

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

FINAL REVISED AGENDA NOVEMBER 10, 2014

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District will be held **Thursday, November 13, 2014, at 6:00 P.M.**, at the Community Center, 59 Arlington Avenue, Kensington, California. The Board will commence its monthly Regular Meeting in open session at **7:30 P.M.** If further Closed Door Session is required, the Board will return to Closed Door Session following the end of the Regular Meeting. **Please note that this early agenda was posted by the Board to allow the public time to review the Bay View contract. A supplemental agenda will be posted November 7th.**

This revised agenda is being posted to include Item B of the Consent Calendar, a letter from Haig Harris, representing Bay View, as it relates to Agenda Item #1.

Roll Call
Public Comments

SPECIAL MEETING; CLOSED SESSION 6:00 P.M.

1. Conference with Legal Counsel- Existing Litigation (Government Code Section 54956.9(a))
Leonard Schwartzburd v. Kensington Police Protection and Community Services District (Case Number N12-1625).
2. Conference with Labor Negotiators (Government Code Section 54957.6)
Agency Representatives: Patricia Gillette and Chuck Toombs
Employee Organization: Kensington Police Officers Association
3. Pursuant to California Government Code Section 54957b:
 - a. The Board will enter into closed session to discuss the General Manager/ Chief of Police performance review pursuant to California Government Code Section 54957b.
 - b. The Board will discuss the possible contract extension and terms of the extension of the General Manager/ Chief of Police.
 - c. The General Manager/ Chief of Police will discuss personnel appointment, employment, and evaluation of performance of District personnel.

REGULAR MEETING; OPEN SESSION 7:30 P.M.

The Board will return to Open Session at approximately 7:25 PM and report out on the Closed Door Session.

A Regular Meeting of the Board of Directors of the Kensington Police Protection and Community Services District will be held **Thursday, November 13, 2014, at 7:30 P.M.**, at the Community Center, 59 Arlington Avenue, Kensington, California.

Note: All proceedings of the open session meeting will be videotaped.

Roll Call
Public Comments
Board Member/ Staff Comments

APPROVAL OF CONSENT CALENDAR

- a) Minutes of the Special & Regular Meeting October 9, 2014, Page 3
- b) Correspondence- A letter from Haig Harris, representing Bay View, as it relates to Agenda Item #1, Page 13
- c) Additional Correspondence- A letter from Jim Watt to the Board regarding the Bay View contract as it relates to Agenda Item #1, Page 16
- d) Unaudited Profit & Loss Report for October 2014, Page 20
- e) Park Revenue & Expense Report for October 2014, Page 25
- f) Police Report October 2014, Page 31
- g) Training/ Reimbursement Report for October 2014, Page 42
- h) Recreational Report for October 2014, Page 44
- i) Monthly Calendar, Page 45
- j) General Manager's October Report, Page 47

DISTRICT - NEW BUSINESS

1. Board President Len Welsh will present for Board discussion a draft of the purposed contract between the District and Bay View Refuse & Recycling for services following the expiration of the current Bay View contract in August 2015. Possible Board Action. Page 13
2. Directors Chuck Toombs & Pat Gillette will present the draft of the proposed contract between the District and the Kensington Police Officer's Association. Possible Board Action. Page 121
3. District Administrator Lynn Wolter will present the Proposed Agreement between the District and the West Contra Costa Unified School District. Possible Board Action. Page 138
4. Director Linda Lipscomb will present for a third reading the draft of KPPCSD Board Policy Section 1000. Possible Board Action. Page 144

(If needed, the Board will return to Closed Session following the end of the Regular Open Session meeting.)

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 2 DAYS BEFORE THE MEETING. REQUESTS SHOULD BE SENT TO:

General Manager/ Chief of Police 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
Complete agenda packets are available at the Public Safety Building and the Library.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Services District that are distributed to a majority of the Board less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at the **District offices, 217 Arlington Ave, Kensington, CA 94707** at the same time that those records are distributed or made available to a majority of the Board.

Meeting Minutes for 10/9/14

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, October 9, 2014, at 6:00 P.M. at the Community Center, 59 Arlington Avenue, Kensington, California. The Regular Meeting of the Board of Directors (BOD) of the Kensington Police Protection and Community Services District (KPPCSD) followed.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Kimon Manolius, Hanson Bridgett
Linda Lipscomb, Vice President	Bruce Harter, WCCUSD Superintendent
Chuck Toombs, Director	Haig Harris, Atty. for Bay View Refuse
Pat Gillette, Director	Tracy Swanborn
	Kathy Stein
<u>Staff Members</u>	Karl Kruger
GM/COP Gregory Harman	Janet Diehl
Sgt. Hui (on duty)	Anna Diehl
Lynn Wolter, District Administrator	Genevieve Schweitzer
Sgt. Barrow (own time)	Ada Lengyel
	Genevieve Quinn
<u>Press</u>	Anthony Knight
Joel Koosed, Outlook	Mabry Benson
	Lisa Caronna
	Andrew Reed
	Kay Reed
	Gloria Morrison
	Vanessa Cordova
	A. Stevens Delk
	Steve Bates
	Leonard Schwartzburd
	Peter Liddell
	Catherine De Neergaard
	Celia Concus

Board President Welsh called the meeting to order at 6:12 PM and took roll call. President Welsh, Vice President Lipscomb, Director Gillette, Director Toombs, General Manager/Chief of Police Harman, and District Administrator Wolter were present. Director Lloyd was absent.

PUBLIC COMMENTS

None

CLOSED SESSION

The Board entered into Closed Session at 6:13 P.M. to:

1. Confer with Legal Counsel – Existing Litigation (Government Code Section 54956.9(a))
Leonard Schwartzburd v. Kensington Police Protection and Community Services
District (Case Number N12-1625).

1. Confer with Labor Negotiators (Government Code Section 54957.6)
 - a. Agency Representatives: Pat Gillette and Chuck Toombs
 - b. Employee Organization: Kensington Police Officers Association

2. Pursuant to California Government Code Section 54957b
 - a. Discuss the General Manager/Chief of Police performance review pursuant to
California Government Code Section 54957b.
 - b. Discuss the possible contract extension and terms of the extension of the
General Manager/Chief of Police.
 - c. The General Manager/Chief of Police will discuss personnel appointment, employment, and
evaluation of performance of District personnel.

OPEN SESSION

The Board returned to Open Session at 7:37 P.M.

President Welsh reported that the Board:

- Met with Legal Counsel and gave appropriate direction.
- Discussed Item 2 but took no action.
- Did not cover Item 3.

President Welsh took roll call. President Welsh, Vice President Lipscomb, Director Toombs, and Director Gillette were present. Director Tony Lloyd was absent.

PUBLIC COMMENTS

Catherine DeNeergaard said the Board should settle the writ to save taxpayers money. She said, if the Board pursued collecting money, it likely would take a long time and a lot of money and the Board could be counter-sued. She said she had offered a settlement and urged the incoming Board to come to a speedy settlement.

Peter Liddell thanked the Girl Scouts for bringing cookies and announced there would be a presentation on Thursday, November 6th, at 7:00 PM, about fraud, scams, and ID theft. He said that Contra Costa Legal Services to Seniors and Director Lipscomb would be speaking.

Members of Girl Scout Troop 32222 (Anna Diehl, Genevieve Schweitzer, Ada Lengyel, and Genevieve Quinn) made a presentation about the pollinator garden and fairy house they had installed in the Community Center garden and thanked GM/COP Harman and the KPPCSD Board for allowing them to do this project. The said completing this project had enabled them to earn Girl Scout Bronze Awards.

Lisa Caronna announced that the Kensington Improvement Club (KIC) would hold its annual meeting on Saturday, October 11th at 9:30 AM and that the KIC and the Kensington Property Owners Association would have a candidates' forum, beginning at 10:30 AM.

BOARD MEMBER COMMENTS

President Welsh reported that work at the Community Center to remove fuel hazards was continuing, and he thanked Lisa Caronna, Ray Barraza, Peter Liddell, and Katie Gluck for their work.

STAFF COMMENTS

GM/COP Harman reported on the police incident that had occurred earlier in the week. He said Officer Turner had observed a suspicious-looking vehicle on Lake St. and that, as Officer Turner turned around to follow the vehicle, the driver took off at a high rate of speed. Soon thereafter, the vehicle was recovered on Wellesley. A handgun, stolen property, and burglary tools were recovered from the vehicle. GM/COP Harman reported that El Cerrito units, El Cerrito K9, and a CHP helicopter assisted in a search for the suspects; that, at 3:45 PM, Kensington Police received a report of suspicious people from a citizen; that, following a pursuit, GM/COP Harman had taken the female suspect into custody; and that, following a house-to-house search on York Ave., officers, with the assistance of a K9 unit, had taken the male suspect into custody. GM/COP Harman reported that the female suspect had been wanted on a home invasion warrant and that the male was a parolee at large.

Kay Reed asked about a phone warning system for such events. GM/COP Harman responded that Contra Costa County activates this system only in life-threatening situations.

A resident asked about the lock-down that had occurred at the Hilltop School. GM/COP Harman responded that he hadn't called for the lock-down: this had occurred as a result of communications between the school and dispatch. He said he had subsequently met with Hilltop School Principal Judy Sanders to establish protocols for future events that might occur.

Vanessa Cordova asked if a text message system might make sense. GM/COP Harman responded he was exploring this.

CONSENT CALENDAR

Karl Kruger asked that Item (c) be pulled in order to discuss accounts 401, 506, 521, and 530. Mr. Kruger asked why 401 Revenues were short, as compared to the budget. GM/COP Harman responded that the amount shown represented a credit from the County, not cash: it was a provisional amount that would be adjusted when the District received actual cash from the County. Mr. Kruger asked about 506 (Overtime), 521 (Medical Insurance), and 530 (Workers' Compensation Insurance) and questioned why the amounts differed from the amounts budgeted. GM/COP Harman responded that these differences were due to the timing of payments.

MOTION: Director Toombs moved, and Vice President Lipscomb seconded, to adopt the Consent Calendar.

Motion passed 4 to 0.

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

DISTRICT NEW BUSINESS

1. Dr. Harter, Superintendent of the West Contra Costa County Unified School District (WCCUSD), made a presentation to the Board and public on the School District.

Dr. Harter summarized the WCCUSD Strategic Plan. He said the School District would focus on six key priorities. Among them were students being admitted to colleges and universities and offering multiple advanced placement courses. He reported that 31,000 students were enrolled, including English language learners, special needs students, preschoolers, and adults. He said the Local Control Funding Formula was the best thing to happen to the WCCUSD in a long time; that grants would continue to grow to \$37

million by Fiscal Year 2016-17; and that, through the bond program, the WCCUSD was renovating and rebuilding schools and adjacent facilities. He reported that the District was focusing on the whole child, that common core state standards would ensure students would be prepared for college, and that family involvement was important. He said safety was important and that, as part of this focus, the WCCUSD was entering into partnerships with police agencies.

Karl Kruger asked what the School District's plans were for the former Portola School site. Dr. Harter responded that the WCCUSD and El Cerrito were discussing ways to create a green space in the upper portion and that the lower portion would continue to be used for temporary schools.

Gloria Morrison commended Dr. Harter for improvements and expressed concern about over-budget projects. Dr. Harter replied that the School District was committed to quality construction to ensure the buildings would last and that cost increases had been driven by increases in the cost of materials.

Director Gillette asked what percent of the WCCUSD's budget was spent on education versus building. Dr. Harter replied \$300 million had been budgeted for academics and \$60 - \$80 million had been budgeted for construction.

2. Directors Chuck Toombs and Pat Gillette updated the Board and public on the contract negotiations with the Kensington Police Officers' Association.

Director Toombs reported that a draft contract had been presented to the Kensington Police Officers' Association (KPOA) the previous week and that the officers had returned the document shortly before the Board meeting. He said the revised document would be sent to the District's attorneys for review and that the document would be discussed at the Board's November meeting.

Director Gillette said that there were lots of restrictions about what could and could not be done with collective bargaining and that the District and the KPOA were working for a fair agreement, taking everyone's interests into consideration.

3. KPPCSD Board President Len Welsh presented, for Board discussion, a draft of a proposed contract between the District and Bay View Refuse & Recycling for services following the expiration of the current Bay View contract in August 2015.

President Welsh referred to the motion of the prior month's meeting, with respect to continuing discussions with Bay View. He said that, following lengthy discussions earlier in the week, the District and Bay View had come close to agreement. He said the document, which contained revisions not reflected in the Board Packet's version, would be sent to the District's attorneys for review but that he didn't anticipate much revision. President Welsh summarized the highlights of the agreement:

- State-of-the-art contract
- January 1, 2016 commencement date, with the existing contract being extended from August 31, 2015 to December 31, 2015
- Rate changes would occur annually and would be determined by CPI increases, with a bracketed range of 3% - 5%.
- No rate reviews
- Term: 8 years
- Franchise fees to the District: 7%
- Franchise fees that might be due to the County were unknown, but the District would pay these
- The rate difference between the mini-can and the 32-gallon can would be \$4.00 for the term of the contract.

Vice President Lipscomb said that many of the past problems had arisen because of "squishy" language and that rate reviews had been costly. She said that, at its September meeting, the Board had directed President Welsh and Vice President Lipscomb to provide a deal, ready for signature, by September 30th. Vice President Lipscomb reported that she and President Welsh had met with Bay View's attorney, Haig

Harris, and CPA, Charlie Cowan, to finalize the details of a revised agreement. She asked if the Board would like to grant the negotiation process a little more time or if it wanted to move forward with the RFP process. She said moving in the direction of continuing negotiations would save on RFP costs.

President Welsh recommended moving forward with the negotiations, saying that RFPs were costly, didn't always work out well, and were risky. He said Kensington was a special needs community that couldn't be serviced by mechanical trucks – cans would need to be carried. He said he was convinced that the District had moved past the litigation that had been caused by the poor prior contract and said this would be a good deal for Bay View and for the District.

Director Toombs said the proposed contract would be meeting the community's expressed desires regarding service and rates and that it would save money by avoiding the RFP process. He did note that, in the survey, residents had indicated they didn't want mechanized trucks used, but Section 6.4 would give the service provider the right to select the collection vehicles: it wouldn't prohibit mechanized vehicles. Director Toombs said he wanted to ensure that the existing manual service would continue. He concluded by saying that, other than this issue, the contract was well crafted.

Director Gillette complimented the Board on the contract process and thanked President Welsh and Vice President Lipscomb for their work. She said she had struggled with this issue, that her thinking had evolved, and that she believed it would be good to continue doing business with Bay View.

Director Gillette said she had questions for Tracy Swanborn. She asked about the District's and the County's franchise fees. Ms. Swanborn responded that the current franchise fee was 5%, with a portion being paid the County and a portion to the District. She said there was a contract between the District and the County that would expire one year after the Bay View contract expired. She said that, because it was unknown what would transpire with the County, the proposed contract with Bay View allowed for a 7% franchise fee – an additional 2%, which would allow the District to work through the contractual arrangements with the County. She said that, although the District's team had negotiated an increase of 2% in franchise fees, this would not result in an increase in rates.

President Welsh said the proposed agreement would call for Bay View to continue paying the County fee for household hazardous waste.

Director Gillette asked Ms. Swanborn how the 7% franchise fee compared to that of other areas. Ms. Swanborn responded that, with an RFP process, the franchise fee would be decided by the District, up front, and written into the contracts. She said ultimately it would be the ratepayers who would pay the franchise fee. She said that, in other areas, franchise fees were as high as 30%. She said Kensington's 5% rate was very low and that the average franchise fee was 10%. She said the goal of increasing the franchise fee would be to generate funds for future RFPs or changes in law. President Welsh said that, if the District wanted to increase the franchise fee, the District would simply raise the rates citizens pay to have their garbage collected.

Vice President Lipscomb said that the 7% fee represented a doubling of the franchise fee the District currently received, even after the 3% payment to the County and, moreover, the increase in the franchise fee would not increase the rates to be paid by the ratepayers.

President Welsh asked Ms. Swanborn to comment on whether the rates in the proposed agreement were competitive. Ms. Swanborn responded that, as a starting point, an industry standard contract had been used. Ms. Swanborn commended President Welsh and Vice President Lipscomb for the knowledge and abilities as attorneys. Ms. Swanborn said that, at the prior month's meeting, she had provided a rate analysis for 12 agencies, net of franchise fees, and that Kensington's rates, for the 20 and 32-gallon cans, which represented 90% of the community's customers, were just below the average backyard rates of the 12 comparable communities. She said that, for the multi-can users, the rates were on the high side. She said that the proposed contract did not call for rate reviews and that this change should save money.

Kathy Stein asked what would be the base rate at the beginning of 2016. President Welsh said that the current rates would continue from September 1, 2015 through December 31, 2015, and then the rates would be adjusted consistent with the Consumer Price Index for all Urban Consumers for the San Francisco Bay Area. Ms. Stein asked what the CPI had been for 2013. Ms. Swanborn and GM/COP Harman responded, 2.5% and that, for the current year, the increase was 3%.

Anthony Knight asked why Kensington was paying money to the County. Vice President Lipscomb said this went back to litigation in 1996. As part of the settlement that resulted from that litigation, Kensington entered into a three-party agreement with Bay View and the County and that part of the agreement called for Kensington receiving a 2% franchise fee and the County receiving 3%. GM/COP Harman added that, for the 3%, the County handles all State-mandated reporting for Kensington and allows Kensington access to the County's household hazardous waste site.

Andrew Reed asked what would happen if there were an extraordinary rise in the cost to the hauler. President Welsh responded that, if an increased cost resulted from a change in law or a change in the scope of service, then discussions about rates would ensue; but if any other cost increases were to occur, rates would not increase.

Kay Reed asked if there would be any change in recycling services. President Welsh said there would not be any change.

Gloria Morrison asked if concrete would be included in recyclable items. Ms. Swanborn replied that concrete would not be included, per the Exhibit A "Single Stream Recyclable Materials".

A. Stevens Delk asked for a confirmation that a 12% profit would no longer be in effect. President Welsh confirmed that was correct.

Karl Kruger suggested that the Board obtain a letter guaranteeing that Bay View would continue service from September 1 – December 31, 2015, which would provide the District an extra 90 days to negotiate. President Welsh responded that, if the District and Bay View entered into an agreement, service would continue. Vice President Lipscomb clarified that the effective date of the proposed agreement would be September 1, 2015.

Mabry Benson asked for clarification about the rates that would be in effect in September 2015 and January 2016. President Welsh responded that the current rates would continue through December 31, 2015, and the rates would increase, by CPI, on January 1, 2016.

A resident asked if, when the current agreement with the County expired, the County might ask for an increase in their franchise fee. President Welsh responded that they could and that the District needed to research this.

Kathy Stein asked if a paragraph could be incorporated into the proposed Bay View agreement that would allow the District to adjust the franchise fees, so the District wouldn't be "boxed in" by whatever would be worked out with the County. President Welsh responded that the District could increase the franchise fee anyway and that the District would then have Bay View increase the rates accordingly. President Welsh said this language wasn't in the proposed agreement but the District could go to Bay View and say that the District needed a greater franchise fee and then ask Bay View to charge the community whatever would be needed to make up the difference. Ms. Stein questioned whether doing this would cause the entire contract to be opened for re-negotiation. President Welsh responded that it wouldn't. President Welsh said the District hadn't discussed this matter with Bay View and that he would explore it.

Vice President Lipscomb said it would be good to obtain information from the County. She wondered if it would be good to press for a continuation of the existing contract with the County, or would it be to the District's advantage to take the position that it would expire and that another contract would not be needed. She said this process would be independent of the discussions with Bay View.

Ms. Stein she was concerned that the District was limiting itself to a 7% franchise fee and that the County could ask for more than this amount. President Welsh and Vice President Lipscomb said they couldn't imagine Bay View objecting to an increase in a pass-through cost. Director Gillette said Ms. Stein was trying to limit the "re-opener". President Welsh responded that there was no reason why the District and Bay View couldn't have a discussion about the franchise fee issue.

A resident asked if the franchise fee could be used to build a "rainy-day" fund. Vice President Lipscomb responded that the fees could be used only for related costs.

President Welsh asked Bay View's attorney, Haig Harris, to comment on the process from Bay View's perspective. Mr. Harris said that, following long discussions that included Lewis Figone, Greg Christie, President Welsh, Vice President Lipscomb, and GM/COP Harman, a fair agreement had been reached. He said Mr. Figone had served Kensington for 70 years and the agreement would address service for eight more years. He said the uncertainty of the old contract hadn't been good for Kensington and hadn't been good for Bay View, either, and had resulted in litigation: something the proposed contract would avoid. He said that, with the new contract, rates would go up on the first of every year. He said Bay View would bear the risk of any extraordinary circumstances, except for change in law or change in scope. He said Bay View was in agreement with what had been discussed the prior day and that the agreement would need to be reviewed by the District's legal counsel. He said that, from his perspective, as the attorney for Bay View, he approved the language. He thanked President Welsh, Vice President Lipscomb, GM/COP Harman, and Ms. Swanborn.

Gloria Morrison asked about Bay View's office hours and the proposed service hours of 6:00 AM until 6:00 PM. Mr. Harris responded that office hours would be from 8:00 AM until 3:00 PM. President Welsh added that, if residents were unable to reach someone at Bay View's office, they could contact Bay View's Greg Christie.

Anthony Knight asked when the negotiation process might be completed. Mr. Harris said that Bay View was in agreement with the prior day's language and that it needed to go the District's legal counsel. President Welsh clarified that what had been agreed to the prior day was not the same as the document that had been included in the Board packet. He said he was confident the negotiations could be concluded within two weeks. He said a completed document would be ready for community review by the November Board meeting.

Andrew Reed thank President Welsh and Vice President Lipscomb for their good work, but expressed concern over the possibility that the agreement might not come to fruition. President Welsh responded that, if the District didn't have an agreement that was "signed, sealed and delivered" by the next Board meeting, neither Bay View nor the District would be interested in further discussions. Mr. Harris said he was optimistic that the process would be concluded successfully.

Director Gillette expressed concern that the District could find itself backed into a corner, with respect to the RFP, having spent so much time negotiating with Bay View. Vice President Lipscomb responded that Ms. Swanborn had said that, although it was close, the District still had time for the RFP process. President Welsh asked Ms. Swanborn to confirm the timing. She responded that the District was dependent on its legal counsel to turn things around quickly but that everyone was optimistic that everything that had been negotiated was good. She said that several attorneys had already looked at the agreement, so she hoped the District's legal counsel would review the document quickly. She said that, either the negotiating team would return next month with a deal ready to be signed or, if the agreement still wasn't complete but was still quite close that, perhaps, Bay View would agree to a letter agreeing to a three-month extension of the current contract.

Mr. Harris interjected, saying there was a contract that would expire August 31, 2015 and that this was a long time away. He said he wouldn't get into the RFP process; he would leave that to the District's consultant. He said that, from Bay View's perspective, the company had agreed to the terms of the contract that would be going to the District's lawyers for their approval.

Andrew Reed asked if it would be possible for a Board member to make a motion stating that, if the Board didn't have a deal it wanted, it would entertain the RFP. President Welsh responded that Mr. Harris couldn't answer for his client because his client wasn't present but that, if the Board didn't have an agreement, the negotiating team would ask for an extension. He said that, if the team didn't have either an extension or an agreement, the District would move forward with the RFP. He said Ms. Stein had raised a good point about the franchise fee and that could be a point of discussion with Bay View but that he didn't anticipate any derailment: one way or another, there would be a deal, provided it was the sentiment of the Board to move forward.

Mabry Benson said that the proposed agreement that had been posted was not the current version referred to during the meeting. She asked if the revised proposal, which was under discussion, could be posted and whether any future revisions could also be posted. Vice President Lipscomb responded that the Board couldn't post running versions, citing limitations imposed by the required 218 Hearing. Director Toombs said that the public would have the opportunity to weigh in on the final version twice: once when the Board considered taking action on a proposed agreement and again during the 218 Hearing.

President Welsh asked for clarification on what the Board would do next. Director Toombs responded that the Board would vote whether to approve a proposed agreement and then would hold a 218 Hearing. He said that, as soon as a version that the Board would be considering was ready, it could be posted.

A. Stevens Delk said that, because of the \$4.00 difference between the mini-can and the 32-gallon can, a difference that's supposed to be maintained during the life of the proposed agreement, the mini-can rate would increase at a rate greater than CPI. She asked why the Board adopted this rate structure. Vice President Lipscomb responded that this rate structure had been chosen because the cost to service a mini-can was similar to the cost of providing service for a 32-gallon can. Ms. Delk questioned the rate structure for multiple 32-gallon cans, noting that it seemed inconsistent with the rationale provided for the rate difference between the mini-can and the 32-gallon can. She said the difference between the mini-can and the 32-gallon can should be a percentage difference, rather than an absolute dollar difference. President Welsh said that the number of people using multiple 32-gallon cans was low and that it would be a good thing to provide economic incentives to encourage them to reduce the number of cans they used. Ms. Delk encouraged the Board to continue providing economic incentives for residents to reduce their garbage. President Welsh responded that, in order to cover expenses, mini-can users needed to pay more than they had paid in the past.

Ms. Stein said that there had been changes made to the agreement, as compared to the version that had been posted. She asked if the Board could provide a summary of the major changes. Vice President Lipscomb replied that she couldn't. President Welsh said much of the work had been done the day before, it contained many fine legal points and that the community would have a chance to look at it in the future – likely within the following two weeks and with plenty of time before the next meeting. Director Gillette asked Ms. Stein for clarification. Ms. Stein said one of the things contained in the Board Packet draft agreement was that, in the event of a dispute, Bay View would be responsible for all legal and consulting fees. Vice President Lipscomb responded that this section had been modified: in the event of litigation, Bay View and the District would each bear their own costs.

President Welsh noted that it was 9:45 PM.

**MOTION: Vice President Lipscomb moved, and Director Gillette seconded, to continue the meeting past 10:00 PM, if necessary, to complete all the business on the agenda.
Motion passed 4 to 0.**

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

President Welsh thanked Mr. Harris and Ms. Swanborn for attending the meeting. He said that a lot of work had gone into the discussions on both the District's and Bay View's sides. He said Lewis Figone had been involved in a lot of the discussions. He said there had been strong emotions on both sides. He said he saw a good solid corporate citizen and a good community that had gotten into conflict, which had resulted

from unclear law and badly written contracts. He said he hoped for a new era of getting along with a very good company. He thanked Mr. Harris, Mr. Figone, and Mr. Christie and noted that Mr. Christie had provided dumpsters, at no charge, for the fuel reduction work that had been ongoing at the Community Center.

President Welsh recommended continuing negotiations with Bay View and said he hoped that, by the next meeting there would be an agreement ready for signature or a letter extending the term of the existing contract to provide additional time for continuing negotiations. Director Gillette recommended an extension sufficient to allow for a robust RFP process. President Welsh said he didn't think an extension would be necessary.

Mr. Harris said that the ball was in the District's court and needed to go to the District's attorneys expeditiously. He said he didn't want anyone to be misled that Mr. Figone would agree to extend the contract after August 31, 2015.

Director Toombs said, if the Board didn't have an agreement by the next meeting, one that everyone was ready to sign off on, then the Board would ask Bay View for an extension of the contract, sufficient for the District to do its RFP.

Director Gillette clarified that, if a contract was not ready by the next meeting but completion was close, the District would not proceed with discussions unless Bay View extended the existing contract, for the purpose of continuing negotiations.

Mr. Harris said that the Board had a firm contract: Bay View had gone through the amended contract and had agreed to it.

President Welsh noted that, upon review of the proposed agreement, the District's attorneys might identify a problem.

A resident asked if the Board had passed a motion about this matter at its last meeting. Vice President Lipscomb responded that the Board had passed a motion to bring the agreement in by September 30th, and the negotiating team said it couldn't do it. The resident asked what was the consequence. Vice President Lipscomb responded that there was no consequence.

MOTION: President Welsh moved, and Director Gillette seconded, that unless there is an agreement acceptable to both sides at the next meeting, the Board would proceed with the RFP. Motion passed 4 – 0.

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

Director Gillette asked that legal counsel be directed to act quickly with its review.

4. Vice President Lipscomb presented, for a second reading, the draft of the KPPCSD Board Policy and Procedures Manual Section 1000 and, for a first reading, the introduction for the KPPCSD Board Policy and Procedures Manual.

Vice President Lipscomb reviewed changes that had been made to Section 1000 since the first reading:

- Section 1020.30 – the word “District” had been added between the words “between” and “Board”.
- Section 1050.36, second paragraph – the words “if a claim has been denied, a Notice of Action Taken on Claim shall be” had been added to the beginning of the paragraph, and the words “and it shall be sent to” had been added between the words “for form” and the words “the claimant”.
- The Exhibits 1A through 1E had been attached.

GM/COP Harman clarified that this was the second reading of Section 1000.

Leonard Schwartzburd asked which laws governed the Board. Director Toombs responded that the Government Code and the Brown Act did.

Vanessa Cordova said that a publication titled "What's So Special about Special Districts" would be good to add: the introduction contains information about the Government Code and scope of responsibility.

Celia Concus said that Section 1030.30 should state that investigations should be independent to avoid retaliation. Director Toombs said that the Board had brought in independent parties for investigations in the past. Vice President Lipscomb said that the Manual was a resource that provided guidelines.

**MOTION: Vice President Lipscomb moved, and Director Gillette seconded, that the Board put over Section 1000 for reading at the next regular meeting.
Motion passed: 4 – 0.**

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

Vice President Lipscomb reviewed the Introduction for the Board Policy and Procedures Manual.

**MOTION: Director Gillette moved, and Vice President Lipscomb seconded, to adopt the Introduction.
Motion passed: 4 – 0.**

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

5. GM/COP Harman asked the Board to approve his attending the POST- approved November 2014 Contra Costa County Police Chief's Association Annual Workshop being held November 3rd – 6th, at a total cost of \$825.42, which would be reimbursed by POST.

GM/COP Harman summarized the highlights of the workshop. Director Toombs noted that the fees would be reimbursed by POST and so wouldn't put any upward pressure on the budget.

**MOTION: Director Gillette moved, and Vice President Lipscomb seconded, that the Board authorize GM/COP Harman to attend the workshop.
Motion passed: 4 – 0.**

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

**MOTION: Vice President Lipscomb moved, and President Welsh seconded, to adjourn the meeting.
Motion passed: 4 – 0.**

AYES: Welsh, Lipscomb, Toombs, Gillette NOES: 0 ABSENT: Lloyd

The meeting was adjourned at 10:43 P.M.

Consent Calendar Item B:

**Correspondence- A letter from Haig Harris,
representing Bay View, as it relates to Agenda Item #1**

ANGELO J. SCAMPINI (1899-1993)
BEN MORTARA, JR. (1926-2007)
HAIG A. HARRIS, JR.
NEIL S. TURNER

SCAMPINI, MORTARA & HARRIS
ATTORNEYS AT LAW
220 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE
(415) 421-8556
FACSIMILE
(415) 296-9322

23 October 2014

U.S. Mail and E-Mail

Mr. Len Welsh, President
The Kensington Police Protection and
Community Service District
Kensington Public Safety Building
217 Arlington Avenue
Kensington, CA 94707

Re: Bay View Refuse and Recycling Services, Inc.
Solid Waste/Recycling Contract
1 September, 2015 - 31 August 2023

Dear President Welsh:

I take this opportunity personally and in behalf of Lewis Figone and Bay View Refuse and Recycling Services to thank you and Linda Lipscomb for all your dedicated time, efforts and counsel in negotiating the terms and conditions of a new contract for provision of service to the residents of Kensington by Bay View Refuse and Recycling Services, commencing 1 September, 2015 and continuing through 31 August 2023.

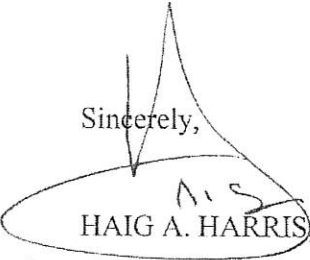
This contract will provide certainty and stability to the Kensington Community for many years in the future.

I have no hesitation in stating that you have provided a great benefit and service to your constituents as a result of your willingness to spend the time and effort necessary to have accomplished the goal of continued service to the residents of Kensington.

I await advice as to when the District Board will meet to approve the contract as presented, after which Lewis Figone, is prepared to sign, as President, in behalf of Bay View Refuse and Recycling Services, Inc.

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Mr. Len Welsh, President
The Kensington Police Protection and
Community Service District
23 October 2014
Page 2

Sincerely,

HAIG A. HARRIS, JR.

HAH/lis

cc: Mr. Lewis Figone, President (Via Fax)
Bay View Refuse and Recycling Services, Inc.

Charles Cowden (Via E-mail)
ccowden@rubensepa.com

15

Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

From: Gregory E. Harman, General Manager/ Chief of Police

Date: Tuesday, October 07, 2014

FORWARDED TO:

Subject: Consent Calendar Item C- Additional Correspondence

The District Additional Correspondence received for the month of October.

Item #1- Letter dated November 6, 2014, from Jim Watt to the Board regarding the Bay View contract as it relates to Agenda Item #1, placed on this agenda at request.

16.

To: KPPCSD Board members
 From: Jim Watt jandiwatt@sbcglobal.net
 November 6, 2014
 Re: Bay View Contract

According to a recent survey, 95% of Kensingtonians, myself included, like Bay View's service, and 73% think their rates are reasonable. While this is justification to negotiate with Bay View, the final contract must be fair for both the ratepayers and Bay View, and must be in-line with rates in other communities. The following are some concerns and observations about the process, factors not considered, Bay View's financial condition, and deal points that should be revisited.

Lack of Community Involvement in a Final Proposal – The Bay View contract appears to have taken on a fait accompli status without the prerequisite opportunity for public comment. This concern is further magnified by the insertion of a 10/23/14 letter in the revised November Board agenda from Mr. Haig Harris, attorney for Bay View, extolling the hard work by Welsh and Lipscomb and suggesting that this contract is now satisfactory. Mr. Harris is certainly entitled to his opinions about the virtues of this contract, but his acceptance of the proposed contract does not negate the fact that the ratepayers should have an opportunity to comment before this contract is presented as a “done deal”.

Waste/Recycle Issues NOT Considered – Evaluating a contract of this kind involves the consideration of many factors besides price per can. Here are some programs that received scant, if any, attention.

- ** A major objective of waste collection is to reduce the amount going to landfills and increase the amount that gets recycled – called the “diversion rate.” One way to accomplish this is to incentivize people to recycle by using a mini can for waste. Unfortunately, the proposed \$4.00 fixed spread between the 20 and 32-gallon cans provides little incentive.
- **Some communities allow an extra fee for backyard pickup with the proceeds used to lower the mini can rate.
- **Albany provides a senior citizens discount of 20% on all containers
- **Albany also has weekly green pickup for those who want to recycle food scraps
- **Many communities use periodic mailers and other means to encourage recycling
- **Many communities resell their composted material at special event days

Bay View's Financial Situation – Several years ago, the Board and Bay View incurred significant legal/consulting costs in a dispute over collection rates, resulting in an arbitrated 21% across-the-board rate increase starting in 2014. A review of their financial records going back to 2007 indicates that Bay View was experiencing financial difficulties starting around 2010 and continuing until 2013, as shown in the table below. However, this table shows that the new 2014 rates will greatly improved Bay View's financial position. No wonder Bay View is anxious to get this contract signed, as they are achieving a 36% return on their fixed assets before depreciation of about \$450,000. On top of this, Bay View also expenses management fees totaling \$132,000 in 2014, which fees may be additional internal compensation for the company's shareholders, and pays over \$60,000/year rent to a sister company. The new contract will also allow Bay View to purchase a green waste truck and thereby reduce truck rental costs of about \$100,000/yr. and increase depreciation, resulting in fewer taxes.

In analyzing a company's financial health, its Gross Profit margin (GP) is not as relevant as the Return on Invested capital (ROI). Thus, in 2014, Bay View's GP of 12.4% is not the key metric, but rather their ROI of 36%, as described above. In short, Bay View is currently quite profitable.

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014 (est)</u>
Total Revenue (000)	1,048	1,045	1,060	1,027	1,017	1,044	1,094	1,300
<u>Expenses (partial)</u>								
Prof. fees /legal (000))	29	30	42	49	82	155	115	33
Mgmt. Fees (000)	107	110	114	117	121	124	128	132
Rent (000)	44	46	50	51	57	58	60	62
Total Expenses (000)	923	898	928	1,002	1,067	1,144	1,168	1,132
NET INC.(Loss) (000)	105	144	129	24	(51)	(101)	(75)	161
32-gal rate - monthly	29.75	30.60	31.90	32.10	32.10	33.25	34.29	40.50

Here are the deal points that need to be revisited.

