

**MEMORANDUM OF UNDERSTANDING
AMONG LOCAL PUBLIC AGENCIES
IN SANTA CLARA COUNTY
FOR COUNTYWIDE FOOD RECOVERY PROGRAM**

This Memorandum of Understanding (“MOU”) is entered into by and between the cities of Cupertino, a municipal corporation of the state of California; Gilroy, a municipal corporation of the state of California; Los Altos, a municipal corporation of the state of California; Milpitas, a municipal corporation of the state of California; Morgan Hill, a municipal corporation of the state of California; Mountain View, a municipal corporation of the state of California; Palo Alto, a municipal corporation of the state of California; San José, a municipal corporation of the state of California; Santa Clara, a municipal corporation of the state of California; Sunnyvale, a municipal corporation of the state of California; the West Valley Solid Waste Management Authority (on behalf of the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos); the Town of Los Altos Hills, a municipal corporation of the state of California; and the County of Santa Clara, a political subdivision of the State of California; collectively “Parties” or individually as a “Party.”

RECITALS

- A. The signatory Parties are also “PARTIES” to the Memorandum of Agreement (“MOA”) entered into on June 14, 2013 for the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee (“TAC”), which is a separate Committee created to assist the County of Santa Clara Recycling and Waste Reduction Commission (“RWRC” or “Commission”) that advances the interests of Party Jurisdictions by performing technical and policy review to inform parties and advise the Commission on solid waste management issues, and bring together varied expertise and viewpoints for planning and implementing the Commission approved annual workplan and budget. The MOA, which remains in effect, is attached hereto and incorporated herein by reference as Exhibit B.
- B. California’s Short-Lived Climate Pollutant Reduction law (SB 1383, Lara, Chapter 395, Statutes of 2016) establishes methane reduction targets for California, including a target to increase recovery by 20 percent of currently disposed edible food for human consumption by January 1, 2025.
- C. To meet the mandated statewide goal, SB 1383 requires each Jurisdiction in California to establish and monitor a robust food recovery program, which will strengthen the relationships between commercial edible food generators and food recovery organizations within their communities, requiring certain food businesses to send the maximum amount of edible food they would otherwise dispose to food recovery organizations and/or services.
- D. The Parties have previously agreed to jointly administer and fund the cost of a countywide edible Food Recovery Program (the “Program”) through the Memorandum of Understanding Among Local Public Agencies in Santa Clara County for Food Recovery Program Costs entered into and covering the time period of July 1, 2023 to June 30, 2024 (“Former MOU”) to satisfy their respective obligations under SB 1383 and the corresponding regulations. The Former MOU is attached hereto as Exhibit C.
- E. The Parties desire to execute this MOU to ensure ongoing operation of the countywide food recovery program to provide for their respective share of costs for the Program.

- F. The West Valley Solid Waste Management Authority (“Authority”) was established by the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos (collectively referred to as the “Member Agencies”), pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, Section 6500 et seq. of the California Government Code) to arrange for and manage the waste reduction, collection, reuse, disposal, recycling, and diversion of discarded materials originating in the participating municipalities; and in furtherance of that purpose, the Member Agencies and the Authority have entered into agreements authorizing the Authority to act as the representative of the Member Agencies in the Food Recovery Program.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. PURPOSE OF THE MOU

The purpose of this MOU is to establish a system of:

- 1) Ongoing management and operation of the Food Recovery Program.
- 2) Payment by the Parties for their share of the costs for implementation of the Program.

SECTION 2. EFFECTIVE DATE

This MOU shall be effective on July 1, 2024 (“Effective Date”), shall supersede the Former MOU, and shall automatically renew each year for all Parties, unless a Party withdraws, in accordance with Section 20 (Withdrawal From MOU) and subject to a Party’s annual appropriations of funds.

SECTION 3. DEFINITIONS

The original 2013 Memorandum of Agreement entered into between the parties (and as may be amended from time to time) defined in detail the duties of the TAC Administrator, Contracting Agent, and Fiscal Agent, and those definitions from the MOA shall apply to this MOU. For ease of reference, those definitions are summarized below.

