### June 11, 2019

To: WRD Solid Waste Management Commission Members

From: Kraig Pennington

Re: Adoption of new 28E Agreement

Dear Member,

The WRD Solid Waste Commission has spent the past several months developing an Amended Substituted Agreement ("Agreement") to clarify the provisions of the original agreement and to address how to improve the participation of the individual municipal members.

The most important provision of the Agreement provides that every city and county shall be entitled to designate one of its members to serve on the Commission. Each member will have one vote. It is hoped that this will result in greater participation of all Commission members. We believe that greater participation will be a benefit to both the Commission and its members.

In addition, many of the original provisions have been updated to reflect current practice or proposed changes designed to improve the operation of the landfill. A copy of the entire document is included with this letter for your review and approval. I have also enclosed a form resolution that can be used by your council or board.

We would ask that you review and pass the resolution approving the Agreement as soon as possible so that we can begin to implement its provisions.

If you have any questions, please don't hesitate to contact me or any member of the Executive Board and we will be happy to respond.

Thanking you for your past support, I am

Sincerely,

Kraig Pennington,

Wayne-Ringgold-Decatur County Landfill

Board Chairman

WAYNE COUNTY AUDITOR

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RECEIVED

COUNTY OF Wayne

### RESOLUTION NO. 20-01

# APPROVAL OF AMENDED AND SUBSTITUTED AGREEMENT FOR THE WAYNE-RINGGOLD-DECATUR COUNTY SOLID WASTE MANAGEMENT COMMISSION

Resolution approving and authorizing execution of the Amended and Substituted Intergovernmental Agreement for the Wayne-Ringgold-Decatur County Solid Waste Management Commission

**WHEREAS** an Amended and Substituted Intergovernmental Agreement has been prepared for the Wayne-Ringgold-Decatur County Solid Waste Management Commission and is contemporaneously being presented to the member counties and municipalities, a copy of which is attached hereto and by this reference made a part hereof; and

WHEREAS, said Amended and Substituted Agreement appears to be in the best interest of the County.

ATTEST:

Mechelle Donley County Auditor

## AMENDED AND SUBSTITUTED INTERGOVERNMENTAL AGREEMENT CREATING THE WAYNE-RINGGOLD-DECATUR COUNTY SOLID WASTE MANAGEMENT COMMISSION

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_\_ 2019, among the following municipalities: Decatur County, Lamoni, Leon, Davis City, Garden Grove, Van Wert, Decatur City, Grand River, Weldon, Pleasanton, LeRoy, Ringgold County, Mount Ayr, Diagonal, Kellerton, Tingley, Redding, Ellston, Maloy, Beaconsfield, Benton, Wayne County, Humeston, Allerton, Lineville, and Clio. (All parties being hereinafter called the "Members.")

## ARTICLE I CREATION OF THE WAYNE-RINGGOLD-DECATUR COUNTY SOLID WASTE MANAGEMENT COMMISSION

Pursuant to the provisions of Chapter 28E, of the 2019 Code of Iowa, the Members above named do hereby create, as a public body corporate and politic and as a separate entity, the Wayne-Ringgold-Decatur County Solid Waste Management Commission, which shall be hereafter referred to as "The Commission." This Agreement shall revoke all prior Intergovernmental Agreements and Amendments made by said parties relating to the Wayne-Ringgold-Decatur County Solid Waste Management Commission.

### ARTICLE II PURPOSE

The purpose of the Commission is as follows:

- A. To provide for the disposal of all acceptable solid waste generated by each member of the Commission.
- B. To cooperate with local, State, and Federal public health agencies in preventing the contamination and pollution of the land, water and air resources of the area, through the control and disposal of solid waste and recyclable material.
- C. To engage such employees and provide such offices, equipment, machinery, buildings and grounds as are necessary to adequately perform the Commission's functions.
- D. To contract with public or private persons, firms, municipalities, other 28E organizations or corporations for the disposal of solid waste and the processing and collection of recyclable materials, and collect payment for such services, and receive and expend State, Federal and private grants and other money's which may be made available, to the extent permissible under applicable State and Federal laws, and under the rules hereinafter set forth.
- E. To provide for a comprehensive integrated solid waste management system for each member of the Commission. The comprehensive integrated solid waste management system shall be consistent with the State of Iowa's waste management hierarchy and it shall be designed to make progress towards the state waste reduction and recycling goals.

