage Service Zone One, and a portion of Solano County limited to those islands of unincorporated areas completely surrounded by the City of Vallejo and those areas contiguous to the City of Vallejo that are contained in the City of Vallejo's sphere of influence as defined by the Solano County Local Agency Formation Commission. If and when any additional cities join the AUTHORITY pursuant to Section 2.2, the SERVICE AREA shall also include all areas within the joining City or Cities. Until such joinder, the areas within such Cities shall be deemed to be within the SERVICE AREA only as to the self haulers of SOLID WASTE and/or franchised collection companies of SOLID WASTE who have entered into direct agreements with the AUTHORITY to deliver such SOLID WASTE to the TRANSFER FACILITY. The SERVICE AREA may be expanded to include the areas within other jurisdictions which mutually agree with the AUTHORITY to transfer their SOLID WASTE to the TRANSFER FACILITY.

"SOLID WASTE" means the type of wastes commonly collected by MEMBERS' franchised SOLID WASTE collectors including putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. SOLID WASTE does not include source separated recyclable or compostable materials intended for collection as part of a MEMBER's collection and/or recycling franchise. SOLID WASTE does not include any wastes defined as "hazardous wastes" under federal or state laws or regulations.

"TRANSFER FACILITY" means a SOLID WASTE facility, including any accessory facilities related thereto, meeting the requirements of a "transfer or processing station" under Section 40200 of the California Public Resources Code, for the receiving, processing, recycling and transportation of SOLID WASTE and the recovery of materials from such SOLID WASTES, which facility is owned either by the AUTHORITY and/or

by a private entity, but in all events is operated for the benefit of the AUTHORITY and the MEMBERS.

SECTION 2. FORMATION

- 2.1 Napa-Vallejo Waste Management Authority. Pursuant to the GOVERNMENT CODE, the MEMBERS do hereby create, form and establish the AUTHORITY, a public entity to be known as the " NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY", it being understood that the BOARD shall be entitled to change the AUTHORITY's name from time to time if it so chooses. The AUTHORITY shall be a public entity separate and distinct from each of the MEMBERS.
- 2.2 Additions. Any city located within the SERVICE AREA may join the AUTHORITY, upon approval of the MEMBERS with the consultation of bond counsel. Such approval shall not be granted unless and until these jurisdictions shall have successfully entered into agreements, satisfactory to the AUTHORITY, which direct their franchised hauler(s) to deliver all SOLID WASTES collected under such franchise(s) to the TRANSFER FACILITY for processing, transportation and disposal. Such agreements may, but are not required to be part of the franchise agreements.

SECTION 3. PURPOSE

- 3.1 General. The AUTHORITY is formed to provide economical coordination of SOLID WASTE management services and to efficiently and fairly assure against adverse effects of past SOLID WASTE management services within the SERVICE AREA.
- 3.2 TRANSFER FACILITY. The general purpose includes, but is not limited to, the purpose of providing economical coordination of SOLID WASTE processing, transfer and disposal services, including but not limited to the acquisition, construction, financing, refinancing, maintaining, operating, rate setting, rate collection, and regulation of a TRANSFER FACILITY.
- 3.3 Landfill Closure and Maintenance. The general purpose also includes, but is not limited to establishment of pooled insurance and other financial or other mechanisms to provide, for safe closure and long term postclosure maintenance of closed landfills serving part or all of the SERVICE AREA, for the general purpose of protecting the health and safety of the public within the SERVICE AREA and the quality of the estuarine portions of the Napa River watershed and the specific purpose of protecting the general funds of the MEMBERS against any possible "generator" liability under state or federal laws and regulations which might arise if such landfills are not properly closed and maintained. The purpose of the AUTHORITY may include ownership and/or management of the LANDFILL during the final stages of the LANDFILL'S active life, during closure and thereafter if such is deemed essential, in the discretion of the BOARD, for successful accomplishment of the primary purpose of safe closure and postclosure maintenance.

3.4 Common and Additional Powers. The AUTHORITY's purpose also includes the establishment of the AUTHORITY as an independent joint powers entity to enable the MEMBERS to jointly exercise the common powers of the MEMBERS set forth in Section 3.1 and for the exercise of such additional powers as are conferred under Section 6 or conferred by the GOVERNMENT CODE upon all joint powers authorities.