1. The CPI Bracket of 3% to 5% - The Consumer Price Index (CPI) floor of 3% could add significant economic costs for Kensington ratepayers, while unduly rewarding Bay View. As described in more detail on the next page, both historical trends and predictions by experts suggest the CPI will likely come in below 3% for the foreseeable future. In fact, over the last 18 years the odds are 10 to 1 that the CPI will fall below 3% (favoring the ratepayers) rather than above 5% (favoring Bay View). If the 3% floor is eliminated, and assuming the annual CPI trend of 1.9% over the last 5 years persists, Kensingtonians will save \$135,541 over the life of the contract – see calculation on the next page.

A second concern about the 3% CPI floor is that it will set a precedent for the current negotiations on the police contract. Since the police budget is about twice the size of the Bay View contract, the economic consequences of a 3% CPI floor are obvious.

Recommendation: Agree on a CPI increase from 0% to 5%. If CPI exceeds 5% for more than 2 years, Bay View has the option to terminate the contract on 12 months prior notice. As an alternative, allow annual increases using a composite of the change in Bay View's wages and pensions factored at 40% and the change in the CPI factored at 60%, with each factor capped at 5% annually.

2. The 2% Increase in the Franchise Fee - At the Board meeting of 10/9/14, it was suggested that the franchise fee increase from the current 5% to 7% was at no cost to the ratepayers. Other testimony and evidence in the files contradicts the veracity of these statements including the District's expert, Tracy Swanborn, who has acknowledged that ratepayers bear the cost of franchise fees. Mr. Welsh also acknowledged that any further increase in fees, for example by the county, would require a garbage can rate adjustment. Moreover, Bay View includes these franchise fees as part of their operating expenses. A 2% fee increase will add about \$25,000 of fee revenue to the Kensington budget, or a total of \$200,000 over the life of this 8-year contract. This hidden tax is born by ratepayers for the benefit of improving the revenue stream of the District's general fund.

Proposition 218 requires that Bay View's franchise fees only be used for waste/recycle purposes. These franchise fees are held in account 134d., and also included in the budget as account 448. Because the District paid \$300,000 in legal and consulting expenses between 2010 and 2014 there is no remaining balance in account 134d. When legal and consulting costs are removed, annual waste/recycle costs average \$5,000 per year compared to fee revenue of \$25,000/year, for an annual net positive of \$20,000. Over the contract's 8 years this will add \$160,000 to account 134d – more than enough to handle reasonable contingencies. Raising the District's Bay View franchise fee from 2% to 4% can only be justified if one assumes the District will make the same costly mistakes of the last 5 years. However, Prop 218 also denies this sort of increase because it prohibits fees "based on potential or future use of a service."

Recommendation: Continue the current 5% total franchise fee (2% to the District) in return for a delay in collection rate increases from the proposed December 31, 2015 until September 1, 2016, or, alternatively, widen the spread between the mini-can and the 32-gallon can to 15% off the 32-gallon rate versus the currently proposed \$4.00 differential.

3. Other legal Document Recommended Changes

** **Section 8.1(B)** – Add the following: If the County franchise fee exceeds 3% the Contractor may absorb the additional fee by a Rate adjustment reflecting the additional costs and agreed to by the District.

****Section 9.2(B)** – The reference to January 2015 makes no sense. How about January 2014? These rates should be codified either in this section or Exhibit B, specifically stating the rate per can. The last sentence of Section 9.2(B) should be changed per the recommendation in #2 above, to September 1, 2016, or the 15% can differential.

** **Section 12.8- Assignment** – Change the imprecise "reasonableness" standard to: The withholding of reasonable consent to an assignment shall be deemed reasonable if it requires the purchase of new trash containers or includes any modifications to the Collection Services provided in Article 4, which services were a major inducing factor to entering into this contract.

Here are examples of the lack of transparency and community engagement.

** Consultant Tracy Swanborn reported that Kensington's rates (with offsets for franchise fees) were lower than the average of 12 other comparable municipalities. However, when the high income/rate areas of Piedmont, Orinda and Belvedere are removed the evidence suggest Kensington is slightly above the remaining communities, and especially if franchise fees are increased from 5% to 7%. Also, no evidence has been provided that a minimum 3% annual increase is an industry standard.

** The packet for the October agenda did not contain the terms of a possible final offer, as Mr. Welsh presented these orally, so the general public had no time to consider the recommended proposal. Therefore, the November meeting should be used as a time to gather and consider comments, not try to finalize a contract.

CPI Changes for S.F./Oak/San Jose over last 18 Years

1996 - 2.3%	1999 - 4.2%	2002 - 1.6%	2005 - 2.0%	2008 - 3.1%	2011 - 2.6%
1997 - 3.4%	2000 - 4.5%	2003 - 1.9%	2006 - 3.2%	2009 - 0.7%	2012 - 2.7%
1998 - 3.2%	2001 - 5.4%	2004 - 1.2%	2007 - 3.3%	2010 - 1.4%	2013 - 2.2%

CPI changes over Last 18 Years Above 5% - -----1 time
 Between 3% & 5% - 7 times Avg. CPI change over last 5 Years = 1.9%
 Below 3% - -----10 times

The data suggest that the probability of the CPI falling below 3% versus above 5% are TEN TO ONE.

Growth in Kensington Payments to Bay View at 3% versus 1.9%

Assuming CPI at 3% per year				Assuming CPI at 1.9% per year		
Year	CPI Increase	Starting Income	Ending Income	CPI Increase	Starting Income	Ending Income
1	3.0%	\$1,300,000	\$1,339,000	1.9%	\$1,300,000	\$1,324,701
2	3.0%	\$1,339,000	\$1,379,170	1.9%	\$1,324,701	\$1,349,871
3	3.0%	\$1,379,170	\$1,420,545	1.9%	\$1,349,871	\$1,375,520
4	3.0%	\$1,420,545	\$1,463,161	1.9%	\$1,375,520	\$1,401,656
5	3.0%	\$1,463,161	\$1,507,056	1.9%	\$1,401,656	\$1,428,288
6	3.0%	\$1,507,056	\$1,552,268	1.9%	\$1,428,288	\$1,455,427
7	3.0%	\$1,552,268	\$1,598,836	1.9%	\$1,455,427	\$1,483,081
8	3.0%	\$1,598,836	\$1,646,801	1.9%	\$1,483,081	\$1,511,260

Savings equals year 8 ending at 3%, less year 8 at 1.9%

TOTAL SAVINGS..... \$135,541

Important Facts

KENSINGTON POPULATION INCLUDES MANY OLDER PEOPLE ON FIXED INCOMES - Source 2010 census

- Kensington has many elderly-the average age is 50 years versus 32 for State of California
- 22% are over 65 years of age
- 13% of all households had someone living alone who was 65 or older
- 83% of all homes are owner occupied

LOW INFLATION CRIMPS SENIORS - Source: Wall St Journal 10/23/14 pA2.

“The Social Security Administration on Wednesday announced a 1.7% annual cost-of-living adjustment, or COLA, for the nearly 64 million Americans who receive federal retirement or disability benefits. The increase would result in about a \$22-a-month increase for the average retiree. Increases have been between 1.5% and 1.7% for three straight years. Some beneficiaries say the small bump provides little relief for already stretched budgets. Ms. Hodge said the annual adjustments are crucial to cover her living costs. A majority of people age 65 and older rely on Social Security benefits for at least half of their retirement income.”

THE CALIF. DEPT. OF FINANCE ESTIMATES VERY TAME INFLATION FOR A NUMBER OF YEARS

Year	U.S.	Calif.	SF/Oak/SJ
2014	1.7%	1.9%	2.4%
2015	2.1%	2.1%	2.3%
2016	1.9%	1.9%	2.1%
2017	1.9%	1.9%	2.1%

DEFLATION IS A POSSIBILITY

“If commodity prices continue to decline, US inflation could slide to -2.0% deflation.” Roger Bottle Chief Economist at HSBC
 “With oil prices dropping 20%, I estimate inflation will fall to just under 1 percent within the next three months.” Evan Soltas

Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

From: Gregory E. Harman, General Manager/ Chief of Police

Date: Friday, November 07, 2014

FORWARDED TO:

Subject: Consent Calendar Item D- Unaudited Profit & Loss Report

For the month of October, the Unaudited Profit & Loss Budget Performance Report is attached for review.

Variances in revenue and expenses for the month, as well as year to date fiscal projections can be found in the "Budget" portion of the General Manager's Report.

KPPCSD
Unaudited Profit & Loss Budget Performance
 October 2014

	Oct 14	Budget	Jul - Oct 14	YTD Budget	Annual Budget
Ordinary Income/Expense					
Income					
400 · Police Activities Rev...					
401 · Levy Tax	46,428.47		1,319,273.42	1,413,620.00	1,413,620.00
402 · Special Tax-Police	681,690.00		681,690.00	680,000.00	680,000.00
403 · Misc Tax-Police	0.00		69.00		
404 · Measure G Supple...	501,949.76	501,443.00	501,949.76	501,443.00	501,443.00
410 · Police Fees/Servic...	110.30		788.95	375.00	1,500.00
414 · POST Reimburse...	751.59		751.59		
416 · Interest-Police	0.00	625.00	0.00	625.00	2,500.00
418 · Misc Police Income	410.21	1,500.00	6,542.30	6,000.00	18,000.00
400 · Police Activities R...	0.00		20.00		
Total 400 · Police Activitie...	1,231,340.33	503,568.00	2,511,085.02	2,602,063.00	2,617,063.00
420 · Park/Rec Activities ...					
424 · Special Tax-L&L	34,334.92	33,000.00	34,334.92	33,000.00	33,000.00
427 · Community Cente...	3,505.00	1,000.00	20,038.00	6,900.00	30,000.00
436 · Interest-Park/Rec	0.00	25.00	0.00	25.00	100.00
438 · Misc Park/Rec Rev	0.00	50.00	42.00	200.00	500.00
Total 420 · Park/Rec Activ...	37,839.92	34,075.00	54,414.92	40,125.00	63,600.00
440 · District Activities Re...					
448 · Franchise Fees	0.00	7,000.00	16,870.54	7,000.00	21,000.00
456 · Interest-District	0.00	87.50	0.00	87.50	350.00
Total 440 · District Activiti...	0.00	7,087.50	16,870.54	7,087.50	21,350.00
Total Income	1,269,180.25	544,730.50	2,582,370.48	2,649,275.50	2,702,013.00
Expense					
500 · Police Sal & Ben					
502 · Salary - Officers	81,652.82	81,748.58	325,781.52	326,994.36	980,983.00
504 · Compensated Abs...	0.00	0.00	2,315.83	2,933.33	8,800.00
506 · Overtime	2,926.69	3,750.00	19,466.21	15,000.00	45,000.00
508 · Salary - Non-Sworn	4,447.29	6,825.00	17,288.13	27,300.00	81,900.00

KPPCSD
Unaudited Profit & Loss Budget Performance
 October 2014

	Oct 14	Budget	Jul - Oct 14	YTD Budget	Annual Budget
516 · Uniform Allowance	666.60	666.66	2,666.40	2,666.64	8,000.00
518 · Safety Equipment	0.00		0.00	2,500.00	2,500.00
521-A · Medical/Vision/...	28,107.08	15,858.83	72,979.66	79,294.19	190,306.00
521-R · Medical/Vision/...	22,558.04	11,312.33	58,720.99	56,561.69	135,748.00
521-T · Medical/Vision/...	58,058.00	58,058.00	58,058.00	58,058.00	58,058.00
522 · Insurance - Police	190.00	436.67	2,151.00	1,746.64	5,240.00
523 · Social Security/M...	1,308.71	1,359.00	2,845.93	5,436.00	16,308.00
524 · Social Security - D...	310.54	423.17	1,209.75	1,692.64	5,078.00
527 · PERS - District Po...	31,794.22	31,565.00	126,856.36	126,260.00	378,780.00
528 · PERS - Officers P...	7,408.76	7,417.33	29,560.36	29,669.36	89,008.00
530 · Workers Comp	0.00		28,817.91	20,000.00	50,000.00
Total 500 · Police Sal & Ben	239,428.75	219,420.57	748,718.05	756,112.85	2,055,709.00
550 · Other Police Expens...					
552 · Expendable Polic...	21.99	125.00	3,699.01	500.00	1,500.00
553 · Range/Ammunitio...	0.00		0.00	2,000.00	3,000.00
560 · Crossing Guard	1,694.04	876.25	2,278.19	3,505.00	10,515.00
562 · Vehicle Operation	7,253.81	5,000.00	16,000.90	20,000.00	60,000.00
564 · Communications (...)	0.00	13,005.83	15,200.33	52,023.36	156,070.00
566 · Radio Maintenance	181.69	1,812.50	545.07	7,250.00	21,750.00
568 · Prisoner/Case Ex...	575.60	450.00	1,926.38	1,800.00	5,400.00
570 · Training	1,201.95	833.33	5,317.01	3,333.36	10,000.00
572 · Recruiting	0.00	541.67	0.00	2,166.64	6,500.00
574 · Reserve Officers	20.00	337.50	1,972.19	1,350.00	4,050.00
576 · Misc. Dues, Meals...	0.00	261.67	2,240.00	1,046.64	3,140.00
580 · Utilities - Police	1,696.44	746.67	2,578.60	2,986.64	8,960.00
581 · Bldg Repairs/Maint.	275.95	83.33	275.95	333.36	1,000.00
582 · Expendable Office...	479.50	500.00	1,572.81	2,000.00	6,000.00
588 · Telephone(+Rich. ...)	1,176.62	742.00	2,646.37	2,968.00	8,904.00
590 · Housekeeping	291.33	333.33	1,445.99	1,333.36	4,000.00
592 · Publications	89.00	183.33	177.50	733.36	2,200.00
594 · Community Polici...	1,526.46	166.67	6,921.85	666.64	2,000.00
596 · WEST-NET/CAL I.D.	0.00		13,655.00	13,925.00	13,925.00
599 · Police Taxes Adm...	0.00		1,681.81	1,650.00	3,300.00

KPPCSD
Unaudited Profit & Loss Budget Performance
 October 2014

	Oct 14	Budget	Jul - Oct 14	YTD Budget	Annual Budget
Total 550 · Other Police E...	16,484.38	25,999.08	80,134.96	121,571.36	332,214.00
600 · Park/Rec Sal & Ben					
601 · Park & Rec Admin...	561.49	650.00	2,223.98	2,600.00	7,800.00
602 · Custodian	1,750.00	1,895.83	7,000.00	7,583.36	22,750.00
623 · Social Security/M...	0.00	49.75	0.00	199.00	597.00
Total 600 · Park/Rec Sal &...	2,311.49	2,595.58	9,223.98	10,382.36	31,147.00
635 · Park/Recreation Exp...					
640 · Community Cente...					
642 · Utilities-Commu...	677.24	468.00	1,865.51	1,872.00	5,616.00
643 · Janitorial Suppli...	27.10	66.67	895.59	266.64	800.00
646 · Community Cen...	939.86		950.84	3,000.00	3,000.00
Total 640 · Community ...	1,644.20	534.67	3,711.94	5,138.64	9,416.00
672 · Kensington Park ...	4,745.00		17,750.31	79,524.00	79,524.00
678 · Misc Park/Rec Ex...	170.00		170.00		
Total 635 · Park/Recreatio...	6,559.20	534.67	21,632.25	84,662.64	88,940.00
800 · District Expenses					
810 · Computer Mainten...	1,089.00	2,024.00	12,706.00	8,096.00	24,288.00
820 · Cannon Copier Co...	387.05	475.00	2,240.15	1,900.00	5,700.00
830 · Legal (District/Per...	0.00	12,500.00	23,561.35	50,000.00	150,000.00
835 · Consulting	0.00	625.00	0.00	2,500.00	7,500.00
840 · Accounting	0.00	2,979.17	1,527.50	11,916.64	35,750.00
850 · Insurance	0.00	250.00	29,531.20	29,000.00	30,000.00
860 · Election	0.00	5,000.00	0.00	6,000.00	10,000.00
865 · Police Bldg. Lease	0.00		0.00	1.00	1.00
870 · County Expenditu...	1,363.62	1,500.00	2,716.38	1,500.00	22,300.00
890 · Waste/Recycle	12,453.41	9,883.33	23,136.44	39,533.36	118,600.00
898 · Misc. Expenses	115.00	1,000.00	155.40	4,100.00	12,300.00
Total 800 · District Expen...	15,408.08	36,236.50	95,574.42	154,547.00	416,439.00
950 · Capital Outlay					

KPPCSD
Unaudited Profit & Loss Budget Performance
 October 2014

	Oct 14	Budget	Jul - Oct 14	YTD Budget	Annual Budget
962 · Patrol Cars	0.00		0.00		30,000.00
963 · Patrol Car Access...	0.00		0.00		16,000.00
972 · Park Buildings Im...	0.00		0.00		
Total 950 · Capital Outlay	0.00		0.00		46,000.00
Total Expense	280,191.90	284,786.40	955,283.66	1,127,276.21	2,970,449.00
Net Ordinary Income	988,988.35	259,944.10	1,627,086.82	1,521,999.29	-268,436.00
Other Income/Expense					
Other Expense					
700 · Bond Issue Expenses					
701 · Bond Proceeds	-175,583.24		-175,583.24		
710 · Bond Admin.	0.00		4,681.72		
720 · Bond Principal	0.00		123,024.10		
730 · Bond Interest	0.00		20,606.66		
Total 700 · Bond Issue Ex...	-175,583.24		-27,270.76		
Total Other Expense	-175,583.24		-27,270.76		
Net Other Income	175,583.24	0.00	27,270.76	0.00	0.00
Net Income	1,164,571.59	259,944.10	1,654,357.58	1,521,999.29	-268,436.00

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Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

From: Gregory E. Harman, General Manager/ Chief of Police

FORWARDED TO:

Date: Friday, November 07, 2014

Subject: Consent Calendar Item E- Park Revenue & Expenses

The KPPCSD Board and the Park Buildings Committee has requested a separate and detailed accounting of park revenues and expenses.

This information is obtained through our QuickBooks software. Revenue and expenses from July 1, 2014 through October 31, 2014 are attached to this memo.

KPPCSD
Account QuickReport
 July 1 through November 7, 2014

6:07 PM
 11/07/14
 Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount
420 - Park/Rec Activities Revenue						
424 - Special Tax-L&L						
General Journal	10/1/2014	JV07...	CCC Taxes-LLD	SP ASSESS ...	114 · Land & L...	34,334.92
Total 424 · Special Tax-L&L						
427 - Community Center Revenue						
Deposit	7/9/2014	V918...		CCC Primary...	112 · General ...	100.00
Deposit	7/9/2014	109		July & Aug 2...	112 · General ...	90.00
Deposit	7/9/2014			Partial Paym...	112 · General ...	125.00
Deposit	7/9/2014	150		Partial Paym...	112 · General ...	175.00
Deposit	7/9/2014	2073		CC Rental 7/...	112 · General ...	600.00
Deposit	7/9/2014	6717		CC Rental ad...	112 · General ...	75.00
Deposit	7/9/2014	7397		2nd Half of R...	112 · General ...	7,500.00
Deposit	7/9/2014			CC Rental 5/...	112 · General ...	450.00
Deposit	8/4/2014	731		CC Rental 7/...	112 · General ...	375.00
Deposit	8/4/2014	3358		CC Rental 7/...	112 · General ...	900.00
Deposit	8/4/2014	3201		CC Rental 7/...	112 · General ...	500.00
Deposit	8/18/2014	9001		AA rent for A...	112 · General ...	90.00
Deposit	8/18/2014	1023		CC Rental 8/...	112 · General ...	1,400.00
Deposit	8/18/2014	602		CC Rental 8/...	112 · General ...	450.00
Deposit	8/18/2014	1139		East Bay Coll...	112 · General ...	598.00
Deposit	9/9/2014	3274		CC Rental on...	112 · General ...	600.00
Deposit	9/9/2014			CC Rental ad...	112 · General ...	75.00
Deposit	9/9/2014	3052		CC Rental on...	112 · General ...	1,200.00
Deposit	9/9/2014	4157		CC Rental on...	112 · General ...	600.00
Deposit	9/30/2014			9-13-14 CC ...	112 · General ...	450.00
Deposit	9/30/2014	5927...		10-18-14 CC ...	112 · General ...	180.00
Check	10/15/2014	15914	Carol Melgoza	Refund of Co...	112 · General ...	-180.00
Deposit	10/21/2014	243		CC Rental 10...	112 · General ...	300.00
Deposit	10/21/2014	3118		CC Rental 11...	112 · General ...	375.00
Deposit	10/21/2014	1708...		CC Rental 8-...	112 · General ...	500.00
Deposit	10/21/2014	1708...		CC Rental 8-...	112 · General ...	500.00
Deposit	10/21/2014	1708...		CC Rental 8-...	112 · General ...	210.00
Deposit	10/21/2014			CC Rental 10...	112 · General ...	1,800.00

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6:07 PM

11/07/14

Accrual Basis

KPPCSD
Account QuickReport
 July 1 through November 7, 2014

Type	Date	Num	Name	Memo	Split	Amount
Total 427 · Community Center Revenue						20,038.00
438 · Misc Park/Rec Rev						
Deposit	7/9/2014			Tennis court f...	112 · General ...	2.00
Deposit	8/18/2014	4314		Tennis court f...	112 · General ...	40.00
Total 438 · Misc Park/Rec Rev						42.00
Total 420 · Park/Rec Activities Revenue						54,414.92
TOTAL						54,414.92

KPPCSD

Account QuickReport

July 1 through November 7, 2014

Type	Date	Num	Name	Memo	Split	Amount
600 · Park/Rec Sal & Ben						
601 · Park & Rec Administrator						
Paycheck	7/15/2014		Di Napoli, Andrea		112 · General ...	286.25
Paycheck	7/30/2014		Di Napoli, Andrea		112 · General ...	257.00
Paycheck	8/15/2014		Di Napoli, Andrea		112 · General ...	274.25
Paycheck	8/29/2014		Di Napoli, Andrea		112 · General ...	255.41
Paycheck	9/15/2014		Di Napoli, Andrea		112 · General ...	276.94
Paycheck	9/30/2014		Di Napoli, Andrea		112 · General ...	312.64
Paycheck	10/14/2014		Di Napoli, Andrea		112 · General ...	250.69
Paycheck	10/29/2014		Di Napoli, Andrea		112 · General ...	310.80
Total 601 · Park & Rec Administrator						2,223.98
602 · Custodian						
Check	7/15/2014	15698	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	7/30/2014	15726	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	8/15/2014	15754	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	8/29/2014	15784	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	9/15/2014	15817	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	9/30/2014	15850	William Driscoll	9/16 - 9/30/1...	112 · General ...	875.00
Check	10/15/2014	15890	William Driscoll	10/1 - 10/15/...	112 · General ...	875.00
Check	10/30/2014	15936	William Driscoll	10/16 - 10/31...	112 · General ...	875.00
Total 602 · Custodian						7,000.00
Total 600 · Park/Rec Sal & Ben						9,223.98
TOTAL						9,223.98

KPPCSD
Account QuickReport
 July 1 through November 7, 2014

Type	Date	Num	Name	Memo	Split	Amount
635 · Park/Recreation Expenses						
640 · Community Center Expenses						
642 · Utilities-Community Center						
General Journal	7/1/2014	REV ...	Kensington Police P...		210 · Account...	-445.60
Check	7/15/2014	15696	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	7/30/2014	15720	EBMUD	840 Coventry...	112 · General ...	29.47
Check	7/30/2014	15722	PG&E	Community C...	112 · General ...	224.30
Check	8/15/2014	15750	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	8/15/2014	15775	PG&E	Community C...	112 · General ...	196.93
Check	8/15/2014	15778	EBMUD	2 Arlmont 6/2...	112 · General ...	383.66
Check	9/15/2014	15813	Olivero Plumbing Co.	Test and certi...	112 · General ...	116.00
Check	9/15/2014	15833	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	9/15/2014	15847	EBMUD	Coventry 7/3 ...	112 · General ...	32.12
Check	9/15/2014	15847	EBMUD	1 Windsor 7/...	112 · General ...	204.55
Check	9/30/2014	15853	PG&E	Community C...	112 · General ...	212.84
Check	10/15/2014	15902	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	10/15/2014	15916	EBMUD	2 Arlmont 7/3...	112 · General ...	350.36
Check	10/30/2014	15933	PG&E	Community C...	112 · General ...	248.88
Total 642 · Utilities-Community Center						1,865.51
643 · Janitorial Supplies						
Check	9/15/2014	15839	UBS	Com. Center ...	112 · General ...	716.07
Check	9/30/2014	15857	UBS	Com. Center ...	112 · General ...	85.01
Check	9/30/2014	15870	UBS	Community C...	112 · General ...	67.41
Check	10/15/2014	15908	UBS	Community C...	112 · General ...	27.10
Total 643 · Janitorial Supplies						895.59
646 · Community Center Repairs						
Check	9/15/2014	15838	William Driscoll	Com. Center ...	112 · General ...	10.98
Check	10/15/2014	15913	Mightho Electric	Inv. # 2657 P...	112 · General ...	939.86
Total 646 · Community Center Repairs						950.84
Total 640 · Community Center Expenses						3,711.94
672 · Kensington Park O&M						

KPPCSD
Account QuickReport
 July 1 through November 7, 2014

Type	Date	Num	Name	Memo	Split	Amount
General Journal	7/1/2014	REV ...	Kensington Police P...		210 · Account...	-2,774.60
General Journal	7/1/2014	REV ...		NBS	153 · Prepaid ...	1,091.66
Check	7/30/2014	15720	EBMUD	1 Windsor Irri...	112 · General ...	2,038.49
Check	7/30/2014	15726	William Driscoll	Park Restro...	112 · General ...	425.00
Check	7/30/2014	15738	Summer Rain Land...	July Monthly ...	112 · General ...	2,615.00
Check	8/15/2014	15747	EBMUD	1 Windsor Sc...	112 · General ...	736.11
Check	8/29/2014	15784	William Driscoll	Park Restro...	112 · General ...	425.00
Check	8/29/2014	15790	Summer Rain Land...	Aug. Monthly ...	112 · General ...	2,050.00
Check	9/15/2014	15847	EBMUD	1 Windsor Irri...	112 · General ...	1,402.69
Check	9/30/2014	15850	William Driscoll	9/1 - 9/30/1...	112 · General ...	425.00
Check	9/30/2014	15872	NBS Government Fi...	LMD Quarate...	112 · General ...	1,129.96
Check	9/30/2014	15875	Summer Rain Land...	September 2...	112 · General ...	2,050.00
Check	9/30/2014	15875	Summer Rain Land...	upper wood s...	112 · General ...	505.00
Check	9/30/2014	15875	Summer Rain Land...	hand railing r...	112 · General ...	880.00
Check	9/30/2014	15877	Andrea DiNapoli	Greg - Certifi...	112 · General ...	6.00
Check	10/30/2014	15935	Summer Rain Land...	October 2014	112 · General ...	2,050.00
Check	10/30/2014	15935	Summer Rain Land...	Repair tennis...	112 · General ...	230.00
Check	10/30/2014	15935	Summer Rain Land...	Install bark to...	112 · General ...	2,040.00
Check	10/30/2014	15936	William Driscoll	Oct. Restroo...	112 · General ...	425.00
Total 672 · Kensington Park O&M						17,750.31
678 · Misc Park/Rec Expense						
Check	10/30/2014	15939	California Park & R...	Membership t...	112 · General ...	170.00
Total 678 · Misc Park/Rec Expense						170.00
Total 635 · Park/Recreation Expenses						21,632.25
TOTAL						21,632.25

October 2014 Police Department Report

November 7, 2014

- Department Personnel
 - We are fully staffed at 10 sworn positions with three reserve officers.
 - We are continuing the background process for a fourth reserve officer candidate.
- Commendations and Correspondence- None this Month
- Investigation of Alleged Misconduct
 - Citizen's Complaint CI #2014-03 was initiated on May 12th on an allegation that an officer failed to perform his duty and that another allowed this failure to occur and had used a despairing remark in describing the community. This investigation is being conducted by Sergeant Hui.
 - Department Investigation DI #2014-04 was initiated on May 23rd on an allegation that an officer engaged in conduct unbecoming an officer while off duty. This investigation is being conducted by Chief Harman.
 - Citizen's Complaint CI #2014-06 was initiated on October 31st on a allegation that a police officer was rude during a traffic stop. This investigation is being conducted by Sergeant Hui.
- 9-1-1 / Richmond Communication Center Information.
 - The Ring Time Report for September identified 38 Total 911 calls with 5 having ring times over 20 seconds. The average ring time for September was 11 seconds.
 - The Ring Time Report for October identified 42 Total 911 calls with 4 having ring times over 20 seconds. The average ring time for October was 8 seconds.

- Community Networking
 - On 10-06-14, Officer Wilson attended the Cub Scout meeting and taught fingerprinting to the Cub Scouts.
 - On 10-11-14, Chief Harman participated in the KIC Town Hall meeting.
 - On 10-14-14, Officer Wilson participated in the Annual Boy Scout Troop 100 Induction meeting.
 - On 10-19-14, Chief Harman, Master Sergeant Hull, Sergeant Stegman, Officers Ramos, Wilkens, Turner, Reserve Officers Armanino, Foley, and Rosette participated in the KCC Fall Parade and Picnic.
- Community Criminal Activity
 - This section of the Watch Commanders Reports are prepared by Corporal Stegman for Team One, Sergeant Hui for Team Two, and Sergeant Barrow for Investigations.

- Watch Commander Reports

- **Corporal Stegman**
Team 1 Statistics

Officer:	Ramos K41 (0800 - 1800)	Turner (0600- 1800)	Wilson (1800- 0600)
Days Worked	16	15	14
Traffic Stops	14	28	2
Moving Citations	7	16	0
Parking Citations	0	2	13
Vacation			
Security Checks	2	32	16
Field Interviews	0	0	0
Traffic Collision			
Reports	2	1	0
Cases	2	3	0
Arrests	0	5	0
Calls for Service	33	81	25

*My team has been experiencing problem with their in car computers. As a result some of their proactive statistics may be inaccurate.

BRIEFING/TRAINING:

- Reviewed Penal code sections concerning subjects carrying concealed weapons.
- Reviewed KPD policy 388, Illness and injury protection program
- Reviewed KPD policy 400, Patrol function.
- Reviewed Case law regarding public records request and private cell phones.
- Reviewed Case law regarding search warrants for cell phones.

SERGEANT'S SUMMARY:

I'll be the proverbial broken record. Lock you houses. Lock your cars. Lock anything you wish to keep safe or retain as your property. If my redundant message seems to be getting annoying I apologize, but it is certainly with benevolent intent. Below you will read about a search for a very dangerous criminal that we undertook this month. One thing not mentioned in the synopsis is the difficulty the search team had because instead of searching just back yards looking for a suspect, we had to go house by unlocked house, because the assailant could have strolled into any number of unsecured residences. Sure he could have broken into a house to hide but that would have provided us with what we refer to satirically in this business as an "FBI clue."

We did ultimately find the suspect inside a home hiding. Did I mention he has a history of home invasion robbery? His method of entry is still in question as there was no force detected. But luckily no one was home and regardless of how he got in, there was no shortage of unlocked doors in the neighborhood he could have strolled right in instead.

So please with all the sincerity I possess, if an object has a lock, it would stand to reason someone thought it a valuable feature which most would find useful, please use it.

SIGNIFICANT EVENTS:

- 2014-5252 – On 10/7/14, Officer Turner attempted to stop a vehicle occupied by two subjects which subsequently fled from him. Officer Turner found the vehicle abandoned a short time later on Wellesley Ave and determined it was stolen. Officer Turner coordinated KPD personnel

as well as officers from ECPD to contain the suspects who were believed to be hiding in the area. A canine and helicopter were requested to aid in the search but ultimately the suspects were not located. A search of the stolen vehicle yielded a concealed firearm and several articles of stolen property.

Hours later, a Good Samaritan who had apparently witnessed the suspects fleeing from Officer Turner earlier, reported she saw the suspects walking on Arlington Ave. KPD responded to the area. When the suspects spotted KPD units they again fled on foot through the back yards of several residences. Detective Sergeant Barrow and Corporal Stegman engaged in a foot pursuit of the suspects eventually containing them in the block between Arlington Ave and York Ave, with the assistance of Chief Harman, Officer Ramos, and Officer Turner.

Chief Harman took the female suspect in custody nearby while we attempted to locate the male suspect. After an extended search and the assistance of an ECPD canine unit, the suspect was located hiding inside a house on York Ave. It turned out both suspects had an extensive criminal history including home invasion robbery, and auto theft to name a few. The male suspect was a parolee at large and a member of a very pervasive street gang.

As of 10/27/14, the male suspect has been held to answer on multiple felony charges stemming from this arrest, and is currently in custody awaiting trial.

This was an example of outstanding performance by all the officers on scene. It is this kind of dedication and professionalism that makes me proud to work with the individuals involved in this scene.

- 2014-5531 – On 10/20/14, Corporal Stegman responded to a report of a prowler, in the unit block of Edgemoor Rd, where a woman was walking around a resident's yard and acting strange. The subject is well known to KPD as a drug user and burglar. Corporal Stegman obtained a citizen's arrest from the resident and took the suspect into custody. During the booking process the suspect first attempted to bribe Corporal Stegman, and then thought it wise to threaten Corporal Stegman and Officer Turner's lives.
- 2014-5532 – On 10/20/14, Officer Ramos took a report of a hit and run on the 100 block of Highland Blvd.
- 2014-5699 – On 10/28/14, Team One personnel (Corporal Stegman, Officer Turner and Officer Ramos), with help from Detective Sergeant Barrow and Officer Wilkens, carried out a probation search in the 200

block of Arlington Ave. The Officers located methamphetamine and drug paraphernalia in the residence and took the only occupant into custody on related charges.

- 2014-5703 – On 10/28/14, Detective Sergeant Barrow, Corporal Stegman, Officer Ramos, and Officer Wilkens responded to a disturbance on the 100 block of Arlington Ave. The victim claimed her son had been using drugs, was extremely agitated, and making threats to kill her. The son was arrested for making criminal threats.
- 2014-5711 – On 10/29/14, Officer Turner stopped a vehicle on the 400 block of Grizzly Peak Blvd and arrested the driver for an outstanding warrant.
- 2014-5716 – On 10/29/14, Corporal Stegman took a hit of a hit and run on the 200 block of Kenyon Ave.

TRAFFIC STATISTICS:

Team #1 took 4 traffic collision reports during the month of October.

12 Moving citations were issued on Arlington Ave.

4 Moving citations were issued on Colusa Ave.

2 Moving citations were issued on Sunset Dr/ Franciscan Way.

5 Moving citation was issued on Grizzly Peak Blvd.

•• Sergeant Hui

Due to illness, Sergeant Hui's October Report will not be ready until next month.

•• Detective Sergeant Barrow

SIGNIFICANT EVENTS:

2014-5252 Auto Theft, Burglary, Possession of Stolen Property, Possession of Burglary tools, Felon in Possession of Firearm with Prior Conviction, and Resist or Obstruct Public Officer.

On Tuesday, October 7, 2014, KPD Officer Turner observed a vehicle occupied by a male driver and female passenger pass him at the north end of Lake Drive. As he passed them the driver sped away. The vehicle was located crashed on Wellesley Avenue and the two occupants had fled the scene. A perimeter was established with the aid of Officer Ramos, El Cerrito Officers, El Cerrito K9, CHP Helicopter, Corporal Stegman, and I. After an extensive search the suspects were not located and the perimeter was lifted. Approximately 1 ½ hours later a citizen had spotted the suspects walking north bound in the 100 block of

Arlington Avenue. Corporal Stegman and I spotted the suspects and after a brief foot chase another perimeter was established by Kensington and El Cerrito Officers. The female suspect was detained by Chief Harman and the male suspect was located in an attic of a residence that he had no connection with. After a brief standoff, the suspect was taken into custody without further incident.

2014-5303 Missing Person.

On Thursday, October 9, 2014, a resident was reported missing by a family member. Days later the subject's vehicle was located unoccupied in a desolate area of Arizona. The local Sheriff's Department conducted an extensive search with negative results. Twelve days after the subject went missing I located him in a hotel in the City of Laguna Beach California. Local police were called and conducted a welfare check and found him in good health. No further action will be taken in this case.

2014-5703 Terrorist Threats and Resist or Obstruct Public Officer.

On Tuesday, October 28, 2014, Officers Ramos, Wilkens, Corporal Stegman, and I were dispatched to an out of control subject in the 100 block of Arlington Avenue. We arrived and contacted the victim who was scared and believed the suspect was under the influence of a controlled substance. We then contacted the suspect who I later arrested for the above offences. The suspect was booked into county jail without incident.