WAYNE COUNTY AUDITOR

JUL 1 1 2019



#### ARTICLE III ORGANIZATION

- 1. The membership of the Commission shall consist of an elected representative of the governing body of each participating governmental jurisdiction, or a designated substitute, which substitute shall be approved by the city or county the member represents. Each member of the Commission shall have one (1) vote.
- 2. There shall be one class of membership in the Commission, which shall be a full membership, and each member county or city shall designate by resolution of its governing body its member of the Commission.
- 3. A quorum of the Commission shall consist of the members present at a meeting provided there are at least 3 members present. For any action requiring the Commission's authorization, a majority vote of the Commission shall mean a majority of the total votes cast by the members attending the meeting at which such action is considered.
- 4. The Commission shall have an Executive Board whose membership shall consist of the following: (1) the Decatur County Commission Member and an alternate representative, both designated by Decatur County; (2) the Ringgold County Commission Member and an alternate representative, both designated by Ringgold County; and (3) the Wayne County Commission Member and an alternate representative, both designated by Wayne County. In addition, there shall be one (1) additional Board representative from each county who shall represent all of the cities within that county. The city representative of each county shall be elected by the Commission members who reside within said County.
- 5. Once a representative has been appointed, he or she shall continue to serve until such time as the appointing Member, by resolution, appoints a new representative and so notifies the Commission of the appointment.
- 6. The Chairman and Vice-Chairman of the Commission shall be elected by the majority of the Commission members present for the election and shall serve for a term of one (1) year or until their respective successors in office are chosen. The Commission Chairman and Vice-Chairman shall also serve as Chairman and Vice-Chairman of the Executive Board. The incumbent may succeed himself/herself, and annual elections shall be held each year in January. The Chairman must be selected from one of the county Commission members.
- 7. The Commission and the Executive Board shall hold at least one (1) joint meeting in January of each fiscal year on the date and at the place determined by the Chairman. Special meetings may be held at the call of the Chairman, Vice-Chairman or majority of the membership of the Commission or Executive Board.
- 8. The Executive Board shall determine the time and place of its meetings. The Executive Board shall have and exercise such powers of the Commission, during the period of time between meetings of the Commission, as may be lawfully delegated, including without limitation the operation of Commission facilities. Each member of the Executive Board shall be entitled to one (1) vote in matters to be decided by the Executive Board. A quorum of the Executive Board shall consist of a majority of the Executive Board members.

- 9. The Executive Board may hire or appoint an office manager who shall also act as the clerk for the Commission and the Executive Board. The Executive Board may hire such other supervisory, clerical or other personnel as are necessary to carry out the functions for the Commission and the Executive Board. The Executive Board shall fix all employee compensation and benefits and shall approve all personnel rules and regulations. The Executive Board shall designate a county to act as the fiscal agent for the Commission and set the administrative fee payable to said county for said services.
- 10. The Executive Board shall cause this Agreement to be filed with the Secretary of State and with the County Recorder of each county in which a member is located and shall notify such officers of the name of any municipality withdrawing from or joining the Commission.
- Additional municipalities may be added to the membership of the Commission upon a majority vote of all of the members of the Commission provided, however, that no such addition shall be made unless a certificate of an independent registered engineer acceptable to the Commission shall have been filed with the Commission stating the opinion that the addition of such municipality or county shall not have the effect of reducing the useful life of the landfill site or sites then existing (or to be acquired concurrently with such addition) of the Commission to a point in time prior to the last maturity day of any rate or bond of the Commission then outstanding.
- 12. In the event an additional municipality shall apply for membership in the Commission and said application is considered and approved by the Commission, then said municipality may be added to the membership provided, however, that said additional municipality, as a condition of membership, agrees to abide by the terms of this Agreement as set out herein and possesses legal power and authority to do so.

### ARTICLE IV DURATION

It is the intention of the parties to this Agreement that the Commission be a perpetual organization unless terminated or dissolved as hereinafter provided.

