

DATE SUBMITTED September 14, 2022
 SUBMITTED BY Community Development
 DATE ACTION REQUIRED September 21, 2022

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: Approval of Amended and Restated Joint Powers Formation Agreement	
DEPARTMENT INVOLVED:	
BACKGROUND/SUMMARY: The Imperial Valley Resource Management Agency ("IVRMA") was formed in 2008 by way of a joint powers arrangement between Imperial County and the seven cities in the County. With the adoption of SB1383 and other State mandated recycling laws, various requirements associated with organic waste collection, public education and outreach, reporting and recordkeeping, capacity planning and procurement and other related functions are now in play. The cities and county have determined that the most efficient way of achieving compliance is by way of amendment to the joint powers agreement.	
FISCAL IMPACT: To be determined based upon budget approved by the participating agencies.	FINANCE INITIALS <u>DP</u>
STAFF RECOMMENDATION: <p style="text-align: center;"><i>approve</i></p>	DEPT. INITIALS <u>DM</u>
MANAGER'S RECOMMENDATION: Approve Imperial's participation in the amended and restated joint powers agreement.	CITY MANAGER'S INITIALS <u>DM</u>
MOTION:	
SECONDED:	APPROVED () REJECTED ()
AYES:	DISAPPROVED () DEFERRED ()
NAYES:	REFERRED TO:
ABSENT:	REFERRED TO:



**IMPERIAL VALLEY RESOURCE
MANAGEMENT AGENCY (IVRMA)
AMENDED AND RESTATED JOINT
POWERS FORMATION AGREEMENT**

TABLE OF CONTENTS

RECITALS	4
SECTION 1: Definitions	6
SECTION 2: Purpose	7
2.1 General.....	7
2.2 Regional Agency Pursuant to Section 40970 et.al. of the ACT.....	8
2.3 Common and Additional Powers.....	8
2.4 Mission.....	8
2.5 Common Powers.....	8
SECTION 3: Continuation of Authority	8
3.1 Continuation.....	8
3.2 Separate Entity.....	8
3.3 Assets, Rights and Liabilities.....	8
SECTION 4: Boundaries	8
4.1 Service Area.....	8
SECTION 5: Formation/Organization	8
5.2 Composition.....	8
5.3 Name.....	8
5.4 The Board.....	9
5.5 Member Agencies Directors.....	9
5.6 Voting.....	9
5.7 Quorum.....	9
5.8 Officers, Committees, Rules.....	9
5.9 Meetings.....	10
5.10 Compensation.....	10
5.11 By-Laws.....	10
SECTION 6: Personnel and Administration	10
6.1 Employees.....	10
6.2 Manager.....	10
6.3 Support Services.....	10
SECTION 7: Powers	10
7.1 Approved Powers.....	10
7.2 Limitations.....	13
7.3 Possible Future Responsibilities and Duties.....	13
7.4 Individual MEMBER Services.....	13
SECTION 8: Financial Matters	13
8.1 Budget.....	13
8.2 Membership.....	13
8.3 Membership Fees.....	13
8.4 Membership Penalties.....	13
8.5 Competitive Purchases.....	13
8.6 Accountability.....	13
8.7 Debts, Liabilities, and Obligations.....	14
8.8 Audit.....	14
8.9 Regional Agency Planning Civil Penalties.....	14
SECTION 9: Withdrawal and/or Termination	14
9.1 Withdrawal.....	14
9.2 Continuance of Agency Upon a Withdrawal.....	14

9.3 Member Re-Admission into Agency.....	15
9.4 Physical Asset Distributions Upon Terminations.....	15
9.5 Funds of the Agency.....	15
9.6 Assets.....	15
9.7 Effective Date of Termination.....	15
9.8 Regional Agency Compliance Upon.....	15
SECTION 10: Amendments.....	15
SECTION 11: Contracts Outside of this Agreement.....	16
SECTION 12: Miscellaneous.....	16
12.1 Term and Continuance.....	16
12.2 Severability.....	16
12.3 No Conflicts.....	16
12.4 Effective Dates.....	16
12.5 Filings.....	16
12.6 Notices.....	16
12.7 Successors and Assigns.....	17
12.8 Section Headings.....	18
12.9 Dispute Resolutions.....	18
12.10 Law to Govern.....	18
12.11 Entirety.....	18
12.12 Waiver.....	18
12.13 Indemnification.....	18
12.14 Counterparts.....	18
12.15 Execution.....	18

**IMPERIAL VALLEY RESOURCE MANAGEMENT AGENCY AMENDED
AND RESTATED JOINT POWERS FORMATION AGREEMENT**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT (“AGREEMENT”) of the IMPERIAL VALLEY RESOURCE MANAGEMENT AGENCY (IVRMA) is made and entered into with an effective date of -----, by and between the COUNTY OF IMPERIAL, a political subdivision of the State of California, the CITY OF BRAWLEY, the CITY OF CALEXICO, the CITY OF CALIPATRIA, the CITY OF EL CENTRO, the CITY OF HOLTVILLE, the CITY OF IMPERIAL, and the CITY OF WESTMORLAND, municipal corporations, referred to hereinafter as “MEMBER (S)” and IVRMA will be referred to hereinafter as “AGENCY”.

