

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE COUNTY OF SAN BENITO AND THE CITIES OF SAN
JUAN BAUTISTA AND HOLLISTER FOR THE
ESTABLISHMENT OF AN EDIBLE FOOD RECOVERY PROGRAM CONSISTENT
WITH CALIFORNIA CODE OF REGULATIONS, TITLE 14, DIVISION 7, CHAPTER
12 SHORT-LIVED CLIMATE POLLUTANTS**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) by and between the County of San Benito, entered into this 14 day of December, 2021, by and between the County of San Benito, hereinafter called "**the County**" and among the City of San Juan Bautista, and the City of Hollister, hereinafter called "**the Cities**."

W I T N E S S E T H:

WHEREAS, the County has been assisting the jurisdictions within the County with compliance and any applicable exemptions concerning AB 939, AB 341 and AB 1826 and is planning on assisting with SB 1383 applicable exemptions and compliance;

WHEREAS, the County of San Benito and its cities have a rural exemption from AB 1826 requirements to establish an organics waste collection program for businesses, due to the rural composition of the County and its cities.

WHEREAS, the County and its cities are applying for a rural exemption from SB 1383 requirements that include the establishment of an organic waste collection program for businesses and residents and other related activities, due to its rural composition and the associated difficulty and expense of establishing an organics waste collection system.

WHEREAS, the SB 1383 rural exemption does not exempt the County and its cities from establishing an edible food recovery program to recover leftover edible food from large commercial generators for human consumption, and to require specified generators to donate such food, and to adopt a mechanism for enforcing such requirements.

WHEREAS, the County’s Board of Supervisors will enact a Mandatory Edible Food Reduction Ordinance as required by the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, to comply with such requirements.

WHEREAS, to promote consistency within jurisdictions throughout San Benito County and help its low population, low density jurisdictions, the County has offered to lead the creation of a County-wide Edible Food Recovery Program on behalf of the unincorporated areas of the county and the two Cities in the county; and

NOW, THEREFORE, it is hereby agreed by the parties hereto as follows:

AGREEMENT

1. Recitals.

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

2. Term.

This MOU shall commence on the Effective Date and remain in full force and effect until terminated as set forth in Section 11.

3. County Responsibilities

The County shall:

- A. Create and coordinate an Edible Food Recovery Program compliant with California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants on behalf of the City so long as this Memorandum of Understanding is in effect in its entirety.
- B. Provide such services and activities for the Cities as described in Exhibit A, attached hereto and incorporated by reference herein.
- C. Offer to provide services relating directly to the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants Edible Food Recovery regulations.
- D. Report to CalRecycle on behalf of the Cities.

4. City Responsibilities

The Cities shall:

- A. Adopts and make part of their municipal codes an enforceable ordinance establishing an Edible Food Recovery program as required under the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, including the specific provisions provided to the Cities by the County for edible food recovery definitions, requirements for Tier One and Tier Two Edible Food Generators, and requirements for Food Recovery Organizations and Food Recovery Services.
- B. Enter into this Memorandum of Understanding.
- C. Acknowledge, by ordinance described in A. above, that, notwithstanding this Memorandum of Understanding, that each City is, as stated in California Code of

Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, ultimately responsible for compliance with the said Code.

- D. Provide information. Within thirty (30) days of request by the County, or as soon as such information is available, the City will share with the County, data, documents, contact information for commercial edible food generators or other information available and necessary for the County to carry out the responsibilities delegated to it in this MOU.
- E. Be responsible for other applicable SB1383 regulatory requirements not expressly designated to the County as set forth herein, including compliance with CalGreen, MWELo and recycled content paper procurement.
- F. Work with the County on any related issues requiring jurisdictional assistance or help in resolving the issue(s) related to complaints and/or noncompliance by any Tier 1 and Tier 2 Edible Food Generator or Food Recovery Organization and Service as defined in the California Code of Regulations, Title 14, Division 7, Chapter 12 Short Lived Climate Pollutants and operating within Cities boundaries.

5. Indemnification/Hold Harmless.

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

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

6. Amendment of MOU and Merger Clause

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

7. Records

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

8. Assignability

The County shall have the right to assign this MOU or any portion thereof to a third party or subcontract with a third party to perform any act required under this MOU without the prior written consent of the City.

