

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

SECTION 1. OVERVIEW

This Memorandum of Understanding (“MOU”) is between the cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San José, Santa Clara, Sunnyvale, and Saratoga; the towns of Los Altos Hills and Los Gatos; and the County of Santa Clara; collectively “Parties” or individually as a “Party.”

SECTION 2. RECITALS

WHEREAS, the signatory Parties are also “PARTIES” to the Memorandum of Agreement for the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee, which is a Committee of the County of Santa Clara Recycling and Waste Reduction 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.

WHEREAS the Parties have previously agreed to jointly fund the cost of a countywide edible food recovery program to satisfy their respective obligations under SB 1383 (2016) and the corresponding regulations;

WHEREAS, the County of Santa Clara is the Fiscal Agent for the Technical Advisory Committee (TAC) to the Santa Clara County Recycling and Waste Reduction Commission and the City of Morgan Hill is the Administrator and Contracting Agent for the TAC;

WHEREAS, the City of Morgan Hill, as Program Administrator and Contracting Agent, has contracted with Joint Venture Silicon Valley to implement and manage the countywide Food Recovery Program (“Program”) for Fiscal Year 2023/24;

WHEREAS, the Parties desire to execute this MOU to provide for their respective share of costs for the Program;

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 3. PURPOSE OF THE MOU

The purpose of this MOU is to establish a means of requiring:

Payment by the Parties for their share of the costs for implementation of the Program.

SECTION 4. EFFECTIVE DATE

This MOU shall be effective upon execution of this MOU by all Parties (“Effective Date”).

SECTION 5. PAYMENTS UNDER THIS MOU

For purposes of the Program, the County of Santa Clara is the Fiscal Agent and the City of Morgan Hill is the TAC Administrator and Contracting Agent, as specified in the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee MOA.

The Parties agree to share costs for the services as described in Exhibit A of this MOU.

The County of Santa Clara will, within thirty (30) days of the Effective Date of this MOU, submit to the other Parties an invoice for the amounts due under the MOU. Each party will make their payment to the County of Santa Clara based on the invoice amount.

SECTION 6. RECORDS AND ACCOUNTS

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

SECTION 7. FURTHER ASSURANCES

Each Party will adopt, execute, and make any and all further assurances, 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 8. REPRESENTATIONS AND WARRANTIES

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

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.

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

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 9. 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 given hereunder or now or hereafter existing in law or in equity or by statute or otherwise, and all such remedies may be exercised without exhausting and without regard to any other remedy.

SECTION 10. 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. 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. The obligations set forth in this paragraph will survive termination and expiration of this MOU.

SECTION 11. 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 12. AMENDMENTS

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

SECTION 13. 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 14. 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 City of Morgan Hill.

SECTION 15. 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.

SECTION 16. 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 17. 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.

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

City of Campbell

Date: _____

Approval as to form, Campbell

Date: _____

City of Cupertino

Date: _____

Approval as to form, Cupertino

Date: _____

City of Gilroy

Date: _____

Approval as to form, Gilroy

Date: _____

City of Los Altos

Date: _____

Approval as to form, Los Altos

Date: _____

Town of Los Altos Hills

Date: _____

Approval as to form, Los Altos Hills

Date: _____

Town of Los Gatos

Date: _____

Approval as to form, Los Gatos

Date: _____

City of Milpitas

Date: _____

Approval as to form, Milpitas

Date: _____

City of Monte Sereno

Date: _____

Approval as to form, Monte Sereno

Date: _____

City of Morgan Hill

Date: _____

Approval as to form, Morgan Hill

Date: _____

City of Mountain View

Date: _____

Approval as to form, Mountain View

Date: _____

City of Palo Alto

Date: _____

Approval as to form, Palo Alto

Date: _____

City of San Jose

Date: _____

Approval as to form, San Jose

Date: _____

City of Santa Clara

Date: _____

Approval as to form, Santa Clara (city)

