

**AGREEMENT FOR COUNTYWIDE  
AB939 IMPLEMENTATION FEE**

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the 8<sup>th</sup> day of June, 2021. The term CITIES may refer to CITIES collectively or individually.

**RECITALS**

**WHEREAS**, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan;

**WHEREAS**, State law, Public Resource Code Section 41750, requires that the countywide integrated waste management plans contain a household hazardous waste (“HHW”) element for each city within the county as well as for the unincorporated area of the county;

**WHEREAS**, the County of Santa Clara Board of Supervisors (“Board”) has imposed a Countywide AB939 Implementation Fee (“Fee”) since July 1, 1992 to pay for the costs of preparing, adopting, and implementing integrated waste management plans and programs, including HHW program elements;

**WHEREAS**, the Board has approved reimposing the Fee for Fiscal Years 2022, 2023, and 2024 (July 1, 2021 through June 30, 2024) at \$4.10 per ton of waste landfilled or incinerated in the County; received at any nondisposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; and removed from any location in the County by any person or business for disposal or incineration outside the County;

**WHEREAS**, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary to meet HHW planning and management requirements under State law;

**WHEREAS**, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground or in any other manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and batteries; and

Approved: 06/08/2021

105960

JUN 08 2021

**WHEREAS**, the County will collect the Fee on behalf of the fifteen cities and for the unincorporated area of the County and will apportion the Fee according to the terms of this Agreement.

**NOW THEREFORE**, CITIES and COUNTY AGREE AS FOLLOWS:

**1. PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$4.10 per ton of waste to be disposed in Fiscal Years 2022, 2023 and 2024. The Fee is divided into two parts: 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a Household Hazardous Waste Fee of \$2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among the CITIES and COUNTY as described in Exhibit B, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program as described in Exhibit C, attached hereto and incorporated herein. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-Disposal Facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element) and are listed in Exhibit A, attached hereto and incorporated herein.

**2. SERVICES PROVIDED BY COUNTY**

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Recycling and Waste Reduction Division. COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

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### **3. ROLE OF CITIES**

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and within 30 days of receipt shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions.

### **4. COLLECTION AND USE OF FEE**

Each ton of waste will be subject to the fee if it is landfilled or incinerated in the County; received at any non-disposal facility or collection facility in the County and subsequently transported for disposal or incineration outside the County; collected from any location within the County by a solid waste hauler operating under franchise, contract, license, or permit issued by a local jurisdiction and subsequently transported for disposal or incineration outside the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Best efforts will be made to prevent tonnage from being assessed a double fee (for instance, once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the CITIES' costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall be applied to fund the costs of CITIES' share of Countywide Household Hazardous Waste services; any HHW fees directly disbursed to CITIES as provided in this Agreement shall be used to fund the costs of preparing, adopting, and implementing the jurisdiction's HHW element of the Countywide integrated waste management plan, including providing HHW services to residents.

### **5. INSURANCE**

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement. CITIES agree to provide evidence of such insurance to COUNTY via Certificate of Insurance or other documentation acceptable to the COUNTY upon request.

### **6. INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement and as described in Exhibit D.

Additionally, CITIES shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, arising from any misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and

employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, brought by third parties based on COUNTY's sole negligence in the collection or distribution of said Fees.

**7. DISTRIBUTION OF FEE**

COUNTY shall distribute the AB939 Program Fee to CITIES and the HHW Program Fee to the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin December 15, 2021, and continue quarterly through October 15, 2024.

**8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM**

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

**9. LATE PAYMENTS**

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

**10. ACCOUNTING**

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

**11. REQUEST FOR REVIEW**

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

**12. EFFECTIVE DATE OF AGREEMENT**

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

**13. AMENDMENT**

This Agreement may be amended only by an instrument signed by all fifteen CITIES and the COUNTY.

**14. INDEPENDENT CONTRACTOR**

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

**15. TERM OF AGREEMENT**

The term of this Agreement shall be from July 1, 2021 to June 30, 2024, or until all funds from the last quarter’s Fee payments have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2021. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2024.