RECITALS

WHEREAS, MEMBERS are responsible for the health and safety of their citizens, and to that end regulate Solid Waste, Recyclable Material, and Organic Material Collection in areas under their jurisdiction, they award franchises for Collection to private organizations, all of which are referred to as Hauler.

WHEREAS, MEMBERS 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 shares Solid Waste Diversion percentages to meet the waste reduction mandates of the California Department of Resources, Recycling and Recovery (CalRecycle) formerly known as the California Integrated Waste Management Board CIWMB, as a region.

WHEREAS, 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.

WHEREAS, MEMBERS desire to establish and confer upon a separate legal entity, the AGENCY, the powers necessary to enable coordination of economical and regional source reduction recycling of SOLID WASTE to meet the diversion requirements mandated by the California Integrated Waste Management Act (ACT), including the monitoring and reporting of source reduction recycling information. to achieve their waste Diversion goals, to comply with the California Integrated Waste Management Act, and arrange for the Disposal of remaining Solid Waste.

WHEREAS, on February 6, 2008 an agreement was executed by and between the Imperial Valley Resource Management Agency Members (Members) forming a joint powers authority pursuant to the

provisions of the Joint Exercise of Powers Act (Government Code Sections 6500 et. seq for the purpose of providing coordination of economical and regional source reduction recycling of solid waste (hereinafter referred to as the “2008 IVRMA Agreement”); and

WHEREAS, pursuant to the 2008 IVRMA Agreement the power to perform the responsibilities of the joint powers authority was vested in the Agency Board of Directors (BOARD); and

WHEREAS, each of the parties expressly represents and acknowledges that it desires to amend the 2008 IVRMA Agreement as provided herein and that the terms of this amendment are incorporated by reference into this AGREEMENT ; and

WHEREAS, the parties expressly designate the Agency Board the authority to ensure and oversee compliance with and enforcement of Senate Bill 1383, on behalf of each party hereto; and

WHEREAS, the MEMBERS also expressly designate and desire for the Agency to ensure and oversee compliance with Assembly Bill 1826 and Assembly Bill 341 on behalf of each party hereto.

WHEREAS, Senate Bill 1383 (Lara, 2016) was signed into law and establishes methane emissions reduction goals of 50 percent in the level of the statewide landfill disposal of organic waste from the 2014 level by 2020 and 75 percent by 2025; and,

WHEREAS, the Department of Resources Recycling and Recovery (CalRecycle) has developed regulations in Title 14 Division 7, Chapter 12 of the California Code of Regulations to implement the goals in Senate Bill 1383 (Senate Bill 1383 regulations;) and

WHEREAS, Senate Bill 1383 regulations require jurisdictions to implement an organic waste diversion program that includes providing organic waste collection services to businesses and residences, edible food recovery goals, public education and outreach, contamination monitoring and sampling activities, recordkeeping and reporting, organic and edible food recovery, infrastructure capacity planning, procurement of recovered organic waste products, and enforcement; and

WHEREAS, Assembly Bill 1826 (Chesbro, 2014) (Recycling of Commercial Organic Waste (MORe)) was signed into law and established the requirement for jurisdictions to implement an organic waste recycling program to divert commercial organic waste; and

WHEREAS, Assembly Bill 341 (Chesbro, 2011) (Recycling of Commercial Solid Waste (MCR)) was signed into law and established requirements for jurisdictions to implement a commercial solid waste recycling program designed to divert commercial solid waste; and

WHEREAS, CalRecycle developed regulations in Title 14, Division 7, Chapter 9.1 to implement the goals of the MCR law; and

WHEREFORE, the Agency continues the Joint Powers Authority now known as the Imperial

Valley Resource Management Agency to own, finance, administer, monitor, and operate based on the compliance under the ACT.

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.

"AGENCY" means the Imperial Valley Resource Management Agency, a joint exercise of powers authority created by the MEMBERS pursuant to this AGREEMENT.

"AUDITOR" means the auditor for the agency.

"BOARD" means the BOARD of DIRECTORS of the AGENCY consisting of one member from the cities of Brawley, Calexico, Calipatria, El Centro, Holtville, Imperial, Westmorland and two members of the County of Imperial Board of Supervisors.

"CALRECYCLE" means the California Department of Resources, Recycling and Recovery previously known as the CIWMB.

"CIWMB" means the California Integrated Waste Management Board created under the provisions of the CIWMA, whose duties include implementing the CIWMA.

"DIRECTOR" means the Agency representative appointee of a MEMBER of the BOARD

"DISPOSAL" means the ultimate disposition of Solid Waste received by HAULER at a Facility in Full Regulatory Compliance.

