

# KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

## AGENDA

A Regular Meeting of the Board of Directors of the Kensington Police Protection and Community Services District will be held Thursday, April 14, 2011, at 7:00 P.M., at the Community Center, 59 Arlington Avenue, Kensington, California.

Note: All proceedings of this meeting will be tape recorded and *please note the 7 P.M. start time.*

Roll Call  
Public Comments  
Board Member/ Staff Comments

### APPROVAL OF CONSENT CALENDAR

- a) Minutes of the Regular Meeting March 10, 2011, Page 3
- b) Profit & Loss Budget Performance for March 2011, Page 9
- c) Board Member Reports-None
- d) Correspondence- None
- e) Police Department Update, Page 14
- f) Monthly Calendar, Page 24
- g) Recreation Report Page 26
- h) General Manager Update, Page 27

### DISTRICT – OLD BUSINESS

1. Director Cathie Kosel will present to the Board a resolution to correct gender imbalance by hiring female police officers at its earliest opportunity. Director Chuck Toombs will present to the Board an alternative resolution, Resolution 2011-005, regarding diversity in the workforce and volunteers. This item was tabled from the March 10<sup>th</sup> meeting. Possible Board Action. Page 30

General Manager Greg Harman will present to the Board Bay View's request for a 6% increase to rates to begin in 2011. Possible Board Action. Page 40

### DISTRICT - NEW BUSINESS

1. Officer Rodney Martinez will present to the Board a recommendation for the purchase of a replacement police vehicle that was budgeted for in this current fiscal year. Possible Board Action. Page 146
2. General Manager Greg Harman will present to the Board for adoption Resolution 2011-06 of the Kensington Police Protection & Community Services District initiating proceedings for the levy and collection of assessments for the Kensington Park Assessment District for Fiscal Year 2011/2012. Board Action. Page 156
3. General Manager Greg Harman will present to the Board for adoption Resolution 2011-07 of the Kensington Police Protection & Community Services District approving the Annual Report for the Kensington Park Assessment District for Fiscal Year 2011/2012. Board Action. Page 159
4. General Manager Greg Harman will present to the Board for adoption Resolution 2011-08 of the Kensington Police Protection & Community Services District declaring its intention to levy and collect assessments for the Kensington Park Assessment District for Fiscal Year 2011/2012. Board Action. Page 221
5. General Manager Greg Harman will present to the Board a recommendation from the Park Restroom Committee to award the contract for the park restroom project to ERA Construction of Richmond for \$136,710.38. Board Action. Page 224
6. General Manager Greg Harman will present to the Board a recommendation to renew the contract with All City Management Services to provide school crossing guard services for Fiscal Year 2011-2012 in the amount of \$9,626.00. Board Action. Page 246
7. General Manager Greg Harman will present to the Board a recommendation to enter into contract with Saviano Company Inc. to repair the playing surface of the Kensington Park tennis courts at a total cost of \$7,500.00. Board Action. Page 250
8. General Manager Greg Harman will present to the Board the opportunity to make a nomination to the SDRMA Board of Directors for a term beginning January 1, 2012 and ending December 31, 2015. Possible Board Action. Page 261

Board President Chuck Toombs will present to the Board a request to retain Brown Taylor as special employee to the District to facilitate the administration of the General Manager/ Chief of Police Annual Goal Setting and Performance Appraisal and to approve payment for such services as are set forth in the accompanying budget. Board Action. Page 280

10. Nicole Kaiser will request a letter of support from the Board for the initial application for a grant from the Diablo Firesafe Council for \$5,000.00 to help fund fuel load reduction and increase safety in the south west corner of Kensington Park. This funding along with contributions of labor and funds from neighbors would help the District to mitigate the fire hazard posed by the highly combustible Acacia, invasive ivy, briars, and thistle prior to fire season. Possible Board Action. Page 322

## ADJOURNMENT

### General Information

### Accessible Public Meetings

NOTE: UPON REQUEST THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT WILL PROVIDE WRITTEN AGENDA MATERIALS IN APPROPRIATE ALTERNATIVE FORMATS, OR DISABILITY-RELATED MODIFICATION OR DISABILITIES TO PARTICIPATE IN PUBLIC MEETINGS. PLEASE SEND A WRITTEN REQUEST, INCLUDING YOUR NAME, MAILING ADDRESS, PHONE NUMBER AND A BRIEF DESCRIPTION OF THE REQUESTED MATERIALS AND PREFERRED ALTERNATIVE FORMAT OR AUXILARY AID OR SERVICE AT LEAST 10 DAYS BEFORE THE MEETING. REQUESTS SHOULD BE SENT TO:

District General Manager Greg Harman, Kensington Police Protection & Community Services District, 217 Arlington Ave, Kensington, CA 94707  
POSTED: Public Safety Building-Colusa Food-Library-Arlington Kiosk- and at [www.kensingtoncalifornia.org](http://www.kensingtoncalifornia.org)

Complete agenda packets are available at the Public Safety Building and the Library.

# KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS

## Meeting Minutes for 3/10/2011

### AGENDA

A Regular meeting of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, March 10, 2011, 6:30 PM, at the Community Center, 59 Arlington Avenue, Kensington, California.

### ATTENDEES

Elected Members	Guests/Presenters:	
Charles Toombs, President	Lynn Wolter	Gloria Morrison
Linda Lipscomb, Vice President	Joan Gallegos	Nicki Kaiser
Tony Lloyd, Director	Joel Koosed	Don Ticek
Mari Metcalf, Director	Melissa Holms Snyder	Catherine DeNeergard
Cathie Kosel, Director	Bryce Nesbitt	John Stein
	Bruce Morrow	Vida Dorroh
	Kim Zvik	Mark Choi
	Elena Caruthers	Kathy McGuire
	Anthony Knight	Patrick McGuire
<b>Staff Members</b>		
Gregory E. Harman, General Manager/ Chief of Police	Jerry Fahy	Anthony Terrace
	Samane Nili	Charles Jennings
Acting Sergeant Kevin Hui	Chris Deppi	Nash Nili
	Eric Potts	Robert Lindquist
	Bill Wright	Debra Lane
	Jeff Schoppert	Greg Christie
	Anthony Terrace	

**ANNOUNCEMENTS:** Board President Charles Toombs announced that public and Board comments will be held following the closed session.

Pursuant to California Government Code Section 54956.9(b), the board entered into Closed Session at 6:31 PM to discuss the following:

- Conference with Legal Counsel
- Anticipated Litigation/ Threat of Litigation
- Exposure to litigation pursuant to subdivision (b) of Section 54956.9- One potential case

The Board returned to open session at 1915 P.M.

**ANNOUNCEMENTS:** Board President Charles Toombs announced that the Board took no action.

**KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS**

**PUBLIC COMMENTS**

Melissa Holms Snyder began to read a letter from the Kensington Improvement Club regarding Bay View's request for a rate increase. President Toombs informed her that the item was on the agenda under New Business #1 and requested that she make her comments at that time.

**BOARD COMMENTS**

Director Lloyd provided an update on the LAFCO meeting he attended on March 9<sup>th</sup>.

Director Metcalf inquired about the possibility of arranging to have the KPPCSD meetings held in the main room of the Community Center.

Director Kosel supported Director Metcalf's request.

**PUBLIC COMMENTS**

Nicki Kaiser, Joan Gallegos, Bryce Nesbitt, and Bruce Morrow provided comments on the use of the main room and the possibility of using Building E.

**CONSENT CALENDAR**

Director Kosel requests Items B "Profit & Loss Budget Report" & C "Variance Report" be pulled. Board discussion follows.

**MOTION: Director Kosel moves and President Toombs seconds to adopt the Consent Calendar.**

**AYES: Toombs, Lipscomb, Lloyd, Metcalf, Kosel**

**NOES: 0**

**ABSENT: 0**

**OLD BUSINESS #1** - Contra Costa County Public Works Senior Civil Engineer- Traffic Section, Jerry Fahy will return to update the Board and the public on the steps the County has taken to mitigate traffic concerns on the Arlington, the status of the solar powered radar sign, and mitigation efforts on Franciscan Way. Possible Board Action.

**BOARD COMMENTS**

Director Metcalf asked Jerry Fahy if bollards could be used to increase safety in the area. Jerry Fahy stated that the use of bollards was not an approved traffic control device. When asked about guard rails, he stated the area did not meet the standards due to the fact that end treatments could not be used because of the short distance between driveways.

Director Metcalf then asked if the District could install bollards. President Toombs asked if the District would then assume the risks for the installation. Jerry Fahy stated that even if the District installed bollards, the County would still be named in any lawsuit that was filed as a result.

# KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS

Director Kosel then asked Jerry Fahy if he was an expert in traffic calming and he replied no. He then continued to address the issue of the solar powered radar sign and mentioned that the sign could be programmed not to run 24 hours a day, 7 days a week.

## PUBLIC COMMENTS

Bryce Nesbitt, Samane Nili, Don Ticek, Catherine DeNeergard, Kathy McGuire, Anthony Terrace, Charles Jennings, Chris Deppi, Nash Nili, Nicki Kaiser, and Eric Potts all made public comments.

## BOARD COMMENTS

Director Kosel stated she would like to have the sign in a location that Jerry Fahy thinks is best. She also asked if he could provide a listing of firms that provide traffic calming advice.

Director Metcalf asked about physical barriers like guard rails. Jerry Fahy responded that they would need to be behind the sidewalk area and therefore not effective in pedestrian safety.

President Toombs stated he would like to see the sign installed now.

Vice President Lipscomb stated that the District has to install the sign now.

Director Lloyd stated that the District needs to go with the subject matter experts and program the sign to the times when it would be most effective and turn it off when it is not.

**MOTION: Made by Director Kosel and seconded by President Toombs to direct the County to install the solar radar sign in the area designated by Jerry Fahy.**

**AYES: Toombs, Lipscomb, Lloyd, Metcalf, and Kosel      NOES: 0      ABSENT: 0**

**OLD BUSINESS #2** - Director Tony Lloyd will update the Board and the community on the status of the KPPCSD Ad-Hoc Pathways Committee's work and progress.

## BOARD COMMENTS

Director Metcalf asked Director Lloyd how many paths were there in Kensington.

## PUBLIC COMMENTS- None

**MOTION: None**

**AYES:0      NOES: 0      ABSENT: 0**

**NEW BUSINESS #1** - General Manager Greg Harman will update the Board on Bay View's request for a 6% Increase to rates to begin in 2011.

## BOARD COMMENTS

5

# KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS

Director Lloyd asked General Manager Harman was the contract with Bay View through 2015 and he responded yes.

Vice President Lipscomb stated that all of the Bay View contracts were available for review on the District's website.

Director Metcalf stated she does not agree that Bay View does not deserve a rate increase, stating we can give an increase if we want to.

Following a statement made by Vice President Lipscomb regarding Bay View's 12% profit margin, Director Kosel indicated that she was correct. Director Kosel then stated that we need to negotiate in good faith with Bay View.

## PUBLIC COMMENTS

Melissa Holms Snyder, Robert Lindquist, Chris Deppi, Joan Gallegos, Gloria Morrison, Bill Wright, Nicki Kaiser, Debra Lane, and John Stein all made public comments. Bay View representatives Jeffrey Schoppert and Greg Christie made statements on behalf of Bay View and indicated that Mr. Figone had no interest in selling the business however he will assign it away.

**MOTION: None**

**AYES:        NOES: 0        ABSENT: 0**

**NEW BUSINESS #2** – Kensington Community Council (KCC) Board President Bruce Morrow will ask the Board for permission to improve the drainage system in the rear of the Community Center Building, and will discuss the engineering drawings that have been prepared, a possible contractor, and the donation of \$20,000 to fund the improvements. Possible Board Action.

## BOARD COMMENTS

President Toombs stated that KCC and Tom Clark are contracting to do the work and not KPPCSD.

Director Kosel expressed her gratitude to KCC for doing the work.

## PUBLIC COMMENTS

Debra Lane stated that the payment bond would pass on all costs to the contractor.

## BOARD COMMENTS

Vice President Lipscomb stated that there needed to be a working agreement between KCC and KPPCSD, in reference to New Business Item # 3.

At 9:58 P.M., Vice President Lipscomb made a motion to extend the time of the meeting, seconded by Director Lloyd, with the Board passing 5-0.

**KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS**

**MOTION: Made by President Toombs, seconded by Vice President Lipscomb, to proceed with the improvement of the drainage system behind the Community Center building as proposed by KCC. Motion passes 5-0.**

**AYES: Toombs, Lipscomb, Lloyd, Metcalf, and Kosel      NOES: 0      ABSENT: 0**

**NEW BUSINESS #3** - Kensington Community Council (KCC) Board President Bruce Morrow will ask the Board to vote to approve the agreement between the KPPCSD and the KCC that was presented to the Board at the January 13, 2011 board meeting. Possible Board Action.

**BOARD COMMENTS**

Following Bruce Morrow's presentation, Director Lloyd stated it was a reasonable proposal and partnership between the two community groups.

Vice President Lipscomb stated she was a proponent of KCC and their activities.

At 10:15 P.M., Vice President Lipscomb made a motion to extend the time of the meeting, seconded by President Toombs, with the Board passing 5-0.

President Toombs then indicated that he did not like this contract and that he could not agree to KCC acting as KPPCSD agent.

Director Metcalf stated she supported the agreement.

**MOTION: By Director Kosel to approve the agreement with KCC, seconded by Director Metcalf. Motion passes 3-1-1.**

**AYES: Kosel, Metcalf, Lloyd      NOES: Toombs      ABSTENTION: Lipscomb**

**NEW BUSINESS #4** - Director Cathie Kosel will present to the Board a resolution to correct gender imbalance by hiring female police officers at its earliest opportunity. Director Chuck Toombs will present to the Board an alternative resolution, Resolution 2011-005, regarding diversity in the workforce and volunteers. Possible Board Action.

**MOTION: By Director Metcalf to table this item until April, seconded by Director Kosel. Motion Passes 5-0.**

**AYES: Toombs, Lipscomb, Kosel, Metcalf, and Lloyd      NOES: 0      ABSENT: 0**

**The board moves to adjourn the meeting at 10:30 PM.**

# KENSINGTON POLICE PROTECTION & COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS

**Note:** An audio recording of all KPPCSD Board meetings is available on the website at [www.kensingtoncalifornia.org](http://www.kensingtoncalifornia.org) under the KPPCSD Board drop down.

Beginning with the February 2011 meeting, CD copies of video recordings of the meetings can be obtained at cost at the District office. Please contact Acting Sergeant Kevin Hui to request a copy of a CD.



Ki SD  
**Unaudited Profit & Loss Budget Performance**  
 March 2011

Ordinary Income/Expense	<u>Mar 11</u>	<u>Budget</u>	<u>Jul '10 - Mar 11</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
<b>Income</b>					
<b>400 · Police Activities Revenue</b>					
401 · Levy Tax	-257.21		1,239,343.06	1,234,000.00	1,234,000.00
402 · Special Tax-Police	0.00		679,980.00	680,130.00	680,130.00
404 · Measure G Supplemental Tax Rev	0.00		405,721.40	405,720.00	405,720.00
410 · Police Fees/Service Charges	210.00	166.67	1,265.00	1,499.99	2,000.00
414 · POST Reimbursement	0.00		3,336.16		
415 · Grants-Police	0.00		61,128.96		
416 · Interest-Police	0.00		2,484.60	3,000.00	6,000.00
418 · Misc Police Income	1,759.39	1,000.00	11,953.18	9,000.00	12,000.00
419 · Supplemental W/C Reimb (4850)	0.00		37,494.22		
<b>Total 400 · Police Activities Revenue</b>	<u>1,712.18</u>	<u>1,166.67</u>	<u>2,442,706.58</u>	<u>2,333,349.99</u>	<u>2,339,850.00</u>
<b>420 · Park/Rec Activities Revenue</b>					
421 · Levy Tax-Park/Rec	0.00		31,127.64		
424 · Special Tax-L&L	0.00		0.00	30,000.00	30,000.00
426 · Park Donations	0.00	41.67	0.00	375.03	500.00
427 · Community Center Revenue	2,162.50	1,666.67	7,647.50	14,999.99	20,000.00
428 · Building E Revenue	0.00		6,109.00		
435 · Grants-Park/Rec	0.00	8,500.00	0.00	76,500.00	102,000.00
436 · Interest-Park/Rec	0.00		0.00	150.00	300.00
438 · Misc Park/Rec Rev	0.00	83.33	396.00	750.01	1,000.00
<b>Total 420 · Park/Rec Activities Revenue</b>	<u>2,162.50</u>	<u>10,291.67</u>	<u>45,280.14</u>	<u>122,775.03</u>	<u>153,800.00</u>
<b>440 · District Activities Revenue</b>					
448 · Franchise Fees	0.00		13,380.74	14,000.00	21,000.00
456 · Interest-District	0.00		0.00	400.00	800.00
458 · Misc District Revenue	225.00		3,201.02		
<b>Total 440 · District Activities Revenue</b>	<u>225.00</u>		<u>16,581.76</u>	<u>14,400.00</u>	<u>21,800.00</u>
<b>Total Income</b>	<b>4,099.68</b>	<b>11,458.34</b>	<b>2,504,568.48</b>	<b>2,470,525.02</b>	<b>2,515,450.00</b>

6

KF SD  
**Unaudited Profit & Loss Budget Performance**  
March 2011

	<u>Mar 11</u>	<u>Budget</u>	<u>Jul '10 - Mar 11</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
<b>Expense</b>					
<b>500 · Police Sal &amp; Ben</b>					
502 · Salary - Officers	76,383.40	75,581.50	687,990.10	680,233.50	906,978.00
504 · Compensated Absences	0.00	10,000.00	0.00	10,000.00	10,000.00
506 · Overtime	6,159.46	3,333.34	28,171.71	29,999.98	40,000.00
508 · Salary - Non-Sworn	1,779.26	4,333.34	26,039.09	38,999.98	52,000.00
516 · Uniform Allowance	666.60	666.66	6,107.39	6,000.02	8,000.00
518 · Safety Equipment	0.00	208.34	721.20	1,874.98	2,500.00
521-A · Medical/Vision/Dental-Active	11,751.93	32,677.75	119,499.37	294,099.75	392,133.00
521-R · Medical/Vision/Dental-Retired	11,495.03	0.00	328,736.09	0.00	0.00
522 · Insurance - Police	657.31	1,016.66	6,126.39	9,150.02	12,200.00
523 · Social Security/Medicare	1,111.35	1,228.84	9,700.42	11,059.48	14,746.00
524 · Social Security - District	110.31	268.66	1,614.36	2,418.02	3,224.00
527 · PERS - District Portion	21,515.48	21,349.50	193,789.97	192,145.50	256,194.00
528 · PERS - Officers Portion	6,934.48	6,862.34	62,458.90	61,760.98	82,348.00
530 · Workers Comp	6,710.24	11,670.50	27,926.65	35,011.50	46,682.00
<b>Total 500 · Police Sal &amp; Ben</b>	<b>145,274.85</b>	<b>169,197.43</b>	<b>1,498,881.64</b>	<b>1,372,753.71</b>	<b>1,827,005.00</b>
<b>550 · Other Police Expenses</b>					
552 · Expendable Police Supplies	25.00	166.67	271.19	1,500.03	2,000.00
553 · Range/Ammunition Supplies	440.00	333.33	3,394.95	2,999.97	4,000.00
560 · Crossing Guard	802.20	802.17	6,451.98	7,219.53	9,626.00
562 · Vehicle Operation	5,558.58	3,125.00	31,253.34	28,125.00	37,500.00
564 · Communications (RPD)	0.00	11,386.67	62,955.39	102,480.03	136,640.00
566 · Radio Maintenance	0.00	366.67	0.00	3,300.03	4,400.00
568 · Prisoner/Case Exp./Booking	280.00	416.67	4,131.87	3,750.03	5,000.00
570 · Training	1,250.92	1,000.00	12,119.84	9,000.00	12,000.00
572 · Recruiting	0.00	637.50	7,138.00	5,737.50	7,650.00
574 · Reserve Officers	84.00	666.67	3,225.36	6,000.03	8,000.00
576 · Misc. Dues, Meals & Travel	13.00	275.00	2,417.08	2,475.00	3,300.00
580 · Utilities - Police	626.50	666.67	6,533.52	5,999.99	8,000.00

**KI SD**  
**Unaudited Profit & Loss Budget Performance**  
March 2011

	<u>Mar 11</u>	<u>Budget</u>	<u>Jul '10 - Mar 11</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
581 · Bldg Repairs/Maint.	0.00	83.33	571.16	750.01	1,000.00
582 · Expendable Office Supplies	94.85	500.00	4,121.90	4,500.00	6,000.00
588 · Telephone(+Rich. Line)	655.08	920.67	5,920.66	8,285.99	11,048.00
590 · Housekeeping	332.95	416.67	2,925.02	3,749.99	5,000.00
592 · Publications	0.00	250.00	2,121.75	2,250.00	3,000.00
594 · Community Policing	0.00	416.67	1,082.96	3,750.03	5,000.00
596 · WEST-NET/CAL I.D.	0.00		12,656.00	12,472.00	12,472.00
598 · COPS Special Fund	0.00		0.00		
599 · Measure G Administration	391.65		1,553.50		
<b>Total 550 · Other Police Expenses</b>	<b>10,554.73</b>	<b>22,430.36</b>	<b>170,845.47</b>	<b>214,345.16</b>	<b>281,636.00</b>
<b>600 · Park/Rec Sal &amp; Ben</b>					
601 · Park & Rec Administrator	567.42	541.67	3,459.74	4,875.03	6,500.00
602 · Custodian	1,750.00	2,000.00	15,750.00	18,000.00	24,000.00
623 · Social Security/Medicare - Dist	43.41	41.42	264.74	372.78	497.00
<b>Total 600 · Park/Rec Sal &amp; Ben</b>	<b>2,360.83</b>	<b>2,583.09</b>	<b>19,474.48</b>	<b>23,247.81</b>	<b>30,997.00</b>
<b>635 · Park/Recreation Expenses</b>					
<b>640 · Community Center Expenses</b>					
642 · Utilities-Community Center	365.04	396.33	3,306.32	3,566.97	4,756.00
643 · Janitorial Supplies	0.00		52.02	1,500.00	1,500.00
646 · Community Center Repairs	1,113.23	83.33	9,931.42	749.97	1,000.00
<b>Total 640 · Community Center Expenses</b>	<b>1,478.27</b>	<b>479.66</b>	<b>13,289.76</b>	<b>5,816.94</b>	<b>7,256.00</b>
<b>660 · Annex Expenses</b>					
662 · Utilities - Annex	23.76	41.67	657.50	374.99	500.00
668 · Misc Annex Expenses	0.00	41.67	0.00	375.03	500.00
<b>Total 660 · Annex Expenses</b>	<b>23.76</b>	<b>83.34</b>	<b>657.50</b>	<b>750.02</b>	<b>1,000.00</b>
670 · Gardening Supplies	0.00	166.67	0.00	1,499.99	2,000.00
672 · Kensington Park O&M	2,355.00	5,133.33	30,269.62	46,200.01	61,600.00
678 · Misc Park/Rec Expense	23.82	166.67	218.82	1,499.99	2,000.00

KF SD  
**Unaudited Profit & Loss Budget Performance**  
March 2011

	<u>Mar 11</u>	<u>Budget</u>	<u>Jul '10 - Mar 11</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
<b>Total 635 · Park/Recreation Expenses</b>	3,880.85	6,029.67	44,435.70	55,766.95	73,856.00
<b>800 · District Expenses</b>					
810 · Computer Maintenance	1,765.60	2,502.83	27,507.12	22,525.51	30,034.00
820 · Cannon Copier Contract	405.41	430.00	4,417.33	3,870.00	5,160.00
830 · Legal (District/Personnel)	0.00	4,166.67	22,008.90	37,499.99	50,000.00
835 · Consulting	0.00	400.00	4,380.00	3,000.00	4,000.00
840 · Accounting	2,441.07	2,150.00	20,716.07	19,350.00	25,800.00
850 · Insurance	0.00		28,956.41	30,000.00	30,000.00
860 · Election	3,501.74	1,000.00	10,443.24	9,000.00	12,000.00
865 · Police Bldg. Lease	14,420.00		28,840.00	14,420.00	28,840.00
870 · County Expenditures	17,152.30	1,658.33	25,400.59	14,925.01	19,900.00
890 · Waste/Recycle	3,311.50	208.33	14,180.43	1,875.01	2,500.00
898 · Misc. Expenses	160.93	787.50	6,795.39	7,087.50	9,450.00
800 · District Expenses - Other	2,458.00		2,458.00		
<b>Total 800 · District Expenses</b>	<u>45,616.55</u>	<u>13,303.66</u>	<u>196,103.48</u>	<u>163,553.02</u>	<u>217,684.00</u>
<b>950 · Capital Outlay</b>					
962 · Patrol Cars	0.00		0.00	30,000.00	30,000.00
963 · Patrol Car Accessories	0.00		3,382.38		
969 · Computer Equipment	1,263.77		1,263.77		
972 · Park Buildings Improvement	104.94	17,500.00	7,182.78	97,500.00	150,000.00
978 · Pk/Rec Furn/Eq	-1,456.00		-1,456.00		
<b>Total 950 · Capital Outlay</b>	<u>-87.29</u>	<u>17,500.00</u>	<u>10,372.93</u>	<u>127,500.00</u>	<u>180,000.00</u>
<b>Total Expense</b>	<u>207,600.52</u>	<u>231,044.21</u>	<u>1,940,113.70</u>	<u>1,957,166.65</u>	<u>2,611,178.00</u>
<b>Net Ordinary Income</b>	-203,500.84	-219,585.87	564,454.78	513,358.37	-95,728.00
<b>Other Income/Expense</b>					
<b>Other Expense</b>					
700 · Bond Issue Expenses					

KIPSD  
**Unaudited Profit & Loss Budget Performance**  
 March 2011

	<u>Mar 11</u>	<u>Budget</u>	<u>Jul '10 - Mar 11</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
701 · Bond Proceeds	0.00		-177,900.66		
710 · Bond Admin.	0.00		8,941.68		
715 · Bond Interest Income	0.00		-228.03		
720 · Bond Principal	0.00		105,422.05		
730 · Bond Interest	<u>27,871.20</u>		<u>57,982.62</u>		
Total 700 · Bond Issue Expenses	<u>27,871.20</u>		<u>-5,782.34</u>		
Total Other Expense	<u>27,871.20</u>		<u>-5,782.34</u>		
Net Other Income	<u>-27,871.20</u>	0.00	<u>5,782.34</u>	0.00	0.00
Net Income	<u><u>-231,372.04</u></u>	<u><u>-219,585.87</u></u>	<u><u>570,237.12</u></u>	<u><u>513,358.37</u></u>	<u><u>-95,728.00</u></u>

# March 2011 Police Department Report

April 8, 2011

- Department Personnel

Sergeant Khan is currently on Workman's Comp medical leave and will be retiring on medical disability on May 31<sup>st</sup>.

Reserve Officer Rodney Lafitte resigned his position in preparation for his move to Louisiana.

- Commendations and Correspondence- None this month

- Investigation of Alleged Misconduct

- Department Investigation #10-001 was initiated on September 20<sup>th</sup> on an allegation that an officer posted an inappropriate screen saver on a District computer. The investigation is being conducted by Sergeant Hull.

- Department Investigation #10-002 was initiated on November 2<sup>nd</sup> on an allegation that an officer was rude during a traffic stop. This investigation is being conducted by Sergeant Hull.

- Department Investigation #10-003 was initiated on November 11<sup>th</sup>, at the KPPCSD Board meeting, when Catherine de Neergaard made a formal complaint indicating, "That there is no fair, impartial, and reasonable police review procedure", after voicing her complaints regarding Chief Harman's policies and directions to the department were not being heard. This complaint was followed by an e-mail complaint received by Chief Harman on November 15<sup>th</sup>.

This complaint will be investigated by Chief Harman and will be presented to the Board at a future KPPCSD Board meeting.

- Department Investigation 11-001 was initiated on 02-24-11 on an allegation of discrimination. The investigation was completed by Chief Harman on 02-28-11 and administrative action was taken.

- 9-1-1 / Richmond Communication Center Information.

- The Ring Time Report for March documented 56 "911" calls received

with 4 having a ring time over 20 seconds.

The first occurred on 03-04-11, at 2:11 PM with a ring time of 24 seconds. This was a fire call in which the dispatcher spoke to the caller for 3 seconds.

The second occurred on 03-09-11, at 11:42 AM and was for 27 seconds. The dispatcher spoke to the caller for 3:21 minutes but no call for service was generated.

The third occurred on 03-18-11 at 8:44 PM and was for 31 seconds. This was a fire call in which the dispatcher spoke to the caller for 18 seconds.

The final one occurred on 03-30-11, at 10:56 PM and was for 58 seconds. The caller spoke to the dispatcher for 1:46 minutes but no call for service was generated.

The average ring time for the month of March was 7.1 seconds.

- Communication Center Service Complaints

- No complaints received this month however, ***this is a good time to remind everyone that for police non-emergencies, you need to contact the dispatch center at "236-0474" and not the KPPCSD business line of 526-4141.*** The KPPCSD business line is only monitored 6 hours a day during the week and should not be used to report police matters. Doing so, only delays the police response time, so please dial Dispatch direct.

- Community Networking

- On 03-02-11, Chief Harman attended the West County Police Chief's meeting in Hercules.
- On 03-12-11, Chief Harman and Acting Sergeant Kevin Hui attended the John Gioia community breakfast held at The Arlington.
- On 03-23-11, Chief Harman attended the Contra Costa County Police Chief's Association meeting held in Martinez.
- On 03-26-11, Chief Harman and Yolla Harman attended Sheriff David Livingston's Sheriff's Charity Ball in Alamo.

- Community Criminal Activity
  - This section of the Watch Commander's Report has been prepared by Sergeant Hull however, next month Sergeant Hull will prepare Team One's report and Sergeant Hui will prepare Team Two's report.
- Watch Commander Reports
  - **Sergeant Hull**

TEAM #1 STATISTICS

Sgt. Hull (K17) (1400-0200) Issued 2 moving citations, 2 parking tickets, and made 2 arrests.

Officer:	Stegman (K32) (0600-1800)	Wilson (K38) (1800-0600)
Days Worked	11	13
Traffic Stops	17	30
Moving Citations	17	22
Parking Citations	0	8
Vacation/Security	27	53
Checks		
FI-Field Interview	0	0
Cases	5	0
Self Initiated Cases	1	0
Arrests	9	0
Calls for Service	45	18

Officer Stegman attended a Patrol Rifle Instructor class (5 days).

Reserve Officer Colon issued 1 moving citations and 2 parking tickets.

Reserve Officer Lafitte issued 1 moving citation and 1 parking ticket.

Reserve Officer Turner assisted with 1 case, issued 21 moving citations and 1 parking tickets.

Reserve Officer Armanino assisted with 4 cases, issued 12 moving citations and 3 parking tickets.

Reserve Officer Foley issued 2 moving citations.

BRIEFING/TRAINING:

- Reviewed KPD Policy 314 – Vehicle Pursuit Policy
- Reviewed KPD Policy 328 – Discriminatory Harassment
- Reviewed Divorce and your Guns pamphlet.
- Reviewed KPD Policy 320 – Domestic Violence



- Discussed Preliminary investigations for Coroner's Cases
- Discussed West Contra Costa County Family Justice Center
- Reviewed KPD Policy 304 – Shooting Policy

**SERGEANT'S SUMMARY:**

The District made several arrests of individuals who were responsible for numerous crimes in the hill areas of Berkeley and El Cerrito. I would like to recognize the good job demonstrated by Officer Stegman in the course of training Reserve Turner. While conducting a neighborhood canvass they discovered a residence where several subjects had been squatting since October 2010. Seven people were arrested from this address and most had extensive criminal histories.

The Kensington Police Department continues to work toward a zero tolerance policy for traffic enforcement. I would like to encourage everyone to obey the rules of the road.

**Acting Sergeant Hui**

**TEAM #2 STATISTICS**

A.Sgt. Hui (K42) (1400-0200) Issued 6 moving citations.

Officer:	Martinez (K31) (0600-1800)	Medina (K35) (1800-0600)	Ramos (K41) (0730-1730)
Days Worked	12	14	18
Traffic Stops	20	74	28
Moving Citations	12	57	16
Parking Citations	3	4	9
Vacation/Security Checks	24	84	49
FI-Field Interview	0	0	0
Cases	2	0	3
Self Initiated Cases	0	0	0
Arrests	0	0	0
Calls for Service	49	23	37

Officer Martinez took 36 hours of Vacation.

Officer Medina took 20 hours of Vacation.

**BRIEFING/TRAINING:**

- Reviewed KPD Policy 300 – Use of Force
- Reviewed KPD Policy 304 – Shooting Policy

- o Reviewed KPD Policy 310 – Officer Involved Shooting
- o Reviewed KPD Policy 314 – Vehicle Pursuit
- o Reviewed case law: People v. Camino (Miranda)

**SERGEANT'S SUMMARY:**

I would like to recognize the hard work displayed by several officers who assisted with Officer Stegman's multiple arrests as well as other ongoing investigations.

As the weather warms up and we near summer, we will see an increase in solicitors. I would like to remind residents that solicitors are required to possess a Contra Costa County business license in order to solicit in Kensington (with the exception of religious organizations and political organizations). One of the reasons a business license is required is to ensure that the person soliciting is representing a legitimate company. Often times, people will pose as solicitors in an attempt to obtain your personal or financial information. I encourage residents to notify KPD of any solicitors in their neighborhood so that we can verify they are representing legitimate businesses.

**SIGNIFICANT EVENTS:**

- o 2011-1372 – On 3/01/2011, Officer Stegman responded to the 200 blk of Coventry Rd to a report of a vehicle theft.
- o 2011-1386 – On 3/01/2011, Officer Stegman and Reserve Armanino responded to the 200 blk of Amherst Ave on the report of an identity theft.
- o 2011-1433 – On 3/03/2011, Officer Medina responded to the 1500 blk of Oak View Ave on the report of a suspicious circumstance.
- o 2011-1442 – On 3/04/2011, Officer Martinez towed a vehicle on the 100 blk of Colusa Ave because the driver had a suspended license.
- o 2011-1469 – On 3/05/2011, Officer Martinez and Reserve Lafitte responded to the 600 blk of Canon Dr on an outside assist to Berkeley PD.
- o 2011-1476 – On 3/05/2011, Officer Martinez and Reserve Lafitte responded to the 300 blk of Berkeley Park Blvd on the report of a downed power line.
- o 2011-1485 – On 3/05/2011, Officer Medina and TAS Hui responded to the 200 blk of Arlington Ave on the report of a missing person.
- o 2011-1487 – On 3/06.2011, Officer Ramos responded to the 200 blk of Amherst Ave on the report of an auto burglary.
- o 2011-1509 – On 3/07/2011, Officer Ramos responded to the 200 blk of Willamette Ave on the report of residential fire alarm activation.

- 2011-1618 – On 3/12/2011, Officer Martinez and Reserve Armanino responded to the unit blk of Arlington Ave on the report of an unresponsive subject in the park.
- 2011-1656 – On 3/14/2011, Officer Stegman and Reserve Turner responded to the unit blk of Windsor Ave on a trespassing complaint.
- 2011-1667 – On 3/15/2011, Officer Stegman responded to the unit blk of Highgate Ave on the report of a residential burglary.
- 2011-1699 – On 3/17/2011, Officer Martinez responded to the 200 blk of Trinity Ave to a request for a civil standby.
- 2011-1806 – On 3/21/2011, Officer Stegman and Reserve Turner responded to the unit blk of Arlington Dr on the report of a fallen tree.
- 2011-1821 – On 3/22/2011, Officer Stegman responded to the 200 blk of Lake Dr on the report of annoying phone calls.
- 2011-1833 – On 3/23/2011, Officer Stegman responded to a phone report of lost property on the 500 blk of Coventry Rd.
- 2011-1912 – On 3/26/2011, Officer Ramos responded to the unit block of Highland Blvd on the report of an arson.
- 2011-1914 – On 3/26/2011, Officer Ramos responded to 300 blk of Berkeley Park Blvd on the report of stolen property.
- 2011-1953 – On 3/28/2011, Officer Stegman and Reserve Armanino responded to the 200 blk of Arlington Ave on the report of harassing phone calls.
- 2011-1957 – On 3/28/2011, Officer Stegman and Reserve Armanino responded to the 200 blk of Arlington Ave on the report of a forged check.
- 2011-1991 – On 3/30/2011, Officer Martinez responded to the 200 blk of Grizzly Peak Blvd to a report of harassing phone calls.
- 2011-2002 – On 3/31/2011, Officer Martinez and Officer Medina responded to the unit blk of Arlmont Dr on the report of a female screaming in the area.