**16. NOTICES**

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of \_\_\_\_\_  
Contact: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

County of Santa Clara  
Contact: Recycling and Waste Reduction Program Manager  
Recycling and Waste Reduction Division  
Address: 1555 Berger Drive, Suite 300  
San Jose, CA 95112

**17. CONTROLLING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

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**18. ENTIRE AGREEMENT**

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designees.

**19. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**20. CONTRACT EXECUTION**

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

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**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: JUN 08 2021

COUNTY OF SANTA CLARA



MIKE WASSERMAN, President  
Board of Supervisors

Date: \_\_\_\_\_


“CITY”

\_\_\_\_\_  
CITY/TOWN OF \_\_\_\_\_

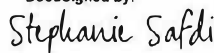
Title \_\_\_\_\_

A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:  
  
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STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:


Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 4/14/21

“CITY”

  
\_\_\_\_\_  
CITY/TOWN OF CAMPBELL  
Title PUBLIC WORKS DIRECTOR  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel



**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:


Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 5/4/2021

“CITY”

  
\_\_\_\_\_  
CITY/TOWN OF Cupertino  
Title City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 5/5/2021

“CITY”

DocuSigned by:  
*Jimmy Forbis*  
CC6456EF9B054DC...  
\_\_\_\_\_  
CITY/TOWN OF Gilroy  
Title City Administrator  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 5/21/21

“CITY”

Carl Cahill  
CITY/TOWN OF LOS ALTOS HILLS  
Title City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: \_\_\_\_\_

“CITY”

\_\_\_\_\_  
DocuSigned by:  
*Brad Kilger*  
CITY/TOWN OF ~~LOS ANGELES~~ LOS ANGELES  
Title Interim City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

\_\_\_\_\_  
DocuSigned by:  
*John*  
CITY ATTORNEY  
City Attorney

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 5/5/2021

“CITY”

DocuSigned by:  
*Laurel Prevetti*  
853FEEA2EB39470...  
CITY/TOWN OF LOS GATOS  
Title TOWN MANAGER  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

APPROVED AS TO FORM:

DocuSigned by:  
*Robert W. Schultz*  
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ROBERT SCHULTZ  
Town Attorney

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:


Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: Jun-01-2021  
\_\_\_\_\_

“CITY”

DocuSigned by:  
  
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CITY/TOWN OF Milpitas  
Title Deputy City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

IN WITNESS WHEREOF, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 3/23/21

\_\_\_\_\_  
"CITY"  
CITY/TOWN OF Monte Sereno  
Title City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this **AGENCY AGREEMENT**  
**FOR COUNTYWIDE AB939 IMPLEMENTATION FEE** on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 4/28/2021

“CITY”

DocuSigned by:  
Christina Turner  
CITY/TOWN OF Morgan Hill  
Title City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

DocuSigned by:  
Donald Larkin  
45E6F0273EA2464...  
DON LARKIN  
City Attorney



Date: May 3, 2021

“CITY”:  
CITY OF MOUNTAIN VIEW,  
a California charter city and municipal corporation

DocuSigned by:  
*Kimbra McCarthey*  
D5DFCB636B67439...  
By: \_\_\_\_\_  
City Manager

DocuSigned by:  
*Heather Glaser*  
E549F8981D3E48B...  
Attest: \_\_\_\_\_  
City Clerk

APPROVED AS TO CONTENT:

DocuSigned by:  
*Dawn S Cameron*  
0E8691A0DA4D442...  
\_\_\_\_\_  
Public Works Director

FINANCIAL APPROVAL:

DocuSigned by:  
*Suzanne Niederhofer*  
8091C5BF7AF44BE...  
\_\_\_\_\_  
Asst. Finance and Administrative  
Services Director

APPROVED AS TO FORM:

DocuSigned by:  
*Nicole C. Wright*  
208D3974FBF34A6...  
\_\_\_\_\_  
Sr. Asst. City Attorney

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 3/25/2021

“CITY”

DocuSigned by:  
*Brad Eggleston*  
\_\_\_\_\_  
CITY OF PALO ALTO  
Title Director of Public Works  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

IN WITNESS WHEREOF, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: May 27, 2021

“CITY”

CITY OF SAN JOSE, a municipal corporation



\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO FORM:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

