

**Memorandum of Understanding
Between Napa County and
The Upper Valley Waste Management Agency
Regarding Implementation of SB 1383**

This Memorandum of Understanding (“MOU”) is made this 20th day of December, 2021 (the “Effective Date”) by and between Napa County, a political subdivision of the State of California, and the **UPPER VALLEY WASTE MANAGEMENT AGENCY**, a California joint powers authority (the “Agency”) (collectively, the “Parties”), with respect to the following Recitals:

RECITALS

WHEREAS, the Agency is a joint powers agency organized and operating under the Joint Exercise of Powers Act (Gov. Code section 6500 et seq.) and a “regional agency” under the California Integrated Waste Management Act of 1989; and

WHEREAS, Napa County is a Member of the Agency, which operates certain core programs on behalf of and for the benefit of the County including, but not limited to, providing education regarding recycling, composting, and other methods of waste diversion to the County and the public, and conducting, preparing, and submitting all monitoring and reporting as a regional agency pursuant to the Integrated Waste Management Act of 1989; and

WHEREAS, SB 1383 (Chapter 395, Statutes of 1383) requires the California Department of Resources Recycling and Recovery (CalRecycle) to adopt regulations to reduce organic waste by 50 percent from its 2014 baseline level by 2020 and 75 percent by 2025, which regulations have been finalized and are now in effect (Division 7 of Title 14 of the California Code of Regulations) (the “SB 1383 Regulations”); and

WHEREAS, the SB 1383 Regulations require local jurisdictions, among other things, to implement programs requiring organic waste generators and waste haulers to meet minimum standards for organic waste collection services, inspect waste containers for prohibited contamination of materials, provide education and outreach information to organic waste generators, report to CalRecycle on compliance with the SB 1383 Regulations, and maintain records of compliance with the SB 1383 Regulations; and

WHEREAS, the County has adopted Ordinance No., which implements and meets the requirements of the SB 1383 Regulations; and

WHEREAS, the SB 1383 Regulations authorize the County to enter into a Memorandum of Understanding with the Agency to fulfill its responsibilities under the SB 1383 Regulations; and

WHEREAS, the Parties wish to enter into this MOU to establish certain roles and responsibilities that the Agency shall assume on behalf of the County to implement the SB 1383 Regulations under the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. **Term.** This MOU shall commence on the Effective Date and remain in full force and effect until terminated as provided herein.

2. **Definitions.** The terms below are defined as follows and any other terms used but not defined herein shall have the meaning set forth in the SB 1383 Regulations, Section 17402 of Title 14 of the California Code of Regulations, or Section 18815.2 of Title 14 of the California Code of Regulations:

- (a) “Agency” means the Upper Valley Waste Management Agency.
- (b) “CalRecycle” or “Department” means the California State Department of Resources Recycling and Recovery.
- (c) “County” means the County of Napa.
- (d) “Edible Food” means food intended for human consumption.
- (e) “Generator(s)” means a person or entity that is responsible for the initial creation of Organic Waste.
- (f) “Hauler(s)” means a person or entity who collects material from a Generator and delivers it to a reporting entity, end user, or a destination. “Hauler” includes public contract haulers, private contract haulers, food waste self-haulers, and self-haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.
- (g) “Implementation Record” means the compiled records, physical or electronic, of the County that must be stored in one central location and contain the records and information required by Section 18995.2 of the SB 1383 Regulations.
- (h) “Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).
- (i) “Route review” means a visual inspection of containers along a hauler route for the purpose of determining container contamination and may include mechanical inspection methods such as the use of cameras.

(j) “SB 1383 Regulations” means Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations.

(k) “Waste evaluation” means collecting samples from garbage, recycling, and organic waste from different areas in the jurisdiction so that the samples are representative of the jurisdiction’s waste stream.

3. Responsibilities of the Agency.

(a) **Organic Waste Collection Services.** Pursuant to Section 18981.2 of the SB 1383 Regulations, the County designates the Agency as the entity responsible for Organic Waste collection services on behalf of the County in the unincorporated areas of the county served by the Agency. The Agency shall contract, permit, or authorize one or more public or private entities to collect Organic Waste within the jurisdiction of the County.

