

RESOLUTION NO. 2021-93

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) REGARDING
COOPERATIVE ASSISTANCE TO COMPLY WITH SENATE BILL 1383, FOOD WASTE
REDUCTION AND ORGANICS RECYCLING REGULATIONS.

WHEREAS, In September 2016, Governor Brown signed into law SB 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of Short-Lived Climate Pollutants (SLCP); and

WHEREAS, SB1383 mandates local jurisdictions undertake certain activities regarding the handling of organic waste materials collected within their jurisdictions; and

WHEREAS, member agencies of the Monterey Regional Waste Management District (the "MRWMD"), through a Joint Powers Agreement ("JPA"), encompass the individual jurisdictions of Carmel by-the-Sea, Del Rey Oaks, Monterey, Marina, Pacific Grove, Pebble Beach Community Services District, Sand City, Seaside, and County of Monterey (hereinafter "Member Agencies") who coordinate their activities in regard to waste collection and management on the Monterey Peninsula through a Technical Advisory Committee (TAC) consisting of staff from these Member Agencies; and

WHEREAS, the City of Marina (the "City") does not have the in-house staff, resources, or expertise to meet the requirements of SB 1383 on its own, and requires the qualified assistance from the MRWMD and HF&H Consulting, LLC ("HF&H") who do have the expertise and resources to advise and aid Marina in implementing the requirements of, and achieving compliance with, SB 1383; and

WHEREAS, a Memorandum of Understanding (MOU) (**Exhibit A**), specifying the scope of work and associated costs, is necessary to provide a structure for Marina and other Member Agencies to reimburse the MRWMD for SB 1383 related activities it performs on behalf of Marina and the other Member Agencies; and

WHEREAS, as detailed in Exhibit A of the MOU, the MRWMD will perform activities related to the implementation of SB 1383 that may include, but not necessarily limited to, contracting and policy development, public education development, reporting, contamination monitoring ("lid flipping"), edible food waste recovery, and organics processing; and

WHEREAS, the estimated annual expense to the City for FY 2021-2022 will be \$35,522 as outlined in Exhibit B of the MOU, which allocates associated costs that are averaged and weighted on various factors providing an "economy of scale" to each Member Agency in fair distribution of fiscal responsibility; and

WHEREAS, it is in the best interest of the City to work cohesively with the MRWMD and the other Member Agencies in pulling together intellectual and financial resources in achieving SB 1383 compliance for all of the Member Agencies.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marina does hereby approving a Memorandum of Understanding (MOU) regarding cooperative assistance to comply with Senate Bill 1383, Food Waste Reduction and Organics Recycling Regulations.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 17th day of August 2021, by the following vote:

AYES, COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT AND ITS
MEMBER AGENCIES REGARDING ASSISTANCE WITH COMPLIANCE WITH
CALIFORNIA SENATE BILL 1383

This Memorandum of Understanding (“MOU”) is made and entered into as of the date of the signatures set forth below by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT (“District”, “MRWMD”), a California Garbage and Refuse Disposal District, and its member agencies including the cities of CARMEL-BY-THE-SEA, DEL REY OAKS, MARINA, MONTEREY, PACIFIC GROVE, SAND CITY, and SEASIDE; THE PEBBLE BEACH COMMUNITY SERVICES DISTRICT; and THE COUNTY OF MONTEREY (“Member Agencies”). Collectively these entities shall be known herein as “Parties” or individually as a “Party.”

Recitals

- A. The State of California has passed legislation, known as Senate Bill 1383, California’s Short-Lived Climate Pollutants regulation. The regulation will have significant impact on each Member Agency, with the goal of reducing organic material being landfilled by 75% by 2025, compared to a 2014 basis. The legislation mandates that Member Agencies undertake certain activities around the handling of organic waste materials collected within their jurisdictions. The regulation also requires 20% recovery of edible food by 2025 to direct it to a beneficial use and thus prevent it from entering the waste stream. Regulations take effect, and local program implementation will begin, on January 1, 2022.
- B. The Member Agencies have determined that it is in their best interest to coordinate their activities related to this legislation. This coordination is being facilitated by the District’s Technical Advisory Committee (TAC) comprised of staff from each Member Agency, the three Haulers in the District service area (Haulers), Salinas Valley Recycles (SVR) and MRWMD.
- C. The Member Agencies have further determined that the District has the expertise and resources necessary to implement some of these activities on the Member Agencies’ behalf and have now requested that the District incur costs to provide these activities.
- D. The Member Agencies have agreed to reimburse the District for proportionate shares of certain designated annual costs incurred by the District for these activities.
- E. The form and content of this MOU have been presented to the TAC, and the TAC has recommended it for approval by the Parties

NOW THEREFORE, in consideration of the mutual benefits to be derived by the District and the Member Agencies, and of the promises contained in this MOU, the Parties agree as follows:

Section 1. Recitals: The recitals set forth above are incorporated into this MOU.