  
\_\_\_\_\_  
Mark Vanni (May 24, 2021 13:30 PDT)

\_\_\_\_\_  
MARK VANNI  
Senior Deputy City Attorney

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: \_\_\_\_\_

“CITY”

**Manuel  
Pineda**

Digitally signed by Manuel  
Pineda  
Date: 2021.06.02  
17:29:55 -07'00'

\_\_\_\_\_  
CITY/TOWN OF SANTA CLARA

Title City Manager

\_\_\_\_\_  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

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Arellano  
Date: 2021.06.02  
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CAIO ARELLANO for Brian Doyle, City Attorney  
Santa Clara City Attorney's Office

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

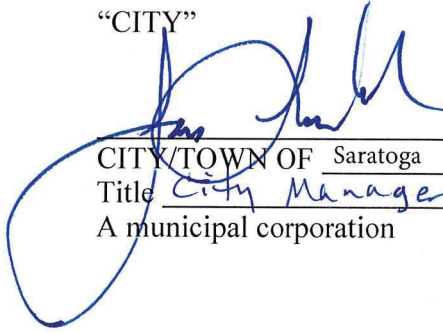
Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: \_\_\_\_\_

“CITY”

  
\_\_\_\_\_  
CITY/TOWN OF Saratoga  
Title City Manager  
A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

**IN WITNESS WHEREOF**, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE on the dates as stated below:

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

\_\_\_\_\_  
MIKE WASSERMAN, President  
Board of Supervisors

Date: 4/21/2021

“CITY”

*Kent Staffens*

\_\_\_\_\_  
CITY/TOWN OF Sunnyvale

Title City Manager

A municipal corporation

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors  
ATTEST:

\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
STEPHANIE SAFDI  
Deputy County Counsel

## EXHIBIT A

### LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site  
Kirby Canyon Sanitary Landfill  
Newby Island Sanitary Landfill  
Zanker Materials Processing Facility  
Zanker Road Landfill

### NON-DISPOSAL FACILITIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY

California Waste Solutions Recycling & Transfer Station  
City of Palo Alto Green Composting Facility  
Environmental Resource Recovery, Inc. (Valley Recycling)  
Green Earth Management LLC Kings Row Recycling Facility  
Green Waste Materials Facility and Transfer Station  
Green Waste Recovery Facility  
GreenTeam of San Jose Material Recovery Facility and Transfer Station  
Guadalupe Landfill  
Lam Hauling Inc. Chipping and Grinding  
Lam Hauling Inc. Inert Debris Type A  
Leo Recycle  
Material Recovery Systems Facility  
Mission Trail Waste Systems, Inc.  
Newby Island Compost Facility  
Pacheco Pass Transfer Station  
Pacific Coast Recycling, Inc.  
Premier Recycle Facility  
Recology Silicon Valley Processing and Transfer Facility  
The Recyclery at Newby Island  
San Martin Transfer Station  
Smurfit-Stone Recycling San Jose Facility  
South Valley Organics  
Stanford Recycling Center and Direct Transfer Facility  
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)  
Valley Recycling San Jose CDI Processing/Transfer Facility  
Wood Processing Facility at Recology Pacheco Pass  
Z-Best Composting Facility  
Zanker Materials Processing Facility  
Zanker Road Class III Landfill  
Zero Waste Energy Development Company Anaerobic Digestion Facility

## **EXHIBIT B**

### **FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE**

Each of the CITIES, and the COUNTY for its unincorporated area, will receive \$1.50 per ton of solid waste disposed of in landfills or taken to non-disposal facilities located in Santa Clara County that originates from that jurisdiction, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.



## EXHIBIT C

### COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)

#### 1. PROGRAM FUNDING SOURCE

HHW Program services are mandated by State law, Public Resources Code Section 41500 et seq. Public Resources Code Section 41901 authorizes imposition of a fee to support planning and implementation of integrated waste management programs, including their HHW elements. The HHW Fee, of \$2.60 per ton, collected as part of the AB939 Implementation Fee, will be the primary source of funding for Countywide Household Hazardous Waste Collection Program (CoHHW Program) services.