KPD INVESTIGATIONS INFORMATION:

During the month of October we took several thefts from vehicles and hit and run vehicle collisions.

I would ask that if you see anything suspicious to please call 911 and report it as soon as possible.

2014-3298 Burglary/ Lewd and Lascivious Acts Committed Against a Child.

On Monday, July 7, 2014, at 0113 hours, KPD Officers were dispatched to the 00 block of Lenox Road on a report of an unknown suspect found in bed with an 11 year old female victim. The suspect ran from the residence when the victim woke up and began to scream. An El Cerrito Police K9 unit searched the area but the suspect was not located.

At approximately 0439 hours, Berkeley Police Officers were dispatched to the 700 block Vicente Street in Berkeley for a reported prowler. Berkeley Police Officers stopped a subject matching the description of the Berkeley and Kensington suspect in the area of The Alameda and Tacoma Avenue in Berkeley.

An infield show-up positively identified Brian Hubbard, a black male adult, 22 years old, from the City of Richmond as the suspect in both incidents.

Kensington Police took custody of Hubbard as the more serious crime occurred in Kensington. Hubbard was arrested and booked into the Martinez Detention Facility.

Hubbard has been charged with 3 counts of PC. 459/460(a), First Degree Residential Burglary and 1 count of PC. 288(b)(1), Forcible Lewd Act upon a Child, with additional enhancements. Hubbard's bail was set at \$2,250,000.00. This case is still under investigation, other victims have been identified and we are working with the Contra Costa County DA's Officer seeking additional felony charges.

KPD INVESTIGATIONS

- I made court runs to file cases and retrieve court notifications and had two arrest warrants signed by judges.
- I updated the KPD Case Review Log.
- I review all cases and incidents to ascertain if any further follow up is warranted.
- I reviewed the "Trak Flyer" messages and maintained the flyer board.
- I assisted WestNet in serving several search warrants, made arrests, and surveillance of suspects.
- I have also been assisting patrol during traffic stops, calls for service, and acting as a cover officer.

KPD Monthly Crime Statistics

October 2014

Part 1 Crimes	Reported	Open/ Pending	Suspended	Closed	Arrest
Homicide	0	0	0	0	0
Rape	0	0	0	0	0
Robbery	0	0	0	0	0
Assault	1	0	0	1	1
Residential Burglary	0	0	0	0	0
Larceny Theft	5	0	5	0	0
Vehicle Theft	0	0	0	0	0
Arson	0	0	0	0	0
Part 1 Totals	<u>6</u>	<u>0</u>	<u>5</u>	<u>1</u>	<u>1</u>

Other Crimes					
Auto Burglary	0	0	0	0	0
Identity Theft	0	0	0	0	0
Fraud	0	0	0	0	0
Forgeries	0	0	0	0	0
Restraining Order Violations/ Stalking/ Criminal Threats	0	0	0	0	0
Sex Crimes (other)	0	0	0	0	0
Assault/ Battery (other)	1	0	0	1	1
Vandalism	1	0	1	0	0
Drugs	1	0	0	1	1
Warrant	3	0	0	3	3
Hit and Run Felony	0	0	0	0	0
Hit and Run Misdemeanor	3	0	3	0	0
Other Misdemeanor Traffic	0	0	0	0	0
Other Crime Totals	<u>9</u>	<u>0</u>	<u>4</u>	<u>5</u>	<u>5</u>

All Crime Totals	<u>15</u>	<u>0</u>	<u>9</u>	<u>6</u>	<u>6</u>
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Traffic Accidents (Non Injury)	4
Traffic Accidents (Injury)	0

* Stats not received

KPD Crime Statistics

YTD 2014

Part 1 Crimes	Reported	Open/ Pending	Suspended	Closed	Arrest
Homicide	0	1*	0	0	0
Rape	1	0	0	1	1
Robbery	0	0	0	0	0
Assault	9	1	0	8	4
Residential Burglary	10	5	5	0	0
Larceny Theft	24	2	21	1	0
Vehicle Theft	3	3	0	0	0
Arson	1	0	1	0	0
Part 1 Totals	<u>48</u>	<u>11</u>	<u>27</u>	<u>10</u>	<u>5</u>
Other Crimes					
Auto Burglary	0	0	0	0	0
Identity Theft	22	9	13	0	0
Fraud	6	1	5	0	0
Forgeries	0	0	0	0	0
Restraining Order Violations/ Stalking/ Criminal Threats	1	0	0	1	1
Sex Crimes (other)	1	0	1	0	0
Assault/ Battery (other)	4	0	0	4	2
Vandalism	17	6	11	0	0
Drugs	9	0	0	9	9
Warrant	13	0	0	13	13
Hit and Run Felony	1	0	0	1	0
Hit and Run Misdemeanor	18	4	13	1	0
Other Misdemeanor Traffic	12	1	0	11	10
Other Crime Totals	<u>104</u>	<u>21</u>	<u>43</u>	<u>40</u>	<u>35</u>
All Crime Totals	<u>152</u>	<u>32</u>	<u>70</u>	<u>50</u>	<u>40</u>

Traffic Accidents (Non Injury) 35
 Traffic Accidents (Injury) 3

* 2011 case

•• **Chief Harman**

Corporal Stegman provides a nice synopsis of the events that occurred on Tuesday, October 7th, in which we arrested two career criminals.

What isn't described in the synopsis is the criticism I received from some in the community for failing to lift the "lock down" at the school, and later for not calling for the "lock down of the school, the library, and the nursery schools during the search for the suspect at large.

First, let me provide and respond to a few facts in place of the rumors, false information, and innuendos being spread by some.

No one from the police department called for a lock down at the school during either time we were searching for the suspects. During the first search between 11:30 AM and 1:30 PM, we had established a perimeter in an area far enough away from the school, park, library, and nursery schools. Additionally, we never had a sighting of the suspects in the first place. We had brought a K9 in for a search to take place from where the suspects abandoned their stolen vehicle and we never picked up a track.

During the second search between 4:00 PM and 5:00 PM, we had officers chase the male suspect on foot and had him secured in an area of approximately 8 residences. We had a very secure perimeter set up, and felt that we had him contained in this very small coverage area.

At no time did I ever feel that there was a safety issue for anyone in the area outside of the perimeter we had set.

However, during this second search, a concerned parent had seen the activity occurring a quarter mile from the school and called the school to ask what was going on. Hearing about the police activity, school personnel contacted the police department non-emergency office line and did not get a response. That was because our office is not staffed after 3:30 PM and all of our police personnel were at the scene. School personnel then contacted our dispatch center and asked the dispatcher if they should place the students still on campus after school on a "lock down"? The dispatcher responded that if the school was on lock down, they should stay that way until they heard further. The school personnel hearing this, thought they should call for a school lock down and they did.

Our dispatcher then came over the police radio and asked us if the school should stay on lock down. Having never called for a lock down in the first place, I responded that it was not necessary and go ahead and lift it.

At no time did I feel there was any danger to anyone outside of this secured

perimeter. (Now, as far as the resident who thought it was a good idea to allow her dog off leach and run across the street over to the K9 unit while they were conducting a search of a residence, that's a topic for another day)

Some in the community have asked, "What about children walking home from school, what if they had walked into the police activity?" When we set a perimeter, we do so not only do we keep people from leaving the secured area, but to keep people and children from entering the secured area. ***That was never an issue or concern.***

I have since met with Principle Judy Sanders and staff from the nursery schools to discuss lock downs and better ways of communication when there is a question regarding police activity or just general safety concerns. If there was ever a need to advise the library staff of a safety concern, we would do that, however, I am unaware of the public library having the authority to "lock down" their facility and only release children to their parents when safe to do so.

The safety of the community is every member of the police department and my primary concern. We will take every action possible to maintain the safety of the community. That is our primary mission, our main organizational value, and what each one of us believes in and swears to uphold to the point of risking our lives to save yours. Please never forget this.

Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED

YES

NO

From: Gregory E. Harman, General Manager/ Chief of Police

FORWARDED TO:

Date: Friday, November 07, 2014

Subject: Consent Calendar Item # G- Training & Reimbursement Reports

For the month of October, the following attached Training and Reimbursement Reports pursuant to KPPCSD Board Policy # 4030 were submitted for approval.

42

APPENDIX A - EXPENSE PREPAYMENT/REIMBURSEMENT FORM

Name: GREG HAZMAN

Event/Activity: CSDA ANNUAL CONFERENCE

Location of Event/Activity: HEM SPRINGS

Approved by Board of Directors on: KPPCS MEETING AUGUST 14TH

	Prepay	Reimburse
1. Event/Activity Registration Fee	\$ <u>550.00</u>	\$ _____
2. Transportation		
• Airfare	\$ <u>204.20</u>	\$ _____
• Car Rental (\$ _____ per day for _____ days)	\$ _____	\$ _____
• Car Mileage (\$ _____ per mile for _____ miles)	\$ _____	\$ _____
• Taxi	\$ _____	\$ _____
• Parking <i>BISE</i>	\$ <u>54.00</u>	\$ _____
<i>LATE 134.00</i>	<u>501.34</u>	<u>47.29</u>
3. Lodging (\$ _____ per night for <u>3</u> nights)	\$ _____	\$ _____
4. Meals (Complete information requested on next page of form)		
a. Breakfast	\$ _____	\$ <u>11.90</u>
b. Lunch	\$ _____	\$ _____
c. Dinner	\$ <u>30.07</u>	\$ <u>16.90</u>
5. Other (Explain details of request)	\$ _____	\$ _____
Total Requested	\$ <u>1,339.61</u>	\$ <u>28.80</u>

Please attach all receipts documenting each expense above. This Expense *TOTAL* Prepayment/Reimbursement Form must be submitted within 30 days after the ~~\$1,338.40~~ event. All expenses reported on this form must comply with the District's Expense *\$1,368.4* Policy for Board members, the General Manager/Chief of Police, and all non-sworn District employees.

Signed: *[Signature]*

Approved by: KPPCS BOT

Date: 100414

Signed: *[Signature]*

Print Name: Len Welsh

Date: 100914

Office Report prepared by Marty Westby, Administrator
Kensington Community Council Board Meeting
November 3, 2014

KASEP:

Winter KASEP brochure is at the printers with delivery to the elementary school the week of November 17th. We added 4 new classes for winter: Knitting and Textile Art, Muffin Madness for upper grades, Mixed Media for kindergarten and a second class of the Science and Inventions. We are very sad to lose one of our tenured teachers, Elaine Chu of Art and Bookmaking. Elaine has been teaching with us for 8 years. KASEP Winter Brochure and schedule will be available for online viewing beginning November 17th:
www.kensingtoncommunitycouncil.org.

KASEP Winter On-line registration is scheduled for Tuesday, December 2nd at 7:30pm. Staff will be in the office that evening for walk-ins registrations (check and cash) and telephone support.

As in past years, KCC donated two free classes to the Annual Hilltop Garden Party auction – one in Winter and one in Spring sessions 2015.

The KASEP winter holiday party and performance takes place on Thursday, December 11th from 5:00 – 6:00pm at the Community Center.

KCC Classes and Events:

Elaine Chu is teaching a Wax Collage Workshop, Saturday, Nov. 29th from 1:30 – 4:00pm; pre-registration is required. Contact KCC Office.

Adult Recreation Classes: Jazzercise, Body Sculpting, Zumba for seniors along with the Wednesday's Acrylic Painters class continue and are on-going classes. Drop-ins are welcome. Schedule is published in the Outlook.

KCC Administrative:

KCC's office will be closed on November 4th (Election Day), Nov. 10-11 (Veteran's Holiday) and Nov. 26- 27-28 (Thanksgiving Holiday).

KCC was represented as Marty presented at the Annual KIC meeting, October 11th

Historians, Paul Grunland and Bob Shaner led a successful Maybeck walk sharing stories from when Bob purchased his land from Mr. Maybeck leading us through the years- stories of the neighborhood, park lands, and viewing of the exterior of Maybeck's house. Paul and Bob donate their time and proceeds to KCC for this event.

44

October 2014

October 2014

November 2014

Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 28	29	30	Oct 1	2	3	4
			7:00am AA (CCM)	7:15pm EBC (CC 1)	6:00pm CCRental (CCM)	10:00am CCRental (CCM)
5	6	7	8	9	10	11
	7:00pm *Cub-Scouts* (CCM) 7:30pm KCC Board Mtg (CCM)	7:30pm Boy Scouts (CCM)	7:00am AA (CCM) 6:00pm GPFF (CCM) 7:00pm *KFD Mtg (CC3)	6:30pm KPCCSD Mtg (CCM)	8:00pm CCRental (CCM)	8:00am KIC Town Hall Mtg (CCM) 3:00pm CC Rental (CCM)
12	13	14	15	16	17	18
	COLUMBUS DAY 6:00pm KPSC (CC3) 7:00pm *Cub-Scouts* (CCM)	7:30pm Boy Scouts (CCM)	7:00am AA (CCM)	7:15pm EBC (CC 1)		1:30pm CC Rental (CCM)
19	20	21	22	23	24	25
KKC Parade & Picnic (CCM)	4:00pm Girl Scouts (CCM) 7:00pm *Cub-Scouts* (CCM)	7:30pm Boy Scouts (CCM)	7:00am AA (CCM)			
26	27	28	29	30	31	Nov 1
	7:00pm *Cub-Scouts* (CCM) 7:30pm *KIC (CC3)	7:30pm Boy Scouts (CCM) 7:30pm *KMAC (CC3)	7:00am AA (CCM)		HALLOWEEN	

45

November 2014

November 2014

Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

December 2014

Su	Mo	Tu	We	Th	Fr	Sa
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Oct 26	27	28	29	30	31	Nov 1
2	3 7:00pm *Cub-Scouts* (CCM) 7:30pm KCC Board Mtg (CCM)	4 7:30pm *Boy Scouts (CCM)	5 7:00am AA (CCM)	6 6:30pm KPSC (CCM) 7:15pm EBC (CC 1)	7	8
9	10 6:00pm KPSC (CC3) 7:00pm *Cub-Scouts* (CCM)	11 VETERANS DAY 7:30pm *Boy Scouts (CCM)	12 7:00am AA (CCM) 6:00pm *GPFF (CCM) 7:00pm *KFD Mtg (unik)	13 6:30pm KPSCSD Mtg (CCM)	14	15 4:00pm CC Rental (CCM)
16	17 4:00pm *Girl Scouts* (CCM) 7:00pm *Cub-Scouts* (CCM)	18 7:30pm *Boy Scouts (CCM)	19 7:00am AA (CCM)	20 7:15pm EBC (CC 1)	21	22 5:00pm CC Rental (CCM)
23	24 7:00pm *Cub-Scouts* (CCM) 7:30pm *KIC (CC3)	25 7:30pm *Boy Scouts (CCM) 7:30pm *KMAC (CC3)	26 7:00am AA (CCM)	27	28	29
30	Dec 1	2	3	4	5	6

General Manager October 2014 Report

Budget

Last month, I made the following report;

“During the month of September, there were no real variances in our revenues or expenses. There was a slight increase in revenue in Community Center rentals and in traffic citation fines collected, and other than legal fees for the month being higher than budgeted for, September was as projected.

However, late Friday I did learn something that concerned me and that will impact our budget as we move through the fiscal year. I was informed by one homeowner, that after receiving her property tax bill for the year, she noticed that there was less than 1% increase in her property taxes this year. Now if this increase holds true District wide, and the property turn over in the District does not increase the property tax rates enough to offset the less than 1% increase in District wide property taxes, we could be looking at less revenue than budgeted for this fiscal year.

When we first prepared our budget for Fiscal Year 2015/16, we used a very conservative estimate of a 4% increase in property taxes collected for this year. Then after reviewing recent reports of the property tax “rebound” in Contra Costa County, in July we adjusted our estimated increase in property tax revenue to a still conservative rate of 6%. (See the July 4th memo to the Board for New Business Item #3 of the July 10th KPPCSD Board meeting for further details on this adjustment)”

Last month the County credited us with \$1,267,778.56 in property tax revenues. This month, the County made an adjustment and increased our property tax revenue to \$1,319,273.42, while better than last month, still short of the \$1,413,620 we had estimated in our 2014/15 Fiscal Year budget.

Hopefully, we will get to and past our property tax revenue projections as the County continues to receive property tax payments, but this is still an area that we need to watch closely as the year progresses.

As far as other noted items in the budget for October;

Our park revenue continues to pass our projections for Community Center rentals, with our year to date revenue \$13,000 ahead of our projections.

Our year to date police salary and benefits expenses are \$8,000 under our budgeted projections for this time in the fiscal year.

Finally, there was no legal expense for the month of October per the Unaudited Profit & Loss Report. No, that isn't good news, this is just a late billing being paid in November. We had \$15,500 in legal billing for the month of October that would have appeared in Chart 830 for the month.

I do have one last piece of good news to report. In October, we received \$407 of the \$1,236 requested from the State for our 2001/2002 Fiscal Year reimbursement claim for mandated costs associated with compiling with the Brown Act. This is part of the reimbursement we requested under SB 90 back in 2012. Maybe reimbursement funding will finally be made available to us this year.

Kensington Park

Community Center & Annex

On June 3rd, Measure L (The Community Center Safety Project bond measure) lost in the election. This means that the Park Buildings Committee and the KPPCSD Board will need to re-group and determine how we will move forward with the repairs and upgrades to the Center.

Park Repairs

In October, the following repairs were made in the park in addition to our normal maintenance items:

Repair of the tennis court wall, \$230 (Please note that this wall is continuously being vandalize, so please contact us if you see anyone causing damage to the wall or in the park)

Installation of 17 yards of playground bark, \$2,040

*Please note that most of the repairs that we make in the park are the result of vandalism. If you see vandalism being committed, please call the police department immediately.

Fuel Reduction Project

The Park & Recreation Committee has formed a sub-group and has called on citizen volunteers to begin a wild land fire fuels reduction project in the park. The group's first project area is the area surrounding the Community Center. The next round of cleanup dates will be continuing on Thursdays, during November, from 2 to 5 PM.

Those wishing to volunteer for future projects can contact me for information on dates and projects scheduled.

Emergency Preparedness

The agenda and the minutes of the Public Safety Council posted are on the KPPCSD web page.

On Thursday, October 16th, the Arlington Earth Quakers and Blake Gardens participated in the "Great California Shake Out". Great job of preparing for the big one!

On Thursday, November 6th, at 7PM, the KPSC hosted a "Reducing Fraud Risks Workshop", at the Community Center.

The next meeting of the Kensington Public Safety Council will take place Monday, November 10th, at 6:00 PM at the Community Center Room #3.

Finally, volunteers are needed for the El Cerrito Emergency Preparedness Drill taking place on Thursday, November 20th, between 8 AM and Noon. For more information, contact Suzanne Iarla at 215-4318 or siarla@ci.el-cerrito.ca.us.

Solid Waste & Recycling

The KPPCSD Board will be voting on a possible contract with Bay View at its November 13th meeting. Please go to the District's website to view the proposed contract and attend the meeting to make your voice heard.

Website

The new and improved District website is up and running!

We have contracted with Pagepoint to revise our website in order to make it much more user friendly and up to date. The project has moved through the months of August and September and is now up and running.

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

Check it out!

New Business Item #1

Board President Len Welsh will present for Board discussion a draft of the purposed contract between the District and Bay View Refuse & Recycling for services following the expiration of the current Bay View contract in August 2015.

Possible Board Action. Page 13

FRANCHISE AGREEMENT
FOR SOLID WASTE, RECYCLABLE MATERIALS, AND
ORGANIC MATERIALS COLLECTION SERVICES
BETWEEN
THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICE DISTRICT
AND
BAY VIEW REFUSE AND RECYCLING SERVICES, INC.

October 23, 2014

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List of Exhibits

- A. Definitions
- B. Rate Adjustment Methodology
- C. Approved Subcontractors
- D. Reporting Requirements
- E. Map of District Franchise Area

1 **FRANCHISE AGREEMENT FOR SOLID WASTE,**
2 **RECYCLABLE MATERIALS, AND ORGANIC MATERIALS**
3 **COLLECTION SERVICES**

4 This Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials
5 Collection Services (the "Agreement") is entered into on the _____ day of _____ 2014,
6 by and between the Kensington Police Protection and Community Service District, a political subdivision
7 of the State of California (hereinafter, "District"), and Bay View Refuse and Recycling, Inc. a California
8 corporation, (hereinafter, the "Contractor") (together, the "Parties").

9 **RECITALS**

10 WHEREAS, the Legislature of the State of California, by enactment of the California Integrated
11 Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid
12 Waste management process which requires cities and other local jurisdictions to implement source
13 reduction, reuse and Recycling programs as integrated waste management practices; and

14 WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid
15 Waste handling within their jurisdictions; and

16 WHEREAS, Section 40059 of the State Public Resources Code provides that the District may
17 determine aspects of Solid Waste handling which are of local concern, including, but not limited to,
18 frequency of Collection, means of Collection and Transportation, level of services, charges and fees and
19 nature, location, and extent of providing Solid Waste handling services and whether the services are to
20 be provided by means of partially exclusive or wholly exclusive Agreements, contracts, licenses, permits
21 or otherwise; and

22 WHEREAS, the District is obligated to protect the public health and safety of the residents of the
23 District and arrangements by waste haulers for the Collection of Solid Waste should be made in a
24 manner consistent with the protection of public health and safety; and

25 WHEREAS, the District and the Contractor are mindful of the provisions of the laws governing
26 the safe Collection, Transport, Recycling, and Disposal of Solid Waste, including AB 939, AB 341, and the
27 Resource Conservation and Recovery Act 42 U.S.C. 9601 et seq.; and

28 WHEREAS, the District's Board of Directors determines and finds that the public interest, health,
29 safety and well being would be served if the Contractor performs these services for Residential and
30 Commercial Customers; and

31 WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the District's
32 Board of Directors is empowered to enter into agreements with any Person or corporation and to
33 prescribe the terms and conditions of such agreements; and

34 WHEREAS, the District's Board of Directors has selected Contractor based on its past provision
35 of Collection services to the District and has authorized the execution of this Agreement; and

55

36 WHEREAS, neither the District nor Contractor could anticipate all of the possible needs,
37 considerations, or eventualities that may arise during the Term of this Agreement and the Parties agree
38 that they will work together in a spirit of mutual cooperation to resolve any such issues as and when
39 they arise;

40 NOW THEREFORE, in consideration of the respective and mutual covenants and promises
41 herein, and subject to all the terms and conditions hereof, the Parties agree as follows:

42 ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE

43 1.1 Grant and Limitations of Exclusive Franchise

44 By the signing of this Agreement, the District grants to Contractor, and Contractor accepts, an exclusive
45 Franchise within the Franchise Area of the District. Subject to the limitations described in this
46 Agreement and Applicable Law, the Franchise granted to Contractor shall be the exclusive right to
47 Collect, Transport, handle, Process, Recycle, and, Dispose of all Solid Waste, Recyclable Materials, and
48 Organic Materials generated by Residential Premises and Commercial Premises in the District, as more
49 particularly set out in the scope of services described in Article 4 of this Agreement and subject to the
50 limitations described below in Section 1.1.A and except where otherwise precluded by federal, State,
51 and local laws and regulations.

52 A. **Limitations to Exclusivity.** The award of this Agreement shall not preclude the categories of Solid
53 Waste, Recyclable Materials, and Organic Materials listed below from being delivered, Collected,
54 and Transported by others provided that nothing in this Agreement is intended to, or shall be
55 construed to, excuse any Person from obtaining any authorization from the District which is
56 otherwise required by law:

57 1. Recyclable Materials. Other Persons shall maintain the right to accept donated Recyclable
58 Materials and to compensate the service recipient for Recyclable Materials so long as there
59 is no net payment made by the service recipient to such other Person;

60 2. Self-Hauled Materials. A Commercial business Owner or resident may Dispose of or arrange
61 for Processing of Solid Waste, Recyclable Materials, Organic Materials, and C&D generated
62 in or on their own Premises using their own vehicles and equipment, and, with respect to a
63 Commercial business, its own employees in conformance with all Applicable Laws and
64 regulations, including the County's mandatory subscription ordinance;

65 3. Donated Materials. Any items which are donated by the Generator to youth, civic, or
66 charitable organizations;

67 4. Beverage Containers. Containers delivered for Recycling under the California Beverage
68 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public
69 Resources Code;

70 5. Materials Removed by Customer's Contractor as Incidental Part of Services. Solid Waste,
71 Recyclable Materials, Green Waste, and/or C&D removed from a Premises by a contractor
72 (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential

- 73 clean-out service), using its own employees, vehicles and equipment as an incidental part of
74 the service being performed and such contractor is providing a service which is not included
75 in the scope of this Agreement;
- 76 6. Animal, Grease Waste, and Used Cooking Oil. Animal waste and remains from
77 slaughterhouse or butcher shops, grease, or used cooking oil;
- 78 7. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge
79 ash, grit, and screenings;
- 80 8. Excluded Waste. Excluded Waste regardless of its source;
- 81 9. Materials Generated by Cemetery and School. Materials generated by Sunset Cemetery or
82 the Kensington Elementary School.
- 83 10. Materials Generated by State, County, and Federal Facilities. Materials generated by State,
84 County, and federal facilities located in the District.

85 Contractor acknowledges and agrees that the District may permit other Persons besides the Contractor
86 to Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
87 without seeking or obtaining approval of Contractor. Contractor shall be responsible for enforcing the
88 exclusive nature of this Franchise. District shall cooperate with Contractor in such efforts but shall not be
89 required to initiate or participate in litigation at its expense to do so. From and after September 1, 2015,
90 Contractor shall reimburse District for litigation expenses incurred by District in defending the exclusive
91 nature of the Franchise granted by this Agreement.

92 This Agreement and scope of this Franchise shall be interpreted to be consistent with Applicable Law,
93 now and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
94 regulations, or judicial interpretations limit the ability of the District to lawfully contract for the scope of
95 services in the manner and consistent with all provisions as specifically set forth herein, Contractor
96 agrees that the scope of the Agreement will be limited to those services and materials which may be
97 lawfully included herein and that the District shall not be responsible for any lost profits or losses
98 claimed by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth
99 herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of
100 such future judicial interpretations or new laws and the Contractor may meet and confer with the
101 District and may petition for a Rate adjustment pursuant to Section 9.3.

102 **ARTICLE 2: REPRESENTATIONS AND WARRANTIES** 103 **OF THE PARTIES**

104 **2.1 Representations and Warranties**

105 The Parties, by acceptance of this Agreement, represent and warrant that:

- 106 A. **Existence and Powers.** The Parties are duly organized and validly existing under the laws of the
107 State of California, with full legal right, power, and authority to enter into and perform their
108 obligations under this Agreement.

- 109 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and
110 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes
111 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance
112 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,
113 moratorium, and other laws affecting creditors' rights generally.
- 114 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under
115 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental
116 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any
117 term or condition of any judgment, decree, franchise, agreement (including, without limitation,
118 the certificate of incorporation of the Contractor), or instrument to which the Contractor or any
119 Affiliate is a party or by which the Contractor or any Affiliate or any of their properties or assets
120 are bound, or constitutes a default under any such judgment, decree, agreement, or instrument.
121 The Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100
122 et seq. of the California Government Code relating to conflicts of interest for public officers and
123 employees. Contractor represents it is unaware of any financial or economic interest of any public
124 officer or employee of the District relating to this Agreement.
- 125 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in
126 equity, before or by any court or governmental authority, pending, or to the Parties' best
127 knowledge, threatened against either Party which is likely to result in an unfavorable decision,
128 ruling, or finding which would materially and adversely affect the validity or enforceability of this
129 Agreement or any such agreement or instrument entered into by either Party in connection with
130 the transactions contemplated hereby, or which would materially and adversely affect the
131 performance by that Party of its obligations hereunder or by the Contractor under any such other
132 agreement or instrument.
- 133 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the
134 Agreement Date which would prohibit the performance by either Party of this Agreement and the
135 transactions contemplated hereby.
- 136 F. **Contractor's Statements.** The Contractor's proposal and any other supplementary information
137 submitted to the District, which the District has relied on in awarding and entering this
138 Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a
139 material fact that is necessary in order to make the statements made, in light of the circumstances
140 in which they were made, not misleading.
- 141 G. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it)
142 of the conditions and circumstances surrounding the Agreement and the work to be performed
143 hereunder. Contractor has taken such matters into consideration in entering this Agreement to
144 provide services in exchange for the compensation provided for under the terms of this
145 Agreement.
- 146 H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
147 manage, Collect, Transport, Transfer, and Dispose of the Solid Waste and to manage, Collect,
148 Transport, Transfer (if applicable), Process Recyclable Materials and Organic Materials; and
149 Contractor possesses the equipment, facility, and employee resources required to perform this
150 Agreement.

151 I. **Voluntary Use of Approved Facilities.** The Contractor, without constraint and as a free-market
152 business decision in accepting this Agreement, agrees to use Approved Disposal Facilities for the
153 purposes of Disposing of all Solid Waste Collected in the District. In the same arrangement, the
154 Contractor agrees to use an Approved Recyclable Materials Processing Facility and an Approved
155 Organics Materials Processing Facility for Processing of all Recyclable Materials and Organics
156 Materials, respectively, Collected in the District and to use an Approved Transfer Facility (if
157 needed) for the purpose of Transferring Solid Waste, Recyclable Materials, and/or Organic
158 Materials. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding
159 any Change in Law regarding flow control limitations or any definition thereof.

160 **ARTICLE 3: TERM OF AGREEMENT**

161 **3.1 Term of Agreement**

162 The Term of this Agreement is from the Commencement Date of September 1, 2015 through August 31,
163 2023 and shall continue in full force during that period, unless terminated earlier pursuant to this
164 Agreement.

165 **ARTICLE 4: COLLECTION SERVICES**

166 Contractor shall perform the services described in this Article 4. This Article 4 describes the
167 requirements for the services to be provided including the types and sizes of Containers to be serviced
168 by Contractor, available Service Levels and frequencies, acceptable and prohibited materials, and any
169 additional services to be provided by Contractor to Customers who subscribe to that program. Failure to
170 specifically require an act necessary to perform the service does not relieve Contractor of its obligation
171 to perform such act.

172 **4.1 Residential Services**

173 Contractor shall provide the services described in this Section 4.1 to any Residential Customer within the
174 District who subscribes with Contractor for such service.

175 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Customer-provided containers one
176 (1) time per week from Residential Customers and Transport all Solid Waste to an Approved
177 Disposal Facility for Disposal.

178	Containers:	20-, 32-, 40-, 45- gallon (or similar sizes) Containers to be provided by
179		Customer.
180	Service Frequency:	One (1) time per week
181	Service Location:	Back-yard or Curbside service at Customer's option
182	Acceptable Materials:	Solid Waste
183	Additional Service:	On Customer's regularly scheduled Collection day, Contractor shall
184		Collect additional Solid Waste Containers (beyond the Customer's

185 regular Service Level) and shall charge Customer for the extra pick-up at
186 the District-approved Rate.
187 Upon request, Contractor shall provide Customers extra pick-up on a
188 day other than the Customer's regularly scheduled Collection day and
189 shall charge the Customer at the District-approved Rate.
190

191 B. **Recyclable Materials Collection.** Contractor shall Collect Single Stream Recyclable Materials in
192 Customer-provided Containers one (1) time every week from Residential Customers and Transport
193 all Single Stream Recyclable Materials to an Approved Recyclable Materials Processing Facility for
194 Processing. Contractor shall provide weekly Single Stream Recyclable Material Collection services
195 at no charge to Customers subscribing to Solid Waste Collection service.

196 **Containers:** Customer-provided containers including, but not limited to, buckets,
197 baskets, milk crates, carts
198 **Service Frequency:** One (1) time per week on the same day as Solid Waste Collection
199 **Service Location:** Curbside
200 **Acceptable Materials:** Single Stream Recyclable Materials
201 **Additional Service:** None
202 **Other Requirements:** On each Customer's regularly scheduled Collection day, Contractor shall
203 Collect an unlimited quantity of Single Stream Recyclable Materials
204 from the Residential Customer.

205 C. **Green Waste Collection.** Contractor shall Collect Green Waste two times every month from
206 Residential Customers and Transport all Green Waste to an Approved Organics Processing Facility
207 for Processing. Contractor shall collect Green Waste that is bundled, tied, or placed in customer-
208 provided boxes or containers. Contractor shall not collect Green Waste in plastic bags.

209 **Containers:** Customer-provided boxes or containers (or no container if Customer
210 bundles or ties materials)
211 **Service Frequency:** Two (2) times every month on the same day as Solid Waste Collection
212 **Service Location:** Curbside
213 **Acceptable Materials:** Green Waste
214 **Additional Service:** None
215 **Other Requirements:** On each Customer's every other regularly scheduled Collection day,
216 Contractor shall Collect an unlimited quantity of Green Waste from the
217 Residential Customer.

218 D. **Option for Food Scraps Collection.** At any time during the Term of this Agreement, the District
219 shall have the sole option to require that Contractor implement a Food Scraps Collection program
220 for Residential and/or Commercial Customers within the District. In the event that the District
221 directs Contractor to implement such a program, the District shall provide Contractor with one
222 hundred eighty (180) days advanced notice and shall, prior to the implementation of such
223 program, approve an adjustment to Rates, if warranted. Such change shall be handled as a
224 District-directed change in scope pursuant to Sections 4.8 and 9.3.

225 **4.2 Commercial Services**

226 Contractor shall provide the services described in this Section 4.2 to any Commercial Customer within
227 the District who subscribes with Contractor for such service.

228 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided or Customer-
229 provided Containers not less than one (1) time per week from Commercial Customers and
230 Transport all Solid Waste to an Approved Disposal Facility for Disposal.

- 231 **Container Sizes:** 32- and 45-gallon Containers provided by Customers
- 232 1- and 2-cubic-yard Bins to be provided by Customer or Contractor upon
- 233 Customer's request. If Contractor provides Bin upon Customer request,
- 234 Contractor may charge Customer a District-approved Rate for Bin rental.
- 235 Drop Boxes provided by Contractor upon Customer request
- 236 **Service Frequency:** Up to five (5) times per week but not less than one (1) time per week, as
- 237 requested by Customer
- 238 **Service Location:** Curbside or other Customer-selected service location mutually agreed
- 239 to between Customer and Contractor.
- 240 **Acceptable Materials:** Solid Waste
- 241 **Additional Service:** Contractor shall provide a Bin exchange to any Commercial Customer
- 242 for cleaning and maintenance one (1) time each year, upon Customer
- 243 request.
- 244 **Other Requirements:** Contractor shall establish a minimum Service Level of thirty (35) gallons
- 245 per dwelling unit per week for Multi-Family Customers.

246 B. **Recyclable Materials Collection.** Contractor shall Collect Single Stream Recyclable Materials in
247 Customer-provided or Contractor-provided Containers not less than one (1) time every week from
248 Commercial Customers and Transport all Single Stream Recyclable Materials to an Approved
249 Recyclable Materials Processing Facility for Processing. Contractor shall provide service up to five
250 (5) times per week upon Customer's request, at no charge to Customers subscribing to Solid
251 Waste Collection service.

- 252 **Containers:** Containers, Carts, Drop Boxes
- 253 **Container Sizes:** 32- and 65-/68-gallon Carts (or similar size) provided by Contractor; or
- 254 Customer-provided Container
- 255 Drop Boxes provided by Contractor upon Customer request
- 256 **Service Frequency:** Up to five (5) times per week but not less than one (1) time every week,
- 257 as requested by Customer
- 258 **Service Location:** Curbside or other Customer-selected service location mutually agreed
- 259 to between Customer and Contractor
- 260 **Acceptable Materials:** Single Stream Recyclable Materials
- 261 **Additional Service:** None
- 262

263 C. **Green Waste Collection.** Contractor shall Collect Green Waste two times every month from
264 Commercial Customers that subscribe to service and shall Transport all Green Waste to an
265 Approved Organics Processing Facility for Processing. Contractor shall Collect Green Waste that is
266 bundled, tied, or placed in boxes or Containers. Contractor shall

61

- 267 **Containers:** Customer-provided boxes or Containers (or no Container if Customer
- 268 bundles or ties materials)
- 269 **Service Frequency:** Two (2) times every month
- 270 **Service Location:** Curbside or other Customer-selected service location mutually agreed
- 271 to between Customer and Contractor
- 272 **Acceptable Materials:** Green Waste
- 273 **Additional Service:** Restaurants may subscribe to wet or dry Collection service depending
- 274 on the type of materials generated and Contractor shall charge
- 275 Customer for such service at District-approved Rates
- 276 **Other Requirements:** None

277 D. **Extra Pick-Ups and Overage Collection.** Upon Customer request and to accommodate periodic
 278 additional service needs, Contractor shall provide Collection service at a greater frequency than
 279 the Customer’s regular Service Level and Contractor may charge the District-approved Rate for the
 280 higher Service Level.

