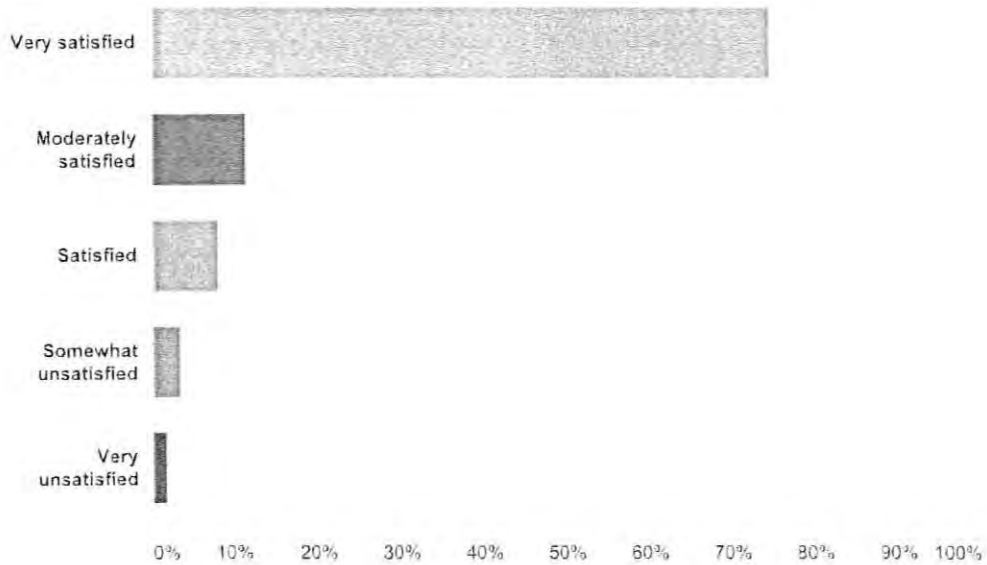


Q3 How satisfied are you with the garbage, recycling, and yard trimming collection services you receive? (You can note what type of service complaints you have in Question 4)

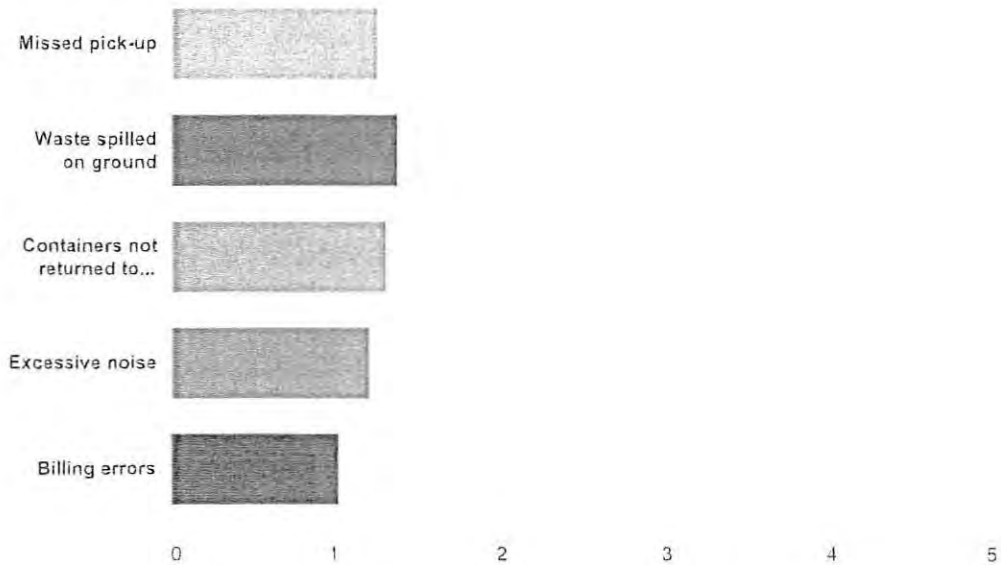
Answered: 481 Skipped: 0



Answer Choices	Responses	
Very satisfied	75.05%	361
Moderately satisfied	11.43%	55
Satisfied	8.11%	39
Somewhat unsatisfied	3.53%	17
Very unsatisfied	1.87%	9
Total		481

Q4 How often, if at all, have you had the following problems with your garbage, recycling, and/or yard trimming services?

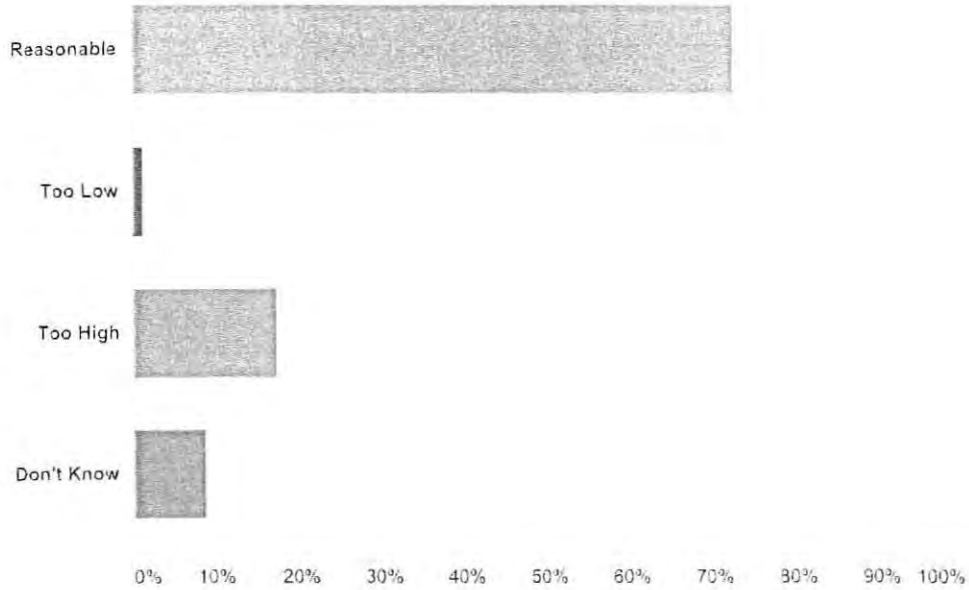
Answers: 133 Skipped: 1



	Not at all	(no label)	Sometimes	(no label)	Often	Total	Average Rating
Missed pick-up	80.79%	13.43%	5.37%	0.21%	0.21%	484	1.26
Waste spilled on ground	74.11%	16.84%	6.74%	1.26%	1.05%	475	1.53
Containers not returned to proper location	81.36%	9.32%	6.57%	1.27%	1.48%	472	1.32
Excessive noise	87.82%	7.05%	2.56%	1.07%	1.50%	463	1.21
Billing errors	97.87%	1.49%	0.43%	0.00%	0.21%	453	1.03

Q5 The monthly cost of collection services are dependent on the amount of garbage service for which you signed up. How would you describe the cost you pay?

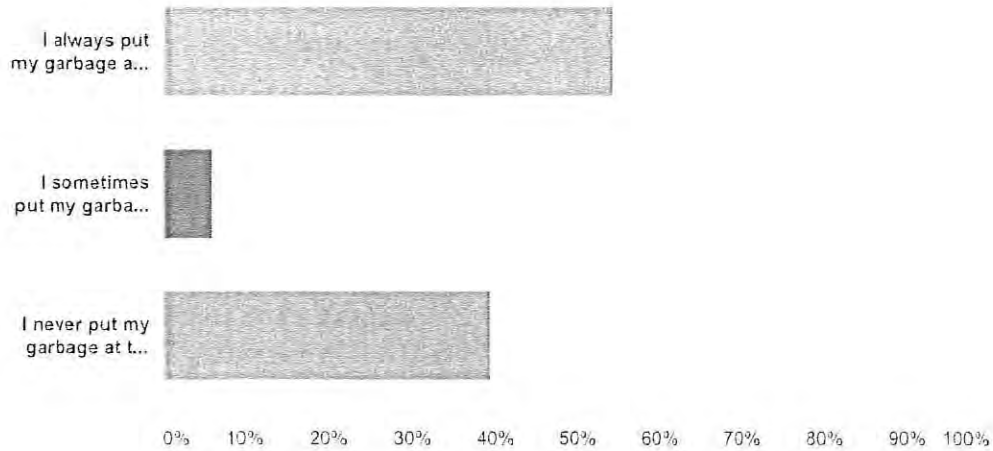
Answered: 433 Skipped: 4



Answer Choices	Responses	
Reasonable	72.67%	351
Too Low	1.45%	7
Too High	17.18%	80
Don't Know	8.70%	42
Total		483

Q6 Do you put your garbage at the curb for collection, or does the garbage company (Bay View) come into your side-yard or backyard to pick-up your garbage?

Answered: 482 Skipped: 5



Answer Choices

- I always put my garbage at the curb for collection
- I sometimes put my garbage at the curb for collection
- I never put my garbage at the curb for collection. the garbage company comes onto my property to collect my garbage

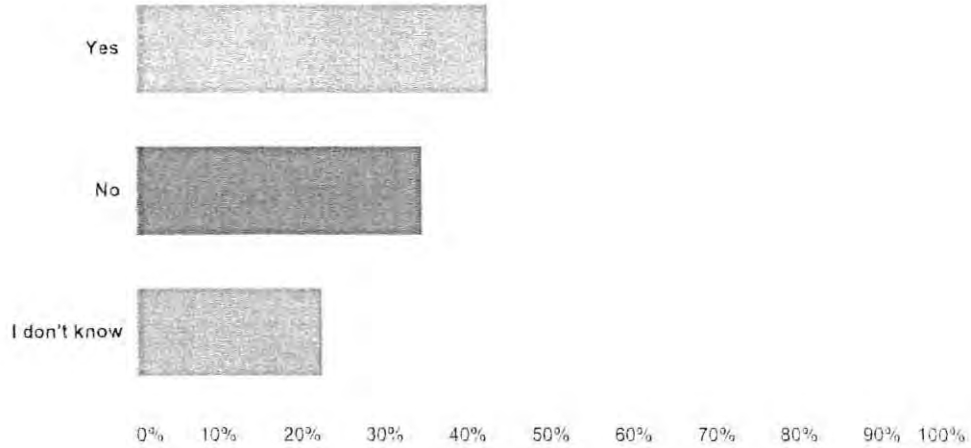
Total

Responses

54.56%	263
6.02%	29
39.42%	190
Total	482

Q7 Currently you do not have to pay extra to have the garbage company come into your side-yard or backyard to pick-up your garbage. Do you think residents should be charged extra for "on-property" side-yard or backyard service?