Section 2. Purpose: The purpose of this MOU is to provide a structure for the Member Agencies to reimburse the District for SB 1383related activities it performs on behalf of the Member Agencies.

Section 3. Voluntary: This MOU is voluntarily entered into by the Parties for the purpose of facilitating the implementation of SB 1383.

Section 4. Term: This MOU shall become effective on the last day of its execution by a Party and shall remain in effect until terminated by the Parties.

Section 5. Scope of Work, Costs & Cost Sharing: The scope of work, and associated costs, are set out in Exhibit A, entitled Detailed Activities and Costs, attached hereto and incorporated herein. Allocation of such costs to the Member Agencies is set out in Exhibit B, entitled Member Agencies' Annual Proportionate Shares and Costs, attached hereto and incorporated herein.

No later than March 1 of each year, and at such other times as directed by the Parties, the TAC shall meet to consider and, if deemed necessary, modify Exhibits A and B, subject to direction from the governing bodies of each Member Agency to its TAC representative.

Section 6. The District Agrees:

(a) District staff will manage activities as identified in Exhibit A, which activities include contracting with third party vendors when reasonably necessary and paying those vendors for contracted costs.

(b) Two times per year, on dates to be determined by the TAC, District will invoice Member Agencies for each Member Agency's proportionate share of costs as shown in Exhibit B with each invoice to be fifty percent (50%) of the Member Agency's share of costs.

(c) District will maintain an accounting of activities and expenses and provide reconciliation of payments annually. Material differences between estimated costs and actual incurred costs will result in either: 1) an adjustment made to the final annual payment for each Member Agency, or 2) such cost difference shall be incorporated into the subsequent year cost allocation.

(d) In year one only, in recognition of expected continuation of improved recycling revenues for the District from recyclable material sales, the District will off-set \$140,000 of the costs identified in Exhibit A. This off-set is reflected in the cost allocations set out in Exhibit B for FY 2021-22.

Section 7. The Member Agencies Agree:

(a) To reimburse the District for all expenses incurred by the District under this MOU in accordance with each Member Agency's proportionate share as shown on Exhibit B.

(b) To make a full-faith effort to cooperate with one another and with the District to achieve the purposes of this MOU by providing information, reviewing information in a timely manner, and informing their respective administration and governing bodies.

Section 8. Termination. Any Party may terminate its participation in this MOU upon giving written notice to the District no later than April 1 of any calendar year during the term of this MOU. Within ten days following a Party's termination date, such party shall pay District all charges then due and payable and shall pay when determined any additional charges that shall later come due under the MOU, subject to the limits set out in Exhibits A and B.

Section 9. General Provisions.

(a) This MOU is binding and for the benefit of the respective successors, heirs, and assigns of each Party and the District; provided however, no Party may assign its respective rights or obligations under this MOU without the prior written consent of the District.

(b) This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

(c) If any provision of this MOU is determined by any court to be invalid, illegal, or unenforceable to any extent, then the remainder of this MOU will not be affected, and this MOU will be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.

(d) Waiver by the District or any Party to this MOU of any term, condition, or covenant of this MOU will not constitute a waiver of any other term, condition or covenant. Waiver by the District or any Party of any breach of the provisions of this MOU will not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.

(e) This MOU may be executed in any number of counterparts, each of which is an original but all of which taken together will constitute one and the same instrument, provided, however, that such counterparts have been delivered to all parties to this MOU.

(f) All parties acknowledge they have been represented, or have had the opportunity to be represented, by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU will be construed according to its fair language. Any ambiguities will be resolved in a collaborative manner by the District and the Parties and must be rectified by amending this MOU.

IN WITNESS WHEREOF, the District and the Parties have caused this MOU to be executed by their duly authorized representatives as of the date of their respective signatures.