281 On regularly scheduled Collection days, Contractor shall Collect excess Solid Waste (“overages”)
 282 Customer has placed for Collection beyond Customer’s regular Service Level if Customer has
 283 requested Collection of such overages and has agreed to pay an extra cost for such service. In
 284 such case, Contractor shall Collect the overages and charge Customer at the District-approved
 285 Rate. If Customer has not arranged for overage Collection and places excess Solid Waste out for
 286 Collection, Contractor shall not Collect the Solid Waste and shall inform Customer of its reason for
 287 non-Collection. For the purpose of this Agreement, two bags of overages shall be considered
 288 equivalent to one 30-/32-gallon container.

289 E. **Locking Containers.** Contractor shall provide Commercial Bins that may be secured with a lock. At
 290 Customer’s option, Customer may secure its Container with a lock. In such case, Customer shall
 291 provide Contractor a key to the lock and Contractor shall lock and unlock the Container at no
 292 additional charge to the Customer at time of Collection. Contractor shall lock the Container
 293 following the provision of Collection service.

294 F. **Option for Food Scraps Collection.** Pursuant to Section 4.1.D, District reserves the right to require
 295 implementation of Food Scraps Collection services for Commercial Premises.

296 **4.3 Collection Service Operating Requirements**

297 A. **Regular Collection Hours.** The Contractor shall provide Collections from any Premises on any
 298 weekday (except Saturdays and Sundays) between the hours of 6:00 a.m. and 6:00 p.m. provided,
 299 however, that the District may, at its sole discretion, change the Collection time as required by the
 300 needs of the Customers or the Contractor. Collections on Saturdays may be performed between
 301 the hours of 6:00 a.m. and 6:00 p.m. if special service is requested or following a legal holiday
 302 (pursuant to Section 4.3.D).

303 B. **Emergency Service.** Collection of Solid Waste necessitated by an emergency, which the District
 304 General Manager determines threatens the public health and safety within the District, will be
 305 made by the Contractor at the direction of the District General Manager. Such Emergency Services
 306 may be required outside of the regular Collection hours and schedule. If the District requests the
 307 Contractor to provide Emergency Services, the Contractor shall use the Contractor's good faith

308 best efforts to respond to such a request. The District shall reimburse the Contractor for all actual,
309 documented and reasonable additional costs incurred in order to comply with the provisions of
310 this Section.

311 C. **Noise Levels.** The Contractor shall perform Collection services in a manner that minimizes the
312 noise resulting from its equipment and personnel and shall ensure that it is in compliance with
313 Applicable Law.

314 D. **Holidays.** Collection of Solid Waste, Recyclable Materials, and Green Waste shall not be required
315 on the following legal holidays: New Year's Day, Independence Day, Thanksgiving Day and
316 Christmas Day, except in case of emergency or as otherwise required by the District General
317 Manager. Whenever a regular Collection falls on such a holiday, the Collection shall be made on
318 the following working day, and Collections throughout the District Franchise Area shall become
319 current within one (1) week thereafter. Written notice of this policy (via bills, emails, or through
320 other means approved by the District General Manager) shall be provided to Customers preferably
321 no more than thirty (30) days prior to such alternative service day. Collection shall not be
322 rescheduled when the holiday falls on a Saturday or Sunday, unless otherwise agreed to by the
323 District and the Contractor.

324 E. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a
325 manner as to protect the public health and safety. The Contractor agrees to establish procedures
326 and educate its employees as to such procedures regarding proper methods for the protection of
327 the general public, including, but not limited to, arranging for the proper and legal Disposal of
328 hazardous substances encountered during its performance under this Agreement.

329 F. **Litter Prevention.** Contractor shall, at all times, take reasonable measures to keep the roads and
330 streets in the District free from litter from the operations of its Operating Assets.

331 G. **Collection Day Changes.** If Contractor desires to modify Residential Customer(s)' regularly
332 schedule day(s) of Collection, Contractor shall present a request for such change to the District
333 General Manager for review and approval. Such request shall identify the reason for such change,
334 the number of impacted Customers, and the addresses of impacted Customers. Following District
335 General Manager approval, Contractor shall provide each Customer with notice of the change in
336 its regularly scheduled Collection day, and such notice shall be provided one to two weeks prior to
337 the effective date of the change.

338 4.4 Other Services

339 A. **General Pick-Up Collection Services.** Contractor shall provide one "general pick-up" Collection
340 service to Residential Customers including Multi-Family Customers who are otherwise served as
341 Commercial Customers, once per year in September. Customers may set out up to one and a half
342 (1.5) cubic yards of excess Solid Waste and Recyclable Materials that is bundled, tied, or bagged.
343 Contractor shall Collect such materials and Transport the materials to an Approved Disposal
344 Facility or Approved Recyclable Materials Processing Facility.

345 **Containers:** Not applicable
346 **Service Level:** Up to one and a half (1.5) cubic yards of Solid Waste and/or Recyclable
347 Materials
348 **Service Frequency:** Once (1) per year per Customer in September

349 **Service Location:** Curbside
350 **Acceptable Materials:** Solid Waste, Recyclable Materials provided that any single item is less
351 than two hundred (200) pounds in weight
352 **Additional Service:** Contractor shall Collect additional items that exceed the above
353 described service level, as requested by Customer, and may charge the
354 District-approved Rate for such service.
355 Contractor shall provide additional general pick-up Collection events for
356 a Customer beyond the one event in September, as requested by
357 Customer, and may charge the District-approved Rate for such service.
358 In such case, the Contractor shall provide the service to the Customer
359 within five (5) Business Days of the Customer's requested service date,
360 as mutually agreed upon by the Customer and Contractor.

361 B. **District and County Facilities** Contractor shall Collect Solid Waste, Recyclable Materials, and Green
362 Waste from District and County facilities in the Franchise Area in the same manner as those
363 services are provided to Commercial Customers. Contractor shall provide service to the District
364 and County facilities listed below as well as any future facilities owned and operated by the
365 District without charge to the District.

366 District Headquarters, 217 Arlington Ave: Two Solid Waste Containers per week
367 District Community Center at 59 Arlington Ave: One 1.5 yard Solid Waste Container per week
368 County's Kensington Library, 61 Arlington Ave
369 Public litter and recycling cans in the District
370

371 C. **District Special Events.** Contractor shall provide Solid Waste and Recyclable Materials Collection
372 services to District-sponsored public events held within the District to include, at a minimum,
373 Containers for the Collection of both Solid Waste and Recyclable Materials. Contractor shall
374 provide these services at no cost to the District or Customers.

375 D. **Community Clean-Up Events.** Contractor shall deliver and make Collection of up to three (3) 20-
376 cubic-yard Drop Boxes per year to the District for Collection of Solid Waste, Recyclable Materials
377 or Green Waste from one or more community events. The District shall select the events and
378 inform the Contractor of the dates and times the Drop Box(es) shall be delivered and Collected.

379 E. **Christmas Trees.** The Contractor shall Collect all Christmas trees placed Curbside by Residential
380 Premises on any day of the year provided that the tree is unflocked, without a stand, and is
381 prepared in the same manner as that described for Green Waste in Section 4.1.C. This service is
382 free of any additional charge to any Customer.

383 F. **Special Services.** The Contractor shall have the right, but not the obligation, to provide additional
384 Special Services requested by any Customer which are directly related or ancillary to any of the
385 other Collection services authorized hereunder. The nature and terms of any such Special Services
386 shall be negotiated with the Customer and compensation therefore shall be paid by the
387 requesting Customer. In the event that Customer and Contractor cannot agree on a Rate, the
388 Contractor shall provide the District with information supporting the Rate proposed by the
389 Contractor. Upon receipt and review of such information, the District may set the Rate, which
390 shall become binding on the Contractor.

391 G. **Collection of Illegally Dumped Materials.** Within the Franchise Area, Contractor shall, without
392 charge to the District or Customers, Collect materials that have been illegally dumped in public
393 roadways or alleys, at locations and in sizes requested by District General Manager; provided that
394 Contractor shall not be obligated to Collect more than three (3) cubic yards per event of non-
395 Hazardous Waste. Contractor shall perform such Collections when observed by Contractor's
396 personnel or within one (1) Business Day of request by District.

397 Contractor shall deliver such illegally dumped waste to an Approved Disposal Facility at no
398 additional charge to the District.

399 4.5 Standard of Performance

400 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to
401 the public and the Contractor's employees. Except to the extent that a higher performance standard is
402 specified in this Agreement, Contractor shall perform services in accordance with Solid Waste,
403 Recyclable Materials, and Organic Materials management practices common to California.

404 A. **Clean Up and Avoiding Damage to Property.** The Contractor shall use due care to prevent
405 littering, spills, or leaks of material placed for Collection. If any materials are littered, spilled, or
406 leaked during Collection or Transportation, the Contractor shall clean up all material before
407 leaving the site. The Contractor shall close all gates after making Collections and shall not do
408 damage to or trespass upon private or public property.

409 B. **Hazardous Waste.** The Contractor acknowledges its obligation to arrange for the Disposal of
410 Hazardous Waste that inadvertently comes into its possession or control. The Contractor agrees to
411 establish all reasonable practices for the screening and elimination of Hazardous Waste from the
412 waste stream including, but not limited to, the training of personnel and the revision of such
413 practices as necessary to reflect prudent waste screening considered to be good practice in the
414 Solid Waste Collection and Disposal industry at the time.

415 If the Contractor finds what reasonably appears to be discarded Hazardous Waste or Household
416 Hazardous Waste at a Designated Collection Location, the Contractor, in addition to the procedure
417 outlined in the previous paragraph, shall either:

418 1. Notify the Owner or Generator, if such can be determined, that the Contractor may not
419 lawfully Collect such material and leave a tag specifying the nearest location available for
420 appropriate Disposal or Processing of such material; or,

421 2. Follow such other procedure as the District General Manager shall approve.

422 In the event of a threat to the public health and safety, the Contractor shall immediately contact
423 the local fire department. The Contractor shall notify the District General Manager of such
424 incident within one (1) day.

425 C. Employees

426 1. **Conduct and Uniform.** The Contractor shall take all steps necessary to ensure that its
427 employees performing Collection services conduct themselves in a safe, proper, and

428 workmanlike manner, and that they work as quietly as possible. All such employees shall at
430 all times of employment be dressed in uniforms with suitable identification.

430 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
431 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
432 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its
433 drivers for safety.

434 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of
435 its employees who operate Collection Vehicles or equipment. Contractor shall train its
436 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the
437 District General Manager's request, Contractor shall provide a copy of its safety policy and
438 safety training program, the name of its safety officer, and the frequency of its trainings.

439 D. **Improper Loading of Containers.** The Contractor may decline to Collect any Solid Waste,
440 Recyclable Materials, and/or Organic Materials that have been left for Collection in any manner
441 which would prohibit its safe Collection.

442 E. **Record of Non-Collection.** When any Solid Waste, Recyclable Materials, and/or Organic Materials
443 placed for Collection are not Collected by the Contractor, the Contractor shall leave a tag listing
444 the reasons for such non-Collection and a telephone number where the Customer may contact
445 the Contractor. This information shall either be in writing or by means of a checked box on a form.
446 The Contractor shall maintain, at its place of business, a log book listing all such circumstances in
447 which Collection is denied. The log book shall contain the names and/or addresses of the
448 Collection Premises involved, the date of such tagging, the reason for non-Collection, and the date
449 and manner of disposition of each case. The log book shall be kept so that it may be conveniently
450 inspected by the District General Manager upon request. The log relating to any particular tagging
451 shall be retained for a period of one (1) year following such tagging. As an alternative to non-
452 Collection, where the basis for the non-Collection notice is not resolved by the Customer and
453 where photographic evidence is provided by the Contractor, Contractor may complete the
454 Collection and charge the Customer at the District-approved Rate for an "extra can or bag of Solid
455 Waste," equivalent to the Customer's Container size to compensate it for the costs of extra
456 pickups and/or sorting of materials.

457 F. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or
458 Subcontractor employed by it, to accept, request, solicit, or demand, either directly or indirectly,
459 any compensation for the Collection of Solid Waste, Recyclable Materials, and/or Organic
460 Materials or other Franchise Services, except such compensation as is specifically provided for
461 herein as approved by the District.

462 G. **Compliance with Applicable Law.** The Contractor shall comply with all Applicable Law relating to
463 any aspect of the Collection Services or this Agreement, shall obtain and maintain all legal
464 entitlements required for the Operating Assets and the Collection Services, shall comply with all
465 valid acts, rules, regulations, orders, and directions of any Governmental Body applicable to the
466 Operating Assets and the Franchise Services provided hereunder, and shall pay all taxes in
467 connection therewith.

468 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in
469 respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any

470 revenues of the Contractor there from, and shall provide and pay the cost of all utilities necessary
471 for the operation of the Operating Assets and the provision of the Franchise Services, when the
472 same shall become due.

473 4.6 Collection Locations

474 A. **General.** The Contractor shall be responsible for the Collection of all Solid Waste, Recyclable
475 Materials, and/or Organic Materials placed for Collection in a legal manner. The Contractor shall
476 immediately notify the District General Manager of any condition at or near any Designated
477 Collection Location which creates a safety hazard or accessibility problem. Upon authorization by
478 the District General Manager, the Contractor shall discontinue Collection for any such location
479 until the safety hazard or accessibility problem is corrected. Contractor may charge for the "Extra
480 Pick-up" at District-approved Rate(s) for such service in the event that its Collection vehicle is
481 required to return to the service location to complete Collection due to a safety hazard or access
482 restriction caused by the Customer and documented with photographic evidence.

483 B. **Enclosures.** Where the Collection Location is within an enclosure constructed pursuant to the
484 requirements of any public agency having jurisdiction over the design, construction, and location
485 of such enclosures, the Contractor shall be responsible for the removal and replacement of all
486 Containers placed therein. The Contractor shall use sufficient care in the handling of such
487 Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent
488 facilities or improvements. The Contractor shall promptly repair at its own expense any such
489 enclosure or adjacent facilities or improvements damaged by the Contractor. The District General
490 Manager shall resolve any disputes relating to such damage, and the Contractor agrees to abide
491 by such decision.

492 4.7 Other Wastes

493 The Parties acknowledge that this Agreement is granted only with respect to the Franchise Services
494 described herein and does not include the Collection, Transportation, Processing, or Disposal of
495 Hazardous Waste, Medical Waste, and Liquid Waste. If the Contractor elects to provide any such
496 services with respect to Hazardous Waste, Infectious Waste, or any other waste regulated by the
497 Department of Toxic Substances Control, such services shall be performed by a separate legal entity
498 separately insured and liable, and according to Applicable Law. The Parties further acknowledge that the
499 provision by the Contractor of any services not specifically included within the Agreement are excluded
500 from the protection of this Agreement and may be the subject of competition among any and all legally
501 authorized haulers.

502 4.8 Changes in Scope of Franchise Services

503 The District may modify the scope of services performed by the Contractor pursuant to this Agreement.

504 The District shall provide written notice of any requested modification to the scope of services provided
505 by Contractor pursuant to this Agreement, and the Contractor shall provide the District with any
506 information requested by the District in connection with the proposed changes. The Contractor shall,
507 within sixty (60) days after receipt of such notice by the District, respond to the District's order. The
508 Contractor may seek additional compensation in the event the scope of services is modified in

509 accordance with this Section 4.8. The need for and amount of additional compensation shall be
510 calculated following a change in scope Rate review pursuant to Section 9.3.

511 4.9 Billing

512 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in
513 accordance with Article 9. Billing shall be performed on the basis of services rendered and this
514 Agreement shall create no obligation on the part of any Person on the sole basis of the ownership of
515 property. Contractor shall bill Customers three (3) times per year scheduled (in September, January, and
516 May) in such a manner that Customers' receive a bill every four (4) months. The format and content of
517 the bills shall be subject to District General Manager review and approval.

518 A. **Payment Methods and Location.** Contractor shall prepare and mail bills to, and collect payment
519 from Customers who decline to use such internet-based billing system. Contractor shall allow for
520 Customers to pay by check or money order.

521 B. **Billing Records.** Contractor shall maintain copies of all billings and receipts, each in chronological
522 order, for the Term of this Agreement, for inspection and verification by the District General
523 Manager at any reasonable time but in no case more than thirty (30) calendar days after receiving
524 a request to do so.

525 C. **Responsible Parties.** For the purposes of determining the parties ultimately responsible for the
526 purposes of billing, the Customer shall be determined to be the Owner of the property. The only
527 exceptions shall be for Single-Unit Dwellings or single businesses on a tax parcel where the tenant
528 or occupant of that property, rather than the Owner, subscribes to service.

529 D. **Bad Debt & Collections Procedures.** Contractor shall be responsible for collection of payment
530 from Customers with past due accounts ("bad debt"). Contractor shall make reasonable efforts to
531 obtain payment from delinquent accounts through issuance of late payment notices, telephone
532 requests for payments, and assistance from collection agencies.

533 Bills shall become due and payable three and one-half (3.5 months) after mailing (e.g., bills mailed
534 on September 1 shall be due and payable on December 15). In the event that any account
535 becomes more than forty-five (45) calendar days past due, Contractor shall notify such Customer
536 of the delinquency via written correspondence and telephone contact.

537 4.10 Public Awareness

538 The Contractor agrees, at its own expense, to prepare and send or deliver to Customers an annual
539 service information brochure providing a description of Collection service offering, including, but not
540 limited to, Rates, Collection service options, set-out requirements, payment options, discounts (if any),
541 days of Collection, service level and inquiry/complaint procedures, including the name, address and local
542 telephone number of Contractor and the name, address and telephone number of the District General
543 Manager. In addition, Contractor shall provide additional information to Customers at least twice
544 annually on such topics as proper Household Hazardous Waste Disposal, Solid Waste reduction and
545 Recycling, or such other relevant topics. All public education and outreach materials are subject to
546 review and approval of the District General Manager prior to release or distribution to Customer and/or
547 the public.

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548 To the extent reasonably possible, the Contractor shall accommodate the inclusion of any District-
549 directed information on its regular billing statements upon the request of the District General Manager
550 without cost to the District. If the District requests the distribution of information on a topic in a form
551 that cannot be printed or included with the Contractor's regular bill, the District and Contractor will
552 share in the cost of printing and distribution.

553 4.11 Transition to Next Contractor at End of Agreement

554 Contractor will take direction from the District and cooperate with the subsequent contractor to assist in
555 a timely and orderly transition of services from Contractor to subsequent contractor. In response to the
556 District's direction, Contractor shall provide then-current route lists in an electronic format, which
557 identify each Customer on the route, its service level (number of Containers, Container sizes, frequency
558 of Collection, scheduled Collection day), and any special Collection notes, and detailed then-current
559 Customer account and billing information. Contractor may, but shall not be obliged to, sell Collection
560 vehicles, equipment, or facilities to the next contractor.

561 4.12 Ownership of Materials

562 Once Solid Waste, Recyclable Materials, and Organic Materials are placed in Containers and at the
563 Collection location, ownership and the right to possession of such materials shall transfer directly from
564 the Generator to Contractor. Once Solid Waste, Recyclable Materials, and Organic Materials are
565 deposited by Contractor at an Approved Facility, such materials shall become the property of the owner
566 or operator of the facility.

567 4.13 Annexation and Change of Franchise Area Boundaries

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

578 **ARTICLE 5: TRANSFER, PROCESSING, AND DISPOSAL**

579 5.1 Approved Facilities

580 A. **General.** The Contractor shall provide or arrange for Transfer (if appropriate) and Processing of
581 Recyclable Materials and Organic Materials Collected in the Franchise Area and for Transfer (if
582 appropriate) and Disposal of Solid Waste Collected in the Franchise Area, so long as such
583 arrangements are in full compliance with this Agreement and Applicable Law. Contractor may
584 engage a Subcontractor to provide Transfer, Processing, and/or Disposal services provided that

585 the Subcontractor is approved by the District pursuant to Section 7.6.D. Contractor shall only
586 deliver Collected materials to facilities approved by the District and such Collected materials shall
587 only be Transferred, Processed, and Disposed of at facilities approved by the District. Contractor
588 shall pay all costs associated with Transport, Transfer, Processing, and Disposal including per-Ton
589 Tipping Fees or gate fees charged for Transfer, Processing, and/or Disposal at Approved Facilities.
590 Contractor, or its Subcontractor, shall keep all existing permits and approvals necessary for use of
591 Approved Facilities in full regulatory compliance.

592 B. **Recyclables Processing.** The Contractor shall be responsible for Transfer (if appropriate) and
593 Processing of Recyclable Materials Collected in the Franchise Area. Contractor shall Transport
594 Collected Recyclable Materials to an Approved Recyclable Materials Processing Facility for
595 Processing.

596 C. **Organic Materials Processing.** The Contractor shall be responsible for Processing of Organic
597 Materials Collected in the Franchise Area. Contractor shall Transport Collected Organic Materials
598 to an Approved Organic Materials Processing Facility for Processing. Contractor shall arrange for
599 composting of the Organic Materials at an Approved Organic Materials Processing Facility. It shall
600 not use or allow for Organic Materials to be used at a landfill for alternative daily cover,
601 alternative intermediate cover, or other “beneficial reuse purposes” at a landfill.

602 D. **Solid Waste Disposal.** The Contractor shall Transport Solid Waste Collected in the Franchise Area
603 to an Approved Transfer Facility and shall arrange for Transfer and Disposal of all Solid Waste at an
604 Approved Disposal Facility. Contractor may directly Transport to and Dispose of Solid Waste at
605 Potrero Hills Landfill in Suisun, CA (an Approved Disposal Facility) in lieu of Transporting Solid
606 Waste to an Approved Transfer Facility. Residue Materials from the Recyclable Materials and
607 Organic Materials Processing shall be Disposed of by Contractor, or owner/operator of Approved
608 Recyclable Materials Processing Facility and Approved Organic Materials Processing Facility, at a
609 Disposal Facility selected by Contractor or the owner/operator of Approved Recyclable Materials
610 Processing Facility or Approved Organic Materials Processing Facility.

611 E. **Facility Records.** The Contractor shall keep and maintain such logs, records, manifest, bills of
612 lading or other documents as the District may deem to be necessary or appropriate to confirm
613 compliance with requirements of this Article and shall retain all weight slips or other call
614 information provided to the Contractor or Contractor's drivers by the owner or operator of
615 Approved Facilities.

616 F. **Failure to Transport to Approved Facilities.** The Contractor's failure to properly Transport, or
617 cause to be Transported, Solid Waste, Recyclable Materials, and Organic Materials to Approved
618 Facilities as described herein is an Event of Default as described in Section 11.1.A of this
619 Agreement, unless the failure is the result of an Uncontrollable Circumstance or such material has
620 been diverted by means of alternative technology allowing AB 939 diversion credit to the District.

621 G. **Guaranteed Capacity.** Contractor shall be solely responsible for selecting Approved Facilities with
622 sufficient capacity at such Facilities to Transfer, Process, and/or Disposal of all Solid Waste,
623 Recyclable Materials, and Organic Materials Collected by Contractor under this Agreement
624 throughout the Term of the Agreement. Contractor shall provide the District, upon request, with
625 documentation demonstrating the availability of such sufficient capacity at Approved Facilities for
626 all materials Collected by Contractor in the District throughout the Term of this Agreement.

627 **5.2 Marketing of Recovered Materials**

628 Contractor shall be responsible for Processing or causing Processing of Recyclable Materials and Organic
629 Materials to recovery and market such materials. For all contracts with Subcontractors entered into or
630 renewed on or after the Agreement Date, Contractor agrees to require Subcontractors to guarantee that
631 Processing will result in significant diversion of Recyclable Materials Collected from Disposal so that
632 Residual Waste from the Recyclable Materials that is less than ten percent (10%) by weight of the
633 Recyclable Materials Collected measured on an average monthly basis. For all contracts with
634 Subcontractors entered into or renewed on or after the Agreement Date, Contractor agrees to require
635 Subcontractors to guarantee that Processing will result in significant diversion of Organic Materials
636 Collected from Disposal so that Residual Waste from the Organic Materials that is less than one percent
637 (1%) by weight of the Green Waste Collected measured on an average monthly basis. The residual level
638 shall be calculated as the monthly Tonnage of Processing Residual Waste divided by the total monthly
639 Tonnage of Recyclable Materials Collected or Organic Materials Collected as appropriate.

640 Contractor shall market or arrange for marketing of all Recovered Materials from the Recyclable
641 Materials and Organic Materials Collected in the District. Contractor's marketing strategy shall make
642 reasonable business efforts to promote the highest and best use of materials presented in the waste
643 management hierarchy established by AB 939. Where practical and cost-effective, the marketing
644 strategy should include use of local, regional, and domestic markets for Recyclable Materials and
645 Organic Materials. With the exception of the small quantities of Residual Waste, Contractor shall not
646 Dispose of Recyclable Materials or Organic Materials. Contractor shall make available to the District
647 General Manager any and all documentation of the final disposition of marketed Recyclable Materials
648 and Organic Materials as well as certification that such materials have not been Disposed or incinerated.

649 Contractor shall not Dispose of Recyclable Materials, Organic Materials, and C&D Collected in the
650 District. However, if market conditions are such that there are no purchasers and no users willing to
651 accept such Recovered Materials for reuse, Recycling, or Processing without payment by Contractor,
652 Contractor may submit a written request to the District General Manager for authority not to Collect
653 such materials while such market conditions persist. If the District General Manager can make the
654 findings specified in Article 418-10.8 in the County Ordinance Code, and unless County otherwise
655 directs, the District General Manager shall exempt such material(s) from Recycling on conditions he/she
656 specifies.

657 **5.3 Weighing and Record Requirements**

658 Contractor shall ensure that all Solid Waste, Recyclable Materials, and Organic Materials are weighed
659 upon delivery to Approved Facilities, and all weight and related delivery information (including date,
660 time, material type, route and truck number) ("Delivery Data") is recorded. Contractor shall provide
661 District with copies of the Delivery Data upon request. If Contractor, or its Subcontractor, record vehicle
662 receiving and unloading operations on video at Approved Facilities, Contractor shall make those videos
663 available for District review during the facility's operating hours, upon request of the District.

664 **5.4 District Right to Modify Facility Arrangements**

665 The District may order the Contractor to modify or terminate its Transfer, Processing and/or Disposal
666 arrangements if:

- 667 A. The District determines that such arrangements threaten public health or safety, or
- 668 B. The District determines that the District is not adequately protected from liability for the activities
669 of the Transfer, Processing, or Disposal facility operations and entities, or
- 670 C. The District determines that the diversion levels of the particular facility causes the District to be
671 out of compliance with AB 939, AB 341, or any other regulations regarding Solid Waste, Recyclable
672 Materials, and Organic Materials management, or the Contractor is Disposing of Recovered
673 Materials in a manner or volume which does not result in significant diversion credit to the
674 District.

675 In the event the District directs the Contractor to modify or terminate Transfer, Processing, or Disposal
676 arrangements, the District acknowledges that the Contractor shall nonetheless be entitled to recover,
677 through the Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the
678 Contractor incurred in implementing such Transfer, Processing, or Disposal arrangements (determined
679 in accordance with generally accepted accounting principles).

680 5.5 Title to Recovered Materials

681 As between the Parties, the Contractor has title to and liability for all Recovered Materials, and shall
682 indemnify, defend, and hold harmless the District from any property damage, personal injury, or
683 consequential damages suffered by any Person from exposure to or as a result of Processing any
684 Recovered Materials or subsequent product made from Recovered Materials based on any theory of
685 liability. The Contractor shall promptly notify the District of any claim by any Person arising out of the
686 marketing, Disposal, or reuse of Recovered Materials.

687 ARTICLE 6: OPERATING ASSETS

688 6.1 Operating Assets

- 689 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,
690 Operating Assets which in number, nature, and capacity shall be sufficient to enable the
691 Contractor to provide the Franchise Services in accordance with the terms hereof and such assets
692 shall be subject to inspection by the District at any time.
- 693 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and Vehicle or
694 equipment number shall be visibly displayed in letters not less than three (3) inches in height on
695 both sides of its Vehicles or other Collection equipment used by the Contractor.
- 696 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered
697 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall
698 be of a type approved by the District, shall be kept clean and in good repair, and shall be
699 continuously maintained in a watertight condition. Vehicles used to Collect or Transport Solid
700 Waste, Recyclable Materials, and Organic Materials shall be kept covered at all times except when
701 such material is actually being loaded or unloaded, or when the Vehicles are moving along a
702 Collection route in the course of Collection. All Vehicles shall carry a broom, shovel, and operable
703 fire extinguisher. Collection Vehicles shall be washed at least once every seven (7) days and

72

704 cleaned and painted as required to maintain a clean appearance. All Vehicles must be made
705 available for inspection upon reasonable notice by the District General Manager.

706 D. **Spillage.** Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall,
707 or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload during
708 transit, the Contractor shall immediately arrange for the clean-up and Transportation of the
709 payload to the appropriate facility at the Contractor's sole cost and expense, shall pay any
710 resulting fines, assessments, penalties, or damages resulting therefrom, and shall indemnify and
711 hold harmless the District in accordance with the procedures provided in Section 10.1 hereof from
712 all loss-and-expense resulting therefrom. Failure to clean-up may result in Liquidated Damages
713 (Section 11.2).

714 E. **Computer System Compatibility.** The Contractor shall maintain records and data in an electronic
715 format compatible with the versions of Microsoft Word and Excel currently in use by the District at
716 any given time during the Term of this Agreement. The Contractor will, at its cost and expense, if
717 requested by the District General Manager, provide any reports or data required by this
718 Agreement via email, on computer disc, or through other electronic format. Raw or printed data
719 may not be submitted as a substitute to the Contractor's obligation to provide various reports
720 under this Agreement.

721 6.2 Operation and Maintenance of the Operating Assets

722 The Contractor, at its cost and expense, shall at all times: 1) operate the Operating Assets properly and
723 in a safe, sound, and economical manner; 2) maintain, preserve, and keep the Operating Assets in good
724 repair, working order, and condition; 3) staff the Operating Assets with the appropriate number of
725 licensed employees consistent with good management practice; and, 4) make all necessary and proper
726 repairs, replacements, and renewals, so that at all times the operation of the Operating Assets may be
727 properly and advantageously conducted. The Contractor shall maintain the safety of the Operating
728 Assets at a level consistent with Applicable Law, the Insurance Requirements, and prudent Solid Waste
729 and Recycling management practices.

730 6.3 Containers

731 A. **District Regulations.** The District shall approve the number, type, size, and other specific physical
732 requirements for Containers.

733 B. **Containers for Residential Customers.** Residential Customers will supply and maintain all Solid
734 Waste, Recyclable Materials, and Green Waste Containers required for the services provided
735 under this Agreement.

736 C. **Containers for Commercial Customers.** The Contractor shall provide Commercial Customers with
737 Carts, Bins, or Drop Boxes for Solid Waste, Recyclable Materials, and Green Waste Collection as
738 needed for the Customer's Service Level. Such Containers shall be provided as an Operating Asset
739 at its own cost and expense. Each Contractor-provided Container shall be watertight, identified
740 with the Contractor's name and phone number, equipped with heavy-duty casters, and equipped
741 with closeable and lockable lids. Pursuant to Section 4.2.E, upon Customer's request, Contractor
742 shall provide lock and unlock service to each Bin at no additional cost.

743 D. **Collection Requirements.** After emptying any Container, the Contractor shall replace the
744 Container in an upright position at the place where such Container was placed by Customer for
745 Collection. The Contractor shall handle Containers in a manner so as to prevent damage or
746 spillage, and shall not throw, drop, or otherwise mishandle Containers during or after emptying
747 them.

748 E. **Maintenance and Repair.** The Contractor shall be responsible for the general maintenance and
749 repair of Contractor-provided Containers, and shall provide an equivalent Container as
750 replacement during repairs and maintenance. If repairing, maintenance, steam cleaning, and/or
751 repainting is required as a result of abuse, neglect, or misuse on the part of any Customer, the
752 Contractor may charge the Customer a fee, to compensate for the cost thereof. The Contractor
753 shall, within seven (7) days, repair or replace any stolen, damaged or dilapidated Container,
754 provided that the Contractor shall only bear the cost of replacement of such Container the first
755 time it is stolen and thereafter such cost of replacement shall be borne by the Customer.

756 6.4 Vehicle Requirements

757 Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently
758 perform the work required by the Agreement in strict accordance with its terms. Contractor shall select
759 and provide the types and kind of Collection vehicles that a suitable for the District's narrow streets,
760 paths, roadways, hills, and other service conditions. Contractor shall have available sufficient back-up
761 Vehicles for each type of Collection Vehicle used to respond to scheduled and unscheduled
762 maintenance, service requests, complaints, and emergencies. All such Vehicles shall have watertight
763 bodies designed to prevent leakage, spillage, or overflow. All such Vehicles shall comply with all Federal,
764 State, and local laws and regulations including, without limitation, safety and emissions requirements,
765 and such compliance shall come at no additional cost to the District or Customers during the Term of
766 this Agreement.

767 Collection Vehicles shall present a clean appearance while providing service under this Agreement.
768 Contractor shall inspect each Vehicle daily to ensure that all equipment is operating properly. Vehicles
769 that are not operating properly shall be taken out of service until they are repaired and operate
770 properly. Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which
771 repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment
772 in a safe and operable condition. All vehicles shall be radio-equipped to facilitate communications
773 between the route driver and Contractor's management, dispatch, and customer service personnel.

774 ARTICLE 7: GENERAL REQUIREMENTS

775 7.1 Public Access to the Contractor

776 A. **Office Facilities.** The Contractor shall establish and maintain an office within the County through
777 which the Contractor's representatives may be contacted, unless otherwise approved by the
778 District General Manager.

779 B. **Office Hours and Telephone Access.** The Contractor's office hours shall be, at a minimum, from
780 8:00 a.m. to 3:00 p.m. daily except Saturdays, Sundays, and Holidays. These hours may be altered

781 with the approval of the District General Manager. Contractor shall answer calls from Customers
782 and the District during office hours and provide a twenty-four (24) hour phone messaging system
783 for calls received after hours. Contractor shall provide a local telephone or toll-free phone number
784 for Customer service calls and shall publish the telephone number(s) in the local telephone
785 directory.

786 C. **Emergency Telephone Number.** The Contractor shall provide the District with an emergency
787 telephone number for use by the District General Manager outside normal business hours. The
788 Contractor shall have a representative, or an answering service to contact such representative,
789 available at the emergency telephone number during all hours other than normal office hours.

790 7.2 Service Complaints

791 A. **Complaints to Contractor.** The Contractor shall maintain during office hours a complaint service
792 and telephone answering system having an answering capacity satisfactory to the District General
793 Manager. All service complaints and billing complaints will be directed to the Contractor. The
794 Contractor shall record all complaints in a log, including date, complainant name and address, and
795 nature and resolution of complaint. This log shall be available for inspection by the District
796 General Manager during the Contractor's regular office hours. Copies thereof shall be furnished to
797 the District General Manager upon request.

798 B. **Required Response to Complaints.** Contractor shall develop and implement a policy and
799 procedures for responding to and recording Customer complaints, including dispute resolution.
800 The policy and procedure shall be subject to the approval of the District General Manager. The
801 Contractor, within twenty-four (24) hours of its receipt of notice from a Customer or the District
802 General Manager of a failure to provide any service(s) as required by the terms of this Agreement,
803 shall provide such service in a manner consistent with the requirements of this Agreement.

804 7.3 Accounting and Records

805 A. **Maintenance and Audit of Records.** The Contractor shall maintain in its principal office in the
806 County full and complete financial statements and accounting records for operations under this
807 Agreement in accordance with generally accepted accounting principles ("GAAP"). Contractor shall
808 account for revenues received and expenses incurred as a result of this Agreement separate from
809 the accounting for other operations performed by Contractor or its Affiliates. The Gross Receipts
810 derived from the Collection services under this Agreement, whether such services are performed
811 by the Contractor or by a Subcontractor, shall be recorded as revenues in the accounts of the
812 Contractor. Upon demand, the Contractor shall permit the District General Manager or his/her
813 designee to examine and audit the books of account of the Contractor at any and all reasonable
814 times for the purpose of verifying Contractor's performance under this Agreement. Upon request,
815 the Contractor shall allow the District General Manager or his/her designee to examine the
816 reports of Gross Receipts and the invoices pertaining to any fee, charge or District-approved Rate
817 for Franchise Services provided under this Agreement. Such request shall be made at reasonable
818 times and with reasonable notice.

