



MEETING DATE: 4/20/09

ITEM NO:

4

COUNCIL AGENDA REPORT

DATE: April 3, 2009

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

A handwritten signature in black ink, appearing to be "Greg Larson", written over the printed name.

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE AND THE AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

RECOMMENDATION:

Adopt a resolution authorizing the Town Manager to execute the "Agency Agreement for Countywide AB939 Implementation Fee" (Exhibit A to Attachment 1) and the "Agency Agreement for Countywide Household Hazardous Waste Collection Program" (Exhibit B to Attachment 1).

BACKGROUND:

The California Integrated Waste Management Act of 1989 (AB 939) was passed by the State Assembly to promote the diversion of materials from the landfill, in order to preserve decreasing landfill capacity and diminishing natural resources. AB 939 and subsequent legislation requires cities and counties to prepare, adopt, and implement waste management plans to reduce their jurisdiction's waste disposed in landfills by 50% and to implement programs to properly manage household hazardous waste (HHW.) Jurisdictions must maintain the mandated diversion level of 50%, submit annual reports documenting compliance, and periodically update their adopted waste management plans. Fines of up to \$10,000 per day may be assessed to jurisdictions which do not develop and/or implement waste management plans. Finally, AB 939 authorized each California city and county to impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan.

PREPARED BY:

Regina A. Falkner
Community Services Director

A handwritten signature in black ink, appearing to be "Regina A. Falkner", written over the printed name.

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Reviewed by: RS Assistant Town Manager OK Town Attorney

 Clerk Administrator GL Finance Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION
FEE, AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD
HAZARDOUS WASTE COLLECTION PROGRAM

April 3, 2009

Pursuant to Public Resource Code 41901, the Recycling and Solid Waste Reduction Commission of Santa Clara County determined that such a fee was necessary for the solid waste reduction efforts of the fifteen cities and the unincorporated areas of the county. Effective July 1, 1992, the Board of Supervisors established the Countywide AB 939 Implementation Fee, to be imposed on each ton of waste disposed of at landfills located within the county or taken to non-disposal facilities located within the county and subsequently transported for disposal to landfills located outside of the county.

The County collects the fee on behalf of all jurisdictions, and remits it to them for funding of locally-benefitting solid waste reduction programs.

DISCUSSION:

The County collects and distributes the Countywide AB 939 Implementation Fee on behalf of the Town and the other jurisdictions in the County under a three-year agreement, the "Agency Agreement for Countywide AB939 Implementation Fee," which expires June 30, 2009. Under the current agreement, a fee of \$3.55 per ton is collected; \$2.05 per ton funds household hazardous waste services to residents, and the remaining \$1.50 per ton funds other AB 939 compliance activities. The Town receives its portion of the fees collected based on the tonnage of solid waste originating in Los Gatos.

Countywide AB939 Implementation Fee Adjustment

In order that the Countywide AB 939 Implementation Fee (AB 939) continue to be collected, a new "Agency Agreement for Countywide AB 939 Implementation Fee" must be executed. Because the County collects the AB 939 Fee on behalf of fifteen other jurisdictions, it contracts with each jurisdiction. All fifteen municipalities, including the Town, must approve the "Agency Agreement for Countywide AB 939 Implementation Fee" by July 1, 2009. If one or more jurisdictions do not approve the agreement, the AB 939 Fee will not be collected. The new Agreement would be for a one-year term, with the option to renew for two additional one-year terms.

The Recycling and Waste Reduction Commission of Santa Clara County has considered the AB939 Fee, and recommends that it be adjusted by 55 cents, for a total fee of \$4.10 per ton (\$2.60 per ton for HHW services and \$1.50 per ton for AB939 compliance activities.) The Recycling and Waste Reduction Commission serves as the principal advisory body to city/town councils and the Board of Supervisors on countywide solid waste planning issues; its members comprise eight council members from cities in the county, a member of the Board of Supervisors, and a member of the Board of the Santa Clara Valley Water District.