Answered: 483 Skipped: 4



Answer Choices

Yes

No

I don't know

Total

Responses

42.86%

34.58%

22.57%

207

167

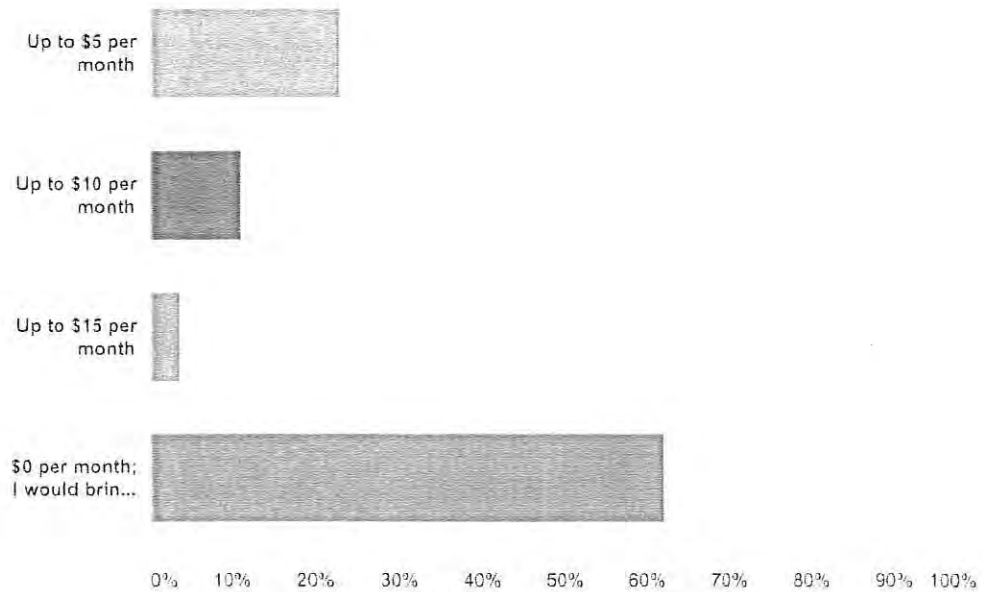
109

483

104

Q8 If the District instituted an "on-property" charge for side-yard or backyard collection, how much more would you be willing to pay per month than your current monthly bill?

Answered: 476 (Skipped: 1)

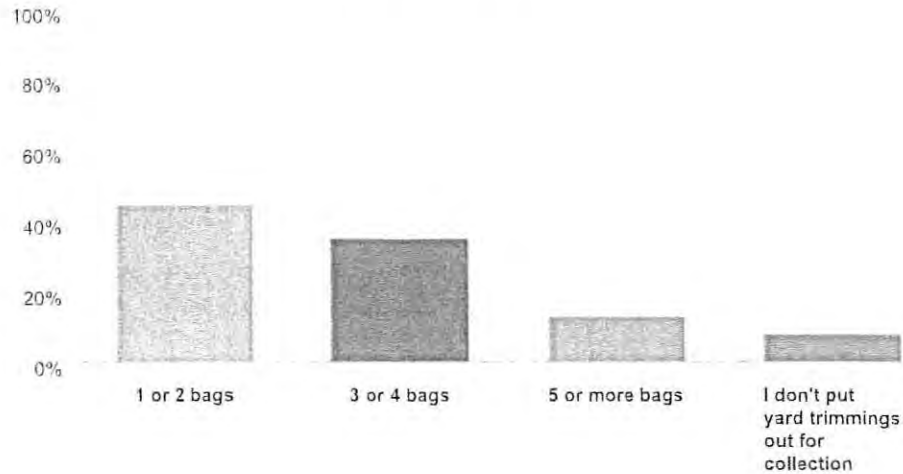


Answer Choices	Responses	Count
Up to \$5 per month	22.90%	109
Up to \$10 per month	11.13%	53
Up to \$15 per month	3.78%	18
\$0 per month; I would bring my garbage to the curb rather than pay more	62.18%	296
Total		476

105'

Q9 Yard trimmings are collected twice monthly from residents. How many bags of yard trimmings do you typically put out for collection on each yard trimmings collection day?

Answers: 483 Skipped: 4

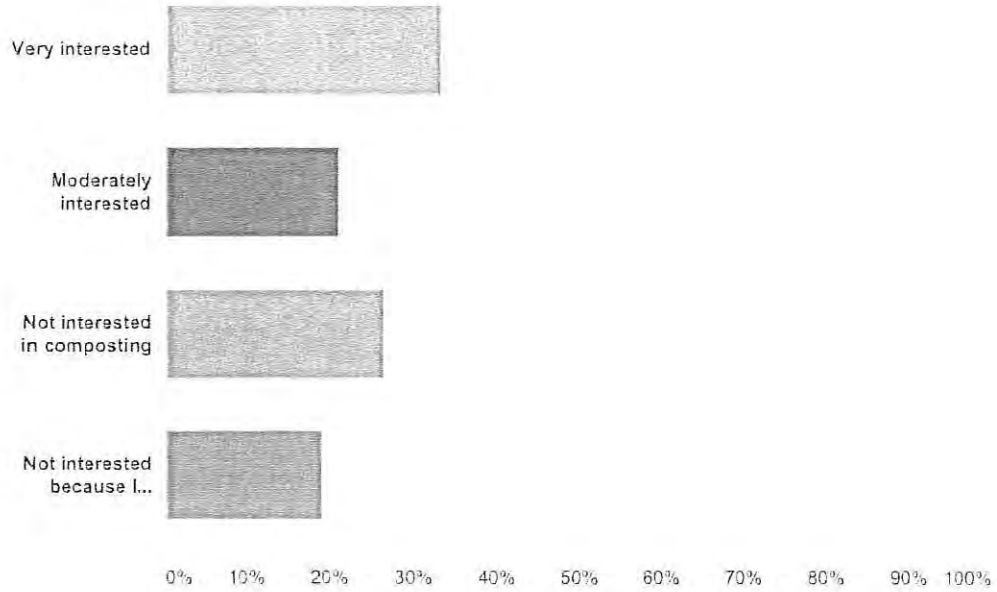


Answer Choices	Responses	
1 or 2 bags	44.51%	215
3 or 4 bags	34.78%	168
5 or more bags	12.84%	62
I don't put yard trimmings out for collection	7.87%	38
Total		483

106

Q10 How interested would you be in putting your food scraps out for collection if you knew the materials would be composted?

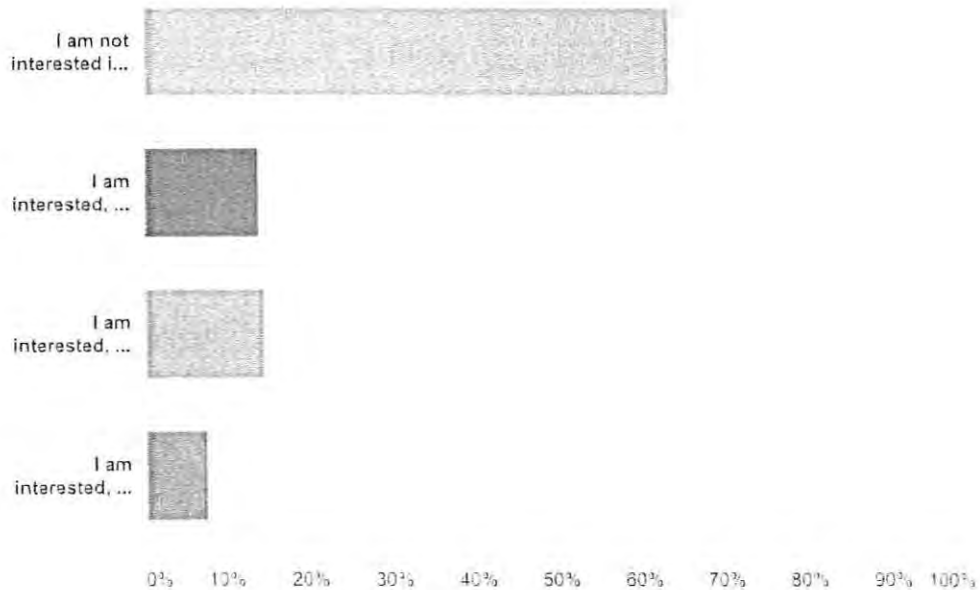
Answered: 431 Skipped: 0



Answer Choices	Responses	
Very interested	33.47%	141
Moderately interested	21.00%	91
Not interested in composting	26.61%	115
Not interested because I compost my food scraps in my backyard	18.92%	82
Total		431

Q11 If the District were to offer food scraps collection service, the following conditions would apply: (i) You would be provided a wheeled cart that would hold 32 to 64 gallons of food scraps and yard trimmings (ii) You would be required to place your food scraps together with the yard trimmings in the cart (iii) The cart would be collected curbside every week (iv) You would no longer have unlimited twice monthly yard trimmings collection service (v) This program would increase the cost of your montly bill. Given these conditions, are you interested in the service and, if so, how much more would you be willing to pay in addition to your current monthly bill?

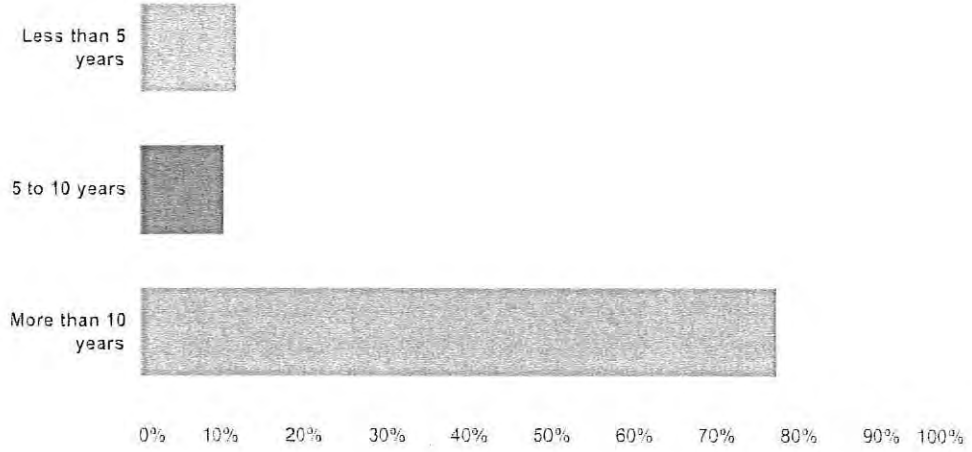
Answered: 433 Skipped: 4



Answer Choices	Responses	
I am not interested in this service	63.56%	1
I am interested, but not willing to pay any more	14.03%	2
I am interested, and would pay up to \$5 per month more	14.70%	3
I am interested, and would pay up to \$10 per month more	7.66%	4
Total		433

Q12 How many years have you lived in Kensington?