819 In the event that a Special Circumstance Rate adjustment is requested pursuant to Section 9.3,
820 such records shall be subject to review at any reasonable time by an independent third party in
821 accordance with appropriate professional standards, and inspection, for the primary purpose of

822 reviewing changes in costs to the Contractor attributable to the Special Circumstance request.
823 The District General Manager shall, in its sole discretion, select the independent third party and
824 define the scope of work for such review. The independent reviewer shall provide any and all
825 drafts of its review to the District and the Contractor. The Party requesting the Special
826 Circumstance Rate review shall bear the cost of the review.

827 The Contractor shall maintain and preserve all cash, billing, and Collection, Transport, Transfer,
828 Processing, and Disposal records (including number of Customers [total, type, and Service Level],
829 route maps, service records, and other materials and operating statistics) throughout the Term of
830 this Agreement and for a period of not less than three (3) years following expiration or early
831 termination of the Agreement.

832 B. **Confidentiality.** The District agrees to hold financial statements delivered pursuant to this Section
833 and Exhibit D as confidential and shall not disclose the same unless and to the extent disclosure is
834 required pursuant to Applicable Law.

835 **7.4 Reporting**

836 Contractor's quarterly and annual reporting requirements are presented in Exhibit D. In addition,
837 Contractor shall maintain on file at its business premises documentation setting forth its Routing and
838 Collection System, a list of all Collection Premises in the District, organized alphabetically or by address,
839 and the identification of all services each receives. This information shall be updated and provided at no
840 additional cost to the District along with Contractor's annual report (as required in Exhibit D) to the
841 District and any time upon request of the District General Manager. The Contractor shall cooperate with
842 the District to periodically monitor the average volume of Solid Waste, Recyclable Materials, and
843 Organic Materials generated from each Collection Premises. Contractor shall provide route maps and
844 operating statistics upon request. Customer-specific records are subject to inspection, and copying by
845 the District during regular business hours with reasonable advance notice.

846 **7.5 AB 939 and AB 341 Compliance**

847 The Contractor shall provide on a monthly basis all necessary reporting data requested by the District
848 and County relating to the District's compliance requirements pertaining to AB 939 and AB 341 as it
849 affects the County's Integrated Waste Management Plan and the County's SRRE. Such report shall be
850 provided to the District within thirty (30) days after the end of each month. The Contractor shall
851 cooperate in activities requested by the District to measure diversion of Solid Waste from landfills
852 including, but not limited to, providing a location for conducting Solid Waste, Recyclable Materials,
853 and/or Organic Materials sorting at the Contractor's facility, and re-routing Vehicles on a temporary
854 basis to facilitate composition analysis. Such report shall include, but not necessarily be limited to,
855 throughput, recovery rates per material type, residue, costs, Recyclable Materials and Organic Materials
856 commodity values, and final disposition of Solid Waste, Recyclable Materials, and Organic Materials. The
857 Contractor shall also supply any other information reasonably requested by the District General
858 Manager to meet State or federal regulatory requirements as those requirements may be amended
859 from time to time.

860 **7.6 Personnel and Subcontractors**

861 A. **Employment Practices.** The Contractor shall at all times maintain and follow employment
862 practices in accordance with all State and federal laws and regulations, and shall indemnify the
863 District for any Legal Proceeding relating to its noncompliance with such laws or regulations.

864 B. **Non-Discrimination.** In the performance of the terms of this Agreement, the Contractor agrees
865 that it will not engage in nor permit such Subcontractors as it may employ to engage in
866 discrimination against any employee or applicant for employment on the basis of race, sex, sexual
867 orientation, color, religion, ancestry, national origin, marital status, age or as a qualified individual
868 with a disability. This prohibition shall pertain to employment, upgrading, demotion, or transfer;
869 recruitment advertising; layoff or termination; rates of pay and other forms of compensation;
870 selection for training, including apprenticeship, and any other action or inaction pertaining to
871 employment matters.

872 C. **Personnel.** The Contractor shall employ personnel sufficient in number, training, experience, and
873 capability to ensure that the Franchise Services required to be performed under this Agreement
874 are properly carried out.

875 D. **Affiliates and Subcontractors.** Contractor shall not engage any Subcontractors, other than those
876 listed in Exhibit C and limited in their scope of service by Exhibit C, for performance of Franchise
877 Services without the prior written consent of District General Manager which consent shall not be
878 unreasonably withheld or denied.

879 **7.7 District General Manager**

880 The District has designated the District General Manager to be responsible for the monitoring and
881 administration of this Agreement. Contractor shall meet and confer with the District General Manager
882 to resolve differences of interpretation and implement and execute the requirements of this Agreement
883 in an efficient and effective manner that is consistent with the stated objectives of this Agreement.

884 From time to time, the District General Manager may designate other agents at the District to work with
885 Contractor on specific matters. In such cases, those individuals should be considered designates of the
886 District General Manager for those matters to which they have been engaged. Such designates shall be
887 afforded all of the rights and access granted thereto. In the event of a dispute between the District
888 General Manager's designate and Contractor, the District General Manager's determination shall be
889 conclusive.

890 In the event of dispute between the District General Manager and the Contractor regarding the
891 interpretation of, or the performance of services under, this Agreement, the District General Manager's
892 determination shall be conclusive except where each such determination results in a material impact to
893 the Contractor's revenue and/or cost of operations. In the event of a dispute between the District
894 General Manager and the Contractor that results in such material impact to the Contractor, Contractor
895 may appeal the determination of the District General Manager to the District Board, whose
896 determination shall be conclusive. For the purposes of this definition, "material impact" is an amount
897 equal to or greater than two percent (2.0%) of Contractor's annual Gross Receipts under this
898 Agreement.

899 District General Manager or their designate shall have the right to observe and review Contractor
900 operations and Processing Facilities and enter Premises for the purposes of such observation and
901 review, including review of Contractor's records, during reasonable hours with reasonable notice. In no
902 event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days
903 after receiving such a request.

904 **ARTICLE 8: DISTRICT AND COUNTY FEES**

905 **8.1 District and County Fees**

906 A. **District Franchise Fees.** In consideration of the rights provided Contractor herein, Contractor shall
907 pay Franchise fees to the District equal to seven percent (7%) of Gross Receipts. This fee shall be
908 paid on a monthly basis in the amount equal to seven percent (7%) of Gross Receipts for the most-
909 recently completed month.

910 B. **County Franchise Fee.** If a franchise fee is due to the County, the District shall be responsible for
911 paying the County franchise fee.

912 C. **County Household Hazardous Waste Fee.** The Contractor shall pay a Household Hazardous Waste
913 Fee to the County in an amount equal to the County's billing for the actual number of District
914 residents that use the County's Household Hazardous Waste Facility.

915 **8.2 Payment Schedule and Late Fees**

916 Contractor shall remit to District and County all fees as described in this Article on a monthly basis on or
917 before the last day of each month, during the Term of this Agreement and including final remittance due
918 to the District due after the end of the Term of this Agreement such as remittance of Franchise Fees on
919 Gross Receipts for services performed under this Agreement which were received after the end of the
920 Term. Such fees shall be payable to District and sent or delivered to the District General Manager with
921 the exception of County Household Hazardous Waste fees which shall be payable to the County and sent
922 or delivered to the County pursuant to Section 8.1.C.

923 If such remittance is not paid to the District or the County on or before the last day of each month, all
924 fees due shall be subject to a delinquency penalty of three percent (3%), which attaches on the first day
925 of delinquency. The delinquency penalty shall be increased an additional three percent (3%) and applied
926 to both the original amount due as well as any delinquency penalties previously applied for each
927 additional month the payment remains delinquent. For example, if the amount of the original fees
928 owed equals ten thousand dollars (\$10,000) the initial delinquency amount applied on the first day of
929 delinquency will be three hundred dollars (\$300) bringing the total amount to ten thousand three
930 hundred dollars (\$10,300). If that amount becomes past due for an additional month, the additional
931 delinquency penalty shall be applied to the ten thousand three hundred dollars (\$10,300) therefore, the
932 new total amount due would be ten thousand six hundred and nine dollars (\$10,609).

933 Each monthly remittance to the District shall be accompanied by a statement listing the amount of each
934 fee paid to the District and County; calculation of each fee; and, statement of Gross Receipts, by line of
935 business for the period Collected from all operations conducted or permitted by this Agreement. The
936 District General Manager may, at any time during the Term, request a detailed calculation of Gross

937 Receipts which may include, but is not necessarily limited to, the number of Customers charged at each
938 Service Level and Rate for each billing period.

939 **8.3 Audit of Franchise Fees**

940 In accordance with Exhibit D, Contractor shall prepare and provide to the District an annual audit of
941 Gross Receipts and Franchise Fees paid to the District.

942 The District General Manager may, at any time during the Term or within three (3) years following the
943 expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment
944 of fees. Contractor shall fully cooperate with the District General Manager in any such audit. Should the
945 District or its agent perform this review and identify billing errors or other errors in payment of
946 Franchise Fees valued at one (1%) percent or more of Gross Receipts, Contractor shall, in addition to
947 compensating the District for lost fees and applicable delinquency penalties, reimburse the District's
948 cost of the review.

949 **ARTICLE 9: CONTRACTOR'S COMPENSATION** 950 **AND RATE SETTING**

951 **9.1 General**

952 The Contractor's compensation for performance of all its obligations under this Agreement shall be
953 Gross Receipts. Contractor's compensation provided for in this Article shall be the full, entire and
954 complete compensation due to Contractor pursuant to this Agreement for all labor, equipment,
955 materials and supplies, Transfer, Processing and Disposal fees, fees due to the District and County, taxes,
956 insurance, bonds, overhead, operations, profit, and all other things necessary to perform all the services
957 required by this Agreement in the manner and at the times prescribed. Nothing herein shall obligate the
958 District to provide any compensation to Contractor beyond Gross Receipts.

959 If Contractor's actual costs, including fees due to the District and County, are more than Gross Receipts,
960 Contractor shall not be compensated for the difference in actual costs and actual Gross Receipts. If
961 Contractor's actual costs (including profit requirements), including fees due to the District and County,
962 are less than the actual Gross Receipts, Contractor shall retain the difference.

963 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
964 Customers, Rates that are approved by the District General Manager for provision of services to
965 Customers. The Rates established by the District are maximum Rates and Contractor may, in its sole
966 discretion, charge Customers any amount up to and including the approved maximum Rate for a given
967 level of service.

968 Revenues received for the sale of Recyclable Materials including California Redemption Value revenues
969 have been considered in the establishment of Rates for services provided under this Agreement.
970 Contractor has the right to retain revenues from the sale of materials which were reused, Recycled, or
971 Processed. Neither Contractor nor the owner or operator of an Approved Recyclable Materials
972 Processing Facility is entitled to grant funds available through CalRecycle through its "Curbside
973 Supplemental Payments" for registered curbside Recycling programs or "City/County Payment Program"

974 pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction
975 Act.

976 **9.2 Rates and Annual Adjustments**

977 A. **General.** The District General Manager shall be responsible for approving maximum Rates as
978 described in this Article. If at any time during the Term of the Agreement, the Contractor
979 determines the need for a Rate that does not appear on the District-approved Rate schedule,
980 Contractor shall immediately notify the District General Manager and request establishment of
981 such Rate. For example, if a Customer requires Collection of Recyclable Materials in a five (5)
982 cubic yard Bin five (5) times per week and the District-approved Rate schedule does not include
983 this level of service, the Contractor must request that the District General Manager approve a
984 Rate for this level of service.

985 B. **Maximum Rates on Commencement Date.** Maximum Rates effective on the Commencement
986 Date of this Agreement shall be the Rates approved by the District General Manager that
987 became effective in January 2015. These maximum Rates shall be effective from the
988 Commencement Date of this Agreement through December 31, 2015.

989 C. **Annual Rate Adjustment.** Maximum Rates shall be adjusted annually in accordance with Exhibit
990 B.

991 **9.3 Special Circumstances Rate Adjustments**

992 Contractor accepts the risk for changes in cost of providing services and the Service Levels requested by
993 Customers and therefore the Special Circumstance adjustments to Rates shall be limited to: (i) a Change
994 in Applicable Law (as defined in Exhibit A); or (ii) a District-directed change in scope (pursuant to Section
995 4.8). If a Change in Applicable Law or a District-directed change in scope occurs and an adjustment to
996 maximum Rates is desired, the Contractor or District General Manager shall petition the District Board
997 for such an adjustment to the maximum Rates calculated in accordance with Section 9.2.

998 Contractor shall prepare an application for the Special Circumstances Rate adjustment calculating the
999 net financial effect on its operations (both increases and decreases of costs and revenues) resulting from
1000 the Change in Applicable Law or District-directed change in scope (but not resulting from unrelated
1001 changes in costs and revenues), clearly identifying all assumptions related to such calculations and
1002 providing the underlying documentation supporting the assumptions. District General Manager shall
1003 evaluate the application for reasonableness. As part of that review, the District General Manager
1004 and/or its agent shall be granted access to the financial statements and accounting records maintained
1005 by the Contractor in order to determine the reasonableness of the Contractor's application.

1006 In the event of such an application for Special Circumstances Rate adjustment, it is understood that the
1007 Contractor shall have the burden of demonstrating the reasonableness of the requested adjustment.

1008 The Contractor may appeal the decision of the District General Manager to the District Board, which
1009 shall then make the final determination as to whether an adjustment to the maximum Rates will be
1010 made, and if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to any
1011 Special Circumstances Rate adjustment, the District Board shall make the final determination as to
1012 whether an adjustment to the maximum Rates will be made, and if a Rate adjustment is permitted, the
1013 amount of the Rate adjustment.

1014 **9.4 Publication of Rates**

1015 Following Board approval and prior to the date Rate changes shall become effective, Contractor shall
1016 provide written notice to Customers of Rate changes resulting from the annual Rate adjustment process.
1017 Such written notice shall be delivered to all Customers as part of the next quarterly or monthly billing
1018 statement which Contractor sends to Customers.

1019 **ARTICLE 10: INDEMNITY, INSURANCE,**
1020 **AND PERFORMANCE BOND**

1021 **10.1 Indemnification**

1022 A. **General.** Contractor shall indemnify, defend with counsel acceptable to District, and hold
1023 harmless (to the full extent permitted by law) District and its officers, officials, employees,
1024 volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability,
1025 loss, injuries, damage, expense, and costs (including without limitation costs and fees of
1026 litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature
1027 arising out of or in connection with Contractor's performance under this Agreement, or its
1028 failure to comply with any of its obligations contained in the Agreement, except to the extent
1029 such loss or damage was caused by the negligence or willful misconduct of the District.

1030 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the
1031 entire Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport,
1032 use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

1033 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
1034 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly
1035 take all investigatory and/or remedial action reasonably required for the remediation of such
1036 environmental contamination. Prior to undertaking any investigatory or remedial action,
1037 however, Contractor shall first obtain the District's approval of any proposed investigatory or
1038 remedial action. Should Contractor fail at any time to promptly take such action, the District
1039 may undertake such action at Contractor's sole cost and expense, and Contractor shall
1040 reimburse the District for all such expenses within thirty (30) calendar days of being billed for
1041 those expenses, and any amount not paid within that thirty (30) calendar day period shall
1042 thereafter be deemed delinquent and subject to the delinquent fee payment provision of
1043 Section 8.2. These obligations are in addition to any defense and indemnity obligations that
1044 Contractor may have under this Agreement. The provisions of this Section shall survive the
1045 termination or expiration of this Agreement.

1046 Notwithstanding the foregoing, however, Contractor is not required to indemnify the
1047 Indemnitees against claims arising from Contractor's delivery of Collected Materials to a
1048 Processing Facility, Disposal Site, or Transfer Station owned or operated by a third party, unless
1049 such claims are a direct result of Contractor's negligence or willful misconduct. The foregoing
1050 indemnity is intended to operate as an agreement pursuant to Section 107(e) of the
1051 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.
1052 Section 9607(e), California Health and Safety Code Section 25364, and the Resource

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1053 Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless,
1054 and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination
1055 of this Agreement.

1056 C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold the District harmless
1057 against and from any and all claims, suits, losses, penalties, damages, and liability for damages
1058 of every name, kind and description, including attorneys' fees and costs incurred, attributable to
1059 the negligence or willful misconduct of Contractor in handling Excluded Waste.

1060 D. **Related to AB 939 and AB 341.** Contractor's duty to defend and indemnify herein includes all
1061 fines and/or penalties imposed by CalRecycle if the requirements of AB 939 and/or AB 341 are
1062 not met by the Contractor with respect to the waste stream Collected under this Agreement
1063 and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the
1064 failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor
1065 delays in providing information that prevents Contractor, the District, or the County from
1066 submitting reports to regulators in a timely manner.

1067 E. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
1068 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
1069 (Commonly Proposition 218), which impacts the Rates for the Franchise Services established in
1070 accordance with this Agreement, Contractor agrees to meet and confer with the District to
1071 discuss the impact of such Change in Law on either Party's ability to perform under this
1072 Agreement.

1073 If, at any time, a Rate adjustment determined to be appropriate by the District to compensate
1074 Contractor for increases in costs as described in this Agreement cannot be implemented for any
1075 reason, Contractor shall be granted the option to negotiate with the District, in good faith, a
1076 reduction of services equal to the value of the Rate adjustment that cannot be implemented. If
1077 the District and Contractor are unable to reach agreement on such a reduction in services, then
1078 Contractor may terminate this Agreement upon one hundred eighty (180) calendar days prior
1079 written notice to the District, in which case the Contractor and the District shall each be entitled
1080 to payment of amounts due for contract performance through the date of termination.

1081 Should a court of competent jurisdiction determine that the Contractor cannot charge and/or
1082 increase its Rates for charges related to any new or increased Franchise fee(s) and
1083 Governmental Fees and charges, Contractor shall reduce the Rates it charges Customers by a
1084 corresponding amount and shall discontinue payment of any new or increased Franchise fee(s),
1085 Governmental Fees, and/or charges which have been invalidated by the court.

1086 Nothing herein is intended to imply that California Constitution, Articles XIII C or XIII D, apply to
1087 the Rates established for services provided under this Agreement; rather this Section is provided
1088 merely to allocate risk of an adverse judicial interpretation between the Parties.

1089 F. **Provisions Survive Agreement.** This provision (i.e., Section 10.1) will survive the expiration or
1090 earlier termination of this Agreement and shall not be construed as a waiver of any rights by the
1091 District to indemnify from third parties.

1092 **10.2 Insurance**

1093 A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all
1094 times during the Term of this Agreement insurance that meets at a minimum the coverage and
1095 limits of insurance described in this Section 10.2.

1096 B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
1097 maintain, at its expense, the following coverages and requirements. The comprehensive general
1098 liability insurance shall include broad form property damage insurance.

1099 1. Insurance coverage shall be with limits not less than the following:

1100 (a) **Comprehensive General Liability** – \$1,000,000 combined single limit per
1101 occurrence for bodily injury, personal injury, and property damage.

1102 (b) **Automobile Liability** – \$1,000,000 combined single limit per accident for bodily
1103 injury and property damage (include coverage for hired and non-owned Vehicles).

1104 (c) **Workers' Compensation** – Statutory Limits/Employers' Liability.

1105 (d) **Pollution Legal Liability** – \$1,000,000 per claim/occurrence for bodily injury,
1106 property damage, and remediation of contaminated site.

1107 (e) **Excess/Umbrella Coverage** – Not less than \$2,000,000 in addition to the coverage
1108 required by subparagraphs (a), (b), and (d) above.

1109 2. The District, its officers, agents, and employees shall be named as additional insureds on
1110 all but the workers' compensation coverage.

1111 3. Said policies shall remain in force through the life of this Agreement and shall be
1112 payable on a "per occurrence" basis unless the District General Manager specifically
1113 consents in writing to a "claims made" basis. For all "claims made" coverage, in the
1114 event that the Contractor changes insurance carriers Contractor shall purchase "tail"
1115 coverage or otherwise provide for continuous coverage covering the Term of this
1116 Agreement and not less than three (3) years thereafter. Proof of such "tail" or other
1117 continuous coverage shall be required at any time that the Contractor changes to a new
1118 carrier prior to receipt of any payments due.

1119 4. The Contractor shall declare all aggregate limits on the coverage before commencing
1120 performance of this Agreement, and the District General Manager reserves the right to
1121 require higher aggregate limits to ensure that the coverage limits required for this
1122 Agreement as set forth above are available throughout the performance of this
1123 Agreement.

1124 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
1125 the sole responsibility of the Contractor.

1126 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
1127 suspended, voided, canceled, reduced in coverage or in limits except after thirty (30)

1128 calendar days prior written notice (by certified mail, return receipt requested) has been
1129 given to the District General Manager, and in the case of delinquent insurance
1130 premiums after ten (10) Business Days.

1131 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than
1132 A-VII, unless otherwise approved by the District General Manager.

1133 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
1134 volunteers arising out of or in connection with this Agreement.

1135 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
1136 primary, including as respects the District, its officers, agents, employees, and
1137 volunteers. Any insurance maintained by the District shall apply in excess of, and not
1138 contribute with, insurance provided by Contractor's liability insurance policy.

1139 10. The Contractor shall waive all rights of subrogation against the District, its officers,
1140 employees, agents, and volunteers related to the performance of services under this
1141 Agreement.

1142 C. **Endorsements.** Prior to the Agreement Date, Contractor shall furnish the District General
1143 Manager with certificates or original endorsements reflecting coverage required by this
1144 Agreement. The certificates or endorsements are to be signed by a Person authorized by that
1145 insurer to bind coverage on its behalf. All certificates or endorsements are to be received by,
1146 and are subject to the approval of, the District General Manager before work commences.

1147 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish the District General
1148 Manager with certificates or original endorsements reflecting renewals, changes in insurance
1149 companies, and any other documents reflecting the maintenance of the required coverage
1150 throughout the entire Term of this Agreement. The certificates or endorsements are to be
1151 signed by a Person authorized by that insurer to bind coverage on its behalf.

1152 E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
1153 by State law, and prior to the Agreement Date, Contractor shall file the following statement with
1154 the District. Signing of this Agreement by Contractor shall constitute the filing of such
1155 statement.

1156 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
1157 to be insured against liability for workers' compensation or to undertake self-insurance in
1158 accordance with the provisions of that code, and I will comply with such provisions before
1159 commencing any services required by this Agreement.

1160 The Person executing this Certificate on behalf of Contractor affirmatively represents that
1161 she/he has the requisite legal authority to do so on behalf of Contractor, and both the Person
1162 executing this Agreement on behalf of Contractor and Contractor understand that the District is
1163 relying on this representation in entering into this Agreement."

1164 **10.3 Performance Bond**

1165 Within seven (7) calendar days of the District's notification to Contractor that the District has executed
1166 this Agreement, Contractor shall file with the District a surety bond, payable to the District, securing the
1167 Contractor's performance of its obligations under this Agreement and such bond shall be renewed
1168 annually if necessary so that the performance bond is maintained at all times during the Term. The
1169 principal sum of the bond shall be equal to ten thousand dollars (\$10,000.00) and shall be adjusted
1170 every three (3) years, commencing on September 1, 2018, by the change in the CPI over the previous
1171 three year period. The bond shall be executed as surety by a corporation licensed and authorized to
1172 issue surety bonds in the State of California that has a rating of A or better in the most recent edition of
1173 Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the
1174 District. The bond shall be in a form approved by the District. In lieu of the corporate surety bond,
1175 Contractor may provide District a letter of credit, cash bond, or other security acceptable and in a form
1176 satisfactory to the District General Manager.

1177 Any action by District to proceed against the bond shall not limit or affect any other rights or remedies
1178 available to District under the Agreement or in courts of law or equity, notwithstanding the foregoing.

1179 In the event District requires a performance bond in an amount greater than the amount above, the
1180 District may request that Contractor increase the principal sum of the bond and the District shall pay for
1181 or reimburse Contractor for the incremental increase in the cost of the performance bond. Contractor
1182 shall cooperate in the application for the increased bond.

1183 **ARTICLE 11: DEFAULT, REMEDIES AND TERMINATION**

1184 **11.1 Default and Remedies**

1185 A. **Events of Default.** Each of the following shall constitute an Event of Default:

1186 1. Any transaction, without any requirement of notice or cure opportunity, attempted or
1187 completed, not complying with the requirements of Section 11.3 hereof.

1188 2. The failure by the Contractor for any reason to consistently Collect or deliver Solid Waste,
1189 Recyclable Materials, and Organic Materials to Approved Facilities.

1190 3. Any criminal conviction, plea bargain, or settlement, without any requirement of notice or
1191 cure opportunity, of Contractor, its officers, managers, or employees related directly or
1192 indirectly to performance of this Agreement or any other agreement held with the District.

1193 4. Failure or refusal of the Contractor to perform any term, covenant, obligation or condition in
1194 this Agreement, other than a failure or refusal described in items (1), (2), or (3) above,
1195 except that no such failure or refusal shall give the District the right to terminate this
1196 Agreement under this Section unless:

1197 (i) The District has given prior written notice to the Contractor, stating the existence of a
1198 specific failure or refusal to perform exists which will, unless corrected, constitute a
1199 material breach of this Agreement on the part of the Contractor and which will, in the

1200 District's opinion, give the District a right to terminate this Agreement for cause under
1201 this Section unless such default is corrected within fifteen (15) days, and

1202 (ii) The Contractor has neither challenged in an appropriate forum the District's
1203 conclusion that such failure or refusal to perform has occurred or constitutes a
1204 material breach of this Agreement nor corrected or developed an action plan for
1205 correcting such breach or refusal to perform, to be approved by the District General
1206 Manager, within such fifteen (15) day period from receipt of the notice given pursuant
1207 to the clause (i) of this subsection (but if the Contractor shall have submitted to
1208 District an action plan to correct such default within a reasonable period of time, the
1209 same shall not constitute an Event of Default for as long as the Contractor remains in
1210 compliance with the action plan and continues to take such steps to correct such
1211 default in a timely manner).

1212 5. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of
1213 a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor to
1214 the appointment by a court of a receiver or trustee for all or a substantial portion of its
1215 property or business, or the making by the Contractor of any arrangement with or for the
1216 benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary,
1217 regardless of how designated, of all or a substantial portion of the Contractor's property or
1218 business.

1219 6. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition
1220 under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and
1221 until the same is no longer being contested by the Contractor nor until the order of the
1222 adjudication is no longer appealable.

1223 7. The failure of the Contractor to provide or maintain the performance bond required
1224 pursuant to Section 10.3 hereof.

1225 8. Any failure by the Contractor to comply with Applicable Law following the specified notice
1226 and opportunity to cure.

1227 9. Failure of the Contractor to timely implement the operational changes and adjusted
1228 maximum Rates resulting from the Change in Law or District-directed change in scope. The
1229 Contractor shall have thirty (30) days after notice of breach from the District to implement
1230 the operational changes. Should the Contractor thereafter not implement the operational
1231 changes it shall be in default of the Agreement. In addition to being liable for all damages
1232 and penalties to the District resulting from such default, the District may terminate the
1233 Agreement in accordance with Section 11.1.B.

1234 B. **Right to Terminate Upon Default.** Upon a determination by the District General Manager that an
1235 Event of Default has occurred, the District Board shall conduct a hearing upon ten (10) days notice
1236 to the Contractor to determine if termination of the Agreement is in the best interests of the
1237 public health, safety, and general welfare of the citizens of the District. If the fact finder makes
1238 such a determination, the Contractor shall be deemed to have waived any right it may have under
1239 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth
1240 herein.

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1241 C. **District's Remedies Cumulative: Specific Performance.** The District's right to terminate this
1242 Agreement under this Section 11.1 is not exclusive, and the District's termination of the
1243 Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any
1244 and all other legal and equitable rights and remedies which the District may have, including but
1245 not limited to specific performance, and fees and expenses incurred by or on behalf of the District
1246 in enforcing payment or performance of the Contractor's obligations hereunder if such non-
1247 performance results in a judicially determined Event of Default by the Contractor.

1248 D. **Possession of Property upon Termination or Suspension.** In the event of termination or
1249 suspension for default, the District shall have the right to take possession of any and all of
1250 Contractor's equipment and other property used or useful in the Collection, Transportation,
1251 Transfer, Processing, and Disposal of Solid Waste, Recyclable Materials, or Organic Materials and
1252 the billing and collection of fees for these services and to use such property. The District shall
1253 have the right to retain the possession of such property until such time as Contractor remedies
1254 the default or substitute services can be provided by another contractor. If the District retains
1255 possession of Contractor's equipment or other property after the period of time for which
1256 Contractor has already been paid by means of bills issued in advance of providing service for the
1257 service involved, the Contractor shall be entitled to the reasonable rental value of such property
1258 (which shall be offset against any damages due the District for the Contractor's default).
1259 Contractor shall furnish District with immediate access to all of its business records related to its
1260 Customers and billing of accounts for Collection services.

1261 11.2 Liquidated Damages

1262 In addition to any other remedies provided for in this Agreement, the District General Manager may levy
1263 a charge in the amounts listed below for the Contractor's failure to meet the requirements enumerated
1264 below that constitute a breach of the terms and conditions of this Agreement. The District General
1265 Manager's decision to levy such a charge shall not be deemed an election of remedies, but shall be
1266 cumulative with any other remedies provided for in this Agreement. The District General Manager's
1267 decision not to levy any such charge shall not be deemed a waiver of any breach by Contractor under
1268 this Agreement. The Parties agree that the following Liquidated Damages represent a reasonable
1269 estimate of the amount of such damages, considering all of the circumstances existing on the
1270 Agreement Date, including the relationship of the sums to the range of harm to the District that
1271 reasonably could be anticipated and anticipation that proof of actual damages would be costly or
1272 inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements
1273 made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain
1274 an explanation of this Liquidated Damage provision at the time that this Agreement was entered into.

1275 A. **Excessive complaints.** When Contractor or the District General Manager receives complaints from
1276 more than one percent (1%) of its client base within a six (6) month period, Contractor will be
1277 assessed twenty-five dollars (\$25) per complaint per occurrence during that period; and an
1278 additional twenty-five dollars (\$25) each twenty-four (24) hours until the complaint is reasonably
1279 resolved. For purposes of this section, "complaints" shall mean substantive and credible Customer
1280 notifications to the Contractor or the District General Manager of missed pick-ups, property
1281 damage, missed commitments, employee misconduct or poor quality of service (e.g. litter on
1282 property or public right-of-way or misplacement of Containers).

- 1283 B. **Failure to Remit Fees or Submit Reports.** Failure to remit the fees due to the District and/or
1284 County as required by Article 8, or file required reports in an accurate and complete manner by
1285 the fifth working day following the due date of such fees or reports: fifty dollars (\$50) per day for
1286 the first five (5) days, then five hundred dollars (\$500) per day for each day after the first five (5)
1287 days.
- 1288 C. **Failure to Provide District Access.** Failure to provide access to Operating Assets or any other
1289 documents or information within fourteen (14) days of a request by the District General Manager:
1290 one hundred dollars (\$100) per day per occurrence.
- 1291 D. **Failure to Properly Charge Customer.** Failure to charge a Customer at or below the maximum
1292 District-approved Rate, where not refunded on the next invoice: fifty dollars (\$50) per occurrence
1293 per Customer where the number of Customers overcharged is less than twenty-five (25); five
1294 hundred dollars (\$500) per occurrence per Customer where the number of Customers
1295 overcharged is twenty-five (25) or more. In addition, Contractor shall be responsible for refunding
1296 any amount overcharged to each Customer determined to be overcharged. Contractor shall not be
1297 entitled to any refund from the District for Franchise fees or other fees paid on overcharged
1298 amounts.
- 1299 E. **Unauthorized Collection Hours.** For Collection outside permitted hours: one hundred dollars
1300 (\$100) per occurrence.
- 1301 F. **Use of Unauthorized Facilities.** Delivery of Collected Solid Waste, Recyclable Materials, or Organic
1302 Materials to a location that is not an Approved Facility for Transfer, Processing, and/or Disposal of
1303 the material: one hundred dollars (\$100) per Ton.

1304 The District General Manager shall give the Contractor written notice of charges levied pursuant to this
1305 Section. Any such damages shall be paid directly to the District, and may not be included by the
1306 Contractor as an expense in calculating a request for an upward adjustment in the Rate schedule or
1307 offset against any fees.

1308 The decision of the District General Manager shall be final and binding on the Contractor unless the
1309 Contractor files a Notice of Appeal with the Secretary of the District Board within fifteen (15) days of
1310 receipt of the District General Manager's decision. The Notice of Appeal shall be in writing and shall
1311 contain a detailed statement of the basis for the appeal. Upon receipt of the Notice of Appeal, the
1312 District General Manager shall set the matter for a public hearing within thirty (30) days. The District
1313 General Manager shall give the Contractor and any interested Person requesting the same, ten (10) days
1314 written notice of the time and place of the hearing. At the hearing, the District Board shall determine,
1315 based on the record, the appropriate action to be taken. The decision of the District Board shall be final
1316 and conclusive.

1317 **11.3 Uncontrollable Circumstances**

- 1318 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations
1319 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a default of this
1320 Agreement, so long as the Party in good faith has used its best efforts to perform its respective
1321 obligations.

1322 The Party claiming excuse from performance shall, within five (5) days after such Party has notice
1323 of the effect of such cause, give the other Party notice of the facts constituting such cause and
1324 asserting its claim to excuse under this Section. Specifically, such information shall include the
1325 following:

- 1326 1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1327 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated
1328 duration, and the estimated time during which the performance of such Party's obligations
1329 hereunder will be delayed;
- 1330 3. Its estimated impact on the other obligations of such Party under this Agreement; and
- 1331 4. Potential mitigating actions which might be taken by the Contractor or District and any areas
1332 where costs might be reduced and the approximate amount of such cost reductions.

1333 While the delay continues, the Contractor or District shall give daily notice to the other Party
1334 updating the information previously submitted.

1335 In the event that either Party validly exercises its rights under this Section, the Parties hereby
1336 waive any claim against each other for any damages sustained thereby.

1337 B. **District's Right to Terminate.** The partial or complete interruption or discontinuance of the
1338 Contractor's services caused by one (1) or more of the events described in this Section 11.3 shall
1339 not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing,
1340 however, if the Contractor is excused from performing its obligations hereunder because of any
1341 Uncontrollable Circumstance for a period of thirty (30) days or more, the District shall
1342 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving sixty (60)
1343 days notice.

1344 C. **Work Stoppages.** Notwithstanding anything in this Agreement to the contrary, any strikes, work
1345 stoppages, or other labor disputes or disturbances occurring with respect to an activity performed
1346 or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with
1347 the Operating Assets or the Franchise Services and which last beyond seven (7) days shall not
1348 constitute an Event of Default under Section 11.1.A.

1349 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to
1350 Collect, Transport, Transfer, Process, and/or Dispose of any or all the Solid Waste, Recyclable
1351 Materials, and/or Organic Materials which it is obligated under this Agreement to Collect,
1352 Transport, Transfer, Process, and Dispose of for a period of more than seventy-two (72) hours and
1353 the District General Manager, in his or her discretion, should find that such accumulation
1354 endangers or menaces the public health, safety or welfare, then District shall have the right, upon
1355 twenty-four (24) hours notice to Contractor, to find the Contractor in Default and to contract with
1356 any other third parties to Collect, Transport, Transfer, Process, and/or Dispose any and all Solid
1357 Waste, Recyclable Materials, and Organic Materials which Contractor would otherwise be
1358 obligated to Collect, Transport, Transfer, Process, and/or Dispose pursuant to this Agreement.
1359 Contractor agrees that in such event, it will fully cooperate with District and its third-party
1360 contractor to affect such transfer of operations in as smooth and efficient a fashion as is
1361 practicable. All costs, fees, rates or other expenses incurred by District and/or its third-party

1362 contractor that exceed those that would have been incurred by District had no such emergency
1363 arisen shall be the responsibility of the Contractor and shall be paid to District within thirty (30)
1364 days of receipt of written notice to pay.

1365 **11.4 Right to Demand Assurances of Performance**

1366 If the District believes in good faith that the Contractor's ability to perform under the Agreement has
1367 been placed in substantial jeopardy by one (1) of the events enumerated below, the District General
1368 Manager may, at his/her option and in addition to all other remedies the District may have, require that
1369 Contractor provide District General Manager with sufficient proof that none of the events enumerated
1370 below will in fact impair Contractor from performing its obligations under the Agreement:

- 1371 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,
1372 picketing, or other concerted job action;
- 1373 B. Contractor appears, in the reasonable judgment of the District, to be unable to regularly pay its
1374 bills as they become due; or,
- 1375 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, State,
1376 County, regional, or local agency for violation of an environmental law.