#### TRAFFIC ENFORCEMENT:

- 63 moving citations were issued on Arlington Avenue.
- 51 moving citations were issued on Colusa Avenue.
- 12 moving citations were issued on Franciscan Way.
- 3 moving citations were issued on Coventry Road.
- 1 moving citation was issued on Berkeley Park Boulevard.
- 1 moving citation was issued on Windsor Avenue.
- 1 moving citation was issued on Yale Avenue.
- 1 moving citation was issued on Sea View Ave.
- 1 moving citation was issued on Central Ave.

•• **Detective Keith Barrow**

**SIGNIFICANT EVENTS:**

2011-1656 Trespassing, Possession of Burglary Tools, Receiving Stolen Property, and Auto Theft.

On 03-14-11, KPD Officers were conducting a follow-up investigation and contacted seven individuals at a residence located in the 00 block of Windsor Avenue. The residence was vacant and being remodeled. A stolen vehicle was located in the driveway that was linked to thefts in the cities of Berkeley and El Cerrito. The seven individuals were arrested for trespassing, possession of burglary tools, receiving stolen property, and auto theft. **This case will be submitted to the Contra Costa DA for prosecution.**

**2011-1618 Homicide**

**On 03-12-11, KPD Officers were dispatched to a possible dead body in the 00 block of Arlington Avenue. The individual was pronounced dead at the scene. This case is being investigated as a homicide.**

2011-1311 Petty Theft

On 02-25-11, Officer Medina took a reported theft of a license plate. The plate has been found on a stolen vehicle and two suspects have been taken into custody by Walnut Creek Police Department. This case may be connected to recent Kensington residential burglaries. This case is under investigation.

2011-921 Hit and Run

On 02-07-11, Officers Wilson and Turner responded to a hit and run vehicle collision. Due to Officer Wilson and Turner's preliminary report I was able to contact the suspect in the town of San Pablo. Officer's Wilson and Turner did a great job on this case. **The Contra Costa DA declined prosecution citing insufficient evidence and "can't prove knowledge".**

**KPD INVESTIGATIONS INFORMATION:**

2011-45, 46, 47, 48 50 and 50 Auto Burglary

During the month of January KPD took five reported auto burglaries with the point of entry made by window smash. These cases are under investigation.

2011-159 Residential Burglary

On 1-6-11, a resident reported their front door had been kicked open and property was stolen. The burglary had taken place during the hours of 1400 PM to 1600 PM. These cases are under investigation.

2010-6538 Petty Theft

On 12-07-10, a resident reported the theft of a garden fixture. **This case has been suspended.**

2010-6692, 6786 and 6867 Stolen Vehicle

On 12-15-10, 12-18-10 and 12-21-10 three vehicles were stolen. All three of the vehicles have been recovered by KPD. Two suspects have been identified and we will be filing charges with the Contra Costa DA.

**2010-5319 and 5351 Arson**

**On 10-16-10 and 10-17-10, Kensington Police Officers responded to fires at 59 Arlington Avenue, the Kensington Park building E. The fires were determined to be arsons. These cases are under investigation.**

2010-3491 Identity Theft.

Case under investigation.

2010-1457 Hit and Run Vehicle Accident.

A vehicle left the roadway and struck an AT&T phone box and two parked vehicles. **Charges have been filed in this case.** The suspect in this case has been arrested in another county for drug related offences. He will have to wait until the other county adjudicates its case before the suspect can be held to answer for the crimes committed in Kensington.

**KPD INVESTIGATIONS**

- Made several court runs for filing cases, and citation drop off's.
- Updated the KPD residential burglary log.
- Updated the KPD stolen vehicle log.
- I'm currently assigned one day per week as a Field Training Officer.

**WEST-NET ASIGNMENT:**

I am currently assigned to the West Contra Costa County Narcotic Enforcement Team (West-NET) one day per week.

While on this assignment I work with other west Contra Costa County law enforcement Officers and agencies. I participate and aid in the service of search warrants, surveillance and on going narcotics investigations.

**INVESTIGATORS SUMMARY:**

In the month of March the District of Kensington sustained 1 identity theft, 1 non-injury vehicle accident and 1 Hit and Run Vehicle Accident, 0 Injury Hit and Run Accident, 0 Injury Accident, 2 Residential Burglaries, 0 Attempted Residential Burglaries, 0 Commercial Burglary, 1 Auto Burglary, 1 Theft from an unlocked vehicle, 1 Stolen Vehicle, 0 Petty Theft, 0 Vandalisms, 0 Embezzlement, 0 Elder Abuse, 2 Frauds, 0 Forgery, 0 Attempted Grand Thefts, 0 Grand Thefts, and 1 Homicide.

•• **Chief Harman**

First an update on the on going traffic issues in the community.

Following the March 10<sup>th</sup> KPPCSD Board meeting, in which the Board directed Jerry Fahy of the County's Public Works Department to install the solar powered radar sign at 34 Arlington, Samane Nili contacted the Contra Costa County Public Works Director in protest, halting the installation. Ms. Nili had a scheduled meeting with the Public Works Director set for March 21<sup>st</sup> to discuss her concerns.

On March 24<sup>th</sup>, I was informed by Jerry Fahy that he was instructed to look at two other possible locations for the sign, which he intended to do the week of March 28<sup>th</sup>. He indicated that once he investigates other possible locations and meets with the Public Works Director and Supervisor John Gioia, he will provide me an update on the radar sign.

As you can see from the Sergeant's reports, we are continuing with our traffic enforcement efforts with 134 traffic citations issued during the month.

Starting Monday April 11<sup>th</sup>, Officer Ramos begins his 80-hours POST certified Motorcycle Officer training course. This course is the most difficult POST course to successfully complete in law enforcement. Good luck Manny!

Between Saturday, March 12<sup>th</sup> and Wednesday, March 16<sup>th</sup>, Kensington PD experience the busiest 5 days in the history of the department. Unfortunately, on Saturday, March 12<sup>th</sup>, we responded to the park on a report of an unresponsive subject. The subject was found deceased and we began our death investigation. On Monday, March 14<sup>th</sup>, at 9 AM, we were notified by the Coroner's Office that the preliminary investigation indicates that our victim was the victim of homicide.

This would be the first homicide in Kensington in 26 years. Detective Barrow was notified and responded from out of state to coordinate the investigation. Officer Stegman and Reserve Officer Turner were conducting a neighborhood check on Windsor, and came across what they believed at the time to be a residential burglary in progress. A perimeter was set and the search of the house resulted in the arrest of 7 individuals for trespassing. Recovered in driveway of the residence was a vehicle stolen out of Discovery Bay. In the vehicle we recovered property stolen out of Berkeley and El Cerrito. The suspects were identified as being responsible for the thefts and are believed to be responsible for several of the thefts that have been occurring in Kensington since December.

On Tuesday, March 15<sup>th</sup>, as we continued our preliminary homicide investigation and the investigation of the 7 suspects arrested Monday, we received a report of a residential burglary. While investigating the burglary, we received a report of a suspicious person in a vehicle in the park. We located the subject, who was in

possession of a vehicle stolen out of San Francisco, and who was connected to the suspects we arrested the day before.

These investigations were all occurring during the time we had a sergeant off on disability, two officers off sick for the week, and one officer unavailable for duty.

I would like to recognize Sergeant Hull, Acting Sergeant Hui, Detective Barrow, Officer Martinez, Officer Stegman, and Reserve Officers Armanino, Colon, Foley, and Turner for their efforts and outstanding dedication to service during this time. Not only did they begin the homicide investigation, make 8 arrests, recover two stolen vehicles, recover stolen property, and identify the suspects responsible for the thefts occurring in three jurisdictions, but they also continued to provide patrol coverage logging long shift hours.

Finally, we need your help. During the course of conducting these investigations, we spoke to people that reported hearing and seeing unusual activity but did not call the police. Examples include a witness that reported hearing yelling and screaming coming from the park the night of the homicide. Another witness reported that, "suspicious people have been going in and out of that house for weeks", referring to the house where the seven arrests were made. Finally, the most disturbing, a witness reported seeing the suspects breaking into a vehicle and then a residence, and watched while the resident chased the suspects down the street, and never called the police.

We can not do it alone. We need you to call when you see or hear something unusual. All of our patrol efforts, community policing, and Neighborhood Watch, will not prevent or reduce criminal activity if you do not call us.

Please call us. Let us determine whatever you thought was unusual, was not, because as the above examples demonstrate, your information could be very important.

# April 2011

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 27	28	29	30	31	Apr 1	2
3	4	5	6	7	8	9
	6:00pm Finance Com 7:00pm KCC, CCM 7:00pm Park Bldg Co	6:00pm Finance Com 7:00pm Park Bldg Co		6:00pm EBC, CC3 7:30pm EBC, CC3		6:00pm EBC, CC3
10	11	12	13	14	15	16
	6:00pm EBC, CC3 7:00pm KCC, CCM 7:30pm Park Bldg Co	6:00pm Park Bldg Co 7:00pm Park Bldg Co	7:00pm KFD Mtg; CC	6:00pm KPPCSD MTG 7:00pm GPF, CC3		
17	18	19	20	21	22	23
	6:00pm EBC, CC3 7:00pm Park Bldg Co	6:00pm EBC, CC3		6:00pm EBC, CC3		6:00pm EBC, CC3
24	25	26	27	28	29	30
	6:00pm EBC, CC3 7:00pm Park Bldg Co 7:30pm KIC; CC3	6:00pm EBC, CC3 7:30pm KMAC, CC3				6:00pm EBC, CC3

Mar 27 - Apr 2

Apr 3 - 9

Apr 10 - 16

Apr 17 - 23

Apr 24 - 30

22



# May 2011

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>May 1</b> 8:00am CC Rental	7:00pm KCC; CCM 7:00pm KCC; CCM	7:00pm KCC; CCM	7:00pm KFD Mtg; CC	7:30pm EBC; CC	7:00pm KCC; CCM	7:00pm KCC; CCM
<b>8</b>	7:00pm KCC; CCM 7:00pm KCC; CCM 7:00pm KCC; CCM	7:00pm KCC; CCM	<b>11</b> 7:00pm KFD Mtg; CC	<b>12</b> 6:00pm KPPCSD MTG 7:00pm GPF; CC	<b>13</b>	<b>14</b> 7:00pm KCC; CCM 7:00pm KCC; CCM
<b>15</b>	7:00pm KCC; CCM 7:00pm KCC; CCM	7:00pm KCC; CCM	<b>18</b>	<b>19</b> 7:30pm EBC; CC	<b>20</b>	<b>21</b> 7:00pm KCC; CCM 7:00pm KCC; CCM
<b>22</b>	7:00pm KCC; CCM 7:00pm KCC; CCM	7:00pm KCC; CCM	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>
<b>29</b>	7:00pm KCC; CCM 7:00pm KCC; CCM 7:30pm KIC; CC3	7:00pm KCC; CCM 7:30pm KMAC; CC3	<b>Jun 1</b>	<b>2</b>	<b>3</b>	<b>4</b>

May 1 - 7

May 8 - 14

May 15 - 21

May 22 - 28

May 29 - Jun 4

**KASEP:**

The spring session began on March 21 and continues through June 3. We have 357 students enrolled in 48 classes. Approximately 64% of the students at Kensington Hilltop are taking classes with KASEP this spring. Our teachers will meet on Wednesday, April 13 as part of our on-going quarterly staff meetings. The office and all KASEP classes will be on break during the week of April 18 – April 22. Marty Westby was summoned for jury duty April 25<sup>th</sup>.

The KASEP video is now available for viewing by logging onto the website, [www.aboutkensington.com](http://www.aboutkensington.com). Aaron Gobbler has done a good job getting KCC information uploaded and available for public viewing. Our community relies on current information and uses this electronic tool learning about KASEP classes as well as knowing schedules and holidays.

**KCC Summer Day Camp:**

Melissa Lambie, camp director, and Ethan Houser, head counselor, conducted interviews for summer day camp counselors. Melissa and Ethan made their selection and formed a team of 4 full-time counselors (working 8-9 weeks of the 10 week camp) plus themselves, (a total of 6 full time camp staff). In addition, offers were made to 8 other applicants to work as part-time counselors. These part timer slots will be used to fill-in the role of counselor based on camp enrollment; they will also serve as substitutes and vacation relief.

As of April 1<sup>st</sup>, 250 campers have enrolled in the KCC Summer Day Camp. There are a little over 600 total spaces available and there are spaces available in each of the camp weeks. Camp is around 42% full.

An ad for the KCC Summer Camp was placed in the El Cerrito Journal and the Berkeley Voice newspapers for the April 1<sup>st</sup> run. Flyers were printed and are displayed in high traffic public areas ( Andronicos, Gordos) as well as hand carried to the German American School, Windrush and Prospect Sierra private schools. Camp information is published in the Outlook and Parent's Press. Fingers crossed the message gets out to those looking for a summer camp for their children.

**KCC Classes and Events:**

The high school senior picture will be taken on Sunday, May 15<sup>th</sup>. We've posted a "save the date" note in the Outlook, and I've begun making contact with parents.

Ernie Adams, our Pilates instructor, will continue teaching on Wednesday evenings during the summer at the Community Center.

Stan, the adult art class, will end his teaching session June 8<sup>th</sup> and will resume again September 7<sup>th</sup> in the community center.

# General Manager March 2011 Report

## Budget

As you have read in the papers, the Governor's attempt to get the Vehicle License Fee (VLF) Supplemental Tax continuance on the June ballot failed. The VLF is the tax that funds COPS Grant funding. Therefore, we will not receive our \$100,000 2010-2011 COPS Grant disbursement this fiscal year. The best we can hope for is that the VLF tax will make it to the November ballot and that it passes, so we might get COPS Grant funding in Fiscal Year 2011/2012.

## Kensington Park

### **Park Restroom**

The volunteer restroom group has received 11 bids for the project, selected and approved the low bidder, and will be making a recommendation to the Board at the April 14<sup>th</sup> meeting to award the contract to ERA Construction of Richmond. The bids ranged in price from the low bid of \$136,710.38 to the high bid of \$245,371.00. The Committee's estimate for completing the project prior to the bids being submitted was between \$150,000 and \$180,000.

### **Community Center & Annex**

The Park Building Committee sent out the request for proposals for the park buildings consultant and received three proposals. The Park Building Committee will meet Tuesday, April 12<sup>th</sup>, at 7 P.M., at the Community Center to open and discuss the proposals.

### **Park Repairs**

During my recent inspections of the park, I noticed that the tennis courts have large cracks running through both of them. We received three estimates for their repair and I will be making a recommendation to the Board to hire Saviano Company to complete the repairs at a cost of \$7,500 at the April 14<sup>th</sup> meeting.

## Emergency Preparedness

We now have the agenda and the minutes of the Public Safety Council posted on the KPPCSD web page for review.

The next meeting of the Kensington Public Safety Council will take place Monday, April 11<sup>th</sup>, at 6:30 PM at the Community Center Room #3.

## Other District Items of Interest

### **Solid Waste**

On December 1<sup>st</sup>, Bay View Refuse made a request for a 6% increase in rates to

begin in 2011.

On January 18<sup>th</sup>, Allison Schutte, our attorney from Hanson/ Bridgett, Rick Simonson, our rate reviewer from HF&H, and I met with Louise Figone, Jeffrey Schoppert, Bay View's attorney, Charles Cowden, Bay View's accountant, and Kim Christie, Bay View's office manager, at Bay View's office to discuss the rate increase request. At the conclusion of this meeting, all parties agreed to a follow up meeting scheduled for February 1<sup>st</sup>.

On January 27<sup>th</sup>, I was contacted by Jeffrey Schoppert who indicated that Bay View was not prepared to meet on February 1<sup>st</sup> and requested that the meeting be postponed.

On February 2<sup>nd</sup>, I received the year end financials from Bay View and was preparing for our next meeting with Bay View. In 2010, Bay View achieved a profit of 2.42%.

On February 23<sup>rd</sup>, our attorney, Allison Schutte was contacted by Jeffrey Schoppert, and we were informed that Bay View does not wish to continue to meet with staff and discuss their request further.

During that same week, staff learned that Bay View mailed a letter dated February 15<sup>th</sup>, to all households in the District, informing customers of Bay View's desire for another rate increase for 2011.

Both the District and Bay View are currently in full compliance with all contract terms. In accordance with the contract, the District conducted a rate review in 2009 and approved a rate increase for 2010. The contract will expire in 2015.

In the event that Bay View assigns the contract to another company, subject to the approval of the District, the terms and conditions of the contract will remain in effect through 2015.

This item is on the April 14<sup>th</sup> KPPCSD Board agenda and I will be providing detailed information and analysis for the meeting in the agenda packet.

#### **Traffic**

Following the March 10<sup>th</sup> KPPCSD Board meeting, in which the Board directed Jerry Fahy of the County's Public Works Department to install the solar powered radar sign at 34 Arlington, Samane Nili contacted the Contra Costa County Public Works Director in protest, halting the installation. Ms. Nili had a scheduled meeting with the Public Works Director set for March 21<sup>st</sup> to discuss her concerns.

On March 24<sup>th</sup>, I was informed by Jerry Fahy that he was instructed to look at two other possible locations for the sign, which he intended to do the week of March

28<sup>th</sup>. He indicated that once he investigates other possible locations and meets with the Public Works Director and Supervisor John Gioia, he will provide me an update on the radar sign.

As you can see from the Sergeant's reports in the Police Monthly Report, we are continuing with our traffic enforcement efforts with 134 traffic citations issued during the month.

We are also participating in the California Office of Traffic Safety's "Crack Down on Cell Phone and Texting" campaign this month.

Starting Monday April 11<sup>th</sup>, Officer Ramos begins his 80-hour POST certified Motorcycle Officer training course. This course is the most difficult POST course to successfully complete in law enforcement. Good luck Manny!

### **Website**

The Board packets, monthly reports, minutes, recordings of the KPPCSD Board Meetings, and our Bay View – County Solid Waste contracts are available for review on our website at:

[www.kensingtoncalifornia.org](http://www.kensingtoncalifornia.org).

### **National Drug Take Back Day**

The DEA is planning a second National Drug Take Back Initiative for April 30, 2011, between the hours of 10:00 AM and 2:00PM. This year's event will be co-sponsored with the Kensington Fire Department and will be held at the Public Safety Building.

Last year's event was very successful and we took in 56 pounds of prescription medication.

### **St. Baldrick's Foundation**

Help Team Kensington PD (Chief Harman, Sergeant Hui, Officer Martinez, Reserve Officer Arminino and Dakota Harman) beat other Contra Costa police agencies in raising funds for childhood cancer research. We will be having a "shave off" Tuesday, May 10, 2011, at the Shadelands Art Center, 111 North Wiget Lane, Walnut Creek, from 4 to 8 PM. We would love to have you come out and support us as we participate in this worthy cause.

Since signing up to participate, I have learned that I now have a personal cause in the fight against cancer. Please help and donate.

Donations can be made online at: <http://www.stbaldricks.org/events/wcpd2011> or in person at the Kensington Public Safety Building.

## DISTRICT – OLD BUSINESS

1. Director Cathie Kosel will present to the Board a resolution to correct gender imbalance by hiring female police officers at its earliest opportunity. Director Chuck Toombs will present to the Board an alternative resolution, Resolution 2011-005, regarding diversity in the workforce and volunteers. This item was tabled from the March 10<sup>th</sup> meeting. Possible Board Action.

# KOSEL RESOLUTION

**Whereas, In the United States police departments must hire people without regard to race or gender. This has been the law for the past twenty years.**

**Whereas, in policing, gender integration and the opportunity for women to participate in forming police policy has been strongly resisted.**

**Whereas, acceptance by their male peers has yet to occur. Women receive, at best, a cool reception from male officers and, at worst, a hostile reception .**

**Whereas, In recent years acceptance by the public has grown as women police have been seen more frequently on the street on patrol and in uniform.**

**Whereas, the capabilities of women to perform police work; virtually all conclude that women, indeed, do have such ability. This capacity includes physical as well as mental and emotional fitness. Studies demonstrating women's capabilities have covered the areas of patrol work (Bloch and Anderson 1974, Sherman 1975, Townsey 1982) citizen satisfaction (Sherman 1975), police chief evaluations (Seligson 1985), response to hazardous situations (Elias 1984), academy academic performance (Elias 1984), physical capability (Townsey 1982), physical training receptivity (Moldon 1985), and the handling of violent confrontations (Moldon 1985, Grennan 1987).**

**Whereas, Male officers anticipate women failing (Brookshire 1980);**

**Whereas, women police were harassed and resisted by the male officers because they feared that women would violate departmental (actually, their own) secrets about police corruption and violence. Thus, fear of exposure by women officers was cited by Hunt as the underlying cause of the significant resistance to women.**

**Whereas, Evidence of gender discrimination was also found in the absence of women in certain special units. Respondents pointed out that they are excluded from certain units, details and even seminars.**

**Whereas, statistical data on women's uneven distribution throughout police ranks<sup>1</sup> and women's virtual absence in some specialized units. These recent studies find that women of both races face a considerable amount of discrimination in policing.**

**Whereas, Gender bias is clearly attitudinal as well as behavioral while the organization and its practices are inherently a matter of structure.**

**Now therefore be it resolved that the Kensington Police Protection and Community Services District resolves to correct gender imbalance by hiring female patrol officers at its earliest opportunity.**

# KOSEL SUPPORTING DOCUMENT

## FEMALE POLICE OFFICERS IN THE UNITED STATES

Barbara Raffel Price

### INTRODUCTION

**In the United States police departments must hire people without regard to race or gender. This has been the law for the past twenty years.**

However, **in policing, gender integration and the opportunity for women to participate in forming police policy has been strongly resisted.** Schulz has observed that women have transformed their original social worker role in policing only because of their own determination and struggle (1995). She argues that women changed their police role throughout history by drawing on outside social forces, and in recent times, by relying on the law to enable them to work as police officers. However, **acceptance by their male peers has yet to occur. Women receive, at best, a cool reception from male officers and, at worst, a hostile reception** (Worden 1993:229).

In spite of this, there has been a steady growth in the number of women entering police work. In 1970, only two percent of all police were women but, by 1991, nine percent of police were women (personal communication, Bureau of Justice Statistics, 1993). At the executive, policy making level of policing, we find very limited representation of women. Less than two percent of police (1.4%) in the very top echelons of the uniformed ranks are women. In the lower supervisory ranks 2.5% of the lieutenants and 3.7% of the sergeants are women (Martin 1988). Today, in the New York Police Department, 15% of all uniformed officers in the department are women, but only 9% are sergeants, 6% are lieutenants, 3% are captains and 4% are above the rank of captain (personal communication with the Office of Management and Budget, NYPD, data are for 7/31/96). Research has shown that women in policing are not easily accepted by their male peers, their supervisors, or their own police department. Women are viewed with skepticism or worse by their male counterparts in spite of the fact that women have been doing police work for over one hundred years. The public is, however, considerably more positive and frequently welcoming of their presence. **In recent years acceptance by the public has grown as women police have been seen more frequently on the street on patrol and in uniform.**

The first police matrons appeared in the nineteenth century and, in 1905, the first documented appointment of a woman with police powers took place (Peyser 1985). Shortly thereafter in 1910 the first woman with full police power was hired by the Los Angeles Police Department (Melchionne 1976).

The early history of women police consisted largely of social service in which women had to meet higher standards for police employment, but received lower wages, were restricted to a special unit or bureau, and were assigned primarily to clerical, juvenile, guard duty and vice work (Schulz 1989). Women police were not permitted to be promoted except within their own special women's unit nor were they permitted to take the same promotion test as men. Finally,



and most damaging for opportunities to demonstrate their general value to the organization, they were not permitted to perform basic patrol duties (Price and Gavin 1982, Peyser 1985). Women could only be promoted within their own bureaus because, they were told by their police superiors, they had not had the full "police experience" of being on general street patrol. It was, of course, the same male police administration that had refused over the years to assign women to general patrol and thus had blocked police women's access to the required experience (Price and Gavin 1982). When women finally were given the opportunity, as a result of Federal law mandating equal opportunity regardless of gender or race, to perform general police work and serve on patrol, they demonstrated their fitness for police work. Or did they?

Almost all of the past research on women police has focused on **the capabilities of women to perform police work; virtually all conclude that women, indeed, do have such ability. This capacity includes physical as well as mental and emotional fitness. Studies demonstrating women's capabilities have covered the areas of patrol work (Bloch and Anderson 1974, Sherman 1975, Townsey 1982) citizen satisfaction (Sherman 1975), police chief evaluations (Seligson 1985), response to hazardous situations (Elias 1984), academy academic performance (Elias 1984), physical capability (Townsey 1982), physical training receptivity (Moldon 1985), and the handling of violent confrontations (Moldon 1985, Grennan 1987).**

The research literature also reveals that in entering police work women have encountered enormous difficulties, primarily as a result of the negative attitudes of the men. **Male officers anticipate women failing** (Brookshire 1980); they doubt women can equal men in most job skills (Bloch and Anderson 1974); they do not see women officers as doing "real" police work (Melchionne 1976); and they perpetuate myths about women's lack of emotional fitness (Bell 1982). Race, age and education seem to influence attitudes toward women: black officers were found to be somewhat more favorable toward women than white officers (Bell 1982, Bloch and Anderson 1974); and in St. Louis younger, better educated officers exhibited less negativism (Sherman 1975). In contrast, a study in Atlanta concluded flatly that male officers did not accept women as police officers (Remington 1981). Horne (1980) has pointed out that the biggest challenge facing women officers is the resistance displayed by male officers in their attitudes toward women in policing. Hunt (1990) concluded that **women police were harassed and resisted by the male officers because they feared that women would violate departmental (actually, their own) secrets about police corruption and violence. Thus, fear of exposure by women officers was cited by Hunt as the underlying cause of the significant resistance to women.**

It is important to point out that the situation found in the U.S. and reported in the literature is similar to that found in European, Eastern European, Asian and Latin American countries. At an international conference on women and policing held in Amsterdam and sponsored by the European Network of Policewomen a workshop was convened on the role of femininity on police work. Women police from over twenty countries around the world shared information on the discriminatory treatment that they suffered at the hands of their male colleagues. A recent article on Polish women police notes that "Sometimes it happens that they (women police) are scarcely tolerated" (Trzcinska 1996).

In addition to police men's negative attitudes, women face a number of other major socially structured problems that are inherent in the larger society and are played out as well in policing. These include family responsibilities (Brookshire 1980, Martin 1980), role strain and role conflict (Martin 1980, Jacobs 1983) doubts about competence and self-worth (Glaser and Saxe 1982) sexual harassment (Wong 1984) and a concomitant fear of complaining about abuse (The Council of the City of New York, Committee on Women 1986) and, lastly, equipment and facilities inadequacies--including material conditions of such items as locker rooms (Horne 1980, Washington 1974), uniforms (Brookshire 1980), and patrol car seats (Horne 1980). Black women face additional obstacles, such as conflicts engendered by being both a black woman and a police officer, a type of stress which is currently unstudied. Thus there are many hurdles--both organizational and role-related--confronting women who choose police work as their career.

My own research examined the integration of women into policing in the NYPD (Price, Sokoloff, and Kuleshnyk:1992). We also considered the race of the women since black women make up approximately thirty percent of all women police officers in the United States today. In contrast, black men comprise only fifteen percent of all police men (The Municipal Year Book 1987).

## **THE RESEARCH**

Our study investigated the women's situation in the an urban department. The subjects average age was 30 years, most had come into police work for financial security and job security, most had a college degree and had been in the department from 5-10 years. The issue of discrimination was covered in depth.

In any study of women and policing, the question of discrimination is central. My study revealed that the presence of discrimination in the workplace is identified by virtually all black women officers (92%, N=11) and half (57%, N=4) of the white women. Moreover, most agreed that the discrimination within the department exists on two levels -- gender and race.

Eighty-three percent (N=10) of the black women see themselves as black women and therefore in some ways unique, (as opposed to focusing only on being black or only female). Of those women, half (N=5) of them believe they are discriminated against on the basis of race. Several examples of this discrimination were reported:

- Black women feel they have to demand respect while white women are put on pedestals.
- Black women report that their bosses don't send white women into high crime areas (but, by inference, do send black women).
- Black women report they have no one to help them secure desired assignments, special training sessions or promotions; white women, they say, have "hooks" (connections).
- Black women report verbal racial insults.
- Black women say they have more trouble with racial discrimination from the cops than from the public.
- Black women claim that white women can get transferred inside to a warm job such as the switchboard on a cold night while they have to remain on the street.

On the part of white women, some (29%, N=2) acknowledge that the black women have a more difficult time than women who are white. This is true despite the fact that some white women simultaneously believe black women are at an advantage in the department as "double minorities" at a time when the department is anxious to show that it is not a racist organization.

Only one white woman (14%) believed white women have it better in the department. Fifty-eight percent (N=7) of black women think white women receive preferential treatment, e.g., "they can get someone to make a call -- black women don't have anyone." On the other hand, 71% (N=5) of the white women think black women have it better, whereas only 25% (N=3) of the black women feel black women have it better.

The issue of individual vs. institutional discrimination was explored but the results are inconclusive although a number of interviewees believe there are deliberate departmental policies which work to the detriment of women. At least 42% (N=5) of the black women but, at best, only one white woman (0-14%) believed there is an attempt by the department to keep women and/or minorities separate from each other. Speculation as to why this is the case varies. It was noted that there is a "divide and conquer" strategy in the department which starts during training where "they" (either individuals or the department) try to keep the females separate from each other. This effort operates also by race according to some reports. One explanation of the use of "divide and conquer" is male officer insecurity or fear of the competition which women seem to present.

Clearly, black police women experience their work worlds differently than white women. They report greater degrees of discrimination than white women in the police department, and black women see themselves as discriminated against because of their race, gender, or combined race/gender. However, despite the discrimination that black women report in assignments and promotion as workers in the department, they do not believe that discrimination against them is any worse than in the larger society. On the contrary, the black women police officers in our study seem to feel that policing provided alternatives not available to them in the larger world where a narrower range of occupational options exist for them. The detailed job hierarchy, the less biased civil service entrance and promotional tests, the higher paid "male" jobs (compared with low-paid, low-status jobs traditionally available to women in general and black women in particular) result in greater opportunities for black women in policing than in the private sector.

The literature points out that apparently similar experiences occur for black police men who report great conflict in their roles as blacks and as police officers (Alex 1969, Leinen 1984). An example helps to illustrate the point. On the job, a black partner may be seen as "a brother in blue," but if blacks speak forcefully against what they perceive to be racist slurs, behaviors, and policies in the department, they are often accused of not being "blue enough" (Terry 1988). However, despite these problems, when black police men are interviewed, many say (as did our women subjects) their jobs are satisfying and believe there are opportunities for advancement they would not be able to get in other kinds of jobs (Williams 1988).

**Evidence of gender discrimination was also found in the absence of women in certain special units. Respondents pointed out that they are excluded from certain units, details and even seminars. Based on the comments of the women, the study labeled these units as**

"forbidden units" since they are either off-limit assignments for women or assignments where women experience extra harassment, presumably to encourage them to transfer out. At least 29% (N=2) of the white women and 42% (N=5) of the black women mentioned this phenomenon. Women reported that they are not welcome in such units as mounted, harbor and highway (a specialized traffic unit) and that they are told there are no openings when, in fact, by the women's perception there are vacancies. If, as happens on occasion, a woman gets into one of the male-only units, respondents report, she meets with considerable hardship. The department's own figures on male/female participation in several of these units show proportionately less females than are represented overall in the department. The mounted unit has 4.4% women, highway, 0.4% and harbor, 3.2% while the department overall is over 11% female. Of the ten women in these three units, one is black while the department has 818 black women out of a total of 8,106 women. These figures, taken alone, would tend to confirm the claim that there currently are "forbidden units" for women.

### Recent Interviews

Women in urban policing today express a high level of cynicism about policing as a career and considerable anger at the department and their job. They cite lack of opportunity for advancement, conflict between working hours and their personal life, and negative attitudes of men toward them as the main reasons for their disillusionment with police work. They believe that the department does not value women police and that they are, in general, an unappreciated group. The women believe that they are discriminated in work assignments, promotions, recommendations for promotion and the availability of appropriate facilities. The women expressed their desire to have women hired, evaluated and promoted on their own merit and not as tokens to satisfy some statistical requirements of the government or some political needs. On the positive side, the women who were interviewed believe that women police bring special qualities and attributes to police work such compassion, communication skills, maturity.

### SUMMARY

Women and racial minorities are entering mainstream policing, ostensibly, on both an equitable basis with white men and in markedly larger numbers than ever before. Numbers, however, do not reveal the changing nature of the work itself, the job environment, treatment by others on the job, internal support for career development, promotion and other rewards. One objective of recent research has been to examine these topics. The women's responses during interviews help to support and give meaning to **statistical data on women's uneven distribution throughout police ranks<sup>1</sup> and women's virtual absence in some specialized units. These recent studies find that women of both races face a considerable amount of discrimination in policing.**

Major findings are: (1) women are motivated to become police officers because of financial security (this is twice as true for black women) and as a result of family or friends' encouragement (this is more true for white than black women); (2) pre-employment exposure to police work played an important role in influencing black women to enter police work; (3) problems in the previous assignment were more frequently noted as a precursor to requesting assignment to the police academy than was the desire for a steady day shift; (4) most women derive job satisfaction from their academy assignment; (5) most women in the study are

preparing for promotion examinations; (6) almost all black women police in our study and over half of white women report that discrimination exists in the police department; (7) male domination in policing creates professional obstacles to career advancement and satisfaction.

Social scientists continually argue as to whether structural and technical changes or attitudinal changes must occur first in order to bring about social change. A case can be made that both must occur -- and in relation to one another, before gender equality will be achieved. This is as true for policing as for other aspects of our social and occupational lives. Yet, it is clear that the structural changes in the law in the United States have helped to create an increase in the numbers of women in this traditionally male dominated field of policing.

In policing, as departments expanded in the early 1970's, a related increase of black and white women police occurred driven by affirmative action practices. However, despite the advent of affirmative action laws affecting the police, urban fiscal problems led to the wide-scale dismissal of women and minorities in the labor force. <sup>2</sup> Some of the structural barriers experienced by women in police work as well as attitudinal barriers contribute to the disproportionately high numbers of women in the lowest levels of police departments (Martin, 1988). While some believe that the passage of time is all that is needed, others argue that barriers to achieving promotions, job security, and comparable assignments and salaries will persist. **Gender bias is clearly attitudinal as well as behavioral while the organization and its practices are inherently a matter of structure.**

## NOTES

1. 93.3% of the women are police officers or detectives; 5.7% are sergeants; 1% are lieutenants, captains or higher. Comparisons with other major cities reveal similar distributions (Martin 1988).
2. Detroit and New York City provide two vivid examples. In Detroit, Dreifus (1982) reports that in 1980 39% of furloughed police officers were female. In New York, Viteritti (1987) reports that personnel cutbacks led to a 9.8% loss of white police officers, but much higher losses of blacks (18%) and Hispanics (22%). However, it led to a whopping 88% loss for women who had been appointed in the previous two years (Peyser 1985).

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Table of Contents | Reasons for Joining and Beliefs About Police Among Slovenian Female Police Rookies

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*The HTML conversion of this chapter was supported by the  
National Institute of Justice/  
National Criminal Justice Reference Service  
Washington, D.C.*

# KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

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Resolution 2011-05 of the Board of Directors Regarding Diversity in Workforce and Volunteers

Kensington Police Protection and Community Services District

WHEREAS, Kensington is a community of diverse people, based in part on race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition, veteran status, physical and mental abilities, political affiliation, and other characteristics which create an interesting and diverse mixture of people who live here and which contributes to the health, well being and vitality of this community.

WHEREAS the Kensington Police Protection and Community Services values diversity and is committed to a firm policy of equal employment opportunity for all employees, trainees, job applicants, recruits, and volunteers.