### ARTICLE V POWERS

The Commission shall be a public body corporate and politic and a separate legal entity exercising public and essential governmental functions to provide for the public health, safety, and welfare and shall have the following powers:

- A. To adopt and have a common seal and to alter the same at pleasure.
- B. To sue and be sued.
- C. To acquire, hold, use and dispose of the reserves derived from the operation of its facilities and other moneys of the Commission.
- D. To acquire, hold, use and dispose of other personal property for the purposes of the Commission.

- E. To lease, purchase or acquire by any other means, from any other source, such real and personal property as is required for the operation of the Commission and the carrying out of the purpose of this Agreement. The Commission shall maintain title to all such property in the name of the Commission and shall require the Executive Committee to maintain an inventory. Property, materials and services shall be acquired or disposed of only upon a majority vote of a quorum attending a duly called Executive Board meeting. All conveyances of real property owned or held in the name of the Commission shall be made and executed on behalf of the Commission by the Chairman or Vice-Chairman of the Commission.
- F. To acquire by purchase, gift, lease or otherwise, real property and easements therein, if any, and to hold and use the same, and to dispose of property so acquired no longer necessary for the purposes of this Commission.
- G. To accept gifts or grants of real or personal property, money, material, labor or supplies for the purposes of the Commission, and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring, acceptance or disposition of such gifts or grants.
- H. To make and enforce by laws or rules and regulations for the management and operation of its business and affairs and for the use, maintenance and operation of its facilities and any other of its properties, and to annul the same.
- I. To do and perform any acts and things authorized by Chapter 28E of the 2001 Code of Iowa, and by this Agreement, under, though or by means of its, agents and employees, or by contracts with any person.
- J. To enter into any and all contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the Commission or to carry out any powers expressly given by this Agreement.
- K. To cause the disposal or processing of solid waste and recyclable material originating within each member jurisdiction.
- L. To fix, establish and maintain such rates, (all members, present and future, will pay the same tipping fee for disposal of solid waste) tolls, fees, rentals or other charges for the services and facilities of the Commission sufficient to pay at all times the costs of maintaining, repairing and operating said facilities, to pay the principal of and interest on bonds of the Commission then outstanding, to provide for replacements, depreciation and necessary extensions and enlargements and to provide a margin of safety.
- M. To make or cause to make studies and surveys necessary or useful and convenient to carrying out the functions of the Commission.
- N. To contract with and compensate consultants for professional services including but not limited to architects, engineers, planners, lawyers, accountants, rate specialists, and others found necessary or useful and convenient to the stated purpose of the Commission.
- O. To prepare and recommend to members local ordinances governing recyclable material, refuse collection, transportation and disposal, regulation of private collection haulers, land use regulations, sanitation, burning of private or public waste, incineration standards and such other regulations as may from time to time be required.

- P. To exercise such powers relative to the efficient disposal of solid waste and recyclable material as are available under then existing laws to each member as is necessary or useful and convenient to carrying out the functions of the Commission.
- Q. To provide for a system of budgeting, accounting, auditing and reporting of all Commission funds and transactions, for a depository, and for bonding of employees.
- R. To consult with representatives of Federal, State and local agencies, departments and their officers and employees and to contract with such agencies and departments.
- S. To borrow money, make and issue negotiable bonds, certificates, bond anticipation notes, refunding bonds and notes and to secure the payment of such bonds, certificates, refunding bonds and notes or any part hereof by a pledge of any or all of the Commission's net revenues and any other funds which it has a right to, or may hereafter have the right to pledge for such purposes.
- T. To provide in the proceeding authorizing of such obligations for remedies upon default in the payment of principal and interest on such obligations including but not limited to, the appointment of a trustee to represent the holders of such obligations in default and the appointment of a receiver of the Commission's property, such trustee and such receiver to have the powers and duties provided for in the proceeding authorizing of such obligations.
- U. To receive funds as payment for providing disposal and processing of solid waste and recyclable materials provided, however, that in lieu of receiving payment, the Commission shall have the power to bill for disposal and recycling services and to receive such payments.
- V. To hire employees, fix their compensation, benefits, personnel rules and regulations, and terminate their employment.
- W. To borrow money and accept grants, contributions or loans from, and to enter into contracts, leases, or other transactions with Municipal, County, State or the Federal Government.
- X. To assess Members for additional contributions to the Commission, for any purpose deemed appropriate by the Executive Board. However, such assessments shall be made only by compliance with the following procedure:
  - 1. The Executive Board shall adopt a resolution recommending the assessment and its amount, and directing the question of such assessment be submitted to a vote at a meeting of each member Commission.
  - 2. Written or printed notice shall be given by registered mail to each member Commission and shall state the Executive Board's recommendation and basis and direct the member Commission to conduct a meeting of the member Commission, the purpose, or one of the purposes, of such meeting is to consider an assessment of members.
  - For purposes of the meeting, a quorum shall be required in accordance with the member Commission's bylaws.
  - 4. At such meeting, a vote of members shall be taken on the proposed assessment. Such resolution shall be adopted only upon receiving the affirmative vote of the majority of votes entitled to be cast by the members present and voting.