Answered: 485 Skipped: 2



Answer Choices

Less than 5 years

5 to 10 years

More than 10 years

Total

Responses

11.96%

10.52%

77.53%

58

51

376

485

Q13 Please add any comments you have regarding the above questions, or other items related to collection of garbage, recycling, or yard trimmings. If you have a question, please include your email address or phone number so we can provide you an answer.

Answered 143 Signed 141

Q14 If you would like to be contacted directly via email for participation in future surveys, please provide us with your email address.

Answered: 133 Skipped: 339





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

CITY – COUNTY – CONTRACTORS

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

LEWIS FIGONE, PRESIDENT

September 4, 2014

By facsimile and US Mail

Kensington Police Protection
and Community Services District
217 Arlington Avenue
Kensington, CA 94707

To the Board of Directors:

Bay View Refuse & Recycling Services, Inc. ("Bay View" or "the Company") is pleased to make the following proposal for your consideration of a possible new Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials to be effective September 1, 2015 at the end of our current agreement. This proposal is intended to give the District general information about what we consider to be the most critical issues for you to consider in making a decision about whether or not a new agreement is negotiated between the parties. This offer is subject to negotiation of a definitive contract acceptable to both the District and Bay View Refuse & Recycling Services, Inc.

Bay View has served the residents of Kensington for over 70 years and has always received very high ratings from customer service questionnaires about both the quality and the cost of the service. We are proud of our record in that regard and sincerely hope that an acceptable new agreement can be reached to continue our relationship with the residents of the district.

1. A. Bay View would agree to continue to provide the same curbside and backyard service that the residents currently enjoy with no difference in rates between the two.
B. The rate in effect at August 31, 2015 under our existing contract would be continued with no increase for the first sixteen months of the contract through December 31, 2016. A one-year CPI increase would take effect January 1, 2017 and annually thereafter through the end of the contract.
C. Bay View will give customers and extra "clean-up" day each year (2 per year) starting in 2016.
2. The Franchise Fee paid to the District would be increased to 8% for the twelve months from September 1, 2015 through August 31, 2016 and would decrease to 5% thereafter through the end of the contract. Beginning on September 1, 2015 the District would be responsible to Contra Costa County for any Franchise Fee payments due to the County.
3. In addition to holding the rates in effect at September 1, 2015 steady through December 31, 2016, the Company would agree to a Multi-Index Rate Adjustment formula that is similar to Consumer Price Index (CPI) for rate adjustments beginning January 1, 2017 and annually thereafter. The Multi-Index Rate Adjustment methodology weights certain inflation factors into categories for employment costs, fuel and all other costs of operation so that it give a more accurate reflection of the actual changes in cost of providing the services.

The mini-cans rates in effect are currently \$4.00 per month less than the 32 gallon containers and the rate is negotiated to remain a constant \$4.00 per month difference as the 32 gallon can rates are adjusted by formula. Bay View understands the concept of the 20 gallon "mini-cans" as an enticement for people to increase recycling and reduce landfill waste and supports the concept. Unfortunately Kensington is a very hard to service area because of the geography, the narrow streets, high traffic in many areas and the general lack of off-street parking. These factors eliminate the ability of any contractor to take advantage of automation that other service areas might enjoy. The practical reality of waste collection in Kensington is that it must all be done "by hand" and there is no labor cost differentiation between our employees collecting a 32 gallon container and a 20 gallon "mini-can". For that reason our proposal is based on the assumption that the 20 gallon can rate under the new contract will not be changed by the index but will remain \$4.00 per month less than any future rates for the 32 gallon containers, as adjusted.

4. Bay View is requesting a minimum five year initial contract term and would like to have the ability with mutual consent of the District to extend the contract for another three years if the Company is not in default and the customer satisfaction ratings remain high. We believe that an initial term of at least 5 years is necessary because a new truck and equipment is needed and there needs to be sufficient length of time for us to recoup the cost of that equipment. We also think that an extension for some period of time would be beneficial to the District so that you would not be required to incur the cost of a full Request For Proposal (RFP) process in five years.

Bay View has served Kensington for seventy years and would very much like to negotiate a contract that will allow the residents of Kensington to continue to enjoy the excellent level of customer service that they currently support. I have always taken a long-term view about my business and commitments so it will probably not surprise many members of the Board that I have made arrangements for the continuance of all businesses which I have majority ownership in through a Business Trust which will assure a secure and stable future for the employees and the customers of my operations.

If these general terms are acceptable to the District's Board of Directors, Bay View stands ready to work diligently to negotiate the terms of a new Franchise Agreement . We would ask that you advise us of your acceptance of these general terms no later than September 30, 2014. In the meantime, if you have any questions please contact me.

Cc Haig Harris
Cc Charlie Cowden

Very truly yours,
Bay View Refuse & Recycling Services, Inc.



Lewis R. Figone, President

DRAFT

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.

DRAFT FOR REVIEW

September 4, 2014

114

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- G. Approved Subcontractors
- H. Reporting Requirements
- I. Form of Performance Bond
- J. 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 Collection
5 Services (the "Agreement") is entered into on the _____ day of _____ 2014, by and
6 between the Kensington Police Protection and Community Service District, a political subdivision of the
7 State of California (hereinafter, "District"), and {Insert Contractor Name} a California corporation,
8 (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 manner
24 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 the
26 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 of
35 Collection services to the District and has authorized the execution of this Agreement on _____
36 {Insert Execution Date}; and

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

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

43 ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE

44 1.1 Grant and Limitations of Exclusive Franchise

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

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

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

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

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

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

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

74 out service), using its own employees, vehicles and equipment as an incidental part of the
75 service being performed and such contractor is providing a service which is not included in
76 the scope of this Agreement;

77 6. Animal, Grease Waste, and Used Cooking Oil. Animal waste and remains from slaughterhouse
78 or butcher shops, grease, or used cooking oil;

79 7. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge
80 ash, grit, and screenings;

81 8. Excluded Waste. Excluded Waste regardless of its source;

82 9. Materials Generated by Cemetery and School. Materials generated by Sunset Cemetery or
83 the Kensington Elementary School.

84 10. Materials Generated by State, County, and Federal Facilities. Materials generated by State,
85 County, and federal facilities located in the District.

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

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

103 **ARTICLE 2: REPRESENTATIONS AND WARRANTIES** 104 **OF THE PARTIES**

105 **2.1 Representations and Warranties**

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

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

- 110 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and
111 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes
112 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance
113 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,
114 moratorium, and other laws affecting creditors' rights generally.
- 115 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under
116 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental
117 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any
118 term or condition of any judgment, decree, franchise, agreement (including, without limitation, the
119 certificate of incorporation of the Contractor), or instrument to which the Contractor or any Affiliate
120 is a party or by which the Contractor or any Affiliate or any of their properties or assets are bound,
121 or constitutes a default under any such judgment, decree, agreement, or instrument. The Parties
122 have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the
123 California Government Code relating to conflicts of interest for public officers and employees.
124 Contractor represents it is unaware of any financial or economic interest of any public officer or
125 employee of the District relating to this Agreement.
- 126 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in
127 equity, before or by any court or governmental authority, pending, or to the Parties' best
128 knowledge, threatened against either Party which is likely to result in an unfavorable decision,
129 ruling, or finding which would materially and adversely affect the validity or enforceability of this
130 Agreement or any such agreement or instrument entered into by either Party in connection with
131 the transactions contemplated hereby, or which would materially and adversely affect the
132 performance by that Party of its obligations hereunder or by the Contractor under any such other
133 agreement or instrument.
- 134 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the
135 Agreement Date which would prohibit the performance by either Party of this Agreement and the
136 transactions contemplated hereby.
- 137 F. **Contractor's Statements.** The Contractor's proposal and any other supplementary information
138 submitted to the District, which the District has relied on in awarding and entering this Agreement,
139 do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that
140 is necessary in order to make the statements made, in light of the circumstances in which they were
141 made, not misleading.
- 142 G. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it)
143 of the conditions and circumstances surrounding the Agreement and the work to be performed
144 hereunder. Contractor has taken such matters into consideration in entering this Agreement to
145 provide services in exchange for the compensation provided for under the terms of this 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 the Approved Disposal Facility for the
153 purposes of Disposing of all Solid Waste Collected in the District. In the same arrangement, the
154 Contractor agrees to use the Approved Recyclable Materials Processing Facility and the Approved
155 Organics Materials Processing Facility for Processing of all Recyclable Materials and Organics
156 Materials, respectively, Collected in the District and to use the Approved Transfer Facility (if needed)
157 for the purpose of Transferring Solid Waste, Recyclable Materials, and/or Organic Materials. Such
158 decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law
159 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 Agreement Date of September 1, 2015 through August 31, 2020
163 and shall continue in full force during that period, unless terminated earlier pursuant to this Agreement.
164 The Agreement may be extended in accordance with this Article or terminated pursuant to Section 3.3
165 and/or Article 11.

166 **3.2 District's Option to Extend**

167 This Agreement may be extended without amendment, at the District sole option, for a period of no less
168 than one (1) year and no more than ___additional years for a total Term that does not exceed ___years.
169 If the District desires to extend the Agreement, the District shall provide the Contractor with written notice
170 of its desire to extend the Agreement at least one hundred eighty (180) days before the expiration of the
171 Term. Such notice by the District shall specify the desired duration of the extension. Any extensions to
172 this Agreement shall be made by an amendment to this Agreement, approved by both Parties.

173 **3.3 Termination for Failure to Implement Services**

174 The Contractor has agreed herein, through either its own labor, equipment, and facilities or facilities
175 provided by others, to implement various programs in order to expand the types of services provided to
176 the District. Failure to implement the services described in this Agreement upon the commencement of
177 this Agreement for any reason, shall constitute an Event of Default in accordance with Section 11.1 hereof.

178 **ARTICLE 4: COLLECTION SERVICES**

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

184 **4.1 Residential Services**

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

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

190 **Containers:** 20-, 32-, 40-, 45- gallon (or similar sizes) Containers to be provided by
191 Customer or Contractor upon Customer's request.

192 Drop Boxes (as requested by Customer)

193 **Service Frequency:** One (1) time per week

194 **Service Location:** Back-yard or Curbside service at Customer's option

195 **Acceptable Materials:** Solid Waste

196 **Additional Service:** On Customer's regularly scheduled Collection day, Contractor shall
197 Collect additional Solid Waste Containers (beyond the Customer's regular
198 Service Level) and shall charge Customer for the extra pick-up at the
199 District-approved Rate.

