

Memorandum of Understanding
Between the Jurisdictions of Belmont, Burlingame, East Palo Alto, Foster City,
Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitary
District, and the County of San Mateo and
the South Bayside Waste Management Authority
Regarding Implementation of SB 1383 Regulations

This Memorandum of Understanding ("MOU") is made this 16th day of November, 2021 ("Effective Date") by and between the **COUNTY OF SAN MATEO**, a political subdivision of the State of California, the **CITIES OF BELMONT, BURLINGAME, EAST PALO ALTO, FOSTER CITY, HILLSBOROUGH, MENLO PARK, REDWOOD CITY, SAN CARLOS, SAN MATEO**, each a municipal corporation of the State of California, the **WEST BAY SANITARY DISTRICT**, a California independent district, (the County and Cities and West Bay Sanitary District are referred to individually herein as a "Jurisdiction") and the **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**, a California joint powers authority ("Agency") (collectively the "Parties").

RECITALS

WHEREAS, the Agency is a joint powers authority established pursuant to the California Joint Exercise of Powers Act (Gov. Code section 6500 *et seq.*); and

WHEREAS, each of the Jurisdictions is a member of the Agency, and the Agency operates certain core programs on behalf of and for the benefit of the Jurisdictions, including but not limited to providing education regarding recycling, composting, and other methods of waste diversion to the Jurisdictions and the public, and conducting, preparing, and submitting all monitoring and reporting pursuant to the Integrated Waste Management Act (California Public Resources Code §§40000 *et seq.*); and

WHEREAS, the State of California passed SB 1383 (Lara, Chapter 395, Statutes of 2016), which required the California Department of Resources Recycling and Recovery (CalRecycle) to adopt regulations to reduce statewide disposal of organic waste by 50 percent from its 2014 baseline level by 2020 and 75 percent by 2025; and

WHEREAS, CalRecycle has finalized SB 1383 Regulations that among other things created new Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations ("SB 1383 Regulations"); and

WHEREAS, the SB 1383 Regulations require local agencies or jurisdictions to implement Edible Food Recovery programs; to promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the creation of a countywide Edible Food Recovery Program on behalf of the unincorporated areas of the county and all the cities in the county and has developed a separate MOU to be entered into by the cities in conjunction with that program;

WHEREAS, in addition, the SB 1383 Regulations require local agencies or jurisdictions, among other things, to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste

containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with SB 1383 Regulations, and maintain records of compliance with SB 1383 Regulations; and

WHEREAS, Jurisdictions may designate a public or private entity to fulfill a portion of the requirements for the SB 1383 Regulations, except that the Jurisdictions shall remain responsible for compliance; and

WHEREAS, the Parties are entering into this MOU to designate certain roles and responsibilities that the Agency shall assume on behalf of the Jurisdictions to implement the SB 1383 Regulations (excluding the Edible Food Recovery Program requirements undertaken by the County in the separate MOU) that will take effect on January 1, 2022 under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. **Term.** This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 6 of this MOU.
2. **Definitions.**
 - (a) "Agency" means the South Bayside Waste Management Authority.
 - (b) "CalRecycle" or "Department" means the California State Department of Resources Recycling and Recovery.
 - (c) "City" means one of the cities or towns that is a member of the Agency.
 - (d) "County" means the County of San Mateo.
 - (e) "Edible Food" means food intended for human consumption.
 - (f) "Generator" means a person or entity that is responsible for the initial creation of organic waste.
 - (g) "Hauler" means a person or entity who collects material from a Generator and delivers it to a reporting entity, end user, or a destination outside of the state. "Hauler" includes public contract haulers, private contract haulers, food waste self-haulers, and self-haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.
 - (h) "Implementation Record" means all records, physical or electronic, that must be stored in one central location and are required by Chapter 12: Short-lived Climate Pollutants.