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF CARMEL-BY-THE-SEA

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF DEL REY OAKS

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF MARINA

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF MONTEREY

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF PACIFIC GROVE

By: _____

DATE: _____

APPROVED AS TO FORM:

SAND CITY

By: _____

DATE: _____

APPROVED AS TO FORM:

CITY OF SEASIDE

By: _____

DATE: _____

APPROVED AS TO FORM:

PEBBLE BEACH COMMUNITY SERVICES DISTRICT

By: _____

DATE: _____

APPROVED AS TO FORM:

COUNTY OF MONTEREY

By: _____

DATE: _____

APPROVED AS TO FORM:

EXHIBIT A

DETAILED ACTIVITIES & COSTS FY 2021-2022

Scope of Work

The activities related to the implementation of SB 1383 may include contracting and policy development; public education; materials purchasing and distribution; reporting; contamination monitoring; edible food waste recovery; enforcement; procurement; organics processing; rate setting; cost monitoring; and any other related activities the Parties choose to address.

The District will take the lead producing public education campaigns in concert with the already-provided Hauler and/or Member Agency resources. The Member Agencies will be responsible for production and mailing fees associated with outreach. The District will also contract with a vendor to administer contamination monitoring in the form of curbside lid flipping within each Member Agency, except for in Carmel-by-the-Sea and the County of Monterey, where the City of Carmel-by-the-Sea and the County of Monterey will decide how to proceed. The District will also provide CalRecycle reporting services to the Member Agencies. In addition, funds will be allocated to food recovery organizations for procurement of refrigerated holding facilities or transport vehicles to support edible food recovery efforts.

Costs

SB 1383 Fee Category	Detail	FY 21/22 Cost	Notes
Contracting/Policy (HF&H)	Franchise amendment/ordinance development	122,815	
Public Education		\$ 50,000	Covers creation of materials, but not production or distribution
Kitchen Pails w/ sticker & postcard	SFD & MFD upon request	\$ 50,000	
Reporting	Recyclist	\$ 11,610	Note: Omits City of Monterey & County from shared cost
	MRWMD staff time	\$ 20,000	
Contamination Monitoring (Lid Flipping)	Blue Strike / Greenwaste Recovery for Carmel	MA Specific	See attachment for cost breakdown
Edible Food Recovery	Donations to local food recovery organizations	\$ 50,000	
Organics Processing	District fees	\$ -	
		\$ 304,425	
Reduction from MRWMD for recycling revenues FY 21/22		\$ (140,000)	
		\$ 164,425	
HFH Franchise Management & Rate Setting		\$ 55,000	Note: Omits City of Monterey & County from shared cost
Monitoring Costs		11,047	
Total		\$ 230,472	

EXHIBIT B

MEMBER AGENCIES' ANNUAL PROPORTIONATE SHARES & COSTS* FY 2021-2022

	SB 1383 Costs Distributed by Contract (Includes Recyclist for GWR Agencies)		
	Population #	Per Agency Cost/Year	With \$2,500 Minimum
Carmel	3,830	\$ 3,096	\$ 2,927
DRO	1,525	\$ 1,233	\$ 2,500
Marina	21,981	\$ 17,766	\$ 16,798
PG	15,522	\$ 12,546	\$ 11,862
PBCSD	4,531	\$ 3,662	\$ 3,463
Sand City	310	\$ 251	\$ 2,500
Seaside	33,956	\$ 27,445	\$ 25,949
TOTAL	81,655	\$ 65,997	\$ 65,997
Monterey City	28,352	\$ 34,214	\$ 34,214
County	50,128	\$ 34,214	\$ 34,214
TOTAL	160,135	\$ 134,425	\$ 134,425

	Remainder of Shared Costs			
	Population #	%	Per Agency Cost/Year	With \$2,500 Minimum
Carmel	3,830	2.4%	\$ 718	\$ 2,500
DRO	1,525	1.0%	\$ 286	\$ 2,500
Marina	21,981	13.7%	\$ 4,118	\$ 2,862
PG	15,522	9.7%	\$ 2,908	\$ 2,500
PBCSD	4,531	2.8%	\$ 849	\$ 2,500
Sand City	310	0.2%	\$ 58	\$ 2,500
Seaside	33,956	21.2%	\$ 6,361	\$ 4,421
Monterey City	28,352	17.7%	\$ 5,312	\$ 3,691
County	50,128	31.3%	\$ 9,391	\$ 6,526
TOTAL	160,135		\$ 30,000	\$ 30,000