Funds derived from the HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITIES' anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.
- C. Variable Cost Per Car is the cost associated with labor, waste disposal, transportation, and other services provided to residents at the County HHW Collection Facilities and at temporary HHW collection events. The Variable Cost Per Car is based on the estimated cost of providing a base level service to 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding is allocated based on tonnage generated per participating jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in Public Resources Code Section 41904.

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## **2. FIXED PROGRAM COST**

Funds shall be allocated on a per household basis for Fixed Program Costs at the conclusion of each Fiscal Year. This portion of the funds shall be distributed directly to the Countywide HHW Program to pay for HHW Program costs. Fixed Program Costs funding shall be calculated shall not exceed \$3.75 per household in Fiscal Years 2022, 2023, and 2024. Fixed Program Costs may include, but are not limited to eleven (11) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance, and union negotiated salary and benefit changes.

## **3. ABANDONED WASTE DISPOSAL COST**

The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations. The Abandoned Waste Disposal Cost is based on the cost to the County to dispose of abandoned waste allocated among participating jurisdictions based on their proportional share of the County population and shall not exceed \$0.05 per household. Projected Abandoned Waste Disposal Costs to the CITY based on a charge of \$.05 per household are set forth in Attachment A, attached hereto and incorporated herein. Any existing unexpended non-profit abandoned waste fund balance may be allocated toward funding of disposal of HHW illegally abandoned at nonprofit charitable reuser organizations as defined in Public Resources Code Section 41904.

For the purposes of this agreement, a nonprofit charitable reuse organization has the definition provided in Public Resources Code Section 41904 as follows: “Nonprofit charitable reuser” means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

## **4. SAN JOSE FACILITY USE SURCHARGE**

The total San José Facility Use Surcharge for CITY will be based on CITY residents’ proportional participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José. The San José Facility Use Surcharge will vary depending on facility usage but will not exceed \$8.29 per car for Fiscal Years 2022, 2023, and 2024. The total San Jose Facility Use Surcharge for CITY will be based on CITY’s participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.

## **5. VARIABLE COST PER CAR**

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County HHW Collection Facilities and Temporary Events. This portion of the funds shall be distributed directly to the Countywide HHW Program. The Variable Cost Per Car is estimated to be \$58.20 per car for

Fiscal Years 2022, 2023, and 2024. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and San Jose Facility Use Surcharge are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached, the Countywide HHW Program will use the remaining balance of funds, in cooperation with the CITIES, to increase public outreach and/or provide additional services in that jurisdiction where the level of 4% is not reached the following year.

## **6. AVAILABLE DISCRETIONARY FUNDING**

The Available Discretionary Funding portion will be allocated based on the tons of waste generated within each jurisdiction and after allocation of Fixed Program Cost, San Jose Facility Use Surcharge, and Variable Per Car Cost. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in the jurisdiction by the Countywide HHW Program, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. CITIES authorize the COUNTY to determine appropriate uses of available discretionary funding and to use CITIES' Available Discretionary Funding portion of the AB939 HHW Fee to provide for additional HHW services requested by the CITIES.

## **7. PROGRAM FUNDING PASS-THROUGH**

Annual funding calculations include HHW Fees collected on behalf of all jurisdictions in the County. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. If CITIES elect to participate in the Countywide HHW Program, their pro-rata share of the HHW Fee shall be retained by the County to utilize for HHW Program costs, as provided in this Agreement and the Agreement for Countywide Household Hazardous Waste Collection Program. The COUNTY will distribute to CITIES not participating in the Countywide Household Hazardous Waste Collection Program their pro-rata share of funding received by the COUNTY from the HHW Fee, except that the COUNTY may retain and expend that portion of the non-participating CITIES' fee attributable to Abandoned Waste Disposal Costs.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to allow residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators will be billed to the CITIES. A CITIES' representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. Liability shall be apportioned as provided in Exhibit D to this Agreement.

## **EXHIBIT D**

### **SECTION 28 OF AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM**

#### **HOLD HARMLESS AND INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require Conditionally Exempt Small Quantity Generators (“CESQG”) and Nonprofit Charitable Reusers to indemnify COUNTY for, at minimum, their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY’s apportioned share of any liability for household hazardous waste.

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