200 Upon request, Contractor shall provide Customers extra pick-up on a day
201 other than the Customer's regularly scheduled Collection day and shall
202 charge the Customer at the District-approved Rate.
203

204 B. **Recyclable Materials Collection.** Contractor shall Collect Single Stream Recyclable Materials in
205 Contractor-provided Containers one (1) time every week from Residential Customers and Transport
206 all Single Stream Recyclable Materials to the Approved Recyclable Materials Processing Facility for
207 Processing. Contractor shall provide weekly Single Stream Recyclable Material Collection services at
208 no charge to Customers subscribing to Solid Waste Collection service.

209 **Containers:** Customer-provided containers including, but not limited to, buckets,
210 baskets, milk crates, carts or up to three (3) 5-gallon plastic buckets
211 provided by Contractor upon Customer request

212 **Service Frequency:** One (1) time per week on the same day as Solid Waste Collection

213 **Service Location:** Curbside

214 **Acceptable Materials:** Single Stream Recyclable Materials

215 **Additional Service:** Contractor to provide replacements containers at cost

216 **Other Requirements:** On each Customer's regularly scheduled Collection day, Contractor shall
217 Collect an unlimited quantity of Single Stream Recyclable Materials from
218 the Residential Customer.

219 C. **Green Waste Collection.** Contractor shall Collect Green Waste two times every month from
220 Residential Customers and Transport all Green Waste to the Approved Organics Processing Facility
221 for Processing. Contractor shall collect Green Waste that is bundled, tied, or placed in boxes or
222 containers. Contractor shall not collect Green Waste in plastic bags.

223 **Containers:** Customer-provided boxes or containers (or no container if Customer
224 bundles or ties materials)

225 **Service Frequency:** Two (2) times every month on the same day as Solid Waste Collection

226 **Service Location:** Curbside
227 **Acceptable Materials:** Green Waste
228 **Additional Service:** None
229 **Other Requirements:** On each Customer's regularly scheduled Collection day, Contractor shall
230 Collect an unlimited quantity of Green Waste from the Residential
231 Customer.

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

239 4.2 Commercial Services

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

242 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided Containers not
243 less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the
244 Approved Disposal Facility for Disposal.

45 **Container Sizes:** 32- and 45-gallon Containers and
246 1- and 2-cubic-yard Bins to be provided by Customer or Contractor upon
247 Customer's request
248 Drop Boxes provided by Contractor upon Customer request
249 **Service Frequency:** Up to five (5) times per week but not less than one (1) time per week, as
250 requested by Customer
251 **Service Location:** Curbside; or other Customer-selected service location at Customer's
252 option.
253 **Acceptable Materials:** Solid Waste
254 **Additional Service:** Contractor shall provide a Bin exchange to any Commercial Customer for
255 cleaning and maintenance one (1) time each year, upon Customer
256 request.
257 **Other Requirements:** Contractor shall establish a minimum Service Level of thirty (35) gallons
258 per dwelling unit per week for Multi-Family Customers.

259 B. **Recyclable Materials Collection.** Contractor shall Collect Single Stream Recyclable Materials in
260 Contractor-provided Containers not less than one (1) time every week from Commercial Customers
261 and Transport all Single Stream Recyclable Materials to the Approved Recyclable Materials
262 Processing Facility for Processing. Contractor shall provide service up to five (5) times per week upon
263 Customer's request, at no charge to Customers subscribing to Solid Waste Collection service.

264 **Containers:** Containers, Carts, Drop Boxes
265 **Container Sizes:** 65-/68-gallon Carts (or similar size) provided by Contractor; or Customer-
36 provided Container

267 Drop Boxes provided by Contractor upon Customer request
268 **Service Frequency:** Up to five (5) times per week but not less than one (1) time every other
269 week, as requested by Customer
270 **Service Location:** Curbside or other Customer-selected service location
271 **Acceptable Materials:** Single Stream Recyclable Materials
272 **Additional Service:** None
273

274 C. **Green Waste Collection.** Contractor shall Collect Green Waste two times every month from
275 Commercial Customers that subscribe to service and shall Transport all Green Waste to the
276 Approved Organics Processing Facility for Processing. Contractor shall Collect Green Waste that is
277 bundled, tied, or placed in boxes or Containers. Contractor shall

278 **Containers:** Customer-provided boxes or Containers (or no Container if Customer
279 bundles or ties materials)
280 **Service Frequency:** Two (2) times every month
281 **Service Location:** Curbside or other Customer-selected service location
282 **Acceptable Materials:** Green Waste
283 **Additional Service:** Restaurants may subscribe to wet or dry Collection service and
284 Contractor shall charge Customer for such service at District-approved
285 Rates
286 **Other Requirements:** None

287 D. **Extra Pick-Ups and Overage Collection.** Upon Customer request and to accommodate periodic
288 additional service needs, Contractor shall provide Collection service at a greater frequency than the
289 Customer's regular Service Level and Contractor may charge the appropriate Rate for the higher
290 Service Level.

291 On regularly scheduled Collection days, Contractor shall Collect excess materials ("overages")
292 Customer has placed for Collection beyond Customer's regular Service Level if Customer has
293 requested Collection of such overages and has agreed to pay an extra cost for such service. In such
294 case, Contractor shall Collect the overages and charge Customer at the District-approved Rate. If
295 Customer has not arranged for overage Collection and places excess materials out for Collection,
296 Contractor shall not Collect the material and shall inform Customer of its reason for non-Collection.
297 For the purpose of this Agreement, two bags of overages shall be considered equivalent to one 30-
298 /32-gallon container.

299 E. **Locking Containers.** Contractor shall ensure that all Commercial Bins are equipped with locking
300 mechanisms. Upon Customer's request, Contractor shall provide each Customer with a lock and
301 key, at no additional charge to the Customer, for each Bin and shall service each Bin at no additional
302 cost. Contractor shall ensure that each Bin is locked following the provision of service.

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

305 4.3 Collection Service Operating Requirements

306 A. **Regular Collection Hours.** The Contractor shall provide Collections from any Premises on any
307 weekday (except Saturdays and Sundays) between the hours of 6:00 a.m. and 6:00 p.m. provided,

308 however, that the District may, at its sole discretion, change the Collection time as required by the
309 needs of the Customers or the Contractor.

310 B. **Emergency Service.** Collection of Solid Waste necessitated by an emergency, which the District
311 Contract Manager determines threatens the public health and safety within the District, will be
312 made by the Contractor at the direction of the District Contract Manager. Such Emergency Services
313 may be required outside of the regular Collection hours and schedule. If the District requests the
314 Contractor to provide Emergency Services, the Contractor will use the Contractor's good faith best
315 efforts to respond to such a request. The District shall reimburse the Contractor for all actual,
316 documented and reasonable additional costs incurred in order to comply with the provisions of this
317 Section.

318 C. **Noise Levels.** The Contractor shall perform Collection services in a manner that minimizes the noise
319 resulting from its equipment and personnel and shall ensure that it is in compliance with Applicable
320 Law and the District Code.

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

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

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

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

344 4.4 Other Services

345 A. **General Pick-Up Collection Services.** Contractor shall provide one "general pick-up" Collection
346 service to Residential Customers including Multi-Family Customers who are otherwise served as
347 Commercial Customers, once per year in September. Customers may set out up to 1.5 cubic yards
348 of excess Solid Waste and Recyclable Materials that is bundled, tied, or bagged. Contractor shall

349 Collect such materials and Transport the materials to the Approved Disposal Facility or Approved
350 Recyclable Materials Processing Facility.

351 **Containers:** Not applicable
352 **Service Level:** Up to one and a half (1.5) cubic yards of Solid Waste and/or Recyclable
353 Materials
354 **Service Frequency:** Once (1) per year per Customer in September
355 **Service Location:** Curbside
356 **Acceptable Materials:** Solid Waste, Recyclable Materials provided that any single item is less
357 than two hundred (200) pounds in weight
358 **Additional Service:** Contractor shall Collect additional items that exceed the above described
359 service level, as requested by Customer, and may charge the Rate
360 approved by the District for such service.
361 Contractor shall provide additional general pick-up Collection events for
362 a Customer beyond the one event in September, as requested by
363 Customer, and may charge the Rate approved by the District for such
364 service.
365 The Contractor shall provide the service to the Customer within five (5)
366 Business Days of the Customer's requested service date, as mutually
367 agreed upon by the Customer and Contractor.

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

373 District Headquarters, 217 Arlington Ave: Two Solid Waste Containers per week
374 District Community Center at 59 Arlington Ave: One 1.5 yard Solid Waste Container per week
375 County's Kensington Library, 61 Arlington Ave
376 Public litter and recycling cans in the Colusa and Arlington business districts
377

378 C. **District Special Events.** Contractor shall provide Solid Waste and Recyclable Materials Collection
379 services to District-sponsored public events held within the District to include, at a minimum,
380 Containers for the Collection of both Solid Waste and Recyclable Materials and staffing sufficient to
381 ensure that such Containers are serviced frequently enough to prevent overflowing or spillage. In
382 addition, Contractor shall conduct public education at such events, upon request of the District
383 Contract Manager, including staffing an information booth and providing educational materials.
384 Contractor shall provide these services at no cost to the District or Customers.

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

389 E. **Christmas Trees.** The Contractor shall Collect all Christmas trees placed Curbside by Residential
390 Premises on any day of the year provided that the tree is unflocked, without a stand, and is prepared

391 in the same manner as that described for Green Waste in Section 4.1.C. This service is free of any
92 additional charge to any Customer.

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

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

407 Contractor shall deliver such illegally dumped waste to the Approved Disposal Facility at no
408 additional charge to the District.

409 H. **Public Education and Outreach.** The Contractor shall perform all public education and outreach
410 activities as described in its Public Education and Outreach Plan in Exhibit F.

411 **4.5 Standard of Performance**

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

416 A. **Clean Up and Avoiding Damage to Property.** The Contractor shall use due care to prevent littering,
417 spills, or leaks of material placed for Collection. If any materials are littered, spilled, or leaked during
418 Collection or Transportation, the Contractor shall clean up all material before leaving the site. The
419 Contractor shall close all gates after making Collections and shall not do damage to or trespass upon
420 private or public property. Failure to comply with the provisions of this Section may result in
421 Liquidated Damages, subject to the provisions of Section 11.2.

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

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

128

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

434 2. Follow such other procedure as the District Contract Manager shall approve.

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

438 C. **Employees**

439 1. **Conduct and Uniform.** The Contractor shall take all steps necessary to ensure that its
440 employees performing Collection services conduct themselves in a safe, proper, and
441 workmanlike manner, and that they work as quietly as possible. All such employees shall at
442 all times of employment be dressed in uniforms with suitable identification.