- 3.1 The TAC Administrator provides administration and management services to the TAC and carries out the annual workplan.
- 3.2 The Contracting Agent executes contracts with outside contractors, including the Administrator and the Fiscal Agent that have been requested and approved by the Implementation Committee.
- 3.3 The Fiscal Agent serves as the treasurer of the countywide funds and is responsible for collecting the Solid Waste Planning Fee from all solid waste disposal facilities and non-disposal facilities located within Santa Clara County.
- 3.4 The Program Manager is the entity contracted by the Contracting Agent on behalf of the RWRC to implement the Santa Clara County Food Recovery Program.

Other terms used in this MOU that relate to the Food Recovery Program (e.g., including but not limited to the term “Jurisdictions”) are used as defined in SB 1383 and any implementing regulations, as may be amended from time to time.

SECTION 4. RESPONSIBILITIES OF THE TAC ADMINISTRATOR AND CONTRACTING AGENT

5.1 The TAC Administrator will provide administration and management of the Program. These duties include overseeing the work of the Program, development of the biennial budget, and inclusion of the Program in the annual work plan and budget. The costs to perform these duties will be included in the annual work plan and budget.

5.2 Contracts executed by the Contracting Agent with the Program, TAC Administrator and Fiscal Agent will be based on the approved budget for the Program. The Contracting Agent will provide an invoicing system to pay the Program Manager, TAC Administrator, and Fiscal Agent. The Contracting Agent shall provide the TAC Administrator with the proposed costs to perform these duties. The signatory Parties to this MOU (except when acting in their authorized capacities as Contracting Agent, TAC Administrator, and Fiscal Agent) are not direct parties to the third-party contracts entered into by those agents.

SECTION 5. RESPONSIBILITIES OF THE FISCAL AGENT

The Fiscal Agent will collect and receive funds from the Parties for implementation of the Countywide Food Recovery Program. The Countywide Food Recovery Program Funds will be segregated from the Countywide Solid Waste Program Funds in separately numbered and coded accounts that are readily identifiable as those containing Countywide Food Recovery Program Funds or Countywide Solid Waste Program Funds. The Fiscal Agent shall not expend, use or transfer any funds except in accordance with the annual work plan and budget.

The Fiscal Agent shall provide the TAC Administrator with the proposed costs to perform these duties.

SECTION 6. RESPONSIBILITIES OF THE PROGRAM MANAGER

The Program Manager will implement the Santa Clara County Food Recovery Program as described in Exhibit A.

SECTION 7. RESPONSIBILITIES OF THE PARTIES

The Parties will share costs of implementing the Program as described in Section 9 and undertake the duties assumed by the Jurisdictions as described in Exhibit A.

SECTION 8. BIENNIAL BUDGET

The TAC Administrator will prepare a biennial (two-year) budget that encompasses costs for the Program and Program Manager, the TAC Administrator, the Contracting Agent/Administration, and the Fiscal Agent. Approval of the biennial budget shall follow the annual work plan and budget process as specified in the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee MOA.

SECTION 9. FUNDING

9.1 The Parties agree to share costs of the Program based on the number of edible food generators, as defined by the California Code of Regulations (14 CCR Section 18982) operating in their Jurisdiction on an annual basis, according to the following formula: $\text{Party's Annual Share} = (\text{Total Budgeted Cost for Year})$

÷ Total Number of Edible Food Generators Under MOU) x Number of Edible Food Generators in Party's Jurisdiction.

The Parties agree to pay annually for the costs identified in the biennial budget and approved through the annual work plan and budget process as specified in the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee MOA.

9.2 The initial Program budget will be based on the Fiscal Year 2024 allocation including costs for the Fiscal Agent, totaling THREE HUNDRED AND TEN THOUSAND DOLLARS (\$310,000). No costs for TAC Administrator or Contracting Agent are included in the initial Program budget. Should cost recovery for the TAC Administrator or Contracting Agent be required in the future, these will be proposed during the annual work plan and budget process.

