

**CITY OF CLOVERDALE
CITY COUNCIL**

RESOLUTION NO. 040-2020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING AN
INDEMNIFICATION AGREEMENT WITH SONOMA COUNTY WASTE MANAGEMENT AGENCY TO
PROVIDE POLYSTYRENE ORDINANCE ADMINISTRATION SERVICE AND AUTHORIZING THE CITY
MANAGER TO EXECUTE SAID AGREEMENT**

WHEREAS, the Sonoma County Waste Management Agency (“Agency”) is a joint powers agency established and operating pursuant to that certain Amended and Restated Joint Exercise of Powers Agreement dated March 1, 2017 (the “JPA Agreement”).

WHEREAS, the City of Cloverdale (“City”) is a member of Agency under the terms of the JPA Agreement. The Agency provides certain core programs to its member agencies, and additionally has the authority to conduct planning activities and development of regional programs that are related to the furtherance of increasing waste diversion within the members’ jurisdictions, subject to review and approval of such additional programs by the members’ governing bodies.

WHEREAS, the additional programs that may be developed by the Agency for its members include the development of model ordinances related to waste diversion which may be considered by the legislative bodies of the members and implementation of waste diversion programs in member jurisdictions that are adopted pursuant to such model ordinances; and

WHEREAS, pursuant to such authority, the Agency developed a model ordinance prohibiting the use and sale of disposable food service ware and other products containing polystyrene foam (the “Polystyrene Ordinance”) and has developed educational, outreach and implementation materials to assist in the implementation of such Polystyrene Ordinance; and

WHEREAS, adoption of the Polystyrene Ordinance by the City will help to reduce or eliminate the use of polystyrene foam and other non-compostable and non-recyclable disposable food service ware items, which will maximize the operating life of landfills, lessen the economic and environmental costs of waste management for businesses and residents of Sonoma County, and further protect the public health and safety of residents, the natural environment, waterways and wildlife, which is consistent with the Agency’s overarching purpose of increasing waste diversion in the jurisdictions of its members, and the Agency therefore desires to encourage member agencies to adopt the Polystyrene Ordinance; and

WHEREAS, in order to encourage its members to adopt the Polystyrene Ordinance, the Agency is willing to indemnify, defend and hold harmless individual members that are made party to any claim, suit or similar proceeding challenging the validity of the Polystyrene Ordinance or the provision of the Administration and Implementation Services (as defined in Section 2(a)(2) of this Agreement), including but not limited to a challenge to such Polystyrene Ordinance under the California Environmental Quality Act (Public Resources Code §§21000 *et seq.*) (“CEQA”); and

WHEREAS, the City and Agency desire to enter into this Agreement to set forth the terms of such indemnity;

WHEREAS, the City further desires that the Agency take responsibility for the implementation of the Polystyrene Ordinance within the City; and

WHEREAS, the Agency has the authority pursuant to Section 5.B of the JPA Agreement to enter into an agreement with the City to implement and participate in the enforcement of the Polystyrene Ordinance; and

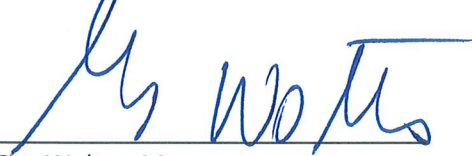
WHEREAS, the Agency agrees to provide such administrative and enforcement services as are described in the agreement, on the terms and condition specified in this Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cloverdale hereby approves an Indemnification Agreement attached hereto as Exhibit A with the Sonoma County Waste Management Agency to provide Polystyrene Ordinance Administration Services and authorizes the City Manager to execute said agreement in a form approved by the City Attorney on behalf of the City.

The foregoing Resolution No. 040-2020 was duly introduced and adopted by the City Council of the City of Cloverdale at its regular meeting held on the 8th day of April 2020, by the following roll call vote:

AYES:	(5)	Councilmembers Bagby, Brigham and Cruz, Vice Mayor Turner, and Mayor Wolter
NOES:	(0)	None
ABSTAIN:	(0)	None
ABSENT:	(0)	None

APPROVED:



Gus Wolter, Mayor

ATTEST:



Irene Camacho-Werby, City Clerk

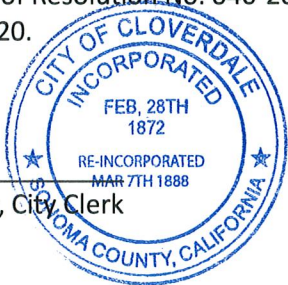
Attachment:

Exhibit A – Agreement Between the City of Cloverdale and the Sonoma County Waste Management Agency Providing Polystyrene Ordinance Administration Services

I, IRENE CAMACHO-WERBY, City Clerk of the City of Cloverdale, do hereby certify that the foregoing is a full, true, and correct copy of Resolution No. 040-2020 adopted by the City Council of the City of Cloverdale on the 8th day of April 2020.