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

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

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

455 E. **Record of Non-Collection.** When any Solid Waste, Recyclable Materials, and/or Organic Materials
456 placed for Collection are not Collected by the Contractor, the Contractor shall leave a tag listing the
457 reasons for such non-Collection and a telephone number where the Customer may contact the
458 Contractor. This information shall either be in writing or by means of a checked box on a form. The
459 Contractor shall maintain, at its place of business, a log book listing all such circumstances in which
460 Collection is denied. The log book shall contain the names and/or addresses of the Collection
461 Premises involved, the date of such tagging, the reason for non-Collection, and the date and manner
462 of disposition of each case. The log book shall be kept so that it may be conveniently inspected by
463 the District Contract Manager upon request. The log relating to any particular tagging shall be
464 retained for a period of one (1) year following such tagging. As an alternative to non-Collection,
465 where the basis for the non-Collection notice is not resolved by the Customer and where
466 photographic evidence is provided by the Contractor, Contractor may complete the Collection and
467 charge the Customer at the "extra can or bag of Solid Waste" Rate, as specified in Exhibit D,
468 equivalent to the Customer's Container size to compensate it for the costs of extra pickups and/or
469 sorting of materials.

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

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

481 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in
482 respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any
483 revenues of the Contractor there from, and shall provide and pay the cost of all utilities necessary
484 for the operation of the Operating Assets and the provision of the Franchise Services, when the
485 same shall become due.

486 4.6 Collection Locations

487 A. **General.** The Contractor shall be responsible for the Collection of all Solid Waste, Recyclable
488 Materials, and/or Organic Materials placed for Collection in a legal manner. The Contractor shall
489 immediately notify the District Contract Manager of any condition at or near any Designated
490 Collection Location which creates a safety hazard or accessibility problem. Upon authorization by
491 the District Contract Manager, the Contractor shall discontinue Collection for any such location until
492 the safety hazard or accessibility problem is corrected. Contractor may charge for the "Extra Pick-
493 up" at Rates set in accordance with Article 11 in the event that its Collection vehicle is required to
494 return to the service location to complete Collection due to a safety hazard or access restriction
495 caused by the Customer and documented with photographic evidence.

496 B. **Enclosures.** Where the Collection Location is within an enclosure constructed pursuant to the
497 requirements of any public agency having jurisdiction over the design, construction, and location of
498 such enclosures, the Contractor shall be responsible for the removal and replacement of all
499 Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers
500 so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or
501 improvements. The Contractor shall promptly repair at its own expense any such enclosure or
502 adjacent facilities or improvements damaged by the Contractor. The District Contract Manager shall
503 resolve any disputes relating to such damage, and the Contractor agrees to abide by such decision.

504 4.7 Other Wastes

505 The Parties acknowledge that this Agreement is granted only with respect to the Franchise Services
506 described herein and does not include the Collection, Transportation, Processing, or Disposal of Hazardous
507 Waste, Medical Waste, and Liquid Waste. If the Contractor elects to provide any such services with respect
508 to Hazardous Waste, Infectious Waste, or any other waste regulated by the Department of Toxic
509 Substances Control, such services shall be performed by a separate legal entity separately insured and
510 liable, and according to Applicable Law. The Parties further acknowledge that the provision by the

511 Contractor of any services not specifically included within the Agreement are excluded from the
512 protection of this Agreement and may be the subject of competition among any and all legally authorized
513 haulers.

514 4.8 Changes in Scope of Franchise Services

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

516 The District shall provide written notice of any requested modification to the scope of services provided
517 by Contractor pursuant to this Agreement, and the Contractor shall provide the District with any
518 information requested by the District in connection with the proposed changes. The Contractor shall,
519 within sixty (60) days after receipt of such notice by the District, respond to the District's order. The
520 Contractor may seek additional compensation in the event the scope of services is modified in accordance
521 with this Section 4.8. The need for and amount of additional compensation shall be calculated following
522 a change in scope Rate review pursuant to Section 9.3.

523 4.9 Billing

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

530 A. **Payment Methods and Location.** Contractor's website shall provide Customers with the ability to
531 pay their bills through an electronic check or credit card and include the ability for Customer billings
532 to be automatically charged on a recurring basis. Contractor shall prepare and mail bills to, and
533 collect payment from Customers who decline to use such internet-based billing system. Contractor
534 shall allow for Customers to pay by check or money order.

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

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

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

547 Bills shall become due and payable three and one-half (3.5 months) after mailing (e.g., bills mailed
548 on September 1 shall be due and payable on December 15). In the event that any account becomes

549 more than forty-five (45) calendar days past due, Contractor shall notify such Customer of the
550 delinquency via written correspondence and telephone contact.

551 4.10 Public Awareness

552 The Contractor agrees, at its own expense, to prepare and send or deliver to Customers an annual service
553 information brochure providing a description of Collection service offering, including, but not limited to,
554 Rates, Collection service options, set-out requirements, payment options, discounts (if any), days of
555 Collection, service level and inquiry/complaint procedures, including the name, address and local
556 telephone number of Contractor and the name, address and telephone number of the District Contract
557 Manager. Contractor shall also develop and maintain a website accessible to the District and Customers
558 that presents the information required by annual service information brochure and other information as
559 may be appropriate. In addition, Contractor shall provide additional information to Customers at least
560 twice annually on such topics as proper Household Hazardous Waste Disposal, Solid Waste reduction and
561 Recycling, or such other topics included as part of the Contractor's Recycling Plan (Exhibit F). All public
562 education and outreach materials are subject to review and approval of the District Contract Manager
563 prior to release or distribution to Customer and/or the public.

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

69 4.11 Transition to Next Contractor at End of Agreement

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

577 4.12 Ownership of Materials

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

583 4.13 Annexation and Change of Franchise Area Boundaries

584 Contractor realizes that the public agency boundaries may be altered by virtue of actions taken by the
585 Contra Costa County Local Agency Formation Commission (LAFCO). Contractor agrees that should a
586 municipal corporation lawfully annex territory which is within the Franchise Area, District may make such
587 alternations to the Franchise Area as the annexation necessitates. Should the Franchise Area boundaries

588 be amended, Contractor agrees that it will abide by any changes resulting from the Franchise Area change.
589 Contractor agrees that the District Board may make such alterations to the Franchise Area as are
590 necessitated by such Local Agency Formation Commission actions and that it shall have no right or claim
591 to damages or other relief against the District or County for such alterations to the Franchise Area.
592 However, nothing herein is intended to abrogate Contractor's rights under Public Resources Code Section
593 49520 or any successor or similar statute.

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

595 **5.1 Approved Facilities**

596 A. **General.** The Contractor shall provide or arrange for Transfer (if appropriate) and Processing of
597 Recyclable Materials and Organic Materials Collected in the Franchise Area and for Transfer (if
598 appropriate) and Disposal of Solid Waste Collected in the Franchise Area, so long as such
599 arrangements are in full compliance with this Agreement and Applicable Law. Contractor may
600 engage a Subcontractor to provide Transfer, Processing, and/or Disposal services provided that the
601 Subcontractor is approved by the District pursuant to Section 7.6.D. Contractor shall only deliver
602 Collected materials to facilities approved by the District and such Collected materials shall only be
603 Transferred, Processed, and Disposed of at facilities approved by the District. Contractor shall pay
604 all costs associated with Transport, Transfer, Processing, and Disposal including per-Ton tipping fees
605 or gate fees charged for Transfer, Processing, and/or Disposal at the Approved Facilities.
606 Contractor, or its Subcontractor, shall keep all existing permits and approvals necessary for use of
607 the Approved Facilities in full regulatory compliance.

608 B. **Recyclables Processing.** The Contractor shall be responsible for Transfer (if appropriate) and
609 Processing of Recyclable Materials Collected in the Franchise Area. Contractor shall Transport
610 Collected Recyclable Materials to the Approved Recyclable Materials Processing Facility for
611 Processing.

612 C. **Organic Materials Processing.** The Contractor shall be responsible for Transfer (if appropriate) and
613 Processing of Organic Materials Collected in the Franchise Area. Contractor shall Transport
614 Collected Organic Materials to the Approved Organic Materials Processing Facility for Processing.
615 Contractor shall arrange for composting of the Organic Materials at the Approved Organic Materials
616 Processing Facility. It shall not use or allow for Organic Materials to be used at a landfill for
617 alternative daily cover, alternative intermediate cover, or other "beneficial reuse purposes" at a
618 landfill.

619 D. **Solid Waste Disposal.** The Contractor shall Transport Solid Waste Collected in the Franchise Area
620 to the Approved Transfer Facility and shall arrange for Transfer and Disposal of all Solid Waste at
621 the Approved Disposal Facility. Residue Materials from the Recyclable Materials and Organic
622 Materials Processing shall be Disposed of by Contractor, or owner/operator of the Approved
623 Recyclable Materials Processing Facility and Approved Organic Materials Processing Facility, at a
624 Disposal Facility selected by Contractor or the owner/operator of the Approved Recyclable
625 Materials Processing Facility or the Approved Organic Materials Processing Facility.

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

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

635 G. **Guaranteed Capacity.** Contractor shall be solely responsible for selecting the Approved Facilities
636 and guaranteeing sufficient capacity at such Facilities to Transfer, Process, and/or Disposal of all
637 Solid Waste, Recyclable Materials, and Organic Materials Collected by Contractor under this
638 Agreement throughout the Term of the Agreement. Contractor shall provide the City, upon request,
639 with documentation guaranteeing and demonstrating the availability of such sufficient capacity at
640 the Approved Facilities for all materials Collected by Contractor in the City throughout the Term of
641 this Agreement.

642 5.2 Marketing of Recovered Materials

643 Contractor shall be responsible for Processing or causing Processing of Recyclable Materials and Organic
644 Materials to recovery and market such materials. At a minimum, Contractor shall guarantee that
645 Processing will result in significant diversion of materials from Disposal so that Residual Waste from the
46 Recyclable Materials that is less than ten percent (10%) by weight of the Recyclable Materials Collected
647 measured on an average monthly basis. At a minimum, Contractor shall guarantee that Processing will
648 result in significant diversion of materials from Disposal so that Residual Waste from the Organic Materials
649 that is less than one percent (1%) by weight of the Green Waste Collected measured on an average
650 monthly basis. The residual level shall be calculated as the monthly Tonnage of Processing Residual Waste
651 divided by the total monthly Tonnage of Recyclable Materials Collected or Organic Materials Collected as
652 appropriate.