9. Notices

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

In the case of the County, to:

Resource Management Agency Director, Mike Chambless
County of San Benito Office
2301 Technology Parkway, Hollister, CA
Email: MChambless@cosb.us

In the case of San Juan Bautista, to:

City Manager, Don Reynolds
City of San Juan Bautista
311 2nd Street, San Juan Bautista, CA
citymanager@san-juan-bautista.ca.us

In the case of Hollister, to:

City Manager, Brett Miller
City of Hollister
375 5th Street, Hollister, CA
brett.miller@hollister.ca.gov

10. Controlling Law and Venue

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

11. Term and Termination


Subject to compliance with the terms and conditions of the MOU, the term of this MOU shall commence on January 1, 2022, and shall automatically be renewed from year to year on the same terms and conditions. This MOU may be terminated without cause by the City or the County's Administrative Officer or their designee at any time upon thirty (30) days written notice to the other party.

12. Authority

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


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

COUNTY OF SAN BENITO:
San Bentio County Board of Supervisors
Chair

By: 
Bea Gonzales, Chair

Date: December 14, 2021

CITY OF SAN JUAN BAUTISTA
Mayor

By: 

Date: DECEMBER 17, 2021


CITY OF HOLLISTER

Mayor

By:  _____

Date: 12-15-2021

**APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL**

DocuSigned by:

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Reed Gallogly, Deputy County Counsel

12/9/2021

Date

EXHIBIT A - SCOPE OF ACTIVITIES

The activity listed below relating to the County of San Benito's Edible Food Recovery Program will be conducted by the County and the Cities.

The Counties will:

I. Establishment

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

II. Notification of Commercial Edible Food Generators of the Requirements

Through email, letters, or other direct or electronic communication, the County shall annually notify Tier I and II Commercial Edible Food Generators within each Jurisdiction of their food recovery requirements as established pursuant to Section 18991.3 and 18991.4 of the Regulations. Such notification shall include website information to assist in compliance with the applicable food recovery requirements.

III. Inspections of Commercial Edible Food Generators.

Beginning January 1, 2022, the County or its designee shall conduct annual inspections of Tier One Edible Food Generators, food recovery organizations, and food recovery services within the County in a manner as necessary to comply with the requirements of Section 18995.1(a)(2) for the Cities. The County or its designee may conduct inspections of a random sampling of food recovery entities or prioritize inspections of entities that it determines are more likely to be out of compliance, provided that such manner of selection shall satisfy the requirements of the Regulations. Beginning January 1, 2024, the County or its designee shall additionally conduct annual inspections of Tier Two Edible Food Generators within the County in a manner as necessary to comply with the requirements of Section 18995.2(a)(2) for the Cities. The County may adjust the frequency or number of inspections from time to time if required by CalRecycle.

IV. Reporting and recordkeeping.

(i) The County shall prepare and submit the reports required pursuant to Section 18992.1 and 18992.2 on Edible Food recovery capacity planning. The County

shall submit the required reports in accordance with the schedule established in Section 18992.3.

(ii) In conformance with Section 18995.2 of the Regulations, the County will store and maintain the Implementation Record for each of the Jurisdictions.

(iii) Upon request by a CalRecycle representative, the County will provide access to the Implementation Record within 10 business days. In conformance with the California Public Records Act (Government Code §6250 *et seq.*), County will also respond to a request for public records contained in the Implementation Record. County and the Cities shall each notify the other if either the County or a City receive a request for all or part of the Implementation Record and coordinate a response to such request.

(iv) The County shall prepare and submit the Initial Jurisdiction Compliance Report and Jurisdiction Annual Reports to CalRecycle in compliance with Sections 18994.1 and 18994.2.

V. Edible food recovery capacity.

In conformance with Sections 18992.1 and 18992.2 of the Regulations, the County shall estimate existing Edible Food recovery capacity available in the County, in consultation with the Cities. If it is found that capacity is needed, the County shall work with the Jurisdictions that lack capacity to create a plan to expand capacity.

VI. Enforcement

1. The County will conduct enforcement of the ordinance within the County and participating Cities using a complaint-based system consistent with the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants. The County will respond to complaints, investigate, and resolve reported issue(s).
2. The County will comply with enforcement provisions detailed in the ordinance, in compliance with SB 1383, and in accordance with the County's own enforcement provisions.
3. The County will keep detailed records of enforcement in the County and the Cities for a minimum of five (5) years.
4. The County will submit the necessary reports to CalRecycle on the Edible Food Recovery Program.
5. The County will notify the Cities promptly about any related issues that arise that require the Cities assistance or to request the Cities lead in resolving the issue(s) related to noncompliance.

6. The Cities will work with the County on any related issues requiring jurisdictional assistance or lead in resolving the issue(s) related to complaints and/or noncompliance by any Tier 1 and Tier 2 Edible Food Generator or Food Recovery Organization and Service as defined in the California Code of Regulations, Title 14, Division 7, Chapter 12 Short Lived Climate Pollutants and operating within Cities boundaries.