Irene Camacho-Werby, City Clerk



**AGREEMENT BETWEEN THE CITY OF CLOVERDALE
AND THE SONOMA COUNTY WASTE MANAGEMENT AGENCY
PROVIDING POLYSTYRENE ORDINANCE ADMINISTRATION SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2020 (“Effective Date”), by and between the City of Cloverdale, a municipal corporation of the State of California (“City”), and the SONOMA COUNTY WASTE MANAGEMENT AGENCY, a California joint powers agency (“Agency”).

RECITALS

WHEREAS, the Agency is a joint powers agency established and operating pursuant to that certain Amended and Restated Joint Exercise of Powers Agreement dated March 1, 2017 (the “JPA Agreement”). The City is a member of Agency under the terms of the JPA Agreement. The Agency provides certain core programs to its member agencies, and additionally has the authority to conduct planning activities and development of regional programs that are related to the furtherance of increasing waste diversion within the members’ jurisdictions, subject to review and approval of such additional programs by the members’ governing bodies.

WHEREAS, the additional programs that may be developed by the Agency for its members include the development of model ordinances related to waste diversion which may be considered by the legislative bodies of the members and implementation of waste diversion programs in member jurisdictions that are adopted pursuant to such model ordinances; and

WHEREAS, pursuant to such authority, the Agency developed a model ordinance prohibiting the use and sale of disposable food service ware and other products containing polystyrene foam (the “Polystyrene Ordinance”) and has developed educational, outreach and implementation materials to assist in the implementation of such Polystyrene Ordinance; and

WHEREAS, adoption of the Polystyrene Ordinance by the City will help to reduce or eliminate the use of polystyrene foam and other non-compostable and non-recyclable disposable food service ware items, which will maximize the operating life of landfills, lessen the economic and environmental costs of waste management for businesses and residents of Sonoma County, and further protect the public health and safety of residents, the natural environment, waterways and wildlife, which is consistent with the Agency’s overarching purpose of increasing waste diversion in the jurisdictions of its members, and the Agency therefore desires to encourage member agencies to adopt the Polystyrene Ordinance; and

WHEREAS, in order to encourage its members to adopt the Polystyrene Ordinance, the Agency is willing to indemnify, defend and hold harmless individual members that are made party to any claim, suit or similar proceeding challenging the validity of the Polystyrene Ordinance or the provision of the Administration and Implementation Services (as defined in Section 2(a)(2) of this Agreement), including but not limited to a challenge to such Polystyrene Ordinance under the California Environmental Quality Act (Public Resources Code §§21000 *et seq.*) (“CEQA”); and

WHEREAS, the City and Agency desire to enter into this Agreement to set forth the terms of such indemnity;

WHEREAS, the City further desires that the Agency take responsibility for the implementation of the Polystyrene Ordinance within the City; and

WHEREAS, the Agency has the authority pursuant to Section 5.B of the JPA Agreement to enter into an agreement with the City to implement and/or participate in the enforcement of the Polystyrene Ordinance; and

WHEREAS, the Agency agrees to provide such administrative and enforcement services as are described herein, on the terms and condition specified in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the City and Agency agree as follows:

Section 1. Incorporation of Recitals

The above recitals, including the paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

Section 2. Responsibilities Under the Agreement

a. Agency Responsibilities. Agency shall do the following:

1. Subject to the terms of this Agreement, the Agency shall provide outreach and educational materials, and draft administrative procedures to be used in the implementation of the Polystyrene Ordinance.

2. The Agency shall additionally serve as the City's representative in the administration and implementation of the Polystyrene Ordinance. The administrative and implementation services to be provided by Agency include but shall not be limited to contacting food establishments and food providers in response to complaints and conducting inspections to determine whether a violation occurred, providing technical assistance for compliance to the ordinance, reviewing and making recommendations to the City Manager or designee on requests from exemptions from the Polystyrene Ordinance, issuing written warning notices for violations of the Polystyrene Ordinance, and coordinating with the City Attorney's office on any further enforcement action as may be allowed under the Polystyrene Ordinance ("Administration and Implementation Services").

3. The Agency shall meet with the appropriate City personnel on an annual basis, at a time and location to be chosen convenient for both parties, to assess the status of this Agreement and to discuss any modifications thereto.

b. City Responsibilities. City shall do the following:

1. Provide the outreach and educational materials regarding the Polystyrene Ordinance to any food provider, retail vendor or special event promoter, as those terms are defined in the Polystyrene Ordinance that is applying for a business license or special event permit pursuant to the City's Municipal Code.