- (i) “Jurisdiction” means a City, or West Bay Sanitary District, or the County, each of which provides solid waste collection services within their jurisdictional boundaries.
- (j) “Local Enforcement Agency” or “LEA” means the San Mateo County Department of Health Services, Solid Waste Local Enforcement Agency.
- (k) “Organics,” or “Organic Waste” are materials that originate from living organisms and their metabolic waste products, including but not limited to, food, green material, landscape and pruning waste, organic textiles, paper products, printing and writing paper, vegetables, grain, meat, bones, paper towels, leaves, and wood.
- (l) “Route review” means a visual inspection of containers along a hauler route for the purpose of determining container contamination and may include mechanical inspection methods such as the use of cameras.
- (m) “SB 1383 Regulations,” “Regulations,” or “Chapter” means, for the purposes of the MOU, Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations. Regulatory references to specific sections listed in the MOU shall be to the SB 1383 Regulations, unless specifically noted otherwise.
- (n) “Waste evaluation” means collecting samples from garbage, recycling, and organics from different areas in the jurisdiction so that the samples are representative of the jurisdiction’s waste stream.

3. **Responsibilities of the Agency.**

- (a) **General.** The Agency shall conduct the services described in this Section for the SBWMA Jurisdictions. In the unincorporated county areas, this will be for the County Franchised Areas and County Service Area No. 8 (North Fair Oaks). The County is delegating certain responsibilities related to the SB 1383 Regulations to the Agency as described in this Section. The Agency shall conduct the services described in this Section for the County in a manner in which each Jurisdiction receives services in an equitable manner.
- (b) **Education and outreach.** The Agency shall provide educational materials and community outreach to organic waste Generators in English, Spanish, and Chinese that explain and provide information on the requirements of the SB 1383 Regulations, as more specifically described below, and will be consistent with the scope of work listed in the three-year Public Education and Recycling Technical Assistance Plan.
 - (i) Prior to February 1, 2022, the Agency will make available to Generators, through print and/or electronic media, information regarding §§ 18984.9, 18984.10, 18985.1, 18985.2, 18988.3, 18991.3, 18991.4, and 18991.5 of the Regulations. This information shall be maintained and updated at least annually.

- (ii) The Agency shall send letters to residential and commercial Generators who have not subscribed to Recyclable Materials or Organics Collection Services and those who are found to have prohibited container contaminants. The letters shall provide information and resources to comply with the Regulations related to the collection and recovery of Recyclable Materials and Organic Waste. The Agency shall work with each individual Jurisdiction and the franchise Hauler to tailor the letters to the Jurisdiction's needs.
- (c) **Procurement.** The Agency shall annually notify each Jurisdiction of its Organic Waste product procurement target, as required and determined by CalRecycle. Before CalRecycle releases the official procurement targets for each Jurisdiction on January 1, 2022 and every five years thereafter, the Agency shall assist the Jurisdictions in calculating estimates of the procurement targets. (§18993.1)
- (d) **Reporting and recordkeeping.**
 - (i) The Agency shall submit reports for Organics processing capacity and Edible Food recovery planning requirements according to the County within 120 days of the County's request as required by Article 11 of the SB1383 Regulations (§ 18992.3).
 - (ii) The Agency will retain records for the Agency for all the information and documents required in the Implementation Record (SB 1383 Regulations, § 18995.2). Each Jurisdiction will be given access to their own set of records through a cloud-based software. Agency staff will upload documents within the 60-day timeframe as required in the Chapter, provided that the information is made available to the Agency by the necessary parties in a timeframe that allows for such uploading.
 - (iii) Upon request by a CalRecycle representative or the public through a Public Records Act request, either the Agency or the Jurisdiction will provide access to the Implementation Record. Agency and Jurisdiction shall notify the other of the request and coordinate a response.
 - (iv) The Agency shall submit the Initial Jurisdiction Compliance Report and Jurisdiction Annual Reports to CalRecycle as detailed in SB 1383 Regulations, §§ 18994.1, 18994.2.
- (e) **Organic waste processing capacity and diversion planning.** The Agency shall work with the County of San Mateo to estimate existing Organics processing and Edible Food Recovery capacities available in the service area (SB 1383 Regulations, §§ 18992.1, 18992.2). If it is found that either are lacking, the Agency shall assist the Jurisdictions in creating an implementation plan to expand capacity.

