

DRAFT

**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 _____ day of _____ 2015. 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 an integrated waste management plan; and

WHEREAS, the Board of Supervisors established the Countywide AB939 Implementation Fee effective July 1, 1992 to fund local costs of preparing, adopting, and implementing integrated waste management plans and programs; and

WHEREAS, the Recycling and Waste Reduction Commission of Santa Clara County has determined that a Countywide AB939 Implementation Fee (Fee) is necessary, pursuant to Public Resource Code 41901, to assist in funding the costs of preparing, adopting and implementing integrated waste management plans and programs in the fifteen cities and the unincorporated area of the county; and

WHEREAS, 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; and

WHEREAS, state law requires jurisdictions to plan and implement household hazardous waste (HHW) services; and

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary services to enable jurisdictions to meet the requirements of state law; and

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, in a 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

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. Best efforts will be made to prevent tonnage from being assessed a double fee (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 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 assist in funding the costs of each city's share of HHW operations.

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 Fee to CITIES and 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

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, 2015 to June 30, 2018, 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, 2015. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2018.

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 Division Manager

Recycling and Waste Reduction Division

Address: 1555 Berger Drive, Suite 300

City: San Jose, CA 95112

17. CONTROLLING LAW

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

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.

EXHIBIT A

LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site
Kirby Canyon Sanitary Landfill
Newby Island Sanitary Landfill
Pacheco Pass Sanitary Landfill
Palo Alto Refuse Disposal Area
Zanker Materials Processing Facility
Zanker Road Landfill

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

Butterick Enterprises Recyclery
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 Recovery Facility
GreenTeam of San Jose Material Recovery Facility and Transfer Station
Guadalupe Landfill
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)
Z-Best Composting Facility
Zanker Materials Processing Facility
Zero Waste Energy Development Company Anaerobic Digestion Facility

EXHIBIT C

COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)

1. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. 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 four 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 CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.
- C. Variable Cost Per Car to provide 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 funded on tonnage generated per participating jurisdiction.

2. FIXED PROGRAM COST

Funds shall be distributed on a per household basis for Fixed Program Costs. This portion of the funds shall be distributed directly to the Countywide HHW Program. Fixed Program Costs funding shall be calculated at \$2.47 per household in Fiscal Years 2016, 2017, and 2018. Fixed Program Costs may include, but are not limited to ten (10) 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.

COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

7. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all County jurisdictions. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. CITIES not participating in the Agency Agreement will receive their pro-rata share of funding received by the COUNTY from the HHW Fee.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to permit 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. The pro-rata share of liability will be shared as defined in Section 29 of AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM and as described in Exhibit D.

COUNTY shall require Conditionally Exempt Small Quantity Generators (“CESQG”) and Nonprofit Charitable Reusers to indemnify COUNTY for 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.

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CLARA APPROVING THE COLLECTION OF
A COUNTYWIDE AB939 IMPLEMENTATION FEE AND
DELEGATING AUTHORITY TO THE DIRECTOR OF THE CONSUMER AND
ENVIRONMENTAL PROTECTION AGENCY, OR DESIGNEE, TO AMEND,
TERMINATE, AND TAKE ANY AND ALL NECESSARY OR ADVISABLE ACTIONS
RELATING TO AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE**

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 an integrated waste management plan; and

WHEREAS, a Countywide AB939 Implementation Fee (Fee) was established in 1992 to assist the fifteen cities and the County unincorporated area (jurisdictions) to fund costs of preparing, adopting and implementing the integrated waste management plan in each jurisdiction; and

WHEREAS, the fee of \$4.10 per ton of wastes disposed at landfills located within the County or taken to non-disposal facilities located within the County and subsequently transported for disposal to landfills outside of Santa Clara County was approved for Fiscal Years 2013, 2014, and 2015, in order to assure equal assessment of the Fee on wastes; and

WHEREAS, the Recycling and Waste Reduction Commission of Santa Clara County (“Commission”) has determined that in order to fund the household hazardous waste services in the fifteen cities and the unincorporated area of the County the Fee should remain at \$4.10 for Fiscal Years 2016, 2017, and 2018. The Fee will 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; and

WHEREAS, the Commission has further determined that the County should collect said Fee on behalf of jurisdictions from each landfill, non-disposal or collection facility located within the County; solid waste haulers operating pursuant to a franchise, contract, license, or permit; or person or business that removed waste from any location in the County for disposal or incineration outside the County, and distribute the Fee to the jurisdictions and to the Countywide Household Hazardous Waste Program according to the terms of the Agreement for Countywide AB939 Implementation Fee (“Agreement”) effective July 1, 2015; and