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MAYOR AND TOWN COUNCIL

SUBJECT: AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION
FEE, AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD
HAZARDOUS WASTE COLLECTION PROGRAM

April 3, 2009

The attached "Agency Agreement for Countywide AB 939 Implementation Fee" (Exhibit A to Attachment 1) would increase the AB 939 Fee by to \$4.10 per ton for 2009/10 as recommended by the Commission. The increase would be used to fund increased HHW volumes, a 4% base level of service, and an annual lease cost at the new San Jose HHW drop-off facility. A copy of the February 25 report to the Recycling and Waste Reduction Commission, from its Technical Advisory Committee, is Attachment 2; this report contains the cost details.

Household Hazardous Waste Services

As noted above, a portion of the AB 939 Fee is earmarked for provision of HHW services to residents. The Town contracts with the County to provide these services to Los Gatos residents, under the "Agency Agreement for Countywide Household Hazardous Waste Collection Program." The current agreement expires June 30, 2009. The County's household hazardous waste program allows residents to dispose of safely, and at no charge, common household hazardous wastes including household cleaning products, solvents, oven cleaner, garden pesticides, oil-based paints, motor oil, antifreeze, and batteries. The current agreement assumes that the AB 939 Fee will fund services to 3% of residents (360 Los Gatos households); the Town has the option to fund services to additional residents, using other monies. As noted above, and in Attachment 2, the proposed increase in the AB939 Fee would allow services to be provided to 4% of residents (480 Los Gatos households) without additional cost to the Town. Historically, the Town has guaranteed services to all Los Gatos residents who request them, and would continue to do so, using funds from its Solid Waste Fund balance. Los Gatos small businesses may also participate in the program, on a cost recovery basis. The not-to-exceed amount for these additional services was set at \$39,000 for FY 2008/09; staff recommends the same for FY 2009/10.

The attached "Agency Agreement for Countywide Household Hazardous Waste Collection Program" (Exhibit B to Attachment 1) would extend the existing household hazardous waste services provided by the County through June 30, 2010.

ENVIRONMENTAL ASSESSMENT:

The recommended action is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

As noted above, the Countywide AB939 Implementation Fee (Fee) has two components: one portion funds household hazardous waste services, and the other portion funds AB939 compliance activities. The Town does not receive the household hazardous waste services portion of the Fee; it is retained by the County for its services to Town residents. The Town does

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MAYOR AND TOWN COUNCIL

SUBJECT: AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION
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April 3, 2009

receive the AB939 compliance portion of the Fee; during FY 2009/10, staff estimates revenue from this portion to total approximately \$39,000.

As discussed in the "Household Hazardous Waste Services" portion of this report, staff recommends that the Town guarantee household hazardous waste services to all Los Gatos residents who request them, with a not-to-exceed amount of \$39,000. The AB939 compliance portion of the Fee would be used to fund these services.

Attachments:

1. Draft resolution of the Town Council of the Town of Los Gatos authorizing the Town Manager to execute the Agency Agreement for Countywide AB939 Implementation Fee and the Agency Agreement for Countywide Household Hazardous Waste Collection Program (Exhibits A - B).
2. Report of February 25, 2009 to the Recycling and Waste Reduction Commission from its Technical Advisory Committee

Distribution:

Rob D'Arcy, Santa Clara County Department of Environmental Health
Scott Hobson, Hilton Farnkopf and Hobson

RESOLUTION NO. 2009-__

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER TO EXECUTE
THE AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE
AND THE AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS
WASTE COLLECTION PROGRAM
FOR FY 2010 THROUGH 2012**

WHEREAS, a Countywide AB 939 Implementation Fee (Fee) was established in 1992 to assist the fifteen cities and the county unincorporated area to fund costs of preparing, adopting, and implementing the integrated waste management plan required by the California Integrated Waste Management Act of 1989 (AB 939) and subsequent legislation; and

WHEREAS, pursuant to Public Resources Code Section 41901, each jurisdiction must approve the collection of the Fee, such approval to be indicated by execution of the Agency Agreement for Countywide AB 939 Implementation Fee; and

WHEREAS, the Town of Los Gatos wishes to approve the collection of the Fee for FY 2010 through FY 2012; and

WHEREAS, the Town of Los Gatos wishes to provide a safe, convenient, and economical means for its residents to dispose of household hazardous wastes.