- (f) **Model Tools.** The Agency shall adapt three Model Tools to fit the Jurisdictions' needs. The Agency shall assist the Jurisdictions in tailoring the language further if necessary, although it will ultimately be the Jurisdictions' responsibility to use or adopt them. The Model Tools are:
- (i) Model Franchise Agreement Amendment and Exhibits with Recology;
 - (ii) Model Mandatory Organic Waste Disposal Reduction Ordinance; and
 - (iii) Model Procurement Policy
- (g) **Complaints and violations.** Agency shall forward to the Jurisdictions all complaints alleging from non-compliance with the Regulations for investigation. The Agency shall also provide to the Jurisdictions the names and associated contact information of Generators who repeatedly fail to comply with the Regulations. The Agency shall notify the Jurisdictions of these complaints and violations within 10 business days of receipt of such complaints by the Agency.
- (h) **Waivers.**
- (i) Since the authority to issue waivers cannot be delegated to a private entity, the Agency shall approve or deny each waiver request, with support from Jurisdiction as needed, except as otherwise provided herein. Waivers may be granted by the Agency for de minimis volumes and physical space limitations. (SB 1383 Regulations, § 18984.11). Eligibility for waivers will be reviewed by the Agency every 5 years after written verification of eligibility is provided by the Commercial Business or property owner. The Agency will provide Jurisdictions with a list of Generators who are approved and denied a waiver.
 - (1) The Agency will create a standardized waiver request form for Jurisdictions and Haulers to distribute or make available to Generators. This form will be a printable document maintained on the Agency's website.
 - (2) De Minimis Waivers: The Agency may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Recyclable Materials and Organic Waste requirements of each Jurisdiction's ordinance if the Commercial Business provides documentation that the business' total Solid Waste, Recyclable Materials, and Organic Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in the Organic Waste Container comprises less than 20 gallons per week or the Paper Products and Printing and Writing Paper subject to collection in the Recyclable Materials Container; or if the total Solid Waste, Recyclable Materials,

and Organic Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in the Green Container comprises less than 10 gallons per week or the Paper Products and Printing and Writing Paper subject to collection in the Recyclable Materials Container.

(3) **Physical Space Waivers:** The Agency may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the Agency has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Recyclable Materials and Organic Waste collection requirements specified in each Jurisdictions' ordinance or municipal code.

(4) Since weekly pickup of solid waste is required by the LEA, Collection Frequency Waivers will not be granted to Generators in any of the Jurisdictions.

(i) **Emergency Circumstances – Waivers for Jurisdiction**

(i) The Agency will notify CalRecycle and apply for a waiver to landfill organics if any of the Jurisdictions experience a natural disaster, uses a recyclable materials or organic waste processing facility that has a temporary operational failure, or unforeseen operational restrictions have been imposed upon it by a regulatory agency. (SB 1383 Regulations §18984.13)

4. **Responsibilities of the Jurisdictions.**

(a) The Jurisdictions shall assume responsibility for all other requirements specified for Jurisdictions in the Regulations not expressly stated to be covered by the Agency in this MOU.

(b) **Sharing of information.** Within thirty (30) days of request by the Agency, or as soon as such information is available to the Jurisdictions, the Jurisdictions shall share with the Agency all data, documents, contact information for Generators within the Jurisdiction, or any other information necessary for the Agency to carry out the responsibilities listed in this MOU.

(c) **Staff and funding.** In order for the Agency to carry out its responsibilities in connection with the administration and implementation of the SB 1383 Regulations as specified in this MOU, costs shall be jointly shared by participating Jurisdictions through the garbage tipping fee rate. Budget

changes related to this MOU will be integrated into the Agency's regular budget process, as approved by the Board of Directors.