9.3 The Parties acknowledge that the Program Manager will evaluate the costs per Jurisdiction annually based on the number of generators operating within each Jurisdiction. Based on this evaluation, a cost adjustment will be projected to the second year of the biennial budget (see Section 8 above). The overall Program budget will not increase by more than TEN PERCENT (10%) of the prior year's Program budget without prior approval by the RWRC.

9.4 The Fiscal Agent will annually submit to the Parties an invoice for the amounts due under this MOU by May 15th of each year. Each Party will make their payment to the Fiscal Agent based on the invoice amount within sixty (90) calendar days of receipt.

9.5 The Fiscal Agent will ensure that the Santa Clara County Food Recovery Program Fund account is segregated from the Solid Waste Program Fee Fund account managed pursuant to the TAC MOA.

9.6 Should any unspent funds remain in the Santa Clara County Food Recovery Program Fund account at the end of the fiscal year, disposition of those funds will be decided by the RWRC through the annual work plan and budget process, which could include: retaining surplus funds as a reserve, crediting Jurisdictions toward future payment allocations, dedicating funding to food recovery infrastructure, and providing supplemental food recovery outreach and education or other food recovery program activities.

9.7 Jurisdictions wishing to contribute additional funds for the edible food recovery enhancement program, implemented by the Program Manager, may elect to do so during the annual work plan and budget process. Any Jurisdiction opting into any voluntary enhancement program shall do so at its own discretion and at its own cost. The Fiscal Agent will include the additional enhancement program funding formally selected by the Jurisdiction in the annual invoice submitted to each Party by May 15th of each year.

9.8 In the event of a CalRecycle Implementation Schedule for a food recovery capacity shortfall identified during a Santa Clara County Edible Food Recovery Capacity Assessment, the Program budget may increase by more than TEN PERCENT (10%) of the prior year's Program budget if needed to fund necessary capacity improvements as outlined in the CalRecycle Implementation Schedule, following prior approval of the budget increase by the RWRC.

SECTION 10. BOOKS AND ACCOUNTS

The Fiscal Agent will keep complete and accurate financial records related to accomplishing the purposes of this MOU. Upon reasonable notice to the Fiscal Agent, any Party to this MOU may inspect the financial records related to this MOU.

SECTION 11. FURTHER ASSURANCES

Each Party will adopt, execute, and make any and all further assurances, documents, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the Parties' performance of their obligations under this MOU.

SECTION 12. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to all other Parties as follows:

12.1 Authority: Each Party has the full legal right, power and authority under the laws of the State of California to enter into this MOU and to carry out all of its obligations herein.

12.2 Due Execution: Each Party's representatives who sign this MOU are duly authorized to sign and bind their respective agency.

12.3 Valid, Binding, and Enforceable Obligations: This MOU has been authorized and executed by each Party and constitutes the legal, valid, and binding agreement of the Parties, and is enforceable according to its terms.

SECTION 13. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved in this MOU is exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy provided hereunder or hereafter existing in law or in equity or by statute or otherwise, and all remedies may be exercised without exhausting and without regard to any other remedy.

SECTION 14. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties 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, 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 in 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 MOU (including but not limited to work engaged in or contracts entered into by a Party acting in their capacity as Contracting Agent, Program Manager, TAC Administrator, or Fiscal Agent.). No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of any other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work

authority or Jurisdiction delegated to such other Party under this MOU, as indicated in this Section. The obligations set forth in this paragraph will survive termination and expiration of this MOU.

SECTION 15. SEVERABILITY

The provisions of this MOU shall be severable, and if any clause, sentence, paragraph, provision or other part shall be adjudged by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this MOU will be valid and binding on the Parties.

SECTION 16. AMENDMENTS

This MOU may only be amended by a written instrument signed by the Parties.