RESOLVED, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos Town Manager is authorized to execute:

1. The Agency Agreement for Countywide AB 939 Implementation Fee (Exhibit A); and
2. The Agency Agreement for Countywide Household Hazardous Waste Collection Program (Exhibit B); and
3. Future amendments to both Agreements so long as they conform to the adopted Town budget

PASSED AND ADOPTED at a _____ meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____, 2009 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTEST:

**CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

**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 _____ 2009. 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

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 OF SANTA CLARA 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 2010 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. 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. 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.

3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions within 30 days of receipt.

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.

6. INDEMNIFICATION

In lieu of and notwithstanding 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, CITY 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, arising from misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any actions brought by third parties based on COUNTY's 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 distribution amounts. Distributions shall begin in December 2009, and continue quarterly through October 2010.

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 monies 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 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, and payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share 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 takes effect only upon approval by all fifteen cities and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by an instrument signed by the parties.

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, 2009 to June 30, 2010, 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, 2009. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2010.

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.

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 designates.

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"

COUNTY OF SANTA CLARA,
a political subdivision of the
State of California

By: _____
Liz Kniss, President
Board of Supervisors

Date: _____

ATTEST:

Maria Marinos
Clerk of the Board of Supervisors

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Elizabeth G. Pianca Date
Deputy County Counsel

"CITY"

CITY OF _____
a municipal corporation.

by: _____

Title: Date

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 FACILITIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY

Butterick Enterprises Recyclery
California Waste Solutions Recycling & Transfer Station
City of Palo Alto Green Composting Facility
ComCare Farms Composting Facility
Environmental Management Systems Facility
Green Waste Recovery Facility
Mission Trail Waste Systems, Inc.
Newby Island Compost Facility
Pacheco Pass Landfill Composting Facility
Pacific Coast Recycling, Inc.
Premier Recycling Facility
The Recyclery at Newby Island
San Martin Transfer Station
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)
Z-Best Composting Facility
Zanker Materials Processing Facility

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.

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 2010, 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 FY 2010.
- C. Variable Cost Per Car to provide a base level service to 4% of households in all participating jurisdictions.
- 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 FY 2010. 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.

3. ABANDONED WASTE DISPOSAL COST

The existing unexpended abandoned waste fund balance of \$145,000 will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations for FY 2010. Therefore it is not necessary to apportion any of the Fee for FY 2010. 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, 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. 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 2010. 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 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 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 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.

EXHIBIT D

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

HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding 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 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.

**AGENCY AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM**

This Agreement is made by and between the _____ (CITY or Participating Jurisdiction) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2009.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes, regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their household hazardous waste (HHW) in order to encourage the proper disposal of toxic products, and 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; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of household hazardous wastes. 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, car batteries, mercury thermostats, fluorescent lamps containing mercury, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring household hazardous wastes to any household hazardous waste collection event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the COUNTY Board of Supervisors approved on February 7, 2006 to modify the Countywide Household Hazardous Waste Program to include the collection and management of electronic waste (e-waste); and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2010; and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.60 in FY 2010 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.

NOW, THEREFORE, CITY and COUNTY OF SANTA CLARA AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. 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 AB939 HHW Fee, \$2.60 per ton in FY 2010, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 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 Department of Finance, Demographic Research Unit in its 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 of \$145,000 from previous years will fund Abandoned Waste Disposal Costs for FY 2010.
- C. Variable Cost Per Car to provide a base level service to 4% of households in all participating jurisdictions.