3.5 Market Development. The general purpose also includes, but is not limited to establishment and oversight of a Recycling Market Development Zone, pursuant to the ACT.

3.6 Hazardous Waste Collection. The general purpose also includes, but is not limited to, establishment of a hazardous waste collection facility to provide for the safe reuse, recycling or disposal of hazardous waste generated within the SERVICE AREA.

SECTION 4. ORGANIZATION

4.1 Composition. The AUTHORITY shall be composed of the City of American Canyon, the City of Napa, the City of Vallejo, any jurisdiction within the SERVICE AREA which has joined pursuant to Section 2.2. and not subsequently withdrawn, and the County of Napa.

4.2 Principal Office. The principal office of the AUTHORITY shall be established by the BOARD. The BOARD may change that principal office upon giving at least 15 days written notice to each MEMBER and to the California Integrated Waste Management Board.

4.3 BOARD. The AUTHORITY shall be governed by the BOARD, which shall exercise or oversee the exercise of all powers and authority on behalf of the AUTHORITY.

4.4 DIRECTORS.

(a) The BOARD shall consist of the same number of DIRECTORS as the number of MEMBERS. Each MEMBER shall appoint one DIRECTOR. Upon execution of this AGREEMENT by a MEMBER, the MEMBER shall appoint its representative to the BOARD and at least one person as an alternate to serve in the case of absence or conflict on the part of the appointed DIRECTOR.

Thereafter, vacancies shall be filled by the appointing MEMBER within thirty (30) days of the occurrence thereof. Each DIRECTOR and alternate shall be an elected official of the governing body of the MEMBER that he or she represents. If a DIRECTOR or alternate ceases holding any such elected position, he or she shall then cease to serve as a DIRECTOR or alternate. The AUTHORITY and the BOARD shall be entitled to rely on a written notice from the City Clerk (in the case of city MEMEBERS) and the Clerk of the Board of Supervisors (in the

case of county MEMBERS) as conclusive evidence of the appointment and removal of the DIRECTORS and/or alternates representing that MEMBER.

- (b) Each DIRECTOR and alternate shall hold office from the first meeting of the BOARD after appointment by the MEMBER, until his or her successor is selected by the MEMBER that appointed that DIRECTOR. Each DIRECTOR and alternate shall serve at the pleasure of the MEMBER that he or she represents and may be removed at any time, without cause, at the sole discretion of that MEMBER.
- (c) No compensation shall be received by any DIRECTOR or alternate unless expressly provided by unanimous resolution of the BOARD.

SECTION 5. PERSONNEL AND ADMINISTRATION

- 5.1 Employees. The AUTHORITY may have its own employees or may contract with a MEMBER agency or firm for the furnishing of any necessary staff services associated with or required by the AUTHORITY.
- 5.2 MANAGER. Except and until the AUTHORITY exercises its option to have its own employees or contractors, the MANAGER of the AUTHORITY shall be the Napa County Director of Environmental Management. The Napa County Director of Environmental Management shall contract with the AUTHORITY for services and shall serve until such time as the AUTHORITY exercises its options to have its own employees or contractors.
- 5.3 Support Services. Except and until the AUTHORITY exercises its option under the GOVERNMENT CODE and Section 5.1 of the AGREEMENT, the County of Napa will provide support services to the AUTHORITY including all legal, financial, accounting, data processing, secretarial, purchasing and personnel services. Such services and their costs will be included in the annual budget referred to in Section 7.2.

SECTION 6. POWERS

- 6.1 FACILITIES. The AUTHORITY is empowered to acquire, construct, finance, refinance, operate, regulate, set rates for and maintain a TRANSFER FACILITY subject, however, to the conditions and restrictions contained in this AGREEMENT. To ensure safe closure and postclosure maintenance of the LANDFILL, the AUTHORITY is empowered to acquire, operate, regulate, set rates for, close and provide postclosure maintenance for the LANDFILL and all facilities and properties related thereto in the manner required by law. To finance such closure and postclosure maintenance, the AUTHORITY is empowered to sell any unnecessary property and to operate, directly or through lessees, gas recovery operations and, to the extent compatible with postclosure maintenance, open-space recreational enterprises on the LANDFILL property and any

type of enterprise on the related quarry property, if such are acquired by the AUTHORITY. To ensure the proper disposal of hazardous wastes, the AUTHORITY is empowered to operate hazardous waste collection activities in a manner not inconsistent with the MEMBERS hazardous waste management plans.