WHEREAS the Kensington Police Protection and Community Services District is committed to creating and maintaining a work environment that is free of all forms of illegal discrimination, and is further committed to ensuring full equal employment opportunity in conformance with Title VII of the Civil Rights Act of 1964, the guidelines issued by the Equal Employment Opportunity Commission, the California Fair Employment and Housing Act, and the guidelines issued by the California Fair Employment and Housing Commission.

WHEREAS, this Board fully supports the requirements of Federal and State law as it applies to prohibited illegal discrimination, and further supports a diverse, qualified, workforce.

WHEREAS, this Board wishes to ensure that its police department continues to reflect the rich diversity of the community it serves and to that end that its police department continue to recruit qualified women and men of all types and backgrounds to fully comply with applicable law to maintain and enhance that diversity.

BE IT RESOLVED that the Kensington Police Protection and Community Services District shall foster a work environment that values quality, respect, diversity, integrity, communication, public safety, and accountability.

BE IT FURTHER RESOLVED that no person shall be granted preferential treatment based on race or gender, or otherwise be illegally discriminated against with regard to appointment, discipline, promotion, recruitment, retention, selection, training, or in other aspects of employment.

BE IT FURTHER RESOLVED that the Board directs the police department to continue to encourage qualified applicants of all backgrounds to apply for positions with this department.

BE IT FURTHER RESOLVED that this Board directs its chief of police to take such action as may be deemed necessary or proper to effect these resolutions.

The foregoing resolution was duly adopted at a Regular Meeting of the Kensington Police Protection and Community Services District Board of Directors on the 14th day of April, 2011 by the following vote of the Board

AYES: BOARD MEMBERS \_\_\_\_\_

NOES: BOARD MEMBERS \_\_\_\_\_

ABSENT: BOARD MEMBERS \_\_\_\_\_

\_\_\_\_\_  
Charles E. Toombs, President

ATTEST:

\_\_\_\_\_  
Gregory E. Harman, General Manager

## DISTRICT – OLD BUSINESS

2. General Manager Greg Harman will present to the Board Bay View's request for a 6% increase to rates to begin in 2011. Possible Board Action.



# Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

From: Gregory E. Harman, General Manager

\_\_\_\_\_

Date: Friday, March 25, 2011

FORWARDED TO:

Subject: Old Business Item #2 Bay View Rate Request

\_\_\_\_\_

## ACTION

Staff recommends the Board does not move forward with Bay View Refuse and Recycling Services, Inc's (Bay View) rate increase request at this time. Staff has analyzed the request in light of the Franchise Agreement with Bay View, dated September 11, 1997 (Agreement) and considered Bay View's year end financial statements over the term of the Agreement and does not believe that a rate increase is warranted under the terms of the Agreement. Both the District and Bay View are in full compliance with the Agreement.

## SIGNIFICANCE

In addition to an annual CPI increase, the Agreement provides that Bay View can increase rates in two circumstances: (1) in order to achieve a 12% pre-tax profit, following a quadrennial comprehensive review of revenues and expenses; and (2) in the event of extraordinary costs, events or changes in scope.

Bay View requested and received a quadrennial rate review and increase in 2009. In May 2009, Bay View requested a rate increase of 1.2%. A rate review, conducted by the District's rate consultant, HF&H Consultants LLP and paid for out of District funds, recommended a rate increase of 0.6%. Staff discussed this recommendation with Bay View. Staff recommended and the Board adopted a 0.6% rate increase on November 12, 2009, following the substantive and procedural requirements of Proposition 218. The new rates were implemented January 1, 2010. Despite the 2009 comprehensive review and the rate increase approved last year, Bay View is now requesting a mid-cycle rate increase.

Staff has consulted with District legal counsel and its rate review consultant regarding Bay View's current request, in particular whether the request met the exceptions in the Agreement for a rate change due to extraordinary costs, events or changes in scope. Staff, legal counsel and the rate review consultant have concluded that Bay View's request does not meet the Agreement's requirements for considering a mid-cycle

increase.

The Board has two options to consider at this time:

1. The Board could deny the rate increase, which, in the opinion of staff, would be in full conformance with the terms of the Agreement.

Under the terms of the Agreement, Bay View would maintain service to Kensington. Bay View could increase rates per the increase in the CPI as provided in the Agreement, work to reduce its costs in order to realize a larger profit, and/or accept a possible lower profit margin depending on the economy in 2011. In the event that Bay View wished to assign the Agreement to another company, subject to the approval of the District, the terms and conditions of the Agreement will remain in effect through 2015.

2. The Board could decide to move forward with the rate increase proposed by Bay View or suggest other adjustments to the rates currently being charged.

If the Board decides to take this action, consideration should be given to whether a new comprehensive rate review should be undertaken and, if so, how the cost of such a review should be allocated.

In addition, although the District is under no legal obligation to grant a mid-cycle rate increase, in the event that Board determines to grant a such an increase as a matter of policy, staff recommends the rate setting process comply with the substantive and procedural requirements of Proposition 218. These requirements were followed when the District increased rates in 2009 and include holding a public hearing after providing a 45 day notice of the hearing to increase rates.

For your reference, the Agreement is attached as Attachment A.

## **BACKGROUND**

### **Bay View request and meeting with staff**

On December 1<sup>st</sup>, Bay View sent the District a letter requesting a 6% increase in rates, with an additional increase of the mini-can service from \$23.59 to \$29.03, a 23% increase, to begin in 2011. (Attachment B).

On January 18<sup>th</sup>, the District's legal counsel, its rate review consultant, representatives and legal counsel for Bay View and the General Manager met to discuss Bay View's rate increase request. During this meeting, staff provided the Bay View representatives a 14 year history of the company's revenues, net profits, and percentage earnings from net income/gross revenues as reported in their yearly financial statements. This chart, Attachment C Page 1, reflects the fact that in 8 of the 14 years, Bay View received a profit percentage over the contractual benchmark rate of 12%, and in all of the years reported, except for the first year 1996, Bay View has earned a profit.

Profit is determined by considering revenues minus expenses. As negotiated in the Agreement, expenses include employee salaries as well as a salary for the president of the company. As stated in Exhibit D to the Agreement, the president's salary is increased every year by 3%.

During the meeting, Bay View's accountant indicated that the October 2009 comprehensive rate review did not account for the subsequent reduction in residential and commercial customers and the migration of customers to the mini-can. Bay View's accountant stated that the mini-can rate has lagged behind the next rate category, since rate increases over the years have been a percentage of the existing rates and the mini-can rate started as a lower rate. He also stated that some costs may not be captured by the rates, such as back yard service, overstuffing of the mini-cans, and unlimited green waste pick up. Bay View's accountant further stated that Kensington is a very challenging community to service due to the narrow and hilly streets and that there have been significant increases in salaries, health and insurance benefits. However, when questioned by staff, Bay View's accountant and the District's rate review consultant confirmed that these increases, as well as most of the costs, were all known at the time of the 2009 rate review and included in the rate analysis.

Staff pointed out to the Bay View representatives that their request for a 6% increase and a 23% percent increase in the mini-can rate did not meet the exceptions in the Agreement to allow an increase in a year that does not include the 4-year rate review. The exceptions in the Agreement that would allow such an increase are as follows: (1) extraordinary changes in disposal costs; (2) extraordinary events, such as a war that increases fuel costs by a factor of five; (3) expansions in service, which increases costs; (4) changes in "pass through" costs, such as hazardous waste fees; and (5) adjustments for new capital equipment.

Staff also acknowledged the possibility that Bay View would not reach the targeted profit margin of 12% this year and discussed possible cost savings measures that Bay View could take to realize a larger profit. The District's rate review consultant also suggested another possible option: examining the rate structure, adjusting the mini-can rate and reducing the rates in other categories to ensure the totality of the rates stayed the same. Bay View representatives did not appear to be interested in any of these suggested solutions.

It was also pointed out that Bay View had not taken advantage of the yearly CPI rate increase as provided in the Agreement, and the Bay View representatives stated that was something that they would investigate.

At the conclusion of this meeting, the parties agreed to a follow up meeting to be held in early February once the 2010 year end financial report was complete. Subsequently, Bay View informed the District and the District's legal counsel that it was not interested in holding another meeting with staff to discuss the proposed rate increase.

### Analysis of Bay View's Financial Statements

On February 2<sup>nd</sup>, the District received the 2010 year end financials from Bay View. The 2010 Year End Financial Report indicated that Bay View achieved a profit of 2.42%.

Bay View's rate increase request of 6% to current rates and the 23% increase in cost of the mini-can service from \$23.59 to \$29.03, would increase Bay View's profit by an estimated \$61,000. Bay View states that this increase would achieve a profit margin of only 8.59%, which according to their letter, "is substantially below the 12% profit allowed under its contract." This profit margin is subject to change, depending on when the rate increase, if approved, becomes effective.

While the Agreement provides that the profit margin benchmark is 12%, it does not state that this profit level must be maintained throughout the term of the Agreement. Notably, the Agreement states that the rates ". . . may not continually produce compensation to the Contractor consistent with the benchmark used to establish the initial rates." (Section 9.4, para. 2, p. 8) Therefore, the Agreement contemplates that Contractor's actual profit may fluctuate.

### Bay View's Letter to the Customers

During the week of February 23<sup>rd</sup>, staff learned that Bay View mailed a letter, dated February 15<sup>th</sup>, to all households in the District informing customers of Bay View's desire for another rate increase for 2011. (Attachment D). This letter has generated at least 86 letters of support for Bay View and their request for a rate increase. The District also received a letter from the Kensington Improvement Club and a few other letters from customers indicating that they supported the District's efforts in maintaining the terms of the Agreement.

### Comparison to other communities

In Bay View's December 1<sup>st</sup> rate increase request letter, it stated that the service provided to Kensington is very reasonable and they provided solid waste rate information from the City of Piedmont as a comparison, stating "For example, in Piedmont monthly rates for backyard collection of a 20-gallon can are \$48.11 and \$52.96 for a 35-gallon can. Bay View's requested 2011 rates are thus 40% and 30% lower than the comparable Piedmont rates, including the adjustments for the larger can." When comparing rates, it is important to also consider Piedmont's curbside rates, which are lower and therefore closer to Kensington's blended service rates. Piedmont's curbside rates are \$45.48 for the 20-gallon can and \$47.71 for the 35-gallon can. (See Attachment E).

In addition, Bay View charges the same rate whether or not customers receive backyard service, spreading the cost of backyard service to all Kensington customers. The District has asked Bay View for a breakdown of how many customers in Kensington utilize backyard service; to date, Bay View has not provided this information. Bay View has estimated that if backyard service were to be eliminated, it would realize a cost saving of \$5,000 a month. However, backyard service has always been part of the Agreement with Bay View and was considered in the last rate review and approved increase.

Bay View also provided the District with a copy of the Notice of Public Hearing for the

Town of Atherton and its proposed new garbage rates effective March 1, 2011. (Attachment F) The Notice indicates that the rate for the 20-gallon can was to be increased from \$17.31 to \$28.22 and the 32-gallon rate was to be increased from \$27.69 to \$45.15. As a point of comparison between those rates and Kensington rates, Kensington residents currently pay \$23.59 for the 20-gallon can, which would increase under Bay View's proposal to \$29.03; Kensington residents currently pay \$32.10 for the 32-gallon can, which would increase under Bay View's proposal to \$34.03.

In order to determine how Kensington rates compare to other jurisdictions in Contra Costa County, please see the three rate comparison charts, dated 2008, 2009, and 2010. (Attachments G pages 1-3). These charts were provided by the District's rate consultant. Rate comparisons between jurisdictions are difficult because of the fluctuation of rates and the differences among service areas and these charts do not always contain the same exact rate categories year to year. The rate chart for 2009 (Attachment G page 2) includes a cost of service for backyard service and the servicing of difficult areas. The 2009 rates for Orinda, Lafayette, and Moraga include higher rates (compared to those paid by a curbside customer) for hard to service areas and backyard service. The third page of Attachment G indicates the basic rates for other jurisdictions for comparison purposes. According to the 2010 rate comparison chart, the current Kensington rate for the 32-gallon can is the second highest in the County (the rate in El Cerrito is higher). If the Board was to approve Bay View's rate increase request, Kensington would tie El Cerrito for some of the highest solid waste rates in the County.

#### Bay View's April 1<sup>st</sup> supplemental letter

On April 1, the District's legal counsel was sent a letter from Bay View's attorney that supplements Bay View's earlier correspondence. That letter is included as Attachment H. The letter restates Bay View's arguments for its proposed rate increase while conceding that "from 1998 (the first full year of the franchise agreement term) through 2010, Bay View earned annual profits of 11.3%, an amount consistent with the express intent of the franchise agreement." The letter also suggests that Kensington residents' migration to the mini-can may not have been taken into account in the 2009 comprehensive rate review and that no one anticipated the extent of such migration.

As stated previously, the Agreement provides that rate increases are allowable to adjust for extraordinary costs, events or changes in scope. An extraordinary event is an event that radically increases or decreases the cost of providing service, which is substantially outside the commercially reasonable expectations of the parties, such as a war or embargo that increases the cost of fuel by a factor of five, or economic events that reduce the cost of fuel by fifty percent. Staff and the District's legal counsel have concluded that customer migration to lower revenue service options do not constitute an extraordinary event under the terms of the Agreement.

In order to address customer migration to the mini-can, the Board can follow the suggestion of its rate review consultant and examine the current rate structure, adjust the mini-can rate, and reduce the rates in other categories so that the totality of the rates remain the same. The Board could also decide to review the rates at the end of the year

to monitor the migration issue and could revisit revising rates at that time.

Attachments

- A: Franchise Agreement with Bay View Refuse and Recycling Services, Inc., dated September 11, 1997
- B: Letter to General Manager "Bay View Refuse and Recycling Services, Inc./ Rate Increase Request for 2011, dated December 1, 2010
- C: Bay View Refuse & Recycling Services, Inc. Fiscal Year End Financial Statements Summary
- D: Letter from Bay View Refuse & Recycling Services, Inc. to Customers dated February 15, 2011
- E: Richmond Sanitary Service Rate Schedule for the City of Piedmont
- F: Notice of Public Hearing for the Town of Atherton
- G: Rate Comparison Charts
- H: Letter to District Counsel "Kensington Police Protection and Community Services District /Rate Increase Request of Bay View Refuse and Recycling Services, Inc." dated April 1, 2011

# ATTACHMENT A

September 11, 1997

**FRANCHISE AGREEMENT WITH  
BAY VIEW REFUSE AND RECYCLING SERVICES, INC.**

**KENSINGTON POLICE PROTECTION  
AND COMMUNITY SERVICES DISTRICT**

TABLE OF CONTENTS

*6.5*

*13.3*

	<u>Page</u>
1. EFFECTIVE DATE, PARTIES . . . . .	1
2. DEFINITIONS . . . . .	1
3. TERM . . . . .	4
4. INTENT TO REGULATE ALL RECYCLING AND RESIDENTIAL AND SOLID WASTE COLLECTION, REMOVAL AND/OR DISPOSAL . . . . .	4
5. EXCLUSIVE PRIVILEGE AND DUTY . . . . .	4
⑥ EXCEPTIONS TO EXCLUSIVE PRIVILEGE . . . . .	4
7. LIMITATION ON CONTRACTOR'S OPERATIONS . . . . .	5
8. CONTRACTOR'S DUTY TO MAINTAIN RECORDS; DISTRICT'S RIGHT TO EXAMINE RECORDS . . . . .	5
⑨ CONTRACTOR'S COMPENSATION <i>9.4 - Compensation - 2009</i> . . . . .	6
⑩ AFFILIATED COMPANY TRANSACTIONS . . . . .	12
11. OPERATION BY CONTRACTOR . . . . .	12
12. TIME AND MANNER OF COLLECTION . . . . .	12
⑬ CUSTOMER SATISFACTION, AB 939 AND EFFICIENCIES IN OPERATION . . . . .	13
14. CUSTOMER SERVICE STANDARDS . . . . .	14
15. CUSTOMER COMPLAINTS . . . . .	15
16. BILLING . . . . .	15
17. RECYCLING <i>revised - co-mingled</i> . . . . .	15
18. FREE SERVICE FOR COUNTY LIBRARY AND DISTRICT . . . . .	17
⑰ FRANCHISE AREA-WIDE COLLECTION <i>bi-monthly amend.</i> . . . . .	17
20. PARTICIPATION IN COMMUNITY CLEAN-UP PROJECTS . . . . .	18
21. DISPOSAL AND WASTE STREAM CONTROL . . . . .	18
⑱ MISCELLANEOUS OBLIGATIONS OF CONTRACTOR <i>progress</i> . . . . .	18

*41*



23.	ADMINISTRATIVE SERVICES AND FRANCHISE FEES	19
24.	HAZARDOUS WASTE	19
25.	PRELIMINARY DISPUTE RESOLUTION	19
26.	FAITHFUL PERFORMANCE BOND	20
27.	INSURANCE	20
28.	INDEMNIFICATION	21
29.	ATTORNEY'S FEES	22
30.	ASSIGNABILITY <i>written consent</i>	22
31.	INVOLUNTARY ASSIGNMENT	23
32.	NOTICE	24
33.	ANNEXATION AND CHANGE OF FRANCHISE AREA BOUNDARIES	24
34.	BREACH AND TERMINATION	24
35.	EMERGENCY	26
36.	COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS	26
37.	AMENDMENT OR MODIFICATION	27
38.	STATUTORY POWERS	27
39.	CONTEST OF AGREEMENT'S TERMS	27
40.	SEVERABILITY	27
41.	WAIVER	27
42.	SURVIVAL OF OBLIGATIONS	28
43.	THIRD PARTY BENEFICIARY	28
44.	ENTIRE AGREEMENT; SUPERSESSION OF PRIOR AGREEMENT	28
45.	EFFECTIVE DATE; CONDITIONS TO EFFECTIVENESS	28

*County Review?*

*Comments*

C

49

**FRANCHISE AGREEMENT  
WITH BAY VIEW REFUSE AND RECYCLING SERVICES, INC.**

THIS FRANCHISE AGREEMENT is made as of September 1, 1997, by and between the KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California ("District"), and BAY VIEW REFUSE AND RECYCLING SERVICES, INC., a California corporation ("Contractor").

THE PARTIES AGREE AS FOLLOWS:

**1. EFFECTIVE DATE, PARTIES.** This Agreement is binding between the District and the Contractor and is effective on September 1, 1997.

**2. DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below:

**2.1 Agreement.** Agreement means this Agreement by and between the District and Contractor for the collection, removal and disposal of solid waste and the recycling of material.

**2.2 Act.** Act means the California Integrated Waste Management Act of 1989 (Public Res. Code, §40000 et seq.) and all rules, regulations and definitions adopted under any of those sections, as such sections, rules, regulations and definitions may be amended from time to time in the future.

**2.3 Commercial Solid Waste.** Commercial Solid Waste means Solid Waste routinely originating from stores, business offices and other commercial and light industrial sources excluding residences and any wastes from heavy industry (i.e., industry that manufactures or processes petroleum, lumber, steel, chemicals, explosives, fertilizers, gas, rubber, cement, sugar and other such products [see section 84-60.402 of the Contra Costa County Ordinance Code.]).

**2.4 Contractor.** Contractor means Bay View Refuse and Recycling Services, Inc., a California corporation. It is the entity which has been granted an exclusive franchise pursuant to the terms and conditions set forth herein. Lewis Figone is president of, and owns 100% of the stock in, Bay View Refuse and Recycling Services, Inc.

**2.5 Consumer Price Index or Index.** Consumer Price Index and Index each means the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose Area as published by the United States Department of Commerce, Bureau of

Labor Statistics, 1982-84=100. The Consumer Price Index for June 1997 was 160.0.

**2.6 County.** County means the County of Contra Costa which includes its Board of Supervisors, Community Development Department and/or the Community Development Director.

**2.7 Customers.** Customers means those who receive service from the Contractor for the collection of materials for recycling and/or for the collection, removal, or disposal of Solid Waste, pursuant to this Agreement and applicable ordinances of County, including mandatory subscription ordinances.

**2.8 Designated Waste.** Designated Waste as used herein has the meaning set forth in section 2522 of Title 23 of the California Code of Regulations, as amended from time to time.

**2.9 District.** District means the Kensington Police Protection and Community Services District.

**2.10 District Board.** District Board means the Board of Directors the Kensington Police Protection and Community Services District.

**2.11 Franchise Area.** Franchise Area means the geographic area generally known as the unincorporated community of Kensington in West Contra Costa County described in Exhibit A to this Agreement. Exhibit A may be amended from time to time to reflect changes of boundaries of the Franchise Area in such a manner as to identify each alteration to the Franchise Area and the effective date thereof.

**2.12 Hazardous Waste.** Hazardous Wastes include any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant, or a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to humans, domestic animals, or wildlife, during or as a proximate result of any disposal of such wastes as defined in Article 2, Chapter 6.5, Section 26117 of the Health and Safety Code. The terms "toxic," "corrosive," "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substances Act (Chapter 13 commencing with Section 28740 of Division 21 of the Health and Safety Code) and 14 Cal. Code Regs., §17225.32.

**2.13 Industrial Waste.** Industrial Waste includes all types of Solid Waste which result from industrial processes and manufacturing operations and/or which originate from such facilities.

**2.14 Infectious Waste.** Infectious Wastes include:

(1) Equipment, instruments, utensils and other fomites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies;

(2) laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta and secretions obtained from patients or laboratory animals) and disposable fomites (any substances that may harbor or transmit pathogenic organisms) attendant thereto;

(3) surgical operating room pathologic specimens including recognizable anatomical parts, human tissue, anatomical human remains and disposable materials from hospital, clinics, outpatient areas and emergency rooms (14 Cal.Code Regs., §17225.36).

**2.15 Memorandum of Understanding.** Memorandum of Understanding means the agreement dated as of September 1, 1997 between District and County concerning solid waste collection and recycling services within the Franchise Area executed by the District Board and the County Board of Supervisors.

**2.16 Recycle or Recycling.** Recycle or Recycling means the process of collecting, sorting and recovering materials so that they may be reconstituted for new, reused, or reconstituted products.

**2.17 Residential Solid Waste.** Residential Solid Waste means Solid Waste routinely originating from single family or multiple family dwellings. Residential Solid Waste includes household hazardous waste, but does not include septage.

**2.18 Septage.** Septage means non-sewered liquid or semi-liquid waste which may be trucked to treatment facilities for disposal, to include, but not be limited to, waste from residential septic tanks, commercial grease clean-outs, and industrial waste holding facilities.

**2.19 Solid Waste.** Solid Waste has the meaning set forth in Section 40191 of the California Public Resources Code as of the date of execution of this Agreement. Solid Waste includes, but is not limited to, all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes and other discarded solid and semisolid wastes. "Solid Waste" does not

include infectious, designated, and hazardous waste, except household hazardous waste.

**2.20 Waste Stream.** Waste Stream means the Solid Waste to be collected under this Agreement from the time of its collection by the Contractor to its disposal at a landfill or delivery to a transfer facility or other facility by Contractor.

**3. TERM.** Subject to section 33 (Annexation and Change of Franchise Area Boundaries) and section 34 (Breach and Termination), the Term of this Agreement and the exclusive franchise granted hereunder shall be 18 years, commencing on the Effective Date set forth in Section 1 and expiring on August 30, 2015.

**4. INTENT TO REGULATE ALL RECYCLING AND RESIDENTIAL AND SOLID WASTE COLLECTION, REMOVAL AND/OR DISPOSAL.** The District has jurisdiction to regulate the collection, removal and disposal of all Solid Waste, and the recycling of all material in the Franchise Area. The intent of this Agreement is to regulate Solid Waste handling services and recycling of material in the Franchise Area.

**5. EXCLUSIVE PRIVILEGE AND DUTY.** To the extent allowed by law, District hereby grants to Contractor the exclusive privilege and duty within the Franchise Area to collect, and remove for disposal and recycling, all residential and commercial Solid Waste, including recyclable materials, and to charge and receive charges therefor, pursuant to and subject to the terms of this Agreement. Contractor promises and agrees to perform the responsibilities and duties set forth herein.

**6. EXCEPTIONS TO EXCLUSIVE PRIVILEGE.** The exclusive privilege granted by this Agreement shall not apply to:

**6.1** Solid Waste, including recycling materials, which are collected, removed and disposed or recycled personally by the same person or entity which generated them, or by the owner of the property on which they were generated, in a clean and sanitary manner and in conformance with all applicable laws and regulations, including mandatory subscription ordinances.

**6.2** Construction/demolition debris which is collected, removed and disposed or recycled by a construction contractor incidental to construction, remodeling or demolition work performed for a customer.

**6.3** Greenwaste (lawn and garden trimmings, branches and other organic materials from landscaped areas) which is collected, removed and disposed or recycled by a gardener or landscape contractor as an incidental part of gardening or landscaping work performed for a customer.

6

53

6.4 Recyclable or reusable materials donated to a charity or other nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code.

6.5 Solid Waste and recyclable material generated by Sunset Cemetery or Kensington Elementary School.

Contractor shall be responsible for enforcing the exclusive nature of the franchise. District shall cooperate with Contractor in such efforts but shall not be required to initiate or participate in litigation at its expense to do so. Contractor shall reimburse District for litigation expenses incurred by District in defending the exclusive nature of the franchise granted by this Agreement.

**7. LIMITATION ON CONTRACTOR'S OPERATIONS.** Contractor's operations and business activities shall solely consist of providing solid waste collection and recycling services to the Kensington Franchise Area, unless otherwise agreed by the parties through an amendment to this Agreement. Contractor shall not use its equipment or employees to collect Solid Waste from, or perform other services for, either Sunset Cemetery or Kensington Elementary School or from locations outside Kensington. As long as Contractor's corporate operations and business activities are so limited to Kensington, the District's right to examine records, as provided in section 8 below, shall be limited to the corporate books and records of Contractor.

**8. CONTRACTOR'S DUTY TO MAINTAIN RECORDS; DISTRICT'S RIGHT TO EXAMINE RECORDS.** Contractor shall maintain and make available to District, upon its request, records as to number of Customers (total and by type), route maps, service records and other materials and operating statistics in such manner and with such detail as District may require.

\* Contractor shall maintain a proper set of books and records in accordance with generally accepted accounting principles ("GAAP"), accurately reflecting the operations performed and business done by it under this Agreement. Accounts shall be maintained on the accrual basis. The Contractor's fiscal year shall be the calendar year.

A financial statement verified by Contractor's president shall be provided by Contractor to the District on May 15th (covering the period January 1 through May 1), September 15th (covering the period January 1 through September 1) and January 15 (covering the period January 1 through December 31 of the previous year) of each year commencing with May 1, 1998. By March 30, Contractor shall provide a financial statement for the previous calendar year compiled by an independent certified public accountant in accordance with GAAP.

District may examine the books and records of the Contractor. District shall give thirty (30) days written notice to the Contractor of such examination date.

In addition, District may review or audit any annual financial statement compiled by or for Contractor. Thirty (30) days written notice shall be provided to Contractor. The audit review notice must be sent within one year from the date the annual financial statement was submitted to the District. Any such review or audit shall be performed by an independent certified public accountant appointed by District. If requested by District, Contractor shall pay the auditor and shall be entitled to recover the full cost thereof through rates as a pass through expense.

The information required by this section shall pertain to Contractor's operations, all of which are covered and regulated by this Agreement as set forth in section 7 above, and nothing contained herein shall require the Contractor or its shareholder(s) to provide the District with information concerning the business and financial activities of any of its shareholder(s) or of other corporations in which any of the Contractor's shareholder(s) have an interest.

Contractor may consider some operating information submitted to District under the first paragraph of this section as confidential. If District receives a request under the California Public Records Act, prior to releasing any information pursuant to this paragraph, District shall make a good faith effort to notify Contractor of the intended release. Nothing in this section will prevent District from allowing public access to District records as provided for under the California Government Code, and in the event any dispute arises as to the public access to information provided by Contractor under the terms of this Agreement, the District shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the District concerning said information to Contractor.

## 9. CONTRACTOR'S COMPENSATION

9.1 General. Contractor's compensation for the services required by this Agreement shall consist of (1) the right to charge and collect from Customers in the Franchise Area the rates provided for in this Agreement, and (2) the right to retain all revenues received by Contractor from the sale of materials which are Recycled.

9.2 Initial Rates. Rates which Contractor may charge as of the Effective Date, i.e., September 1, 1997, are those set forth on the Schedule attached as Exhibit B. Until the rates are adjusted as provided in this Agreement, Contractor shall provide

C

55

the services required by this Agreement, charging no more than the rates set forth on Exhibit B for the services it provides. Future modifications in rates pursuant to Sections 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8 do not require an amendment to this agreement.

**9.3 Annual Rate Adjustments.** The rates set forth on Exhibit B shall be adjusted annually as set forth below, commencing January 1999. The changes shall become effective January 1 of 1999 and on January 1 of each year thereafter.

**Year Two through Year Four:** The rates in effect as of January 1, 1999 and as of January 1 of each succeeding year through January 1, 2001 shall be adjusted effective as of January 1 of each immediately following year by multiplying each such rate by a fraction, the numerator of which is the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose) published by the U.S. Department of Commerce, Bureau of Labor Statistics ("Index") for September in the year immediately preceding the year for which the increase is to be effective and the denominator of which is the Index for the September twelve (12) months earlier. In the case of Year Two (calendar year 1999), for example, the rates in effect on January 1, 1998 will be changed as of January 1, 1999 to reflect the percentage change in the Index between September 1997 and September 1998.

Contractor need not submit an application to increase rates pursuant to this Section 9.3, but shall submit a proposed new rate schedule by November 1 of each year showing the Index as of the relevant dates and its calculation of the new rates. The new rate schedule shall go into effect automatically unless District notifies Contractor within ten (10) days of receiving the proposed new schedule of any error in Contractor's calculations.

**Years Six through Nine, Eleven through Thirteen and Fifteen through Eighteen:** As provided in Section 9.4 below, the rates will be comprehensively reviewed at four (4) year intervals so that Contractor's compensation is periodically adjusted, independently of changes in the Index, to cover all Contractor's reasonable reimbursable costs and provide a pre-tax profit of twelve percent (12%) on those costs which are subject to a profit allowance (hereafter the "benchmark level"). In the intervening years following such comprehensive reviews, the resulting rates shall be adjusted to reflect changes in the Index as provided in this Section 9.3.

**9.4 Four Year Rate Revisions.** The rates set forth in Exhibit B are intended to generate sufficient revenues so that, in combination with estimated revenues from recycling and other operations in Kensington, Contractor will recover its reasonable costs for furnishing all labor, materials, equipment, supplies and other things necessary to perform all the services required



by this Agreement and, in addition, earn a pre-tax profit of twelve percent (12%) on certain of those costs. The initial rates set forth on Exhibit B are intended to cover all costs for the items mentioned in the preceding sentence, including overhead (insurance, bonds, county fees, and franchise fees), taxes and profit, as shown on Exhibit C. The parties agree that the costs shown on Exhibit C are both complete and reasonable for the scope of services to be provided.

The parties recognize that recycling and other revenues, rate revenues and costs of operation may change over time at rates different than the rate of change in the Index, such that the rates shown on Exhibit B, adjusted as provided in Section 9.3, may not continually produce compensation to the Contractor consistent with the benchmark used to establish the initial rates. In order to ensure that rates are periodically readjusted to the benchmark, the parties agree that there should be a comprehensive review of Contractor's revenues and expenses at four-year intervals.

To implement these comprehensive reviews, Contractor shall submit a report on or before April 30, 2001 which shall include (a) Contractor's financial statements for calendar year 2000, together with an opinion of an independent certified public accountant based on an audit of Contractor's financial operations, (b) Contractor's projections of rate revenue and recycling/other revenue for the calendar year 2002, (c) Contractor's projections of expenses for calendar year 2002, and (d) Contractor's proposed rate increase/decrease, as needed to achieve benchmark level compensation (i.e. recovery of costs plus 12% profit on those costs subject to a profit allowance) in calendar year 2002. In projecting recycling/other revenues for the ensuing year, the average of the preceding three years shall be used. Reports shall be prepared in accordance with the format and level of detail reasonably required by the District and submitted in the number of copies (up to a maximum of 10) required by the District. Contractor shall also furnish any other relevant information requested by District to evaluate the Contractor's rate proposal.

District Board shall consider the Contractor's report at a noticed public meeting at which Contractor and any member of the public may submit written or oral comments. Thereafter, and no later than September 30, 2001, District shall establish, by ordinance or resolution, the maximum rates which Contractor may charge for service commencing January 1, 2002.

Comprehensive reviews shall also be conducted in calendar year 2005, to establish rates applicable as of January 1, 2006 and calendar year 2009, to establish rates applicable as of January 1, 2010.

6

57

**9.5 Adjustments in Rates for Extraordinary Changes in Disposal Costs.** The rates set forth on Exhibit B include all costs of disposal of solid waste including transportation to the Disposal Site and "Gate Fees" charged at the Disposal Site. The adjustments in the rates provided in Sections 9.3 and 9.4 are intended, and expected, to cover all increases in both components of disposal costs, as well as the costs of collection and recycling. The purpose of this Section 9.5 is to set forth the conditions under which the rates may be adjusted at times and/or in amounts different from those provided in Sections 9.3 and 9.4 as a result of extraordinary increases or decreases in disposal costs due either to a change in the Gate Fees or to a change in the Disposal Site.

If the Gate Fees at the Disposal Site are increased or decreased at any time by more than fifteen percent (15%) or if there is a change in the Disposal Site which will increase or decrease total disposal costs by more than fifteen percent (15%), Contractor shall notify District. Either party may then request an adjustment in rates for the remainder of the current calendar year. The District shall adjust the rates so that Contractor's revenues for the calendar year remain, to the extent achievable, at the benchmark level. In addition, at the annual rate adjustment immediately following an adjustment pursuant to this Section 9.5, the parties shall take the effect of the partial year adjustment in rates into account in applying the Index-based adjustment to rates for the ensuing full year, again with the goal of Contractor's receiving compensation at the benchmark level for the ensuing full year.

**9.6 Adjustments in Rates for Extraordinary Events.** The parties acknowledge that there may be infrequent extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the Force Majeure provisions, nevertheless radically increase or decrease the cost of providing service such that the rates and the rate adjustment mechanism provided in this Agreement result in Contractor suffering losses, or enjoying profits, which are substantially outside the commercially reasonable expectations of the parties. An example of such an event is a war or embargo which increases the cost of fuel by a factor of five (5), or economic events which reduce the cost of fuel by fifty percent (50%). The obligation of the parties in such event is to act reasonably toward each other and modify rates as necessary to maintain Contractor's compensation at the benchmark level.

If one party believes such an event has occurred and warrants an increase or decrease in the rates different from that provided for in Section 9.3, it shall notify the other, providing a full explanation and a proposed change in rates.

**9.7 Adjustment in Rates for Changes in Contractor's Scope of Work and/or in Level of "Pass-Through" Costs.** If the District, pursuant to Section 13, directs Contractor to initiate new services or expand the level of existing services, the reasonable cost of the additional services, plus 12% profit, shall be incorporated into the rates. Similarly, if the District directs Contractor to eliminate or reduce the level of existing services, the reasonable cost savings, plus 12% thereof, shall be incorporated into the rates.

If the amount of any of the "pass-through" costs on Exhibit C is increased or decreased from their then-current level, if new fees are imposed which are to be paid for initially by Contractor, or if existing fees are terminated, these changes shall be taken into account in rates.

If one party believes such an event has occurred and warrants an increase or decrease in the rates different from that provided for in Section 9.3, it shall notify the other, providing a full explanation and a proposed change in rates.

**9.8 Adjustment in Rates for New Capital Equipment Purchases.** Contractor shall be entitled to an increase in rates to reflect depreciation on new capital equipment (e.g., vehicles) purchased with District approval. Depreciation shall be incorporated into rates as of January 1 next following the year in which the capital asset is placed into service.

**9.9 Information in Support of Rate Requests.** If a change in rates is requested as a result of a change in the scope of work directed by District (Section 9.7), an extraordinary change in disposal costs (Section 9.5), or an extraordinary event (Section 9.6), Contractor shall promptly furnish to District all relevant operational and financial information and records necessary to evaluate it.

