AGENCY 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 _____ 2011. 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 car batteries; and

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WHEREAS, the County will collect the Fee on behalf of the fifteen cities and the unincorporated area and will apportion the Fee according to the terms of this Agreement.

NOW, THEREFORE, CITIES and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of $4.10 per ton in FY 2011-2012 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 $2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit B, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and participating jurisdictions as described in Exhibit C, attached hereto and incorporated herein. 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) and are listed in Exhibit A, attached hereto and incorporated herein.

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Integrated Waste Management Division. The COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

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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 not withstanding 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.

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

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distribution amounts. Distributions shall begin December 15, 2011, and continue quarterly through October 15, 2012.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. Regardless of whether CITIES enter into the Agreement, CITIES's share of funds collected for Abandoned Waste Disposal Costs will be paid directly to the Countywide HHW Program as described in Exhibit C, Section 3.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of moneys received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

12. EFFECTIVE DATE OF AGREEMENT

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by an instrument signed by all fifteen CITIES and the COUNTY.

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14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employee, 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, 2011 to June 30, 2012, 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, 2011. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2012.

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: Program Manager

Program: Integrated Waste Management Division

Address: 1553 Berger Drive Building 1

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.

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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.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this **AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE** on the dates as stated below:

"COUNTY"	"CITY"
Signature: _____	CITY OF _____,
Kevin O'Day	A municipal corporation
Director of the Department of Agriculture and Environmental Management	By: _____
	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM AND LEGALITY:	APPROVED BY THE OFFICE OF THE COUNTY EXECUTIVE
_____	_____
Mark Bernal	Sylvia Gallegos
Deputy County Counsel	Deputy County Executive
Date: _____	Date: _____

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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 FACILTIES 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 Recycling 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

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EXHIBIT B

FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE

Each jurisdiction located in Santa Clara County will receive $1.50 per ton of solid waste disposed of in landfills or taken to non-disposal facilities located in Santa Clara County that originates from that jurisdiction, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

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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, $2.60 per ton in FY 2011-2012, 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. 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 FY 2011-2012.

C. Variable Cost Per Car to provide a base level service to 4% of households in all participating jurisdictions. The number of households is determined by the most recent "Population Estimates for California Cities and Counties" Report as published by the California Department of Finance, Demographic Research Unit.

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 $1.85 per household in FY 2011-2012. Fixed Program Costs may include, but are not limited to eight (8) 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 increases.

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3. ABANDONED WASTE DISPOSAL COST

The existing unexpended abandoned waste fund balance of $110,000 will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations for FY 2011-2012. Therefore it is not necessary to apportion any of the Fee for FY 2011-2012 for abandoned waste disposal costs. All jurisdictions throughout the COUNTY contribute to this cost including jurisdictions not participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization 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. 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 2012. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% 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 where the level of 4% is not reached 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 program 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, 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 and neighborhood clean-up events.

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

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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.

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EXHIBIT D

SECTION 28 OF AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

HOLD HARMLESS AND INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITY 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 COUNTY and CITY 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 by 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 Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction’s pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction’s pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 25 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program

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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.

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