	Contract Management			
	Population #	%	Per Agency Cost/Year	With \$2,500 Minimum
Carmel	3,830	4.7%	\$ 2,580	\$ 2,500
DRO	1,525	1.9%	\$ 1,027	\$ 2,500
Marina	21,981	26.9%	\$ 14,806	\$ 13,740
PG	15,522	19.0%	\$ 10,455	\$ 9,703
PBCSD	4,531	5.5%	\$ 3,052	\$ 2,832
Sand City	310	0.4%	\$ 209	\$ 2,500
Seaside	33,956	41.6%	\$ 22,872	\$ 21,225
TOTAL	81,655		\$ 55,000	\$ 55,000

EXHIBIT B
(Continued)

MEMBER AGENCIES' ANNUAL PROPORTIONATE SHARES & COSTS*
FY 2021-2022

Carmel	Monitoring Costs			
	Population #	Per Agency Cost/Year	Admin Cost	Total
Carmel	3,830	\$ 584	\$ 175	\$ 759
DRO	1,525	\$ 693	\$ 208	\$ 900
Marina	21,981	\$ 1,633	\$ 490	\$ 2,122
PG	15,522	\$ 1,021	\$ 306	\$ 1,328
PBCSD	4,531	\$ 672	\$ 202	\$ 874
Sand City	310	\$ 937	\$ 281	\$ 1,218
Seaside	33,956	\$ 1,720	\$ 516	\$ 2,237
Monterey City	28,352	\$ 1,238	\$ 371	\$ 1,609
County	50,128			
TOTAL	110,007	\$ 8,498	\$ 2,549	\$ 11,047

	Total Costs		
	Population #	Per Agency Cost/Year	With Minimums
Carmel	3,830	\$ 7,152	\$ 8,686
DRO	1,525	\$ 3,446	\$ 8,400
Marina	21,981	\$ 38,812	\$ 35,522
PG	15,522	\$ 27,236	\$ 25,392
PBCSD	4,531	\$ 8,436	\$ 9,668
Sand City	310	\$ 1,735	\$ 8,718
Seaside	33,956	\$ 58,914	\$ 53,831
Monterey City	28,352	\$ 41,134	\$ 39,514
County	50,128	\$ 43,605	\$ 40,740
TOTAL	160,135	\$ 230,472	\$ 230,472

*Member Agencies' proportionate costs subject to adjustment annually in accordance with any change in scope and total costs.

August 13, 2021

Item No: **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 17, 2021

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2021-,
APPROVING A MEMORANDUM OF UNDERSTANDING (MOU)
REGARDING COOPERATIVE ASSISTANCE TO COMPLY WITH
SENATE BILL 1383, FOOD WASTE REDUCTION AND ORGANICS
RECYCLING REGULATIONS.**

REQUEST:

It is requested that City Council consider:

1. Adopting Resolution No. 2021-, approving a Memorandum of Understanding (MOU) regarding cooperative assistance to comply with Senate Bill 1383, Food Waste Reduction and Organics Recycling Regulations.

BACKGROUND:

In September 2016, Governor Brown signed into law SB 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of Short-Lived Climate Pollutants (SLCP). The law codified the California Air Resources Board's SLCP reduction strategy, established pursuant to SB 605 of 2014, to achieve reductions in statewide emissions of pollutants. Actions to reduce SLCPs are essential to address the many impacts of climate change on human health, especially in California's most at-risk communities and on the environment.

As it pertains to CalRecycle, SB 1383 establishes targets to achieve a 50 percent reduction in the level of statewide disposal of organic waste from the 2014 level by 2020, and a 75 percent reduction by 2025. The law also grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025.

The member agencies of the Monterey Regional Waste Management District (MRWMD) encompass the individual Peninsula jurisdictions of Carmel by-the-Sea, Del Rey Oaks, Monterey, Marina, Pacific Grove, Pebble Beach Community Services District, Sand City, Seaside, and County of Monterey (hereinafter "Member Agencies"). These entities work as a group regarding waste management issues under a Joint Powers Agreement (JPA).