**9.10 No Retroactive Adjustment in Rates.** Whether or not the rates are adjusted by an amount larger or smaller than the change in the Index, pursuant to Section 9.4, no consideration shall be given to Contractor's having previously earned compensation resulting in a profit greater or less than twelve percent (12%). In other words, future rates shall not be increased to make up for profits below 12% in previous years nor reduced to offset profits of greater than 12% in previous years.

**9.11 Design of Rate Schedule.** The parties acknowledge that the District Board retains legislative discretion to add new rate categories to Exhibit B, delete rate categories from Exhibit B, or adjust particular components of the rate schedule by amounts greater or less than the applicable percentage adjustment required by Section 9.3, in order to accomplish social, economic,

and/or environmental goals, so long as the aggregate adjustment is substantially equivalent to the amount of revenue generated by the single percentage required by Section 9.3. A rate schedule which will generate revenues within \$5,000 of the revenue which would be generated during that year with a uniform percentage adjustment in rates shall be considered substantially equivalent. For the purpose of projecting revenues and costs, the Tons of Solid Waste collected in the previous year shall be used, unless the change in rate structure itself is expected to reduce the amount of Solid Waste generated, such as the introduction of a mini-can rate.

Contractor may submit comments on proposed differential rates and District's economic analysis. Such comments may address both the revenue projections and any impacts which revised rates might have on Contractor's costs of performance. District will consider such comments and will, if requested, meet with Contractor to discuss the revenue, cost and operational impacts of the proposed rates.

The District will not introduce a mini-can rate prior to January 1999. The parties will discuss the impact of such a rate during 1998.

**9.12 No District Guarantee of Collection.** District does not guarantee collectibility of rates authorized under this Agreement. Contractor does not look to District for payment of any sums under this Agreement and District has no obligation to pay Contractor any public funds under this Agreement.

**9.13 Challenges to Rates.** If Contractor believes the rates have not been increased in accordance with this Agreement, it may not terminate this Agreement or refuse to continue to provide service. However, it shall have the right to challenge the adequacy of the rates as provided in this section. All disputes as to the adequacy of rates shall be resolved through mandatory binding arbitration conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Sections 1280-1288.8, including the provisions of Section 1283.05. In such arbitration, Contractor shall neither seek, nor be entitled to recover, damages from the District on any theory, including tort, breach of contract, or other.

**10. AFFILIATED COMPANY TRANSACTIONS.** When equipment or facilities owned by another company in which any of Contractor's shareholder(s) have an interest are used by Contractor, the costs paid by Contractor shall not exceed the fair market value of such equipment and facilities. If personnel provide services to both Contractor and any other company in which any of Contractor's shareholder(s) have an interest, the allocation of salary and benefits shall reflect the proportional use of such employee by

Contractor and the other company or companies. Rent paid by Contractor for offices, storage and garage facilities shared with another company in which any of Contractor's shareholder(s) have any interest shall not exceed fair market value of the portion of such facilities used by Contractor. The allocations and costs shown on Exhibit D are agreed to be reasonable.

**11. OPERATION BY CONTRACTOR.** Contractor shall furnish all necessary labor and equipment (excluding containers for weekly Solid Waste service but including three recycling buckets provided for each residential unit) for services provided pursuant to this Agreement in the Franchise Area and shall maintain such equipment in a sanitary condition at all times.

The Contractor shall use trucks with covered, water-tight truck bodies constructed of sufficient strength to withstand a fire within the truck body and not endanger adjacent property. Trucks, drop boxes, bins, or similar types of equipment owned and operated by the Contractor shall be kept clean and in good repair. Contractor shall have its name and telephone number on the side of each truck and on each drop box, bin or similar type equipment provided by Contractor, other than previously distributed recycling buckets.

**12. TIME AND MANNER OF COLLECTION.** Contractor shall systematically collect Solid Waste and, to the extent required by this Agreement, materials for diversion and recycling from its Customers. Place of pickup shall be backyard service for Solid Waste and curbside service for recycling, green waste and periodic clean-ups. Solid waste collection shall be weekly unless otherwise directed by the District Board. Frequency of recycling, green waste and general pick up service shall be as set forth in Exhibit E. Upon commencement of service and upon changes in collection day schedules, Contractor shall provide each customer with notice of the scheduled collection day. Contractor shall not collect Solid Waste from an inhabited dwelling or dwelling unit between the hours of 6:00 p.m. and 6:00 a.m.

**13. CUSTOMER SATISFACTION, AB 939 AND EFFICIENCIES IN OPERATION.**

13.1 From time to time, at its discretion, District may examine Contractor's operation in order to evaluate whether the Contractor is operating in a satisfactory manner. Contractor agrees to cooperate in any such examination and shall permit District representatives to inspect, at Contractor's principal place of business, such information pertaining to Contractor's obligations hereunder as District may require, including, but not limited to, such things as customer inquiry records, collection routes and equipment records. Access to Contractor's records

shall be subject to Section 8 (Contractor's Duty to Maintain Records; District's Right to Examine Records).

13.2 Notwithstanding any contrary provision in this Agreement, the District shall have the right to direct Contractor to compile information, develop plans for and/or conduct programs on alternative methods of Solid Waste and recyclable material collection and management, or to take any other action for the purpose of meeting the source reduction, recycling and composting requirements of the Act, and any other applicable federal, state or local laws regarding Solid Waste collection, recycling and disposal, including, without limitation, the County's Materials Diversion Ordinance.

Contractor agrees to indemnify and hold the District and County harmless from and against any and all liability to the State of California for the District's or County's noncompliance with the requirements of the Act due in whole or material part to the material failure of Contractor to properly carry out the reasonable directives of the District to Contractor regarding collection and disposition of Solid Waste and recyclable material and as required by the Act and directed by District; provided, however, that Contractor shall not be obligated to carry out any such directive (and shall not indemnify nor hold the District or the County harmless from any resulting liability) if such directives expand the scope of services required of Contractor and the District fails to allow Contractor its reasonable costs associated with carrying out such directives, plus 12% of those costs.

13.3 District may require Contractor to develop plans for and conduct programs on alternative methods of Solid Waste collection, including pilot programs of limited scope, or may require additional programs, for the purpose of improving service, increasing customer satisfaction, and/or meeting diversion requirements. The notice shall allow Contractor a reasonable period of time to implement the specified service. Should District require commencement of such a program as outlined in this paragraph, Contractor agrees not only to do those things specified herein, but also to act at the direction of the District on other matters that may be necessary for the success and efficiency of the project, such as public information and notification. In the event that District elects to direct Contractor to discontinue any service theretofore performed by Contractor at the direction of District hereunder, District shall allow Contractor to recover its reasonable capital equipment costs and other reasonable costs arising upon termination of the service. Contractor shall take all reasonable steps to minimize such costs, such as, for example, selling surplus equipment.

14. **CUSTOMER SERVICE STANDARDS.** Contractor shall provide prompt, efficient, continuous and professional service to its Customers. Contractor shall have a phone system with sufficient capacity to promptly respond to telephone calls for at least 8 hours a day during weekdays, excluding those holidays observed by Contractor, plus a 24-hour answering service. All vehicles shall be radio equipped. Telephone numbers for customer service shall be located in the local telephone directory. All telephone lines for customer service shall be toll free to Customers.

Not less than once every three years and not less than six months prior to an application for contract renewal, assignment or extension of term, Contractor shall conduct a representative survey or surveys of Customers within the Franchise Area to determine satisfaction with service, including, without limitation, response to customer complaints. The survey methodology, format and content shall be subject to the prior review and approval of the District General Manager. A copy of the survey results shall be sent to the District within sixty (60) days of completion of the survey. The first such survey shall be conducted during calendar year 1998. If the District requires Contractor to do more surveys than set forth above, Contractor's survey costs shall be a pass-through in the next year's rates. Nothing in this paragraph shall limit the right of the District to conduct and mail its own surveys on its own and at its cost. The Contractor shall cooperate with the District in preparing such District surveys.

Upon initiation of service, and at least once a year, Contractor shall send or deliver to Customers information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), days of collections, the amount and manner of refuse to be collected, service level and inquiry/complaint procedures, including the name, address and local telephone number of Contractor and the name, address and telephone number of the District General Manager. The form and content shall be subject to the review and approval of the District General Manager.

15. **CUSTOMER COMPLAINTS.** Contractor shall develop and implement policy and procedure for responding to and recording Customer complaints, including dispute resolution. The policy and procedure shall be subject to the approval of the District General Manager.

16. **BILLING.** The form and content of customer bills shall be subject to the review and approval of the District General Manager.

Bills for services will be sent three times per year (September, January, May) for every four months thereafter, unless otherwise determined by the District. Bills shall become due and payable three and one-half (3-1/2) months after mailing (e.g., bills mailed in September will be due and payable on December 15). The District may establish billing period options for Customers upon a finding that such options are cost-effective and meet a community need.

Full payment for drop boxes may be required by Contractor prior to delivery of the drop box to the Customer.

The District shall have the right to direct the Contractor to change or alter its billing system in which event the marginal additional expenses incurred by the Contractor in the implementation of the change, with regard to the accounting, printing, mailing, loss of use of funds, or otherwise, shall be recoverable as a pass-through by the Contractor through the rates allowed by the District provided such expenses are reasonable. Contractor shall inform Customers of all rate changes at least 30 days prior to their effective date. A copy or facsimile of such notice shall be provided to District at the time of Customer notification.

17. **RECYCLING.** District grants to Contractor the right and obligation to operate recycling programs, including curbside pick up of recyclable materials, as determined and designated by District, subject to District's right to terminate this grant to Contractor but only pursuant to the provisions of this section. Contractor shall request that recyclable materials be placed at the curb by 5:00 a.m. of the day for which service has been designated for that particular dwelling. Contractor is not responsible to pick up recyclables not placed on the curb in a timely manner.

*Co-mingled*  
Contractor has already instituted and implemented a recycling program including regular curbside pickup in five-gallon buckets at all single family residences of at least aluminum, tin, newsprint, glass bottles, non-colored HDPE and PET. As more fully set forth in Exhibit E, the current program will be supplemented commencing January 1, 1998, so that all items listed in County Ordinance Section 418-10.604, as it may be amended from time to time, are collected. The District has the right at any time to modify said program or require new programs as provided at section 13 hereinabove.

Contractor shall not dispose of recyclable materials, collected through the curbside program, in a landfill. However, if market conditions are such that there are no purchasers and no users willing to accept such materials for reuse without payment by Contractor, Contractor may submit a written request to the



District General Manager for authority not to collect such materials while such market conditions persist. If the District General Manager can make the findings specified in Article 418-10.8 in the County Ordinance Code, and unless County otherwise directs, the General Manager shall exempt such material(s) from recycling on conditions he/she specifies. Contractor shall maintain and provide to the District records relating to its recycling programs as directed by the District General Manager.

Contractor shall provide to each household promotional information pertaining to the curbside recycling program. Contractor shall allow the District General Manager to review such material prior to delivery and shall make any changes he or she reasonably requests. Contractor shall distribute written promotional material two times per year as necessary to maintain participation in the program and more frequently, if required by the District General Manager.

Unless otherwise required by the District, Contractor shall provide the District with periodic reports on the recycling program which shall include:

a. Participation level (i.e., the number of residences participating in the recycling program) based on one sample week during each calendar quarter.

b. Quantity of materials collected, in tons, by type of material (e.g., newspaper, glass, plastic and metal), by calendar quarter. The current County form for this data is attached as Exhibit F.

c. Total revenues received by Contractor for materials received, by calendar quarter.

Unless otherwise directed by the District reports shall be provided quarterly and annually. The quarterly reports shall be due by the 15th of the month following the close of the quarter and shall cover the preceding three months. For example, the first quarterly report shall be due January 15th of 1998 and shall cover October, November and December, 1997. The first annual report shall be due by March 15th of 1998, and shall cover the preceding calendar year.

Contractor's provision of recycling service shall be reviewed in approximately one year and thereafter within three (3) years of the effective date of this Agreement and, at District's discretion, every five years thereafter. If the District determines that continuation of such service by Contractor is not consistent with the ratepayers' best interest, but not as a result of Contractor's failure to satisfactorily provide recycling services, Contractor shall be allowed to recoup

8

6

its unamortized capital expenditures as follows. Contractor shall make a good faith effort to sell all disposable assets acquired in furtherance of the program for their fair market value. If income derived from the sale is insufficient to cover the unamortized costs of such assets, Contractor may transfer those losses together with net operations profits or losses for the current fiscal year to its general account and submit a rate application to cover such losses.

If the District determines that Contractor has failed to satisfactorily provide and perform recycling services, District may terminate this grant to Contractor of the right and obligation to provide and operate recycling programs, at no cost or further obligation on the part of the District or the ratepayers.

**18. FREE SERVICE FOR COUNTY LIBRARY AND DISTRICT.**

Contractor shall provide Solid Waste collection and disposal services at (1) the Kensington library at no charge to the County and (2) the District's headquarters (two cans per week) and the community center (one 1-1/2 yard container weekly) at no charge to the District.

**19. FRANCHISE AREA-WIDE COLLECTION.** Unless otherwise determined by the District Board, in addition to its regular collections, commencing in January, 1998, Contractor shall provide twelve (12) scheduled green waste curbside pick ups and one annual general pick up (no green waste). Any such collections shall be made each year throughout the term of this Agreement in accordance with practices and procedures already established by Contractor. Green waste shall be delivered to a composting or chipping facility by the Contractor, subject to review and direction by the District General Manager.

Customers shall be timely notified on the dates of the scheduled green waste pick ups. The recycling and other services provided by Contractor are set forth in Exhibit E. The scope of solid waste collection, green waste and recycling services provided may be changed from Exhibit E at the direction or with the approval of the District Board and without amending this Agreement.

**20. PARTICIPATION IN COMMUNITY CLEAN-UP PROJECTS.**

Contractor shall provide, upon direction of the District General Manager, Solid Waste drop boxes or equivalent containers for community or other clean-up projects within the Franchise Area. The Contractor's obligation to provide such boxes without charge shall be limited to the equivalent of up to three (3) 20-cubic yards drop boxes per year.

21. **DISPOSAL AND WASTE STREAM CONTROL.** Contractor shall be solely responsible for the disposal of the Solid Waste collected pursuant to this Agreement. Contractor currently disposes of Solid Waste collected from within the Franchise Area at the West Contra Costa Landfill in Richmond. Contractor will not voluntarily change the disposal site without providing sixty (60) days advance notice to District, together with an explanation of the reasons for the change. If the disposal site becomes unavailable for any other reason, Contractor will give District notice as soon as possible after learning of its pending unavailability, together with Contractor's recommendation for the best alternate site. If the change will result in an increase in collection rates, Contractor shall not effect the change without approval of the District Board. The parties also recognize that under the MOU, County has reserved authority to direct Solid Waste to be delivered to specific disposal sites under certain circumstances. Contractor shall comply with directions from District implementing such a directive from County. Contractor shall not enter into contracts for disposal without prior approval of the District Board. A copy of such contracts shall be provided to District's General Manager on request. Such contracts shall allow for termination by Contractor if directed by District.

22. **MISCELLANEOUS OBLIGATIONS OF CONTRACTOR.** Contractor shall assist District and County in their enforcement of the County's mandatory subscription ordinance by providing District and County with the addresses of properties not subscribing to collection service within the Franchise Area and by providing collection service to such properties upon written direction by County in conjunction with arrangements satisfactory to Contractor for County to compensate Contractor for the costs of such continued service.

23. **ADMINISTRATIVE SERVICES AND FRANCHISE FEES.** Contractor shall pay to the County for the services provided by the County Community Development Department (administering and performing its recycling and diversion management, monitoring, review and reporting obligations under the Countywide Solid Waste Management Plan and the Act) a percentage of its gross annual revenues generated from the performance of such waste collection services under this Agreement. Unless otherwise subsequently determined by the County, the total amount for such administration services shall be three percent of the commercial and residential bills for each calendar year. Said sums shall be payable from the Contractor to the County three times annually (January, May and September for three percent of the revenues received in respective four preceding months from commercial and residential billings). For administering this Agreement, the District shall receive a franchise fee of two percent of the commercial and

residential bills for each calendar year, payable at the same time as payment is made to County.

For 1997, franchise fees shall be payable in January 1998 on revenue from the preceding months in which this Agreement was effective (September through December). Any increase in the franchise fees shall also be considered a "pass-through" as described in Section 9 on Rates. Any decrease in such fees shall be reflected in a subsequent rate adjustment.

**24. HAZARDOUS WASTE.** The parties hereto recognize that federal, state and local agencies with responsibility for defining hazardous waste and for regulating the collection, handling or disposing of such substances are continually providing new definitions, tests and regulations concerning these substances. Under this Agreement, it is Contractor's responsibility to keep current with the regulations on such substances and to identify such substances and to comply with all federal, state and local regulations concerning such substances.

Contractor agrees to provide to the District General Manager, upon request, Contractor's program for identifying hazardous waste and complying with all federal, state and local statutes and regulations dealing with hazardous waste.

Contractor shall make every reasonable effort to avoid the collection or disposal of hazardous waste in any manner inconsistent with applicable law.

**25. PRELIMINARY DISPUTE RESOLUTION.** If Contractor has a question as to the interpretation of this Agreement, it shall submit a written request to the District General Manager for a determination of the issue. The Contractor shall provide and submit such information as the District General Manager may reasonably request or require to make the requested determination. The written determination of the District General Manager on such interpretation may be appealed to the District Board by the Contractor.

**26. FAITHFUL PERFORMANCE BOND.** Contractor shall submit to District simultaneously with the execution of this Agreement a corporate surety bond in the amount of \$10,000, provided however, that the Board may increase this amount not more often than every three years to reflect changes in the Consumer Price Index. The bond shall be executed by a surety company licensed to do business in the State of California and acceptable to District General Manager. The bond shall be approved by the District and shall be payable to District or County. The condition of the bond shall be that Contractor will faithfully perform the duties imposed by ordinance, this Agreement and the rules and regulations of District and County. Any action by District or

County to proceed against the Bond shall not limit or affect the right of District or County to use other remedies available to District or County under the Agreement or in courts of law or equity, notwithstanding the foregoing. In lieu of the corporate surety bond, Contractor may provide to District a letter of credit, cash bond or other security acceptable and in a form satisfactory to the District General Manager.

**27. INSURANCE.** Contractor shall procure and maintain in full force and effect at all times during the entire term of this Agreement the following coverage:

**27.1** Public liability and property damage insurance including completed operations, products, contractual, broad form property damage, personal injury and owned and non-owned automobile liability with such coverages and limits as may be reasonably requested by District from time to time, but in no event with limits less than the sum of \$3 million combined single limit for each occurrence arising from the services as stated in the Agreement herein. District and County shall be named as an additional insureds under such liability insurance policy or policies.

**27.2** Contractor shall carry workers' compensation insurance for all its employees.

Evidence of liability and workers' compensation insurance shall be provided by Contractor through filing with District and County a certificate of insurance indicating that District and County are endorsed as an additional named insured under the liability policy. All policies shall include a provision that written notice of cancellation or any material change in coverage shall be delivered to District and County thirty (30) days in advance of the effective date thereof. No cancellation, alteration or change of beneficiary shall be made without written notice to District and County.

District reserves the right to examine all policies from time to time to ensure appropriate conformity to prevailing practices and standards of the insurance industry.

Such insurance shall be obtained from a company or companies licensed to do business in the State of California and acceptable to District. Failure of Contractor to maintain insurance in the manner and amount stated herein will constitute a material breach of this Agreement.

## 28. INDEMNIFICATION.

### 28.1 Complete Indemnification of District and County.

All work and performance covered by this Agreement shall be at the risk of Contractor.

Contractor agrees to save, indemnify and keep harmless the District and County, their officers, employees, agents and assigns against any and all liability, claims, judgments, or demands, including demands arising from injuries or deaths of persons and damage to property, including environmental damage, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the sole negligence or willful misconduct of District or County, and will make good to and reimburse District and County for any expenditures, including reasonable attorney's fees, that District or County may make by reason of such matters and, if requested by District or County shall defend any such suit at the sole cost and expense of Contractor.

The above promise by Contractor to indemnify, hold harmless and defend the District and County expressly includes, but is not limited to, all claims, damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, District or County, their officers, employees or agents arising from or attributed to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substances or hazardous waste at any place where municipal solid waste is or has been transported, transferred, processed, stored, disposed of or otherwise come to be located by Contractor under Agreement, or the activities of Contractor pursuant to this Agreement resulting in a release of hazardous substances or waste into the environment. The foregoing is intended to operate in part as an agreement, pursuant to section 107 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. section 9607(e), and California Health and Safety Code section 26364 to defend, protect, hold harmless and indemnify District and County. The intent of the section is to provide District with the highest level of protection possible under existing and future laws.

**28.2 Defense of Agreement.** Should any party successfully challenge the validity of all or any portion of this Agreement, the procedure by which this Agreement was entered into, or the validity of any County ordinance or District enabling petition or statute which authorizes the District to enter into this Agreement, then in such case the Contractor shall have no cause of action for damages or any other relief against District or County as a result of such successful challenge. Contractor has the right to defend this Agreement and District or County.

**29. ATTORNEY'S FEES.** In the event of litigation between the District and Contractor arising hereunder, the prevailing party shall be entitled to litigation expenses, including reasonable attorney's fees. If Contractor is required to pay District's litigation expenses, neither such payments nor its own litigation expenses may be passed through to Customers in rates.

**30. ASSIGNABILITY.** Contractor shall not sell, assign, subcontract or transfer this Agreement or any part hereof, or any obligation hereunder, without the written consent of District which consent shall not be unreasonably withheld or delayed on or after September 1, 2000. Prior to September 1, 2000, District may refuse consent to any such sale, assignment, subcontract or transfer in its sole discretion.

If Contractor wishes to assign this Agreement, delegate its obligations, or if shareholder(s) of Contractor wish to sell a controlling interest in Contractor or take other action which constitutes an assignment, as defined below, it, he/she or they shall give notice to and request approval of District. District shall be entitled to consider the capability of the proposed assignee to satisfactorily perform the services required by this Agreement, including its experience in Solid Waste handling, its financial condition, evidence of its performance in other communities, its history of compliance with environmental and other regulatory laws, and other relevant information. Contractor shall be responsible for furnishing such information reasonably requested by District. District shall consider any proposed assignment promptly, shall diligently investigate the capabilities of the proposed assignee and shall not unreasonably withhold or delay its consent.

The term "assignment" shall include any dissolution, merger, consolidation or other reorganization of Contractor, which results in change of control of Contractor, or the sale or other transfer, by probate proceeding or otherwise, of a controlling percentage of Contractor's capital stock to a person not a shareholder on the date of the execution of this Agreement, i.e., Lewis Figone. The term "assignment" does not include internal business reorganizations or formations of new companies by

C

21

Contractor, formation of trusts by Contractor or transfers of any interest of Contractor as a result of death, disability or estate planning by one or more of the principals of Contractor, so long as essential management decisions are retained by Lewis Figone, his spouse, his children, and/or their spouses, or others who have previously worked for Contractor as employees to provide services under this Agreement. By his signature below Lewis Figone agrees to the provisions of this Section 30 for himself as well as for Contractor.

**31. INVOLUNTARY ASSIGNMENT.** No interest of Contractor in this Agreement shall be assignable by operation of law. Each or any of the following acts shall be considered an involuntary assignment providing District with the right to elect to terminate the Agreement forthwith, without suit or other Proceedings:

(a) If Contractor is or becomes insolvent, or makes an assignment for the benefit of creditors;

(b) If writ of attachment or execution is levied on this Agreement or other property of Contractor such that it would affect Contractor's ability to perform its duties and obligations under this Agreement.

(c) If in any proceeding to which Contractor is a party, a receiver is appointed with authority to take possession of Contractor's property such that it would affect Contractor's ability to perform its duties and obligations under this Agreement.

(d) Except as otherwise provided in section 30 (Assignability), in the event of a probate proceeding where the rights of Contractor under the Agreement would pass to another individual or other individuals.

**32. NOTICE.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or ten (10) days after posted by certified mail, return receipt requested, addressed as appropriate either to Contractor:

Bay View Refuse and Recycling Services, Inc.  
Attn: Lewis Figone, President  
P.O. Box 277  
El Cerrito, CA 94530

Or to District:

Attention: General Manager  
Kensington Police Protection



and Community Services District  
217 Arlington Avenue  
Kensington, CA 94707-1401

Or to County:

Attention: Director of Community Development  
651 Pine Street, 4th Floor, North Wing  
Martinez, CA 94553

**33. ANNEXATION AND CHANGE OF FRANCHISE AREA BOUNDARIES.**

Contractor realizes that the public agency boundaries may be altered by virtue of actions taken by the Contra Costa County Local Agency Formation Commission (LAFCO). Contractor agrees that should a municipal corporation lawfully annex territory which is within the Franchise Area, District may make such alterations to the Franchise Area as the annexation necessitates. Should the Franchise Area boundaries be amended, Contractor agrees that it will abide by any change resulting from the Franchise Area change. Contractor agrees that the District Board may make such alterations to the Franchise Area as are necessitated by such Local Agency Formation Commission actions and that it shall have no right or claim to damages or other relief against the District or County for such alterations to the Franchise Area. However, nothing herein is intended to abrogate Contractor's rights under Public Resources Code Section 49520 or any successor or similar statute.

**34. BREACH AND TERMINATION.** The District General Manager shall have authority, subject to review by the District Board upon appeal, to determine whether a breach of any provision of this Agreement by Contractor has occurred. Any waiver of a breach shall not be deemed to be a waiver of any subsequent breach or be construed as approval of a course of conduct. In the event that the District General Manager determines that a breach has occurred, District shall give Contractor written notice of the breach setting forth the breach or default. Contractor shall have a reasonable period to cure the noticed breach, said period not to exceed 60 days. In the event the breach or default is cured to the satisfaction of the District General Manager within the period of time allotted, the breach shall not be deemed a material breach. In the event that the District General Manager determines that Contractor has failed to satisfactorily cure the breach or default within the period of time allotted, the District General Manager may determine such breach or default to be material.

Multiple or repeated breaches, or a pattern of breaches and subsequent attempts to cure said breaches by Contractor shall provide an adequate basis for the District General Manager, in his discretion, to declare any subsequent breach to be material,

C

73

notwithstanding whether that breach is ultimately cured by Contractor.

If such a determination of material breach is made, the District General Manager's determination shall be automatically appealed to the District Board for final action.

A material breach shall be cause for termination of this Agreement by the District Board.

In the event of a termination pursuant to this section, District shall have the right to temporarily assume the obligations of Contractor and shall have the right to forthwith take possession of all trucks and other equipment of Contractor and exercise Contractor's right to enter and use any disposal facilities for the purpose of performing the services agreed to be performed by Contractor herein until such time as District or County can make other arrangements for the performance of said services. However, such temporary assumption of Contractor's obligations under the Agreement shall not be continued by District for a period exceeding twelve (12) months from the date such operations are undertaken by District or County.

During any period in which District has temporarily assumed the obligations of Contractor under this Agreement, District shall be entitled to the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses applicable or allocable to said period, including the reasonable rental value of the trucks and equipment to be paid to Contractor. District shall be entitled to the excess, if any, of revenue over applicable or allowable costs and expenses during such period. The loss, if any, during such period shall be a charge against Contractor, and shall be paid to District by Contractor on demand. Final adjustment and allocation of gross revenue, costs, and expenses to the period during which District temporarily assumed the obligations of Contractor shall be determined by an audit by a Certified Public Accountant and prepared in report form with his unqualified opinion attached thereto.

Nothing in this Agreement shall prevent District during any period in which District temporarily assumes the obligations of Contractor under this Agreement, from employing persons who were employed by the Contractor for the collection of Solid Waste under this Agreement.

Upon the occurrence of a material breach and the declaration of such and termination of this Agreement by the District Board, this Agreement and the franchise granted thereunder shall be of no further force and effect, excepting these provisions concerning District's right to temporarily assume Contractor's

obligations and to use Contractor's facilities, and section 28 (Indemnification). District then shall be free to enter into whatever other arrangements are deemed justified and necessary for the collection, removal and disposal of Solid Waste within the Franchise Area.

**35. EMERGENCY.** Notwithstanding Contractor's exclusive franchise rights set forth in section 5 (Exclusive Privilege and Duty), in the event of an emergency due to natural disaster or labor strike which interrupts the collection of Solid Waste by Contractor, the District Board shall have the right to declare a temporary suspension of this Agreement for the reasonable duration of the emergency and until such time as it determines that Contractor is able to reassume all obligations under this Agreement. Should Contractor fail to demonstrate to the satisfaction of the District Board that required services can be resumed by Contractor prior to the expiration of a six (6) month period, this Agreement may be terminated at the direction of the District Board.

**36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.** Contractor shall be responsible for and shall comply with all applicable laws, rules, and regulations that are now in effect or may be promulgated or amended from time to time by the Government of the United States, the State of California, the County and any other agency, other than the District, now authorized or which may be authorized in the future to regulate the services to be performed herein regarding the collection, removal and disposal of Solid Waste and recycling or diversion of material. This includes County Ordinance Code Chapter 418-6 (on mandatory subscription to Solid Waste collection service), and the County's Materials Diversion Ordinance.

**37. AMENDMENT OR MODIFICATION.** This Agreement may be amended or modified upon written agreement of the District and Contractor. The parties agree to meet and confer in good faith if amendments or modifications are proposed.

**38. STATUTORY POWERS.** Nothing in this Agreement is intended to or may limit District authority pursuant to its enabling statute.

**39. CONTEST OF AGREEMENT'S TERMS.** In the event either party to this Agreement attempts to challenge the validity of any portion of this Agreement, such action in attempting to challenge the Agreement shall constitute a material breach of this Agreement and the non-breaching party shall have the right to elect to terminate this Agreement forthwith without suit or other proceeding. Contractor agrees that it shall not request the County to assume control of Solid Waste handling in the Franchise Area, to abrogate this Agreement or to otherwise interfere with



District's authority under this Agreement and that a breach of this promise shall constitute a material breach of this Agreement.

This section shall not be construed to prevent either party from seeking redress from the courts for the purpose of interpreting or enforcing the provisions contained in this Agreement.

**40. SEVERABILITY.** In the event legal action is brought by a person or entity, other than the two parties to this Agreement, to challenge, invalidate, contest or set aside any of the provisions of this Agreement, each and every term and condition, and each and every section and paragraph is severable from the remaining terms, conditions, sections, and paragraphs. The invalidation of any term, condition, section or paragraph as a result of a legal action, brought by a person or entity not a party to this Agreement shall not affect the validity or enforceability of the remaining provisions. However, if material provisions hereof are affected, the parties agree to negotiate in good faith to reach agreement on revisions which preserve the substance hereof to the greatest extent allowed by law.

**41. WAIVER.** The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The acceptance of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

**42. SURVIVAL OF OBLIGATIONS.** Obligations of this Agreement which embody continuing obligations, including but not limited to section 28 (Indemnification) shall survive the termination or expiration of this Agreement.

**43. THIRD PARTY BENEFICIARY.** County shall be considered a third party beneficiary of this Agreement as it may be amended by the parties from time to time. The County's rights are enforceable only through the Memorandum of Understanding between County and District.

**44. ENTIRE AGREEMENT; SUPERSESION OF PRIOR AGREEMENT.** This Agreement, including Exhibits A through F which are attached hereto and incorporated herein, represents the full and entire agreement between the parties hereto with respect to the matters covered herein. This Agreement shall supersede the Contract with Relation to Collection and Disposal of Garbage between District and Bay View Refuse Services, Inc., dated July 7, 1981, as amended.

45. EFFECTIVE DATE; CONDITIONS TO EFFECTIVENESS. This Agreement will become operative on the effective date in Section 1, provided that each of the following has occurred:

(a) County Board has terminated the Franchise Agreement dated September 11, 1996, with Bay View Refuse and Recycling Services, Inc.

(b) District and County have executed the Memorandum of Understanding dated as of September 1, 1997.

(c) District, County and Bay View Refuse and Recycling Services, Inc., have executed and filed a stipulation for dismissal of the lawsuit initiated by District against County and Bay View Refuse and Recycling Services, Inc., now pending in Contra Costa County Superior Court, Civil Action No. C96-04574.

KENSINGTON POLICE PROTECTION AND  
COMMUNITY SERVICES DISTRICT

John F. Ream  
By: PRESIDENT, BOARD OF DIRECTORS

Sept 18, 1997  
Date

ATTEST, James M. Bray,  
General Manager and Secretary of  
the Board

James M. Bray

BAY VIEW REFUSE AND RECYCLING  
SERVICES, INC., a California  
corporation

Lewis Figone  
By: LEWIS FIGONE, PRESIDENT

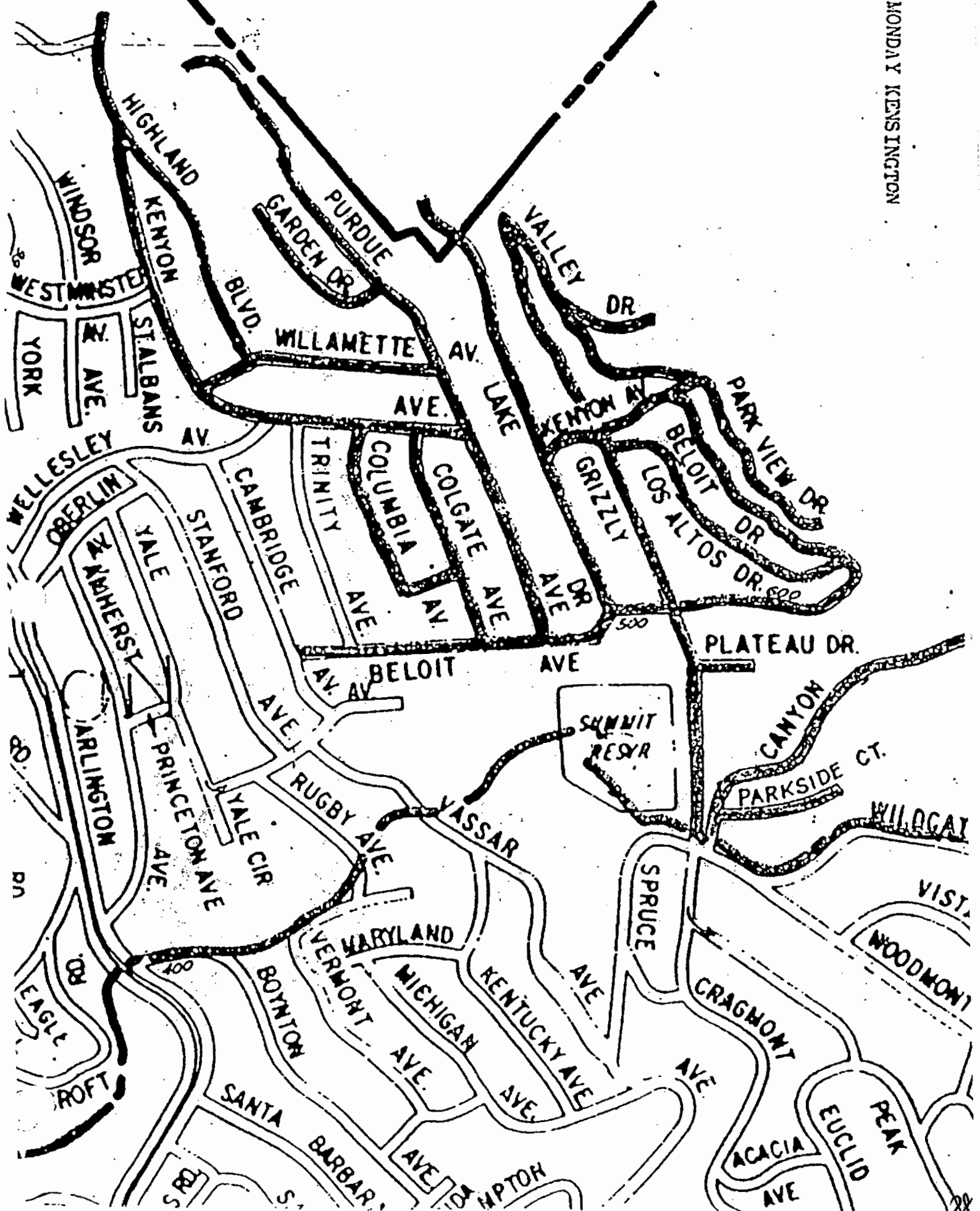
9/12/97  
Date

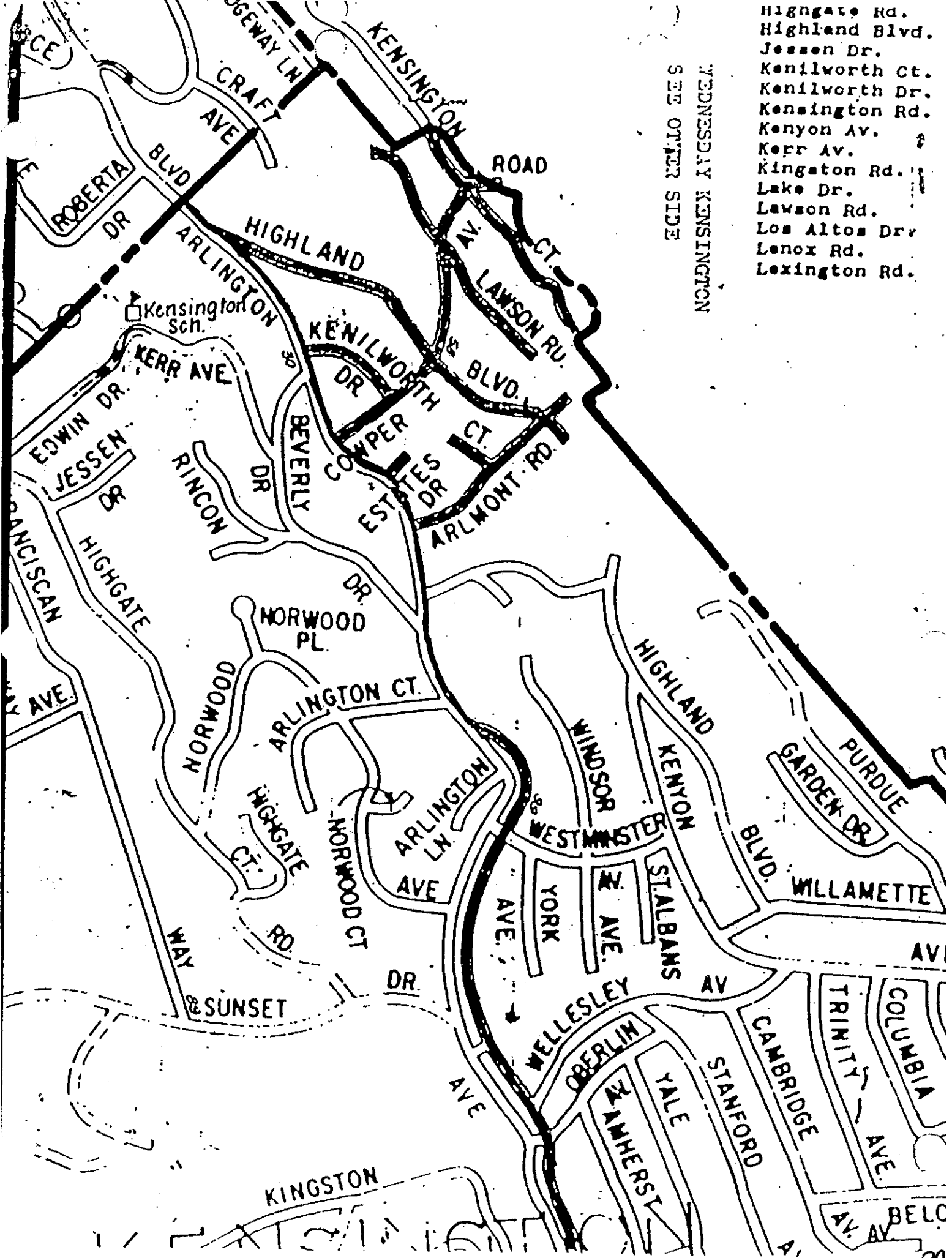
68-0384673  
Taxpayer I.D. No.