- 6.2 Approved Powers. To the full extent permitted by applicable law (including specifically the ACT and the GOVERNMENT CODE), the AUTHORITY is authorized, in its own name, to do all acts necessary or convenient for the exercise of such powers enumerated in the ACT or that each MEMBER could exercise separately including, without limitation, any and all of the following:
- (a) to sue and be sued in its own name;
 - (b) to incur and discharge debts, liabilities and obligations;
 - (c) to issue REVENUE BONDS, from time to time, in accordance with all applicable laws for the purpose of raising funds to finance or refinance the acquisition, construction, improvement, renovation, repair, operation, regulation or maintenance of the TRANSFER FACILITY and/or related facilities;
 - (d) to exercise the power of eminent domain for the acquisition of real and personal property for the TRANSFER FACILITY and access thereto or for the acquisition of the TRANSFER FACILITY itself;
 - (e) to acquire, improve, hold, lease and dispose of real and personal property of all types;
 - (f) to sell or lease the TRANSFER FACILITY, the LANDFILL property, or the related LANDFILL cover quarry property;
 - (g) to establish rates, tolls, tipping fees, other fees, rentals and other charges in connection with the TRANSFER FACILITY, any other SOLID WASTE facility owned or operated by the AUTHORITY, and any other enterprise which the AUTHORITY is empowered by this AGREEMENT to conduct, as well as any and all services provided by the AUTHORITY, and to include in such rates and charges amounts necessary to carry out those purposes described in Section 3 of this AGREEMENT;
 - (h) to require that the MEMBERS direct all of the SOLID WASTE collected by MEMBERS' franchised garbage collectors to the TRANSFER FACILITY;
 - (i) to require that the MEMBERS direct all SOLID WASTE generated by MEMBERS to the TRANSFER FACILITY; provided, however, this subsection shall not apply to recyclables nor to SOLID WASTE generated by MEMBERS outside the SERVICE AREA;

- (j) to enforce the provisions of MEMBERS' garbage collection agreements that require that all SOLID WASTE collected be delivered to the LANDFILL or TRANSFER FACILITY;
- (k) to contract for the processing, transportation and/or disposal of SOLID WASTE delivered to the TRANSFER FACILITY;
- (l) to make and enter into contracts, including contracts with any MEMBER or non-MEMBER, and to assume contracts made by any MEMBER relating to the TRANSFER FACILITY;
- (m) to reimburse the MEMBERS for the costs of services provided to the AUTHORITY;
- (n) to hire agents and employees;
- (o) to employ or contract for the services of engineers, attorneys, accountants, planners, consultants, fiscal agents and other persons and entities;
- (p) to apply for and accept grants, advances and contributions;
- (q) to make plans and conduct studies;
- (r) to coordinate efforts with the established local, regional and state waste management agencies; and
- (s) to make payments for closure and post-closure maintenance for the LANDFILL for the purposes set forth in Section 3.3 of this AGREEMENT, and, if the LANDFILL should become a Superfund site, to seek reimbursement remediation costs from any person or entity (other than any MEMBER) having a legal responsibility for such costs.
- (t) to provide the financial assurances required by state and federal law for postclosure maintenance of the LANDFILL, including use of a PLEDGE OF REVENUES based upon any or all of the revenue-producing enterprises owned and/or operated by the AUTHORITY.

6.3 Limitations. Such powers shall be exercised subject only to the limitations set forth in this AGREEMENT, applicable law and such restrictions upon the manner of exercising such powers as are imposed by law upon the County of Napa in the exercise of similar powers.