D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

The projected Fiscal Year 2010 AB939 HHW Fee funding allocation by jurisdiction is set out in Attachment A.

3. FIXED PROGRAM COST

Fixed Program Costs shall be \$1.85 for FY 2010. Estimated HHW Fixed Costs for FY 2010 are projected in Attachment B. 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.

4. ABANDONED WASTE DISPOSAL COST

The existing unexpended non-profit abandoned waste fund balance of \$145,000 will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904.

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 Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$67 per car for Fiscal Year 2010. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program 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 in a particular jurisdiction, the CoHHW Program will use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

6. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, and Variable Per Car Costs. 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 that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-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 and neighborhood clean-up events.

7. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Integrated Waste Management Program (IWMP) will administer the AB939 HHW Fee, as part of the existing landfill billing system. Administration and payment will be made in accordance with the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE.

8. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to the following activities:

- Serving as the formal contact to the major media.
- Providing participating jurisdictions with educational materials developed for the CoHHW Program.
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions.
- Representing the program through educational presentations for schools and businesses and attendance at community events such as local fairs and festivals.
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication.
- Developing and distributing communications to residents for local and city newsletters, newspapers and to the electronic media.
- Providing the CoHHW Program with a copy of locally produced materials.
- Conducting supporting outreach and publicity to attain the 4% goal of household participation.

9. DELEGATION OF AUTHORITY

The Board of Supervisors delegates all CoHHW Program management to the Department of Agriculture and Environmental Management. The Director of the Department of Agriculture and Environmental Management has the authority to execute all vendor contracts necessary to operate the program, to execute any necessary license agreements, to add additional services provided on a cost recovery basis and to terminate any contracts as warranted. All contracts/agreements/amendments shall first be approved by County Counsel and the Office of the County Executive.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at Events.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at three County Household Hazardous Waste Collection Facilities (CoHHWCF). The CoHHWCF will operate a reuse program, offering usable materials to the public at no charge. The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected. The construction of the San Jose facility is expected to be completed in September, 2009.

The CoHHWCFs are located at:

- ◆ *Sunnyvale Recycling Center, 164 Carl Road, Sunnyvale*
- ◆ *13055 Murphy Avenue, San Martin*
- ◆ *1608 Las Plumas Avenue, San Jose (opening in September 2009)*

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. This program will not be subsidized by participating jurisdictions. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for collecting fees from participating

businesses. See Attachment D, titled Santa Clara County CESQG Drop-off Price List. The Santa Clara County CESQG Drop-off Price List is subject to change at the discretion of County to reflect increases or decreases in CoHHW Program costs.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and nonprofit charitable reusers. Abandoned HHW means a HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee. Government agencies will be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for conditionally exempt small quantity generators (CESQGs).

14. NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization, is a nonprofit as defined in Section 501 (c) (3) of the United States Internal Revenue Code, or a distinct operating unit or division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the Director of Environmental Health a request to be so designated. The Director shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

15. WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218.1(e) or as later amended, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

16. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 13 above shall be accepted.

17. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the Director of the Department of Agriculture and Environmental Management. Additional services may include, but are not limited to, additional appointments (charged at the variable cost per car rate), Door-to-Door HHW Collection, Used Oil Filter Collection, Universal Waste Collection, Electronic Waste Collection, and Abandoned Waste Collection.

CITY agrees to augment up to an additional \$ _____ to the Countywide HHW Program during Fiscal Year 2010 for the purpose of increased resident participation above the 4% service level at the scheduled collection dates listed in Attachment C. Augmentation will be calculated at the Variable Cost Per Car rate which is estimated at \$67.00 per car. Other services will be charged on a cost recovery basis.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

18. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 8:30 a.m. to 4:30 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF and provide information about hazardous household materials. CITY will be notified when indicated resident participation approaches the 4% base level of service.

19. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the

jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2010 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service in each participating jurisdiction.