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Exhibit A  
Kensington Road Maps

MONDAY KENSINGTON





SEE OTHER SIDE  
WEDNESDAY KENSINGTON

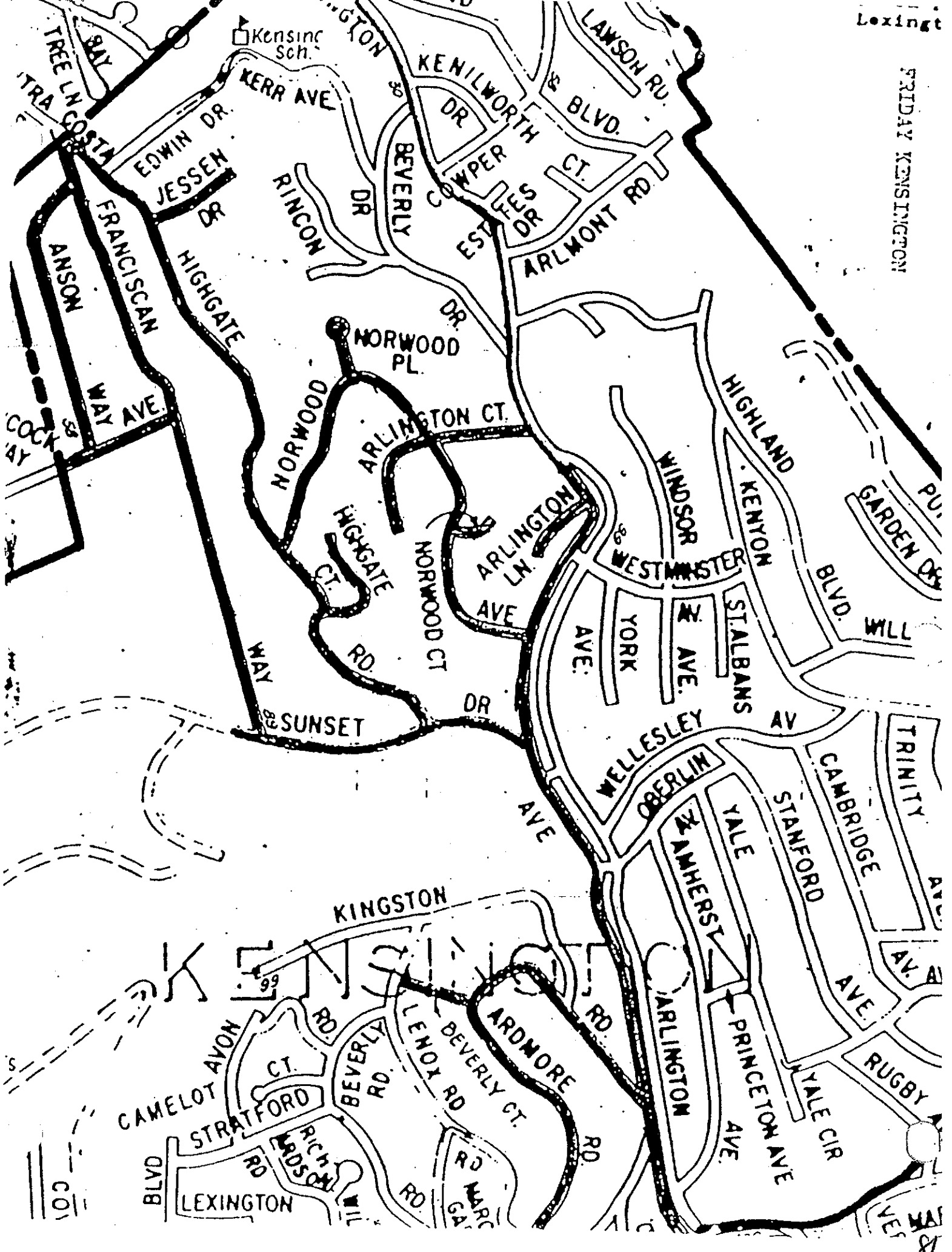
- Highgate Rd.
- Highland Blvd.
- Jessen Dr.
- Kenilworth Ct.
- Kenilworth Dr.
- Kensington Rd.
- Kenyon Av.
- Kerr Av.
- Kingston Rd.
- Lake Dr.
- Lawson Rd.
- Los Altos Dr
- Lenox Rd.
- Lexington Rd.





Lexingt

FRIDAY KENSINGTON



Kensington Sch.

KERR AVE

KENILWORTH DR

LAWSON RU. BLVD.

EDWIN DR  
JESSEN DR

BEVERLY DR  
COWPER CT  
ESTABLISH DR

ARLINGTON RD

FRANCISCAN  
HIGHGATE

RINCON DR

ANSON

NORWOOD PL

NORWOOD

ARLINGTON CT

HIGHLAND

WAY AVE

WINSOR

KENYON

HIGHGATE CT

NORWOOD CT

ARLINGTON LN

WESTMASTER

WILL BLVD

WAY

SUNSET

DR

AVE

YORK

AVE

STALBANS

WELLESLEY

AV

TRINITY

KINGSTON

OVERLIN

AMHERST

YALE

STANFORD

CAMBRIDGE

AV

CAMELOT AVON  
STRATFORD

CT

BEVERLY RD

LENOX RD

ARDMORE

LEXINGTON

RICHARDSON

RD

RD

RD

RD

RD

RD

ARLINGTON

PRINCETON AVE

YALE CIR

RUGBY

RD

Exhibit B

MAXIMUM MONTHLY RESIDENTIAL AND COMMERCIAL RATES

● RESIDENTIAL RATES:

32 gallon cans

Monthly Fee

1 can once a week	\$19.86	
2 cans once a week	\$35.65	39.72
3 cans once a week	\$50.00	59.88
4 cans once a week	\$64.00	79.87

40 gallon cans

Monthly Fee

1 can once a week	\$45.20
-------------------	---------

45 gallon cans

Monthly Fee

1 can once a week	\$49.30
<u>2 units/2 cans</u>	\$40.20

● COMMERCIAL RATES:

30 gallon can once a week	\$21.00
---------------------------	---------

Material other than can use:

Dry

\$21.45/cubic yard

Wet

\$22.10/cubic yard

Exhibit C

PROJECTED EXPENSES IN CALENDAR YEAR 1998  
ON WHICH INITIAL RATES ARE ESTABLISHED

OPERATING EXPENSES:	
Salaries and Benefits	\$337,554
Legal Fees	10,000
Dump Expense (Gate Fees) (1)	108,202
Depreciation	22,204
Insurance	25,577
Accounting	10,800
Parts and Tires (+5%)	23,062
Rent	17,551
Truck Rental	32,698
Diesel Fuel	14,000
Debris Box Rental	7,840
Postage	4,127
Licenses - Trucks	4,019
Office	3,487
Repairs & Maintenance	2,557
Telephone	1,578
Other General & Operating (+ gasoline)	<u>6,267</u>
TOTAL OPERATING EXPENSES	\$631,523
Allowance for Profit (12%)	75,783
Pass-through Expenses	
- County Fee (3% of Req'd Rev)	20,899
- District Fee (2% of Req'd Rev)	13,933
- County Hazardous Waste Fee - current	4,000
- County Hazardous Waste Fee - reimbursemen of prior charges of \$4387 over 24 months	2,194
- Audit Fees	<u>12,300</u>
	53,326
Less: Recycling & Other Fees	<u>(64,000) (2)</u>
Benchmark Level Revenues to be Raised from Collection Rates	<u>\$696,631</u>

- (1) \$36/ton for refuse, \$32/ton for greenwaste.  
(2) Recycling and other revenues based on avg. of  
three (3) previous years (1994,1995,1996).

Kensington - Bay View  
New Franchise Agreement

Exhibit D

ASSUMPTIONS REGARDING AND LIMITATIONS ON COSTS AND EXPENSES

- 1. Salaries and Benefits - Based on five (5) full time employees,
  - 1 garbage route with 2 workers (1 driver and 1 helper)
  - 1 recycling route with driver
  - 1 officer worker, and
  - 1 president (\$80,000 salary; no benefits) 3% increase per year

Allocated employees -

1 mechanic (1 day per week) \$314.32

Part Time As needed helpers and drivers for yardwaste and general pickups.

- 2 yardwaste drivers and 2 yardwaste helpers
- 5 days per week, 12 weeks per year (monthly)

Cost:

Drivers-	\$30.96 per hour
Helpers-	\$28.91 per hour

- 2. Dump Expense Based on \$36 per ton for refuse and \$32 per ton for yardwaste at West Contra Costa County Sanitary Landfill

- 3. Depreciation Based on the following equipment:

	<u>12/31/96</u> <u>Net Book Value</u>	<u>Annual</u> <u>Depreciation*</u>
Equipment	\$ 71,355	\$ 22,204

\* Straight line, seven (7) years.

Excludes fully depreciated assets purchased before 1991.

- 4. Affiliated Company Transactions -

Rent - Office and yard	\$ 1,462.55 per month
Truck Rental**	\$ 36.88 per hour
Debris Box Rental	\$ 80.00 per load

\*\* Monthly yardwaste service assumes 2 trucks required 60 days per year, or 960 truck/hours per year.

84

Exhibit E

SCOPE OF COLLECTION/RECYCLING SERVICES

SOLID WASTE COLLECTION

Backyard weekly service.

RECYCLING

A. Weekly curbside recycling collection.

Materials collected: aluminum cans; steel and tin plated cans; glass containers; PET bottles; clear HDPE bottles; colored HDPE bottles; polystyrene; plastic film; cardboard; newspaper; mixed paper (includes magazines).

Containers: 3 five-gallon plastic buckets for each customer; replacements at cost.

B. Monthly curbside greenwaste collection on customer's regular garbage day. No yardage limit. Materials must be bundled, tied or placed in boxes or trash containers. (Boxes and containers will be emptied and not removed.) Greenwaste in plastic bags not accepted.

GENERAL PICK UP

One curbside pick up annually in September. Limit: 1-1/2 cubic yards bundled, tied or bagged. Greenwaste not accepted.

COMMUNITY CLEAN UP

Up to three 20-cubic yard drop boxes annually.

SPECIAL JOB PICK UPS

Customers may schedule special pick ups (e.g., old refrigerators) for a separate charge.

REUSABLE MATERIALS PICK UPS

If District directs, Bay View will conduct scheduled pick ups of reusable materials (e.g., old clothes, toys) in coordination with organizations such as Good Will Industries and Urban Ore. Compensation for such pick ups shall be in addition to rates shown on Exhibit B.

0

85

# UNINCORPORATED CONTRA COSTA COUNTY DIVERSION DATA

Service Provider: \_\_\_\_\_

Program Type: \_\_\_\_\_

Unincorporated Service Area: \_\_\_\_\_

Is the Data from an annual report (Yes or No)? \_\_\_\_\_

If not, which quarter of the year (e.g. 1,2,3 or 4)? \_\_\_\_\_

Year: \_\_\_\_\_

## MATERIAL TYPES ENTER TONNAGES BY MATERIAL TYPE *Abbreviations are shown in parenthesis*

### PAPER

Corrugated Cardboard (OCC): \_\_\_\_\_

Newsprint (ONP): \_\_\_\_\_

High grade (HG): \_\_\_\_\_

Mixed Paper (MP): \_\_\_\_\_

Magazines (OMG): \_\_\_\_\_

### GLASS

CA Redemption Value Cont. (CRV): \_\_\_\_\_

Other Glass (GLS): \_\_\_\_\_

### METAL

Aluminum Cans (UBC): \_\_\_\_\_

Tinned cans and ferrous (Fe): \_\_\_\_\_

Other non-ferrous (N-Fe): \_\_\_\_\_

### ORGANICS

Yard waste (YW): \_\_\_\_\_

Food waste (FW): \_\_\_\_\_

Wood waste (WW): \_\_\_\_\_

### PLASTIC

PET (PET): \_\_\_\_\_

HDPE (HDPE): \_\_\_\_\_

Polystyrene (PS): \_\_\_\_\_

Other (P-X): \_\_\_\_\_

### OTHER WASTES

Textiles (TX): \_\_\_\_\_

Inerts (INRT): \_\_\_\_\_

White Goods (WG): \_\_\_\_\_

Reusables (REUSE): \_\_\_\_\_

Other (OTHER): \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Completed by: \_\_\_\_\_  
 Firm or Agency \_\_\_\_\_  
 Phone No. \_\_\_\_\_

Date: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

# ATTACHMENT B

KEEGIN • HARRISON | SCHOPPERT SMITH & KARNER LLP

December 1, 2010

VIA EMAIL & U.S. MAIL

Mr. Gregory E. Harman  
General Manager / Chief of Police  
Kensington Police Protection  
and Community Services District  
217 Arlington Avenue  
Kensington, California 94707

Re: Bay View Refuse and Recycling Services, Inc. /  
RATE INCREASE REQUEST FOR 2011

Dear Mr. Harman:

As you will recall, we represent Bay View Refuse and Recycling Services, Inc. On July 12, 2010, I wrote to you on behalf of Bay View requesting an increase in rates for refuse, recycling and green waste collection for the last trimester of 2010.

Bay View is no longer requesting that increase. Instead, it now requests an increase in rates, effective January 1, 2011, as reflected in the enclosed rate sheet [Tab 1].

As discussed below, Bay View's calendar year 2010 profit, as calculated pursuant to its franchise agreement with the District, is projected to be less than one-third the amount predicted by the District's refuse rate consulting firm, HF&H Consultants, LLC ("HFH"). Our research and analysis reveals that this difference is due to multiple factors, including substantially decreased revenues and some increased costs. Of these factors, the most significant is the failure to collect the amount of revenue HFH predicted in its 2009 rate-setting analysis.

I am also enclosing for your ease of reference a copy of the HFH report, dated October 26, 2009 (the "Report") [Tab 2], which analyzed Bay View's 2010 rate application and made recommendations for adjustments to the figures contained in Bay View's submission. I would like to draw your attention to Table 1, and in particular the line item for "benchmark level of revenues." HFH recommended a 0.6% rate increase for 2010 and predicted the recommended increase would result in revenues of \$1,079,952.00. The actual experience anticipated for 2010 will be a year-end total of only \$1,015,038.11 — \$64,914 less than anticipated.

ATTORNEYS AT LAW

Stafford W. Keegin

Robert L. Harrison

Jeffrey S. Schoppert

Paul C. Smith

Jessica Karner

Wendy L. Wyse

Deborah Miller Black

Hank Eason

Nicole M. Cabaerte

OF COUNSEL

Damon M. Connolly

Kip Evan Steinberg

Derek A. Weber

Matthew N. White

Mr. Gregory E. Harman  
December 1, 2010  
Page 2

The reason for the difference in revenue prediction seems to be that no one expected the drop off in numbers and types of customers. Instead, HFH, in analyzing revenues (page 14 of the Report), simply assumed that current account information would remain constant into the future. ("HF&H tested the reasonableness of Bay View's projected revenue, by re-projecting 2010 revenues by multiplying the current account information (number of customers by service level) by the current rates").

**Forecasted 2010 Revenue Shortfall:**

With eight months of operating history now confirmed, Bay View forecasts it will fall short by more than \$92,000 of meeting the benchmark level of revenues needed to assure the 12% profit provided for in the franchise agreement. The profit shortfall based on the dramatic revenue decrease is illustrated in the enclosed worksheet entitled Forecasted Revenue Shortfall showing operating results forecasted to December 31, 2010 and 2011 [Tab 3].

The backup for the 2010 forecast is contained in the enclosed income statement included with the Accountants' Compilation Report, dated October 16, 2010, prepared by Cowden Neale, CPAs, LLP ("Cowden Neale"), Bay View's certified public accountants [Tab 4]. As you can see, Cowden Neale has also prepared spreadsheets showing historical annual revenue and expense figures for 2008 and 2009 from the audited year-end financial statements. As explained in the summary of significant assumptions spreadsheet, those audited, actual numbers were used to project operating results through the end of 2010.

What emerges plainly from a review of this information is the fact that rate payers within the District were not insulated from the adverse effects of the greatest national economic recession since the 1930s. While Bay View has managed to control its costs, it has *no* ability to generate demand for additional revenue-producing business.

**Reasons for Revenue Decrease:**

The revenue decreases are attributable to changes in the number of and the way in which Kensington rate payers use Bay View's services. The raw number of residential customers has decreased. In 2009, Bay View sent bills to 2,110 residential customers. That number dropped to 2,073 by the third trimester of 2010. The amount billed in 2009



Mr. Gregory E. Harman  
December 1, 2010  
Page 3

was an average of \$74,121 per month for residential service. That amount dropped to \$71,439 per month in 2010, a difference of almost \$2,700 per month.

Included with the enclosed accounting information is a detailed breakdown of the number of customers and their respective levels of service as reflected in the bills sent out for the September through December 2010 billing period, together with a comparison of those numbers to the same period in 2009 (page 3 to the 2010 forecasted data, dated October 16, 2010). These figures reveal: (i) a decrease in the total number of residential customers billed (loss of 37 customers); (ii) an increase in lower cost mini-can service (56 customers); (iii) a decrease in 32-gallon can service (loss of 27 customers); and (iv) a decrease in two 32-gallon can customers (loss of 43 customers).

Likewise, the decrease in projected debris box revenue from \$39,067.20 in 2008 to a projected \$26,706.82 in 2010 reflects the dramatic decrease in residential remodeling and construction work triggered by the recession.

**Rate Increase and Projected Effect on 2011 Operating Results:**

Bay View requests that, with one exception, rates for all service categories included in the regular revenue items be increased by 6%.

Bay View requests that the monthly rate for collection of the 20-gallon mini-can be increased by \$5.44, to \$29.03 on January 1, 2011, resulting in a rate that is \$5.00 less than the 32-gallon can rate. This would make the difference between the mini-can rate approximately the same as it was when initiated in 2000. We feel this is appropriate since there is no difference in Bay View's cost of collecting one mini-can as compared to a 32-gallon can.

In order to maintain the historic ratio between the mini-can rate and the regular 32-gallon can rate, Bay View also requests that it be permitted to raise the mini-can rate each year by the same amount as the dollar increase in the 32-gallon can rate.

Cowden Neale has also prepared a Forecasted Income Statement for the Year Ended December 31, 2011, dated November 29, 2010, which is enclosed with this letter [Tab 5]. The forecasted data for 2011 shows the total revenue that will be produced by the requested rate increase and its effect on Bay View's anticipated 2011 profit (page 3 of November 29, 2010 Compilation Report). Please note that Bay View will ultimately receive only 95% of the increase. Five percent of the additional revenues will be paid to

Mr. Gregory E. Harman

December 1, 2010

Page 4

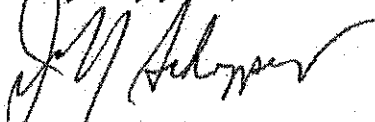
the County or the District as franchise fees. Furthermore, the worksheet entitled Forecasted Revenue Shortfall shows that even with a 6% rate increase, Bay View anticipates only reaching an 8.59% profit, which is substantially below the 12% profit allowed under its contract.

In evaluating Bay View's request, I hope the District is mindful of the reasonableness of the requested rates when compared to other similar Bay Area jurisdictions. For example, in Piedmont monthly rates for backyard collection of a 20-gallon can are \$48.11 and \$52.96 for a 35-gallon can. Bay View's requested 2011 rates are thus 40% and 30% lower than the comparable Piedmont rates, including adjustments for the larger Piedmont container size.

In the enclosed data, Bay View and its accountants have tried to use assumptions that are as realistic and reasonable as possible. We recognize that you and the District board may have questions about particular figures and line items in the enclosed documents, and we welcome the opportunity to sit down and discuss those with you at your earliest convenience.

As always, Mr. Figone, Mr. Christie and Bay View's accountants and lawyer will make themselves available to help answer any question you might have about the within request and the supporting data.

Very truly yours,



Jeffrey S. Schoppert

JSS/glc (048403)

Enclosures

cc: Ms. Deidra Dingman (w/encls.)  
Contra Costa County Dept. of Conservation & Development  
Mr. Patrick T. Miyaki (w/encls.)  
Mr. Lewis R. Figone (w/encls.)  
Mr. Charles Cowden (w/encls.)

**Tab 1**

**PROPOSED  
Kensington Rates 1-1-2011**

Cans	1 Month	3 Month	4 Month
1:	\$ 34.03		\$136.12
2:	\$ 67.83		\$263.32
3:	\$101.84		\$407.36
4:	\$135.75		\$543.00
1-40:	\$ 76.56		\$306.24
1-20 gal	\$29.03		\$102.08

Cans	1 Month	3 Month	4 Month
1-45:	\$ 83.55		\$334.20

1 yard---(Dry)---\$157.37
2 yard---(Dry)---\$314.74
1 yard---(wet)---\$162.70
2 yard---(wet)---\$325.40

**PROPOSED  
Kensington Rates 1-1-2011**

Cans	1 Month	4 Month
	\$	\$

Cans	1 Month	4 Month

<u>Bulk Collection</u>		
<u>Residential:</u>	Curbside:	\$ 18.02 cu yd
	Backyard:	\$ 20.56 cu yd
<u>Commercial:</u>	Dry	\$ 36.32 cu yd
	wet	\$ 37.55 cu yd
		\$ 35.31 30-gal

<u>Extra cans</u>	
1-30:	\$ 8.56
1-40:	\$11.18
1-45:	\$11.66

Tab 2



2175 N. California Boulevard, Suite 990  
Walnut Creek, California 94596  
Telephone: 925/977-6950  
Fax: 925/977-6955  
[www.hfh-consultants.com](http://www.hfh-consultants.com)

Robert D. Hilton, CMC  
John W. Farnkopf, PE  
Laith B. Ezzet, CMC  
Richard J. Simonson, CMC  
Marva M. Sheehan, CPA

October 26, 2009

Mr. Greg Harman  
General Manager/Chief of Police  
Kensington Police Protection and Community Services District  
217 Arlington Avenue  
Kensington, CA 94707

Reference Number: S3774

**Subject: Review of Bay View Refuse & Recycling Services, Inc.'s 2010 Rate Application**

Dear Mr. Harman:

This report documents HF&H Consultants, LLC's (HF&H) Final findings and recommendations from our review of Bay View Refuse & Recycling Services Inc.'s (Bay View) application for a 1.2% increase to its refuse and recycling rates, effective January 1, 2010 (Application), that was submitted to the Kensington Police Protection and Community Services District (District). It should be noted that this final report reflects discussions with and comments received from Bay View after their review of the Draft Report submitted on September 3, 2009.

### **Background**

Bay View's compensation for providing refuse and recycling services to Kensington residents and business is described in the District's Franchise Agreement with Bay View dated September 11, 1997 (Franchise Agreement). Services for residential and commercial customers include weekly collection of solid waste and recyclable materials utilizing a split-body truck operating 5 days a week, Monday through Friday, for approximately 2,100 customers. The split-body truck allows Bay View to reduce the number of trips on the District's streets by collecting solid waste and recyclable materials simultaneously. Additionally, Bay View operates a green waste collection route 10 days per month, providing twice monthly service. In addition, Bay View provides collection services to District and County facilities at no charge. Currently, residents are required to place their recyclable material and green waste containers at the curbside for collection, while solid waste containers are collected from the customer's back or side yard.

In a letter dated May 20, 2009, Bay View President, Louis Figone, requests a 1.2% rate increase effective January 1, 2010 over the levels currently in place for 2009.



Mr. Greg Harman  
October 26, 2009  
Page 2 of 15

The District engaged HF&H on July 9, 2009 to conduct the following analyses:

1. **Rate Adjustment Analysis.** Perform a comprehensive review of Bay View's Application to determine the necessary rate adjustment, in accordance with Section 9.4 of the Franchise Agreement;
2. **Analysis of Projected Savings from the Elimination of Backyard Collection Services.** Solicit and review for reasonableness Bay View's estimated annual savings if Bay View were to collect solid waste containers from the curbside rather than the customer's back or side yard; and,
3. **Analysis of Annual Costs to Provide Service to District and County Facilities.** Determine whether Bay View's costs incurred to provide services to District and County facilities (at no charge) are included in current customer rates. If such costs are included, HF&H shall determine the annual estimated costs and the current impact on rates.

## Summary of Results

### **Rate Adjustment Analysis**

As summarized in Table 1 on the following page, Bay View projected its 2010 revenue shortfall of \$52,281 requiring a rate increase of 1.2%. Based on our review, in accordance with the scope of work detailed below, HF&H recommends reducing Bay View's 2010 projected revenue shortfall by \$46,288. The HF&H adjusted Application requires a rate increase of 0.6%.



Mr. Greg Harman  
 October 26, 2009  
 Page 3 of 15

**Table 1**  
**HF&H Adjusted Rate Application**

	BAY VIEW Rate Application	HF&H Recommended Adjustments	HF&H Adjusted Application
<b>Projected Operating Expenses:</b>			
Salaries and Benefits	\$ 390,000	\$ -	\$ 390,000
Dump Fees	100,000	1,460	101,460
Legal and Accounting	18,000	-	18,000
Debris Box Rental	24,000	-	24,000
Depreciation	40,000	-	40,000
Fuel	30,000	(2,723)	27,277
Truck Rental (Green Waste)	83,000	-	83,000
Insurance	27,000	(2,733)	24,267
Truck Licenses	5,000	(1,000)	4,000
General and Administrative	133,000	-	133,000
Parts and Tires	12,000	-	12,000
Rent - Office and Yard	48,000	-	48,000
Repairs and Maintenance	12,000	-	12,000
<b>Total Operating Expenses</b>	<b>\$ 922,000</b>	<b>\$ (4,995)</b>	<b>\$ 917,005</b>
Allowance for Profit @ 12.00%	\$ 110,640	\$ (599)	\$ 110,041
<b>Total Contractor Compensation before Pass-through</b>	<b>\$ 1,032,640</b>	<b>\$ (5,595)</b>	<b>\$ 1,027,045</b>
<b>Pass-through Expenses</b>			
County Franchise Fee @ 3.00%	\$ 30,843	\$ 1,556	\$ 32,399
District Franchise Fee @ 2.00%	20,559	1,040	21,599
County Hazardous Waste Fee	11,157	-	11,157
Audit Fees	15,000	-	15,000
<b>Total Pass-through Expenses</b>	<b>\$ 77,559</b>	<b>\$ 2,596</b>	<b>\$ 80,155</b>
<b>Total Contractor Compensation</b>	<b>\$ 1,110,199</b>	<b>\$ (2,999)</b>	<b>\$ 1,107,200</b>
<b>Recycling and Other Income</b>	<b>\$ (82,128)</b>	<b>\$ 54,880</b>	<b>\$ (27,248)</b>
<b>Benchmark Level of Revenues (A)</b>	<b>\$ 1,028,071</b>	<b>\$ 51,881</b>	<b>\$ 1,079,952</b>
<b>(to be raised from collection rates)</b>			
<b>Actual 2008 Rate Revenue</b>	<b>\$ 975,790</b>	<b>\$ 54,880</b>	<b>\$ 1,030,670</b>
Add: 2009 4.2% Rate Increase			43,288
<b>Projected 2010 Rate Revenue at Current Rates (B)</b>	<b>\$ 975,790</b>	<b>\$ 54,880</b>	<b>\$ 1,073,958</b>
<b>Projected Revenue Surplus/(Shortfall) [B - A]</b>	<b>\$ (52,281)</b>	<b>\$ 46,288</b>	<b>\$ (5,993)</b>
Benchmark level calculated for 2010 as a percentage of 2008	5.4%		
Less: 2009 rate increase	-4.2%		
<b>Proposed 2010 Rate Increase/(Decrease)</b>	<b>1.2%</b>		<b>0.6%</b>





Mr. Greg Harman  
October 26, 2009  
Page 4 of 15

### **Analysis of Projected Savings from the Elimination of Backyard Collection Services**

In accordance with Section 12 of the Franchise Agreement, "the place of pickup shall be backyard service for Solid Waste". Backyard service is a convenience to customers but comes at a price. If materials are placed for collection at the curb, the collection route can be completed quicker resulting in reductions in labor and fuel costs. At the request of the District, Bay View provided an estimate of cost savings if customers were required to place their solid waste container at the curb, just like they do with their recycling and green waste containers. Bay View's estimated cost savings appear reasonable and would result in an estimated annual savings of \$32,000 per year, which would reduce rates approximately 3.5%.

### **Analysis of Annual Costs to Provide Service to District and County Facilities**

The District requested an analysis of the annual costs incurred by Bay View to provide solid waste collection services to District and County facilities at no charge and whether such expenses were being funded through current customer rates. Our review found that collection services provided to District and County facilities are in fact currently funded through the residential and commercial rates at a rate impact of 1%.

### **Scope of Work**

HF&H determined, through review of: the Franchise Agreement; Bay View's most recently audited financial statements; and, documents provided by Bay View, that Bay View's revenues, expenses and rates were consistent with the benchmarks established in the Franchise Agreement.

To determine the reasonableness of Bay View's expenses, we compared them to industry standards based on recent competitive proposals and our benchmark database that contains actual and proposed operational and financial data collected during our hundreds of rate reviews and contract procurement projects.

The specific items were determined based on an HF&H-prepared variance analysis of expense line items from Bay View's financial statements. The detailed review of specific expense items included, but is not necessarily limited to, the following:

- Wages and Benefits
- Depreciation
- Expenses Paid to Related Parties
- Disposal / Processing Expenses
- General and Administrative Expenses



Mr. Greg Harman  
October 26, 2009  
Page 5 of 15

The review of Bay View's rate revenue was based on then-current rates and current customer subscription level. We calculated the actual revenues that should have been generated within the District in 2008, compared these to the reported revenues, and obtained explanations for any significant variances. We verified the calculation of projected 2010 revenues based on actual customer accounts at the current rates. We also confirmed Bay View's reported recyclable material sales revenues for 2006, 2007, and 2008 with audited financial statements and calculated the projected recyclable material sales revenues for 2010. To determine the reasonableness of Bay View's commodity revenue, we recalculated the 2010 revenue in accordance with the Agreement.

Our review was substantially different in scope than an examination in accordance with Generally Accepted Auditing Standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion. However, Cowden Neale, LLP has issued an unqualified opinion of Bay View's 2008 Financial Statements.

Our conclusions are based on the review of Bay View's projections of its financial results of operations for the forthcoming rate year (i.e. January 1, 2010 - December 31, 2010). Actual results of operations will usually differ from projections, because events and circumstances frequently do not occur as expected, and the difference may be significant.

## **Summary of Analyses**

### **Operating Expenses**

We reviewed the expenses as listed in the audited financial statements for the years 2005-2008 for year over year variances. We also compared the financial information from the 2008 Financial Statements to the 2010 Application. Table 2, on the following page, summarizes the results of Bay View's actual 2008 operating expenses compared to their projected operations expenses for 2010.



Mr. Greg Harman  
 October 26, 2009  
 Page 6 of 15

**Table 2**  
**Operating Expense Variance**

Operating Expenses:	Bay View	Bay View	Increase (Decrease)	
	Actual	Application	Variance	
	2008	2010	\$\$	%
Salaries and benefits	\$ 332,296	\$ 390,000	\$ 57,704	17.37%
Dump fees	95,993	100,000	4,007	4.17%
Franchise fees	52,232	51,402	(830)	-1.59%
Legal and Accounting <sup>1</sup>	29,700	33,000	3,300	11.11%
Debris Box Rental <sup>2</sup>	17,861	24,000	6,139	34.37%
Depreciation	40,421	40,000	(421)	-1.04%
Fuel	36,916	30,000	(6,916)	-18.73%
Truck Rental (Green Waste) <sup>2</sup>	75,712	83,000	7,288	9.63%
Hazardous Waste Fee <sup>1</sup>	10,461	11,157	696	6.65%
Insurance	22,872	27,000	4,128	18.05%
Truck licenses	3,964	5,000	1,036	26.14%
Management Fees (Executive Compensation) <sup>2</sup>	110,184	117,000	6,816	6.19%
General and administrative	12,211	16,000	3,789	31.03%
Parts and Tires	8,146	12,000	3,854	47.31%
Rent - Office and Yard <sup>2</sup>	45,600	48,000	2,400	5.26%
Repairs and Maintenance	3,296	12,000	8,704	264.08%
<b>Total Operating Expenses</b>	<b>\$ 897,865</b>	<b>\$ 999,559</b>	<b>\$101,694</b>	<b>11.33%</b>

- (1) Note: \$15,000 of Professional Fees and all Hazardous Waste Fees are included as pass through expenses on the Application
- (2) Accounts are classified as related-party transactions. See 'related-party transactions' section below

**Salaries & Benefits**

HF&H compared the detailed schedule provided by Bay View for labor rates, effective March 1, 2009 through February 28, 2010, to the rates in the Union Agreement. Upon review, HF&H found Bay View is paying its full-time solid waste/recyclable material driver approximately 5.4% higher than stipulated by the Union Agreement. Based on discussions with Bay View, the additional compensation is an incentive to the driver responsible for collection on the District's manual collection system and challenging route conditions. It is Bay View management's opinion that in order to retain good reliable employees they have found they need to offer wages higher than those provided for in the Union agreement. Bay View's enhanced compensation practice per HF&H's calculation has an overall rate impact of 0.4%. Section 9.4 of the Franchise Agreement states "Contractor will recover its reasonable costs for furnishing all labor...necessary to perform all the services required by this Agreement...". The 5.4% premium results in a fully-loaded rate of pay of \$46.44 per hour, which includes wages, vacation pay, holiday pay, sick leave, workers compensation expense, health and welfare expense, pension, uniforms, and equipment. Based on our review of recent competitive proposals and annual rate reviews for



Mr. Greg Harman  
October 26, 2009  
Page 7 of 15

jurisdictions being provided similar services, the \$46.44 per hour is considered a reasonable and competitive rate within the Bay Area; therefore, we have not recommended an adjustment.

