

**SECOND AMENDMENT TO THE AGENCY AGREEMENT  
FOR COUNTYWIDE AB939 IMPLEMENTATION FEE**

This is the Second Amendment to the “Agency Agreement for Countywide AB 939 Implementation Fee,” (AGREEMENT) by and between the City of Milpitas (CITY) and the County of Santa Clara, (COUNTY), which AGREEMENT was effective on July 1, 2006 and previously amended effective July 1, 2007.

The COUNTY and the CITY agree that:

1. Section 1 **Purpose** is amended in full as follows

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$3.72 per ton in FY 2007, \$3.55 per ton in FY 2008 and \$3.55 per ton in FY 2009 of waste to be disposed. 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 HHW Fee of \$2.22 per ton in FY 2007, \$2.05 per ton in FY 2008 and \$2.05 per ton in FY 2009 to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit B. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and Participating Jurisdictions as described in Exhibit C. 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).

2. Exhibit C. **COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)** is amended in full as set forth in Attachment 1 which is incorporated herein by this reference.

Except as amended herein, all terms and conditions of said AGREEMENT and the First Amendment shall remain in full force and effect.

The effective date of this Amendment is July 1, 2008.

IN WITNESS WHEREOF, COUNTY and CITY through their duly authorized representatives, have entered into this Second Amendment to the AGREEMENT on the date shown below:

**COUNTY OF SANTA CLARA**

**CITY**

Signature:

Signature:

\_\_\_\_\_  
Pete McHugh, Chair                      Date  
BOARD OF SUPERVISORS

\_\_\_\_\_  
Thomas C. Williams                      Date  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Phyllis A. Perez, Clerk                      Date  
BOARD OF SUPERVISORS

\_\_\_\_\_  
Mary Lavelle                      Date  
City Clerk

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Kathy Kretchmer                      Date  
Deputy County Counsel

\_\_\_\_\_  
Michael J. Ogaz                      Date  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Greg Armendariz,                      Date  
Public Works Director/  
City Engineer

## ATTACHMENT 1

### 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, \$2.22 per ton in FY 2007, \$2.05 per ton in FY 2008 and \$2.05 per ton in FY 2009, collected as part of the AB939 Implementation Fee, will be the primary source of funding for 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 Department of Finance, Demographic Research Unit in their most recent Report, "Population Estimates for California Cities and Counties."
- B. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations. The existing fund balance from previous years will fund the Abandoned Wastes Disposal Costs for fiscal years 2007 to 2009. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to the Facility Closure Cost Account. The apportionment for Fiscal Years 2008 to 2009 will be redirected to the City Discretionary Fund.
- C. Facility Closure Costs will cover the estimated cost of closing the three County Household Hazardous Waste Collection Facilities (CoHHWCF) when the time comes. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to this account to satisfy Permit By Rule requirements [California Code of Regulations, Title 22, sections 67450.25 (a) (2) (E) and 66265.110-66265.115]. There will be no further apportionment for FY 2008 and 2009.
- D. Variable Cost Per Car to provide a base level service to 3% of households in all participating jurisdictions.
- E. 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 \$1.68, \$1.61, and \$1.68 per household for fiscal years 2007 through 2009 respectively. Fixed Program Costs may include, but are not limited to six

(6) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, program publicity, training costs, equipment and facility maintenance, and union negotiated salary and benefit increases.

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

The existing unexpended abandoned waste fund balance of \$210,000 will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations for FY 2007 through FY 2009. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to the Facility Closure Cost Account. This portion of the funds shall be distributed directly to the Countywide HHW Program. All jurisdictions throughout the COUNTY contribute to this cost including jurisdictions not participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. The apportionment for Fiscal Years 2008 to 2009 will be suspended, and funding will be redirected to the City Discretionary Fund.

For the purposes of this agreement, the PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organizations 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. FACILITY CLOSURE COST**

The Facility Closure Costs are costs associated with the closing of the three HHW facilities when the time comes and is required by Permit-by Rule Regulations. During the first three years of the AB939 Implementation Fee for HHW services, \$20,000 per year was set aside to pay for facility closure. The closure account was \$60,000 at the beginning of FY 2007. The FY 2007 apportionment (\$70,000) for abandoned waste disposal will be redirected to the Facility Closure Account maintained by Countywide HHW Program to satisfy Permit-by-Rule requirements. This portion of the funds shall be distributed directly to the Countywide HHW Program. This would be a one-time cost from the AB939 Implementation Fee funding.

### **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 \$67 per car for Fiscal Year 2008 and 2009. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and facility closure costs are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 3% of households across all participating jurisdictions. If the level of 3% 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 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 cost, facility closure cost and variable per car cost. Available Discretionary Funds will be paid as directed by each jurisdiction. 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, subsidizing curbside used motor oil collection, electronic waste collection, universal waste collection, emergency HHW services, funding HHW public education, or providing special programs such as door-to-door collection of HHW for the elderly and/or persons with disabilities.

## **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, with the exception of funds for the abandoned waste cost, described above.

If CITIES not participating in the AGENCY 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 28 of AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM and as described in Exhibit D.