(b) **Education and outreach.** The Agency shall provide educational materials and community outreach to Organic Waste Generators in English and Spanish that explain and provide information on the requirements of the SB 1383 Regulations, as more specifically described below. In providing the education and outreach materials described below, the Agency intends that its education and outreach efforts will be consistent with, and supplemental to, the education and outreach provided by the franchised Haulers. Since Non-Local Entities and Local Education Agencies are not under the County’s control but are still subject to the SB 1383 Regulations and other laws, the Agency shall also identify and provide them with the educational materials on the requirements set forth below.

(i) Prior to February 1, 2022, the Agency will make available to Generators, through print and/or electronic media as permitted pursuant to the SB 1383 Regulations, information regarding the responsibilities and requirements set forth in Sections 18984.9, 18984.10, 18985.1, 18985.2, 18988.3, 18991.3, 18991.4, and 18991.5 of the SB 1383 Regulations. The information generated pursuant to this subparagraph shall be made available through posting on the Agency’s website, content made available for posting on the County’s website, and brochures made available for distribution to Generators. The Agency will additionally provide the information through other sources as deemed appropriate at the Agency’s discretion. The information generated pursuant to this subparagraph shall be updated at least annually.

(ii) Through email, letters, or other direct communication, the Agency shall annually notify Tier I and II Commercial Edible Food Generators within the County of their food recovery obligations and requirements pursuant to Sections 18991.3 and 18991.4 of the SB 1383 Regulations. Such notification shall include corresponding resources to assist in compliance with the applicable food recovery obligations and requirements.

(iii) The Agency shall perform outreach to non-compliant residential and commercial Generators to seek voluntary compliance with the SB 1383

Regulations, as more particularly described in this MOU. As part of seeking voluntary compliance, the Agency will provide non-compliant residential and commercial Generators with information and resources to encourage compliance with the SB 1383 Regulations related to the collection and recovery of Organic Waste.

(iv) On or before January 1, 2022, the Agency will design or cause to be designed container decals that comply with Section 18984.8 of the SB 1383 Regulations and distribute them upon request.

(c) **Procurement.** The Agency shall annually notify the County of its Organic Waste product procurement target, as required and determined by CalRecycle pursuant to Section 18993.1 of the SB 1383 Regulations. Before CalRecycle releases the official procurement targets for the County on January 1, 2022 and every five years thereafter, the Agency shall assist the County in calculating estimates of the procurement targets.

(d) **Reporting and recordkeeping.**

(i) The Agency shall prepare and submit the reports required pursuant to Sections 18992.1 and 18992.2 of the SB 1383 Regulations on Organic Waste processing capacity and Edible Food recovery capacity planning requirements. The Agency shall submit the required reports in accordance with the schedule established in Section 18992.3 of the SB 1383 Regulations.

(ii) The Agency will store and maintain the Implementation Record for the County in conformance with Section 18995.2 of the SB 1383 Regulations. The County will be given access to its own Implementation Record upon request. Staff of the Agency will upload documents to CalRecycle within the 60-day timeframe as required in the SB 1383 Regulations, provided that the information is made available to the Agency by the parties creating such records in a prompt manner.

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

(iv) The Agency shall prepare and submit the Initial Compliance Report and Annual Reports to CalRecycle on behalf of the County in compliance with Sections 18994.1 and 18994.2 of the SB 1383 Regulations.

(e) **Organic waste processing capacity and diversion planning.** As a component of preparing the reports required pursuant to Sections 18992.1 and 18992.2 of the SB 1383 Regulations, the Agency shall estimate existing Organic waste processing and Edible Food recovery capacities available in the County. If it is found

that capacity in either category is needed, the Agency shall assist the County in creating an implementation plan to expand capacity.

(f) **Complaints and violations.**

(i) The SB 1383 Regulations require that the County provide a procedure for the receipt and investigation of written complaints of alleged violations of the SB 1383 Regulations. In conformance with this requirement, the Agency shall make an online complaint form available on its website for public submission and will make the form available for the County to place on its website. The complaint form shall collect all information required under Section 18995.3 of the SB 1383 Regulations. Upon receipt of a complaint, the Agency shall forward the complaint to the County and the Hauler. The Agency shall work with the Hauler to investigate the validity of the complaint within 90 days of receipt of the complaint in accordance with Section 18995.3 of the SB 1383 Regulations. If a Generator is found to be non-compliant, the Agency shall notify the Generator of the Agency's determination of non-compliance, including the basis for its determination and the supporting evidence received or generated by the Agency. As part of the notification, the Agency will provide resources to assist the Generator in achieving compliance with the SB 1383 Regulations.