20. OUTSIDE FUNDING

During the term of this agreement, COUNTY will seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

21. ELECTRONIC WASTE COLLECTION

The CoHHW Program will accept electronic waste (e-waste) from residents and businesses throughout the county. A contractor has been selected to perform services and shall reimburse the County Pursuant to the Electronic Waste Recycling Act of 2003 (California State Senate Bill 20) and the Electronic Waste Recycling Act Amendments of 2004 (California State Senate Bill 50), contractor shall remit to COUNTY, recycling and disposal reimbursements for the electronic equipment designated under this Act that are collected by contractor on behalf of the COUNTY. Any and all revenues generated by this service will be apportioned to each city based on households in each jurisdictions and added to the Variable Cost Per Car funding.

22. REGIONAL GRANT PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants from the California Integrated Waste Management Board which are available under the California Oil Recycling Enhancement Act of 1991 and all Household Hazardous Waste grants under the California Integrated Waste Management Act. The Countywide HHW Program will act on behalf of all participating jurisdictions, as the lead applicant and grant administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

23. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment E sets out CITY and COUNTY responsibilities for the collection of

household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of a special emergency event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The plan is set out in Attachment E, Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control, and handle wastes in accordance with State law. COUNTY will bill CITY for all special emergency events on a cost recovery basis and all payments shall be due thirty days following the receipt of the invoice.

24. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 28 of this agreement. Summary information concerning these corporate sponsored events will be included in the CoHHW Program's annual report to the participating jurisdictions.

25. INSURANCE CERTIFICATES

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have insurance with the following minimum limits: General Comprehensive - \$1 million per occurrence, \$2 million aggregate; Auto -\$1 million; workers compensation -- statutory limits established by law; and environmental impairment liability -\$1 million per occurrence, \$2 million aggregate. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program.

26. WASTE TRACKING AND REPORTING

Within 30 days following the end of the 2nd quarter, COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the

participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate. For purposes of any potential disposal liability, each participating jurisdiction shall be deemed a discharger of only its pro rata proportion of household participation in the Program. For example, if the program served 1,000 vehicles from the City of Milpitas and 10,000 vehicles total from all participating jurisdictions, the pro rata portion of household participation from Milpitas would be ten percent. See also Section 28.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter. COUNTY will make every effort to keep the Variable Cost Per Car at approximately \$67.

27. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

28. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding 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 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.

29. TERMINATION

This Agreement may be terminated by any party upon XXX (Elizabeth—previously it was 365 days because the agreement was three years, please advise number of days needed to terminate agreement) written notice given by XXX.

30. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2009, to June 30, 2010, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

31. EXTENSION OF TERM

This Agreement may be extended for succeeding two-year terms if COUNTY and participating jurisdictions so agree in writing.

32. 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.

33. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

34. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

35. 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 designates.

36. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of _____	City Representative _____
	Representative's Title _____
	City Address _____

Santa Clara County	Greg Van Wassenhove, Director
	Department of Agriculture and Environmental Management
	1553 Berger Drive
	San Jose, CA 95112

Attachments:

- A Projected AB939 HHW Fee Fiscal Year 2007
- B Estimated HHW Program Fixed Costs by Fiscal Year
- C HHW Schedule for Fiscal Year 2007
- D Santa Clara County CESQG Drop-off Price List
- E Household Hazardous Waste Emergency Collection Plan

IN WITNESS WHEREOF, the parties have executed this AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM on the dates as stated below:

"COUNTY"

COUNTY OF SANTA CLARA,
a political subdivision of the
State of California

By: _____
Liz Kniss, President
Board of Supervisors

Date: _____

ATTEST:

Maria Marinos
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Elizabeth G. Pianca
Deputy County Counsel

"CITY"

CITY OF _____
a municipal corporation.

