

**MEMORANDUM OF UNDERSTANDING
BETWEEN CITY OF FOSTER CITY AND COUNTY OF SAN MATEO 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), entered into this 1st day of December 2021, by and between the County of San Mateo, hereinafter called "the County" and the City of Foster City, hereinafter called "Foster City."

WITNESSETH:

WHEREAS, the County's Board of Supervisors has enacted a Mandatory Organic Waste Disposal Reduction Ordinance as required by the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants; and

WHEREAS, to promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, 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 all the jurisdictions in the county; and

WHEREAS, Foster City's City Council adopted this Memorandum of Understanding on September 7, 2021, and authorizes the County to operate an Edible Food Recovery Program on behalf of and within Foster City.

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

1. Tasks to be Completed by Foster City

- A. The County will create and coordinate the Edible Food Recovery program on behalf of Foster City, if Foster City performs each of the following actions:
 - a) adopts and makes part of its municipal code 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 Foster City 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; and
 - b) enters into this Memorandum of Understanding; and
 - c) provides the County with a list and schedule of "large events" as defined by the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants occurring in Foster City; and

- d) after consultation with the County, is responsible for coordinating the required edible food recovery regulations for those “large events” occurring in Foster City; and
- e) authorizes, by ordinance, the County to enforce California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants in Section (a) above, and to incorporate such authorization to include, without limitation, the authority to inspect, investigate, hold hearings, issue citations, and/or assess administrative fines on behalf of Foster City as its Designee for Edible Food Recovery; and
- f) shall develop a method to accept written complaints, including anonymous complaints, regarding an entity that may be potentially non-compliant with the Edible Food Recovery requirements as required under the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, and direct all such complaints to the County; and
- g) acknowledges, by ordinance, that, notwithstanding this Memorandum of Understanding, Foster 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.

Note: Some County of San Mateo Jurisdictions are Member Agencies of the South Bayside Waste Management Authority (SBWMA), a joint powers agency located within San Mateo County that provides solid waste and recyclables processing services for its Members; nothing in this MOU precludes the SBWMA from assisting its Member Agencies with the Tasks described in this MOU.

2. Services to be Performed by the County

- A. The County shall 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 Foster City so long as this Memorandum of Understanding is in effect in its entirety.
- B. The County shall provide such services and activities for Foster City as described in Exhibit A, attached hereto and incorporated by reference herein.
- C. The County shall offer only 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 with the exception of a yearly analysis to be conducted by the County to estimate the amount of Green House Gas (GHG) emissions reduction to be attributed to edible food recovery activities in Foster City for use in their climate action plans.
- D. The County shall provide Foster City with the information and data necessary for Foster City to make their required reports to CalRecycle.

- E. The County will not be obligated to provide services if modifications are made to the ordinance by Foster City, which omits existing provisions and/or reduces the impact of the ordinance in any way.

3. Consideration

The benefit of this MOU to Foster City is that it alleviates the need for staff, cost analysis, capacity assessment, expenditures for infrastructure, labor, administration, and record keeping for the edible food recovery activities in its jurisdiction.

The benefit of this MOU to both the County and Foster City is that this approach will create one uniform, standardized, and coordinated effort throughout the incorporated and unincorporated areas of San Mateo County.

4. Relationship of Parties

It is expressly understood that this is an agreement between two independent entities, the County and Foster City, and that no individual agency, employee, partnership, joint venture, or other relationship is established by this MOU. The intent by both the County and Foster City is to create an independent collaborative relationship.

5. Hold Harmless

- A. Except as provided in subsection b. below, Foster City shall indemnify and save harmless the County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Memorandum of Understanding, brought for, or on account of, any of the following:
- a) Injuries to or death of any person, including Foster City or its employees/officers/agents;
 - b) Damage to any property of any kind whatsoever and to whomsoever belonging; or
 - c) Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the County and/or its officers, agents, employees, or servants. However, Foster City's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Foster City to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- B. With respect to coordinating, implementing, and/or enforcing the required edible food recovery regulations for those "Large Events" (as defined by the California Code of Regulations, Title 14, Division 7, Chapter 12) occurring in Foster City pursuant to section 1.A.d. above,

- a) The County shall indemnify, defend, and hold harmless Foster City and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent that they arise out of the negligence or willful misconduct of County staff arising out of coordinating, implementing, and/or enforcing the required edible food recovery regulations for those Large Events occurring in Foster City.
 - b) Foster City shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent they arise out of the negligence or willful misconduct of Foster City staff arising out of coordinating, implementing, and/or enforcing the required edible food recovery regulations for those Large Events occurring in Foster City.
- C. A party seeking indemnity and defense under this section shall provide the indemnifying and defending party with prompt notice of any claim and give control of its defense and settlement to the indemnifying and defending party. The party seeking indemnity and defense shall also cooperate in all reasonable respects with the indemnifying and defending party, its insurance company, and its legal counsel in its defense of such claim. The obligation to defend and indemnify pursuant to this section shall not cover any claim in which there is a failure to give the indemnifying and defending party prompt notice, but only to the extent that such lack of notice prejudices the defense of the claim. The indemnifying and defending party may not settle any potential suit hereunder without the other party's prior written approval, which will not to be unreasonably withheld, conditioned, or delayed. If a party who owes indemnity and defense under this section fails to promptly indemnify and defend a covered claim, the other party shall have the right to defend itself, and in such case, the party owning indemnity and defense shall promptly reimburse the other party for all of its associated costs and expenses.
- D. The obligations imposed by this section shall survive termination or expiration of the Memorandum of Understanding.

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 Foster 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:

Carolyn Bloede, Director
County of San Mateo Office of Sustainability
455 County Center, 4th Floor
Redwood City, CA 94065
Email: cbloede@smcgov.org

In the case of Foster City, to:

City Manager
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Email: CityManager@FosterCity.org

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 Foster City or the County’s Director of Office of Sustainability or the Director’s 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 MATEO

By: 
Carolyn Bloede
Director, Office of Sustainability

Date: December 20, 2021

CITY OF FOSTER CITY

By: 
Kevin Miller, Interim City Manager

Date: 10/18/21

EXHIBIT A - SCOPE OF ACTIVITIES

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

I. Establishment

1. The County will develop and coordinate a standardized and uniform San Mateo County-wide 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 Foster City's boundaries and replace the need for Foster City to create such a program on their own. This program will operate in the unincorporated areas of the county as well as all jurisdictions in the county agreeing to similar MOUs.

II. Enforcement

1. The County will conduct enforcement of the ordinance within Foster City 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 follow enforcement provisions detailed in the ordinance and described in the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants.
3. The County will keep detailed records of enforcement in Foster City for a minimum of five (5) years.
4. The County will provide the necessary records to Foster City for Foster City's required reporting about Edible Food Recovery work to CalRecycle.
5. The County will notify Foster City promptly about any related issues that arise that require Foster City's assistance or to request Foster City lead in resolving the issue(s) related to noncompliance.
6. Foster City 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 Foster City's boundaries.