1377 If the Contractor fails or refuses to provide to the District adequate information to establish its ability to
1378 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of
1379 Section 11.1.A.

1380 **11.5 Waiver of Defenses**

1381 In order to ensure the non-interruption of a vital public service, except as provided in Section 11.3, the
1382 Contractor acknowledges that it is solely responsible for providing the Franchise Services described
1383 herein, and hereby irrevocably waives the following defenses to the payment and performance of its
1384 obligations under this Agreement: any defense based upon failure of consideration, contract of
1385 adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the
1386 existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or
1387 contingency that may be a basic assumption of the Contractor with regard to any provision of this
1388 Agreement.

1389 **ARTICLE 12: MISCELLANEOUS PROVISIONS**

1390 **12.1 Relationship of the Parties**

1391 Neither Party to this Agreement shall have any responsibility whatsoever with respect to services
1392 provided or contract obligations or liabilities assumed by the other Party hereto, whether accrued,
1393 absolute, contingent or otherwise, or whether due or to become due. The Contractor is an independent
1394 Contractor and Agreement holder and nothing in this Agreement shall be deemed to constitute either
1395 Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship
1396 between the Parties.

1397 **12.2 Notice to Parties**

1398 All notices required or provided for in this Agreement shall be provided to the Parties at the following
1399 addresses, by email and by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or
1400 certified mail, addressed as specified below. Notices delivered personally shall be deemed received
1401 upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party
1402 may change the address to which notice is given by giving notice as provided herein.

1403 To District:

1404 Kensington Police Protection and Community Service District Attn: Greg Harman
1405 General Manager/ Chief of Police
1406 217 Arlington Avenue
1407 Kensington, CA 94707
1408 gregharman@kensingtoncalifornia.org

1409 To Contractor:

1410 Bay View Refuse and Recycling, Inc.
1411 2525 Garden Tract Road
1412 Richmond, CA 94801
1413 bcrsgreg@aol.com
1414

1415 **12.3 Resolution of Disputes**

1416 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
1417 time during the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give
1418 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
1419 meet and confer in good faith to resolve any dispute that may arise. In the event such dispute cannot be
1420 resolved by the Parties themselves within thirty (30) days of such notice, either Party may propose the
1421 appointment of a mediator. If the other Party is in agreement, both Parties may refer the matter in
1422 dispute to such mediator for mediation. If through the mediation process, the Parties are unable, within
1423 thirty (30) days thereafter, to reach a resolution as to the matter in dispute, the matter shall be referred
1424 by either Party to arbitration. Mediation and arbitration shall be conducted by JAMS, San Francisco, and
1425 arbitration shall be conducted according to JAMS Arbitration Rules and Procedures. In the event of
1426 mediation, the Parties shall each pay their own attorney fees and costs. If the dispute proceeds to
1427 arbitration, the arbitrator may award attorney fees and costs to the prevailing Party."

1428 **12.4 Actions of the District in its Governmental Capacity**

1429 Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the District in its
1430 governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action
1431 against the District, not based on this Agreement, arising out of any act or omission of the District in its
1432 governmental or regulatory capacity.

1433 **12.5 Binding Effect**

1434 This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee
1435 acquiring an interest hereunder consistent with the provisions hereof.

1436 **12.6 Amendments**

1437 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except
1438 by written agreement duly executed by both Parties.

1439 **12.7 Further Assurance**

1440 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary
1441 or reasonably requested by the other in order to give full effect to this Agreement.

1442 **12.8 Assignment and Transfer of Agreement**

1443 A. **Consent of the District Required.** This Agreement shall not be transferred, sold, pledged,
1444 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,
1445 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto
1446 or thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or
1447 vest in any Person, except the Contractor, either by action or inaction of the Contractor, or by
1448 operation of law, without the prior written consent of the District, which consent shall not be
1449 unreasonably withheld or delayed .

1450 The Contractor shall provide written notice of any request to assign or transfer this Agreement,
1451 and shall provide the District with any information requested by the District in connection with the
1452 proposed transfer, including but not limited to information regarding the general business
1453 qualifications of the proposed assignee, as well as its ability to perform the Franchise Services and
1454 a statement of its financial resources. The Contractor's notice of request to assign this Agreement
1455 shall contain a statement of the allocation of dollars in the consideration to be paid by the
1456 assignee to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset transfer which
1457 has any connection with said assignment, all as agreed upon by the Contractor and the assignee.
1458 The notice shall also contain a statement showing the method of payment for the consideration
1459 and whether the Contractor proposes to hold some security interest as security for the payment
1460 of the unpaid balance of the consideration.

1461 The District shall respond to any such request within ninety (90) days after receipt of any
1462 information requested by the District pursuant to the preceding sentence. The Contractor
1463 acknowledges that, prior to approving such a transfer, the District must find that such a transfer is
1464 in the best interests of the public health, safety, and general welfare. Any attempt by the
1465 Contractor to effectuate any of the foregoing without such consent of the District shall be null and
1466 void, and any effectuation of any of the foregoing without such consent of the District shall
1467 constitute an Event of Default resulting in the immediate termination of this Agreement as
1468 provided in Section 11.1.A hereof.

1469 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of Section
1470 12.8.A above, the Contractor shall not, without the prior written consent of the District which may

1471 be withheld or delayed in its sole and absolute discretion, consolidate with or merge with another
1472 entity or permit one or more other entities to consolidate with or merge into it.

1473 C. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of
1474 the District for any transaction described in Section 12.8 hereof, the proposed assignee, as a
1475 condition of assignment, shall reimburse the District for all costs and expenses incurred by the
1476 District in reviewing, examining, and analyzing the request, including all direct and indirect
1477 administrative expenses of the District and consultants and attorney's fees and expenses. Along
1478 with its written request for the review of the assignment, Contractor shall remit to District an
1479 assignment review fee in the amount of thirty thousand dollars (\$30,000) which shall be intended
1480 to compensate the District for the costs of its review of the requested assignment. Such fee shall
1481 not be refundable to the Contractor in the event that the District determines, in its sole discretion,
1482 that the proposed assignment is unacceptable. In the event that the District's total costs for the
1483 review of the assignment exceed thirty thousand dollars (\$30,000) the Contractor shall
1484 compensate the District for its actual and reasonable costs within thirty (30) days of receiving the
1485 District's invoice. Such costs shall be supported with evidence of the expense or cost incurred. If
1486 the District's total costs for the review of the assignment are less than thirty thousand dollars
1487 (\$30,000), the District shall remit to the Contractor the difference between its actual costs and
1488 thirty thousand dollars (\$30,000).

1489 D. **Transfer Fee.** On the date the District approves the Contractor's written request for an
1490 assignment, Contractor or the assignee shall pay the District a transfer fee in the amount of one
1491 percent (1%) of the Gross Receipts for the most-recently completed calendar year. The District's
1492 approval of such an assignment shall be conditioned on the receipt of the transfer fee.

1493 12.9 Interpretation

1494 In this Agreement, unless the context otherwise requires:

1495 A. **References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms
1496 refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means
1497 before, the Agreement Date.

1498 B. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the
1499 feminine and neuter genders, and words importing the singular number mean and include the
1500 plural number and vice versa.

1501 C. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,
1502 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal
1503 entities, including Governmental Bodies, as well as individuals.

1504 D. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and
1505 subsections of this Agreement shall be solely for convenience of reference and shall not constitute
1506 a part of this Agreement, nor shall they affect its meaning, construction, or effect.

1507 E. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto
1508 with respect to the transactions contemplated by this Agreement. Furthermore, nothing in this
1509 Agreement is intended to confer on any Person other than the Parties hereto and their respective
1510 successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

1511 F. **Reference to Days.** All references to days herein are to calendar days, including Saturdays,
1512 Sundays, and holidays, except as otherwise specifically provided.

1513 G. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.
1514 Standard terms of measurement, unless State or federal law or regulation specifies the system of
1515 measurement to be used.

1516 H. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such
1517 counterparts shall constitute but one and the same Agreement.

1518 I. **Applicable Law.** This Agreement shall be governed by and construed in accordance with
1519 Applicable Law.

1520 J. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be
1521 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:

1522 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article
1523 which shall, to the greatest extent legally permissible, effect the intent of the Parties
1524 therein.

1525 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared
1526 such invalidity for a judicial construction of the invalidated portion of this Agreement.

1527 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this
1528 Agreement as may be necessary in addition to and in conjunction with items (1) and (2)
1529 above, to effect the intent of the Parties in the invalid provision. The invalidity of such
1530 clause, provision, subsection, section, or article shall not affect any of the remaining
1531 provisions hereof, and this Agreement shall be construed and enforced as if such invalid
1532 portion did not exist.

1533 **12.10 Jurisdiction**

1534 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1535 courts of the Contra Costa County in the State of California, which shall have exclusive jurisdiction over
1536 such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be
1537 performed in Contra Costa County.

1538 **12.11 Entire Agreement**

1539 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties
1540 with respect to the matters covered herein. Each of the Exhibits identified as Exhibits "A" through "E" is
1541 attached hereto and incorporated herein and made a part hereof by this reference.

1542

1543

1544

1545 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below:

1546

1547

1548 Kensington Police Protection
1549 and Community Service District

Bay View Refuse and Recycling Services, Inc.

1550

1551

1552

1553 By: _____
1554 Len Welsh, President, Board of Directors

By: _____
Lewis Fagone, President

1555

1556 Dated: _____, 2014

Dated: _____, 2014

1557

1558

1559 Attest:

1560

1561 By: _____
1562 (District Board of Directors Secretary)

1563

1564

1565 _____
Printed name

1566

1567 Dated: _____, 2014

1568

1569

EXHIBIT A DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this Agreement:

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

"AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

"Affiliate(s)" means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity, or under direct or indirect common management or control with such person, corporation or other entity. As between any two (2) or more persons or entities, when ten percent (10%) of one is owned, managed, or controlled by another, they are hereunder Affiliates of one another.

"Agreement" means this Agreement for Solid Waste, Recyclable Materials, and Organic Materials Franchise Services between the District and the Contractor.

"Agreement Date" means the date the later of the two Parties executed the Agreement.

"Applicable Law" means any law, rule, regulation, requirement, guideline, permit, action, determination, or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise Services; the Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation, or maintenance of any of the Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, governmental protection, accommodation of the disabled, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, the payment of per-Ton charges on Solid Waste, Recyclable Materials, and Organic Materials facilities imposed by a governmental entity other than the District.

"Approved Disposal Facility" means the Keller Canyon Landfill located at 901 Bailey Road, Pittsburg, CA or Potrero Hills Landfill located at 3675 Potrero Hills Road, Suisun City, CA.

"Approved Facilities" means Approved Disposal Facility, Approved Recyclable Materials Processing Facility, Approved Organic Materials Processing Facility, and Approved Transfer Facility.

"Approved Organic Materials Processing Facility" means the composting facility at the West Contra Costa Sanitary Landfill (WCCSL) Organics Processing Facility located at the foot of Parr Boulevard, Richmond, CA.

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"Approved Recyclable Materials Processing Facility" means the West County Resource Recovery Facility at 101 Pittsburg Avenue, Richmond, CA or the Newby Island Recycling Facility (also known as BFI's Recyclery) located at 1601 Dixon Landing Road, San Jose CA.

"Approved Transfer Facility" means the Golden Bear Waste Recycling Center located at the foot of Parr Boulevard, Richmond, CA.

"Back-yard Service" means service provided by Contractor in which Contractor Collects Solid Waste, Recyclable Materials, and/or Organic Materials from the Customer's back-yard or sideyard.

"Bureau of Labor Statistics (BLS)" shall mean the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.

"Bin" means a Container with capacity of approximately one (1) to six (6) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection Vehicle.

"Bulky Waste" means large and small household appliances, furniture, tires, carpets, mattresses, and similar large items which cannot be contained within a standard Container, or which does not fit in or causes harm to Collection Vehicles.

"Business Days" mean days during which the District offices are open to do business with the public.

"CalRecycle" means the Department of Resources Recycling and Recovery, and any Governmental Body which succeeds to its duties and powers under Applicable Law.

"Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 35, 65, 95 gallons (or similar volumes approved by the District).

"CEQA" means the California Environmental Quality Act codified at California Public Resources Code Section 21000 et seq., as amended or superseded, and the regulations promulgated thereunder.

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the Contractor of the Franchise Services (except for payment obligations):

- The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Agreement Date of any Applicable Law; or,
- The order or judgment of any Governmental Body, on or after the Agreement Date. to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the District or of the Contractor, whichever is asserting the occurrence of a Change in Law provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed

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as such a willful or negligent action, error or omission or lack of reasonable diligence.

"Collect" or "Collection" (or any variation thereof) means the act of collecting Solid Waste, Recyclable Materials, and Organic Materials at the place of generation in the District Franchise Area.

"Collection Premises" means the Residential Premises, Commercial Premises, or both for which the Contractor is authorized to provide Collection services.

"Commencement Date" means the date the Franchise Services required by this Agreement commence, which is September 1, 2015.

"Commercial" shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property, which are permitted under applicable zoning regulations and are not the primary use of the property. For the purposes of this Agreement, Commercial also includes Multiple-Unit Dwellings with five (5) or more units.

"Compactor" means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection Vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection Vehicles.

"Construction and Demolition Debris (C&D)" includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste.

"Consumer Price Index (CPI)" shall mean the All Urban Consumers Index (CPI-U) compiled and published by the BLS, using the following parameters:

- Area – San Francisco-Oakland-San Jose, CA
- Item – All Items
- Base Period – Current 1982-84=100
- Not seasonally adjusted
- Periodicity – Bi-Monthly
- Series Identification Number – CUURA422SA0

"Container(s)" mean Bins, Carts, Compactors, and Drop Boxes or other storage units that are intended to be serviced by a Collection vehicle.

"Contractor" means Bay View Refuse and Recycling Service, Inc., a California corporation. Contractor organized and operating under the laws of the State and its officers, directors, employees, agents,

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companies, related-parties, affiliates, subsidiaries, and Subcontractors. As of the Agreement Date, the Lewis Figone Revocable Trust 2014 owns 100% of the company stock.

"County" means the County of Contra Costa, California, a political subdivision of the State, acting through its Board of Supervisors.

"Curb" or "Curbside" (or any variation thereof) means the location of a Collection Container for pick-up, where such Container is placed on the public or private street or alley against the face of the Curb, or where no Curb exists, Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

"Customer" means Person who subscribes for service with Contractor for Collection of Solid Waste, Recyclable Materials, and/or Organic Materials pursuant to this Agreement and applicable ordinances of the County, including the County's mandatory subscription ordinance.

"Customer Type" means the Customer's sector category including, but not limited to, Residential, Commercial and District Facilities.

"Designated Collection Location" refers to the location, at each Collection Premises where Containers of Solid Waste, Recyclable Materials, and Organic Materials are customarily placed for Collection, all in accordance with Section 4.6 herein.

"Dispose" or "Disposal" (or any variation thereof) means the final disposition of Solid Waste at a landfill Disposal site.

"District" refers to the Kensington Police Protection and Community Services District, an authority maintained by the unincorporated community of Kensington, California.

"District Board" refers to the Board of Directors the Kensington Police Protection and Community Services District.

"District General Manager" means the District General Manager or their designated representative who is responsible for the administrative management of this Agreement.

"District Fees" shall mean those fees described in Article 8 of this Agreement excluding fees due to the County.

"Drop Box" means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is serviced by a roll-off Collection Vehicle.

"Electronic Waste (E-Waste)" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular

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telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste and thus require special handling, Processing, or Disposal.

"Emergency Services" means Franchise Services, other than those specified under this grant of Agreement, provided during or as a result of an emergency which threatens the public health or safety, as determined by the District General Manager.

"Event of Default" means only the events described in Section 11.1.A.

"Excluded Waste" means Hazardous Waste, Infectious Waste, U-Waste, E-Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or the District to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

"Food Scraps" means those discarded materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

"Franchise" means the right granted by the District to Contractor to provide Solid Waste, Recyclable Materials, and Organic Materials Collection and Transport services within the Franchise Area in accordance with the terms and conditions of this Agreement.

"Franchise Area" means the geographic area generally known as the unincorporated community of Kensington in the western portion of the County described in Exhibit E to this Agreement. Exhibit E 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.

"Franchise Fee" means the fees paid by Contractor to the District for the privilege to hold the rights granted by this Agreement.

"Franchise Services" means all of the duties and obligations of the Contractor hereunder.

"Generator" means any person that generates, produces, or discards Solid Waste, Recyclable Materials, and Organic Materials.

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"Governmental Body" means any federal, state, county, city, district, or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"Governmental Fee" shall mean any fee or surcharge imposed by a governmental entity other than the District including without limitation the State, County, or Local Enforcement Agency. Governmental Fees are a component of the Tipping Fee.

"Green Waste" means grass, lawn clippings, shrubs, plants, weeds, small branches and other forms of organic materials generated from landscapes or gardens, separated from other Solid Waste. Green Waste is a subset of Organic Materials.

"Gross Receipts" shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials.

"Hazardous Waste" means:

- A. Any waste which by reason of its quality, concentration, composition, or physical, chemical, or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged, or any waste which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time, including, but not limited to:
 - 1. The Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281.
 - 2. The Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766.
 - 3. The California Health & Safety Code Section 25117 (west 1992 & Supp. 1998).
 - 4. The California Public Resources Code Section 40141 (West 1996).
 - 5. Future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage, or disposal of toxic substances or Hazardous Wastes.

- B. Radioactive materials which are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

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"Household Hazardous Waste" means waste materials determined by CalRecycle, the Department of Toxic Substances Control, the State Water Resources Control Board, or the Air Resources Board to be:

- A. Of a nature that they must be listed as hazardous in State statutes and regulations;
- B. Toxic/ignitable/corrosive/reactive; and,
- C. Carcinogenic/mutagenic/teratogenic

which are discarded from Residential Premises as opposed to businesses. Household Hazardous Waste shall not include unacceptable waste.

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions or by any insurance company which has issued a policy with respect to the Operating Assets or the Franchise Services.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Line of Business" means any of the following services provided by the Contractor: Residential Solid Waste, Residential Recyclable Materials, Residential Organic Materials, Commercial Solid Waste, Commercial Recyclable Materials, and Commercial Organic Materials.

"Liquid Waste" means watered or dewatered sewage or sludge.

"Liquidated Damages" means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 11.2.

"Medical Waste" means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs, and waste which includes animal wastes or parts from slaughterhouses or rendering plants.

"Multiple-Unit Dwelling" means any building in the District, other than a Single-Unit Dwelling, lawfully occupied for human shelter.

"Multi-Family" means any Multiple-Unit Dwelling with five or more dwelling units and/or refers to programs serving the Customers living in such properties.

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"Operating Assets" means all real and personal property of all kind, which is owned, leased, managed, or operated by or under contract to the Contractor for providing the Franchise Services, including without limitation the Containers, Vehicles, Transfer stations, maintenance and storage facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

"Organic Materials" means any combination of Food Scraps and Green Waste.

"Owner" means the person holding the legal title or having a right to possession of the real property constituting the Collection Premises to which Solid Waste, Recyclable Materials, or Organic Materials Collection service is provided or required to be provided hereunder.

"Party or Parties" refers to the District and Contractor, individually or together.

"Person(s)" means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

"Premises" means any land or building in the District where Solid Waste, Recyclable Materials, and Organic Materials are generated or accumulated.

"Process" or "Processing" means to prepare, treat, Recycle, or convert through some special method.

"Processing Facility" means a permitted facility in which materials are sorted, separated, or otherwise manipulated for the purposes of Recycling, reuse, or Composting.

"Rate" means the maximum amount, expressed as a dollar unit, approved by the District that the Contractor may bill a Customer for providing Franchise Services under this Agreement. A Rate has been established for each individual Service Level. The Rates approved by District are the maximum Rate that Contractor may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the District.

"Rate Adjustment Factor" shall mean the amount, expressed as a percentage, by which each of the operating, Disposal, Processing, and fee components of each Rate are adjusted. The Rate Adjustment Factor for each component shall be calculated separately.

"Recovered Materials" means the products, excluding Residual Waste, produced by the Processing of Recyclable Materials and Organic Materials.

"Recyclable Materials" means materials, by-products, or components of such materials that are set aside, handled, or packaged for the purpose of being Recycled. Recyclable Materials include glass, paper, cardboard, wood, concrete, plastic, ferrous and non-ferrous metal, aluminum and any other materials that are capable of being Recycled.

"Recycle," "Recycled," or "Recycling" means the Process of collecting, sorting, cleansing, treating, reconstituting, or otherwise Processing materials that are or would otherwise become Solid Waste and

EXHIBIT A DEFINITIONS

returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

"Residential" shall mean of, from, or pertaining to a Single-Unit Dwelling Premises or Multi-Unit Dwelling Premises with four (4) or less units including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments with four (4) or less units.

"Residual Waste" means any material remaining after the Processing, by any means and to any extent of Solid Waste, Recyclable Materials, or Organic Materials.

"Routing and Collection System" means the Routing and Collection System for Solid Waste, Recyclable Materials, and Organic Materials which is in effect as of the Agreement Date.

"Scrap Materials" means any materials which are separated by type of Generator thereof from materials which otherwise are discarded or rejected by the Generator as Solid Waste, Recyclable Materials, and Organic Materials and which are sold or donated by the Generator to a private Recycler, scrap dealer, or salvager and Recycled. Scrap Materials shall not include any materials which (1) are commingled with Solid Waste, Recyclable Materials, or Organic Materials, or (2) are not commingled with Solid Waste, Recyclable Materials, or Organic Materials but which are collected by any person other than the Contractor as part of any transaction or arrangement involving Solid Waste, Recyclable Materials, and Organic Materials irrespective of whether the Generator pays or receives consideration in connection with such transaction or arrangement.

"Service Level" refers to the size of a Customer's Container and the frequency of Collection services which form the basis for provision of and charges for service.

"Single-Stream Recyclable Materials" means Recyclable Materials Contractor Collects from Residential and Commercial Customers including but not limited to: newspaper, cardboard, mixed color paper, white paper, junk mail, magazines, telephone books, paper bags, cereal and food boxes, egg cartons, plastic bottles and containers labeled #1-7, plastic milk containers, plastic bags, detergent containers, clear, brown, and green food and beverage container glass, cans of aluminum, steel, tin, food cans, empty aerosol cans, pie tins or other materials having economic value contained within a load of Recyclable Materials, and may also include any other type of Recyclable Material agreed on by the Parties. Single-Stream Recyclable Materials shall include, at a minimum, Recyclable Materials specified for collection in Contra Costa County Ordinance Section 418-10.604.

"Single-Unit Dwelling" means a dwelling designed for or occupied exclusively for human shelter by one (1) family.

"Solid Waste" means all garbage, refuse, rubbish, and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the Generator thereof at the time of such discard or rejection and which are normally discarded by or collected from Residential Premises, Commercial Premises, which are acceptable at Class III landfills under Applicable Law, and which are

EXHIBIT A DEFINITIONS

originally discarded by the first Generator thereof and have not been previously Processed. Solid Waste does not include Hazardous Waste, Medical Waste, Infectious Waste, Liquid Waste, Scrap Materials, Construction and Demolition Debris, or self-hauled waste. Solid Waste includes only those materials which were originally discarded by the first Generator thereof, prior to any Processing at any Collection Premises within the District.

"Special Circumstance" means a circumstance which, when occurring, permits, but does not require the Contractor or the District to seek an adjustment in the Rates for Service, and which then requires District General Manager to review such application and make a recommendation to the District Board as to whether the Rate should be adjusted up or down, or remain unchanged. The continuing need for any and all previously-approved Special Circumstance Rate adjustments shall be reviewed at the time of each subsequent Rate adjustment.

"Special Service" means a level of Collection service in excess of that offered by the Contractor as its basic level of service, at an additional cost to the Customer and may include, but is not limited to, additional Containers or more frequent Collections. "Special Service" does not mean the reasonable accommodation of an individual with a disability. The charge for any Special Service shall be reviewed by the District General Manager.

"SRRE" means the County's Source Reduction and Recycling Element approved by CalRecycle, as the element may be amended from time to time, all in accordance with AB 939 and regulations related thereto, as they may be amended from time to time.

"State" means the State of California.

"Subcontractor" means every person (other than employees of the Contractor) employed or engaged by the Contractor or any person directly or indirectly in privity with the Contractor (including every Subcontractor of whatever tier) for any portion of the Franchise Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Section 3.1.

"Tipping Fee" shall mean the amount of Tipping Fee charged for each Ton or unit of material delivered to an Approved Facility. The "current approved" Tipping Fees shall be the Tipping Fees in place on January 1 immediately preceding the submission of the Rate Application.

"Ton" or "Tonnage" means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

"Total Contractor's Compensation" shall mean the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Contractor's Compensation does not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by the Contractor.

EXHIBIT A DEFINITIONS

“Transfer” means the act of transferring the materials Collected by Contractor in their route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

“Transport” or “Transportation” (or any variation thereof) means the act of conveyance from one place to another or state of being Transported.

“Uncontrollable Circumstance” means only one (1) or more of the following specified acts, events, or conditions, whether affecting the Operating Assets, an Approved Facility, the District, or the Contractor, to the extent that it materially and adversely affects the ability of the Contractor to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control, and is not also the result of the willful or negligent act, error, or omission or failure to exercise reasonable diligence on the part of the Contractor, provided however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of the Contractor:

- A. An act of God (but not including reasonably anticipated weather conditions for the District), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance.
- B. A Change in Law (as defined herein).
- C. Preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Operating Assets.
- D. The first seven (7) days of a strike, work stoppage, or other labor dispute or disturbance occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Franchise Services, provided the Contractor has implemented a contingency plan satisfactory to the District General Manager.

It is specifically understood that only the acts or conditions specified above shall constitute Uncontrollable Circumstances. Without limiting the generality of the foregoing, the Parties acknowledge that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- 1. General economic conditions, interest or inflation rates, currency fluctuations or changes in the cost or availability of fuel, commodities, supplies, or equipment;
- 2. Changes in the financial condition of the District, the Contractor, or any of its Affiliates, or any Subcontractor affecting their ability to perform their obligations;
- 3. The consequences of errors, neglect, or omission by the Contractor, any of its Affiliates, or any Subcontractor of any tier in the performance of the Franchise Services;

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EXHIBIT A DEFINITIONS

4. The failure of the Contractor to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;
5. Union work rules, requirements, or demands which have the effect of increasing the number of employees employed in connection with the Operating Assets, or otherwise increase the cost to the Contractor of operating and maintaining the Operating Assets or providing the Franchise Services;
6. Any strikes, work stoppages, or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Franchise Services and which last beyond seven (7) days;
7. Any failure of any Subcontractor to furnish labor, materials, service, or equipment for any reason;
8. Vehicle or equipment failure;
9. Any impact of prevailing wage law, customs, or practices on the Contractor's construction or operating costs; or,
10. Any act, event, or circumstance occurring outside of the United States.

"Universal Waste (U-Waste)" means all wastes as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Waste.

"Vehicle" means any truck, rolling stock, or other Vehicle used by the Contractor in connection with Franchise Services.

EXHIBIT B

RATE ADJUSTMENT METHODOLOGY

General

Subject to the terms herein, the Contractor shall be entitled to an annual adjustment of all Rates. Contractor shall submit its calculation of a Rate adjustment to the District General Manager on or before October 1 of each year. Contractor's Rate calculations shall include a proposed new Rate schedule, all supporting calculations, and any other documentation or evidence determined by the District General Manager to be reasonably necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance to the requirements of this Exhibit B.

The District General Manager shall make a good faith effort to approve Rates by November 1 of each year, and such Rates shall be effective on each subsequent January 1. If Rates are not effective by January 1 due to a delay caused solely by the District, District shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of said delay that is solely caused by the District. If Rates are not effective by January 1 as a result of Contractor's delay in submitting the Rate calculations in a complete and accurate form, then prior Rates remain in effect until such adjustment is made.

Index Rate Adjustment

The index Rate adjustment methodology involves adjusting then-current Rates by the CPI to determine the Rates for the coming calendar year. The intent of performing the index-based adjustment is to allow Contractor's Compensation to be adjusted annually throughout the Term of this Agreement using a simple mathematical formula based on a readily available price index, rather than conducting the rate adjustments through review of actual changes in Contractor's costs for providing service.

If the CPI is discontinued or revised during the Term by the BLS, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if said index had not been discontinued or revised.

Calculation Method

Contractor shall calculate the adjustment to its Rates using the following methodology:

Step 1: Determine the Annual Percentage Change in the CPI. The Annual Percentage Change means the percentage change in the CPI for August over the prior year as reported by the U.S. Bureau of Labor Statistics. As of the Effective Date, the percentage change in CPI shall be obtained from U.S. Bureau of Labor Statistics "Table 16. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, by expenditure category and commodity and service-group" for San Francisco-Oakland-San Jose, CA. An example of this table is provided herein. The Annual Percentage Change shall be rounded to the nearest tenth percent (0.1%).

EXHIBIT B RATE ADJUSTMENT METHODOLOGY

Table 16. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, by expenditure category and commodity and service group-Continued

(1982-84=100, unless otherwise noted)

Item and group	Monthly cities and pricing schedule 2 ¹					
	San Francisco-Oakland-San Jose, CA			Seattle-Tacoma-Bremerton, WA		
	Index	Percent change from—		Index	Percent change from—	
		Aug. 2014	Aug. 2013		June 2014	Aug. 2013
Expenditure category						
All items	253.354	3.0	0.0	247.185	1.8	-0.2
All items (1987=100) ²	778.880	-	-	753.515	-	-
Food and beverages	255.088	4.1	1.0	251.651	2.7	4
Food	254.888	3.9	.7	254.356	2.7	4
Food at home	248.412	5.4	.8	243.270	3.5	4
Food away from home	262.111	2.2	.8	271.967	1.7	3
Alcoholic beverages	262.361	5.7	4.0	219.352	2.5	1.2
Housing	279.785	4.2	1.0	262.361	3.7	3
Shelter	315.196	4.8	1.2	293.361	4.4	5
Rent of primary residence ³	352.421	5.3	1.2	294.888	5.0	9
Owners' equivalent rent of residences ^{3,4}	339.576	4.7	.8	305.895	4.8	6
Owners' equivalent rent of primary residence ^{3,4}	339.576	4.7	.8	305.895	4.6	6
Fuels and utilities	331.836	2.7	-8	245.025	1.3	-1
Household energy	302.311	.3	-3.4	224.312	-1.1	-1
Energy services ⁵	302.077	.3	-3.3	264.627	.3	0
Electricity ⁵	315.630	-2.3	-4.6	278.135	.3	0
Utility (piped) gas service ⁵	261.626	11.6	1.0	181.528	-1.1	0
Household furnishings and operations	132.845	.3	.3	170.341	.3	-4
Apparel	118.890	.8	1.8	132.457	.8	6
Transportation	198.602	.4	-3.6	232.224	-3	-2.7
Private transportation	187.215	.1	-3.1	244.922	.4	-6
Motor fuel	237.480	2.0	-4.8	415.481	1.3	-2.4
Gasoline (all types)	256.273	2.0	-4.9	423.361	1.2	-2.4
Gasoline, unleaded regular ^{5,6}	297.343	2.0	-4.9	468.790	1.0	-2.4
Gasoline, unleaded midgrade ^{5,6}	273.356	2.0	-4.7	325.075	1.0	-2.4
Gasoline, unleaded premium ⁵	274.718	1.9	-4.7	370.684	1.1	-2.2
Medical care	NA	-	-	NA	-	-
Recreation ⁷	109.846	-5	-7	95.360	-1.0	5
Education and communication ⁷	141.670	-1.1	-2	138.462	1.5	4
Other goods and services	427.337	2.5	-1	396.334	-1.8	1.8
Commodity and service group						
All items	253.354	3.0	.0	247.185	1.8	-2
Commodities	184.736	1.3	-6	196.227	.4	-3
Commodities less food and beverages	145.071	-7	-1.8	167.938	-1.1	-7
Nondurables less food and beverages	189.595	.6	-1.5	206.163	-3	-1.1
Durables	102.810	-2.5	-1.9	129.046	-2.1	-1
Services	310.950	3.8	.3	295.122	2.8	-1
Special aggregate indexes						
All items less medical care	245.266	2.7	.0	241.196	2.0	-1
All items less shelter	229.368	1.8	-7	230.237	.6	-5
Commodities less food	150.288	-4	-1.4	170.191	-9	-6
Nondurables	224.062	2.5	-2	228.273	1.1	-3
Nondurables less food	195.409	1.0	-1.1	207.589	.0	-9
Services less rent of shelter ⁴	321.638	2.5	-8	304.823	.9	-8
Services less medical care services	301.818	3.6	.4	286.160	3.1	-2
Energy	302.711	1.3	-4.3	327.589	1.0	-1.6
All items less energy	253.827	3.1	.3	244.849	1.9	-1
All items less food and energy	254.448	2.9	.2	243.471	1.7	-1

1 Areas on pricing schedule 1 (see Table 1.0) all appear each month.
 2 Index on a November 1987=100 base in March.
 3 This index series was calculated using a Laspeyres estimator. All other item series index series were calculated using a geometric mean estimator.
 4 Index on a December 1982=100 base.
 5 Special index based on a substantially smaller sample.

6 Index on a December 1982=100 base.
 7 Index on a December 1987=100 base.
 NA Data not adequate for publication.
 - Data not available.
 NOTE: Index applies to a month as a whole, not to any specific day.

EXHIBIT B RATE ADJUSTMENT METHODOLOGY

Step 2: Specify the Rate Adjustment Factor, which shall equal:

1. The Annual Percentage Change in CPI (determined in Step 1) if the Annual Percentage Change is equal to or greater than 3.0% and equal to or less than 5.0%; or
2. 3.0% if the Annual Percentage Change in CPI is less than 3.0%; or,
3. 5.0% if the Annual Percentage Change in CPI is greater than 5.0%.

Step 3: Calculate the adjusted value for each Rate charged under this Agreement, rounded to the nearest cent, as follows:

Adjusted Rate = Then-current Rate x (1 + Rate Adjustment Factor) with the exception that the 20-gallon Rate shall equal the adjusted monthly 32-gallon Rate less \$4.00

For example, assuming:

1. Then-current Rate for a 32-gallon can = \$40.00
2. Rate Adjustment Factor = Annual Percentage Change in CPI = 3.54%
3. Adjusted Rate for a 32-gallon can = $\$40.00 \times (1 + 0.0354) = \41.42

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EXHIBIT C

APPROVED SUBCONTRACTORS

As of the Commencement Date of this Agreement, approved Subcontractors shall include the following companies for provision of services specified herein:

- (i) Republic Services, Inc. (or its affiliated entities) for provision of Transfer, Processing and Disposal services at the following Approved Facilities:
 - a. Transfer services at the Golden Bear Waste Recycling Center located at the foot of Parr Boulevard, Richmond, CA (an Approved Transfer Facility);
 - b. Processing of Organic Materials at the composting facility at the West Contra Costa Sanitary Landfill (WCCSL) Organics Processing Facility located at the foot of Parr Boulevard, Richmond, CA (an Approved Organics Materials Processing Facility);
 - c. Processing of Recyclables Materials at the West County Resource Recovery Facility located at 101 Pittsburg Avenue, Richmond, CA or the Newby Island Recycling Facility (also known as BFI's Recyclery) located at 1601 Dixon Landing Road, San Jose, CA (Approved Recyclable Materials Processing Facilities); and,
 - d. Disposal of Solid Waste at Keller Canyon Landfill located at 901 Bailey Road, Pittsburg, CA (an Approved Disposal Facility).

- (ii) Waste Connections, Inc. (or its affiliated entities) for provision of Disposal services at Potrero Hills Landfill located at 3675 Potrero Hills Road, Suisun City, CA (an Approved Disposal Facility).

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EXHIBIT D

REPORTING REQUIREMENTS

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations.
2. Evaluate past and expected progress towards achieving the Contractor's Diversion goals and objectives.
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under AB 939 and AB 341.
4. Determine needs for adjustment to programs.
5. Evaluate Customer service and complaints.

CERCLA Reporting

District views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, District regards its ability to prove where Collected Solid Waste is taken for Transfer or Disposal. Contractor shall maintain records which can establish where Solid Waste Collected was Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to the District (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

Quarterly Report Content

Quarterly reports shall be presented by Contractor to show the following information for each month in the reported quarter and include a quarterly average. In addition, each quarterly report shall show the past four (4) quarters average for data comparison (the first three (3) quarters of the Agreement shall only include the available quarterly information). Contractor shall submit quarterly reports on the fifteen day (15th) following the end of the calendar quarter (e.g., April 15 for the prior quarter).