5. **Indemnification/Hold Harmless.** Agency shall indemnify, defend, and hold harmless the Jurisdictions, their legislative bodies, officials, consultants, agents, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including reasonable attorney's fees, arising from Agency's performance of this MOU, with the exception of matters that are based upon the negligent or intentional acts or omissions of the Jurisdictions, their legislative bodies, officials, consultants, agents and employees.
6. **Withdrawal of Jurisdictions; Termination by Agency.** Any Jurisdiction may withdraw as a Party to this MOU upon giving one hundred and eighty (180) calendar days' prior written notice to the other Parties. Further, the Agency may terminate this MOU upon giving three hundred and sixty-five (365) days' prior written notice to the Jurisdictions.
 - (a) Upon termination of this MOU, the Agency shall have no further obligations to carry out the Agency Responsibilities as described in this MOU. The Agency will provide the Jurisdiction all records related to the Implementation Record (SB 1383 Regulations, § 18995.2). If a Jurisdiction withdraws from this MOU, the Jurisdiction will be required to pay the Agency, for its full portion of expense and consultant contract costs, to conduct the services described in Section 3 under this MOU including costs generated through the end of the Agency's fiscal year of the Jurisdiction withdrawal.
 - (b) The costs of services under the MOU will be reapportioned to the remaining Jurisdictions. Reapportioned costs will be brought to the SBWMA Board of Directors through the regular budgeting process.
7. **Notice.** During the Term of this MOU, all notices shall be made in writing and either served personally, sent by first class mail, or sent by email provided confirmation of delivery is obtained at the time of email transmission, addressed as follows:

To: Agency

South Bayside Waste Management Authority
Attention: Executive Director
610 Elm Street, Suite 202
San Carlos, CA 94070
Telephone Number:
Email:

To City of Belmont:

City of Belmont
Attention: City Manager

Belmont, CA _____

Telephone Number:

Email:

To City of Burlingame:

City of Burlingame
Attention: City Manager

Burlingame, CA _____

Telephone Number:

Email:

To City of East Palo Alto:

City of East Palo Alto
Attention: City Manager

East Palo Alto, CA _____

Telephone Number:

Email:

To City of Foster City:

City of Foster City
Attention: City Manager

Foster City, CA _____

Telephone Number:

Email:

To Town of Hillsborough:

Town of Hillsborough
Attention: City Manager

Hillsborough, CA _____

Telephone Number:

Email:

To City of Menlo Park:

City of Menlo Park
Attention: City Manager

Menlo Park, CA _____

Telephone Number:

Email:

To City of Redwood City:

City of Redwood City
Attention: City Manager

8. **Governing Law and Venue.** This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of

the State of California. Venue in any proceeding or action among the participating Jurisdictions arising out of this MOU shall be in San Mateo County, California.

9. **Amendment.** This MOU and the exhibits hereto may only be amended in writing signed by all Parties, and any purported amendment shall be of no force or effect. This MOU may be amended to both extend the term and conditions, as well as to add tasks. Agency shall not begin new tasks without express written permission of the Cities.

Entire Agreement. This MOU and its exhibits constitute the entire agreement between the Jurisdictions and the Agency and supersedes all prior negotiations, representations, or agreements, whether written or oral.

SIGNATURE PAGE FOR MEMORANDUM OF UNDERSTANDING
Between the Jurisdictions of Belmont, Burlingame, East Palo Alto, Foster City,
Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitary
District, and the County of San Mateo and
The South Bayside Waste Management Authority
Regarding Implementation of SB 1383

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in duplicate on the day and year first above written.

CITY OF BELMONT, A Municipal
Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF BURLINGAME, A Municipal
Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF EAST PALO ALTO, A
Municipal Corporation of the State of
California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF FOSTER CITY, A Municipal
Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

TOWN OF HILLSBOROUGH, A
Municipal Corporation of the State of
California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF MENLO PARK, A Municipal
Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF REDWOOD CITY, A Municipal Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF SAN CARLOS, A Municipal Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

CITY OF SAN MATEO, A Municipal Corporation of the State of California

By: _____

City Manager

APPROVED AS TO FORM:

City Attorney

COUNTY OF SAN MATEO, A Municipal Corporation of the State of California

By: _____

County Manager

APPROVED AS TO FORM:

WEST BAY SANITARY DISTRICT, An
Independent District of the State of
California

By: _____

District Manager

APPROVED AS TO FORM:

District Counsel

**SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY**, A California
Joint Powers Authority

By: _____

Executive Director

APPROVED AS TO FORM:

Agency Counsel