2. Communicate with and assist the Agency so far as reasonably appropriate in carrying out the terms of this Agreement.

3. Meet with the appropriate Agency personnel on an annual basis, at a time and location to be chosen convenient for both parties, to assess the status of this Agreement and to discuss any modifications thereto.

c. Agency and City Responsibilities. The responsibilities listed hereunder shall not be construed so as to preclude existing or future Agency or City rights and responsibilities.

Section 3. Term

This Agreement shall commence on the Effective Date and shall remain in effect so long as not Terminated by either party pursuant to Section 5.

Section 4. Indemnification

The Agency shall indemnify, defend (with counsel selected by the Agency and reasonably acceptable to the City) and hold harmless the City, and its officers, employees, agents, and volunteers, from and against all claims (including any and all actions, causes of action, claims, attorneys' fees, costs, demands, lawsuits, liens, and liabilities of any kind and nature) that challenge the validity of the Polystyrene Ordinance, including but not limited to challenges under the California Environmental Quality Act, or that arise out of or relate to the Agency's administration or implementation of the Polystyrene Ordinance as provided for in this Agreement, except if such claim is a result of City's (including its officers, employees, agents, and volunteers) enforcement of the Polystyrene Ordinance, or the City's negligence or willful misconduct, then City shall indemnify and defend the Agency (with counsel selected by the City and reasonably acceptable to the Agency) from any such claim. In the event that a claim against City is initiated or filed and concerns the Polystyrene Ordinance or the Agency's administration or enforcement of the Ordinance, City agrees to fully cooperate with Agency in its attempts to resolve or defend such challenge. This indemnification obligation shall survive the termination of this Agreement for the fullest period of time allowed by law.

Section 5. Termination

This Agreement may be terminated for the following reasons:

a. Upon the termination of the Polystyrene Ordinance or a substantial change in such ordinance; or

b. For any reason by either party at any time during the term of this Agreement, provided that written notice is given pursuant to Section 8 six (6) months prior to the effective date of termination.

Section 6. Conflict Between Agreement and Ordinance

Any conflict between the terms of this Agreement and the Polystyrene Ordinance shall be resolved in favor of the Polystyrene Ordinance.

Section 7. Applicable Laws/Venue

In the performance of the services required by this Agreement, both parties shall comply with all applicable Federal, State, County, and City statutes, ordinances, regulations, directives, and laws. The interpretation and performance of this Agreement shall be governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in the Superior Court of the County of Sonoma.

Section 8. Notice

All notices, consents, demands, and other communications from one party to the other given pursuant to the terms of this Agreement or under the laws of the State of California, shall be deemed to have been delivered when deposited in the United States Mail, certified or registered, postage prepaid, addressed to City or Agency at the respective addresses specified below or to such other place as City or Agency may from time to time designate in a written notice to the other:

City	City of Cloverdale 124 N. Cloverdale Blvd. Cloverdale, CA 95425 Attn: City Manager
Agency:	Sonoma County Waste Management Agency 2300 County Center Dr. B100 Santa Rosa, CA 95403 Attn: Executive Director

Nothing herein shall prevent service of notice by other reliable means, except to the extent required by law, including but not limited to personal service, Express Mail, or other forms of reliable mail service other than the U.S. Postal Service.

Section 9. Complete Agreement.

There are no oral agreements between City and Agency affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between City and Agency or displayed by City to Agency with respect to the subject matter of this Agreement. There are no representations between City and Agency other than those contained in this Agreement, and all reliance with respect to any representations is based solely upon the terms of this Agreement.

Section 10. Amendment.

This Agreement may be amended by the City and Agency only by a written agreement signed by both parties.

Section 11. Assignment.

Neither the City nor the Agency shall assign its rights or obligations hereunder.

Section 12. Severability.

If any provisions of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. In the event the entire Agreement is unenforceable, then this Agreement shall immediately terminate, and the revocable license described herein shall be deemed revocable.

Section 13. Attorneys' Fees.

In the event that any legal action or proceeding is commenced to enforce or interpret the provisions of this Agreement or any rights arising out of this Agreement, each party in such legal action shall bear attorneys' fees, including expert fees and the costs of enforcing any judgment.

Section 14. Non-liability of Officials, Employees and Agents.

No governing board member, official, employee, agent, or volunteer of either party shall be personally liable for any damages related to any default or breach by the other party, or for any obligations under the terms of this Agreement.

Section 15. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the parties to any one of such counterpart signature pages; all of such counterpart signature pages shall read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF CLOVERDALE,
a municipal corporation

SONOMA COUNTY WASTE
MANAGEMENT AGENCY,
a California joint powers agency

By: _____
David Kelly
City Manager

By: _____
Leslie Lukacs
Executive Director

Approved as to form

Approved as to form

By: _____
Jose Sanchez
City Attorney

By: _____
Ethan Walsh
Agency Counsel

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