1. Tonnage Report

- A. Tonnage delivered to each Approved Facility by Customer Type, subtotalling and clearly identifying those Tons that are Disposed and those that are Diverted.
- B. Recyclable Materials Tonnage Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.
- C. Organic Materials Tonnage Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.

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EXHIBIT D REPORTING REQUIREMENTS

2. Customer Report

- A. Number of Customers by Customer Type.
- B. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Container service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop Box and Compactor service by Customer Type. Report should calculate the average volume of service received per Single-Family Customer and Commercial Customer.
- C. Participation level (i.e., the number of Residential Customers participating in the Recycling and Organic Materials program) based on one sample week during each calendar quarter.

3. Customer Service Report

- A. Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for Recycling information, Rate information, etc.). For complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.).
- B. Number of new service requests for each Customer Type and program.
- C. Number of events of Discarded Materials being tagged for non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable materials, improper setout, Hazardous Waste, etc.).

4. Education and Outreach Report. Identify what, if any, public education and outreach Contractor performed.

5. Revenue Report

- A. Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 8.2.
- B. Maintain a list of Customers that are forty five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; method(s) the Contractor has used to attempt collection of the bad debt including date of such attempt(s); and, identification, if, and when the Contractor plans to or did stop service to a delinquent account.

Annual Report Content

The annual report shall be the fourth quarterly report plus the following additional information.

1. Summary Assessment

Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in

EXHIBIT D REPORTING REQUIREMENTS

meeting all the goals and objectives of this Agreement, particularly the Contractor's diversion goals. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

2. Vehicle Inventory

Provide a listing of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.

3. Recyclables and Organics Markets

Contractor shall include a listing of markets for Recovered Materials and the end use of these materials. This type of information is intended to help the District gauge the sustainability of Recycling markets and the ultimate Disposal of all types of materials Collected.

4. Operational Statistics and Information

A. Number of routes per day by Customer Type and number of operating hours per route

B. Crew size per route

B. Personnel:

i. Organizational chart.

ii. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).

iii. Number of hours per job classification per year

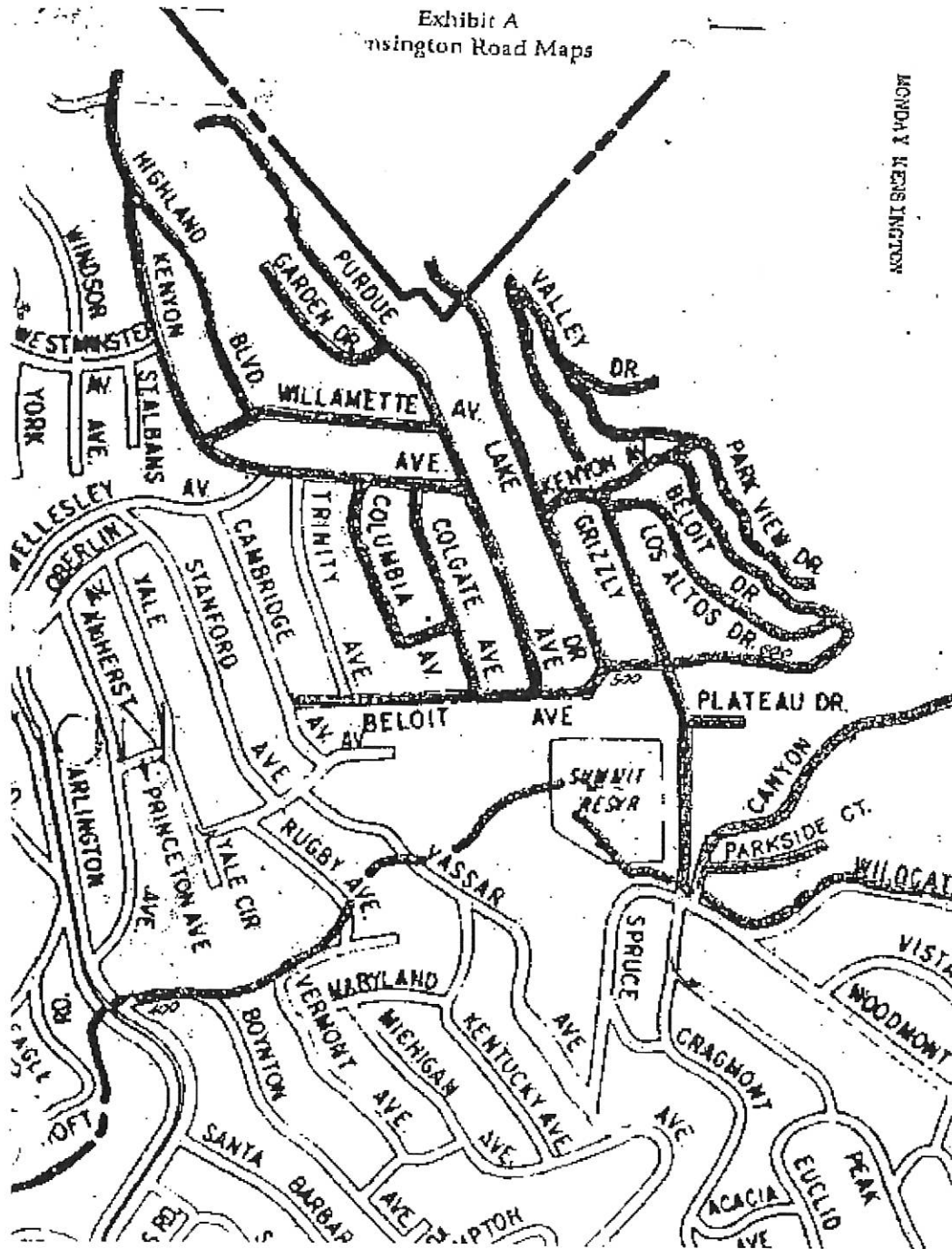
5. Financial Statement. An annual CPA-reviewed financial statement prepared by an independent certified public accountant (CPA), who is not an employee of the Contractor or of an Affiliate, in accordance with GAAP for the most-recently completed calendar period. Such report shall be provided by March 30 of each year commencing March 30, 2016.

6. Audit of Gross Receipts and Franchise Fees. An annual CPA-audited financial statement of Gross Receipts and Franchise Fees paid to the District prepared by an independent CPA, who is not an employee of the Contractor or of an Affiliate, for the most-recently completed calendar period. The purpose of such report shall be to establish that services are being billed and Franchise Fees are being paid in accordance with the Agreement. Such report shall be provided by March 30 of each year commencing March 30, 2016.

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EXHIBIT E
MAP OF DISTRICT FRANCHISE AREA



**EXHIBIT E (CONT.)
MAP OF DISTRICT FRANCHISE AREA**

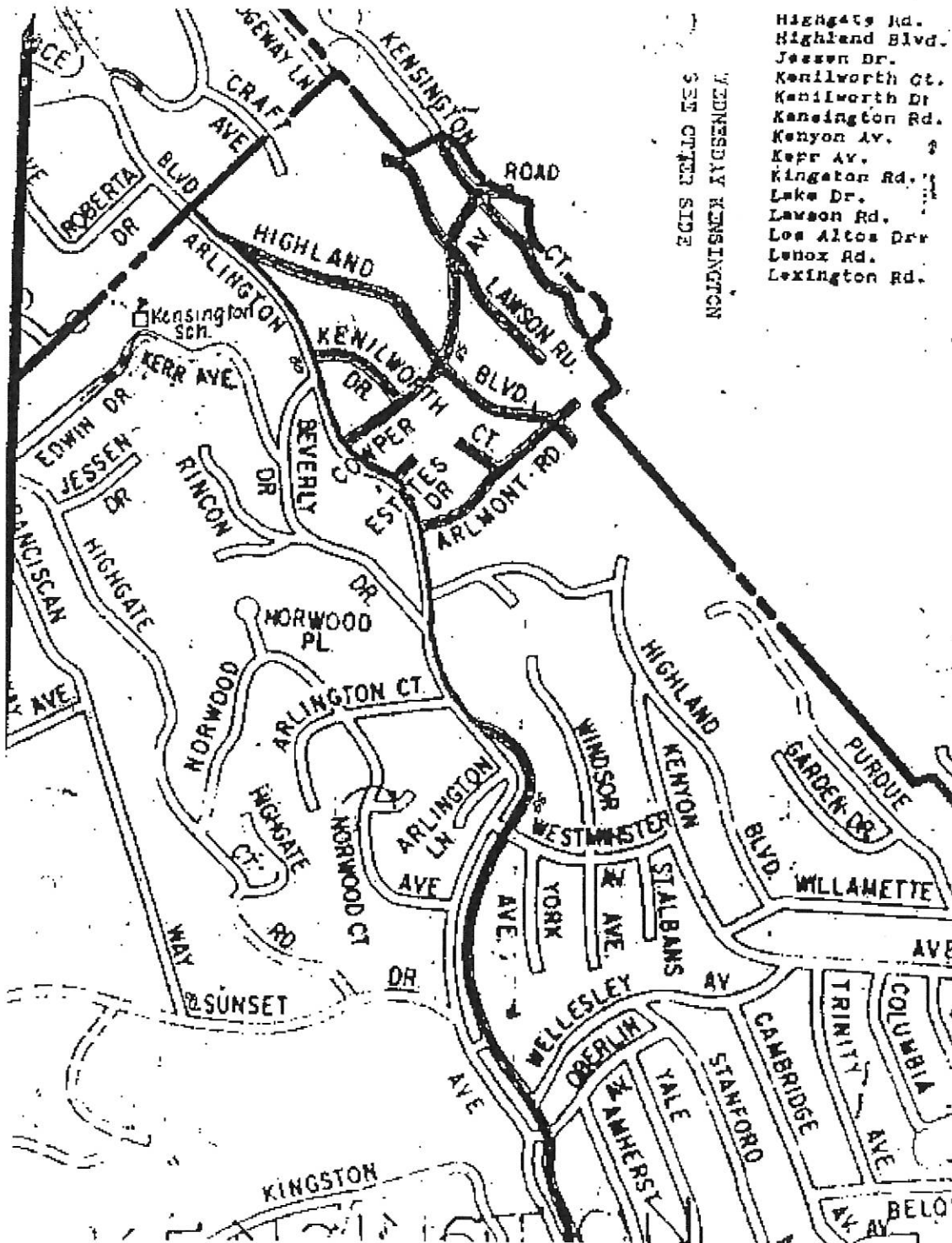
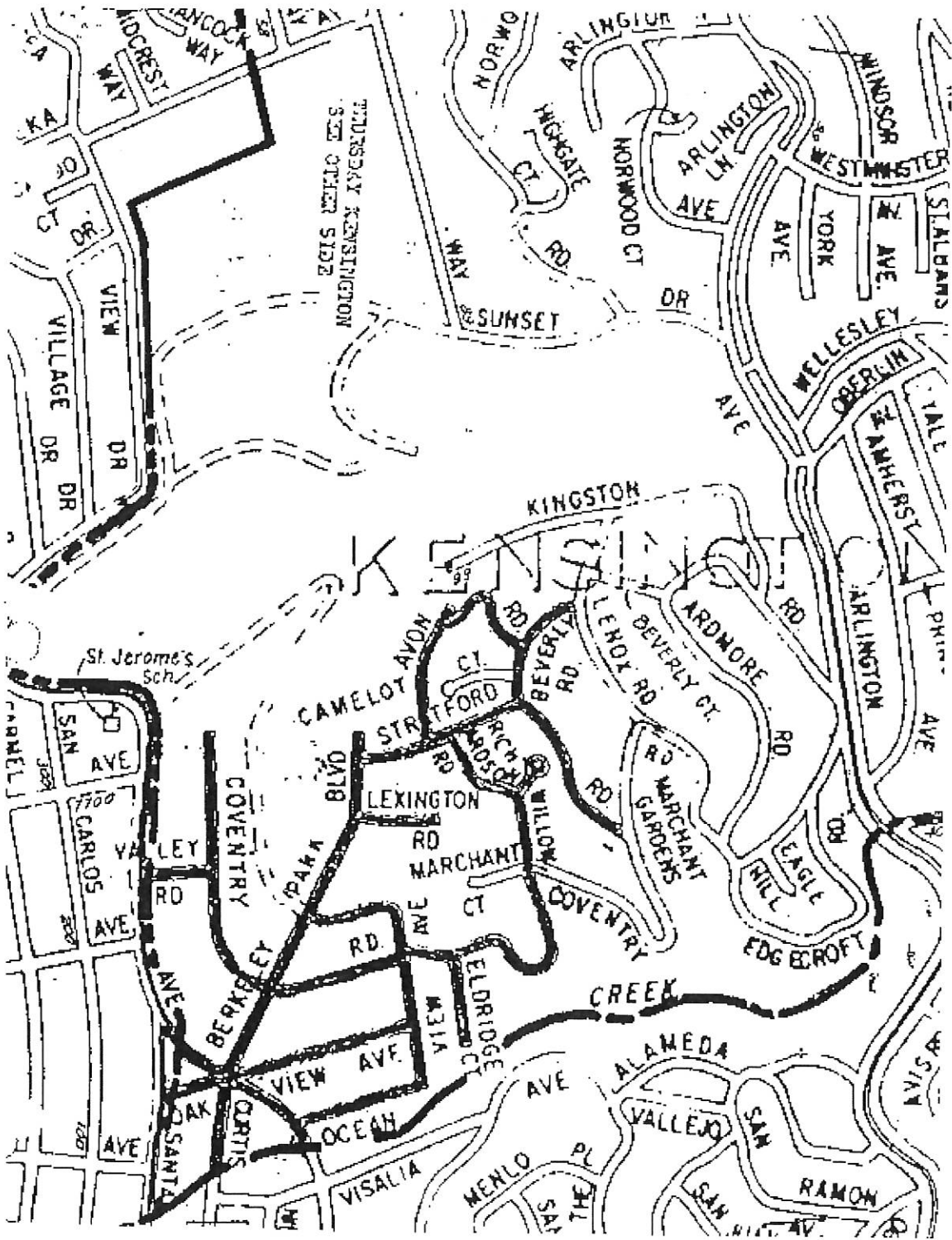
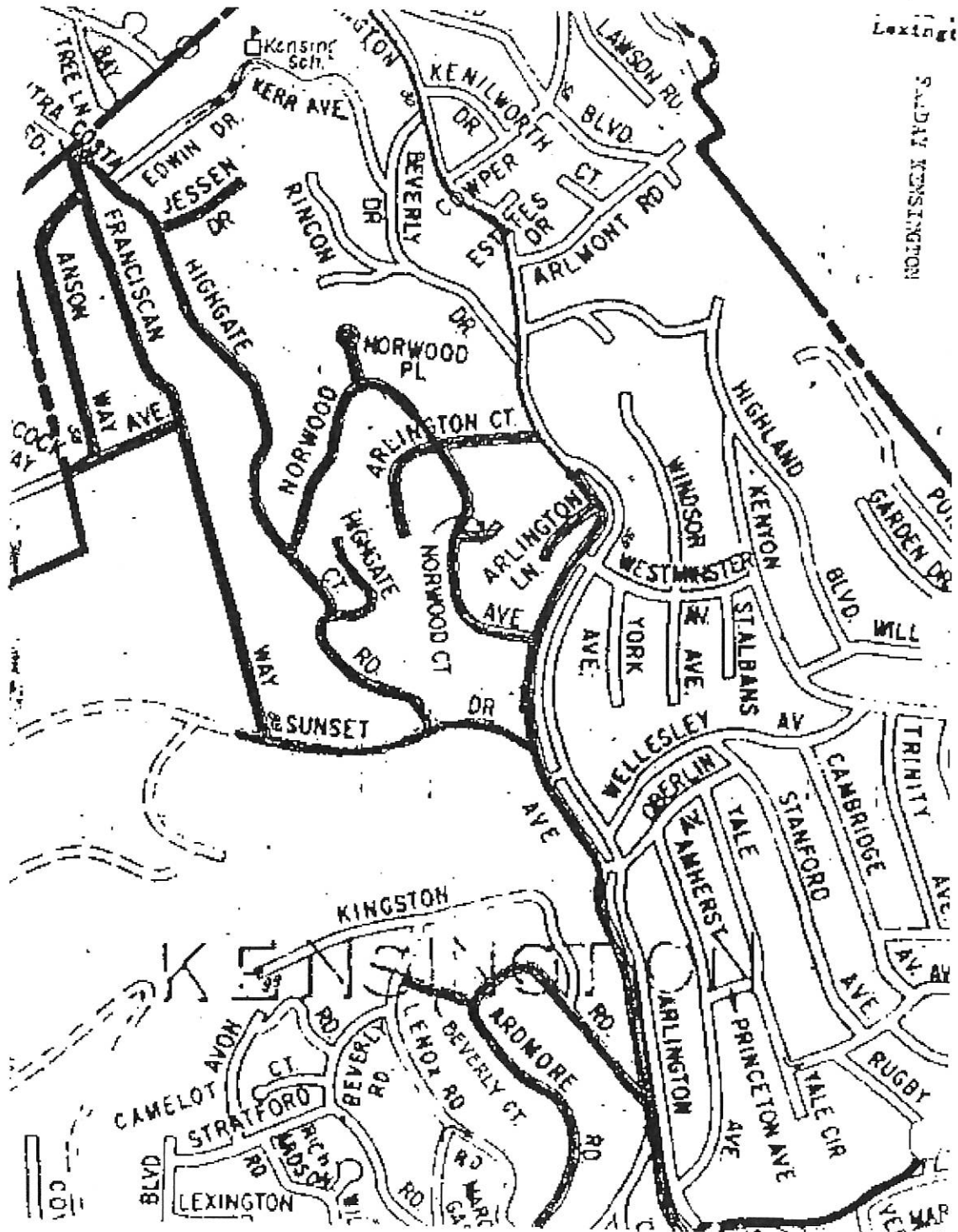


EXHIBIT E (CONT.)
MAP OF DISTRICT FRANCHISE AREA



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EXHIBIT E (CONT.)
MAP OF DISTRICT FRANCHISE AREA



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New Business Item #2

**Directors Chuck Toombs & Pat Gillette will present the draft of the proposed contract between the District and the Kensington Police Officer's Association.
Possible Board Action.**

MEMORANDUM OF UNDERSTANDING

Between

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

And

KENSINGTON POLICE OFFICERS' ASSOCIATION

Effective Date until June 30, 2018

This Memorandum of Understanding is made and entered into on _____, 2014, between the Kensington Police Protection and Community Services District, Contra Costa County, Kensington, California, hereinafter referred to as "The District", and the Kensington Police Officers' Association, hereinafter referred to as "The Association". It is the intent and purpose of this Memorandum to assure sound and mutually beneficial working and economic relations between the parties hereto. This Memorandum of Understanding will become effective immediately upon its ratification by the Association and the District (the "Effective Date").

ARTICLE I RECOGNITION

The District agrees to recognize the Association as the majority representative of all police personnel excluding the Chief of Police, and agrees to meet and confer with the Association in all matters relating to wages, hours and other terms and conditions of employment.

ARTICLE II RIGHTS

A. District Rights Include:

Except as otherwise provided in this Agreement, the rights of the District include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work, lack of sufficient financial resources, or for other business related reasons as determined in the sole discretion of the District; maintain the efficiency of government operation; determine the methods, means and personnel by which government operations are to be concluded; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work, including contracting of specified services. Nothing contained within this article is intended to, in any way, supersede or infringe upon the rights of the recognized employee

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organization as provided under state and federal law, including, but not limited to, California State Government Code Sections 3500 through 3510, inclusive.

B. Association Rights Include:

1. The Association's right to represent their members before the Board of Directors or advisory boards with regard to wages, hours and working conditions or other matters within the scope of representation.
2. The right to be given reasonable written notice of any proposed ordinance, rule, resolution, regulation or amendment thereto relating to matters within the scope of representation.
3. Employees represented by the Association shall be free to participate in Association activities without interference, intimidation or discrimination, in accordance with State Law and the Department's Rules & Regulations.

ARTICLE III SCOPE OF AGREEMENT

A. Conditions

The terms of this Memorandum of Understanding are final. Except as otherwise provided herein, no changes or modifications shall be offered, or otherwise presented by the Association or the District for the duration of this agreement, provided, however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent.

B. Procedure for Meet and Confer:

The District, through its representatives, and representatives of the Association shall meet and confer in good faith regarding matters within the scope of this agreement.

ARTICLE IV HEALTH PLAN BENEFITS/PENSION

A. Health Plan Benefits

Eligible Employees

The District shall provide a health plan through the Public Employees' Retirement System Health Benefit Program. The District will pay the health care premiums at the rate for the Kaiser Bay Area HMO plan for the eligible employee and his or her eligible dependents. If the employee chooses a plan other than the Kaiser Bay Area HMO, the employee shall be solely responsible for all costs over the rate for the Kaiser Bay Area HMO plan. The District shall also provide and pay the premiums for a vision plan through VSP, and a dental plan through Delta Dental,

maintaining the same benefit package as is currently agreed upon per previous contracts. The District will pay the premiums for the eligible employee and his or her eligible dependents.

Eligible Retirees:

The District will pay the health care premiums at the rate for the Kaiser Bay Area HMO plan for former employees who have retired and are eligible for retiree health benefits, and their eligible dependents. Employees and dependents become eligible for this coverage at retirement or disability retirement from the District and with appropriate service under PERS. If the retiree chooses a plan other than the Kaiser Bay Area HMO, the retiree shall be solely responsible for all costs over the rate for the Kaiser Bay Area HMO plan. To the extent required by the Public Employees' Medical and Hospital Care Act (PEMHCA), retirees may be required to apply for, enroll in, and pay the cost of Medicare. An eligible retiree who qualifies for and is eligible for Medicare, to the extent required by PEMHCA, will be enrolled in a CalPERS Medicare supplement plan, and the District will pay the Kaiser Bay Area HMO Medicare supplement rate in effect at the time (e.g., the Kaiser Permanente Senior Advantage rate) instead of the regular Kaiser Bay Area HMO rate.

Employees (including their dependents) hired after the date of ratification of this agreement, or the date Section 22893 of the California Government Code becomes applicable to the District in accordance with CalPERS procedures, whichever is later, shall be eligible for retiree medical benefits under the 100/90 formula as set forth in California Government Code Section 22893.

B. Pension/ Retirement Plan

Classic Member (Definition): "Classic Member" means an employee who first became a member of CalPERS, or another public retirement system that has reciprocity with CalPERS, before January 1, 2013, and who did not have a break in service of more than six months before returning to membership in CalPERS with a new employer.

No Change to Classic Members: Three Percent (3%) at Age 50 CalPERS PLAN.

To Include: One Year Final Compensation 01/06/93
 1959 Survivor Benefit 09/01/79
 Inc. 59 Survivor Benefit 07/04/80

Pension Cost Sharing under AB 340 (PEPRA), as amended: Per this Memorandum of Understanding;

Beginning with the first full pay period after ratification of this agreement by the Association and the District, the employee rate of contribution for Classic

Members will be 9%. The District will pay 66⅔% of each Classic Member's employee contributions as Employer-Paid Member Contributions ("EPMC").

Beginning with the first full pay period after July 1, 2015, the employee rate of contribution for Classic Members will be 9%. The District will pay 33⅓% of each Classic Member's employee contributions as EPMC.

Beginning with the first full pay period after July 1, 2016, the employee rate of contribution for Classic Members will be 9%, The District will not pay any portion of Classic Members' employee contributions as EPMC.

Beginning with the first full pay period after July 1, 2017, Classic Members must contribute 50% of the normal cost of pension benefits, as defined by CalPERS, or 12% of reportable compensation, whichever is less. The District will not pay any portion of the Classic Members' employee contributions as EPMC.

The District shall adopt and file with CalPERS a resolution providing that employee pension contributions will be picked up by the District under section 414(h)(2) of the Internal Revenue Code.

New Member: "New Member" means an employee who first becomes a member of CalPERS on or after January 1, 2013, and who was not a member of another public retirement system that has reciprocity with CalPERS before that date, or, if he or she was a member of CalPERS, or another public retirement system that has reciprocity with CalPERS, before that date, returned to CalPERS membership with a new employer after a break in service of more than a six months.

Pension Plan: CalPERS Option Plan Two; 2.7% at Age 57.

Final compensation for New Members shall be the average of the pensionable compensation earned during the 36-consecutive month period of employment that produces the highest average.

Pension Cost Sharing under AB 340: New Members must contribute 50% of the normal cost of pension benefits, as defined by CalPERS, with no cap in place as for Classic Members. AB 340 (PEPRA), as amended, prohibits the employer from paying this contribution on the employee's behalf (Govt. Code Sect. 7522.30(c)).

The District shall adopt and file with CalPERS a resolution providing that employee pension contributions will be picked up by the District under section 414(h)(2) of the Internal Revenue Code.

C. Life Insurance

The District shall reimburse each officer each year of this agreement in an amount up to but not to exceed Two Hundred Dollars (\$200.00) upon proof of purchase of a minimum \$100,000 term life insurance for the officer.

D. Disability Insurance

The District agrees to provide disability benefits through California Law Enforcement Association (CLEA) "Plan A" or Police Officers Research Association of California (PORAC) "Premier Plus" plan. The District shall increase each members' base pay by the cost of the of the plan premium. The employee shall pay the premium for the plan through payroll deduction.

E. Deferred Compensation

The District has established a Deferred Compensation Plan to be made available to all eligible district employees pursuant to Federal legislation permitting such plans. Employees can invest portions of their current income to meet their future financial requirements and supplement their District retirement, at no cost to the District.

F. Contra Costa County Employees' Federal Credit Union

Optional participation by payroll deduction at no cost to the District.

ARTICLE V SICK LEAVE

A. Accrual

All employees shall accrue sick leave at the rate of ten (10) hours for each calendar month that the employee has worked. Employees may accumulate an unlimited amount of sick leave. A medical professional's note is required for any period of sick leave that exceeds three (3) consecutive days.

B. Termination of Sick Leave

If an employee has accumulated and unused sick leave at the time of termination, resignation, or retirement, he or she shall not be eligible for a cash payout for that sick leave time. However, retirement credit for any such accumulated and unused sick leave may be allowed per CalPERS agreement in effect at the time of the employee's retirement or resignation.

C. Family Sick Leave

Employees may utilize up to 60 hours of accrued sick leave per year for illness or injury to members of their immediate family as defined by California Labor Code 233. Additional family sick leave may be granted at the discretion of the Chief of Police.

ARTICLE VI VACATION AND LEAVES OF ABSENCE

A. Eligibility

All personnel shall be eligible to take paid vacation leave at the end of twelve (12) months of continuous service. An employee may request to be allowed to take 52 hours of vacation upon completion of continuous service for six (6) months. Such a request must be made in writing and submitted to the Chief of Police, and may be granted at the Chief's discretion.

B. Vacation Accrual

Accrued vacation time shall be posted monthly. Employees shall receive a total of 104 hours (13 days) of accrued vacation time upon completion of the first year. Except as modified by Paragraph C, accrued vacation time shall be determined according to the Vacation Accrual Schedule below.

<u>Year(s) of Service</u>	<u>Total Yearly Hourly Accrual</u>	<u>Accrued Hours Per Month</u>
1	104	8.67
2	112	9.33
3	120	10.00
4	128	10.67
5	136	11.33
6	144	12.00
7	152	12.67
8	160	13.33
9	160	13.33
10	168	14.00
11	168	14.00
12	176	14.67
13	176	14.67
14	184	15.33
15	184	15.33
16	192	16.00
17	192	16.00
18	200	16.67
19	200	16.67
20	208	17.33

C. Use of Vacation:

1. Workweek Vacation Sign Up - Employees are to sign up for their yearly-allotted vacation time by January 31 in the order of their seniority. (Signup sheet to be posted on or around December 15.) Not to include single day vacation requests, employees must sign up for a minimum of one (1) workweek per vacation selection. Employees shall have the option

to pass on one or both selections. Vacation period runs from February 1 through January 31.

2. Single Day Vacations - Employees are allowed one single day vacation per shift page. Request must be turned in a minimum of 72 hours prior to the vacation day and are not to be used during the following holidays: Christmas, New Year's Day and Thanksgiving Day. Note: If two (2) or more employees are away, either on vacation, sick or school, single vacation days shall be allowed only if it does not incur overtime or present an undue hardship to the department.
3. Remaining Vacations Days - Upon completion of the initial posting of vacations, employees may sign up for additional vacation time on a first come first serve basis. Additional vacation day requests shall be allowed at the discretion of the Chief of Police. It shall be the policy of the department not to cancel days off during the above mentioned holidays to allow additional vacation day requests.
4. Vacation Accrual Limit - Employees shall be allowed up accrue up to 200 hours of vacation. Once that amount of vacation has accrued, however, no further vacation shall accrue until the employee's balance is reduced below 200 hours through the use of vacation leave. Current employees may retain any vacation accrued as of the Effective Date of this contract without having such accrual counted as part of the 200 hour accrual limit.
5. Number of Employees on Vacation - One officer, corporal or sergeant allowed off per team, when at full strength, a maximum of two (2) officers or two (2) corporals or two (2) sergeants may be off on vacation per workday. Department will make every effort to allow assigned vacations when not at full strength. The Chief of Police has the authority to change the number of employees allowed if circumstances warrant it.
6. Vacation at Termination - Employees leaving the district with accrued vacation leave shall be paid the amount of accrued vacation to the date of termination. Payment for accrued Vacation shall be at the employee's current rate of pay.
7. Effect of Extended Military Leave - An employee who interrupts his or her service because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.
8. Sick Leave During Vacation - Vacation leave may be converted to sick leave, subject to the review and approval of the Chief of Police, if an employee is injured or sick during his or her vacation for a period in excess of twenty-four (24) hours.

9. Transfer of Vacation Time to Bereavement Leave - Vacation leave may be converted to bereavement leave, subject to the review and approval of the Chief of Police, if a death or anticipated death in the immediate family of an employee occurs during that employee's vacation period.

10. Leaves of Absence - The Board of Directors has the power to grant leaves of absence with or without pay. The decision is normally based upon the recommendation of the Chief of Police. The Chief of Police has the authority to grant leaves of absence not to exceed three (3) days.

11. Bereavement/Emergency Leave of Absence
 - a. Time off, consisting of 40 hours with pay, may be granted to any employee in the event of the death of a member of the employees' immediate family. One day of death leave for deaths occurring to persons not in the immediate family may also be granted at the discretion of Chief of Police.

 - b. In addition to the 40 hours, additional hours may be granted at the discretion of the Chief of Police,

 - c. Bereavement leave shall not be charged against either vacation or sick leave accumulation.

 - d. The Chief of Police shall be notified as soon as possible of any event requiring an emergency leave of absence.

 - e. Definition of Family

For the purpose of bereavement or emergency leaves of absence, family as, used herein shall be construed as being the following relatives of the employee:

Spouse	Brother	Mother-in-law	Step Child
Child	Sister	Father-in-law	Step Sibling
Mother	Grandmother	Sister-in-law	Step Parent
Father	Grandfather	Brother-in-law	Step Grandparent

ARTICLE VII SALARIES

The Board of Directors provides that an employee must be paid a salary within the range established for his or her classification.

EFFECTIVE with the first full pay period after ratification of this agreement by the Association and the District, the District and the Association agree the District will compensate all members of the Association as follows:

Year One of the contract term (Effective Date-June 30, 2015), the District agrees to increase salaries 3.75%. Specifically, the monthly base wage rate salary schedule and compensation levels for the positions of Master Sergeant, Sergeant, Corporal, and Officer, which will be effective beginning with the first full pay period after ratification of this agreement by the Association and the District, through the first pay period ending after June 30, 2015, shall be:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Master Sergeant	\$8,136.56	\$8,380.66	-----	-----	-----
Sergeant	\$7,090.87	\$7,374.50	\$7,595.73	\$7,899.58	-----
Corporal	\$7,028.04	-----	-----	-----	-----
Officer	\$5,557.15	\$5,862.80	\$6,185.25	\$6,525.44	\$6,890.22

Year Two of the contract term (July 1, 2015-Jun 30, 2016), the District agrees to increase salaries 3.75%. Specifically, the monthly base wage rate salary schedule and compensation levels for the positions of Master Sergeant, Sergeant, Corporal, and Officer, which will be effective beginning with the first full pay period after July 1, 2015 through the first pay period ending after June 30, 2016, shall be:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Master Sergeant	\$8,441.68	\$8,694.93	-----	-----	-----
Sergeant	\$7,356.78	\$7,651.04	\$7,880.57	\$8,195.81	-----
Corporal	\$7,291.59	-----	-----	-----	-----
Officer	\$5,765.54	\$6,082.66	\$6,417.20	\$6,770.14	\$7,148.60

Year Three of the contract term (July 1, 2016-June 30, 2017), the District agrees to increase salaries 4.25%. Specifically, the monthly base wage rate salary schedule and compensation levels for the positions of Master Sergeant, Sergeant, Corporal, and Officer, which will be effective beginning with the first full pay period after July 1, 2016 through the first pay period ending after June 30, 2017, shall be:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Master Sergeant	\$8,800.45	\$9,064.46	-----	-----	-----
Sergeant	\$7,669.44	\$7,976.21	\$8,215.49	\$8,544.13	-----
Corporal	\$7,601.48	-----	-----	-----	-----
Officer	\$6,010.58	\$6,341.17	\$6,689.93	\$7,057.87	\$7,452.42

Year Four of the contract term (July 1, 2017-June 30, 2018), the District agrees to increase salaries 4.25%. Specifically, the monthly base wage rate salary schedule and compensation levels for the positions of Master Sergeant, Sergeant, Corporal, and Officer, which will be effective with the first full pay period after July 1, 2017 through the first pay period ending after June 30, 2018, shall be:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Master Sergeant	\$9,174.47	\$9,449.70	-----	-----	-----
Sergeant	\$7,995.39	\$8,315.20	\$8,564.65	\$8,907.26	-----
Corporal	\$7,924.54	-----	-----	-----	-----
Officer	\$6,266.03	\$6,610.67	\$6,974.25	\$7,357.83	\$7,769.15

A. Step Increases

1. Classification - Police Officers
 - a. Step One: Minimum hiring rate.
 - b. Step Two: Employees shall be eligible for advancement to Step Two upon completion of twelve, (12) months employment, affirmation by the Chief of Police that there has been satisfactory growth in the service value of the employee.
 - c. Additional Steps: Employees shall be eligible for advancement to additional steps upon completion of one year at the previous step, affirmation by the Chief of Police that there has been satisfactory growth in the service value of the employee.
2. Classification - Sergeants
 - a. Step One: Minimum hiring rate,
 - b. Steps Two: through Step four: Employees shall be eligible for advancement to the next higher Step upon completion of twelve (12) months employment in grade, affirmation by the Chief of Police that there has been satisfactory growth in the service value of the employee.

B. Hourly Rate of Pay

The hourly rate shall be calculated by multiplying the monthly salary by twelve (12) and dividing by the total number of working hours per year, which by convention is 2080.

ARTICLE VIII OVERTIME

A. Overtime Policy - Definition

Overtime work for all employees, except as otherwise provided, shall be defined as any time worked beyond the normal working day or shift, or beyond the normal working week. Time worked in excess of the basic workweek because of changes in days off or shifts shall not be considered overtime. Except as otherwise provided herein, overtime shall commence at the time an employee reaches the place where he or she is directed to report and shall continue until he or she is released or the work is completed, whichever is the earlier. Compensation for overtime shall be at one and a half the current rate of pay.

B. Compensatory Time Policy - Defined

Compensation for overtime hours worked shall be paid at one and one-half times the employee's basic hourly salary every pay period. Compensatory time off at the rate of one and one-half times the number of hours worked may be accrued at the employees' written request in lieu of time and one-half pay.

Compensatory time off may be requested and taken, as long as it does not cause overtime.

Employees shall be allowed to cash in compensation time three (3) specific times per year, with a maximum cash-in for forty (40) hours each date. Employees will be allowed to hold a maximum of one hundred (100) hours on the books. The specific dates are:

July 1, November 1, and March 1

C. Reimbursement for Meals

District agrees to reimburse members of the Association for up to two (2) meals per month at a cost not to exceed ten (10) dollars per meal when they work over twelve (12) hours during a single shift.

D. Minimum Call-Out Compensation

Employees who are called out to perform unscheduled work shall be compensated for a minimum of three (3) hours work at the time and one-half rate.

E. Non Call-Out Overtime

Non Call-Out overtime, or that overtime which represents a simple extension of, the normal workday, is not subject to any minimum period for pay purposes. Compensation will be based on the nearest one-half hour, to be rounded off; except that overtime worked during the first one-half hour following a normal shift shall be compensated by a minimum of one-half hour overtime.