by:_____

Title: _____ Date: _____

County of Santa Clara

Recycling and Waste Reduction Commission
Integrated Waste Management Division

1553 Berger Drive, Building #1
San Jose, California 95112
(408) 282-3180 FAX (408) 282-3188
www.ReduceWaste.org



Recycling and Waste Reduction Commission**February 25, 2009****Action Item:**

TO: Recycling and Waste Reduction Commission

FROM: Technical Advisory Committee

**SUBJECT: Reauthorization of and Increase to Countywide AB939
Implementation Fee**

RECOMMENDED ACTION

Forward a favorable recommendation to the Board of Supervisors to reauthorize the AB 939 Implementation Fee and increase it by 55 cents from the current \$3.55 for a total of \$4.10 per ton for the new Agency Agreement for Countywide AB 939 Implementation Fee (\$1.50 Implementation Fee plus a new \$2.60 HHW Fee). The amount of 55 cents will be applied to the existing \$2.05 per ton fee used to fund countywide household hazardous waste (HHW) services, increasing the HHW total to \$2.60 per ton. This revenue would fund operational increases in the HHW program, and the anticipated annual lease cost of \$53,200 at the new San Jose facility starting FY 2010. The next term of the Agency Agreement shall be July 1, 2009 – June 30, 2010, with options to renew for two additional one-year terms.

Or

Forward a favorable recommendation to the Board of Supervisors to reauthorize the AB 939 Implementation Fee at the current rate of \$3.55 per ton for the new Agency Agreement for Countywide AB 939 Implementation Fee (\$1.50 Implementation Fee plus a \$2.05 HHW Fee). The next term of the Agency Agreement shall be July 1, 2009 – June 30, 2010, with options to renew for two additional one-year terms.

FISCAL IMPLICATIONS

The current Countywide AB 939 Implementation Fee is \$3.55 per ton. The proposed increase of \$0.55 to \$4.10 per ton will generate a total of approximately \$5.4 million in revenue in FY 2010. This is based on an estimated landfill disposal of 1.33 million tons per year. Of this revenue,

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Peter Drekeiner, Patrick Kwok, Evan Low, Cat Tucker, Kris Wang, Ken Yeager

approximately \$2.0 million (\$1.50 per ton) would fund local jurisdictions' AB 939 compliance activities and \$3.4 million (\$2.60 per ton) would fund countywide HHW services. Under State law, this revenue is restricted to funding only AB 939 related costs. Funding of non-related AB 939 activities could make the fee vulnerable to legal challenge.

Increasing the AB939 Implementation Fee to \$4.10 would fund operational increases in the HHW program, a 4% base level of service, and the anticipated annual lease cost of \$53,200 at the new San Jose facility, located at 1608 Las Plumas Avenue, starting FY 2010. If the facility is not ready for occupation on July 1, 2009, the additional revenues will pass-thru to the cities' Discretionary Fund.

Reauthorizing the Fee at the current level will under fund the program and place an increased burden on each city to find funding within their jurisdictions to provide service for residents needing HHW service.

CONTRACT HISTORY

Countywide AB939 Implementation Fee

The County has collected the AB939 Fee on behalf of all jurisdictions within the County since July 1992, when the initial \$1.00 per ton fee was established. The Board and local cities approved increases to \$1.15 in FY 1994, to \$1.30 in FY 1996, to \$2.80 in FY 2000, to \$3.35 per ton in FY 2003 through FY 2006. In FY 2007 the Fee was increased to \$3.72 to support anticipated increases in volumes of Universal Waste (UW) (i.e.: fluorescent lamps and bulbs and batteries). The Fee was reduced to \$3.55 for FY 2008 and FY 2009 to reflect the cost for actual collection volumes of UW.

Because the County collects the AB939 Fee on behalf of other jurisdictions, each jurisdiction contracts with the County for collection and distribution of these funds. All fifteen cities must approve an Amendment to the Agency Agreement for Countywide AB939 Implementation Fee by July 1, 2007. If one or more jurisdictions do not approve this amendment, the AB939 Fee will not be collected, effective July 1, 2009.