Date: _____

City of Saratoga

Date: _____

Approval as to form, Saratoga

Date: _____

City of Sunnyvale

Date: _____

Approval as to form, Sunnyvale

Date: _____

County of Santa Clara

Date: _____

Approval as to form, Santa Clara County

Date: _____

EXHIBIT A

COSTS AND SCOPE OF SERVICES

Proposed Jurisdiction contributions for Base Program and Infrastructure - FY 24 Program Costs									
Jurisdictions	Initial Local Asst. Grant (LAG) Allocation	Initial program "pledge" 19% of LAG	T1	T2	Total Generators	Base Program Contract Cost (\$133 per generator)	Jurisdiction Proposed amount	Potential Infrastructure Enhancements (column E-I)	Jurisdiction Proposed amount
Campbell	\$ 55,495	\$ 10,544	11	49	60	\$ 7,980	\$ 7,980	\$ 2,564	\$ -
Cupertino	\$ 77,953	\$ 14,811	10	80	90	\$ 11,970	\$ 11,970	\$ 2,841	\$ 2,841
Gilroy	\$ 75,255	\$ 14,298	11	48	59	\$ 7,847	\$ 7,847	\$ 6,451	\$ 6,451
Los Altos	\$ 41,038	\$ 7,797	7	34	41	\$ 5,453	\$ 5,453	\$ 2,344	\$ 2,344
Los Altos Hills	\$ 20,000	\$ 3,800	0	2	2	\$ 266	\$ 266	\$ 3,534	\$ 3,534
Los Gatos	\$ 41,465	\$ 7,878	10	45	55	\$ 7,315	\$ 7,315	\$ 563	\$ -
Milpitas*	\$ 100,259	\$ 19,049	21	92	113	\$ 15,029	\$ 15,029	\$ 4,020	\$ 4,020
Monte Sereno	\$ 20,000	\$ 3,800	0	1	1	\$ 133	\$ 133	\$ 3,667	\$ -
Morgan Hill	\$ 63,156	\$ 12,000	15	43	58	\$ 7,714	\$ 7,714	\$ 4,286	\$ 4,286
Mountain View	\$ 109,638	\$ 20,831	17	114	131	\$ 17,423	\$ 17,423	\$ 3,408	\$ 3,408
Palo Alto	\$ 89,759	\$ 17,054	7	106	113	\$ 15,029	\$ 15,029	\$ 2,025	\$ 2,025
San Jose	\$ 1,351,654	\$ 256,814	212	787	999	\$ 132,702	\$ 132,702	\$ 124,112	\$ 124,112
Santa Clara	\$ 172,504	\$ 32,776	40	162	202	\$ 26,866	\$ 26,866	\$ 5,910	\$ 5,910
Saratoga	\$ 41,085	\$ 7,806	2	26	28	\$ 3,724	\$ 3,724	\$ 4,082	\$ -
Sunnyvale	\$ 202,777	\$ 39,368	26	144	170	\$ 22,610	\$ 22,610	\$ 16,758	\$ 16,758
Unincorporated SCC	\$ 113,337	\$ 23,000	13	35	48	\$ 6,384	\$ 6,384	\$ 16,616	\$ 16,616
Totals	\$ 2,575,374	\$ 491,627	402	1768	2170	\$ 288,445	\$ 288,445	\$ 203,182	\$ 192,306
West Valley Cities							\$ 19,152		No Pledge

Note: Initial program pledge was based on program cost estimate before program establishment and experience with program scope of work.

West Valley cities contributed for the Base Program, but chose not to contribute for infrastructure enhancements

SCOPE OF SERVICES

Base Program – Countywide Food Recovery Program Management

From July 1, 2023 to June 30, 2024, Joint Venture Silicon Valley will run the Santa Clara County Food Recovery Program, serving as the food recovery program (Program) on behalf of all jurisdictions (Jurisdictions) of the Parties, and coordinating with any Party performing their own enforcement.

The Base Program

1. Will develop and coordinate a standardized and uniform method to comply with California Code of Regulations, Title 14, Division 7, Chapter 12, “Short-Lived Climate Pollutants.” The Program will operate within the Party’s boundaries and replace the need for the Party to create such a program on its own.
2. Each year by March, the Program will conduct a review of new Tier 1 and Tier 2 Entities, to ensure that as businesses open in Santa Clara County, the appropriate regulated entities are added to the Tier 1 and Tier 2 lists. Closing businesses will be identified during the reporting process, and be eliminated from the lists.
3. Provide Parties with requirements for inclusion in the ‘large event’ list requested from each Party, as well as provide electronic materials for distribution for large event planners.
4. Shall provide Parties with the information and data necessary for the Parties to make their required reports to CalRecycle.
5. Shall retain records of inspections for each Party for a minimum of five (5) years.
6. Shall notify the Party promptly about any related issues that require the Party’s assistance or to request the Party lead in resolving the issue(s) that arise related to non-compliance.
7. Shall fulfill the annual education requirement for the Parties and provide the data needed for the Parties to complete required CalRecycle reports.
8. Shall conduct generator and Food Recovery Organization/Services requests for reports, compile the results, and communicate those results to the jurisdictions for inclusion in the Implementation Record Data Summary, and to Santa Clara County for use in future Capacity Planning efforts.
9. Shall conduct inspections and monitoring in compliance with CalRecycle expectations for Tier One businesses, Tier Two entities and Organizations, and Food Recovery Organizations and Services.
10. The Program shall supply appropriate content for the web site, SCCFoodRecovery.org, as well as a list of Food Recovery Organizations and Services. The list will be annually updated and made accessible to Tier 1 and 2 Entities.
11. The Program leadership shall represent the interests of the Program with other entities, Counties, and CalRecycle.

12. The Program leadership shall create reports about Program activities at the end of each fiscal year. These reports shall include monitoring statistics, details on overall compliance, compliance in certain sectors, total number of pounds of food recovered, and a summary of all enforcement actions taken.
13. Statistics about food recovery in Santa Clara County will be shared on the Office of Sustainability website as part of the Sustainability Master Plan Data Dashboard and the Annual Sustainability Report.

All Parties to this MOU will receive the Base Program services.

Infrastructure Enhancements Program

As shown in Exhibit A of this MOU, some jurisdictions have chosen to contribute to the edible food recovery Infrastructure Enhancements Program which will direct additional food recovery resources to participating jurisdictions between July 1, 2023 and June 30, 2024. The Infrastructure Enhancements Program will include two subprograms, described as follows:

- 1) Small Capacity Grants. Grants will be issued to increase the food recovery capacity of food recovery organizations that serve contributing jurisdictions. Applications will be solicited, awards will be issued, and funds will be distributed. Joint Venture Silicon Valley will provide information for Annual Reporting that shows how contributions to this subprogram were spent on behalf of each participating Agency.
- 2) Food Waste Prevention Classes. A webinar/in-person series will be advertised for different sectors regulated under SB 1383 (e.g., restaurants, hospitals, schools, large events). The series will promote food waste prevention measures specific to each regulated sector, provide food recovery tips and best practices, and teach businesses and organizations how to comply with SB 1383 and local ordinances. The series will start with Tier 2, and then move into Tier 1 groups that answered 'zero pounds' in their reports, if funding allows. Joint Venture Silicon Valley will provide information for Annual Reporting that shows how contributions to this subprogram were spent on behalf of each participating Party.