F. Appearances in Court

Officers directed to appear in court outside of normal shift hours shall receive a minimum of four (4) hours overtime. Court time exceeding the minimum four (4) hours shall be granted on an hour 'by hour basis, unless part of normal shift.

G. Call-Out Standby

When any employee is placed on standby by the Police Department or any related department in regards to official police duties, the employee shall receive the minimum of two (2) hours overtime (time and a half).

ARTICLE IX EDUCATION / LONGEVITY BENEFITS

A. Education Incentive Program

A monthly incentive payment of five percent (5%) of their base salary shall be paid to qualified personnel, who have obtained an Intermediate Post Certificate,

An additional monthly incentive payment of two and one-half percent (2.5%) of their base salary shall be paid to qualified personnel who obtain an Advanced POST Certificate.

B. Tuition Refund Plan

The District establishes an education pool each Fiscal Year; individual employees shall have the opportunity to draw from this pool to a maximum of five hundred dollars (\$500.00) per year. The money shall, be used for tuition, books, materials and supplies. Employees shall be working towards a degree, POST Certificate or taking a class that benefits the District and must complete the course with a passing grade. Employees are not eligible for the benefits set forth in this Section B until they have completed two years of service with the District as full time officers and only if they are working full time at the time they seek to utilize these benefits. The Chief, in his sole discretion, will be allowed to grant an exception from this policy.

Employees failing to complete the course or failing to receive a passing grade shall reimburse the District the amount paid in full.

C. Training

Training shall be provided as mandated by the State of California, at a minimum.

D. Longevity Incentive Benefit

The District agrees to provide Longevity Incentive to each member of the Association. There will be an annual bonus of one hundred dollars (\$100.00) for

each year of service with the District, beginning with the 10th year of service, to be paid every year at the end of the first pay period in December.

ARTICLE X CLOTHING ALLOWANCE./SAFETY EQUIPMENT

A. Installments - Amount

The District shall provide a clothing allowance in the amount of eight hundred dollars (\$800.00) per year, to be paid in twenty-four (24) installments of \$33.33.

B. Damaged Uniforms

It is the policy of the District to pay for the cost of repairing and/or replacing uniforms that are damaged in the line of duty.

C. Safety Equipment

The District shall purchase body armor vests for all officers pursuant to Kensington Police Department Policy #1024.3. Once issued, body armor vests are to be worn pursuant to Kensington Police Department Policy #1024.1 through 1024.3.3.

The District also agrees to reimburse members of the Association for safety equipment up to two hundred and fifty dollars (\$250.00) per year each year the officer is employed under this contract. Unused reimbursement funds may be rolled over by individual officers to the following year for the life of the contract, not to exceed one thousand dollars (\$1,000.00). The Chief of Police shall review and approve all purchases of safety equipment for which the officer seeks reimbursement before such items are purchased.

ARTICLE XI HOLIDAY PAY

A. Holidays

Employees are paid for the following thirteen (13) Holidays: New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Admission Day, Columbus Day, Veteran's Day, Thanksgiving Day and day after and Christmas. Employees shall also receive pay for their birthdays. Employees are not entitled to any extra compensation if they are required to work on these days.

ARTICLE XII PERSONNEL ACTIONS

A. Authority

The information contained in the Kensington Police Department Policy Manual is furnished to acquaint officers with some of the more important personnel policies and practices pertaining to employment with the Kensington Police Department.

Although not presented in the form of regulations, each of the subjects covered in subsequent paragraphs has substantive authority in the powers granted to the Board of Directors or the Chief of Police by special laws of the State of California.

B. Definition of Just Cause

Just cause for employment actions, up to and including termination, shall include, but not be limited to the following: Failure of an employee either willfully, or through negligence or incompetence, to perform the duties of his or her rank or assignment, or violation by an employee of any police policies or order, or instruction having the effect of a policy or order.

C. Discharge

The Chief of Police may discharge an employee for just cause. Any employee who has been discharged is entitled to receive a written statement of reasons for such action and shall have ten (10) days in which to respond.

D. Suspension

An employee may be suspended from his or her position by the Chief of Police at any time for a disciplinary purpose, or for other just cause. Suspension without pay cannot exceed thirty (30) days per occurrence.

A Master Sergeant or Sergeant, may for the good of the service, detach an employee from active duty, require that the employee relinquish his or her badge and other official police credentials, and assign the employee to remain at his or her home pending action by the Chief of Police at the earliest practical moment.

E. Demotion

The Chief of Police can demote an employee whose ability to perform required duties falls below standard or for disciplinary purposes. Notice of the demotion must be given the employee no later than two (2) weeks prior to the effective date of demotion.

F. Reduction in Departmental Seniority

The Chief of Police can reduce an employee in departmental seniority with attendant loss of privileges normally determined by such seniority and by such seniority and as outlined elsewhere this Memorandum.

G. Right of Appeal to Matters Not Involving Discipline

An employee has the right to appeal to the Board of Directors relative to any situation affecting his or her employment status or conditions of employment,

except in those cases involving a general plan affecting the department as a whole, pursuant to Kensington Police Department Policy Manual #1006.

H. Right of Appeal to Matters Involving Discipline

The probationary period for the original appointment of employees shall be for a period of eighteen (18) months. Individual probationary periods may be extended upon decision of the Chief of Police. Consistent with Kensington Police Department Policy Manual #340.9, during the probationary period, an employee may be terminated or otherwise rejected with or without cause, at any time, without right of appeal.

After the probationary period, any employee challenging discipline shall have the option of choosing between the dispute-resolution provisions of Kensington Police Department Policy Manual #1006, or in addition to the grievance procedure and after it is exhausted, requesting an evidentiary hearing to the Board of Directors. Any employee who wishes to preserve the right of appeal and request an evidentiary hearing must within twenty (20) days of the date of a Notice of Discipline, submit in writing to the Chief of Police a separate written statement indicating that he or she wishes a hearing before the Board of Directors consistent with due process rights and the Public Safety Officers Procedural Bill of Rights Act. Each party shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. The time lines contained in this Article XII Personnel Actions and Policy 1006 may be waived for a specific time period at any step with the mutual agreement of the parties.

ARTICLE XIII NO UNLAWFUL DISCRIMINATION

No employee shall be demoted or dismissed, or in any way unlawfully discriminated against because of race, color, religion, creed, sex, pregnancy, childbirth or related medical condition, ancestry, citizenship, national origin, age, marital status, sexual orientation, physical or mental disability, medical condition or any other characteristic protected by federal, state, or local law.

Neither the District nor the Association shall interfere with, intimidate, restrain, coerce or discriminate against employees because of the exercised of their rights to engage or not to engage in any activities pursuant to Section 3500, *et seq.*, of the Government Code.

ARTICLE XIV SCOPE AND SEVERABILITY

It is mutually agreed that ratification and approval of this Memorandum of Understanding relieves the Association and the District of any and all further obligation to meet and confer pursuant to Section 3500, *et seq.*, of the California Government Code for the period covered by the Memorandum of Understanding. Meet and confer sessions may, however, be reopened during the life of the Memorandum of Understanding by mutual consent of the Association and the District.

In case of material conflict between this Agreement and the approved District policies and procedures, the provisions of the Agreement shall govern.

If any portion of this Memorandum of Understanding is declared null and void by superseding Federal or State Law, the balance of the Memorandum of Understanding shall continue in full force and effect, and the parties hereto shall commence negotiations to ensure that the superseded portion shall be rewritten to conform as closely as possible to the original intent.

ARTICLE XV DURATION

This agreement shall be in full force and effect from the Effective Date through June 30, 2018.

Kensington Police Protection &
Community Services District
Board of Directors

Kensington Police Officers
Association Representatives

Len Welsh, Board President

Keith Barrow, KPOA President

REV: October 28, 2014

By Gregory E. Harman
General Manager / Chief of Police

New Business Item #3

District Administrator Lynn Wolter will present the Proposed Agreement between the District and the West Contra Costa Unified School District. Possible Board Action.

To: KPPCSD Board Members
From: GM/COP Gregory Harman and District Administrator Lynn Wolter
Date: October 22, 2014

Re: Proposed Agreement with the West Contra Costa Unified School District

Background

Twenty years ago, when the West Contra Costa Unified School District (WCCUSD) was in the throes of financial duress, it stopped funding the crossing guard at the intersection of Arlington Avenue and Kensington Park Road/Rincon Avenue. Later, it stopped providing coverage, with its own police force, for the Kensington Hilltop School.

Since then, the KPPCSD has provided these services and absorbed these costs.

During the past five years, the Kensington Police Department's patrols and calls for service (for issues including arson and vandalism) have averaged 600 per year, with each call requiring about 30 minutes. This has translated into an average of 300 hours per year. This has redirected Kensington Police Department resources, both human and financial, from its jurisdiction to that of the WCCUSD.

Additionally, each year, the KPPCSD absorbs the approximately \$10,000 cost of providing the Arlington Avenue crossing guard.

At the KPPCSD's July 11, 2013 meeting, WCCUSD Board member Charles Ramsey reported that, as a result of recent changes in the way California was funding schools, the WCCUSD would see a doubling of revenues within six years and was enjoying its largest reserve in the school district's history: \$23 million.

Mr. Ramsey also reported, "The Superintendent, in light of what happened in Newtown, wants to make sure we don't leave any community without enough public safety. So I welcome your Chief to at least give me some idea of what we can do to enhance what you're doing here to help work with this local community".

In response to this invitation, then KPPCSD Board President Tony Lloyd, Sergeant Keith Barrow, and District Administrator Lynn Wolter met to analyze services provided to the WCCUSD's Kensington Hilltop School by the KPPCSD. From this analysis, a proposal was developed and then presented to the WCCUSD's Superintendent Bruce Harter and Board member Madeline Kronenberg on November 5, 2013.

At the KPPCSD's November 6, 2013 meeting, President Tony Lloyd reported on the November 5th proposal to the WCCUSD and let the Board know that there would be follow-up meetings on the matter. There was no opposition expressed by the Board or the community.

In early March 2014, Director Tony Lloyd received a phone call from WCCUSD Board President Charles Ramsey, letting him know that, at its March 12, 2014 Board meeting, President Ramsey would be presenting, for an up or down vote, a proposal for the WCCUSD to enter into a partnership with the KPPCSD. President Ramsey indicated that there would be time on the agenda for Kensington to make a presentation, and he asked that Director Lloyd bring two others with him for this purpose. Director Lloyd, GM/COP Harman, and District Administrator Wolter attended the meeting and made a presentation.

On March 12, 2014, in response to President Ramsey's proposal to enter into a partnership with the KPPCSD, the WCCUSD Board voted unanimously to support President Ramsey's proposal of a partnership in which the WCCUSD would resume providing funding for services it had paid for in the past but had had to abandon when the WCCUSD was in the throes of financial distress. The approved motion authorized the WCCUSD to enter into an agreement to provide up to \$50,000 per year for three years to the KPPCSD.

On March 13, 2014, Mr. Ramsey attended the KPPCSD Board meeting and addressed the Board and the community about the proposed agreement. Among the points he made:

- The passage of Proposition 30 had added \$12.5 million to the WCCUSD's operating budget.
- Governor Brown's local control funding formula had provided additional significant operating funds.
- The WCCUSD had \$24 million in unallocated reserves.
- It was important to accomplish things for all parts of the school district.
- Other schools and geographic areas within the WCCUSD were already receiving funds for police services and safety.

On July 29, 2014, the KPPCSD submitted a proposed agreement to Dr. Bruce Harter, WCCUSD Superintendent. On October 8, 2014, Dr. Harter returned the agreement, with his signature.

On October 9, 2014, Dr. Harter made a presentation at the KPPCSD Board meeting. He reported on the WCCUSD's good financial status and said that, because safety was an important priority, the WCCUSD was entering into partnerships with police agencies.

The WCCUSD's School Resource Officers 2014-15 Budget is \$3,064,500. In addition to Kensington, this will provide funding for:

- Hercules \$320,000
- San Pablo \$136,000
- Contra Costa County Sheriff \$257,500
- El Cerrito \$520,000
- Richmond \$1,326,000
- Pinole \$480,000

Kensington's budgeted allocation equals less than 2% of the \$3,064,500 budgeted.

Since October 9, 2014, the WCCUSD has contacted the KPPCSD twice, asking the KPPCSD to return the fully executed contract.

For the Board's Consideration at its November 13, 2014 Meeting

KPPCSD staff prepared the draft agreement between the KPPCSD and the WCCUSD. Before it was sent to the WCCUSD, KPPCSD's legal counsel reviewed the proposed agreement. The proposed agreement is presented tonight for Board discussion and possible approval.

Contract with the West Contra Costa Unified School District

This contract for police and crossing guard services is made as of _____, 2014, by and between the West Contra Costa School District (WCCUSD) and the Kensington Police Protection and Community Services District (KPPCSD).

Whereas, the WCCUSD requires crossing guard, police patrolling, and police responses to calls for service; and

Whereas, the KPPCSD has represented that it is experienced, qualified, and willing to perform such work.

Now, therefore, the parties agree as follows:

1. Scope of Work

- a) KPPCSD will contract with All City Management Services, Inc. to provide crossing guard service at the intersection of Arlington Avenue and Kensington Park Road.
- b) KPPCSD's police officers will provide routine patrolling of the WCCUSD's Kensington Hilltop School.
- c) KPPCSD's police officers will respond to calls for service at the WCCUSD's Kensington Hilltop School.

2. Compensation

- a) WCCUSD will pay KPPCSD \$4,725.00 per quarter for police services (patrolling and calls for services), based on 15 hours per month at an hourly cost of \$105.00.
- b) Police services exceeding 15 hours per month will be billed at an hourly rate of \$105.00.
- c) WCCUSD will pay KPPCSD \$3,505 per quarter during the 9-months of the academic year for crossing guard services.
- d) Total compensation to the KPPCSD shall not exceed \$50,000 per year.

3. Method of Payment

- a) KPPCSD will submit quarterly invoices describing work performed. WCCUSD will pay approved invoices within thirty days of receipt of an invoice.

4. Government Immunities

The parties understand that KPPCSD maintains discretion in overseeing its resources and budget in providing police protection services to the community as a whole. The parties also acknowledge and incorporate the special government statutory immunities into this contract, including but not limited to those in Government Code sections 815.2(b), 820.2, and 845, and neither party voluntarily assumes any additional duty by way of this contract. Further, the parties acknowledge and agree that nothing in this contract creates a special relationship between the parties over the provision of police protection services so as to alter any government immunity for any alleged failure to provide adequate or sufficient police protection services.


5. No Third Party Beneficiaries

This contract is exclusively for the benefit of the parties and does not and is not intended to confer any rights or remedies upon any person or entities other than the parties.

6. Term

This contract commences August 18, 2014 and continues for a three-year term. By signing below, I agree to the terms stated in this contract.

West Contra Costa Unified School District

By: 
Title: Director General Services
Date: 10/8/14

Kensington Police Protection and Community Services District

By: _____
Title: _____
Date: _____

New Business Item #4

Director Linda Lipscomb will present for a third reading the draft of KPPCSD Board Policy Section 1000. Possible Board Action.

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POLICY TITLE: Purpose of Board Policies
POLICY NUMBER: 1000

- 1000.10** It is the intent of the Board of Directors (Board) of the Kensington Police Protection and Community Services District (District) to maintain a Board Policy and Procedures Manual (Board Manual). Contained therein shall be a comprehensive listing of the Board's current policies, being the rules and regulations enacted by the Board from time to time. The Board Manual will serve as a resource for Directors, staff, and members of the public in determining the manner in which matters of District business are to be conducted.
- 1000.20** If any policy or portion of a policy contained within the Board Manual is in conflict with rules, regulations or legislation passed or adopted by an entity having authority over the District, said rules, regulations or legislation shall prevail.

POLICY TITLE: Adoption/Amendment of Policies
POLICY NUMBER: 1010

- 1010.10** Any Director or the General Manager/Chief of Police may request that the Board adopt a new policy or amend an existing policy. Members of the community may suggest policy changes or additions to any Director. The proposed policy adoption or amendment shall be initiated by submitting a written draft of the proposed adoption or amendment to each Director and the General Manager/Chief of Police through the District office and requesting that the item be included for consideration on the agenda of the appropriate regular meeting of the Board.
- 1010.20** Before considering adopting or amending any policy, Directors shall have the opportunity to review the proposed adoption or amendment at the regular Board meeting prior to the meeting at which consideration for adoption or amendment is to be given. Copies of the proposed policy adoption or

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amendment shall be included in the agenda information packet for any meeting of consideration. Consistent with the Brown Act, the agenda information packets with said copies shall be made available to each Director, and posted on the District's Web site, for review at least three (3) days (72 hours) prior to any meeting of consideration. (See also Policy # 5020.10 for the date by which agenda items may be proposed.)

- 1010.30** Adoption of a new policy or amendment of an existing policy shall be accomplished at a regular meeting of the Board and shall require a 4/5 affirmative vote of the entire Board. There shall be a first reading for consideration of the new policy or amendment, followed by a second reading of the new policy or amendment before the Board may vote to adopt the proposed policy or amendment at the second or a subsequent meeting.

POLICY TITLE: Conflict of Interest
POLICY NUMBER: 1020

- 1020.10** It is the policy of the District to follow all federal, State, and local laws concerning conflicts of interest, including California Government Code Section 1090, *et seq.* (regarding government contracts) and the Political Reform Act codified at Government Code Section 8000, *et seq.*, as well as implementing regulations adopted by the Fair Political Practices Commission, as each may be amended or supplemented from time to time. Pursuant to State law and in furtherance of the purposes of this policy, it is the policy of the District regularly to review and update its Conflict of Interest Code designating disclosure requirements for the economic interest of the District officials, employees, and consultants that could give rise to an actual or apparent conflict, and to enforce compliance with the State's and the District's economic interest disclosure requirements, including those set forth in the Political Reform Act and the District's Conflict of Interest Code.
- 1020.20** The Political Reform Act, Government Code Section 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of

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Interest Codes. The California Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Exhibit 1B in which officials, employees and consultants are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the District.

A public official at any level of state or local government shall not use or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a financial interest. (Government Code § 87100)

Designated officials, employees and consultants shall file statements of economic interests with the District, which will make the statements available for public inspection and reproduction. (Gov. Code Section 81008) Upon receipt of the statements of all designated officials and employees, the District shall make and retain a copy and forward the original of these statements to the County of Contra Costa Clerk of the Board of Supervisors, which shall be the filing officer.

Designated Position	Disclosure Categories
General Manager/Chief of Police	1, 2
Consultants/New Positions	*

* Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The General Manager/Chief of Police may determine in writing that a particular consultant or new position, although a “designated position,” is

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hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager/Chief of Police's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Government Code Section 81008).

The following positions are NOT covered by the Conflict of Interest Code because they must file a statement of economic interests (Form 700 pursuant to Government Code Section § 87200 and, therefore, are listed for information purposes only:

Members of the District's Board of Directors

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the determination whether a position is covered by Section 87200.

Disclosure Category 1: All investments, business positions, and sources of income (including loans gifts, and travel payments) from sources that provide services, supplies, materials, machinery, or equipment of the type utilized by the District.

Disclosure Category 2: All interests in real property located in whole or in part within the District's jurisdiction or within two miles of the District's jurisdiction.

1020.30 Anti-nepotism

The purpose of this policy is to ensure effective supervision, safety, security, performance, assignments, and discipline while maintaining positive morale by avoiding actual or perceived favoritism, discrimination, or other actual or potential conflicts of interest by or between Board members, employees of the District, and the community.

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1020.31 Definitions

Relative - The parent, stepparent, spouse, ex-spouse, domestic partner, significant other, child (natural, adopted or step), sibling, grandparent, great-grand parent, cousin, niece, nephew grandchild, first cousin once removed, or second cousin of any District Board member or employee. In addition, the parent, stepparent, spouse, ex-spouse, domestic partner, significant other, child (natural, adopted or step), sibling, grandparent, great-grand parent, cousin, niece, nephew grandchild, first cousin once removed, or second cousin of any spouse or ex-spouse of a District Board member or employee.

Personal Relationship - Includes marriage, cohabitation, dating, or any other intimate relationship beyond mere friendship.

Business Relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture, or other transaction where the District Board member's or employee's annual interest, compensation, investment, or obligation is greater than \$250.

Conflict of Interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a District Board member's or employee's action, inaction, or decisions are or may be influenced by the Board member's or employee's personal or business relationship.

Supervisor - A District Board member or employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation, and/or performance of a subordinate employee.

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

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1020.32 Restricted Duties and Assignments

While the District does not prohibit personal or business relationships between its Board members, employees, and the community, the following reasonable restrictions and safeguards shall apply to District Board members and employees in order to avoid actual or perceived nepotism:

- a) District Board members and employees are prohibited from directly supervising, occupying a position in the line of supervision, or being directly supervised by any other Board member or employee who is a relative or with whom they are involved in a personal or business relationship.
 - 1) If circumstances require that such a supervisor/subordinate relationship exists temporarily, the supervisor shall make every reasonable effort to defer matters involving the involved Board member or employee to an uninvolved supervisor.
 - 2) When personnel and circumstances permit, the District will attempt to make every reasonable effort to avoid placing Board members or employees in supervisor/subordinate situations. The District, however, reserves the right to transfer or reassign any Board member or employee to another position within the same classification as it may deem necessary in order to avoid conflicts with any provision of this policy.
- b) District Board members and employees are prohibited from participating in, contributing to, or recommending new hires, promotions, assignments, performance evaluations, transfers or other personnel decisions affecting a Board member or employee who is a relative, or with whom they are involved in a personal or business relationship.

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- c) In order to avoid actual or perceived conflicts of interest, District Board members and employees shall disclose in writing any personal or business relationships with District Board members, employees, or vendors. (AB1234 and Government Code Section 1090, *et seq.*, shall apply to all such conflicts of interest.) The District Board will recommend appropriate action after considering any conflict of interest issues with legal counsel. Directors shall disclose any conflicts of interest regarding any matter which comes before the Board or over which the Board has authority. Directors shall recuse themselves from discussing and/or voting on any matter where they have a conflict of interest.

- d) In the event that conflicts of interest, real or perceived, arising in a selection process cannot be adequately addressed by the provisions of this policy set forth above, the District will create an impartial selection committee to conduct the selection process. The creation of an impartial selection committee may be initiated by either the General Manager/Chief of Police or the District's Board.

POLICY TITLE: **Public Complaints**

POLICY NUMBER: **1030**

1030.10 The Board desires that public complaints be resolved at the lowest possible administrative level and that the method for resolution of complaints be logical and systematic.

1030.20 A public complaint is an allegation in writing by a member of the public of a violation or misinterpretation of a District policy, a state or federal statute by which the individual has been adversely affected.

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1030.30 Non-police complaints, including complaints against a Director, shall be resolved as follows:

The individual with the complaint shall first discuss the complaint with the General Manager/Chief of Police with the objective of resolving the matter informally.

If the General Manager/Chief of Police does not satisfy the individual making the complaint with the disposition of the complaint, the complaint may be filed, in writing, with the General Manager/Chief of Police. At the option of the General Manager/Chief of Police, conferences may be conducted with testimony or written documentation in the resolution of the complaint. The individual filing the complaint may request a written decision from the General Manager/Chief of Police.

If the individual filing the complaint is not satisfied with the disposition of the matter, a written complaint may be filed with the Board within ten (10) days of receiving the General Manager/Chief of Police's decision. The Board may consider the matter at the next regular meeting or may call a special meeting. The Board will resolve the matter expeditiously. In making its final decision, the Board may conduct conferences, hear testimony, as well as utilize any other form of evidence deemed by the Board to be helpful in making its decision. The individual filing the complaint may request a written decision from the Board.

This policy in no way prohibits or is intended to deter a member of the public or staff from appearing before the Board to present verbally, or in writing, any testimony, complaint or statement regarding actions of the Board, District programs services, or impending considerations of the Board.

1030.40 If the Board or Board member receives a complaint against the Police Department (sworn or non-sworn personnel), the complaining party shall be referred to the Kensington Police Department to file a complaint.

The Board is part of the Grievance Procedure as outlined in the Kensington Police Department Manual and therefore must remain neutral in the complaint process.

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The investigation shall be conducted according to guidelines set forth in the Kensington Police Department Manual and, additionally, for sworn personnel, according to the guidance set forth in the Police Officers' Bill of Rights. (Government Code Section 3300-3313 and the Kensington Police Department Manual).

The complaining party shall be notified, in writing, of the disposition of the complaint. Discipline, if any, of sworn personnel shall not be disclosed. (Penal Code 832.5, 832.7, 832.8.)

POLICY TITLE: **Grievance Procedures for District Employees**
POLICY NUMBER: **1040**

1040.10 Purpose and Scope
Grievances of non-sworn personnel shall be handled according to the Grievance and Personnel Complaint procedures outlined in the Kensington Police Department Manual (Policy # 1000, *et seq.*, and 1020, *et seq.*) Grievances alleging harassment and/or discrimination shall be handled according to the procedures set forth in Section 8328, *et seq.*, of the Kensington Police Department Manual. The Disciplinary Policy of Section 340 *et seq.*, of the Kensington Police Department Manual shall apply to sworn and non-sworn personnel.

POLICY TITLE: **Claims Procedures**
POLICY NUMBER: **1050**

1050.10 The purpose of this policy is to describe procedures for handling claims and to inform the public, District staff, and Board of Directors (Board) of these procedures. These policy sections are generally intended to describe the claims procedure, but do not replace or alter existing law relating to Government Tort Claims.

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1050.20 Claims Requirements. The California Government Code beginning with Section 810 sets forth requirements that a claim must meet. These requirements establish the time period within which a claim must be presented to the District and the information that must be included in the claim.

1050.21 Time of Presentation (Government Code Section 911.2).

- a) Six-month claims. If a claim is for injury to person or to personal property, or growing crops, it must be presented to the District no later than six months after the accrual of the cause of action.
- b) One-year claims. If the claim arises out of any other circumstances, it must be presented no later than one year after the accrual of the cause of action.
- c) Definition of “presentation” (Government Code Section 915). If a claim is personally delivered to the District, the date it is received is the date of presentation. If a claim is mailed to the District, the claim is deemed presented at the time it is deposited in the mail (§915 – 915.42). The envelope in which a claim is mailed should be retained in the District office with the claim in case a question arises concerning the date of presentation.

1050.22 Content of Claim. Government Code Section 910 provides that a claim shall include all of the following information:

- a) The name and post office address of the claimant;
- b) The post office address to which the person presenting the claim desires notices be sent;
- c) The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

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- d) A general description of the indebtedness, obligation or injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
- e) The name or names of the public employee or employees causing the injury, damage or loss, if known; and
- f) The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage or loss insofar as it may be known at the time of presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

If the claim does not contain all this information, it is deemed to be insufficient. A claim form is provided in Exhibit 1A.

1050.30 Claims Process. District employees shall follow the process described below when receiving a claim.

1050.31 Telephone/Oral Complaints. All claims against the District shall be in writing. Claimants who call or visit the District office shall be informed that all claims must be presented to the District in writing. District staff shall provide a claims form (Exhibit 1A) to the claimant, in person if the claimant is present at the Public Safety Building, or by mail. District staff shall listen to the person making the complaint and take notes specifying the date and time of the discussion and the nature of the incident. District staff shall not discuss responsibility, liability or make any admission that implicates the District.

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- 1050.32** Request for Acknowledgement of Receipt. The District should time-date stamp the claim when it is received. When a claim is delivered in person to the District or received by mail at the District offices, a written acknowledgement of receipt should not be provided. The District's time-date stamp should be affixed to a copy of the claim and returned to the claimant/messenger as an acknowledgement of receipt. The person receiving the claim may provide his/her name and title. It is not necessary to make a photocopy for the claimant/messenger if an extra copy is not provided. A copy of the page with the time date stamp will suffice as acknowledgement if a copy is not provided. This copy will be kept in the District office.
- 1050.33** Insufficient Claims. If it is determined that a claim does not include all of the required information, the District shall so notify the claimant within 20 days after the claim is presented. (Government Code Section 910.8) The form letter attached as Exhibit 1B is sufficient to meet this requirement.
- 1050.34** Claim Investigations. District staff and/or its designee shall investigate the claim and gather information pertaining to the claim as soon as possible after the claim is presented to the District, except for claims for personal injury or wrongful death, which shall be sent immediately to the District's insurance company and attorney.
- 1050.35** Action on Claims by Board or its Designee. Section 935.4 of the Government Code provides that the District, by ordinance or resolution, may authorize an employee to allow compromise or settle a claim against the District if the amount to be paid is less than \$50,000. The Board designates the General Manager/Chief of Police to act upon claims against the District in an amount up to the District's insurance deductible in any manner outlined in this policy.

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The General Manager/Chief of Police, after evaluating the claim, shall determine whether to present the claim to the Board or to recommend to the Board that an advisory committee comprised solely of two directors be formed to work with District staff regarding the specific claim. No independent investigation of a claim shall be conducted by a Board member. When the claim is presented to the Board, it may be considered in closed session if the attorney for the District is present.

Under Government Code Section 912.4, the Board or its designee must act upon the claim within 45 days after the claim has been presented or the claim is deemed to have been rejected by operation of law.

1050.36 Notice of Action Taken on Claims which are denied. A Notice of Action on Claim for each claim that has been denied shall be sent to the claimant within the time prescribed by law. If a notice of Action is sent out, subject to certain exceptions, a claimant generally has only six months from the date the Notice of Action is sent out in which to file a suit. However, if no Notice of Action is sent out, subject to certain exceptions, the claimant generally has two years from the date the cause of action accrued (usually the date of the underlying incident or accident) in which to file suit. (Government Code Section 945.6.)

Send a Notice of Action on Claim completed to show that the claim was rejected by the Board or its designee, or rejected by operation of law (see Exhibit 1C for form) to the claimant or to claimant's counsel at the address indicated in the claim. A Declaration of Service by Mail should be attached to this Notice. (See Exhibit 1C for form.) These documents should be retained in the District office.

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- 1050.37** Notice of Action Taken on Claims which are granted. The following procedure should be followed when a claim has been granted or granted in part:
- a) Send a Notice of Action on Claim completed, and retain a copy in the District office, to show that the claim was allowed in the specified amount (see Exhibit 1C for format) or the claimant or the claimant's counsel at the address indicated in the claim. A Declaration of Service by Mail should be attached to this Notice. (See Exhibit 1D for form.)

 - b) All repair work done or money paid shall be documented (with "before" and "after" photographs when appropriate) and placed in the claim file in the District office.

 - c) Any payment of claims shall be conditional upon claimant executing a Release of All Claims (Exhibit 1E).
- 1050.38** Other Requests. Any other applications received from a claimant, such as applications for leave to submit a late claim, insufficient claim, or subrogation claim shall be provided to the General Manager/Chief of Police, who in consultation with the attorney shall determine how to proceed and report the determination to the Board.

EXHIBITS 1A, 1B, 1C, 1D, and 1E follow.

EXHIBIT 1A

CLAIM AGAINST

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

IN THE MATTER OF THE CLAIM of

_____, Claimant,
this matter is hereby presented by Claimant to Kensington Police Protection and Community
Services District pursuant to §910 of the California Government Code.

1. The name and mailing address of Claimant is as follows:

2. The mailing address to which Claimant desires notice of this claim to be sent, if different than
above, is as follows:

3. On _____, 200____, at _____,
(date) (location where injury occurred)
Claimant received personal injuries under the following circumstances:

4. On _____, 200____, at _____,
(date) (location where injury occurred)

Claimant **personal/real** property was damaged by District under the following circumstances:
(circle one)

5. So far it is known to Claimant at the date of filing this claim that Claimant has incurred damages in the amount of \$_____ due to personal injury or damage to personal or real property.

6. The name(s) of the District employee(s) who caused said damages to Claimant is as follows (if you do not know their names, write "UNKNOWN"):

Date signed: _____

(print or type name of Claimant)

(signature of Claimant)

EXHIBIT 1B

Kensington Police Protection and Community Services District
279 Arlington Ave., Kensington, CA 94707
(510) 526-4141

_____, 20__

Notice of Insufficiency of Claim

Notice is hereby given that the claim that you presented to the Kensington Police Protection and Community Services District on _____, 20__ failed to comply with certain Government Code Sections. It was insufficient for the following reason(s):

For your information, consult California Government Code Sections 910, 910.2, 910.4, 910.8 and other Government Code Sections pertaining to the filing of claims against a public entity. Pursuant to Government Codes Section 910.8, no action will be taken on this claim by the Kensington Police Protection and Community Services District for a period of 15 days after the date of this Notice. Therefore, if you wish to file an amended claim correcting these deficiencies, you should do so within that time period.

General Manager, Chief of Police
Kensington Police Protection and Community Services District

EXHIBIT 1C

NOTICE OF ACTION TAKEN ON CLAIM

TO: _____

REFERENCE: Claim of _____

Notice is hereby given that your claim presented to the Kensington Police Protection and Community Services District, 217 Arlington Avenue, Kensington, California 94707-1401, on the _____ day of _____, 20____, was:

- Rejected
- Allowed in the amount of \$ _____ and rejected as to any balance
- Rejected by operation of law

on the ____ day of _____, 20____.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. See Government Code Section 945.6. Your time for filing an action in federal court may be less than six months.

Option No. 1

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Option No. 2

Pursuant to Government Code Section 913, your client is to be advised of the right to consult an attorney in connection with this matter. Since you have already been retained, the notification of this right is being given to your client through you.

General Manager of the District

EXHIBIT 1D

Declaration of Service by Mail [Alternative 1]

State of California
County of Contra Costa

I am employed in the County of Contra Costa, State of California I am over the age of 18 and not a party to the within cause or claim. My business address is 217 Arlington Avenue, Kensington, CA, 94707.

I served the foregoing document entitled: _____ by depositing a true copy thereof in the United States Mails in _____, California on _____, 20____, enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

[Name and address of claimant or claimant's attorney]

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____ (month) 20____ at _____, CA.

Name Printed

Signature

[Alternative 2]

State of California
County of Contra Costa

I am employed in the County of Contra Costa, State of California I am over the age of 18 and not a party to the within cause or claim. My business address is 217 Arlington Avenue, Kensington, CA, 94707.

I am familiar with the practice of the Kensington Police Protection and Community Services District for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

I served the foregoing document entitled: _____ by placing a true copy thereof for collection and mailing in the ordinary course of business practice, with other correspondence of the Kensington Police Protection and Community Services District located at 217 Arlington Ave., Kensington, Ca 94707, on _____, 20____, enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

[Name and address of claimant or claimant's attorney]

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____ (month) 20____ at _____, CA.

Name Printed

Signature

EXHIBIT 1E

RELEASE OF ALL CLAIMS (CALIFORNIA FORM)

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, for sole consideration of _____ Dollars(\$ _____) to be paid to _____

do/does hereby and for my/our/its heirs, executors, administrators, successors and assigns release, acquit and forever discharge Kensington Police Protection and Community Services District and its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of any from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the day of _____, 20____, at or near _____, CA.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefor and intend merely to avoid litigation and buy their peace. Any and all claims against parties not specifically released herein, if any, are hereby assigned in full to the parties hereby released. The releases expressly reserve any and all claims they may have against the undersigned, or any others.

It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

"1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The undersigned hereby declare(s) and represent(s) that the injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the undersigned rely(ies) wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by any physician or surgeon by them employed.

The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and this Release contains the entire agreement between the parties hereto and that the terms of this Release are contractual and not a mere recital.

FOR YOUR PROTECTION CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM: 556 Penalty for Fraudulent Claim for Loss.

(a) It is unlawful to:

- (1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance.
- (2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer with an intent to defraud.
- (3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.
- (4) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented in support of any such claim.

(b) Every person who violates any provision of this section is punishable by imprisonment in the state prison, for two, three, or five years, or by fine not exceeding twenty-five thousand dollars (\$25,000), or by both.

(c) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence by suspended for any adult person convicted of a violation of this section who has been previously convicted of violations of this section as an adult under charges separately brought and tried two or more times. The existence of any fact which would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in open court or found to be true by the jury trying the issue of guilt, or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Except where the existence of such fact was not admitted or found to be true or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) or the Welfare and Institutions Code (1935 ch. 145, 1976 oper. July 1, 1977, 1978 ch. 174 urgency eff. May 31, 1978, 1979 ch. 556, 1986 ch. 1324, 1988 ch. 1609).

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this day of _____, 20____

CAUTION: READ BEFORE SIGNING BELOW

Witness

Witness

Witness

STATE OF CALIFORNIA }
COUNTY OF CONTRA COSTA } ss.

On this ____th day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public, State of California

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