6.4 Noncompetition. The AUTHORITY shall not provide any recycling services that duplicate or compete with recycling services provided by any MEMBER (at the time the AUTHORITY determines to provide new or expanded recycling services) without consent of the MEMBER. A MEMBER shall not contract with any TRANSFER

FACILITY that duplicates or competes with the services provided by the AUTHORITY without consent of the BOARD.

- 6.5 Possible Future Responsibilities and Duties. Upon future approval and agreement by all of the MEMBERS, the AUTHORITY may conduct other related waste management responsibilities and duties, including but not limited to contracting with non-MEMBERS to accept their SOLID WASTE at the TRANSFER FACILITY.
- 6.6 Individual MEMBER Services. Upon approval of the BOARD and the governing body of a MEMBER, the AUTHORITY may contract to provide other related waste management responsibilities and duties, individually for that MEMBER. These contracted services will be paid for solely by the contracting MEMBER.
- 6.7 Local Governing Body For the purposes of the California Integrated Waste Management Act of 1989 (Public Resources Code section 40000 et seq.) the AUTHORITY will operate as a "Local Government Body" or "Local Governmental Agency" which has the authority to provide solid waste handling services.

SECTION 7. FINANCE

7.1 Assets, Rights, Debts, Liabilities and Obligations.

- (a) Except as provided in subsection (b), (c) and (d) below, the assets, rights, debts, liabilities and obligations of the AUTHORITY shall not constitute assets, rights, debts, liabilities or obligations of any of the MEMBERS. However, nothing in this AGREEMENT shall prevent any MEMBER from separately contracting for, or assuming responsibility for, specific debts, liabilities or obligations of the AUTHORITY, provided that both the BOARD and that MEMBER give prior approval to such contract or assumption.
- (b) The MEMBERS hereby agree that any defense against claims, as well as the cost of any judgments imposed for claims resulting from actions by the AUTHORITY or any of the officers, agents, employees, or contractors of the AUTHORITY in relation to the TRANSFER FACILITY and any other SOLID WASTE facility owned and/or operated by the AUTHORITY or any other enterprise owned and/or operated by the AUTHORITY for purposes of funding postclosure maintenance of the LANDFILL, are primarily a cost of operating the TRANSFER FACILITY either because such claims are directly related to TRANSFER FACILITY operation or because achieving operational flexibility for the TRANSFER FACILITY required acquisition of a level of waste stream ownership and control obtainable only by the AUTHORITY acquiring the LANDFILL for closure and postclosure maintenance purposes. Such costs shall therefore be paid for ultimately through surcharges uniformly imposed on the rates charged to users of the TRANSFER FACILITY.

- (c) To the extent that MEMBERS are also held jointly and severally liable for such amounts by Government Code Section 895.2, if a MEMBER provides for such defense of itself or the AUTHORITY, or pays all or part of such judgment, the MEMBER shall be entitled to reimbursement in full from the AUTHORITY. Such reimbursement shall be paid over such time as is necessary for the collection of the corresponding reasonable user surcharges.
- (d) If MEMBERS are held responsible by third parties for tort claims or other claims as a result of activities of the AUTHORITY, pursuant to Government Code Section 895.2, or state or federal laws applicable to SOLID WASTE management facilities, and the AUTHORITY has ceased to exist or has ceased to operate a TRANSFER FACILITY or other enterprise capable of generating enough revenue to defend against and pay for such claims, each MEMBER shall be entitled to seek reimbursement from the other MEMBER(S) for the costs of providing the defense against such tort claims or payment of any judgments lawfully imposed in connection therewith to the extent that the amounts paid by the MEMBER exceed that proportion of the total cost which exceeds (1) the ratio of the tonnage of SOLID WASTE generated within the jurisdiction of the MEMBER, collected by franchised companies, and processed by the TRANSFER FACILITY in the FISCAL YEAR of the occurrence of the incident giving rise to liability to the total tonnage processed by the TRANSFER FACILITY during said FISCAL YEAR, plus, (2) the inverse of the number of MEMBERS multiplied by the ratio of that tonnage to the tonnage of self hauled SOLID WASTE processed at the TRANSFER FACILITY in said FISCAL YEAR to the total tonnage processed by the TRANSFER FACILITY during said FISCAL YEAR.