653 Contractor shall market or arrange for marketing of all Recovered Materials from the Recyclable Materials
654 and Organic Materials Collected in the District. Contractor's marketing strategy shall make reasonable
655 business efforts to promote the highest and best use of materials presented in the waste management
656 hierarchy established by AB 939. Where practical and cost-effective, the marketing strategy should
657 include use of local, regional, and domestic markets for Recyclable Materials and Organic Materials. With
658 the exception of the small quantities of Residual Waste, Contractor shall not Dispose of Recyclable
659 Materials or Organic Materials. Contractor shall make available to the District Contract Manager any and
660 all documentation of the final disposition of marketed Recyclable Materials and Organic Materials as well
661 as certification that such materials have not been Disposed or incinerated.

662 Contractor shall not Dispose of Recyclable Materials, Organic Materials, and C&D Collected in the District.
663 However, if market conditions are such that there are no purchasers and no users willing to accept such
664 materials for reuse, Recycling, or Processing without payment by Contractor, Contractor may submit a
665 written request to the District Contract Manager for authority not to Collect such materials while such
666 market conditions persist. If the District Contract Manager can make the findings specified in Article 418-

667 10.8 in the County Ordinance Code, and unless County otherwise directs, the District Contract Manager
668 shall exempt such material(s) from Recycling on conditions he/she specifies.

669 **5.3 Weighing and Record Requirements**

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

676 **5.4 District Right to Modify Facility Arrangements**

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

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

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

691 **5.5 Title to Recovered Materials**

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

ARTICLE 6: OPERATING ASSETS

6.1 Operating Assets

700 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,
 701 Operating Assets which in number, nature, and capacity shall be sufficient to enable the Contractor
 702 to provide the Franchise Services in accordance with the terms hereof and such assets shall be
 703 subject to inspection by the District at any time.

704 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and Vehicle or
 705 equipment number shall be visibly displayed in letters not less than three (3) inches in height on
 706 both sides of its Vehicles or other Collection equipment used by the Contractor.

707 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered
 708 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall be
 709 of a type approved by the District, shall be kept clean and in good repair, and shall be continuously
 710 maintained in a watertight condition. Vehicles used to Collect or Transport Solid Waste, Recyclable
 711 Materials, and Organic Materials shall be kept covered at all times except when such material is
 712 actually being loaded or unloaded, or when the Vehicles are moving along a Collection route in the
 713 course of Collection. All Vehicles shall carry a broom, shovel, and operable fire extinguisher.
 714 Collection Vehicles shall be washed at least once every seven (7) days and cleaned and painted as
 715 required to maintain a clean appearance. All Vehicles must be made available for inspection upon
 716 reasonable notice by the District Contract Manager.

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

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

6.2 Operation and Maintenance of the Operating Assets

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

740 6.3 Containers

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

743 B. **Containers for Residential Customers.** Residential Customers will supply and maintain all Solid
744 Waste and Green Waste Containers required for the services provided under this Agreement. For
745 Recyclable Materials Collection, Customer shall provide Containers or Contractor shall provide up
746 to three (3) five-(5-) gallon plastic buckets for new Customers and one or more plastic buckets to
747 Customers requesting replacement of one or more plastic bucket(s).

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

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

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

768 6.4 Vehicle Requirements

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

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

785 ARTICLE 7: GENERAL REQUIREMENTS

786 7.1 Public Access to the Contractor

- 787 A. **Office Facilities.** The Contractor shall establish and maintain an office within _____ (___) miles
788 of the District through which the Contractor's representatives may be contacted, unless otherwise
789 approved by the District Contract Manager.
- 790 B. **Office Hours and Telephone Access.** The Contractor's office hours shall be, at a minimum, from 8:00
791 a.m. to 5:00 p.m. daily except Saturdays, Sundays, and Holidays. These hours may be altered with
792 the approval of the District Contract Manager. Contractor shall answer calls from Customers and
793 the District during office hours and provide a twenty-four (24) hour phone messaging system for
794 calls received after hours. Contractor shall provide a local telephone or toll-free phone number for
795 Customer service calls and shall publish the telephone number(s) in the local telephone directory.
- 796 C. **Emergency Telephone Number.** The Contractor shall provide the District with an emergency
797 telephone number for use by the District Contract Manager outside normal business hours. The
798 Contractor shall have a representative, or an answering service to contact such representative,
799 available at the emergency telephone number during all hours other than normal office hours.

800 7.2 Service Complaints

- 801 A. **Complaints to Contractor.** The Contractor shall maintain during office hours a complaint service
802 and telephone answering system having an answering capacity satisfactory to the District Contract
803 Manager. All service complaints and billing complaints will be directed to the Contractor. The
804 Contractor shall record all complaints in a log, including date, complainant name and address, and
805 nature and resolution of complaint. This log shall be available for inspection by the District Contract
806 Manager during the Contractor's regular office hours. Copies thereof shall be furnished to the
807 District Contract Manager upon request.
- 808 B. **Required Response to Complaints.** Contractor shall develop and implement a policy and procedures
809 for responding to and recording Customer complaints, including dispute resolution. The policy and
810 procedure shall be subject to the approval of the District Contract Manager. The Contractor, within
811 twenty-four (24) hours of its receipt of notice from a Customer or the District Contract Manager of
812 a failure to provide any service(s) as required by the terms of this Agreement, shall provide such
813 service in a manner consistent with the requirements of this Agreement.

814 **7.3 Accounting and Records**

815 A. **Maintenance and Audit of Records.** The Contractor shall maintain in its principal office in the
816 County full and complete financial statements and accounting records for operations under this
817 Agreement in accordance with generally accepted accounting principles ("GAAP"). Contractor shall
818 account for revenues received and expenses incurred as a result of this Agreement separate from
819 the accounting for other operations performed by Contractor or its Affiliates. The Gross Receipts
820 derived from the Collection services under this Agreement, whether such services are performed
821 by the Contractor or by a Subcontractor, shall be recorded as revenues in the accounts of the
822 Contractor. Upon demand, the Contractor shall permit the District Contract Manager to examine
823 and audit the books of account of the Contractor at any and all reasonable times for the purpose of
824 verifying Contractor's performance under this Agreement. Upon request, the Contractor shall allow
825 the District Contract Manager to examine the reports of Gross Receipts and the invoices pertaining
826 to any fee or charge approved by the District Board for Franchise Services provided under this
827 Agreement. Such request shall be made at reasonable times and with reasonable notice.

828 In the event that a Special Circumstance Rate adjustment is requested pursuant to Section 9.3, such
829 records shall be subject to review at any reasonable time by an independent third party in
830 accordance with appropriate professional standards, and inspection, for the primary purpose of
831 reviewing changes in costs to the Contractor attributable to the Special Circumstance request. The
832 District Contract Manager shall, in its sole discretion, select the independent third party and define
833 the scope of work for such review. The independent reviewer shall provide any and all drafts of its
834 review to the District and the Contractor. The Party requesting the Special Circumstance Rate review
835 shall bear the cost of the review.

836 The Contractor shall maintain and preserve all cash, billing, and Collection, Transport, Transfer,
837 Processing, and Disposal records (including number of Customers [total, type, and Service Level],
838 route maps, service records, and other materials and operating statistics) throughout the Term of
839 this Agreement and for a period of not less than three (3) years following expiration or early
840 termination of the Agreement. The Contractor shall obtain, within one hundred twenty (120) days
841 of a request by the District Contract Manager, complete independently audited financial statements
842 for the prior calendar year, including its balance sheet, statement of revenues and expenses, and
843 statement of changes in cash position, and provide such financial statements to the District Contract
844 Manager.

845 B. **Confidentiality.** The District agrees to hold financial statements delivered pursuant to this Section
846 as confidential and shall not disclose the same unless and to the extent disclosure is required
847 pursuant to Applicable Law.

848 **7.4 Reporting**

849 Contractor's quarterly and annual reporting requirements are presented in Exhibit H. In addition,
850 Contractor shall maintain on file at its business premises documentation setting forth its Routing and
851 Collection System, a list of all Collection Premises in the District, organized alphabetically or by address,
852 and the identification of all services each receives. This information shall be updated and provided at no
853 additional cost to the District along with Contractor's annual report (as required in Exhibit H) to the District
854 and any time upon request of the District Contract Manager. The Contractor shall cooperate with the
855 District to periodically monitor the average volume of Solid Waste, Recyclable Materials, and Organic

856 Materials generated from each Collection Premises. Contractor shall provide route maps and operating
57 statistics upon request. Customer-specific records are subject to inspection, and copying by the District
858 during regular business hours with reasonable advance notice.

859 7.5 AB 939 and AB 341 Compliance

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

872 7.6 Personnel and Subcontractors

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

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

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

887 D. **Affiliates and Subcontractors.** The Contractor shall not utilize any Affiliates or Subcontractors for
888 the performance of the Franchise Services except with the consent of the District Contract Manager,
889 which may be withheld or delayed if the District Contract Manager determines, in their sole
890 discretion, that such consent is not in the best interest of the public health, safety, or general
891 welfare. In the event Subcontractors are utilized, the Contractor shall provide the District with direct
892 access to a designated representative from the Subcontractor, such designation not to be changed
893 without prior approval of the District Contract Manager, except in cases of termination of the
894 employee. The Parties acknowledge the District's direct contact with any Subcontractors in no way
895 eliminates the Contractor's responsibility to fulfill its obligations under this Agreement.

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896 **7.7 District Contract Manager**

897 The District has designated the District Contract Manager to be responsible for the monitoring and
898 administration of this Agreement. Contractor shall meet and confer with the District Contract Manager to
899 resolve differences of interpretation and implement and execute the requirements of this Agreement in
900 an efficient and effective manner that is consistent with the stated objectives of this Agreement.

901 From time to time, the District Contract Manager may designate other agents at the District to work with
902 Contractor on specific matters. In such cases, those individuals should be considered designates of the
903 District Contract Manager for those matters to which they have been engaged. Such designates shall be
904 afforded all of the rights and access granted thereto. In the event of a dispute between the District
905 Contract Manager's designate and Contractor, the District Contract Manager's determination shall be
906 conclusive.

907 In the event of dispute between the District Contract Manager and the Contractor regarding the
908 interpretation of, or the performance of services under, this Agreement, the District Contract Manager's
909 determination shall be conclusive except where each such determination results in a material impact to
910 the Contractor's revenue and/or cost of operations. In the event of a dispute between the District Contract
911 Manager and the Contractor that results in such material impact to the Contractor, Contractor may appeal
912 the determination of the District Contract Manager to the District Board, whose determination shall be
913 conclusive. For the purposes of this definition, "material impact" is an amount equal to or greater than
914 two percent (2.0%) of Contractor's annual Gross Receipts under this Agreement.

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

920 The District Contract Manager is authorized and empowered to adjust, settle, or compromise any
921 controversy or charge arising from the operations under this Agreement, either on behalf of the District,
922 contractor, or the public, pursuant to District Code.