SECTION 17. COUNTERPARTS

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

SECTION 18. USE OF ELECTRONIC SIGNATURES

Unless otherwise prohibited by law, 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 writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the Parties. Should any Jurisdiction not permit electronic signatures only their copy of the MOU must be signed in the conventional manner.

SECTION 19. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This MOU, including all Exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this MOU, the terms specified in the body of this MOU shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This MOU may be modified only by a written amendment duly executed by the Parties to this MOU. This MOU is intended to supplement the original MOA and does not replace the original MOA. The MOA shall remain in effect and to the extent that there are any contradictions between this MOU and the original MOA, the provisions in this MOU shall prevail.

SECTION 20. WITHDRAWAL FROM MOU

No individual Party may withdraw from this Agreement prior to July 1, 2025. Any party wishing to withdraw on or after July 1, 2025 must provide notice to the Contracting Agent on or before January 15 of each year. The Parties acknowledge that the Contracting Agent and each individual Party may recalculate Agreement costs pro rata in the event of any withdrawal from this Agreement and that this time is required in order to allow each remaining Party and the Contracting Agent to amend their respective budgets if needed. Any withdrawing Party must make full payments through the end of the-then current term ending

on June 30. In no event shall this clause to be interpreted to prevent all Parties by unanimous mutual consent from withdrawing from this Agreement.

SECTION 21. NO LEGAL RELATIONSHIP

By entering into this MOU, the Parties are neither forming, nor do they intend to form a partnership, agency, or any other legal entity relationship. No Party is authorized to bind or to act as the agent or legal representative of the other Party for any purpose, and neither Party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other Party.

SECTION 22. GOVERNING LAW, VENUE

This MOU has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this MOU shall be in the County of Santa Clara.

MEMORANDUM OF UNDERSTANDING AMONG LOCAL PUBLIC AGENCIES IN SANTA CLARA COUNTY FOR COUNTYWIDE FOOD RECOVERY PROGRAM

IN WITNESS HEREOF, the Parties have executed the MOU as of the last date set forth below:

City of Cupertino – City Manager

Date: _____

Approval as to form, Cupertino City
Attorney

Date: _____

City of Gilroy- City Manager

Date: _____

Approval as to form, Gilroy City
Attorney

Date: _____

City of Los Altos – City Manager

Date: _____

Approval as to form, Los Altos City
Attorney

Date: _____

Town of Los Altos Hills – Assistant to the
Town Manager

Date: _____

Approval as to form, Los Altos Hills
Town Attorney

Date: _____

City of Milpitas – City Manager

Date: _____

Approval as to form, Milpitas City
Attorney

Date: _____

City of Morgan Hill, as a Party and as
Contracting Agent and TAC
Administrator

Date: _____

Approval as to form, Morgan Hill City
Attorney

Date: _____

City of Mountain View- Acting Public
Works Director

Date: _____

City of Mountain View – Finance and
Administrative Services Director

Date: _____

City of Mountain View- City Manager

Date: _____

City of Mountain View-Assistant City Clerk

Date: _____

City of Palo Alto – City Manager

Date: _____

West Valley Solid Waste Management Authority (on behalf of the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos) -Executive Director

Date: _____

City of Santa Clara - City Manager

Date: _____

Approval as to form, Mountain View Senior Assistant City Attorney

Date: _____

Approval as to form, Palo Alto Assistant City Attorney

Date: _____

Approval as to form, West Valley Solid Waste Management Authority General Counsel

Date: _____

Approval as to form, Santa Clara City Attorney

Date: _____

City of Sunnyvale – City Manager

Date: _____

Approval as to form, Sunnyvale Interim
City Attorney

Date: _____

County of Santa Clara, as a Party and as
Fiscal Agent - Chief Operating Officer

Date: _____

Approval as to form and legality, Santa
Clara County Deputy County Counsel

Date: _____

City of San José

Date: _____

Approval as to form, San José City
Attorney

Date: _____