BACKGROUND

The AB 939 Implementation Fee was first used for HHW services effective July 1, 2000. The Fee is broken down into several components to effectively administer the countywide HHW Program. Those components are Fixed Cost, Variable Cost per car, and Discretionary Fund.

As hazardous waste volumes increase, each city must augment with city money, the funding generated by the AB 939 Fee to pay for rising costs.

Increased Base Level Participation

In FY 2001 when the AB 939 Implementation Fee took effect for HHW, the cities agreed on providing service to a minimum of 3% of households in each jurisdiction. Over the years, participation increased and all cities now augment the Fee with additional funding to support the actual resident participation rate. The countywide household participation rate in FY 2008 was 4.3%. At the January 8, 2009 TAC meeting, city representatives agreed to support an increase of the minimum base service level to 4%. This increases the households served from 17,845 to 24,911. In order to support the cities and the County and reduce the need to augment the Fee, an adjustment to the base level participation rate is desired.

Increased Waste Volumes

The Fee increase is necessary for HHW services to support the collection of increased hazardous waste volumes. As environmental issues such as pharmaceuticals in the water and the ban of many products from landfill become more publicized in the press, the volume of hazardous waste managed by the HHW Program continues to rise. Universal waste (UW) products, like fluorescent lamps and batteries, now banned from the landfills continue to show the highest growth patterns and increased in FY 2007/08. Table 1 below shows the annual increases experienced by the Program. Unless there are further bans in the future, waste volumes should remain stable over the next three years and can be managed with the recommended Fee level. Fortunately, Producer Responsibility is taking hold, as evidenced by the passage of AB 2347. The Mercury Thermostat Collection Act of 2008 (AB 2347) was chaptered into law, requiring manufacturers to collect and recycle mercury-containing thermostats and advancing producer responsibility in California. In addition, alternative collection mechanisms such as Retail Take-it Back Partners are assisting in the collection of UW and sharps and deflecting cost away from the countywide HHW Program.

As shown in Table 1 below, waste volumes increased significantly between FY 2006/07 and FY 2007/08.

TABLE 1

Fiscal Year	Universal waste in pounds	Total HHW in pounds
2005/06	119,368	2,339,000
2006/07	154,170	2,340,000
2007/08	225,516	2,993,000
2008/09*	240,000	3,000,000
2010/2012*	260,000	3,020,000

*Estimated

Increased Costs

As a result of increased hazardous waste volumes, cost to manage the waste has increased as well. Since the beginning of the AB 939 Implementation Fee three-year cycle (July 1, 2006), costs have increased as shown in Table 2 below.

TABLE 2

Fiscal Year	AB939 Tipping Fee per Ton	AB939 Tipping Fee Revenue for HHW Services	HHW costs	Deficit Compensated by City Augmentation & Unincorporated Surcharge
2004-2005	\$1.85	\$1,751,113.85	\$2,160,986.72	\$409,872.87
2005-2006	\$1.85	\$1,883,516.78	\$2,348,134.82	\$464,618.04
2006-2007	\$2.22	\$2,161,138.05	\$2,781,730.62	\$620,592.57
2007-2008	\$2.05	\$2,214,533.56	\$2,891,698.63	\$677,165.07
*2008-2009	\$2.05	\$2,194,963.29	\$2,900,000.00	\$705,036.00
*2009-2010	\$2.05	\$2,194,963.29	\$2,953,200.00	\$758,236.71

*The HHW revenue from Tipping fee and cost are estimates. The HHW cost in FY 09-10 includes a lease cost of \$53,200 for the new San Jose HHW facility.

**2009-2010	\$2.60	\$2,648,326.00	\$2,953,200.00	\$304,874.00
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**The HHW revenue from Tipping fee is based on a \$ 0.55 per ton increase and a 4% base level of service.

Tonnage is estimated at 1.33 million tons per year.

The goal of the increase is to reduce the deficit compensated by city and County augmentations above and beyond the funding generated by the AB 939 Implementation Fee. This increase of \$0.55 per ton to fund increased waste volumes, a 4% base level of service, and an annual lease cost at the new San Jose HHW drop-off facility will adequately fund Fiscal Years 2010 through 2012.

With the anticipation of the new San Jose HHW drop-off facility opening in fiscal year 2009-2010, approximately \$0.04 per ton of the \$0.55 per ton will be required to support leasing and maintenance costs for the site. Fair market leasing costs for use of the exterior paved areas, and associated maintenance and security costs for the site, have been estimated at \$53,200 annually. As the operational area for the HHW drop-off activities will span nearly 27,000 square feet of the exterior paved lot, the annual fair market rental cost is estimated at \$32,400, at \$1.20 per year per square foot. The remaining \$20,800 will be used to fund the activities of the on-site City maintenance staff and site maintenance operations, the equivalent of 20% of a City senior maintenance worker, which can be equated to the \$2 per vehicle "impact fee" as provided to the City of Sunnyvale for the annual lease of the HHW drop-off facility. The annual \$53,200 cost can be funded by increasing the AB 939 Implementation Fee by an additional \$0.04 per ton (based on the estimated landfill disposal of 1.33 million tons per year). Increasing the AB 939 Implementation Fee will ensure a consistent and dependable funding source to support this annual, recurring lease expense.

Currently, the Sunnyvale HHW drop-off facility is open for collection services on the third Saturday of each month, in which the County is subject to annual lease costs estimated at \$25,000 (\$4,855 for space rental and \$20,070 for vehicle impacts calculated at \$2 per vehicle) for use of approximately 13,000 square feet on site. In comparison, the San Jose HHW drop-off facility will provide nearly 27,000 square feet of exterior operational space, as well as paved parking areas for County staff and paved surfaces for residential traffic. This facility is scheduled to be open for collections eight days per month, of which four days will be dedicated to residential drop-offs, and four days will be dedicated to Conditionally Exempt Small Quantity Generators (CESQG). An on-site City senior maintenance worker will manage maintenance issues that may arise from use of the site and security issues required under the CEQA Initial Study.

The funding increase per ton shall be integrated into the Agency Agreement, with an initial term from July 1, 2009 – June 30, 2010, including options to renew the Agreement for two additional one-year terms. San Jose is requesting year-to-year agency agreements in order to accommodate anticipated Countywide HHW program and funding changes associated with the opening of the permanent indoor HHW facility at Las Plumas (Phase Two). Program and cost impact discussions are anticipated to begin at TAC in the 2009-2010 fiscal year. This second phase of the facility has been publicly detailed in the Master Plan of the project, in which the majority of the HHW collection activities would be performed inside the Las Plumas warehouse space. With an anticipated opening of the second phase of the site in 2010 – 2011, additional lease payments will be requested for use of the interior warehouse areas. Separate lease agreements would be developed between the City of San Jose and the County for the first and second phases of the San Jose HHW facility.

San Jose continues to aggressively research and pursue available assistance programs to support the funding for both phases of the San Jose HHW drop-off facility. Annually, San Jose re-invests AB 939 Discretionary Fund refunds into the capital appropriation for the Las Plumas site. San Jose also submitted for, and was awarded, a grant in the amount of \$250,000 from the California Integrated Waste Management Board to assist in the construction of the first phase of the facility. Other funding sources being actively sought include the submittal for National Economic Stimulus funds and grant opportunities with the California State Water Resources Board. San Jose has also already identified more than \$3.5 million of City funding to support the Las Plumas project.

CONSEQUENCES OF NEGATIVE ACTION

If the Board does not support the Recommended Action, the AB 939 Implementation Fee will no longer be collected.

COMMISSION ACTION AND NEXT STEPS

The Commission's recommendation will be forwarded to the cities and the Board for action. Following cities' approval, County staff will send the fee agreements, to the Board for action. If the Board and all the cities approve the amendment, the fee will continue to be collected through June 30, 2010.