"DIVERSION" means the separation of materials from the overall Solid Waste stream and whose disposition is for reuse or Recycling and not landfill disposal.

"FACILITY/FACILITIES" means any 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.

"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.

"HAULER" means an Exclusive Franchised Hauler, Permitted Haulers and/or Licensed Haulers providing Residential, Commercial, and/or Industrial Waste collection services to generators within the service areas.

"HOUSEHOLD HAZARDOUS WASTE ELEMENT" or "HHWE" means the element prepared pursuant to the ACT, which identifies a program for the safe collection, recycling, treatment and disposal of hazardous wastes which are generated by households within a jurisdiction and which should be separated from the SOLID WASTE stream.

"LANDFILL" means any parcel of duly licensed and certified as a sanitary landfill which may be owned or leased or to which the member agencies contribute, including any accessory facilities related thereto.

"LEGISLATION" means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may here as be adopted which constitutes law or regulation.

"MANAGER" means the person, MEMBER agency or firm hired or contracted by the BOARD as the AGENCY's administrative officer to manage the affairs of the AGENCY and to affect 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.

"NON-DISPOSAL FACILITY ELEMENT" or NDFE means the element that describes new facilities and the expansion of existing facilities, which will be needed to implement a jurisdiction's SRRE.

"SERVICE AREA" means those incorporated areas within the cities of Brawley, Calexico, Calipatria, El Centro, Imperial, Holtville and Westmorland and those unincorporated areas within the County of Imperial.

"SOLID WASTE" refers to garbage, refuse, sludges and other discarded solid materials resulting from residential activities, and industrial and commercial operations. This term generally includes used oil. This term generally does not include solids or dissolved material in domestic sewage or other significant pollutants in water such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. However, if any of these materials are separated from the water that carries them, then they generally are considered SOLID WASTE. For regulatory purposes, hazardous waste is a subset of SOLID WASTE.

"SOURCE REDUCTION AND RECYCLING ELEMENT" or "SRRE" means the element prepared pursuant to the ACT, which includes a program for management of SOLID WASTE generated within a jurisdiction, consistent with the California Integrated Waste Management Board's waste management hierarchy.

"TERM" means the period of time

SECTION 2. PURPOSE

- 2.1 **General.** The AGENCY is formed for the purpose of providing coordination of economical and regional source reduction recycling of SOLID WASTE to meet the diversion requirements mandated by the ACT, including the monitoring and reporting of source reduction recycling information.
- 2.2 **Regional Agency Pursuant to Section 40970 et al. of the ACT.** The AGENCY shall act as a regional agency as defined in the ACT to implement the ACT within the SERVICE AREA. The AGENCY, and not the MEMBERS, is responsible for compliance with Article I (commencing with Section 41780) of Chapter 6 of the ACT.

- 2.3 Common and Additional Powers. The AGENCY's purpose also includes the establishment of the AGENCY as an independent joint powers entity to enable the MEMBERS to jointly exercise the common powers of the MEMBERS set forth in Section 2.1 and for the exercise of such additional powers as are conferred under Section 7 or conferred by the GOVERNMENT CODE upon all joint powers' authorities.
- 2.4 This AGREEMENT is entered into pursuant to the Act for the purpose of the Members maintaining an existing Regional Agency to collectively monitor post-collection services and disposal and diversion of Hazardous Waste for determining compliance with the Act and (i) plan, study, recommend, and have the authority to recommend proper solid waste management activities and programs consistent with the Act, (ii) to enable it to report and track programs under the Act on a regional basis, (iii) address future diversion mandates, to allow for efficient operation of diversion programs on a region-wide basis, and (iv) to allow for the development of Regional Integrated Waste Management Plans including a Source Reduction and Recycling Element (SRRE), Household Hazardous Waste Element (HHWE), and Non-Disposal Facility Element (NDFE).
- 2.5 The Members are each empowered by the laws of the State of California to exercise the powers specified in this Agreement, to comply with the provisions of the Act and other laws. These common powers shall be exercised for the benefit of any one or more of the Members or otherwise in the manner set forth in this AGREEMENT.

SECTION 3. CONTINUATION OF AUTHORITY

- 3.1 Continuation. Pursuant to the Act, the MEMBERS continue the public entity known as the Imperial Valley Resource Management Agency.
- 3.2 Separate Entity. The AGENCY shall be a public entity separate from the MEMBERS.
- 3.3 Assets, Rights, and Liabilities. The assets, rights, debts, liabilities, and obligations of the Agency shall not constitute assets, rights, debts, liabilities, or obligations of any of the Members. However, nothing in this AGREEMENT shall prevent the Agency from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the AGENCY, provided that both the Board and that Agency approve such contract or assumption.

SECTION 4. BOUNDARIES

- 4.1 Service Area. The AGENCY shall exercise its powers within its Service Area. If a MEMBER withdraws from the AGENCY, the boundary of the AGENCY shall be modified to exclude the area of the withdrawing MEMBER. Such withdrawal and redrawing of boundaries shall not prevent any Facilities from being located outside of the boundary of the Service Area.