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

924 **8.1 District and County Fees**

925 A. **District Franchise Fees.** In consideration of the rights provided Contractor herein, Contractor shall
926 pay Franchise fees to the District equal to ___ percent (___%) of Gross Receipts. This fee shall be
927 paid on a quarterly basis in the amount equal to two percent (12%) of Gross Receipts for the most-
928 recently completed three (3) month period.

929 B. **County Franchise Fee.** For as long as the Memorandum of Understanding with the District and
930 Contra Costa County, which commenced September 1, 1997 and may or may not be extended
931 beyond August 31, 2016, is in effect, the Contractor shall pay a franchise fee to the County for the
932 services provided by the County Community Development Department related to administering and
933 performing its recycling and diversion management, monitoring, and reviewing and reporting

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934 obligations under the Countywide Solid Waste Management Plan, County SRRE, and Act. The
935 amount of the County franchise fee shall be three percent (3%) of the Gross Receipts. Contractor
936 shall pay the fees due to the County three times annually (January, May, and September) for Gross
937 Receipts received in the respective four (4) preceding months.

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

941 D. **Reimbursement of District's Contracting Costs.** The Contractor shall reimburse the District for its
942 costs related to the negotiation of this Agreement in the amount of _____ (\$____,000)
943 immediately upon execution of this Agreement. Contractor may annualize this cost over the Term
944 of the Agreement and include it in its annual expenses.

945 E. **Other Fees.** The District shall reserve the right to set other fees as it deems necessary, subject to
946 District Board approval. The fee adjustment process shall be consistent with that specified in
947 Section 8.2, and the time and method of payment shall be consistent with that specified in Section
948 8.3.

949 8.2 Adjustment to Fees

950 The District Board may adjust the fees established in this Article from time-to-time during the Term of this
951 Agreement. Such adjustments to fees shall be treated as pass-through costs and included in the
952 adjustment of Rates as described in Section 9.2 and Exhibit B. The District acknowledges that the
953 Contractor shall be entitled to recover, through the Rates to be charged and authorized to be imposed
954 hereunder, the reasonable costs of the Contractor incurred due to the adjustment in the fees.

955 The annual amount of the District Audit Fee shall be adjusted annually in accordance with the adjustment
956 method described in Exhibit B, or shall be the amount specified by the District. The District acknowledges
957 that the Contractor shall be entitled to recover, through the Rates to be charged and authorized to be
958 imposed hereunder, the reasonable costs of the Contractor incurred due to the adjustment in the fees.

959 8.3 Payment Schedule and Late Fees

960 , Contractor shall remit to District and County all fees as described in this Article three (3) times per year
961 on or before the last day of September, January, and May, during the Term of this Agreement and
962 including final remittance due to the District and/or the County due after the end of the Term of this
963 Agreement such as remittance of franchise fees on Gross Receipts for services performed under this
964 Agreement which were received after the end of the Term. Such fees shall be payable to District and sent
965 or delivered to the District Contract Manager with the exception of County fees which shall be payable to
966 the County and sent or delivered to the County.

967 If such remittance is not paid to the District or the County on or before the thirtieth (30th) day following
968 the end of a calendar quarter, all fees due shall be subject to a delinquency penalty of three percent (3%),
969 which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional
970 three percent (3%) and applied to both the original amount due as well as any delinquency penalties
971 previously applied for each additional month the payment remains delinquent. For example, if the
972 amount of the original fees owed equals ten thousand dollars (\$10,000) the initial delinquency amount
973 applied on the first day of delinquency will be three hundred dollars (\$300) bringing the total amount to

974 ten thousand three hundred dollars (\$10,300). If that amount becomes past due for an additional month,
975 the additional delinquency penalty shall be applied to the ten thousand three hundred dollars (\$10,300)
976 therefore, the new total amount due would be ten thousand six hundred and nine dollars (\$10,609).

977 Each quarterly remittance to the District shall be accompanied by a statement listing the amount of each
978 fee paid to the District and County; calculation of each fee; and, statement of Gross Receipts, by line of
979 business for the period Collected from all operations conducted or permitted by this Agreement. The
980 District Contract Manager may, at any time during the Term, request a detailed calculation of Gross
981 Receipts which may include, but is not necessarily limited to, the number of Customers charged at each
982 Service Level and Rate for each billing period.

983 The District Contract Manager may, at any time during the Term or within three years following the
984 expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment
985 of fees. Contractor shall fully cooperate with the District Contract Manager in any such audit. Should the
986 District or its agent perform this review and identify billing errors or other errors in payment of fees valued
987 at one (1%) percent or more of Gross Receipts, Contractor shall, in addition to compensating the District
988 for lost fees and applicable delinquency penalties, reimburse the District's cost of the review.

989 **ARTICLE 9: CONTRACTOR'S COMPENSATION** 990 **AND RATE SETTING**

991 **9.1 General**

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

999 If Contractor's actual costs, including fees due to the District and County, are more than Gross Receipts,
1000 Contractor shall not be compensated for the difference in actual costs and actual Gross Receipts. If
1001 Contractor's actual costs (including profit requirements), including fees due to the District and County,
1002 are less than the actual Gross Receipts, Contractor shall retain the difference.

1003 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
1004 Customers, Rates that are approved by the District for provision of services to Customers. The Rates for
1005 Rate Period One (Exhibit D) are based on the Contractor's proposal. Contractor's proposed costs and
1006 operating assumptions for Rate Period One are presented in Exhibit C. The Rates established by the District
1007 are maximum Rates and Contractor may, in its sole discretion, charge Customers any amount up to and
1008 including the approved maximum Rate for a given level of service.

1009 Revenues received for the sale of Recyclable Materials including California Redemption Value revenues
1010 have been considered in the establishment of Rates for services provided under this Agreement.
1011 Contractor has the right to retain revenues from the sale of materials which were reused, Recycled, or

1012 Processed. Neither Contractor nor the owner or operator of the Approved Recyclable Materials
1013 Processing Facility is entitled to grant funds available through CalRecycle through its "Curbside
1014 Supplemental Payments" for registered curbside Recycling programs or "City/County Payment Program"
1015 pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction
1016 Act.

1017 9.2 Rates and Annual Adjustments

1018 A. **General.** The District shall be responsible for approving maximum Rates as described in this
1019 Article. If at any time during the Term of the Agreement, the Contractor determines the need for
1020 a Rate that does not appear on the District-approved Rate schedule in Exhibit D, Contractor shall
1021 immediately notify the District and request establishment of such Rate. For example, if a
1022 Customer requires Collection of Recyclable Materials in a five (5) cubic yard Bin five (5) times per
1023 week and the District-approved Rate schedule does not include this level of service, the
1024 Contractor must request that the District approve a Rate for this level of service.

1025 B. **Maximum Rates for Rate Period One.** Maximum Rates for Rate Period One, which are presented
1026 in Exhibit D, were determined by Contractor and were approved by the District resolution on or
1027 before the execution of the Agreement. The maximum Rates for Rate Period One shall be effective
1028 from the Commencement Date of this Agreement through the final day of Rate Period One.

1029 C. **Rates for Subsequent Rate Periods.** Maximum Rates for subsequent Rate Periods shall be
1030 adjusted annually in accordance with Exhibit B.

31 9.3 Special Circumstances Rate Adjustments

1032 It is understood that the Contractor accepts the risk for changes in cost of providing services and the
1033 Service Levels requested by Customers and therefore the Special Circumstance adjustments to Rates shall
1034 be limited to: (i) a Change in Law (as defined in Exhibit A); (ii) an increase or decrease in a direct per-Ton
1035 surcharge (above/below the adjustment resulting from the Rate adjustment process pursuant to Exhibit
1036 D) assessed on the Collection, Transportation, Processing or Disposal of Solid Waste, Recyclable Materials,
1037 or Organic Materials by federal, State, County, or local regulatory agencies after the effective date of the
1038 Agreement ("Surcharge"); or (iii) a District-directed change in scope (pursuant to Section 4.8). If a Change
1039 in Law, Surcharge, or a District-directed change in scope occurs and an adjustment to maximum Rates is
1040 desired, the Contractor or District Contract Manager shall petition the District Board for such an
1041 adjustment to the maximum Rates (either increasing or decreasing the Rates) calculated in accordance
1042 with Section 9.2.

1043 Contractor shall prepare an application for the Special Circumstances Rate adjustment calculating the net
1044 financial effect on its operations (both increases and decreases of costs and revenues) resulting from the
1045 Change in Law, Surcharge, or District-directed change in scope (but not resulting from unrelated changes
1046 in costs and revenues), clearly identifying all assumptions related to such calculations and providing the
1047 underlying documentation supporting the assumptions. District Contract Manager shall evaluate the
1048 application for reasonableness. As part of that review, the District Contract Manager and/or its agent
1049 shall be granted access to the financial statements and accounting records maintained by the Contractor
1050 in order to determine the reasonableness of the Contractor's application. The District may rely on
1051 operating statistics and costs for Rate Period One included in Exhibit C, and other information available to
52 it as the basis for making reasonable assumptions regarding what those accounting and financial records

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1053 would have shown and therefore the reasonableness of the Contractor's application. Contractor shall pay
1054 all reasonable costs incurred by the District, including the costs of outside accountants, attorneys, and/or
1055 consultants, in order to make a determination of the reasonableness of the requested Rate adjustment.

1056 In the event of such an application for Special Circumstances Rate adjustment, it is understood that the
1057 Contractor shall have the burden of demonstrating the reasonableness of the requested adjustment.

1058 The Contractor may appeal the decision of the District Contract Manager to the District Board, which shall
1059 then make the final determination as to whether an adjustment to the maximum Rates will be made, and
1060 if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to any Special
1061 Circumstances Rate adjustment, the District Board shall make the final determination as to whether an
1062 adjustment to the maximum Rates will be made, and if a Rate adjustment is permitted, the amount of the
1063 Rate adjustment.

1064 9.4 Publication of Rates

1065 Following Board approval and prior to the date Rate changes shall become effective, Contractor shall
1066 provide written notice to Customers of Rate changes resulting from the annual Rate adjustment process
1067 pursuant to Exhibit D. Such written notice shall be delivered to all Customers as part of the next quarterly
1068 or monthly billing statement which Contractor sends to Customers. Contractor shall also publish such
1069 Rates in a convenient and easily found location on its website.

1070 ARTICLE 10: INDEMNITY, INSURANCE, 1071 AND PERFORMANCE BOND

1072 10.1 Indemnification

1073 A. **General.** Contractor shall indemnify, defend with counsel acceptable to District, and hold
1074 harmless (to the full extent permitted by law) District and its officers, officials, employees,
1075 volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability,
1076 loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation,
1077 including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out
1078 of or in connection with Contractor's performance under this Agreement, or its failure to comply
1079 with any of its obligations contained in the Agreement, except to the extent such loss or damage
1080 was caused by the negligence or willful misconduct of the District.