**Dump Fees**

HF&H reviewed the Agreement for Landfill Services (LF Agreement) entered into March 10, 2003, between Bay View, West Contra Costa Sanitary Landfill (WCCSL) and Potrero Hills Landfill, Inc. (PHL) and noted per Section 14 of the LF Agreement, tip fees are to be adjusted every March 1 by CPI, All Urban Consumers. We further noted per Section 23 of the LF Agreement, the term of the Agreement is 10 years from the date of execution (March 10, 2013) with an option to extend an additional 10 years.

HF&H reviewed the per-ton tip fees charged to Bay View for the disposal of solid waste at the WCCSL and the Golden Bear Transfer Station and agreed the rates to the July 1, 2009 invoices, a notification letter from Republic Services, Inc. and Bay View's LF Agreement without exception.

HF&H calculated the projected dump fees for Calendar Year 2010 (see Table 3), by multiplying the actual tons collected in 2008 for refuse and green waste multiplied by the current tip fees adjusted by 1.16% to reflect the projected per-ton tip fees for 2010. Our 1.16% projected increase in the 2010 tip fee is based on the average annual increase in the CPI for February 2009 over the previous year.

**Table 3  
Projected Dump Fees**

Refuse	2009 Rate (eff 7/1/09 - 2/28/10)	* % CPI Increase	Projected 2010 Rate (eff 3/1/10 - 2/28/11)	2008 tons	Projected Disposal Cost 2010
Golden Bear (Transfer Station)	\$ 46.64	1.16%	\$ 47.18	1,538.68	\$ 72,459.52
<b>Greenwaste</b>					
West Contra Costa Sanitary L.F.	\$ 35.54	1.16%	\$ 35.95	799.17	\$ 28,677.76
<b>ADC</b>					
West Contra Costa Sanitary L.F.	\$ 7.50	1.16%	\$ 7.59	42.65	\$ 322.98
<b>Total 2010 Projected Dump Fees</b>					<b>\$ 101,460.26</b>

\*Estimated March 1, 2010 CPI Increase based on the actual percentage change for the prior year (February 2008 over February 2009)



Mr. Greg Harman  
October 26, 2009  
Page 8 of 15

Bay View's projected dump fees are \$100,000 versus our projection of \$101,460. Based on the calculation above HF&H recommends an increase of \$1,460 to Bay View's projected dump fee expenses reflected in the Application.

### Legal and Accounting

Per Section 8 of the Franchise Agreement, Bay View is required to provide to the District annual financial statements compiled by an independent certified public accountant in accordance with Generally Accepted Accounting Principles. Per a discussion with the Audit firm of Cowden Neale, LLP Certified Public Accountants, currently providing this service to Bay View, approximately one half of their hours billed are for annual audit services. Annual audit services are treated as a pass-through expense in the Application (see Exhibit C of the Agreement). The remaining service is shown in the operation expenses section of the Application. Bay View is invoiced monthly for services provided for annual audits, quarterly reporting to District and ongoing monthly accounting services. The annual cost to Bay View for accounting was \$29,700 in 2008 per the Audited Financial Statement. Per Bay Views Application they are projecting \$15,000 in pass-through expenses and \$15,000 in operating expenses for a total of \$30,000. This is a \$300, or a 1% increase over 2008 and therefore appears reasonable.

### Depreciation

Per Exhibit D of the Franchise Agreement, fixed assets are depreciated using straight line depreciation and a useful life of seven years. Bay View projected 2010 depreciation expenses of \$40,000. HF&H tied Bay View's projected depreciation expense to their independently audited Fixed Asset sub ledger without exception. HF&H noted all fixed assets with a remaining useful life were depreciated using straight-line and seven years as their useful life.

### Fuel

Bay View projected 2010 fuel costs of \$30,000, a \$6,916, or 18.75% decrease from actual fuel expenses incurred in 2008. We calculated the average change in CPI for Motor Fuel from January-June 2008 to January-June 2009 and noted a percentage decrease of 37.23%, compared to Bay View's estimated decrease of 18.75%. Although HF&H believes Bay View's decrease in fuel costs resulting from an anticipated lower price per gallon is conservative, due to the current trends and volatility in prices in recent years, no adjustment to price is recommended. However, the 2008 actual fuel expense used by Bay View to project 2010 fuel costs was overstated by approximately 880 gallons or an estimated \$3,350 as a result of a four month period in 2008 where Bay View transferred Solid Waste tonnage to Potrero Hills Landfill in Solano County. As this will not occur in 2010, HF&H recommends a decrease in the projected 2010 fuel costs of \$2,723 (\$3,350 decreased by 18.75% due to declining prices)



Mr. Greg Harman  
October 26, 2009  
Page 9 of 15

**Insurance**

Bay View projected annual insurance costs of \$27,000. HF&H requested a copy of the annual invoice for the renewal policy effective 1/1/09 and noted the amount of the coverage was \$23,560. The 2010 Application cost requested by Bay View represents a \$3,440 increase or 14.6% from the 2009 policy. The increase from 2008 to 2009 was 3.0% with significant reductions the previous two years. Therefore, Bay Views projected insurance expense does not appear reasonable. Based on our analysis described above, **HF&H recommends a decrease in 2010 projected insurance cost of \$2,733.**

**Truck Licenses**

Bay View projected 2010 Truck License expense of \$5,000, a \$1,036 increase from 2008. HF&H obtained the most recent DMV Registration Renewal Notices from Bay View for the four vehicles indicated on the 2009 Fixed Asset Listing. Bay View's total 2009 renewal fees were approximately \$4,000; therefore, **HF&H recommends a decrease in projected truck licenses fees of \$1,000.**

**General and Administrative (includes executive compensation)**

Bay View projected 2010 general and administrative costs of \$133,000, including executive compensation in the amount of \$117,000. In accordance with Exhibit D of the Franchise Agreement, Bay View Refuse Inc. and Bay Cities Refuse Services, Inc., companies controlled by the sole stockholder, Louis Figone, provide executive management services to Bay View and charge a management fee in lieu of an executive salary at a rate of \$80,000 per year, commencing September 11, 1997, and adjusted annually be 3.0%. HF&H verified the accuracy of the \$117,000 calculation without exception, as shown in Table 4 below.



Mr. Greg Harman  
October 26, 2009  
Page 10 of 15

**Table 4**  
**Executive Compensation**

Year	Base	CPI		New Rate
		Increase %	Increase \$	
1998	\$80,000	3%	\$2,400	\$82,400
1999	\$82,400	3%	\$2,472	\$84,872
2000	\$84,872	3%	\$2,546	\$87,418
2001	\$87,418	3%	\$2,623	\$90,041
2002	\$90,041	3%	\$2,701	\$92,742
2003	\$92,742	3%	\$2,782	\$95,524
2004	\$95,524	3%	\$2,866	\$98,390
2005	\$98,390	3%	\$2,952	\$101,342
2006	\$101,342	3%	\$3,040	\$104,382
2007	\$104,382	3%	\$3,131	\$107,513
2008	\$107,513	3%	\$3,225	\$110,739
2009	\$110,739	3%	\$3,322	\$114,061
2010	\$114,061	3%	\$3,422	\$117,483

To test the overall reasonableness of Bay View's total general and administrative costs (which includes, but is not limited to: billing expenses, allocated office/customer service staff, executive compensation, etc.), we compared Bay View's projected general and administrative expenses ratio of 12.9% of its total compensation to three recent proposals received for similar services in a competitive environment. HF&H found the competitively proposed general and administrative expenses ratios ranged from 9.2% to 17.2% with an average ratio of 13.4%; therefore, Bay's View's projected general and administrative costs appear reasonable and no adjustment is necessary.

**Parts & Tires**

Bay View projected parts & tires expense of \$12,000 in 2010, which is a \$3,854 increase from actual 2008 expenses. Based on discussions with Bay View, the increase in parts and tires expense is attributable to the purchase of new tires in 2010 to replace the tires that can no longer be re-capped; therefore, no adjustment is necessary.

**Repairs & Maintenance**

Bay View projected repairs & maintenance expenses of \$12,000 in 2010, which is an \$8,704 increase, compared to Bay View's actual expenses incurred in 2008. Per discussions with Bay View, the projected repairs & maintenance expenses for 2010 were based on an average of the



Mr. Greg Harman  
October 26, 2009  
Page 11 of 15

previous three years and additional expenses related to the expiration of a five year factory warranty on hydraulic cylinders expiring at the end of 2009, installation of a back-up camera on the split-body vehicle, and the retrofitting of the vehicle with a Diesel Particulate Filter to comply with emissions standards. Based on our review and discussions with Bay View management, we find Bay View's projected expenses reasonable.

### **Related-Party Transactions**

There are related-party transactions (amounts paid to affiliated entities to Bay View) included in Bay View's 2010 projections at rates that have been discussed and allowed by the District in previous reviews. HF&H notes the following accounts have been classified as related-party transactions because they are amounts that are paid to affiliated entities: Debris Box Rental, Truck Rental (Green Waste), and Rent (Office and Yard). In accordance with Exhibit D of the Franchise Agreement, and data from haulers with similar operations, we reviewed Bay View's related-party transactions projections for reasonableness. Presented below are the results of our analyses.

#### **Debris Box Rental**

Due to the relatively small size of the District's service area, Bay View's contracts with Bay City Refuse Services, Inc., Bay View's sister company, to provide the labor and vehicle (on a per pull basis) to collect debris boxes within the District's service area. By doing this, Bay View does not incur the entire cost of purchasing a debris box collection vehicle and employing a full-time driver to provide on average two debris box pulls per week. Bay View has projected 2010 debris box rental expense of \$24,000, based on 96 pulls (the average number of pulls for the last three years) at \$250 per pull, which equates to \$200 per hour (based on the average round-trip time of 1 hour and 15 minutes). To test the reasonableness of Bay View's \$200 per hour rate, HF&H compared the cost per hour to three recent proposals received for similar services in a competitive environment. HF&H found the competitively proposed per-hour rates ranged from \$198.42 per hour to \$216.99 per hour; therefore, Bay's View's projected debris box rental costs appear reasonable and no adjustment is necessary.

#### **Truck Rental (Green Waste)**

Similar to debris box rental, Bay City Refuse Services Inc., Bay View's sister company, provides the green waste collection vehicle that is used 960 hours per year to provide twice monthly green waste collection services. Through out the year Bay View has found it is necessary to utilize a second truck on certain days to accommodate the allowed unlimited green waste collection. HF&H looked at the most recent twelve-month period from September 2008 through August 2009 to determine the number of days an additional truck is needed. The green waste dump statements and tonnage was used to support the estimated twenty one days or 168 hours per year (21 days X 8 hours). Two trucks are needed for the Annual Clean-up which takes place over





Mr. Greg Harman  
October 26, 2009  
Page 12 of 15

five days or 80 hours per year. (2 trucks X 5 days X 8 hours). Additionally a different truck is needed approximately 260 hours per year to collect the two yard bins through out the service area. In total Bay View is requesting \$83,000 compensation for an estimated 1,468 hours for truck rental for 2010. The rental expense of \$56.54 per hour (\$83,000 divided by 1,468 hours) covers depreciation, interest, repairs and maintenance, parts and tires, licenses, and insurance. HF&H compared this rate to the rate in Exhibit D of the Agreement escalated for the change in the consumer price index. The calculated rate per this method was \$52.02 per hour or approximately \$76,400 annually when multiplied by the 1,468 estimated truck hours. As this is only an estimate of hours and actual expenses may vary from CPI projections HF&H recommends no adjustment to the Application amount of \$83,000.

**Rent - Office and Yard**

HF&H notes the allowable monthly rent at the commencement of the Franchise Agreement in 1998, in accordance with Exhibit D, was \$2,823.56 (made up of \$1,462.55 per month for office and yard space plus \$1,361.01 per month for allocated mechanic salary and benefits expenses based on 8 hours per week). To test the reasonableness of Bay View's 2010 projections we compared their monthly rent expense projection of \$4,000 per month to the allowable expense in accordance with Exhibit D of the Franchise Agreement adjusted annually by the percentage change in the CPI. As shown in Table 5 below, increasing Bay View's agreed-upon rent expense in 1998 (the commencement date of the current Franchise Agreement) by the annual change in CPI results in a rent expense of \$3,982.84 in 2010; therefore, no adjustment is necessary.

**Table 5  
Rent - Office Yard**

Year	Monthly Rent in Current Year	CPI Increase %	CPI Increase \$	Monthly Rent for Following Year
1998	\$ 2,823.56	3.44%	\$ 97.06	\$ 2,920.62
1999	\$ 2,920.62	3.81%	\$ 111.18	\$ 3,031.79
2000	\$ 3,031.79	4.25%	\$ 128.82	\$ 3,160.62
2001	\$ 3,160.62	6.59%	\$ 208.24	\$ 3,368.85
2002	\$ 3,368.85	1.20%	\$ 40.59	\$ 3,409.44
2003	\$ 3,409.44	1.60%	\$ 54.71	\$ 3,464.15
2004	\$ 3,464.15	1.38%	\$ 47.65	\$ 3,511.80
2005	\$ 3,511.80	1.11%	\$ 38.82	\$ 3,550.62
2006	\$ 3,550.62	3.93%	\$ 139.41	\$ 3,690.03
2007	\$ 3,690.03	3.36%	\$ 123.94	\$ 3,813.97
2008	\$ 3,813.97	4.19%	\$ 159.85	\$ 3,973.82
2009	\$ 3,973.82	0.23%	\$ 9.02	\$ 3,982.84
2010	\$ 3,982.84			



Mr. Greg Harman  
October 26, 2009  
Page 13 of 15

### **Profit**

Per Section 9.3 and 9.4 of the Franchise Agreement, Bay View is allowed a benchmark pre-tax profit margin of 12% of Bay View's reasonable reimbursable costs. HF&H recalculated the profit based on the recommended adjustments described above and included in Table 1, which results in a recommended reduction of \$599 from \$110,640 to \$110,041.

### **Pass-Through Fees**

#### **Franchise Fees**

In accordance with Section 23 of the Franchise Agreement, County franchise fees and District franchise fees are calculated at 3% and 2%, respectively, of commercial and residential bills for each calendar year. Our review found Bay View's application mistakenly calculated its franchise fee obligations based on total contractor's compensation net of revenue from the sale of recyclable commodities; however, franchise fees are paid on gross revenues.

As a result, Bay View's projected franchise fee obligation was understated by.

In addition, as a result of the recommended reductions the Bay View's compensation discussed above and summarized on Table 1, Bay View's projected franchise fee obligation was overstated.

As a result, HF&H recommends increasing Bay View's franchise fee obligation (and therefore their 2010 compensation) a net \$2,596.

Also, it should be noted that during the conduct of this review and our discussions with Bay View management we learned Bay View has been mistakenly over paying its franchise fees to the County and District by approximately \$1,400 per year (\$840 overpayment to the County and \$560 overpayment to the District). The overpayments are the result of Bay View calculating and paying franchise fees on the revenue from the sale of recyclable materials when the Franchise Agreement only requires franchise fees to be calculated and paid on gross customer rate revenue; therefore, the County and District should see a decrease in its annual franchise fee revenue in the amounts discussed above.

#### **County Hazardous Waste Fee**

Bay View projected 2010 Hazardous Waste Fees of \$11,157, a reasonable \$696 increase from actual 2008 expenses, which reflects an average annual increase of 3.1%; therefore, we do not recommend an adjustment.

106



Mr. Greg Harman  
October 26, 2009  
Page 14 of 15

## Revenue

HF&H verified that Bay View's Application correctly reflected the actual regular residential and commercial revenue (\$975,790) for 2008 per the Audited Financial Statements. HF&H verified that the Rate Application line "Less: recycling & other income" which was based on the average of prior 3 years" reflected the sum of the average revenues (\$82,128) for the years 2006 - 2008 per the Audited Financial Statements for the following:

- Recycling Revenue \$27,248.06
- Extra Charges \$1,520.21
- Debris Box \$46,252.44
- Container Rental \$2,983.03
- University of California House \$5,232.76
- Other Income \$285.00
- Accrued Revenue Adjustment (\$218.44)
- Refunds (\$1,175.90)

HF&H tested the reasonableness of Bay View's projected revenue, by re-projecting 2010 revenues by multiplying the current account information (number of customers by service level) by the current rates. Bay View projected 2010 revenues were calculated by summing Bay View's actual 2008 rate revenue (increased by the District-approved 4.2% increase in 2009) and the three-year average of recycling and other revenue. Our re-projected revenue was within a reasonable range of Bay View's projections; therefore, it appears that Bay Views projected revenues per the Application are reasonable.

HF&H tested the accuracy of Bay View's rate revenue by sampling 2009 actual residential, commercial and debris box monthly billings to confirm that Bay View is correctly charging their customers based upon their level of service at the District-approved rates. HF&H noted no exceptions in the samples and therefore does not recommend additional sampling.

## Elimination of Backyard Service

At the request of the District, Bay View provided an estimate of cost savings due to elimination of backyard service. Bay View's estimated cost savings of approximately \$32,000 per year include the elimination of one part-time helper, used three days per week on average. Bay View provided base pay information, assuming the daily rate stipulated for a Recycling Helper per the Union Agreement, and calculated 60% of the total compensation to account for the helper's part-time status. Bay View's estimated cost savings appear reasonable and would potentially result in annual savings of \$32,000 per year which would reduce rates approximately 3.5%.



Mr. Greg Harman  
October 26, 2009  
Page 15 of 15

### District and County Facility Services

The District requested an analysis of the annual costs incurred by Bay View to provide solid waste collection services to District and County facilities at no charge. Following is a list of the services and the corresponding current monthly cost to provide such service, at an annual total cost of \$10,473. Our review found that collection services provided to District and County facilities are in fact currently funded through the residential and commercial rates at a rate impact of 1%.

- Community Center 2 cubic yard bin, 2 x per week = \$607.53/month,
- Library 2 - 30 gallon cans = \$66.30/month
- District Office 2 - 30 gallon cans = \$66.30/month
- Park adjacent to the Library - 30 gallon cans = \$132.60/month

\* \* \*

We would like to express our appreciation to Bay View management and staff for their assistance. In addition, we express our appreciation to each of you for assistance and guidance during the course of the review. Should you have any questions, please call me at 925-977-6957.

Very truly yours,

HF&H CONSULTANTS, LLC

Richard J. Simonson, CMC  
Vice President

cc: Colleen Costine, HF&H Consultants  
Louis Figoné, Bay View Refuse and Recycling Services

101

**Tab 3**

**Bay View Refuse & Recycling**  
**Forecasted Revenue Shortfall**  
Forecasted for the years ending December 31, 2010 and 2011

	<u>Approved Rate Data From HF&amp;H Report Dated 10/20/09</u>	<u>Amounts Anticipated Based on 2010 Forecasted Operations</u>	<u>Amounts Anticipated Based on 2011 Forecasted Operations with 6% Rate Increase</u>
<u>Forecasted Revenues:</u>			
Kensington-regular		\$ 957,793.97	\$ 1,018,632.03
Kensington-extra		837.88	837.88
Recycling		27,116.82	27,116.82
Debris box		26,706.82	26,706.82
Container rental		1,915.37	1,915.37
Univ of Calif House		2,892.26	2,892.26
Accrued revenue adjustments		(567.62)	(567.62)
Refunds		(1,657.39)	(1,657.39)
		<u>\$ 1,015,038.11</u>	<u>\$ 1,075,876.17</u>
<u>Projected Operating Expenses:</u>			
Salaries & benefits	390,000.00	392,945.03	402,495.10
Dump fees	101,460.00	98,269.20	98,269.20
Legal and accounting	18,000.00	31,321.98	31,321.98
Debris box rental	24,000.00	14,535.00	14,535.00
Depreciation	40,000.00	42,283.00	42,283.00
Fuel	27,277.00	19,852.19	19,852.19
Truck rental	83,000.00	78,540.00	78,540.00
Insurance	24,267.00	24,782.01	24,782.01
Truck licenses	4,000.00	5,319.00	5,319.00
General and Administrative (including management fees)	133,000.00	129,597.95	129,597.95
Parts and tires	12,000.00	15,102.51	15,102.51
Rent-office and yard	48,000.00	51,408.00	51,408.00
Repairs and maintenance	12,000.00	4,694.40	4,694.40
	<u>\$ 917,004.00</u>	<u>\$ 908,650.27</u>	<u>\$ 918,200.34</u>
Allowance for profit @ 12%	<u>\$ 110,040.48</u>		
Forecasted profit based on projected operations		<u>\$ 31,833.68</u>	<u>\$ 78,861.42</u>
Forecasted contractor profit percentage		3.50%	8.59%
Total contractor compensation before pass-through	<u>\$ 1,027,044.48</u>	<u>\$ 940,483.95</u>	<u>\$ 997,061.76</u>
<u>Projected Pass-through Expenses:</u>			
Franchise fees-county	32,399.00	29,720.13	32,276.29
Franchise fees-district	21,599.00	19,813.43	21,517.52
County hazardous waste fee	11,157.00	13,020.60	13,020.60
Audit fees	15,000.00	12,000.00	12,000.00
	<u>\$ 80,155.00</u>	<u>\$ 74,554.16</u>	<u>\$ 78,814.41</u>
Total pass-through expenses	<u>\$ 80,155.00</u>	<u>\$ 74,554.16</u>	<u>\$ 78,814.41</u>
Total contractor compensation	<u>\$ 1,107,199.48</u>	<u>\$ 1,015,038.11</u>	<u>\$ 1,075,876.17</u>
Less: Recycling and other income	<u>\$ (27,248.00)</u>	<u>\$ (27,116.82)</u>	<u>\$ (27,116.82)</u>
Benchmark level of revenues for 2010 per HF&H	<u>\$ 1,079,951.48</u>		
Benchmark level of revenues per contractor forecasts		<u>\$ 987,921.29</u>	<u>\$ 1,048,759.35</u>
Contractor forecasted profit shortfall from HF&H projection		<u>\$ (92,030.19)</u>	<u>\$ (31,192.13)</u>

Bay View Refuse Recycling  
Forecasted Revenue Shortfall for 2010 2011

Tab 4

## ACCOUNTANTS' COMPILATION REPORT

October 16, 2010

To the Stockholder  
Bay View Refuse & Recycling Service, Inc.  
Richmond, California

We have compiled the accompanying forecasted statement of income for Bay View Refuse & Recycling Service, Inc. for the year ending December 31, 2010, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting, in the form of a forecast, information that is the representation of management and does not include evaluation of the assumptions underlying the forecast. We have not examined the forecast and accordingly, do not express an opinion or any other form of assurance on the accompanying statements or assumptions. Furthermore, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

The accompanying historical statements of income for Bay View Refuse & Recycling Service, Inc. for the years ended December 31, 2008 and 2009 are prepared from audited financial statements on which we issued our audit reports dated February 27, 2009 and February 19, 2010 respectively.

The accompanying statements of income and this report are intended solely for the information and use of Bay View Refuse & Recycling Service, Inc. and the Kensington Police Protection and Community Services District in their discussions concerning potential rate adjustments and are not intended to be and should not be used by anyone other than these specified parties.



Certified Public Accountants



**Bay View Refuse & Recycling**  
**Statements of Income**  
 For the Years Ended December 31, 2008 and 2009 (Historical)  
 and For the Year Ending December 31, 2010 (Forecasted)  
 Updated October 19, 2010

	December 31, 2008 (Historical)				December 31, 2009 (Historical)				December 31, 2010 (Forecasted)			
	4 mos. April	4 mos. August	4 mos. Dec	Total	4 mos. April	4 mos. August	4 mos. Dec	Total	Actual 4 mos.-April	Actual 4 mos.-August	Forecasted Sept to Dec	Forecasted Total
<b>Revenues:</b>												
Kensington-regular	\$ 334,849.87	\$ 322,139.16	\$ 319,801.18	\$ 976,790.21	\$ 336,990.01	\$ 329,814.95	\$ 327,656.24	\$ 994,461.10	\$ 320,451.23	\$ 319,342.64	\$ 319,000.00	\$ 958,793.87
Kensington-extra	259.00	290.15	595.00	1,144.15	337.00	395.70	311.30	1,044.00	300.70	293.61	273.57	867.88
Recycling	6,928.55	8,902.57	6,811.69	20,642.81	12,170.26	6,147.56	4,866.57	23,004.39	12,009.09	6,254.09	6,853.64	27,116.82
Debris box	14,793.60	13,886.90	13,385.70	39,667.20	11,410.83	13,153.72	9,466.80	34,031.35	9,343.79	8,643.34	8,719.78	26,706.92
Container rental	1,109.30	1,026.10	1,026.10	3,161.50	1,120.80	1,035.30	489.80	2,645.90	690.00	690.00	628.37	1,915.37
Unity of Calif House	2,846.10	1,478.70	1,478.70	5,803.50	2,931.00	1,025.80	1,821.40	5,878.20	1,431.98	513.98	944.32	2,889.28
Accrued revenue adjustments	-1245.3	1,435.95	436.55	627.10	-2,545.75	2,450.81	408.83	313.89	-1,489.38	1,107.07	-185.23	-467.62
Returns	-892.95	-242.45	-478.05	-1,613.45	-225.61	-102.73	-1.89	-330.23	-656.78	-479.47	-641.14	-1,697.39
<b>Total revenues</b>	<b>355,578.17</b>	<b>345,916.98</b>	<b>342,056.87</b>	<b>1,044,552.02</b>	<b>352,088.44</b>	<b>322,921.00</b>	<b>344,892.39</b>	<b>1,029,874.83</b>	<b>342,100.64</b>	<b>339,247.26</b>	<b>339,690.21</b>	<b>1,015,038.11</b>
Percentage of total revenues	34.04%	33.21%	32.73%	100.00%	34.18%	33.30%	32.54%	100.00%	33.70%	33.13%	33.47%	100.00%
<b>Expenses:</b>												
Bank charges	71.98	0.00	50.22	131.60	30.00	5.77	101.46	137.23	7.10	397.94	202.82	607.56
Bay Cities Refuse-debris box service	5,466.00	5,641.00	5,724.00	17,831.00	6,072.00	6,000.00	5,280.00	17,352.00	4,845.00	4,845.00	4,845.00	14,535.00
Bay Cities Refuse-green waste rental	23,296.00	23,296.00	28,120.00	75,712.00	24,480.00	24,480.00	30,572.00	79,432.00	25,690.00	26,690.00	26,180.00	78,560.00
Bay View Refuse-management fees	36,629.04	36,629.00	37,129.00	110,387.04	37,629.86	37,629.86	37,940.86	113,200.58	39,161.08	39,161.08	39,161.08	117,483.24
Communications-Fed Ex	117.00	0.00	0.00	117.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Communications-Handels	403.05	671.65	597.40	1,672.10	534.28	540.22	597.40	1,672.10	1,003.52	42.60	470.23	1,410.69
Contributions	80.53	213.79	289.62	563.94	189.10	0.00	261.44	450.54	166.24	306.26	235.77	707.26
Depreciation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bridge permit & tolls	13,473.67	13,473.67	13,473.66	40,421.00	13,473.67	13,473.67	13,473.66	40,421.00	13,473.66	13,473.66	13,473.66	42,289.00
Drugs & subscriptions	11.04	32.00	64.00	107.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dues & subscriptions	62.00	68.00	96.00	226.00	163.00	92.00	317.00	572.00	28.00	202.00	101.00	303.00
Dump fees	25,907.19	29,577.25	29,000.00	84,484.44	31,662.28	32,994.50	34,818.47	99,475.25	32,678.05	33,434.75	32,756.40	98,289.20
Employee equipment	0.00	0.00	1,221.00	1,221.00	0.00	105.00	0.00	105.00	1,233.22	0.00	0.00	1,233.22
Franchise fees-Kensington CSD	10,719.70	10,371.19	10,248.16	31,339.05	10,939.96	10,331.63	10,378.49	31,448.07	9,848.33	9,858.09	9,995.71	29,720.13
Franchise fees-Kensington CSD	7,446.47	6,914.13	6,832.21	20,992.81	7,293.30	6,887.77	6,794.53	20,965.58	6,832.22	6,832.22	6,832.22	19,873.43
Fuel-diesel	10,871.90	10,841.31	8,610.43	30,323.64	6,084.66	2,165.77	6,004.35	14,254.78	6,916.32	3,853.13	5,436.23	16,308.68
Fuel-gasoline	2,307.82	2,359.34	1,354.94	6,022.10	2,005.32	1,878.08	2,597.25	6,418.63	1,971.34	1,653.00	1,781.17	3,343.51
Hazardous waste program-county	345.36	5,665.72	4,449.60	10,460.68	2,504.10	8,323.42	2,853.00	13,680.52	3,088.48	5,691.92	4,340.20	13,020.60
Insurance-accident	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00	500.00	1,500.00
Insurance-bonds	0.00	0.00	200.00	200.00	0.00	0.00	200.00	200.00	0.00	0.00	0.00	0.00
Insurance-health and welfare	17,199.00	13,230.00	17,199.99	47,628.99	19,690.00	26,600.00	16,800.00	63,000.00	24,144.00	30,190.00	24,144.00	78,482.00
Insurance-trucks and liability	7,567.33	7,567.33	7,567.34	22,672.00	7,920.00	7,920.00	7,920.00	23,760.00	7,790.67	7,790.67	7,790.67	23,292.01
Insurance-workers' compensation	4,399.64	4,317.01	1,801.18	10,517.83	3,213.77	3,627.13	1,662.80	8,493.80	5,475.17	5,475.17	5,475.17	17,543.59
Interest expense	697.42	0.00	0.00	697.42	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Laundry	420.38	912.76	430.97	1,764.11	363.26	369.32	336.02	1,068.60	264.21	268.02	261.12	793.35
License-trucks	2,359.00	1,945.00	0.00	4,304.00	2,293.00	1,129.00	331.00	3,753.00	2,184.00	1,262.00	1,173.00	5,319.00
Maintenance and supplies-trucks	557.08	748.12	1,990.93	3,296.13	5,705.36	1,907.40	910.87	8,523.57	1,814.31	1,316.29	1,654.80	4,694.40
Mechanics	0.00	-2.12	-85.44	-87.56	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office expense	48.73	1,332.88	-383.83	1,018.78	847.32	86.26	1,747.48	2,781.36	785.33	390.05	582.59	1,748.97
Payroll	74,821.60	73,547.38	81,810.02	230,179.00	68,879.60	78,510.85	63,794.64	210,984.70	77,850.44	82,992.29	80,503.29	240,346.02
Permits	7,360.12	5,692.18	11,200.70	24,253.00	7,790.60	7,817.84	7,746.52	23,293.96	7,875.96	8,293.58	8,340.00	24,500.50
Postage	-25.00	0.00	0.00	-25.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Professional fees-accounting	2,272.86	2,780.71	432.89	5,486.52	4,862.36	494.00	0.00	5,356.36	2,701.00	2,858.00	1,413.00	4,259.00
Professional fees-legal fees	9,900.00	10,000.00	9,800.00	29,700.00	4,260.00	10,200.00	16,050.00	20,510.00	13,100.00	13,100.00	34,950.00	59,950.00
Promotions	0.00	0.00	0.00	0.00	0.00	0.00	2,747.00	2,747.00	5,891.32	5,891.32	2,791.65	8,371.98
Refuse-United Refuse Service	15,200.00	15,200.00	15,200.00	45,600.00	16,800.00	16,800.00	16,800.00	50,400.00	17,136.00	17,136.00	17,136.00	51,408.00

SEE SUMMARY OF SIGNIFICANT ASSUMPTIONS AND ACCOUNTANTS' COMPILATION REPORT

Note 2

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**Bay View Refuse & Recycling**  
**Statements of Income**  
For the Years Ended December 31, 2008 and 2009 (Historical)  
and For the Year Ending December 31, 2010 (Forecasted)  
Updated October 16, 2010

	December 31, 2008 (Historical)				December 31, 2009 (Historical)				December 31, 2010 (Forecasted)				Notes
	4 mos. April	4 mos. August	4 mos. Dec	Total	4 mos. April	4 mos. August	4 mos. Dec	Total	Actual - April	Actual - August	Forecasted - Sept to Dec	Forecasted Total	
Taxes-payroll	6,843.38	6,014.27	6,899.06	19,756.71	6,238.73	6,267.05	6,828.76	19,334.54	7,368.25	6,738.23	7,487.40	21,594.88	Note 6
Taxes-property taxes	0.00	0.00	0.00	0.00	0.00	212.17	0.00	212.17	0.00	168.61	84.81	254.42	
Telephone	0.00	0.00	0.00	0.00	100.00	-42.89	-0.02	57.09	0.00	68.00	34.00	102.00	
Trains	1,592.82	2,575.09	3,977.92	8,145.83	2,882.88	0.00	453.00	3,335.88	3,525.36	3,013.02	3,265.19	9,807.57	
Accrued payable adjustment	0.00	21,217.66	-21,217.66	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
<b>Total expenses</b>	<b>287,912.34</b>	<b>312,424.32</b>	<b>298,697.66</b>	<b>898,431.34</b>	<b>301,788.36</b>	<b>308,226.77</b>	<b>317,468.90</b>	<b>928,484.03</b>	<b>311,736.13</b>	<b>328,720.94</b>	<b>332,687.32</b>	<b>983,204.39</b>	Note 3
Percentage of total expenses	32.03%	34.77%	33.18%	100.00%	32.60%	33.30%	34.15%	100.00%	31.71%	34.43%	33.84%	100.00%	
Income from operations before tax provision	67,895.83	34,495.66	43,959.19	146,120.68	60,300.08	43,694.23	27,396.49	131,390.80	30,314.51	-2,473.88	3,992.89	31,833.72	
Provision for taxes	1,061.00	563.00	704.09	2,328.00	951.00	702.00	367.00	2,020.00	800.00	0.00	0.00	800.00	
<b>Net income</b>	<b>\$ 66,804.83</b>	<b>\$ 33,932.66</b>	<b>\$ 43,255.10</b>	<b>\$ 143,792.68</b>	<b>\$ 59,349.08</b>	<b>\$ 42,992.23</b>	<b>\$ 27,029.49</b>	<b>\$ 129,370.80</b>	<b>\$ 29,514.51</b>	<b>\$ (2,473.88)</b>	<b>\$ 3,992.89</b>	<b>\$ 31,033.72</b>	

**Summary of Significant Forecast Assumptions:**

- Revenue historically is slightly higher in the first trimester than later in the year because some customers pay their entire annual bill in January. All revenue other than regular refuse service for the period from Sept through December 2010 is forecasted as if it will be the same percentage of the total as the average percentage for the third trimester of 2008 and 2009. In 2008 and 2009 the average percentage of revenue collected was 32.85% of the total for those years. This same 32.65% was applied to 2010.
- Kensington regular revenue for the period from September 1, 2010 through December 31, 2010 has been forecasted using the actual billings mailed to customers for the period adjusted for anticipated non-pay or reductions in service based on the historical actual collections for the period from September to December 2009.
- Operating expenses, unless noted otherwise, have been projected to be equal to the average of the expenses incurred January through August of 2010.
- Depreciation has been recorded at the actual amount calculated for 2010 based on asset activity through August 2010.
- Workers compensation insurance is calculated at the same percentage of payroll as the percentage in the four months from May through August 2010.
- Payroll expense is higher in the third trimester because unused vacation and sick leave is paid to employees in December. 2010 payroll for the third trimester is forecasted at the same average percentage of the total as has been paid in 2008 and 2009. In 2008 and 2009, 36% of payroll expense was paid in the third trimester and that same 36% is anticipated in 2010. Forecasted payroll taxes are similarly adjusted.
- Health and welfare costs and employee pension expense are dictated by union contract. The amounts forecasted for September through December 2010 are based on the actual amounts that are payable monthly. Health and Welfare is \$6,036 per month and Union Pension is \$2,085 per month.