ANALYSIS:

SB 1383 requires a multitude of endeavors by individual jurisdictions; which include developing and adopting organic reduction programs, performing public outreach and education of SB 1383 requirements, conducting organic waste inspections, adopting enforceable regulations, and taking enforcement actions against non-compliant residential and commercial entities. To implement these requirements, the MRWMD and HF&H Consulting, LLC ("HF&H") have been invaluablely assisting its Member Agencies and their staffs in developing franchise agreement amendments and municipal code amendments that achieve SB 1383 compliance. HF&H has previously made presentations to the City Council in regard to SB 1383 this year and prior.

The City of Marina does not have the in-house staff, resources, or expertise to meet all the requirements of SB 1383 on its own; and therefore, the City requires qualified assistance. The MRWMD and HF&H have the expertise and resources necessary to advise and aid its Member Agencies in implementing the requirements of SB 1383. To address that assistance and related costs, the MRWMD has drafted a Memorandum of Understanding (MOU) (“**EXHIBIT A**”) for and between the MRWMD and its Member Agencies, which is now being presented for City Council consideration.

MOU Activities:

Under purview of the proposed MOU, the MRWMD (with their consultant HF&H) will prepare drafts of the franchise agreement and municipal code amendments necessary for partial compliance with SB 1383. Exhibit A of the MOU lists the scope of work to be performed by MRWMD and Exhibit B of the MOU outlines the allocation of related costs to the Member Agencies.

Franchise Agreement Amendment:

The City's Franchise Agreement with Greenwaste Recovery (GWR) does not sufficiently address SB 1383 or the services/activities necessary to achieve and maintain SB 1383 compliance. Therefore, an amendment of the Franchise Agreement is necessary to modify the GWR's services to implement those activities and responsibilities mandated by SB 1383.

The franchise agreement amendment will specify the duties and obligations needed from GWR to implement those "boot on the ground" efforts necessary for the City to achieve and maintain SB 1383 compliance. It also provides the mechanisms for customer rate adjustments/additions to recoup costs for implementation of SB 1383 mandated programs (i.e. modified organic waste hauling and processing, equipment, inspections, violation notifications, etc.).

A draft franchise agreement was provided in May of this year to its Member Agencies, who are contracted with GWR, for their review and comment. This draft was prepared on good faith that the MRWMD would be fiscally reimbursed by its Member Agencies under the MOU now being considered. Tentatively, the intent is for the franchise agreement amendment to be considered and acted upon by the City Council in early Fall of 2021; but this must be accomplished and in effect no later than January 1, 2022.

Municipal Code Amendment/Update:

The City's Municipal Code is inadequate concerning SB 1383 in regulating and enforcing organic waste compliance by residents, businesses, and other organic waste generators. Work has commenced on draft municipal code amendments for the Member Agencies, but each jurisdiction will need to adopt regulations for management and enforcement of organic waste collection and processing prior to the end of this year. This includes adopting regulations requiring edible food recovery and implementing related programs.

Also under the proposed MOU, the MRWMD will take the lead in designing SB 1383 public education in conjunction with Member Agencies and their haulers; however, Member Agencies will be responsible for final production and distribution of education material and the associated costs (possibly through their waste haulers). The District will contract with a vendor to administer contamination monitoring in the form of curbside lid flipping within each MOU participating jurisdiction (except for Carmel By-The-Sea that has a unique situation). The District will also provide CalRecycle reporting services for each Member Agency.

FISCAL IMPACT:

The estimated annual expense to Marina for FY 2021-2022 will be \$35,522 as shown in Exhibit B of the draft MOU (see Attachment), which outlines the estimated annual expenses to each Member Agency of the MRWMD. These expenses are averaged and weighted on various factors providing an "economy of scale" to each Member Agency depending upon their needs. This includes expenses related to SB 1383 implementation, general shared and monitoring costs for Member Agencies, and the annual \$13,740 the City already pays for franchise agreement management. It is anticipated that overall costs will be lower in the following fiscal years as the FY 2021-22 estimated amounts reflect the excess work currently performed by HF&H in preparing the franchise agreement amendment and draft of an ordinance update; both needed for SB 1383 compliance to meet Cal-Recycle's deadlines. These efforts, as with past solid waste efforts, are funded through franchise fees collected and remitted to the City.

CONCLUSION:

This presentation will be made to City Council for information.

Respectfully submitted,

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina