

MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SAN BENITO AND THE CITIES OF SAN JUAN BAUTISTA AND HOLLISTER FOR THE
ESTABLISHMENT AND ADMINISTRATION OF A NON-EXCLUSIVE PERMIT SYSTEM FOR THE COLLECTION AND
DIVERSION OF SOLID WASTE

THIS MEMORANDUM OF UNDERSTANDING (MOU), entered into this 21st day of February, 2024, by and between the County of San Benito, hereinafter called "the County" and among the City of San Juan Bautista, and the City of Hollister, hereinafter called "the Cities."

WITNESSETH:

WHEREAS, the County and the Cities entered into a Joint Powers Integrated Waste Management Agreement in 1995, pursuant to Public Resource Code Section 40970, to form the San Benito County Integrated Waste Management Regional Agency, hereinafter referred to as "Regional Agency"; and

WHEREAS, as the lead agency of the Regional Agency, the County has been assisting the jurisdictions within the County with compliance and any applicable exemptions concerning AB 939, AB 341 and AB 1826 and is assisting with SB 1383 applicable exemptions and compliance;

WHEREAS, the Regional Agency has been granted a rural exemption from SB 1383 requirements to establish an organics waste collection program due to the County's rural composition.

WHEREAS, the SB 1383 rural exemption is anticipated to expire on December 31, 2026 and not all areas of SB 1383 are exempt under the rural exemption granted by CalRecycle, including some elements of program implementation and annual reporting requirements to CalRecycle.

WHEREAS, the County and the Cities will continue working towards SB 1383 compliance and development of effective recycling & organics waste collection programs.

WHEREAS, AB 939 mandates the diversion of 50% of the solid waste generated within the County.

WHEREAS, Article 3, §15.01.041 collection franchise or permit requires that the Board of Supervisors may determine, pursuant to state law, if a collection franchise or permit shall be awarded exclusively or non-exclusively, with or without competitive bidding. The Board shall specify the duration of the franchise or permit and shall specify, by resolution, an appropriate franchise or permit fee.

WHEREAS, the County and the Cities executed the Cost-Sharing Agreement in May of 2006 which further defines that the County oversees refuse and recycling collection, disposal and processing contract operation, and shall provide for strict accountability of all funds received or disbursed by the Regional Agency and shall provide reports of all receipts and disbursements, pursuant to Government Code section 6505. Any contracts entered into as part of duties under the Cost-Sharing Agreement by the County of San Benito, which contemplate a charge to residents and commercial and industrial businesses, shall be reviewed and approved by the Local Task Force and further approved by the representative governing bodies according to their statutory authority.

WHEREAS, the County and its cities have been participating in a non-exclusive franchise agreement (NEFA) system to ensure proper reporting of garbage, recyclables and organics collected and fees paid as appropriate.

WHEREAS, the County intends to formalize this relationship by administering the program on behalf of the Cities through this memorandum of understanding.

WHEREAS, based on best practices, County staff will revise the current NEFA system into a permit system to be more consistent with local regulatory powers and ordinances, to implement a more effective recycling & organics waste collection program, and to ensure ongoing SB 1383 compliance and reporting is conducted on behalf of the County and Cities.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

AGREEMENT

1. Recitals.

The foregoing recitals are true and correct and hereby incorporated herein.

2. Term.

This MOU shall commence on approval of all the parties and remain in full force and effect until terminated as set forth in Section 11.

3. County Responsibilities

The County shall:

- A. Create and coordinate a non-exclusive permit system consistent with Article 5 of the County Code of Regulations and Exhibit A for the collection of garbage, recyclables, and organics on behalf of the City so long as this Memorandum of Understanding is in effect in its entirety. The Board may, from time to time, adopt any regulations governing the issuance of solid waste collection permits. However, any agreements or contracts that contemplate a charge to residents and commercial and industrial businesses, shall be reviewed and approved by the Local Task Force and further approved by the representative governing bodies according to their statutory authority.
- B. Pursuant to Section 15.01.041 of the County Code of Regulations, the Integrated Waste Management Director shall be authorized to execute such a permit in writing with any person desiring to provide solid waste collection and roll-off collection services pursuant to the permit approved by the Board.
- C. Create and oversee the actual permits and reporting mechanisms to be completed by the haulers on behalf of the City so long as this MOU is in effect in its entirety.
- D. As described in the Cost Sharing Agreement between the parties, shall collect, distribute and administer the appropriate fees (franchise fees as set by Cities and the County to be paid to Cities and County, and the permit fee to be retained by County) so long as this MOU is in effect in its entirety.
- E. Implement other administrative necessities to ensure the effective administration of the permit system.
- F. Report annually to the Local Task Force on the effectiveness of the permit system.
- G. Compile the information and data necessary to complete required reports to CalRecycle as the lead agency of the Regional Agency.

4. City Responsibilities

The Cities shall:

- A. Enter this Memorandum of Understanding.
- B. Provide information. Within thirty (30) days of request by the County, or as soon as such information is available, the City will share with the County, data, documents, contact information for any hauler operating within the City limits in which it is familiar.
- C. Work with the County on any related issues requiring jurisdictional assistance including enforcement to help maximize diversion by all haulers operating within City boundaries.
- D. Review and provide consideration of any changes to agreements or contracts that contemplate a charge to residents and commercial and industrial businesses.

5. Indemnification/Hold Harmless.

Each Party shall solely be liable for any and all damages, including attorney's fees, resulting from the actions or omissions arising from its performance of the terms of this MOU. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Parties") from and against any and all claims, demands, actions, losses, damages, assessments, charges, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) that may from time to time be asserted by third parties against the Indemnified Parties because of any personal injury, including death, to any person or loss of, physical damage to or loss of use of real or tangible personal property, to the extent caused by the negligence or misconduct of the Indemnifying Party, its agents, employees or contractors in the performance of this MOU.

For the purposes of indemnification set forth in this MOU, "Indemnified Parties" means the applicable party, its affiliates, successors, and their employees, directors, officers, agents, and volunteers. The Indemnified Parties: 1) shall notify the Indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the Indemnifying Party is prejudiced thereby; 2) shall have the right to participate in such defense or settlement with its own counsel and at its own expense, but the Indemnifying Party shall have control of this defense or settlement; and 3) shall reasonably cooperate with the defense.

6. Amendment of MOU and Merger Clause

This MOU, including the Exhibit attached hereto and incorporated herein by reference, constitutes the sole MOU of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the MOU conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this MOU, the provisions of this body of the MOU shall prevail. Any prior MOU, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and will become effective when signed by both parties.

7. Records

The County shall maintain and preserve all records relating to this MOU in its possession and those of any third-party performing work related to this MOU for a period of five (5) years from the termination of this MOU.

8. Assignability

The County shall not have the right to assign this MOU or any portion thereof to a third party or subcontract with a third party to perform any act required under this MOU without the prior written consent of the City.

9. Notices

Any written notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited with the United States Postal Service, postage prepaid, or when transmitted by email communication, addressed:

In the case of the County, to:

Integrated Waste Management Director
County of San Benito
2301 Technology Parkway
Hollister, CA 95023
Email: sbciwm@cosb.us

In the case of San Juan Bautista, to:

City Manager
City of San Juan Bautista
311 Second Street
PO Box 1420
San Juan Bautista, CA 95045
Email: citymanager@san-juan-bautista.ca.us

In the case of Hollister, to:

City Manager
City of Hollister
375 Fifth Street
Hollister, CA 95023
Email: coh.manager@hollister.ca.gov

All notices and communications should be addressed to the jurisdiction contact listed and be sent by both email and through the United States Postal Service to ensure all communications are received by the appropriate jurisdiction contact. Staff changes may occur and communicating via multiple methods will ensure receipt of notifications by the jurisdictions.

10. Controlling Law and Venue

The validity of this MOU, the interpretation of its terms and conditions, and the performance of the parties hereto shall be governed by the laws of the State of California. Any action brought to enforce this action must be brought in the Superior Court of California in and for the County of San Benito.

11. Term and Termination

Subject to compliance with the terms and conditions of the MOU, the term of this MOU shall commence on January 1, 2024 and shall automatically be renewed from year to year on the same terms and conditions. This MOU may be terminated without cause by the City or the County Board of Supervisors at any time upon thirty (30) days written notice to the other party.

12. Authority

The parties warrant that the signatories to the MOU have the authority to bind their respective entities.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN BENITO

DocuSigned by:
By: Angela Curra
D8BD79D4D88A4E1
Name
Chair, Board of Supervisors

Date: 02-06-2024

ATTEST:

DocuSigned by:
By: Vanessa Delgado
36E7BC2E3623439
Clerk of the Board of Supervisors

Date: 02-06-2024

Approved as to Legal Form:

San Benito County Counsel's Office

DocuSigned by:
By: Ekam Brar
249F8FD870FB47D
Date: 1/25/2024

CITY OF HOLLISTER

By: Mia Cary
Name
Mayor

Date: 2/5/24

ATTEST:

CITY OF SAN JUAN BAUTISTA

By: [Signature]
Name
Mayor

Date: FEB 21, 2024

ATTEST:

By: [Signature]
Clerk, City of San Juan Bautista

Date: Feb 21, 2024

Approved as to Legal Form:

City Attorney, City of San Juan Bautista

By: Jon Giffen
Jon Giffen (Feb 21, 2024 14:30 PST)
Date: Feb 21, 2024

By: *Jeff Woodcock*
Clerk, City of Hollister

City Attorney, City of Hollister

By: *Mary Kunn*

Date: *2-5-2024*

EXHIBIT A – PERMIT SYSTEM DESCRIPTION

The activities listed below make up the County of San Benito’s Non-Exclusive Franchise Solid Waste Collection and Roll-Off Collection Permit System administered by the County on behalf of the Cities.

I. ORIGATION OF SOLID WASTE DOCUMENT

It is unlawful for any person to transport solid waste, soil, or fill material within the county without an origination of waste document. An origination of waste document is a document which identifies the nature of the waste, where the waste was located before it was loaded for transportation, the estimated weight of the solid waste, a statement identifying the person in possession of the solid waste before the transporter of solid waste took possession of the solid waste and a statement identifying all transporters of solid waste. The origination of solid waste document shall be signed by the person in possession of solid waste before transportation of solid waste commenced and all transporters of the solid waste certifying under penalty of perjury the accuracy of the information contained in the origination of solid waste document. The county shall prepare a standard origination of solid waste document. The use of a copy of the standard form or any form substantially similar shall comply with this section.

II. NON-EXCLUSIVE PERMIT

The Board shall approve by written resolution from time to time a non-exclusive permit system authorizing non-exclusive solid waste collection in the discretionary area and roll-off collection throughout the Regional Agency. Following the approval of the permit system, the Integrated Waste Management Director shall be authorized to execute such a permit with any person desiring to collect solid waste in unincorporated area of the County or to provide roll-off collection throughout the Regional Agency. The Board may, from time to time, adopt any regulations governing the issuance of solid waste collection permits.

The County will develop and coordinate a standardized and uniform San Benito Countywide Non-Exclusive Collection Permit Program consistent with and compliant to California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants. The program will operate within San Juan Bautista’s and Hollister’s boundaries and will replace the need for San Juan Bautista and Hollister to create such a non-exclusive collection permit program on their own. This program will operate in the unincorporated areas of the county as well as the jurisdictions in the county agreeing to the MOU.

Through email, letters, or other direct or electronic communication, the County shall annually notify non-exclusive collection haulers within each Jurisdiction of their requirements to hold a permit as established pursuant to Section 18991.3 and 18991.4 of the Regulations.

III. TERMS OF PERMITS

- a. The permit shall provide for a term of three years which shall renew automatically unless revoked as determined by the Director in his/her sole discretion.
- b. The permit shall provide for a permit fee which shall be determined by the County and paid by the permittee at the time of the permit submittal, and upon any permit renewal.
- c. Franchise fees shall be paid on a quarterly basis with payments submitted by permittee every three months. The Board of Supervisors, the City of San Juan Bautista City Council and the City of Hollister City Council may adopt new franchise fees by written resolution from time to time, following a public hearing. Notice of public hearing shall be posted in a newspaper of general circulation not less than ten days prior to the date of the hearing.
- d. The permit shall provide that the Permittees prepare and file reports with the County to include, without limitation, information about the volume and type of solid waste, about the location where the transported solid waste is generated, and information about recycling, composting and other recovery efforts.
- e. The permit may require a bond as an undertaking to insure compliance with this chapter and with other requirements imposed by law.