SECTION 5. FORMATION/ORGANIZATION

- 5.1 The MEMBERS, pursuant to the GOVERNMENT CODE, do hereby form, establish and create the Imperial Valley Resource Management Agency, it being understood that the BOARD shall be entitled to change the AGENCY's name from time to time if it so chooses. The AGENCY shall constitute a public entity separate and distinct from the MEMBERS thereof.
- 5.2 Composition. The AGENCY shall be composed of the Cities of Brawley, Calexico, Calipatria, El Centro, Holtville, Imperial, Westmorland and the County of Imperial (those unincorporated areas within the County of Imperial).

- 5.3 **Name.** The official name of the AGENCY shall be the "Imperial Valley Resource Management Agency whose address shall be 300 S. Imperial Avenue Suite 6, El Centro CA 92243
- 5.4 **Board.** The AGENCY 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. The power of the AGENCY is vested in its BOARD. The composition, and voting power of the members of the BOARD shall be as follows:

	<u>Directors</u>	<u>Voting Ballots</u>	<u>Population</u>
City of Brawley	1	1	27,320
City of Calexico	1	1	40,714
City of Calipatria	1	1	3,646
City of El Centro	1	1	44,693
City of Holtville	1	1	6,779
City of Imperial	1	1	19,929
City of Westmorland	1	1	2,461
County of Imperial	2	2	35,331
TOTAL	9	9	180,873

- 5.5 **Member Agency Directors.**
- a. **Member Agency Directors.** Each MEMBER shall appoint its representative(s) 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. Each DIRECTOR and alternate shall be an elected or managerial officer appointed by the governing body of the MEMBER. **Unless otherwise determined by the governing body of the Member, the representative to the Board shall be the same person(s) that represents the Member on the Imperial County Transportation Commission.**
 - b. If a DIRECTOR or alternate ceases holding any such elected or managerial position, he or she shall then cease to serve as a DIRECTOR or alternate.
 - c. The appointing MEMBER shall fill vacancies within thirty (30) days of the occurrence thereof. The AGENCY and the BOARD shall be entitled to rely on a written notice from the City Clerk (in the case of the cities) and the Clerk of the Board of Supervisors (in the case of the County) as conclusive evidence of the appointment and removal of the DIRECTORS and/or alternates representing that MEMBER. All designations must be placed on file with the Clerk of the AGENCY to be effective. All DIRECTORS serve solely at the pleasure of the appointing MEMBERS.
- 5.6 **Voting.** The affirmative vote of a majority of the voting power of the AGENCY as a whole (five (5) affirmative votes) shall be required to approve an act of the AGENCY.
- 5.7 **Quorum.** A majority of the DIRECTORS present (five (5)) shall constitute a quorum for the transaction of business of the BOARD except that if there is less than a majority of DIRECTORS present to constitute a quorum, then a quorum may consist of the MEMBERS present if the total populations of the MEMBERS present total fifty-one percent (51%) of the entire MEMBER

population. If neither roll call results in a quorum, then the DIRECTOR(s) who are present, or the MANAGER, must adjourn any meeting for lack of a quorum.

- 5.8 Officers, Committees, Rules. The AGENCY may designate such officers, establish such committees and adopt such rules as may be necessary or convenient to conduct its affairs.
- 5.9 Meetings. Regular meetings of the AGENCY shall be held at least four (4) times each FISCAL YEAR, at such times and places as may be established by the AGENCY by resolution. All meetings of the AGENCY, including regular, adjourned regular and special meetings shall be called, noticed, held and conducted in accordance with the provisions of The Ralph M. Brown Act (California Government Code Section 54950 et seq.).
- 5.10 Compensation. No member of the AGENCY's BOARD shall receive any compensation unless expressly provided by resolution of the AGENCY and with approval of a majority of the MEMBERS' governing bodies.
- 5.11 By laws. The BOARD, from time to time, may adopt bylaws for the conduct of the AGENCY's affairs, provided that they are not inconsistent with this AGREEMENT.

SECTION 6. PERSONNEL AND ADMINISTRATION

- 6.1 Employees. The AGENCY may have its own employees or may contract with a MEMBER or firm for the furnishing of any necessary staff services associated with or required by the AGENCY.
- 6.2 MANAGER. Except and until the AGENCY exercises its option to obtain other employees or contractors, the MANAGER of the AGENCY shall be the Executive Director of the Imperial County Transportation Commission or his/her designee. The Executive Director of the, Imperial County Transportation Commission or his/her designee, shall contract with the AGENCY for services and shall serve until such time as the AGENCY exercises its option to obtain other employees or contractors. The MANAGER shall serve as the Purchasing Agent of the AGENCY.
- 6.3 Support Services. Except and until the AGENCY exercises its option under the GOVERNMENT CODE and Section 6.1 of the AGREEMENT, the Imperial County Transportation Commission will provide support services to the AGENCY including all legal, financial, accounting, audits, data processing, secretarial, purchasing and personnel services. The Imperial County Transportation Commission Auditor's shall be the Auditor and Treasurer for the AGENCY pursuant to the GOVERNMENT CODE. The AGENCY's MEMBERS shall mutually establish the scope of support services to be provided by the Imperial County Transportation Commission annually. The cost for such services shall be included in the AGENCY's annual budget referred to in Section 8.1 and shall be in a not-to-exceed amount to be determined mutually by the MEMBERS.

SECTION 7. POWERS

- 7.1 Approved Powers. To the full extent permitted by applicable law (including specifically the ACT and the GOVERNMENT CODE), the AGENCY 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 provide for the implementation of the requirements of the ACT for the MEMBERS, as a regional agency pursuant to the ACT, including the following:
 - i. Acquire, improve, hold, lease, and dispose of real and personal property of all types.
 - ii. Review local ordinances and resolutions to ensure consistency with the ACT;
 - iii. Adopt, review, revise and recommend updates, including those necessary due to any additions or changes to State or Federal law, of the SRRE, HHWE, and NDFE of the AGENCY to meet the requirements of the ACT;
 - iv. Monitor and implement the AGENCY SRRE, HHWE and NDFE and make findings as to nonconformance as required by the ACT;
 - v. Each MEMBER shall be responsible to implement the AGENCY SRRE, HHWE, SLCP and NDFE as stated in the AGENCY SRRE, HHWE, and NDFE which are incorporated by reference;

- b. To assist with the development and implementation of a countywide Integrated Waste Management Plan and other documents representing the interests of all Members, and in that regard is empowered by the MEMBERS to:
 - i. Review and recommend updates to the countywide siting element and the countywide summary plan.
 - ii. Inform the MEMBERS of new or revised planning criteria adopted for use within each of the: MEMBER's jurisdiction;
 - iii. Review the countywide hazardous waste management plan;
 - iv. Participate in any other regional waste management efforts, such as household hazardous waste collection events;
 - v. Plan, design, and implement programs that address the Processing and Diversion requirements of the CIWMA.
 - vi. Educate the public about Solid Waste, Organic Waste, Compost Diversion, and Recycling matters
 - vii. To sue and be sued;
 - viii. To employ agents, employees and to contract professional services
 - ix. To incur debts, liabilities and obligations
 - x. To reimburse the: MEMBER(S) for the costs of special services provided to the AGENCY
 - xi. To make and enter into contracts, including contracts with any: MEMBER, and to assume existing contracts made by any MEMBER
 - xii. To apply for and accept grants, advances, and contributions
 - xiii. To make plans and conduct studies
 - xiv. To coordinate efforts with established local, regional, and State waste management agencies
 - xv. To provide annual reporting to each of the MEMBERS
 - xvi. To review and make recommendations on pending SOLID WASTE and household hazardous waste legislation
 - xvii. To represent the AGENCY in all source reduction recycling and hazardous waste issues affecting the MEMBERS
 - xviii. To assist with the development of local markets for recycled products and provide resources for information concerning product availability; and
 - xix. To conduct or contract for household hazardous waste events and activities
 - xx. Coordinate with CalRecycle as required.
 - xxi. Operate Household Hazardous Waste Programs ("HHWP"), including the

following:

1. Act as the HHWP public agency permittee;
 2. Determine the desired level of service after consultation with Members and communicate desired levels to all HHWP contractors;
 3. Manage HHW budget and monitor Contractor's HHW costs for consistency with the approved budget;
 4. Manage contract for HHW Facility and any satellite or mobile events;
 5. Confirm and report that expected levels of service are being maintained;
 6. Operate a motor oil recycling program, design and distribute all related public information in English and Spanish, ensure compliance and coordinate events;
- xxii. Implementation of outreach, monitoring, and reporting for Integrated Waste Management Act AB939, which includes, SREE, HHWE, AB341 MCR, AB1826 MORE, and SB1383, as further defined in this AGREEMENT.
- c. To act as the delegate on behalf of each party to this AGREEMENT for the responsibilities for compliance with the provisions of Senate Bill 1383 (Public Resources Code section 42652-42654) and the corresponding regulations in Title 14 of the California Code of Regulations, Division 7, Chapter 12 and "Assembly Bill 1826 (Public Resources Code sections 42649.8-24649.87" to the extent allowed by law, except as noted below. These delegated responsibilities, include, but are not limited to:
- i. Advisor to MEMBERS in support of MEMBERS establishing, administering, implementing and/or operating all state mandated Senate Bill 1383 programs. The programs are to be managed by the MEMBERS within their jurisdiction. Such programs include, but are not limited to organic waste management, education and outreach, monitoring, inspection, and record keeping programs. Such compliance shall also include conducting organic waste capacity planning, as required by law and compliance with CalGreen Building Standards and the Model Water Efficient Landscape Ordinance. AGENCY shall report to CalRecycle on MEMBER programs as required by law.
 - ii. Establishing, administering, and implementing the edible food recovery requirements of Senate Bill 1383 regulations. Such duties shall include, but are not limited to, coordination with MEMBERS: assessment of existing capacity for edible food recovery, assist with establishing a food recovery program, and education and outreach to all businesses, residents, commercial edible food generators, and any other entities or parties required by law.
 - iii. Coordinating with CalRecycle and any other state or federal entities in assessing, and ensuring compliance with the CalRecycle procurement and pollution reduction targets for each party.
 - iv. AGENCY will not perform any duties under Senate Bill (SB) 1383 Lara, Chapter 395, Statutes of 2016, Inspection and Enforcement.
- d. To act as delegate on behalf of each party to this Agreement for compliance with Assembly Bill 341, (Public Resources Code sections 42649-42649.7) and the corresponding regulations in Title 14, Division 7, Chapter 9.1 Such compliance shall be on behalf of each party to this AGREEMENT to the extent allowed by law and shall include, but is not limited to:
- i. Advisor to MEMBERS on requirements of identification and monitoring of businesses, education and outreach, notification of non-compliant businesses.
 - ii. AGENCY shall report the progress achieved in implementing the program in the Annual Report required by Public Resources Code Section 41821, et seq.

- 7.2 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 MANAGER for the AGENCY in the exercise of similar powers.
- 7.3 Possible Future Responsibilities and Duties. Upon future approval and agreement by all of the MEMBERS, the AGENCY may conduct other related waste management responsibilities and duties as amended or developed outside agreement, Section 10 and/or Section 11.
- 7.4 Individual MEMBER Services. Upon approval of the AGENCY and the governing body of a MEMBER, the AGENCY may contract to provide services individually for that MEMBER, pursuant to Section 10 of this AGREEMENT.

SECTION 8. FINANCIAL MATTERS

- 8.1 Budget. A budget for the AGENCY 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 AGENCY including, but not limited to, actions related to implementing the ACT. Approval of the budget by the BOARD shall constitute authority for the MANAGER to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand as determined by the Auditor; 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.
- 8.2 Membership. Membership in the AGENCY is contingent upon timely payment of membership fees and other fees, as determined by the AGENCY. If a MEMBER hereto fails to pay its fees, as determined by the AGENCY, said MEMBER shall be deemed to have withdrawn from the AGENCY.
- 8.3 Membership Fees. Twenty-five percent (25%) of the annual project cost will be distributed in **eight (8)** equal parts. Seventy-five percent (75%) of the annual project cost will be distributed based upon the MEMBERS' percentage of population to the total population within the County of Imperial. Total population will include the population of the **seven (7)** cities and the unincorporated area of the County of Imperial. The population figures to be utilized will be those as determined by the State Department of Finance in May of each FISCAL YEAR.
- 8.4 Membership Penalties and Delinquency. A ten percent (10%) penalty shall be assessed to a MEMBER for failure to pay membership fee within ninety (90) days of receiving invoice from the AGENCY. A MEMBER shall be deemed delinquent for failure to pay membership fees within six (6) months of receiving invoice from the AGENCY and shall be withdrawn from AGENCY at that time.
- 8.5 Competitive Purchases. The BOARD shall establish procedures and policies to ensure competitive prices for the purchase of goods and services to the extent necessary. Formal bidding shall not be necessary except to the extent required by law for general law counties.
- 8.6 Accountability. The AGENCY shall be strictly accountable to all MEMBERS for all receipts and disbursements. The AGENCY may not obligate itself beyond the monies due to it under

this AGREEMENT plus any monies on hand or irrevocably pledged to its support from other sources.

- 8.7 Debts, Liabilities and Obligations. The debts, liabilities and obligations of the AGENCY shall be solely the obligation of the AGENCY and not the debts, liabilities and obligations of the MEMBERS or its officers or employees except as required by the GOVERNMENT CODE.
- 8.8 Audit. The AGENCY shall cause an annual audit to be prepared and filed to the extent required by the GOVERNMENT CODE.
- 8.9 Regional Agency Planning Civil Penalties. Any civil penalties that are imposed pursuant to the ACT will be apportioned by the AGENCY. The AGENCY shall review the civil penalty and determine one of the following concerning the payment of the penalty:
- a. That the AGENCY shall pay the entirety of the penalty; or
 - b. That an individual MEMBER is responsible for the assessment of the civil penalty and that the penalty shall be therefore imposed upon that MEMBER for payment of the penalty; or
 - c. That multiple MEMBERS, but not all MEMBERS, are responsible for the assessment of the civil penalty and that the penalty shall be therefore allocated equally and imposed upon those responsible MEMBERS.
- d. Before assessing the MEMBER or MEMBERS with any civil penalty as provided in this Section 8.9, the AGENCY shall provide the MEMBER or MEMBERS determined to be responsible for the assessment with at least fifteen (15) days written notice regarding the MEMBER's or MEMBERS' responsibility, which notice shall include the basis for determining the MEMBER's or MEMBERS' proportional responsibility and the opportunity for a hearing before the BOARD. Such notice shall be made to the MEMBER or MEMBERS and deemed complete as provided in Section 12.6 of this AGREEMENT.