- 5. Any assessment of payment made shall be shared by each member on a per capita assessment based on the population of each Member.
- 6. Members will be given notice of payment assessments in January. Members must pay per capita payments or delinquency notices will be issued by the following July. If delinquencies are not cured, the Member may be suspended from the Commission.

### ARTICLE VI COOPERATION FROM MEMBERS

The Members agree to respond to reasonable requests to make local records available to the Commission staff and its consultants or employees for the purposes of this Agreement.

#### ARTICLE VII NOT FOR PROFIT

It is expressly understood that the Commission is to be operated not for profit and no profit or dividend will inure to the benefit of any person.

### ARTICLE VIII FINANCING

The Executive Board shall prepare a budget based on a July 1 to June 30 fiscal year based on the operation of the Commission, the same to be adopted at the January meeting each year. A copy of the budget and gate charges for the next ensuing fiscal year shall be forwarded to each member no later than the first day of February following its adoption.

In the event the gate fees are not sufficient to cover all landfill costs, the share of the budget deficit paid for by each county or city shall be determined by first, dividing the amount of revenue needed by the total population of the Commission members to determine a per capita cost. Each county or city shall pay an amount equal to the per capita cost multiplied by its own population. The population figures shall be determined by the latest regular or special United States Census and shall be adjusted each time a new census figure is published.

A similar formula shall be used to determine membership responsibility for any bonds or other forms or indebtedness issued by the Commission.

The share of each budget from each County or City council shall be due and payable to the Treasurer or the Commission in quarterly payments to be made within thirty (30) days after the beginning of the Commission's budget year.

Any special or budgetary appropriation adopted by the Commission shall be a membership requirement of each and every County or City. The failure of a County or City to pay over to the Commission the allotted share of a Commission budget may be considered a momentary withdrawal of that County or City and a default of this Agreement.

### ARTICLE IX SUSPENSION OF VOTING RIGHTS AND SERVICES

During a period of delinquency of payments by a Member to the Commission of its share of a budget and before such delinquency is determined a voluntary withdrawal, such Member shall not be entitled to the services of the Commission, nor shall the representative of the Member be entitled to vote on matters coming before the Commission or the Executive Board, unless such delinquency shall be waived for voting purposes by a majority vote of the Executive Board.

## ARTICLE X WITHDRAWAL, DISSOLUTION AND EXPULSION OF MEMBERS

<u>Withdrawal</u> A Member cannot withdraw from membership prior to dissolution of the Commission except with the following procedures:

- A. The withdrawing member shall serve notice of the withdraw of the Commission by registered certified mail, return receipt requested, addressed to the Chairman of the Executive Board deposited in a United States mail box with sufficient postage thereon. The notice shall state the name of the withdrawing member, its intention to withdraw from the Commission, its willingness to sign the requisite agreements upon withdrawal (see paragraph E. below), and shall be signed by a duly authorized representative of the member Commission. For purposes of this paragraph, notice of withdrawal is deemed served when received by the Commission Chairman.
- B. Notice of withdrawal may be served at any time, and shall be effective on the date it is served.
- C. A notice of withdrawal is self-executing, not requiring Commission or Executive Board action to be effective. A member which has once served a notice of withdrawal in accordance with this Agreement cannot rescind the notice, but may reapply for membership in accordance with the procedures set forth in this Agreement.
- D. A member which has served notice of withdrawal shall utilize the Commission for disposal of all solid waste generated by the member until the last day of the budget year of the Commission following the budget year in which notice is served. A notice of withdrawal relinquishes any rights to property of the Commission as of the date it is served, except rights on dissolution as provided in this Agreement.
- E. Concurrently with service of the notice of withdrawal, the withdrawing member shall authorize, sign, and tender to the Commission an agreement, which shall provide at a minimum, the following:
  - 1. That the withdrawing member will pay its proportionate share as defined below, of all cost of maintenance and monitoring, of the landfill site when all members and former members are assessed by the Commission for this purpose.
  - 2. That the withdrawing member will bear its proportionate share, as defined below, of all cleanup costs pertaining to the landfill site incurred at any time by the Commission, Commission members, their agents, the State of Iowa, the United States of America, or the political subdivisions of these entities. For purposes of this subparagraph, the term "cleanup costs" means costs incurred in the prevention or mitigation of damages from

hazardous conditions or the cleanup of a hazardous substance involved in a hazardous condition. The definition of the term "hazardous condition" and "hazardous substance" is that set forth in the Iowa Code.

- That the withdrawing member will comply with the provisions of House File 2336 of the 71st Iowa General Assembly, regarding financial disclosure of liabilities and assets of responsible parties when a site is listed on the State registry of abandoned and uncontrolled sites, and regarding repayment of costs and expenses paid by the State.
- For purposes of paragraph E., a "proportionate share" of costs is defined as a per capita share based upon the total tonnage of waste brought by the member to the Commission's site or sites, as a percentage of the total tonnage of waste brought by all members to the Commission's site or sites. The determination of the tonnage under this subparagraph shall be in the sole judgment of the Commission, based upon relevant records.
- No notice of withdrawal or withdrawal from the Commission shall be served or effective, notwithstanding paragraph B. of this article, until such time that the member's proportionate share of any assessments, debts or liabilities incurred or levied by the Commission during the period in which such withdrawing member was a member, as well as the member's proportionate share of all outstanding bonds, loans, notes, and all other indebtedness or obligations of any kind of the Commission, is paid in full to the Commission by the member attempting to withdraw.

#### **Dissolution** The Commission may be dissolved in the following manner:

- A. The Commission shall adopt a resolution recommending that the Commission be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of each Commission member.
- B. Written or printed notice shall be given to each Member of the Commission, by registered mail and shall state the Commission's recommendation and basis and direct the member to conduct a meeting of the member's elected representatives within sixty (60) days of receipt of the notice to consider the advisability of dissolving the Commission/28E Agreement.
- C. Upon the adoption of a resolution, approving the Commission's recommendation to dissolve by a majority of the member entities, a written notice of the dissolution of the Commission shall be filed in the office of the Secretary of State and in the office of the county recorder in each county containing a Member of the Commission.
- D. Upon dissolution of the Commission, the Executive Board and the Commission shall continue in existence and be empowered to conduct such business of the Commission as is necessary to complete the Commission's affairs. All assets of the Commission shall be distributed to the members as soon as practical, pro-rata, based upon the population of the member, as a percentage of the total of all member's population.

#### **Expulsion of Members**

A. Procedures for Expulsion of Members: A member may be expelled for continued violation of any of the provisions of this Agreement or the bylaws of the Commission. Expulsion of a member shall be initiated by resolution passed by a majority of the Executive Board members declaring their intent to expel the member and setting forth within the resolution the reasons for the intended

expulsion. The resolution of intent shall include the actions that the member may take to avoid expulsion, as well as the time limit the member shall have to take such actions. The notice shall be sent to the member's responsible representative by certified mail. Once the member has received notice, if the member fails to take corrective action within the time stated in "the resolution," the Commission may at its next regular scheduled meeting, by a simple majority vote, expel the member.

B. Obligations of Expelled Members: Expulsion of a member unit shall not relieve the member from its obligation to pay its share of expenses and liabilities of the Commission incurred during the time in which such expelled member was a member of the Commission. Expulsion of a member shall also not relieve the member of any additional financial obligations it may have to the Commission which are imposed either under the terms of this Agreement, the bylaws, any contractual obligations, or any other obligations imposed by Federal or State law.