7.2 Budget. A budget for the AUTHORITY shall be adopted by the BOARD for the ensuing FISCAL YEAR prior to June 30 of each year. The budget shall include sufficient detail to constitute an operating guideline. It shall also include the anticipated sources of funds, and the anticipated expenditures to be made for the operations of the AUTHORITY including, but not limited to, the acquisition or construction of the TRANSFER FACILITY and related site improvements, administration, special projects, maintenance and operating costs. Approval of the budget by the BOARD shall constitute authority for the MANAGER to expend funds for the purposes outlined in the approved budget, but subject to the availability of funds on hand as determined by the Auditor-Controller; provided that this shall not be construed to limit the power of the BOARD to modify the budget in whatever manner it deems appropriate and instruct the MANAGER accordingly.

7.3 Rates.

- (a) The BOARD shall establish rates to be charged at the TRANSFER FACILITY in amounts sufficient to provide for the efficient operation of the TRANSFER FACILITY, including administrative, processing, transportation and disposal costs, to discharge all indebtedness and liabilities relating to the acquisition and construction of the TRANSFER FACILITY (including, without limitation, any

REVENUE BONDS issued in connection therewith) and the operation of the TRANSFER FACILITY, to insure against future liabilities of the TRANSFER FACILITY and of MEMBERS resulting from "generator" status under state and federal laws and regulations relating to landfills experiencing illegal discharges of hazardous substances, to the extent that status pertains to SOLID WASTE generated at any time within the SERVICE AREA, and to pay those costs of postclosure maintenance for the LANDFILL which exceed net revenues from gas recovery and other ongoing LANDFILL site enterprises, as liability for such costs accrues, and to accommodate the planning and implementation of activities incidental thereto.

- (b) The BOARD shall establish rates to be charged at the LANDFILL in amounts sufficient to provide for the efficient operation of the LANDFILL, including administrative, processing, disposal costs and any as-yet unfunded costs of closure of the LANDFILL.
- (c) The AUTHORITY shall provide at least thirty (30) days advance written notice to its MEMBERS of any intent to increase or decrease rates to be charged at the TRANSFER FACILITY. To the extent possible, the AUTHORITY shall coordinate the effective date of rate increases or decreases with the annual garbage collection rate setting processes of the MEMBERS and other public entities having SOLID WASTE franchising jurisdiction within the SERVICE AREA.

SECTION 8. RULES OF CONDUCT

- 8.1 Bylaws. The BOARD, from time to time, may adopt bylaws for the conduct of the AUTHORITY's affairs, provided that they are not inconsistent with this AGREEMENT.
- 8.2 Officers and Committees. The BOARD may designate such officers and establish such committees as may be necessary or convenient to conduct the AUTHORITY's affairs.
- 8.3 Voting.
 - (a) Each DIRECTOR shall have one vote on all matters presented to the BOARD for a vote.
 - (b) Except as provided in Section 8.3(c), the vote of two of the DIRECTORS shall constitute the act of the BOARD.
 - (c) A majority vote of all of the DIRECTORS representing two thirds of the waste entering the AUTHORITY'S SOLID WASTE facilities during the prior calendar year, as defined in Section 8.5, shall be necessary in order to approve any of the following:

- i the construction budget for the TRANSFER FACILITY;
- ii the annual operating budget of the AUTHORITY in excess of debt service on REVENUE BONDS and the payment to the transfer station operator;
- iii the issuance, execution or delivery of REVENUE BONDS;
- iv any change in a budget exceeding 10% of the total amount of that budget;
- v any amendment to or the termination of this AGREEMENT;
- vi voting rules regarding the approval of contracts between the AUTHORITY and any one or more MEMBERS (it being understood that all such contracts must be approved pursuant to rules adopted in this manner); and
- vii the admission of an additional member or a substitute member including by means of assignment.

8.4 Quorum. A majority of the DIRECTORS shall constitute a quorum for the transaction of business of the BOARD except that if there is less than a quorum present, the DIRECTOR who is present, or the MANAGER may adjourn any meeting.