(ii) The Agency will develop a standardized procedure for seeking voluntary compliance from Generators that are in violation of the SB 1383 Regulations. The Agency's responsibilities will include contacting Generators who have repeatedly contaminated and/or refuse to use the recycling and/or organic waste collection containers despite reasonable efforts by the franchised Hauler to notify the Generator and seek compliance. The Agency will use incrementally escalating efforts to educate the non-compliant Generator and seek voluntary compliance through the standardized procedures developed by the Agency. In the event the Agency is unable to achieve voluntary compliance through these contacts, the Agency will refer the matter, along with all evidence collected by the Agency related to the Generator's non-compliance, to the County for consideration of formal enforcement action.

(iii) In the event the County initiates an enforcement action against a Generator, the Agency will provide support to the County in carrying out the enforcement action, including working with the franchised Hauler to determine whether the Generator has come into compliance prior to a compliance deadline established by any Notice of Violation or other enforcement tool. The Agency's support will be directed by the County as the County retains sole responsibility for any formal enforcement action.

(g) **Inspections of Commercial Edible Food Generators.** Beginning January 1, 2022, the Agency shall conduct annual inspections of Tier I Commercial 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) of the SB 1383 Regulations. The Agency 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 SB 1383 Regulations. Beginning January 1, 2024, the Agency shall additionally conduct annual inspections of Tier II Commercial Edible Food Generators within the County in a manner as necessary to comply with the requirements of Section 18995.2(a)(2) of the SB 1383 Regulations. The Agency may adjust the frequency or number of inspections from time to time in its discretion or if required by CalRecycle.

(h) **Transfer and Assignment of Agency Responsibilities.** The Agency may transfer any or all of its responsibilities under this MOU to a franchise Hauler or other entity pursuant to a franchise agreement or other written agreement.

4. **Responsibilities of the County.**

(a) Except for those responsibilities and requirements expressly assumed by the Agency pursuant to this MOU, the County shall be responsible for compliance with the SB 1383 Regulations, as applicable. With respect to CALGreen and Model Water Efficient Landscaping Ordinance (“MWELO”) requirements, if the County has incorporated CALGreen or MWELO requirements within its municipal code, the local requirements shall apply but if not, the state statutes and regulations governing CALGreen and MWELO shall apply in all circumstances where necessary.

(b) The County shall be responsible for the adoption of its own enforceable ordinance and procurement policy as required by SB 1383.

(c) **Sharing of information.** Within thirty (30) days of request by the Agency, or as soon as such information is available to the County, the County shall share with the Agency all data, documents, contact information for Generators within the County, and any other information necessary for the Agency to carry out the responsibilities set forth in this MOU. At the Agency’s request, the County shall provide the following information:

- (i) Debris Removal:
 - (1) A record of the amount of sediment debris that is disposed pursuant to Section 18984.13 of the SB 1383 Regulations on an annual basis.
 - (2) All solid waste removed for landfill disposal from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety that exceeds 100 tons annually.
- (ii) CALGreen and Model Efficient Water Landscaping Ordinances:

- (1) The number of construction and demolition debris removal activities conducted in compliance with Section 18989.1 of the SB 1383 Regulations.
- (2) The number of projects subject to Section 18989.2 of the SB 1383 Regulations.
- (iii) Purchasing:
 - (1) The amount of each recovered Organic Waste product procured directly by the County or through direct service providers, or both during the prior calendar year.
 - (2) If the County is implementing the procurement requirements of Section 18993.1 of the SB 1383 Regulations through an adjusted recovered Organic Waste product procurement target pursuant to Section 18993.1(j) of the SB 1383 Regulations, the County shall include in its report the total amount of transportation fuel, electricity, and gas for heating applications procured during the calendar year prior to the applicable reporting period.
 - (3) All recycled content paper procurement records required by Section 18993.4 of the SB 1383 Regulations.