114

**Bay View Refuse & Recycling, Inc.**

Analysis of anticipated residential and commercial revenue for the four months from September 1 through December 31

Service description	Forecasted			Actual		
	September--December 2010			September--December 2009		
	Number of customers billed	Rate	Anticipated Monthly Revenue	Number of customers billed	Rate	Anticipated Monthly Revenue
20 gallon	367	23.59	8,657.53	331	23.45	7,761.95
1-30 gallon	1480	32.10	47,508.00	1507	31.90	48,073.30
2-30 gallon	187	63.99	11,966.13	230	63.60	14,628.00
3-30 gallon	19	96.08	1,825.52	20	95.50	1,910.00
4-30 gallon	1	128.07	128.07	2	127.30	254.60
40 gallon	1	72.23	72.23	1	71.80	71.80
45 gallon	11	78.82	867.02	11	78.35	861.85
Miscellaneous (uses the average rate actually billed)	7	59.27	414.89	8	69.98	559.84
	<u>2,073</u>		<u>71,439.39</u>	<u>2,110</u>		<u>74,121.34</u>
Commerical monthly billings (2010 estimated)			<u>9,786.00</u>			<u>9,500.00</u>
Monthly total			<u>\$ 81,225.39</u>			<u>\$ 83,621.34</u>
Four month anticipated revenue if all customers pay			<u>\$ 324,901.56</u>			<u>\$ 334,485.36</u>
Actual amount collected						<u>\$ 327,656.24</u>
Calculated amount of non-pay or reductions in service @ 2.04%			<u>(6,633.45)</u>			<u>(6,829.12)</u>
As a percent of total billed						<u>-2.04%</u>
Anticipated revenue Sept--Dec 2010 using actual Company billings and anticipated drop-offs and changes in service			<u>\$ 318,268.11</u>			

**Tab 5**

## ACCOUNTANTS' COMPILATION REPORT

November 29, 2010

To the Stockholder  
Bay View Refuse & Recycling Service, Inc.  
Richmond, California

We have compiled the accompanying forecasted statement of income for Bay View Refuse & Recycling Service, Inc. for the year ending December 31, 2011, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting, in the form of a forecast, information that is the representation of management and does not include evaluation of the assumptions underlying the forecast. We have not examined the forecast and accordingly, do not express an opinion or any other form of assurance on the accompanying statements or assumptions. Furthermore, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

The accompanying statements of income and this report are intended solely for the information and use of Bay View Refuse & Recycling Service, Inc. and the Kensington Police Protection and Community Services District in their discussions concerning potential rate adjustments and are not intended to be and should not be used by anyone other than these specified parties.

*Cowden Neale, LLP*  
Certified Public Accountants

**Bay View Refuse & Recycling Service, Inc**  
**Forecasted Statement of Income**  
**For the Year Ending December 31, 2011**

	Forecasted Totals	
<b>Revenues:</b>		
Kensington-regular	\$ 1,018,632.03	Note 1
Kensington-extra	837.88	
Recycling	27,116.82	
Debris box	26,706.82	
Container rental	1,915.37	
Univ of Calif House	2,892.26	
Accrued revenue adjustments	(567.62)	
Refunds	(1,657.39)	
Total revenues	1,075,876.17	
<b>Expenses (Note 6):</b>		
Bank charges	607.56	
Bay Cities Refuse-debris box service	14,535.00	
Bay Cities Refuse-green waste rental	78,540.00	
Bay View Refuse-management fees	117,483.24	
Communication-Fed Ex	-	
Communication-radlos	1,410.68	
Communication-telephone	707.30	
Contribution	-	
Depreciation	42,283.00	
Bridge permit & tolls	-	
Drug program	303.00	
Dues & subscriptions	109.50	
Dump fees	98,269.20	
Employee equipment	1,849.83	
Franchise fees-county	32,276.29	Note 3
Franchise fees-Kensington CSD	21,517.52	Note 3
Fuel-diesel	16,308.68	
Fuel-gasoline	3,543.51	
Hazardous waste program-county	13,020.60	
Insurance-accident	1,500.00	
Insurance-bonds	-	
Insurance-health and welfare	78,768.00	Note 2
Insurance-trucks and liability	23,282.01	
Insurance-workers' compensation	17,543.59	
Interest expense	-	
Laundry	783.35	
Licenses-trucks	5,319.00	
Maintenance and supplies-containers	-	
Maintenance and supplies-trucks	4,694.40	
Miscellaneous	-	
Office expense	1,748.07	
Parts	5,294.94	
Payroll expense	259,377.00	Note 4
Pension	24,500.54	
Permits	-	
Postage	4,239.00	

SEE SUMMARY OF SIGNIFICANT ASSUMPTIONS AND ACCOUNTANTS' COMPILATION REPORT

**Bay View Refuse & Recycling Service, Inc**  
**Forecasted Statement of Income**  
**For the Year Ending December 31, 2011**

	Forecasted Totals	
Professional fees-accounting	34,950.00	
Professional fees-legal fees	8,371.98	
Promotions	-	
Rent-United Refuse Service	51,408.00	
Taxes-payroll	22,306.00	Note 5
Taxes-property taxes	254.42	
Telephone	102.00	
Tires	9,807.57	
Accrued payable adjustment	-	
<b>Total expenses</b>	<b>997,014.75</b>	
<b>Income from operations before tax provision</b>	<b>78,861.42</b>	
<b>Provision for taxes</b>	<b>800.00</b>	
<b>Net income</b>	<b>\$ 78,061.42</b>	

- 1 Based on a 6% increase from 2010 monthly rates except for mini cans per attached worksheet.
- 2 Per notification from Teamsters Benefit Trust monthly contribution per employee will increase from \$1,509/mo to \$1,641/mo, per employee. ( $\$1,641 \times 4 \text{ ees} = \$ 6,564 \times 12 \text{ mo.} = \$78,768$ )
- 3 Required to pay CC County 3% of revenues and Kensington Police Protection and Community Services 2% of revenues per contract. These fee will increase as revenues increase.
- 4 Per Union contract, employees will receive a 3.4% wage increase in 2011.
- 5 Payroll tax was calculated using the same percentage (8.6% of wages) that was calculated based on wages and taxes in 2010.
- 6 All 2011 operating expenses other than those identified above have been forecasted at the same level as anticipated for 2010.
- 7 The number of customers anticipated for the 2011 revenue forecast is based on the actual customers billed by level of service during the four month period from September to December 2010.

SEE SUMMARY OF SIGNIFICANT ASSUMPTIONS AND ACCOUNTANTS' COMPILATION REPORT

**Bay View Refuse and & Recycling Service, Inc.**  
2011 Projected Regular Revenue After Requested Increase

<u>Service Type</u>	<u>Number of Customers (Note 7)</u>	<u>2010 Monthly Rate</u>	<u>% Increase</u>	<u>\$ Increase</u>	<u>2011 Monthly Rate</u>	<u>Annual Revenue</u>
<b>Residential</b>						
One 20-gal can (mini)	367	\$23.59	1.08	\$1.93	\$25.52	\$112,409.37
One 32-gal can	1,480	\$32.10	1.06	\$1.93	\$34.03	\$604,301.76
Two 32-gal cans	187	\$63.99	1.06	\$3.84	\$67.83	\$152,209.17
Three 32-gal cans	19	\$96.08	1.06	\$5.76	\$101.84	\$23,220.61
One 40-gal can	1	\$72.23	1.06	\$4.33	\$76.56	\$918.77
Four 32-gal cans	1	\$128.07	1.06	\$7.68	\$135.75	\$1,629.05
One 45-gal can	11	\$78.82	1.06	\$4.73	\$83.55	\$11,028.49
Miscellaneous	7	\$59.27	1.06	\$3.56	\$62.83	\$5,277.40
	<u>2,073</u>					
<b>Subtotal</b>						\$910,994.63
<b>Apartments/commercial—2010 anticipated total revenue</b>		\$101,544.72	1.06			<u>107,637.40</u>
<b>Total Projected 2011 Kensington Regular Revenue</b>						<u>\$1,018,632.03</u>

SEE SUMMARY OF SIGNIFICANT ASSUMPTIONS AND ACCOUNTANTS' COMPILATION REPORT

21



<b>Bay View Refuse &amp; Recycling Services, Inc. Fiscal Year-End Financial Statements Summary</b>			
<b>Fiscal year End Date</b>	<b>Gross Revenues</b>	<b>Net Profit (before taxes)</b>	<b>Percentage Earnings Net Income/Gross Revenues</b>
FYE 12/31/2010	\$1,027,344	\$24,896	2.42%
FYE 12/31/2009 (1)	\$1,059,875	\$131,391 (2)	12.40%
FYE 12/31/2008	\$1,044,552	\$146,120 (3)	13.99%
FYE 12/31/2007	\$1,047,548	\$106,211 (4)	10.14%
FYE 12/31/2006	\$1,020,050	\$140,437 (5)	13.77%
FYE 12/31/2005	\$1,003,358	\$109,840 (6)	10.95%
FYE 12/31/2004	\$992,156	\$125,429 (7)	12.64%
FYE 12/31/2003	\$1,002,227	\$151,402 (8)	15.11%
FYE 12/31/2002	\$882,284	\$36,034 (9)	4.08%
FYE 12/31/2001 (10)	\$883,109	\$63,375 (11)	7.18%
FYE 12/31/2000	\$859,613	\$108,097 (12)	12.58%
FYE 12/31/1999	\$774,709	\$110,502 (13)	14.26%
FYE 12/31/1998	\$738,341	\$128,319 (14)	17.38%
FYE 12/31/1997	\$674,161	\$36,915 (15)	5.48%
FYE 12/31/1996	\$620,153	(\$116,906) (16)	(18.85%)



**BAY VIEW REFUSE  
& RECYCLING  
SERVICE,  
INC.**

CITY - COUNTY - CONTRACTORS

P.O. BOX 277 - EL CERRITO, CALIFORNIA 94530 - PHONE (510) 237-4614

LEWIS FIGONE, PRESIDENT

## ATTACHMENT D

February 15, 2011

Dear Valued Customer:

Our family owned Company, has had the privilege to serve residents of the Kensington Police Protection and Community Services District for more than 65 years. The president and major shareholder of the company, Lewis Figone, started with the company in 1942, while in high school, working a collection route on Saturdays, after Oakland Scavenger terminated its service to Berkeley and Kensington. The company has always strived to deliver the highest level of customer service. Surveys conducted over the years confirm that this goal has been met consistently as our customers have given the company excellent ratings.

But it's not just the service that has been exemplary. The price for collection remains extremely competitive, given the level of service provided. In addition to being in a difficult area to serve, few Bay Area refuse and recycling companies still perform the kind of backyard collection service Bay View delivers to each of its customers. Nor do similar companies have an unlimited green waste collection policy like Bay View's. This level of service comes at a cost, however, that the company is unable to recover through its collection rates.

For example, the rate charged for the smaller 20-gallon mini can is \$8.51 per month less than for a 32-gallon can. This difference was originally \$4.16 when the mini-can rate was introduced in 1999 with 9% of our customers and presently at 19%. The cost differential was originally implemented to encourage recycling and decrease the amount of waste being hauled to the landfill. Now there seems to be a new reason many Kensington customers are switching to the lower cost mini can: the economic downturn has affected everyone and our customers are increasingly seeking to reduce their household costs by switching their service to the smaller can.

Unfortunately, this has not resulted in any operational cost savings for Bay View. The same number of drivers and collectors are required to collect the refuse from the smaller cans, and the company's records reveal no significant decrease in the amount of refuse still taken to the landfill.

Page 2

The combination of the increased mini can rate gap and the ever increasing number of customers switching to the lower cost service leaves the company doing the same amount of work and hauling about the same amount of refuse, but receiving less revenue for that service. Meanwhile, the company's labor contracts with its employee unions require ever larger contributions for health and welfare benefits.

The revenue decreases from the switch to mini cans and the increasing operational costs now put Bay View in the position of being unable to earn anything more than a minimal profit from its operations. And this downward trend is expected to continue for the next few years.

The company has tried to negotiate with the management of the District a solution to these financial problems that threaten the ability of Bay View to continue operation as a family-owned business. We have requested a rate increase that would significantly reduce the difference between the mini can and regular can costs, and have separately offered to extend the franchise agreement with the District beyond the current 2015 termination date. Unfortunately, the District's board of directors has not yet been willing to implement the rate increase. Nor has it been willing even to discuss at a board meeting a potential contract extension.

Bay View recently started talking with one of the large companies that provides refuse collection services in a nearby area about taking over collection services in Kensington. Unless Bay View is able to obtain some relief from the financial difficulties described in this letter, it will no longer be financially feasible to provide collection and recycling services and we will seek to shift those duties to a new company beginning in 2012.

If our rate revision was granted, the service you are receiving: refuse, recycling, one September annual clean-up, free hazardous waste drop-off, backyard collection of refuse and unlimited green-waste service, your rate would still remain the lowest in the County and perhaps many other areas.

If you think the service we provide is good and want to continue to have that service delivered by our family-owned enterprise, you should let your District board members know how you feel. Please see enclosed information for your review.

Sincerely yours,

Lewis R. Figone  
President

12

**BAY VIEW REFUSE AND RECYCLING SERVICE, INC.  
CUSTOMER SURVEY, OUR 65<sup>TH</sup> YEAR OF SERVICE**

**Survey Totals—September thru December 2008**

Total bills mailed 2,100-- surveys returned 727

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>No Reply</u>
1. How do you rate the overall service?	532	183	9	0	3
2. How is the courtesy and service of your collectors?	569	139	14	1	4
3. How do you find our overall customer service in dealing with our office staff?	389	160	8	1	169
4. How do you feel about the value you receive for the service we provide?	387	268	56	5	11
	<u>Yes</u>	<u>No</u>	<u>No Reply</u>		
5. Are you aware that recycling is now commingled and all recycling can be placed in one or more containers and placed at the curb?	652	70	5		
6. Are you aware that Kensington is the only community in Contra Costa County that provides backyard refuse collection and unlimited green waste service without a surcharge?	260	465	2		

121

Similar size city operation—Rates

Piedmont: Backyard—32 gallon \$52.96 per month

Curbside—32 gallon \$47.71 per month

Orinda: Backyard—32 gallon \$44.76 per month

Curbside—32 gallon \$30.75 per month



## Richmond Sanitary Service...

[For Your Home](#) ▾
 [For Your Business](#) ▾
 [FAQs](#)
[Contact Information](#) ▾
 [Home](#)

### Rates - Effective July 1, 2010

The cost of service will be based on your choice of Backyard or Curbside collection and the size of your garbage cart. Bio-degradable compostable overage bags are available upon request for occasional green waste clean-ups.

#### Backyard

##### Garbage Collection

- 20 or 35 gallon carts **ONLY** for worker safety
- 20-gal @ \$48.11/month
- 35-gal @ \$52.96/month

##### Unlimited Collection

- Recycle: 35 gal (included)
- Organic Wastes: 35 gal (included)
- Food Scraps: 1.5 gal (included)

#### Curbside

##### Garbage Collection

- 20 gal @ \$45.48/month
- 35 gal @ \$47.71/month
- 65 gal @ \$55.70/month
- 95 gal @ \$65.26/month

##### Unlimited Collection

- Recycle: choice of 35, 65 or 95 gal (included)
- Organic Wastes: choice of 35, 65 or 95 gal (included)
- Food Scraps: 1.5 gal (included)

#### Residential Rates

Rates are established by the City based on **black** waste cart capacity, filled to the rim with the lid properly closed.

#### Billing

For customer convenience and cost containment, residential customers are billed quarterly in advance. Bills are due upon receipt and considered past due at the end of the first month of the billing period. Past due accounts are subject to late payment charges applied at 60 days. **We are required to report occupied properties without subscription to weekly waste collection service to the City of Piedmont. Mechanics liens may be recorded against benefitting properties.**

# ATTACHMENT F

## NOTICE OF PUBLIC HEARING REGARDING PROPOSED INCREASE IN SOLID WASTE/RECYCLING RATES IN THE TOWN OF ATHERTON

Dear Property Owner/Tenant:

Pursuant to the requirements of Proposition 218 and Article XIII D of the California Constitution, this notice provides information regarding proposed increases to the existing residential and commercial customer rates for the collection of solid waste and recyclable materials in the Town of Atherton. A public hearing on the proposed rate increases will be held by the City Council. The rates were last increased in 2010.

**Notice of Public Hearing  
Regarding Proposed Increase in Solid Waste/Recycling Rates**

A public hearing on proposed increases to solid waste/recycling rates will be held by the City Council on:

**Date:** Wednesday, February 16, 2011  
**Time:** 7:00 p.m.  
**Place:** City Council Chambers, 94 Ashfield Road, Atherton CA

This notice is being sent to the refuse service billing address for all parcels in Atherton. This notice also describes how to file a protest regarding the proposed rate increases. All property owners/tenants and other interested parties are invited to attend the public hearing and be heard on the proposed rate increases.

### Proposed New Rates (Effective March 1, 2011):

Quantity	Volume	Current Monthly Rates	Proposed Monthly Rates
1	20 gallon	\$17.31	\$28.22
1	32 gallon	\$27.69	\$45.15
1	64 gallon	\$55.38	\$99.33
1	96 gallon	\$82.18	\$162.53

Kensington

-----\$23.59/29.0  
-----\$32.10/34.0

See attached for chargers for other services including rear yard charges.

#### Basis for New Rates:

The above new rates are necessary due to revenue shortfall due to Allied Waste Company projected to the end of year 2010, increased disposal cost due to tipping fee increase imposed by the County of San Mateo and the increased cost for the new services with Recology. The new services with Recology include automated collection, weekly collection of recycling and residential organics recycling (food scraps).

The need for these increases was discussed by the City Council at its meeting of December 16, 2010. The staff report for this matter is available on the Town's website [www.ci.atherton.ca.us](http://www.ci.atherton.ca.us), or at the Town's Administrative offices.

**2008 Rate Review**

<b>Jurisdiction</b>	<b>30-35 Gal \$/Mo.</b>	<b>Recycling Frequency</b>	<b>Yard Waste Frequency</b>	<b>Recycling Sort</b>
El Cerrito	\$34.04	Weekly	Bi-weekly	Single
Kensington	\$32.28	Weekly	2x per month	Single
Orinda*	\$30.75	Weekly	Weekly	Single
West CC County	\$29.36	Bi-weekly	Bi-weekly	Single
Pinole	\$28.80	Bi-weekly	Bi-weekly	Single
Richmond	\$28.46	Bi-weekly	Bi-weekly	Single
Hercules	\$28.01	Bi-weekly	Bi-weekly	Single
San Pablo	\$27.57	Bi-weekly	Bi-weekly	Single
Martinez	\$27.45	Weekly	Bi-weekly	Single
Lafayette*	\$24.98	Weekly	Weekly	Single
San Ramon	\$24.19	Weekly	Weekly	Single
Moraga*	\$23.60	Weekly	Weekly	Single
Concord	\$23.00	Weekly	Weekly	Single
Pleasant Hill	\$22.66	Weekly	Weekly	Single
Danville*	\$19.81	Weekly	Weekly	Single
County*	\$19.81	Weekly	Weekly	Single
Livermore	\$19.29	Weekly	Weekly	Single
Dublin	\$17.99	Weekly	Weekly	Single
Walnut Creek*	\$17.80	Weekly	Weekly	Single

\* Reflects 2011 proposed rates; all other rates are subject to increases during 2011



**Kensington Police Protection and Community Services District  
Solid Waste Collection Rate Comparison**

**Residential Rates (as of September 1, 2009)**

Jurisdiction	30-35 gallons \$/Mo.	SW Collection Location	Recycling Frequency	Yard Waste Frequency
Piedmont	\$51.95	Backyard	Weekly	Weekly
Hillsborough	\$49.22	Backyard	Bi-weekly	Bi-weekly
Orinda*	\$48.58	Backyard	Weekly	Weekly
Oakland	\$39.77	Backyard	Weekly	Weekly
Lafayette*	\$38.84	Backyard	Weekly	Weekly
Unincorp. Contra Costa (Central)	\$35.52	Backyard	Weekly	Weekly
Richmond	\$34.40	Curbside	Bi-weekly	Bi-weekly
Danville*	\$33.61	Backyard	Weekly	Weekly
Kensington (proposed)	\$32.28	Backyard	Weekly	Twice per Month
El Cerrito	\$32.06	Curbside	Weekly	Bi-weekly
Kensington (current)	\$31.90	Backyard	Weekly	Twice per Month
Moraga*	\$29.59	Backyard	Weekly	Weekly
Unincorp. Contra Costa (West)	\$28.94	Curbside	Bi-weekly	Bi-weekly
Pinole	\$28.06	Curbside	Bi-weekly	Bi-weekly
Hercules	\$27.59	Curbside	Bi-weekly	Bi-weekly
San Pablo	\$27.15	Curbside	Bi-weekly	Bi-weekly
Berkeley	\$27.10	Curbside	Weekly	Weekly
Walnut Creek*	\$24.67	Backyard	Weekly	Weekly
Atherton	\$23.68	Curbside	Bi-weekly	Bi-weekly

\* Reflects rates charged "hard-to-service" accounts which are comparable to a typical Kensington account

**Commercial Rates (as of September 1, 2009)**

Jurisdiction	2 Cubic Yards, 1x/wk \$/Mo.	1 Cubic Yard, 3x/wk \$/Mo.
Pinole	\$362.67	\$547.81
El Cerrito	\$360.03	\$507.70
Hercules	\$359.58	\$543.38
Unincorp. Contra Costa (West)	\$352.69	\$505.84
San Pablo	\$345.39	\$521.71
Orinda	\$321.58	\$482.37
Richmond	\$319.95	\$489.32
Kensington (proposed)	\$308.73	\$463.09
Kensington (current)	\$305.07	\$457.60
Piedmont	\$292.29	\$411.30
Lafayette	\$276.97	\$415.45
Moraga	\$256.28	\$384.42
Danville	\$234.46	\$351.69
Oakland	\$233.94	\$406.94
Unincorp. Contra Costa (Central)	\$233.58	\$350.37
Berkeley	\$205.68	\$307.89
Atherton	\$198.00	\$297.00
Hillsborough	\$189.18	\$283.77
Walnut Creek	\$161.99	\$242.98

2010 Residential Garbage Rate Comparison

Jurisdiction	20 Gallon	Jurisdiction	35 Gallon	Jurisdiction	64 Gallon	Jurisdiction	96 Gallon
Brentwood	N/A	El Cerrito	\$ 34.04	Oakley	N/A	El Cerrito	N/A
Concord	N/A	El Sobrante	\$ 29.36	Pleasanton	N/A	Orinda	\$ 84.03
Dublin	N/A	Pleasanton	\$ 29.13	El Cerrito	\$ 68.08	El Sobrante	\$ 83.85
Pittsburg	N/A	Pinole	\$ 28.80	El Sobrante	\$ 56.31	Richmond	\$ 80.92
Pleasanton	N/A	Richmond	\$ 28.46	Orinda	\$ 56.02	San Pablo	\$ 78.24
Pinole	\$ 24.45	Castro Valley	\$ 28.18	Richmond	\$ 54.33	Pinole	\$ 74.27
El Sobrante	\$ 24.41	Oakley	\$ 28.11	San Pablo	\$ 52.53	Hercules	\$ 71.57
Orinda	\$ 24.28	Hercules	\$ 28.01	Pinole	\$ 51.20	Lafayette	\$ 70.69
Antioch	\$ 24.00	Orinda	\$ 28.01	Hercules	\$ 49.46	Livermore	\$ 70.36
El Cerrito	\$ 23.70	San Pablo	\$ 27.57	Castro Valley	\$ 48.90	Castro Valley	\$ 69.72
Hercules	\$ 23.66	Martinez	\$ 27.45	Lafayette	\$ 47.12	<b>San Ramon 2010</b>	<b>\$ 67.70</b>
Richmond	\$ 23.50	Pittsburg	\$ 27.00	Moraga	\$ 43.30	Moraga	\$ 64.95
Oakley	\$ 23.11	Antioch	\$ 25.14	Livermore	\$ 42.40	Martinez	\$ 64.30
San Pablo	\$ 22.60	<b>San Ramon 2010</b>	<b>\$ 24.12</b>	<b>San Ramon 2010</b>	<b>\$ 42.18</b>	County	\$ 56.60
Lafayette	\$ 20.44	Lafayette	\$ 23.57	County	\$ 37.73	Danville	\$ 53.56
Clayton	\$ 20.36	Concord	\$ 23.00	San Leandro	\$ 37.56	San Leandro	\$ 52.54
Pleasant Hill	\$ 19.58	Brentwood	\$ 22.71	Danville	\$ 35.71	Walnut Creek	\$ 50.99
<b>San Ramon 2010</b>	<b>\$ 19.45</b>	Pleasant Hill	\$ 22.66	Walnut Creek	\$ 33.99	Pleasant Hill	\$ 46.36
Martinez	\$ 19.15	San Leandro	\$ 22.57	Brentwood	\$ 33.76	Brentwood	\$ 40.52
Moraga	\$ 18.75	Moraga	\$ 21.65	Pittsburg	\$ 33.00	Dublin	\$ 38.09
Castro Valley	\$ 18.18	Clayton	\$ 21.58	Clayton	\$ 31.64	Concord	\$ 38.00
San Leandro	\$ 18.11	Livermore	\$ 19.29	Antioch	\$ 31.50	Pittsburg	\$ 37.00
County	\$ 16.35	County	\$ 18.87	Concord	\$ 31.00	Antioch	\$ 36.76
Danville	\$ 15.48	Danville	\$ 17.85	Pleasant Hill	\$ 30.91	Pleasanton	\$ 34.57
Walnut Creek	\$ 14.19	Walnut Creek	\$ 17.00	Martinez	\$ 30.60	Clayton	\$ 34.54
Livermore	\$ 11.56	Dublin	\$ 14.25	Dublin	\$ 26.17	Oakley	\$ 31.11

# ATTACHMENT H

KEEGIN • HARRISON | SCHOPPERT SMITH & KARNER LLP

April 1, 2011

VIA REGULAR U.S. MAIL AND  
EMAIL AT ASCHUTTE@HANSONBRIDGETT.COM

Ms. Allison C. Schutte  
Hanson Bridgett LLP  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, California 94105

Re: Kensington Police Protection and Community Services District /  
Rate Increase Request of Bay View Refuse and Recycling Services, Inc.

Dear Ms. Schutte:

This will supplement my letters to Mr. Greg Harman dated (i) July 12, 2010, in which our client, Bay View Refuse and Recycling Services, Inc. ("Bay View"), requested the Kensington Police Protection and Community Services District (the "District") approve an increase in Bay View's rates effective September 1, 2010; and (ii) December 1, 2010, requesting approval of a rate increase effective January 1, 2011. Neither of these requests has been approved or denied by the District.

A purpose of this letter is to confirm the actual audited year-end figures for 2010 are consistent with the revenue and expense information contained in my December 1 letter. I also will explain why the franchise agreement between the parties requires the District to approve Bay View's most recent request.

### **Year-End Financial Results Are Consistent With Projections Contained In Bay View's December 2010 Rate Increase Request**

Included with our December 1, 2010 letter, was a schedule of forecasted revenue shortfall (Tab 1). This forecast was based on financial information available at the time the letter was written. Enclosed with this letter and attached as **Tab 6** (continuing the numbering sequence from the December letter) is an updated version of that calculation, showing the revenue shortfall and resulting 2010 profit percentage of 2.42%, based on final audited financial statements which were provided to the District in early February 2011.

ATTORNEYS AT LAW

Stephen A. Kopp

Robert J. Harrison

Jeffrey S. Schoppert

Paul C. Smith

Jessica Krong

Wendy L. Wynn

Deborah Miller Black

Frank Cooper

Nicole M. Cabore

OF COUNSEL

Damon M. Connolly

Kap Evan Siskberg

Derek A. Weller

Matthew N. White

Ms. Allison C. Schutte  
April 1, 2011  
Page 2

### **2011 Profit Forecast Based On District Approval Of Rate Increase**

Included in Tab 6 are profit projections for 2011 based on the assumption that the District approves the rate increase and that the increase will be implemented effective May 1, 2011. We continue to believe that the projections for 2011 are accurate. We have no reason to believe that there will be any significant increase in revenue during the year and uncontrollable costs, like fuel and labor costs, including health and welfare benefits, continue to rise at rates higher than general inflation.

As the District is aware, Bay View sends bills to its customers covering a four-month period. These bills are sent three times a year, in January, May and September. The District's failure to act on the rate increase request at the December and January board meetings deprived Bay View of the opportunity to bill for and collect the increased rates during the first four months of the year. Since the next opportunity to bill for increased rates will be in May 2011, Tab 6 reflects the results of collecting the rate increase for only an eight-month period. The rate increase is projected to result in a 4.22% profit for Bay View in 2011.

### **Section 9.6 Requires The District To Act Reasonably And Modify Rates As Necessary To Maintain Contractor's 12% Benchmark Profit**

During our recent telephone conversation, you informed me that the District intends to make a policy-based decision regarding Bay View's rate increase request. We believe the District lacks any discretion to deny the request on policy grounds. Instead, as explained below, action on and approval of the request are compelled by both the express and implied terms of the franchise agreement.

Every California contract contains an implied covenant of good faith and fair dealing. This covenant requires the District to refrain from doing anything deliberately to deprive Bay View of the benefits of the franchise agreement. (*Pasadena Live, LLC v. City of Pasadena* (2004) 114 Cal.App.4<sup>th</sup> 1089, 1092-1094 [plaintiff adequately pleaded breach of implied covenant in alleging city defendant refused to consider plaintiff's application to produce events in city-owned facility and written agreement between the parties stated plaintiff would have the opportunity to apply to the city for up to 11 such events].) Another court has explained that a party breaches the implied covenant when it acts consciously and deliberately to unfairly frustrate the agreed common purpose of the contract and disappoint the reasonable expectations of the other party to the contract.

Ms. Allison C. Schutte  
April 1, 2011  
Page 3

(*Celador Int'l Ltd. v. Walt Disney Co.* (C.D. Cal. 2004) 347 F. Supp. 2d 846, 852, citing *Careau and Company v. Security Pac. Bus. Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1394.)

The franchise agreement itself expressly recognizes the duty of the District to act reasonably with respect to Bay View's rate increase requests. Specifically, section 9.6, pursuant to which Bay View has submitted its requests, permits Bay View to seek a rate increase based on extraordinary events. Most importantly, section 9.6 establishes the standard by which such rate increase requests shall be acted upon by the District:

"The obligation of the parties in such event is to act reasonably toward each other and modify rates as necessary to maintain Contractor's compensation at the benchmark level." (Franchise Agreement, dated Sept. 11, 1997, §9.6, at p. 9.)

The benchmark level, defined in section 9.3, is a pre-tax profit of 12% based on reimbursable costs.

As noted above, Bay View earned a 2.42% profit in 2010, significantly less than the 12% benchmark. This result might have been avoided had the District acted on the rate increase request made in July 2010. Further, as Tab 6 discloses, even if the rate increase is now approved, Bay View's projected 2011 profit of 4.22% will again fall materially short of the 12% benchmark.

#### **Current Operating Profits Are Well Below Historical Averages And The Amount Called For By The Franchise Agreement**

From 1998 (the first full year of the franchise agreement term) through 2010, Bay View earned average annual profits of 11.3%, an amount consistent with the express intent of the franchise agreement. The 2010 profit dropped to 2.42% and, without the requested increase, will be eliminated entirely in 2011.

#### **Bay View's Request Results In A Net Rate Increase Of Only 5.25% For 2011**

In the staff report for the March 10, 2011 board meeting, Chief Harman stated Bay View was requesting a six percent increase. This statement was inaccurate in light of the District's failure to act on the request in time to implement the increase at the beginning of the year. Instead, any rate increase applied at the beginning of May 2011 and spread

Ms. Allison C. Schutte  
April 1, 2011  
Page 4

over the remaining eight months would mean rate payers would pay in the aggregate approximately 5.25% more for Bay View's services than they did in 2010.

Under the terms of the franchise agreement, Bay View is permitted to raise its rates in 2011, without action by the District board, by an amount equal to the increase in the Consumer Price Index. This would result in a 1% increase in 2011. Bay View refrained from imposing this increase based on the expectation its rate increase application would be acted upon in time to prepare the January billing. In considering the reasonableness of Bay View's proposed rate increase, the District should be mindful that it represents a net increase of only 4.25% over what would have been permitted absent the extraordinary economic circumstances described in Bay View's earlier submissions.

In addition, please note Bay View does not receive the entire amount of the rate increase, since it pays total franchise fees to the District and the County equal to 5% of its gross receipts. (Franchise Agreement, §23 at pp. 18-19 [2% to District]; Memorandum of Understanding between the District and the County of Contra Costa effective September 1, 1997, §2.9 at p. 7 [3% to County].)

#### **Customer Migration In 2010 Is Consistent With Historical Experience In Kensington And Throughout The Bay Area**

Both Bay View and its customers can take pride in the efforts that helped achieve the waste reduction goals of the California Integrated Waste Management Act of 1989 (Assembly Bill 939), which called for substantial diversions of solid waste from the state's landfills. Early on, AB 939 compliance efforts were directed at segregating recyclables and green waste from other solid waste trucked to the landfill. Over time, as the separation habits took hold, customers realized that they were beginning to have a lot of empty space in their regular garbage can.

The effect of these realizations is demonstrated in the chart attached as **Tab 7**, which shows the steady downward trend in the number and size of containers used by Kensington rate payers. Highlighted in bold type are the mini-can figures for the September 2008 and September 2010 billing periods. These show 105 more customers using mini-cans in 2010 than in 2008, or a 38% increase. It is not clear from its October 26, 2009 report whether HFH adequately took into account the pattern of migration to lower revenue service types (and corresponding decreases in higher revenue service types) between 2008 and 2009. What is plain is that no one anticipated the additional migrations that occurred in 2010, as exemplified by the 47 new mini-can customers. The

Ms. Allison C. Schutte  
April 1, 2011  
Page 5

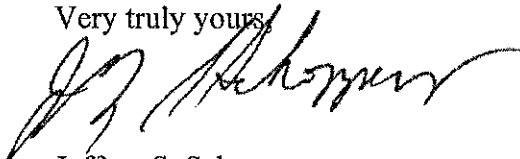
failure to take this trend into account, combined with the effect of the economic downturn on debris box and other revenue categories, caused the 2009 rate review to inaccurately predict actual revenue conditions in 2010.

The experience of Bay View and Kensington is not unique in this regard. Attached as **Tab 8** is an editorial reprinted from the March 29, 2011 edition of the *Marin Independent Journal*. The editorial is authored by Mr. Jim Iavarone, a principal in Mill Valley Refuse Service, which provides collection service in portions of central and southern Marin County. Mr. Iavarone's essay cites the experiences of other Marin County haulers and the City of Berkeley, which handles its own residential collection service. As Mr. Iavarone points out, rate payer migration to lesser-cost service has created a vicious cycle of inaccurate revenue prediction, resulting in franchisee inability to meet agreed-upon profit levels.

\* \* \* \* \*

Bay View reasonably expects the board to act on the request at the April 14, 2011 meeting.