### ARTICLE XI AMENDMENT OF AGREEMENT

Amendment of the Agreement shall be by the approval of a majority or more of the Member's votes by the same procedures by which this Agreement was approved and executed, provided, however, that this Agreement shall never be amended in any way so as to adversely affect the interests of the holder or holders of any bonds or other obligations of the Commission.

### ARTICLE XII ARBITRATION OF DISPUTES BETWEEN MEMBERS

Any dispute, claim or controversy arising out of this Agreement will be settled by arbitration in Decatur County, Iowa. Such arbitration shall be conducted in accordance with the procedures set out in the Commission's bylaws.

Notwithstanding this provision, the aggrieved party shall be entitled to injunctive and/or equitable relief in a court of competent jurisdiction.

#### ARTICLE XIII FLOW CONTROL

- 1. To the extent permitted by the Constitution and laws of the United States and the State of Iowa, all Members shall require that all waste generated or collected, in cities or counties that are included in the Commission's Comprehensive Solid Waste Management Plan, be delivered to and deposited in the disposal facility designated by the Commission.
- 2. The Commission shall accept for disposal at its facilities all solid waste generated and collected within the service area boundaries of any Member, without regard to whether such waste was collected by a public or private entity; provided that such waste when delivered is in compliance with the Commission's regulations and is a waste of a kind and nature suitable for disposal at the Commission's site. The Commission may, at its option, refuse to accept any waste for disposal which it, at its sole discretion, deems unsuitable for disposal at the site.
- 3. New Commission Members are required to adopt waste stream reduction plans equal to the plans and reduction percentage of current Members.

### ARTICLE XIV RESPONSIBILITY OF INDIVIDUAL MEMBERS FOR INDEBTEDNESS OF COMMISSION

Any indebtedness, liability or expenditure which is initiated, accrued or acquired during the period of time of any individual Member's membership in the Commission shall continue to be an obligation of said Member until such indebtedness, liability or expenditure is fully paid or satisfied. All Members shall continue to be responsible for their proportionate share of said indebtedness, liability or expenditure during the period of time the obligation remains outstanding.

### ARTICLE XV BYLAWS

The Commission shall establish bylaws and, once established, the bylaws may only be amended after written notice of the proposed change is sent to each of the Commission members at least thirty (30) days prior to the date set by for consideration of the proposed amendment. The meeting to determine if the proposed amendments to the bylaws are adopted will be a joint meeting of the Commission and the Executive Board and notice will be sent to all Commission members.

### ARTICLE XVI GENERAL PROVISIONS

- 1. This Agreement constitutes the entire Agreement of the parties establishing the Commission and supersedes and replaces all prior agreements, whether written or oral, regarding the Wayne-Ringgold-Decatur County Solid Waste Management Commission.
- 2. If any term or provision of this Agreement, or the application thereof to any person or circumstance, is held to be invalid by a decision in any court of law, such invalidity shall not affect any other term or provision or any application thereof which can be given effect without the invalid term, provision or application, and to this end the terms and provisions of this Agreement are declared to be severable.
- 3. Throughout this Agreement, the masculine, feminine, or neuter genders shall be deemed to include the masculine, feminine, and neuter and the singular, the plural, and vice versa. The section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret, or construe the intentions of the parties.
- 4. This Agreement may be executed in several counterparts each of which shall be deemed to be an original, and all such counterparts when taken together shall constitute one and the same instrument.
- 5. This Agreement shall be governed by, and interpreted in accordance with the laws of the State of Iowa. The parties hereby agree that any legal action or proceeding shall be brought in the courts of the State of Iowa. The parties further agree to submit to the jurisdiction of the State of Iowa and consent to the service of process in accordance with applicable procedures and rules of said jurisdiction.

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ByChairman, Board of Supervisors	
Chairman, Board of Supervisors	Attest
	Decatur County Auditor
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By Mayor	Attest
	Clerk
City of Leon, Iowa	
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	Ringgold County Auditor

Wayne County, Iowa

By Chairman, Executive Board of Supervisors	
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