(d) **Enforcement.** The County shall be responsible for any enforcement of the SB 1383 Regulations within its boundaries. The Agency's role in seeking compliance with the SB 1383 Regulations will be limited to conducting investigations and seeking voluntary compliance as more specifically described in this MOU. The County shall however provide the Agency with the following information regarding enforcement actions:

- (i) The number of complaints pursuant to Section 18995.3 of the SB 1383 Regulations that were received and investigated, and the number of Notices of Violation issued based on investigation of those complaints.
- (ii) The number of Notices of Violation issued, categorized by type of entity subject to the SB 1383 Regulations.
- (iii) The number of penalty orders issued, categorized by type of entity subject to the SB 1383 Regulations.

- (iv) The number of enforcement actions that were resolved, categorized by type of regulated entity.

5. **Indemnification/Hold Harmless.** The Agency shall indemnify, defend, and hold harmless the County, its officials, consultants, agents, and employees from and against any and all losses, damages, liability, claims, suits, costs and expenses, including reasonable attorney's fees, arising from the Agency's performance of this MOU, with the exception of matters that are based upon the negligent or intentional acts or omissions of the County, its officials, consultants, agents and/or employees. The County shall also indemnify, defend, and hold harmless the Agency, its officials, consultants, agents, and employees from and against any and all losses, damages, liability, claims, suits, costs and expenses, including reasonable attorney's fees, arising from the County's performance of this MOU, with the exception of matters that are based upon the negligent or intentional acts or omissions of the Agency, its officials, consultants, agents and/or employees.

6. **Withdrawal of Member Agency; Termination by Agency.** The County may withdraw as a party to this MOU upon giving at least one hundred and eighty (180) calendar days' prior written notice to the Agency. Further, the Agency may terminate this MOU upon giving at least three hundred and sixty-five (365) calendar days' prior written notice to the County or such shorter period agreed to by the Parties. Upon termination of this MOU, the Agency shall have no further obligations to carry out its responsibilities as described in this MOU.

7. **Notice.** During the term of this MOU, all notices shall be made in writing and either served personally, sent by first class mail, or sent by email provided confirmation of delivery is obtained at the time of email transmission, addressed as follows:

To: Agency

Upper Valley Waste Management Agency
Attention: Agency Manager
1195 Third St. Suite 101
Napa, CA 94559
Telephone Number: 707-253-4351
Email: steven.lederer@countyofnapa.org

To: County

Napa County
Attention: Public Works Director
1195 Third St. Suite 101
Napa, CA 94559
Telephone Number: 707-253-4351
Email: steven.lederer@countyofnapa.org

The Parties may change the address to which notice is to be given by providing the other written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

Service of notices shall be deemed complete on the date of receipt if personally served or if served using email provided confirmation of delivery is obtained at the time of email transmission. Service of notices sent by first class mail shall be deemed complete on the fifth (5th) day following deposit in the United States mail.

8. **Governing Law and Venue.** This MOU shall be governed by and construed in accordance with the laws of the State of California. Venue in any proceeding or action arising out of this MOU shall be in the Superior Court of California for the County of Napa.

9. **Amendment.** This MOU and the exhibits hereto may only be amended in writing signed by all Parties and any other purported amendment shall be of no force or effect. This MOU may be amended from time to time to modify its provisions and/or add tasks to one or both of the Parties.

10. **Entire Agreement.** This MOU and its exhibits constitute the entire agreement between the County and the Agency and supersedes all prior negotiations, representations, or agreements related hereto, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in duplicate on the day and year first above written.

NAPA COUNTY, A Political Subdivision
of the State of California and Member
of the Upper Valley Waste
Management Agency.

By: _____

Minh Tran

Napa County County Executive Officer

Date: _____

APPROVED AS TO FORM:



Napa County Deputy County
Counsel

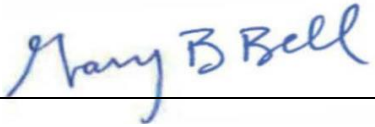
Date: November 3, 2021

**UPPER VALLEY WASTE MANAGEMENT
AGENCY, A California
Joint Powers Authority**

By: _____

Steven Lederer
Agency Manager

APPROVED AS TO FORM:



Agency Counsel