Very truly yours,



Jeffrey S. Schoppert

JSS/glc (048403)  
Enclosures

cc: Ms. Deidre Dingman (w/encls.) [Via Email & U.S. Mail]

Tab 6



## ACCOUNTANTS' COMPILATION REPORT

March 31, 2011

To the Stockholder  
Bay View Refuse & Recycling Service, Inc.  
Richmond, California

We have compiled the accompanying schedules of revenue shortfall and regular revenues for Bay View Refuse & Recycling Service, Inc. forecasted for the year ending December 31, 2011, in accordance with attestation standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting, in the form of a forecast, information that is the representation of management and does not include evaluation of the support for the assumptions underlying the forecast. We have not examined the forecast and, accordingly, do not express an opinion or any other form of assurance on the accompanying statements or assumptions. Furthermore, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

The historical statement of income for Bay View Refuse & Recycling Service, Inc. for the year ended December 31, 2010 included in the accompanying schedule of revenue shortfall is prepared from audited financial statements on which we issued our audit report dated February 1, 2011.

Management has elected to omit the summary of significant accounting policies required by the guidelines for presentation of a forecast established by the American Institute of Certified Public Accountants. If the omitted disclosures were included in the forecast, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows for the forecast period. Accordingly, this forecast is not designed for those who are not informed about such matters.

The accompanying financial information and this report are intended solely for the information and use of Bay View Refuse & Recycling Service, Inc. and the Kensington Police Protection and Community Services District in their discussions concerning potential rate adjustments and are not intended to be and should not be used by anyone other than these specified parties.

*Cowden Neale, LLP*

Certified Public Accountants

**BAY VIEW REFUSE & RECYCLING SERVICES, INC.**  
**Schedule of Revenue Shortfall**  
**Forecasted for the Year Ending December 31, 2011**  
**and Historical Financial Information for the Year Ended December 31, 2010**

	Approved Rate Data From HF&H Report Dated 10/20/09	2010 Operations Per Audited Financial Statements (Note 1)	Amounts Anticipated Based on 2011 Forecasted Operations with No Rate Increase (Note 2)	Amounts Anticipated Based on 2011 Forecasted Operations with a Mid-year Rate Increase (Note 3)
<b>Forecasted Revenues:</b>				
Kensington-regular		\$ 964,378.60	\$ 966,000.00	\$ 1,006,000.00
Kensington-extra		1,187.07	1,200.00	1,200.00
Recycling		24,314.75	24,300.00	24,300.00
Debris box		32,049.76	32,000.00	32,000.00
Container rental		1,930.00	2,000.00	2,000.00
Unly of Calif House		2,864.12	2,900.00	2,900.00
Accrued revenue adjustments		2,497.76	2,500.00	2,500.00
Refunds		(1,842.67)	(1,900.00)	(1,800.00)
<b>Total revenues</b>		<b>1,027,343.39</b>	<b>1,019,000.00</b>	<b>1,069,000.00</b>
Less: Recycling		(24,314.75)	(24,300.00)	(24,300.00)
<b>Total contractor's revenue per contract</b>		<b>\$ 1,003,028.64</b>	<b>\$ 994,700.00</b>	<b>\$ 1,044,700.00</b>
<b>Operating Expenses:</b>				
Salaries and benefits (Note 4)	\$ 390,000.00	\$ 391,149.38	\$ 402,200.00	\$ 402,200.00
Dump fees	101,460.00	100,178.31	100,200.00	100,200.00
Legal and accounting	18,000.00	34,012.64	34,000.00	34,000.00
Debris box rental	24,000.00	16,830.10	16,800.00	16,800.00
Depreciation	40,000.00	42,283.00	42,300.00	42,300.00
Fuel (Note 5)	27,277.00	25,278.10	33,600.00	33,600.00
Truck rental	83,000.00	84,460.00	84,500.00	84,500.00
Insurance	24,267.00	24,522.00	24,500.00	24,500.00
Truck licenses	4,000.00	3,828.00	3,800.00	3,800.00
General and administrative (including management fees)	133,000.00	130,822.20	130,800.00	130,800.00
Parts and tires	12,000.00	12,065.75	12,100.00	12,100.00
Rent office and yard	48,000.00	51,408.00	51,400.00	51,400.00
Repairs and maintenance	12,000.00	9,740.43	9,700.00	9,700.00
<b>Total operating expenses</b>	<b>917,004.00</b>	<b>926,595.91</b>	<b>945,900.00</b>	<b>945,900.00</b>
Allowance for profit @ 12%	110,040.48	111,191.51	113,508.00	113,508.00
<b>Total contractor compensation before pass-throughs</b>	<b>1,027,044.48</b>	<b>1,037,787.42</b>	<b>1,059,408.00</b>	<b>1,059,408.00</b>
<b>Pass-through Expenses:</b>				
Franchise fees-county (Note 6)	32,399.00	30,019.44	29,800.00	31,300.00
Franchise fees-district (Note 6)	21,699.00	20,012.96	19,900.00	20,900.00
County hazardous waste fee	11,157.00	10,846.40	10,800.00	10,800.00
Audit fees	15,000.00	15,000.00	15,000.00	15,000.00
<b>Total pass-through expenses</b>	<b>80,155.00</b>	<b>75,878.80</b>	<b>75,500.00</b>	<b>78,000.00</b>
<b>Total contractor compensation</b>	<b>1,107,199.48</b>	<b>1,113,666.22</b>	<b>1,134,908.00</b>	<b>1,137,408.00</b>
Less: Recycling and other income	(27,248.00)	(24,314.75)	(24,300.00)	(24,300.00)
<b>Benchmark level of revenues per contract</b>	<b>\$ 1,079,951.48</b>	<b>1,089,351.47</b>	<b>1,110,608.00</b>	<b>1,113,108.00</b>
<b>Total contractor's compensation per contract</b>		<b>1,003,028.64</b>	<b>994,700.00</b>	<b>1,044,700.00</b>
<b>Revenue shortfall</b>		<b>\$ (86,322.83)</b>	<b>\$ (115,908.00)</b>	<b>\$ (68,408.00)</b>
<b>Contractor's profit percentage</b>		<b>2.42%</b>	<b>-0.24%</b>	<b>4.22%</b>

SEE SUMMARY OF SIGNIFICANT ASSUMPTIONS AND ACCOUNTANTS' COMPILATION REPORT

**BAY VIEW REFUSE AND RECYCLING SERVICES, INC.**  
**Schedule of Regular Revenues**  
 Forecasted For the Year Ending December 31, 2011

Service Type	Revenue using 2010 rates			Revenue using increased rates		
	Number of Customers (Note 7)	2010 Monthly Rate	% Increase	2011 Monthly Rate	% Increase	Annual Revenue
<b>Residential</b>						
One 20-gal can (min)	378	\$23.59	1.00	\$23.59		\$107,004.24
One 32-gal can	1,527	\$32.10		\$32.10		\$589,200.40
Two 32-gal cans	186	\$63.99		\$63.99		\$142,825.58
Three 32-gal cans	17	\$96.08		\$96.08		\$19,600.32
One 40-gal can	1	\$72.23		\$72.23		\$866.76
Four 32-gal cans	1	\$128.07		\$128.07		\$1,536.84
One 45-gal can	10	\$78.82		\$78.82		\$9,456.40
Miscellaneous	8	\$59.27		\$59.27		\$4,267.44
<b>Subtotal</b>	<b>2,126</b>					<b>\$873,760.08</b>
Apartments/commercial—anticipated total revenue		\$101,544.72				<u>101,544.72</u>
<b>Total forecasted 2011 Kensington regular billings without rate increase</b>						<b>\$975,304.80</b>
Expected percentage of service reduction and termination (Note 8)			2%			<u>(19,506.10)</u>
<b>Anticipated revenue without rate increase (Note 2)</b>						<b>\$955,798.70</b>
Anticipated revenue without rate increase for 1st billing cycle (Note 3)						<u>\$316,599.57</u>

Service Type	Revenue using increased rates			Revenue using 2010 rates		
	Number of Customers (Note 7)	2010 Monthly Rate	% Increase	2011 Monthly Rate	% Increase	Annual Revenue
<b>Residential</b>						
One 20-gal can (min)	378	\$23.59	N/A	\$23.59		\$131,661.94
One 32-gal can	1,527	\$32.10	1.06	\$34.03		\$623,492.42
Two 32-gal cans	186	\$63.99	1.06	\$67.84		\$151,395.22
Three 32-gal cans	17	\$96.08	1.06	\$101.84		\$20,776.34
One 40-gal can	1	\$72.23	1.06	\$76.56		\$918.77
Four 32-gal cans	1	\$128.07	1.06	\$135.75		\$1,629.05
One 45-gal can	10	\$78.82	1.06	\$83.55		\$10,025.90
Miscellaneous	8	\$59.27	1.06	\$62.83		\$4,523.49
<b>Subtotal</b>	<b>2,126</b>					<b>\$944,423.15</b>
Apartments/commercial—anticipated total revenue		\$101,544.72				<u>101,637.40</u>
<b>Total forecasted 2011 Kensington regular billings with rate increase</b>						<b>\$1,052,060.53</b>
Expected percentage of service reduction and termination (Note 8)					2%	<u>(21,041.21)</u>
<b>Anticipated revenue with rate increase (Note 3)</b>						<b>\$1,031,019.32</b>
Anticipated revenue with rate increase for 2nd and 3rd billing cycles (Note 3)						<u>\$667,346.21</u>
<b>Total forecasted regular revenue for 2011 with rate increase (Note 3)</b>						<b>\$1,005,945.76</b>

SEE SUMMARY OF SIGNIFICANT ASSUMPTIONS AND ACCOUNTANTS' COMPILATION REPORT

**BAY VIEW REFUSE & RECYCLING SERVICES, INC.**  
**Summary of Significant Forecast Assumptions**  
**For the Year Ending December 31, 2011**

**Note 1**

The 2010 financial information is based on the audited financial statements of Bay View Refuse & Recycling Services, Inc. as of and for the year ended December 31, 2010.

**Note 2**

The Kensington-regular revenues forecasted for 2011 have been calculated using the actual number of customers billed in January 2011 extended at the 2010 rates. All other 2011 revenue has been projected at the same level as 2010. The 2011 expenses have been forecasted to remain at the 2010 levels except for salaries, fuel and franchise fees.

**Note 3**

The Kensington-regular revenues forecasted with a mid-year rate increase have been calculated using the actual number of customers billed in January 2011 extended for four months at the 2010 rates, and eight months at the rates stated in the Company's December 1, 2010 rate increase request. All other 2011 revenue has been projected at the same level as 2010. The 2011 expenses have been forecasted to remain at the 2010 levels except for salaries, fuel and franchise fees.

**Note 4**

Salary and benefits expense reflects a 3.4% increase over the 2010 levels effective March 1, 2011 as dictated by union contracts resulting in a net increase of 2.83% for the full year.

**Note 5**

Fuel costs in 2011 are expected to be 33% higher than 2010 based upon the Company's experience and considering current conditions.

**Note 6**

Franchise fees for the county and the district are a percentage of revenues as dictated by the franchise agreement and have been adjusted to reflect changes in revenue assumptions.

**Note 7**

The number of customers used for the 2011 revenue forecasts is based on the number of actual billings mailed to customers for the period January 1, 2011 through April 30, 2011.

**Note 8**

The Company's historical records show that approximately 2% of billings are not collected as a result of service reductions or terminations. The forecasted Kensington-regular revenues have been reduced by 2% to reflect this pattern.

**Note 9**

The increased rates for the two billing periods from April 1, 2011 through December 31, 2011 are those referenced in the Bay View Refuse & Recycling Services, Inc. rate increase request dated December 1, 2010.

Tab 7

Kensington Billings by Service Type  
2006-2011

Type of Service	Sep.-Dec. 2006	Sep.-Dec. 2007	Sep.-Dec. 2008	Sep.-Dec. 2009	Sep.-Dec. 2010	15-Mar-11
1-20 gal. can	253	255	273	331	378	378
1-32 gal. can	1480	1499	1508	1507	1525	1527
2-32 gal. can	315	295	273	230	187	186
3-32 gal. can	23	24	22	20	19	17
4-32 gal. can	4	3	3	2	1	1
1-40 gal. can	2	1	1	1	1	1
1-45 gal. can	11	11	11	11	11	10
Misc rates	6	5	7	8	7	6

Tab 8



## Marin Voice: Trash charges need to change

By James Iavarone  
Guest op-ed column

Posted: 03/29/2011 03:24:00 AM PDT

A RECENT ARTICLE on Marin Sanitary Service's request for rate increases — "Less garbage, more for pick-up" — highlighted an issue facing trash haulers throughout the Bay Area.

The issue is "migration," which occurs when customers reduce service (or migrate) from larger to smaller trash cans as they recycle and compost more. This sounds great — and it is.

The passage of AB939 in 1990 was aimed at reducing the flow of garbage into our landfills, and the public's enthusiastic participation in recycling and composting services is accomplishing that goal.

The downside to migration is that it drives trash rates higher by reducing revenue without reducing costs. Put simply, sending a truck down your street to pick up a single trash can costs the same no matter what size it is. Imagine what happens to revenues when sizeable numbers of people start the year with 32-gallon trash cans, and then switch to cheaper 20-gallon cans.

Marin Sanitary CFO Neil Roscoe explains that "as people downsize, their cost decreases, but the cost of collecting and processing all that output does not go down." Shortfalls created by migration in one year factor into requests for higher rates the next year.

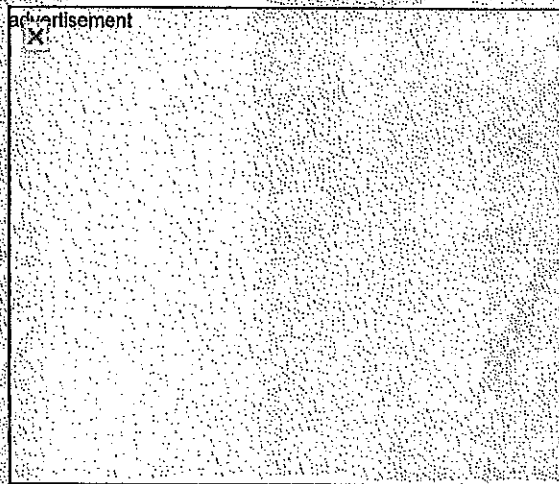
Steve McCaffrey, a spokesman for Novato's trash collector, correctly points out this problem is not an isolated one. "It's not just Marin. It's happening statewide," he said.

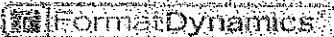
### Last year, Berkeley

reported a decline in refuse revenue that added \$4 million to its budget deficit. One Berkeley resident, who had switched to a smaller can, said, "I felt funny going to the smaller rate. It's the same amount of stuff going out — and trucks and garbage people required to take it away."

Fixing the migration problem requires revising the way rates are currently set. Rates now are determined by adding operating costs (verified by independent auditors) and a contractually agreed-upon profit margin (often unrealized thanks, in part, to migration) to create a single "blended" rate that includes trash, recycling and compost services.

If warranted and approved, a percentage rate increase is added to the cost of the size of the trash can each customer currently uses.



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Since people typically re-evaluate their trash needs right after a rate increase is granted, most migration occurs in the first few months of a new rate year. Haulers then find themselves operating during the year with lower revenues than their rate increase was designed to bring in to cover costs.

James Iavarone is one of the managing directors of Mill Valley Refuse Service Inc.

Revenue shortfalls contribute to increasing rates the following year, and the vicious cycle continues.

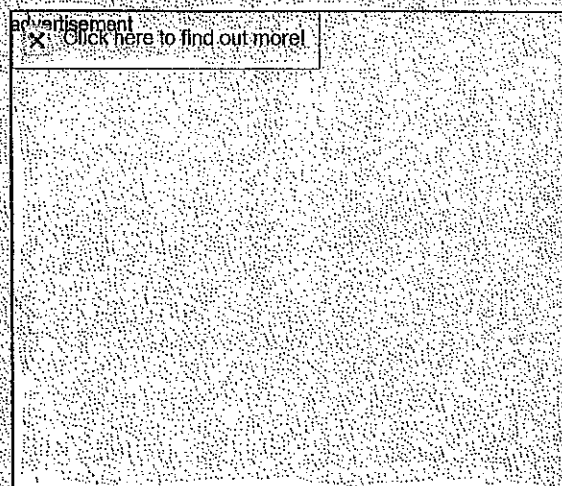
What haulers have come to learn is that this rate-setting system not only contributes to repeated requests for rate increases, but also fails to address lost revenue in the current rate year. Mill Valley Refuse will lose about \$120,000 in expected revenues this year due to migration, but any rate request for next year will not recover that loss.

It can only ensure the same \$120,000 isn't lost again. Roscoe discovered similar substantial losses for Marin Sanitary. These revenue shortfalls are causing serious cash-flow problems and depleting cash reserves.

Haulers are casting about for a remedy to the migration problem, but no one has yet agreed on what it might be. Care has to be taken to ensure that any proposed solution doesn't remove incentives to recycle and compost.

There are many variables to consider, and these may differ from hauler to hauler, so there might not be one "best" solution that fits every community's situation.

Now that the problem has been identified, however, proposals to fix it are sure to follow.



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165

## DISTRICT - NEW BUSINESS

1. Officer Rodney Martinez will present to the Board a recommendation for the purchase of a replacement police vehicle that was budgeted for in this current fiscal year. Possible Board Action.

FOLSOM LAKE FORD  
12755 FOLSOM BLVD.  
FOLSOM, CA. 95630  
(916) 353-2000 Ext. 307.

Date: 3/25/2011

---

To: Rodney Martinez / Kensington Police Department  
From: Mark A. Paoli  
Subject: Price Quotation for 2008 Ford Crown Victoria Police Interceptor - Chief's Car

Selling Price:	\$22,487.00 (V.I.N. 2FAHP71V98X179109)
Documentation Fee:	N/A
Subtotal:	\$22,487.00
Sales Tax:	\$ 2,080.05 (9.25%)
License Fees:	\$EXEMPT
California Tire Fee:	\$ 8.75
Total Price:	\$24,575.80 (EACH)

Payment Terms: Net 20

Delivery: No charge to Kensington P.D.

Thank you for considering Folsom Lake Ford for your vehicle needs.

Mark A. Paoli  
Government Sales Manager  
(916) 353-2000 Ext. 307

DEALER 72E 207

VIN

2FAHP71V98X179109

	Suggested Retail Price	
CROWN VIC POLICE INTERCEPTOR	26020	00
SPECIAL DEALER ACCOUNT ADJUSTM		
SPECIAL FLEET ACCOUNT CREDIT		
1007-670805/23/07CA		
2008 MODEL YEAR		
CA BLACK CLEARCOAT		
PN CHARCOAL CLOTH		
INCLUDED ON THIS VEHICLE		
.ORDER CODE 750A-STR APR 327		
.STREET APPEARANCE GROUP		
.POLICE PACKAGE		
.17" STEEL SPARE WHEEL/TIRE		
.MANUAL AIR CONDITIONING		
.HEAVY-DUTY BATTERY		
.ENGINE IDLE METER		
OPTIONAL EQUIPMENT		
99V .4.6L OHV SEFI V8 FLEX FUEL EN	NC	
44Q .ELECTRONIC AUTO O/D TRANS	NC	
TC1 .P235/55R17 ALL SEAS BSW	NC	
JOB #2 ORDER		
128 CARPET FLOOR COVERING	125	00
FRONT AND REAR FLOOR MATS		
153 FRONT LICENSE PLATE BRACKET		NC
41A COMFORT CONVENIENCE GROUP	760	00
.8-WAY POWER DRIVER'S SEAT		
.SPEED CONTROL		
.ELEC AM/FM STEREO W/ANGI DISC		
478 COURTESY LAMPS DISABLED	20	00
53M NOISE SUPPRESSION BOND STRAPS	95	00
54M 5 INCH DOME/MAP LIGHT DELETE		NC
59M DRIVER/PASSENGER SIDE AIR BAGS	300	00
61R BECKLED RELEASE ON IP AND DOOR	60	00
P CLOTH SPLIT BENCH SEATS	30	00
SPCL. DLR. ACCT. ADJ. CR.		
TOTAL OPTIONS	1450	00
TOTAL VEHICLE & OPTIONS	27470	00
DESTINATION & DELIVERY	825	00
<hr/>		
TOTAL FOR VEHICLE	28295	00
05 U.S. GAL FUEL CHARGE		
CA NEW MTR VEHICLE BOARD FERS		
NET INVOICE FLEET OPTION (B4A)		
SHIPPING WEIGHT 3974 LBS.		
TOTAL	28295	00

148

# CROWN VICTORIA

DNA PROFILE OF THE POLICE INTERCEPTOR



## FOR STREET PATROL AND HIGH-SPEED PURSUIT

New for 2008:

- Flexible Fuel Vehicle (FFV) – runs on E85, gasoline or any combination of both
- Tire Pressure Monitoring System alerts for underinflation and overinflation
- Remote keyless entry, optional
- Oil-change interval extended to every 5,000 miles

### ALL STANDARD

- Air conditioning – Manual with wide-open throttle cutoff
- Audio – AM/FM stereo
- Floor covering – Heavy-duty rubber
- Fuse panel – Labeled for easy access on instrument panel
- Glass – Solar-tinted
- Glove compartment – Illuminated, lockable
- Hub caps – Snap-on steel
- Instrument cluster – With analog gauges
- Integral front-door map pockets
- Interior trunk release – Powered release on center of instrument panel
- Light bar connector – 40-amp battery circuit behind right-front cowl panel
- Lights – Overhead dome, front map and trunk
- Mirror – Day/night, inside rearview
- Mirrors – Black, power sideview foldaway
- Paint – Clearcoat
- Radio antenna – Integral in rear window
- Rear-access power point – Provides 100 amps of current for trunk-mounted equipment
- Scuff plates – Color-keyed, front and rear
- Seat – Rear vinyl bench; excludes center armrest
- Seats – Front cloth buckets with power lumbar driver seat and manual recline
- Spare tire – Conventional (full-size)
- Speedometer – Electronically certified calibration: 0–140 mph (225 kph) in 2-mph (3-kph) increments
- Tires – P235/55R17W speed-rated
- Wheels – 17" x 7.5" heavy-duty steel, painted black
- Windows – Power with one-touch-down driver-side feature

### STANDARD POWERTRAIN/FUNCTIONAL

- Alternator – High-output, 200-amp maximum; 132-amp at idle (80°F/26.6°C)
- Automatic 4-speed transmission
- Axle ratio – 3.27 (speed-limited to 129 mph/207 kph) or 3.55 limited-slip (speed-limited to 119 mph/191 kph)
- Battery – Maintenance-free, 78-amp-hr. (750 CCA)
- Brakes – Power with Anti-lock Brake System (ABS)
- Coolant recovery system
- Decklid – Low-liftover design with battery-powered release on center of instrument panel
- Defroster – Rear-window
- Driveshaft – Aluminum
- Drivetrain – Rear-wheel drive (RWD)
- Engine – 4.6L overhead cam, SEFI V8 with 250 hp and 297 lb.-ft. of torque
- Engine-idle meter
- Engine oil cooler
- Exhaust system – Dual stainless steel
- Fail-safe engine cooling system
- Flexible Fuel Vehicle (FFV)
- Frame – Heavy-duty hydroformed body-on-frame construction
- Fuel tank – 19-gallon (71.9-liter) capacity
- Ignition system – Coil-on-plug distributorless electronic
- Parking brake – Manual release
- Shock absorbers – Heavy-duty monotube, nitrogen gas-pressurized
- Stabilizer bars – Front and rear
- Steering – Speed-sensitive, variable-assist power rack-and-pinion with power steering oil cooler
- Suspension – Heavy-duty front: Short- and Long-Arm; Rear: Watts linkage
- Transmission oil cooler – Oil-to-air
- Upper ball joints – Low-friction, non-greaseable

### STANDARD SAFETY & SECURITY

- Airbags\* – Dual-stage driver and front-passenger
- Battery saver – Turns off lights after 30 minutes
- Personal Safety System®
- Side-intrusion door beams
- Tire Pressure Monitoring System\*\* (TPMS)

\*Always wear your safety belt and secure children in the rear seat.

\*\*TPMS alerts driver when one or more tires is low.  
Red type = NEW FOR 2008

149

## OPTIONAL FEATURES

ITEM	OPTION CODE	ITEM	OPTION CODE
2-way radio pre-wire connector	946	Keyed alike (cont.)	
50-state emissions	425	– Key Code 0151x	439
Airbags* – Front-seat side	59M	Lamp pre-wire – Package tray or under decklid	476
All-Speed Traction Control (standard with 3.55 axle ratio)	553	Lateral bow reinforcement (center roof light support)	185
AM/FM stereo delete	58Y	License plate bracket – Front	153
AM/FM stereo/single-CD player	58Z	Limited-slip differential (standard 3.55 rear axle)	45C
Axle ratio – 3.55		Locking gas cap	98G
– Police Interceptor Array	730A	Pedals – Power-adjustable	59C
– Street Appearance Array	770A	Power driver seat	21A
Ballistic door panel – Driver door only	90L	Police Power Pigtail harness – For powering aftermarket equipment	179
Ballistic door panels – Driver and front-passenger doors	90B	Rear door handles – Inoperable/lock operable	67R
Courtesy lamp disable	478	Rear windows power delete – Operable from front driver-side switches	948
Cruise control	525	Remote keyless-entry key fob – excluding keypad	14R
Decklid release on door and instrument panel – Ignition-powered	61H	Roof wiring – Hole in center of roof (incl. lateral bow reinforcement)	187
Dome/map light delete (5" center-mounted)	54M	Roof wiring – No hole in roof	189
Engine block heater	41H	Seats – Cloth front buckets/cloth rear bench	H
Fire Suppression System	60S	Seats – Cloth front split bench/cloth rear bench	P
Floor covering – Carpeted with front and rear floor mats	128	Sideview mirrors – Heated	61K
Front bodyside moldings, color-keyed – Installed	96A	Silicone hoses with aircraft clamps	177
Front bodyside moldings, color-keyed – Uninstalled (shipped in trunk)	96B	Spot lamp – Driver side	51A
Grille lamp, siren and speaker wiring	172	Spot lamp wiring prep – Driver side	51B
Keyed alike:		Spot lamps – Dual	51Y
– Key Code 1284x	432	Spot lamp wiring prep – Dual	51Z
– Key Code 1294x	435	Trunk Pack™ (w/KEVLAR® barrier)	14T
– Key Code 0135x	436	Two-Tone Paint Treatment #1	952
– Key Code 1435x	437	Two-Tone Paint Treatment #2	953
– Key Code 0576x	438	Two-Tone Paint Treatment #3	955
		Wheel covers – Full	64N

## OPTIONAL PACKAGES

ITEM	OPTION CODE	ITEM	OPTION CODE
Comfort and Convenience Package	41A	<b>POLICE PREP PACKAGES</b>	
– AM/FM stereo/single-CD player, cruise control and power driver seat		Base Police Prep Package	65A
Street Appearance Package	60B	Base Lighting Package	65P
– Chrome grille, fascia inserts, door handle bezel and taillamp appliqué; color-keyed retail bodyside moldings; "Crown Victoria" badge; full wheel covers; and rear appliqué with color-keyed panels		Ready-for-the-Road Package	65U
		Visibility Package	65W
		Complete Police Prep Package	68P

## DIMENSIONS & CAPACITIES



<b>EXTERIOR (in.)</b>		<b>INTERIOR – Front (in.)</b>		<b>Trunk liftover height (in.)</b>	26.8
Wheelbase	114.6	– Head room	39.5	<b>Cargo volume (cu. ft.)</b>	
Length	212.0	– Shoulder room	60.6	– Luggage compartment	20.6
Height	58.3	– Hip room	57.4	– EPA passenger-volume index	106.4
Width	78.3	– Leg room	41.6	<b>Engine – 4.6L V8</b>	
<b>Track width (in.)</b>		<b>INTERIOR – Rear (in.)</b>		– Horsepower @ 5000 rpm	250 hp
– Front	62.8	– Head room	37.8	– Torque @ 4000 rpm	297 lb.-ft.
– Rear	65.6	– Shoulder room	60.0		
Base curb weight (lbs.)	4214	– Hip room	56.1		
Fuel capacity (gal.)	19	– Leg room	38.0		

FOLSOM LAKE FORD  
12755 FOLSOM BLVD.  
FOLSOM, CA. 95630  
(916) 353-2000 Ext. 307

Date: 3/25/2011

---

To: Rodney Martinez / Kensington Police Department  
From: Mark A. Paoli  
Subject: Price Quotation for 2011 Ford Fusion Hybrid

Selling Price:	\$28,795.00 (Estimate-price based on vehicle selected)
Documentation Fee:	N/A
Subtotal:	\$28,795.00
Sales Tax:	\$ 2,663.54 (9.25%)
License Fees:	\$EXEMPT
California Tire Fee:	\$ 8.75
Total Price:	\$31,467.29 (EACH)

Payment Terms: Net 20

Delivery: No charge to Kensington P.D.

Thank you for considering Folsom Lake Ford for your vehicle needs.

Mark A. Paoli  
Government Sales Manager  
(916) 353-2000 Ext. 307





## Responsive engines that are also responsible.

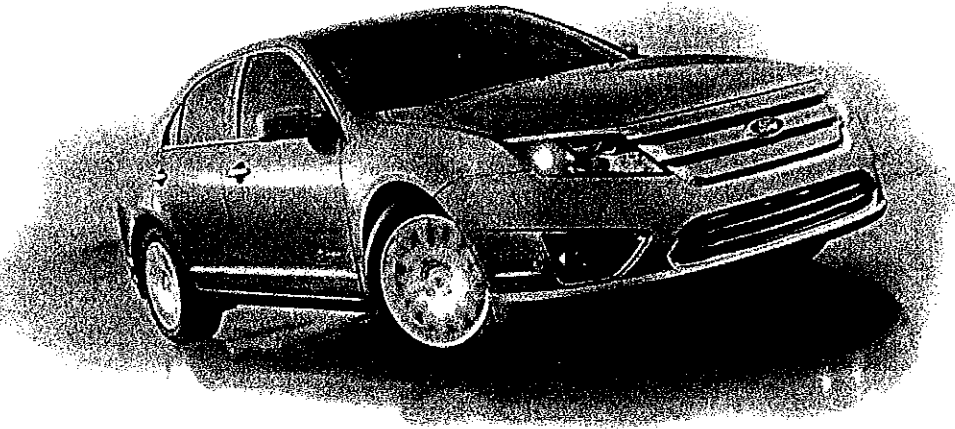
### Green

- Impressive Power. Great Economy.
- Hybrid Performance
- Flex Fuel Capability
- SmartGauge™ Cluster with EcoGuide
- Energy Flow Display
- Easy Fuel™ Filler System
- Regenerative Braking
- Eco-Friendly Cloth Seats

### Technology

### Performance

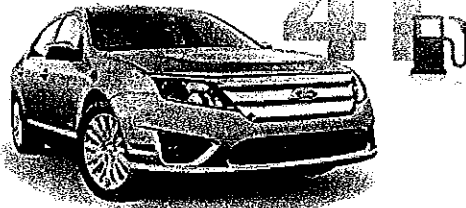
### Design



Share

Fusion gas-powered and hybrid models deliver plenty of responsive performance. So go ahead, enjoy your ride in the MPH zone. And all the while be assured that you're going right by the environment, with fuel efficiency that is very impressive.\*

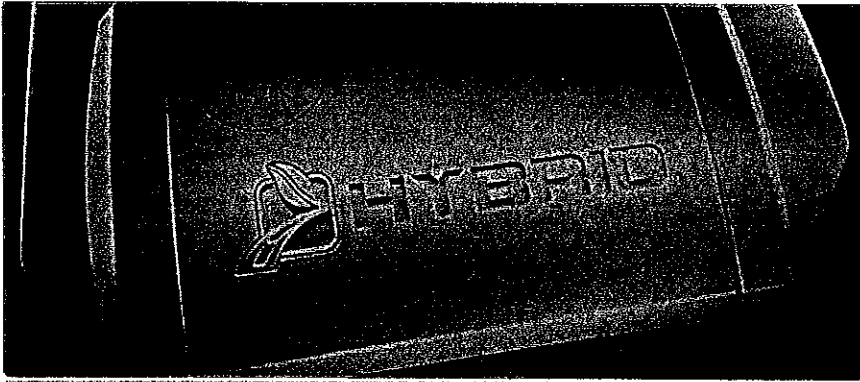
\*EPA-estimated 23 City/34 Hwy/27 Combined mpg, Fusion S, I-4 with automatic; 41 City/36 Hwy/39 Combined mpg, Fusion Hybrid.



### Impressive Power. Great Economy.

You can have both — impressive power and great economy.

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### Hybrid Performance

Drive electric only. Or electric and gas combined.

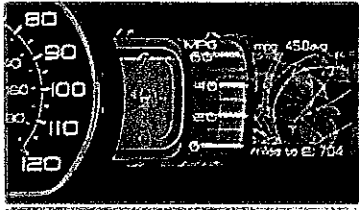
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### Flex Fuel Capability

The 3.0L Duratec V6 is "flex-fuel" capable.

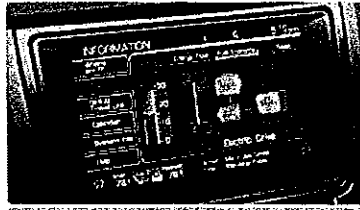
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### SmartGauge™ Cluster with EcoGuide

High-tech gauge panel shows you to drive smart.

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### Energy Flow Display

Track the Hybrid powertrain's four modes of operation.

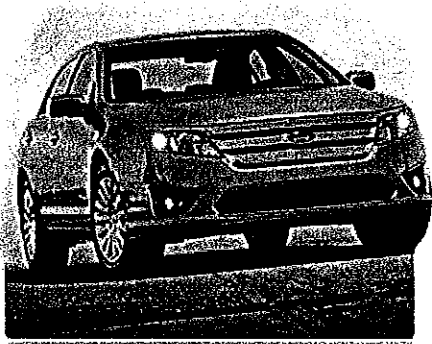
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### Easy Fuel™ Filler System

Easy Fuel™ is convenient and eco-friendly.

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### Regenerative Braking

Regenerative braking captures 94 percent of energy lost to braking friction.

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### Eco-Friendly Cloth Seats

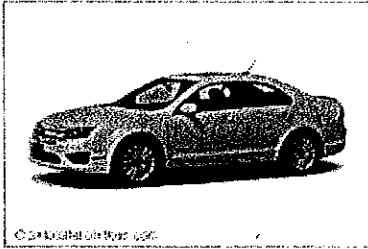
For those who think green, these seats provide a perfect fit.

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Home > Ford > Fusion Hybrid > 2011 > Standard Equipment

[Side-by-Side Comparison](#)  
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2011 Ford Fusion Hybrid 4dr FWD Sedan shown  
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## 2011 Ford Fusion Hybrid

Starting MSRP \$28,340



### Vehicle Style Selector

Choose a style to change Equipment & Specs data

Starting MSRP Invoice\*

[Common standard equipment for all styles](#)

[4dr Front-wheel Drive Sedan Hybrid](#)

\$28,340 \$26,036

Destination Charge: \$760

### About Vehicle

Vehicle Summary

Photos & Colors

Rebates, Payments, Prices

5-Year Ownership Costs

Standard Equip. & Specs

Available Options

Safety Ratings & Recalls

Owner & Expert Reviews

See Similar Models

### Common Standard Equipment and Specs

Choose a style above to see more specific info about engines, stereos, colors and more

#### Power and Performance

2.5L I-4 156 HP engine

2-spd CVT transmission w/OD

Hybrid electric motor alternator

390 amp battery with run down protection ⓘ

Axle Ratio 2.57 axle ratio

Fuel Tank 17.5 gal. fuel tank

Stainless steel exhaust ⓘ

#### Fuel Economy

Fuel Economy City ⓘ 41.0 mpg city fuel economy

Fuel Economy Hwy ⓘ 36.0 mpg hwy fuel economy

#### Handling and Control

Front-wheel drive ⓘ

ABS & driveline traction control ⓘ

AdvanceTrac stability control ⓘ

Front short and long arm suspension ⓘ

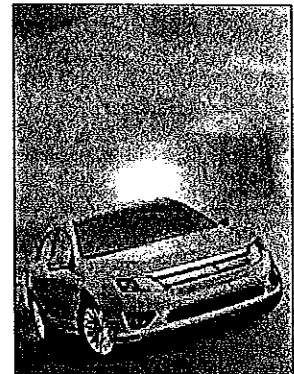
Front anti-roll bar ⓘ

Coil front springs ⓘ

Gas-pressurized front shocks ⓘ

Multi-link rear suspension ⓘ

Rear anti-roll bar ⓘ



2011 FUSION HYBRID

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