IV. REGULATION OF FEES

- a. The Board reserves the authority to establish or change, by resolution, a schedule of fees to be charged for the collection of solid waste as regulated by this chapter.
- b. A company operating under a permit shall comply with all conditions specified in the permit and all provisions of this chapter.

V. REPORTING AND RECORDKEEPING

- a. The County shall develop reporting forms for Quarterly and Annual Reports from Haulers for information required by section 18994.2 of the regulations.
- b. Upon request by a CalRecycle representative, the County will provide access to the Implementation Record within 10 business days. In conformance with the California Public Records Act (Government Code §6250 *et seq.*), County will also respond to a request for public records contained in the Implementation Record. County and the Cities shall each notify the other if either the County or a City receive a request for all or part of the Implementation Record and coordinate a response to such request.

VI. ENFORCEMENT

- 1. The County will conduct enforcement of the ordinance within the County and participating Cities using a complaint-based system consistent with the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants. The County will respond to complaints, investigate, and resolve reported issue(s).

2. The County will keep detailed records of enforcement in the County and the Cities for a minimum of five (5) years.
3. The County will provide the necessary records to the Cities for required reporting about SB 1383 efforts to CalRecycle.
4. The County will notify the Cities promptly about any related issues that arise that require the Cities assistance or to request the Cities lead in resolving the issue(s) related to noncompliance.
5. The Cities will work with the County on any related issues requiring jurisdictional assistance or lead in resolving the issue(s) related to complaints and/or noncompliance by any waste haulers operating within the County and Cities boundaries.

VII. ISSUANCE OF PERMITS, COLLECTION OF FEES, PENALTIES, FINES AND LIQUIDATED DAMAGES

The County is granted authority to issue permits to non-franchised collection haulers and to collect fees, issue penalties, fines, and liquidated damages to Permittees for implementation of the non-exclusive permit system and for issuing any violations of the permit or Municipal Code regulations.

VIII. EXEMPTION FROM REQUIREMENT OF PERMIT

The following persons are exempt from the permit requirement specified above and may collect solid waste without the approval of the county:

- i. **Recyclable and Organic Materials:** Other persons shall maintain the right to accept source separated recyclable materials and source separated organic materials provided that such person paid the service recipient for materials, so long as there is no net payment of any type made by the service recipient to such other person including, without limitation, for rental of collection or storage containers, loading or transporting of materials, and/or disposal;
- ii. **Self-Hauled Materials:** Business owners or residents may dispose of garbage, recyclable materials, and compostable/organic materials generated on their own premises with their own vehicle;
- iii. **Donated Materials:** Items that are source separated by the generator and are and donated to youth, civic, or charitable organizations;
- iv. **Beverage Containers:** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;
- v. **Materials Removed by Customer's Permittee as Incidental Part of Services:** Garbage, recyclable materials, compostable/organic materials, and/or C&D removed from a premise by a Permittee (e.g., gardener, landscaper, tree-trimming service, construction Permittee, residential clean-out service) using Permittee's

own vehicle, equipment, and employee(s) as an incidental part of the total service offered by that Permittee, rather than as a hauling service;

- vi. **Source Separated E-Waste and Source Separated Universal Waste:** Discarded electronic equipment and Universal Waste including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices.

“Universal Waste” means all wastes defined by Title 22, Subsections 66273.1 through 156 66273.9 of the California Code of Regulations or successor regulations. These include, but are not limited to, Household Batteries, fluorescent light bulbs, mercury switches, and E-Waste;

- vii. **Animal, Grease Waste, and Used Cooking Oil:** Animal waste and remains from slaughterhouse or butcher shops, grease, or used cooking oil;
- viii. **Sewage Treatment By-Product:** By-products of sewage treatment, including sludge, sludge ash, grit, and screenings;
- ix. **Excluded Waste:** Excluded Waste regardless of its source, which means Hazardous Substances, Hazardous Waste, Biomedical Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Permittee reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be disposed of in Class III landfills, waste that in Permittee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Permittee or Regional Agency to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
- x. **Materials Generated by State, County, and Federal Facilities:** Materials generated by State, and Federal facilities located in the Service Area provided that the generator has arranged services with other persons or has arranged services with the Permittee through a separate agreement.