8.5 Determination of MEMBERS' Calendar Year's Waste Quantities. As part of the fiscal year budget setting process, the determination of the MEMBERS' prior calendar years' waste quantities shall be made and approved by the AUTHORITY'S BOARD OF DIRECTORS. The recorded waste tonnage quantities delivered to the AUTHORITY'S FACILITIES from each of the MEMBERS' franchised solid waste collection companies for the prior calendar year of January 1 to December 31 shall be used to set the next FISCAL YEAR's weighted voting as described in Section 8.3(c).

SECTION 9. TERM

9.1 The AUTHORITY became effective March 17, 1993 and this AGREEMENT shall become effective upon execution by all MEMBERS and shall continue in full force and effect until amended pursuant to Section 11 or until dissolved pursuant to Section 10 of this AGREEMENT. However, in no event shall the AUTHORITY be dissolved until all of the AUTHORITY's obligations and liabilities respecting all REVENUE BONDS are satisfied, discharged, or terminated or until the provisions of Section 10.2 are complied with.

SECTION 10. DISSOLUTION.

10.1 Assets.

- (a) Subject to the then-applicable requirements of the GOVERNMENT CODE, upon dissolution of the AUTHORITY, the assets of the AUTHORITY remaining after payment of or adequate provision for all debts, liabilities and obligations of the AUTHORITY shall be divided among the MEMBERS in accordance with an unanimous agreement among them or, in the absence of such an agreement, in proportion to the total tonnage of SOLID WASTE, over the life of the TRANSFER FACILITY, (exclusive of SOLID WASTE delivered by self haulers) each MEMBER caused to be delivered to the TRANSFER FACILITY.

- (b) To ensure that "adequate provision" is made for all debts, liabilities and obligations of the AUTHORITY upon dissolution, any assets remaining after satisfaction of all debts known to exist as of the time of dissolution shall be placed in a trust account with the Napa County Auditor to be held in trust until expiration of the period of postclosure maintenance for the LANDFILL required by state and federal law. If the assets are not liquid, such assets shall first be sold at public auction and the net proceeds placed in the trust fund. While held in trust, such assets and/or any interest earned thereon shall be disbursed only to pay debts of the AUTHORITY arising after dissolution in consequence of actions of the AUTHORITY prior to dissolution, or to pay for costs of postclosure maintenance of, or hazardous waste release remediation at the LANDFILL. Any such disbursement from this dissolution trust fund shall be made by the Napa County Auditor only with the unanimous consent of the governing bodies of those agencies which were MEMBERS at the time of dissolution, or by order of a court of competent jurisdiction. Upon expiration of the period of postclosure maintenance, any remaining funds shall be distributed in the manner set forth in (a).

10.2 REVENUE BONDS.

- (a) If any REVENUE BONDS are outstanding, the MEMBERS shall cause to be delivered to the REVENUE BOND trustee(s):
 - (i) an opinion of nationally recognized bond counsel substantially to the effect that such dissolution will not cause the interest on the outstanding REVENUE BONDS to be included in gross income for federal income tax purposes; and

 - (ii) evidence from each rating agency then rating the outstanding REVENUE BONDS that such dissolution will not adversely affect the rating of such REVENUE BONDS.

(b) Approval of any request to dissolve shall not be unreasonably withheld; provided, however, that if any REVENUE BONDS are outstanding at the time the request is made or acted upon, financial assurances are made by the MEMBERS that will assure continued payment of the MEMBERS' share of the outstanding indebtedness which is acceptable to the other MEMBERS, the AUTHORITY, and the REVENUE BOND trustee(s) and their respective counsel. Approval of such financial assurances by an independent financial consultant selected by the BOARD shall be required.

10.3 Effective. No dissolution shall be effective unless and until the AUTHORITY and MEMBERS comply with any then-applicable requirements of the GOVERNMENT CODE relating to changes in the composition of entities such as the AUTHORITY; and if and when they have REVENUE BONDS issued by the AUTHORITY outstanding, comply with all of the terms and conditions of all REVENUE BONDS and related documentation including, without limitation, indentures, trust agreements, resolutions and letter of credit agreements.