SECTION 9. WITHDRAWAL AND/OR TERMINATION

- 9.1 Withdrawal. A MEMBER may not withdraw from the AGENCY unless it has entered into an agreement with the AGENCY, at least ninety (90) days prior to the end of the fiscal year permitting a MEMBER to withdraw and specifying the terms and impact of its withdrawal, which approval shall not be unreasonably withheld. No withdrawal shall be effective unless and until the AGENCY and the MEMBER comply with any then-applicable requirements of law relating to changes in the composition of entities such as the AGENCY.
- a. A MEMBER which has withdrawn from the AGENCY shall not be liable for the payment of further membership fees falling due beyond the date of withdrawal and shall have no right to reimbursement on any monies including membership fees and grant funding previously paid to the AGENCY on their behalf. The AGENCY may authorize a reimbursement if in its judgement such reimbursement is fair and equitable and can be done without jeopardy to the operation of the AGENCY.
- 9.2 Continuance of AGENCY Upon a Withdrawal. Upon withdrawal of any MEMBER, the remaining MEMBERS shall determine, by majority vote, whether the AGENCY shall continue in existence or be terminated.

- 9.3 Member Re-Admission Into AGENCY. A MEMBER which has withdrawn from the AGENCY may request re-admission into the AGENCY. The MEMBER shall be liable for all applicable membership fees and other fees as determined by the AGENCY. Re-admission into the AGENCY is contingent upon affirmative vote of a majority of the voting power of the AGENCY as a whole (four (4) affirmative votes).
- 9.4 Physical Asset Distribution Upon Termination. In the event that the AGENCY is terminated, any physical assets remaining shall be sold and, after all liabilities, encumbrances and liens have been paid, the proceeds of the sale shall be allocated proportionately to the MEMBERS based on their percentage of population to the total population within the County of Imperial. The population figures to be utilized will be those as determined by the State Department of Finance in May of each fiscal year.
- 9.5 Funds of the AGENCY. All revenues shall become funds of the AGENCY. No revenues shall be returned to a withdrawing MEMBER unless the AGENCY as a whole dissolve, in which case, any remaining funds shall be distributed according to Section 9.6.
- 9.6 Assets. Subject to the then-applicable requirements of the ACT and/or the GOVERNMENT CODE, upon termination of the AGENCY, the assets of the AGENCY remaining after payment of or adequate provision for all debts, liabilities and obligations of the AGENCY 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 each MEMBER generated. Any assets that are not conveniently divisible shall be sold at a duly-noticed public auction, in which case the net proceeds from the sale shall be divided among the MEMBERS in accordance with that agreement or, in the absence of such an agreement, those same proportions. In-kind contributions shall be returned to the donating MEMBER.
- 9.7 Effective Date of Termination. No termination shall be effective unless and until the AGENCY and MEMBERS comply with any then-applicable requirements of the GOVERNMENT CODE and/or the ACT relating to changes in the composition of entities such as the AGENCY.
- 9.8 Regional Agency Compliance Upon termination, each MEMBER shall be responsible for implementing Senate Bill 1383, Assembly Bill 1826 and/or Assembly Bill 341 and corresponding regulations. Each MEMBER shall also be responsible for complying with the requirements of the ACT within their respective jurisdictional boundaries in accordance with the programs set out in the AGENCY SRRE, HHWE, and NDFE.

SECTION 10. AMENDMENTS

- 10.1 Amendments: Amendments to this AGREEMENT shall be made only with the consent of two-thirds (2/3) existing MEMBERS at the time of the amendment without regard to voting power; any such consent shall be in the form of duly authorized resolutions of the MEMBERS' respective governing bodies. Notwithstanding the foregoing, no amendment shall require any MEMBER to contribute any funds to the AGENCY or become directly or contingently liable for any debts, liabilities or obligations of the AGENCY without the consent of that MEMBER evidenced in a written instrument signed by a duly authorized representative of that MEMBER.

SECTION 11. CONTRACTS OUTSIDE THIS AGREEMENT

- 11.1 This document contains the complete AGREEMENT concerning the implementation of the Regional AGENCY and the pertaining MEMBERS and shall, as of the effective date hereof, shall not supersede all other agreements between the parties. Parties may develop outside agreements to provide AGENCY with additional powers in relation to this AGREEMENT. All outside agreements between different jurisdictions MEMBERS and AGENCY will not supersede this AGREEMENT and shall remain in effect as is. All Outside agreements shall remain between the AGENCY and the pertaining jurisdiction MEMBERS. The parties stipulate that neither of them has made any representation with respect to the subject matter of this AGREEMENT or any representations including the execution and delivery hereof, except such representations are specifically set forth herein and each of the parties hereto acknowledges that any payments or representations that may have heretofore been made by either of them to the other are of no effect and that neither of them has relied thereon upon connection with him or its dealings with the other.