2. The Board of Supervisors of the County of Santa Clara approves entering into the Agreement for Countywide AB939 Implementation Fee with participating jurisdictions; and,
3. The Board of Supervisors delegates authority to the Director of the Consumer and Environmental Protection Agency to amend, terminate, and take any and all necessary or advisable actions regarding the Agreement for Countywide AB939 Implementation Fee with each jurisdiction, following approval by County Counsel as to form and legality, and approval by the Office of the County Executive, and that said delegation of authority shall expire on June 30, 2018.
4. A person or business owing the Fee must, in addition to paying the Fee to the County, provide the County with a report indicating the source and disposition of all materials collected or disposed. Such persons must provide the County Integrated Waste Management Division with access to all substantiating information as needed to reconcile or verify such reports.
5. A person or business owing the Fee must make payment and submit the required reports to the County within 45 days of the end of the calendar quarter for which the payment applies. Both Fees and reports are due within 45 days of the end of the calendar quarter. If Fees and reports are not submitted on a timely basis, additional charges will be added as follows:
 - (a) A late processing fee of \$200 will be added if either Fees or reports are not submitted within 45 days;
 - (b) A delinquent penalty of 1% per month will be added if Fees accompanied by required reports are not submitted within 60 days of the end of the calendar quarter for which the payment applies.
6. Landfills, non-disposal facilities and collection facilities must provide copies of BOE audit reports or equivalent audit reports, or other relevant data to enable County to verify reports of tonnages disposed or incinerated.
7. Upon collection, the Fee and accrued delinquent penalties, if any, shall be distributed among jurisdictions according to the terms of the Agreement.
8. This Fee will become effective July 1, 2015, provided that all fifteen cities approve the Agreement for Countywide AB 939 Implementation Fee by July 1, 2015.

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Projected Fiscal Years 2016, 2017, 2018 AB939 HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal tonnage	AB939 HHW Fee \$2.60 per ton	Fixed Cost \$2.47 per HH	SJ Facility \$18.06 use surcharge	Variable Cost \$68 per car	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	17,604	704.16	32,902.51	\$ 85,546.53	\$ 43,481.88	\$ 6,918.90	\$ 47,882.88	(12,737.13)	\$ 27,618.25	923	383
Cupertino	21,037	841.48	77,298.88	\$ 200,977.09	\$ 51,961.39	\$ -	\$ 57,220.64	91,795.06		4	0
Glroy	15,533	621.32	37,660.67	\$ 97,917.74	\$ 38,366.51	\$ 420.24	\$ 42,249.76	16,881.23	\$ 2,494.24	658	23
Los Altos	11,278	451.12	14,608.06	\$ 37,980.96	\$ 27,856.66	\$ 2,181.82	\$ 30,676.16	(22,733.68)	\$ 66,857.52	1,100	121
Los Altos Hills	3,080	123.20	2,013.30	\$ 5,234.58	\$ 7,607.60	\$ 684.52	\$ 8,377.60	(11,435.14)	\$ 22,165.54	281	38
Los Gatos	13,185	527.40	23,552.12	\$ 61,235.51	\$ 32,566.95	\$ 8,781.31	\$ 35,863.20	(15,975.94)	\$ 56,476.74	1,123	486
Milpitas	20,242	809.68	63,180.22	\$ 164,268.57	\$ 49,997.74	\$ 1,572.97	\$ 55,058.24	57,639.62		810	87
Monte Sereno	1,293	51.72	1,414.16	\$ 3,676.82	\$ 3,193.71	\$ 1,137.78	\$ 3,516.96	(4,171.63)	\$ 10,446.67	144	63
Morgan Hill	13,617	544.68	42,705.11	\$ 111,033.29	\$ 33,633.99	\$ 869.06	\$ 37,038.24	39,492.00	\$ 31,505.76	1,008	48
Mountain View	34,173	1,366.92	53,308.92	\$ 138,603.19	\$ 84,407.31	\$ 1,909.97	\$ 92,950.56	(40,664.64)	\$ 61,614.08	1,675	106
Palo Alto	28,546	0.00	41,109.73	\$ 106,885.30		\$ -		106,885.30		0	
San Jose	323,203	12,928.12	553,851.57	\$ 1,440,014.08	\$ 798,311.41	\$ 127,789.59	\$ 879,112.16	(365,199.08)	\$ 365,199.08	12,928	7,076
Santa Clara	45,770	1,830.80	135,911.26	\$ 353,369.28	\$ 113,051.90	\$ 4,345.05	\$ 124,494.40	111,477.93	\$ 130,029.60	3,743	241
Saratoga	11,172	446.88	17,441.99	\$ 45,349.17	\$ 27,594.84	\$ 5,770.55	\$ 30,387.84	(18,404.05)	\$ 52,684.21	951	320
Sunnyvale	56,998	2,279.92	98,182.53	\$ 255,274.58	\$ 140,785.06	\$ 1,081.28	\$ 155,034.56	(41,626.32)	\$ 231,895.76	5,078	60
Unincorporated	18,538	741.52	31,263.28	\$ 81,284.53	\$ 45,788.86	\$ 7,881.48	\$ 50,423.36	(22,809.17)	\$ 92,609.81	1,768	436
Total	635,269	24,268.92	1,226,404.31	\$ 3,188,651.21	\$ 1,498,605.81	\$ 171,344.50	\$ 1,650,286.56	(131,585.66)	\$ 1,151,597.28	32,194	9,488

Notes: No of HH based on 1/1/14 estimates; Anticipated participation based on FY11 actual participation except for Milpitas & S.J. (FY11 actual for these 2 cities are below the 4% of HH); Anticipated SJ facility participation based on FY14 participation at SJ temp events.