SECTION 11. AMENDMENTS

11.1 This AGREEMENT may only be amended by a written instrument approved in accordance with this AGREEMENT and meeting any requirements imposed by the terms or conditions of all REVENUE BONDS and related documentation including, without limitation, indentures, trust agreements, resolutions and letter of credit agreements. Notwithstanding the foregoing, no amendment shall require any MEMBER to contribute any funds to the AUTHORITY or become directly or contingently liable for any debts, liabilities or obligations of the AUTHORITY without the consent of that MEMBER evidenced in a written instrument signed by a duly authorized representative of that MEMBER.

SECTION 12. FILING WITH THE SECRETARY OF STATE

12.1 The MANAGER shall file all required notices with the Secretary of State in accordance with California Government Code Sections 6503.5 and 53051, as such may be amended from time to time.

SECTION 13. NOTICES

13.1 All notices which any MEMBER or the AUTHORITY may wish to give in connection with this AGREEMENT shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the MEMBER or AUTHORITY, to an officer or person apparently in charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to the MEMBER or AUTHORITY at

its principal office, or to such other address as the AUTHORITY or MEMBER may designate from time to time by written notice given to the other MEMBERS in the manner specified in this Section. Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery (but 24 hours after such delivery in the case of notices of special meetings of the BOARD) or three (3) days after mailing if deposited in the United States mail. Until changed by written notice to the AUTHORITY and the MEMBERS, notice shall be delivered as follows:

CITY OF VALLEJO: Vallejo City Manager
555 Santa Clara Street
Vallejo, CA 94590

COUNTY OF NAPA: Clerk of the Board of Supervisors
1195 Third Street, Room 310
Napa, CA 94559

CITY OF NAPA: City of Napa Clerk
P.O. Box 660
955 School Street
Napa, CA 94559

CITY OF AMERICAN CANYON: City of American Canyon Clerk
2185 Elliott Drive
American Canyon, CA 94589

AUTHORITY: South Napa Waste Management Authority
Environmental Management Director
1195 Third Street, Room 101
Napa, CA 94559

SECTION 14. SUCCESSORS AND ASSIGNS

14.1 This AGREEMENT shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the MEMBERS. However, no MEMBER shall assign any of its rights under this AGREEMENT except to a duly formed public entity organized and existing under the laws of the State of California and then only when approved in accordance with this AGREEMENT. No assignment shall be effective unless and until the AUTHORITY, the MEMBERS and the proposed assignee comply with all then-applicable requirements of the GOVERNMENT CODE relating to changes in the composition of entities such as the AUTHORITY and, if and when they have REVENUE BONDS outstanding, in compliance with the terms and conditions of all REVENUE BONDS and related documentation including, without limitation, indentures, trust agreements, resolutions and letter of credit agreements.

SECTION 15. **SEVERABILITY**

15.1 Should any part, term or provision of this AGREEMENT be decided by a final judgement of a court or arbitrator to be illegal or in conflict with any law of the State of California or otherwise be unenforceable or ineffectual, the validity of its remaining parts, terms and provisions shall be not be affected.

SECTION 16. **SECTION HEADINGS**

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

SECTION 17. **ARBITRATION**

17.1 All disputes that arise in connection with the interpretation or performance of this AGREEMENT shall be resolved on an equitable basis by a single arbitrator under the commercial arbitration rules of the American Arbitration Association. The arbitrator's decision shall be final and binding on the AUTHORITY, all MEMBERS and all former MEMBERS involved or affected by the dispute. The AUTHORITY, any MEMBER and any former MEMBER that is party to the dispute may enforce any award, order or judgement of the arbitrator in any court of competent jurisdiction.

SECTION 18. **LAW TO GOVERN**

18.1 It is understood and agreed by the parties that the law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this AGREEMENT and shall govern the interpretation of this AGREEMENT.

SECTION 19. **ENTIRETY**

19.1 The MEMBERS agree that this AGREEMENT represents the full and entire agreement between the MEMBERS hereto with respect to matters covered herein. This AGREEMENT supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the MEMBERS hereto with respect to such subject matter.

SECTION 20. **WAIVER**

20.1 A waiver of any breach of any provision of this AGREEMENT shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, nor

shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.