SECTION 12. MISCELLANEOUS

- 12.1 **Term and Continuance.** The AGENCY became effective **February 6, 2008** and this AGREEMENT shall continue until rescinded, renegotiated according to Section 10.1, or terminated.
- 12.2 **Severability.** Should any part, term or provision of this AGREEMENT be decided by a final judgment 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.
- 12.3 **No Conflicts.** Unless otherwise required by law, during the term of this AGREEMENT, no MEMBER shall exercise any power or undertake any act that conflicts with or is inconsistent with the powers or objectives of the AGENCY.
- 12.4 **Effective Dates.** The term of any amendment to this AGREEMENT becomes effective as of the date that the BOARD, by resolution, adopts the amendment.
- 12.5 **Filings.** The MANAGER shall file all required notices with the Secretary of State in accordance with the GOVERNMENT CODE and any other applicable State and Federal laws, as such may be amended from time to time.
- 12.6 **Notices.** All notices which any MEMBER or the AGENCY 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 AGENCY, 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 AGENCY at its principal office, or to such other address as the AGENCY 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 AGENCY and the MEMBERS, notice shall be delivered as follows:

COUNTY OF IMPERIAL:	Clerk of the Board of Supervisors 940 Main Street, El Centro, CA 92243
CITY OF BRAWLEY:	Clerk of the Brawley City Council 383 Main Street Brawley, CA 92227
CITY OF CALEXICO:	Clerk of the Calexico City Council 608 Heber Avenue Calexico, CA 92231
CITY OF CALIPATRIA:	Clerk of the Calipatria City Council 125 North Park Avenue Calipatria, CA 92233
CITY OF EL CENTRO:	Clerk of the El Centro City Council 1275 Main Street El Centro, CA 92243
CITY OF HOLTVILLE:	Clerk of the Holtville City Council 121 West 5 th Street Holtville, CA 92250
CITY OF IMPERIAL:	Clerk of the Imperial City Council 420 South Imperial Avenue Imperial, CA 92251
CITY OF WESTMORLAND:	Clerk of the Westmorland City Council 355 South Center Street Westmorland, CA 92281
AGENCY:	Imperial Valley Resource Management Agency Executive Director 1503 N. Imperial Ave., Suite 104 El Centro CA 92243

12.7 Successors and Assigns. 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 AGENCY, the MEMBERS and the proposed assignee comply with all then-applicable requirements of the GOVERNMENT CODE and the ACT relating to changes in the composition of entities such as the AGENCY.

- 12.8 Section Headings. 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.
- 12.9 Dispute Resolution. All disputes that arise in connection with the interpretation or performance of this AGREEMENT shall be resolved in a court of law. Any action brought by any MEMBER with respect to this AGREEMENT shall be brought in a court of competent jurisdiction within Imperial County.
- 12.10 Law to Govern. It is understood and agreed by the MEMBERS 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.
- 12.11 Entirety. 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.
- 12.12 Waiver. 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.
- 12.13 Indemnification. Each AGENCY indemnifies and holds the others harmless in proportion to their comparative fault as established under California law.
- 12.14 Counterparts. This AGREEMENT may be executed in counterparts, providing that each MEMBER receives an AGREEMENT originally executed by each other MEMBER.
- 12.15 Execution. Each MEMBER shall execute and return two copies of this AGREEMENT to the MANAGER within sixty (60) days of the date first hereinabove written. No MEMBER shall be bound by this AGREEMENT unless and until all MEMBERS comply with this provision. In the event that less than all MEMBERS execute and return two copies of this AGREEMENT within the time required herein, the MANAGER shall poll all complying MEMBERS to determine they agree to assume the proportionate share of the non-complying MEMBER's share of the costs apportioned to such non-complying MEMBER. Failure of each complying MEMBER to agree to assume its proportionate share of the non-complying MEMBER's share of costs within fifteen (15) days of being polled shall void all signatures and this AGREEMENT shall be no force and effect.

IN WITNESS WHEREOF, the MEMBERS have executed this Amendment on the days and years written hereinbelow and approved by the IVRMA Board on the day and year first written above.

**IMPERIAL VALLEY RESOURCE
MANAGEMENT AGENCY**

By: MARIA NAVA-FROELICH
Chair of the Board of Directors

ATTEST:

By: CRISTI LERMA
Secretary to IVRMA

APPROVED AS TO FORM:

Eric Havens
County Counsel

IMPERIAL VALLEY RESOURCE MANAGEMENT AGENCY

Signature Page

By: _____
Name:
City of El Centro
Date: _____

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City of Calexico
Date: _____

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City of Brawley
Date: _____

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County of Imperial
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City of Calipatria
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City of Westmorland
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City of Holtville
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By: _____
Name:
City of Imperial
Date: _____