1081 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire
1082 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or
1083 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

1084 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
1085 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take
1086 all investigatory and/or remedial action reasonably required for the remediation of such
1087 environmental contamination. Prior to undertaking any investigatory or remedial action,
1088 however, Contractor shall first obtain the District's approval of any proposed investigatory or
1089 remedial action. Should Contractor fail at any time to promptly take such action, the District may

1090 undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse the
1091 District for all such expenses within thirty (30) calendar days of being billed for those expenses,
1092 and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed
1093 delinquent and subject to the delinquent fee payment provision of Section 8.3. These obligations
1094 are in addition to any defense and indemnity obligations that Contractor may have under this
1095 Agreement. The provisions of this Section shall survive the termination or expiration of this
1096 Agreement.

1097 Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees
1098 against claims arising from Contractor's delivery of Collected Materials to a Processing Facility,
1099 Disposal Site, or Transfer Station owned or operated by a third party, unless such claims are a
1100 direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended
1101 to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental
1102 Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), California Health
1103 and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C.
1104 Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability,
1105 and shall survive the expiration or earlier termination of this Agreement.

1106 C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold the District harmless
1107 against and from any and all claims, suits, losses, penalties, damages, and liability for damages of
1108 every name, kind and description, including attorneys' fees and costs incurred, attributable to the
1109 negligence or willful misconduct of Contractor in handling Excluded Waste.

1110 D. **Related to AB 939 and AB 341.** Contractor's duty to defend and indemnify herein includes all
1111 fines and/or penalties imposed by CalRecycle if the requirements of AB 939 and/or AB 341 are
1112 not met by the Contractor with respect to the waste stream Collected under this Agreement
1113 and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the
1114 failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays
1115 in providing information that prevents Contractor, the District, or the County from submitting
1116 reports to regulators in a timely manner.

1117 E. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
1118 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
1119 (Commonly Proposition 218), which impacts the Rates for the Franchise Services established in
1120 accordance with this Agreement, Contractor agrees to meet and confer with the District to discuss
1121 the impact of such Change in Law on either Party's ability to perform under this Agreement.

1122 If, at any time, a Rate adjustment determined to be appropriate by the District to compensate
1123 Contractor for increases in costs as described in this Agreement cannot be implemented for any
1124 reason, Contractor shall be granted the option to negotiate with the District, in good faith, a
1125 reduction of services equal to the value of the Rate adjustment that cannot be implemented. If
1126 the District and Contractor are unable to reach agreement on such a reduction in services, then
1127 Contractor may terminate this Agreement upon one hundred eighty (180) calendar days prior
1128 written notice to the District, in which case the Contractor and the District shall each be entitled
1129 to payment of amounts due for contract performance through the date of termination.

1130 Should a court of competent jurisdiction determine that the Contractor cannot charge and/or
31 increase its Rates for charges related to any new or increased Franchise fee(s) and Governmental

1132 Fees and charges, Contractor shall reduce the Rates it charges Customers by a corresponding
1133 amount and shall discontinue payment of any new or increased Franchise fee(s), Governmental
1134 Fees, and/or charges which have been invalidated by the court.

1135 Nothing herein is intended to imply that California Constitution, Articles XIII C or XIII D, apply to the
1136 Rates established for services provided under this Agreement; rather this Section is provided
1137 merely to allocate risk of an adverse judicial interpretation between the Parties.

1138 F. **Provisions Survive Agreement.** This provision (i.e., Section 10.1) will survive the expiration or
1139 earlier termination of this Agreement and shall not be construed as a waiver of any rights by the
1140 District to indemnify from third parties.

1141 10.2 Insurance

1142 A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all
1143 times during the Term of this Agreement insurance that meets at a minimum the coverage and
1144 limits of insurance described in this Section 10.2.

1145 B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
1146 maintain, at its expense, the following coverages and requirements. The comprehensive general
1147 liability insurance shall include broad form property damage insurance.

1148 1. Insurance coverage shall be with limits not less than the following:

1149 (a) **Comprehensive General Liability** – \$2,000,000 combined single limit per occurrence
1150 for bodily injury, personal injury, and property damage.

1151 (b) **Automobile Liability** – \$2,000,000 combined single limit per accident for bodily
1152 injury and property damage (include coverage for hired and non-owned Vehicles).

1153 (c) **Workers' Compensation – Statutory Limits/Employers' Liability** - \$2,000,000 per
1154 accident for bodily injury or disease.

1155 (d) **Employee Blanket Fidelity Bond** – \$500,000 per employee covering dishonesty,
1156 forgery, alteration, theft, disappearance, and destruction (inside or outside).

1157 (e) **Pollution Legal Liability** – \$1,000,000 per claim/occurrence and \$2,000,000
1158 aggregate for bodily injury, property damage, and remediation of contaminated site.

1159 2. The District, its officers, agents, employees, and volunteers shall be named as additional
1160 insured on all but the workers' compensation and professional liability coverages.

1161 3. Said policies shall remain in force through the life of this Agreement and, with the
1162 exception of professional liability coverage, shall be payable on a "per occurrence" basis
1163 unless the District's Risk Manager specifically consents in writing to a "claims made" basis.
1164 For all "claims made" coverage, in the event that the Contractor changes insurance
1165 carriers Contractor shall purchase "tail" coverage or otherwise provide for continuous
1166 coverage covering the Term of this Agreement and not less than three (3) years
1167 thereafter. Proof of such "tail" or other continuous coverage shall be required at any time

- 1168 that the Contractor changes to a new carrier prior to receipt of any payments due.
- 1169 4. The Contractor shall declare all aggregate limits on the coverage before commencing
1170 performance of this Agreement, and the District's Risk Manager reserves the right to
1171 require higher aggregate limits to ensure that the coverage limits required for this
1172 Agreement as set forth above are available throughout the performance of this
1173 Agreement.
- 1174 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
1175 the sole responsibility of the Contractor.
- 1176 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
1177 suspended, voided, canceled, reduced in coverage or in limits except after thirty (30)
1178 calendar days prior written notice (by certified mail, return receipt requested) has been
1179 given to the District Contract Manager, and in the case of delinquent insurance premiums
1180 after ten (10) Business Days.
- 1181 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-
1182 VII, unless otherwise approved by the District Risk Manager.
- 1183 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
1184 volunteers arising out of or in connection with this Agreement.
- 1185 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
'86 primary, including as respects the District, its officers, agents, employees, and volunteers.
-187 Any insurance maintained by the District shall apply in excess of, and not contribute with,
1188 insurance provided by Contractor's liability insurance policy.
- 1189 10. The Contractor shall waive all rights of subrogation against the District, its officers,
1190 employees, agents, and volunteers related to the performance of services under this
1191 Agreement.
- 1192 C. **Endorsements.** Prior to the effective date pursuant to this Agreement, Contractor shall furnish
1193 the District Contract Manager with certificates or original endorsements reflecting coverage
1194 required by this Agreement. The certificates or endorsements are to be signed by a Person
1195 authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to
1196 be received by, and are subject to the approval of, the District Risk Manager before work
1197 commences.
- 1198 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish the District Contract
1199 Manager with certificates or original endorsements reflecting renewals, changes in insurance
1200 companies, and any other documents reflecting the maintenance of the required coverage
1201 throughout the entire Term of this Agreement. The certificates or endorsements are to be signed
1202 by a Person authorized by that insurer to bind coverage on its behalf.
- 1203 E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
1204 by State law, and prior to the effective date pursuant to this Agreement, Contractor shall file the
'05 following statement with the District.

1206 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
1207 to be insured against liability for workers' compensation or to undertake self-insurance in
1208 accordance with the provisions of that code, and I will comply with such provisions before
1209 commencing any services required by this Agreement.

1210 The Person executing this Certificate on behalf of Contractor affirmatively represents that she/he
1211 has the requisite legal authority to do so on behalf of Contractor, and both the Person executing
1212 this Agreement on behalf of Contractor and Contractor understand that the District is relying on
1213 this representation in entering into this Agreement."

1214 10.3 Performance Bond

1215 Within seven (7) calendar days of the District's notification to Contractor that the District has executed
1216 this Agreement, Contractor shall file with the District a surety bond, payable to the District, securing the
1217 Contractor's performance of its obligations under this Agreement and such bond shall be renewed
1218 annually if necessary so that the performance bond is maintained at all times during the Term. The
1219 principal sum of the bond shall be equal to one hundred thousand dollars (\$100,000.00) and shall be
1220 adjusted every three (3) years, commencing with Rate Period Three, by the change in the CPI over the
1221 previous three year period. The bond shall be executed as surety by a corporation licensed and authorized
1222 to issue surety bonds in the State of California that has a rating of A or better in the most recent edition
1223 of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the
1224 District. The bond shall be in the form attached as Exhibit I or other form approved by the District. In lieu
1225 of the corporate surety bond, Contractor may provide District a letter of credit, cash bond, or other
1226 security acceptable and in a form satisfactory to the District Contract Manager.

1227 Any action by District to proceed against the bond shall not limit or affect any other rights or remedies
1228 available to District under the Agreement or in courts of law or equity, notwithstanding the foregoing.

1229 **ARTICLE 11: DEFAULT, REMEDIES AND TERMINATION**

1230 11.1 Default and Remedies

1231 A. **Events of Default.** Each of the following shall constitute an Event of Default:

- 1232 1. Any transaction, without any requirement of notice or cure opportunity, attempted or
1233 completed, not complying with the requirements of Section 11.3 hereof.
- 1234 2. The failure by the Contractor for any reason to consistently deliver to the Collected Solid
1235 Waste, Recyclable Materials, and Organic Materials to the Approved Facilities.
- 1236 3. Any criminal conviction, plea bargain, or settlement, without any requirement of notice or
1237 cure opportunity, of Contractor, its officers, managers, or employees related directly or
1238 indirectly to performance of this Agreement or any other agreement held with the District.
- 1239 4. Failure or refusal of the Contractor to perform any term, covenant, obligation or condition in
1240 this Agreement, other than a failure or refusal described in items (1), (2), or (3) above, except

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1241 that no such failure or refusal shall give the District the right to terminate this Agreement
1242 under this Section unless:

1243 (i) The District has given prior written notice to the Contractor, stating the existence of a
1244 specific failure or refusal to perform exists which will, unless corrected, constitute a
1245 material breach of this Agreement on the part of the Contractor and which will, in the
1246 District's opinion, give the District a right to terminate this Agreement for cause under
1247 this Section unless such default is corrected within fifteen (15) days, and

1248 (ii) The Contractor has neither challenged in an appropriate forum the District's conclusion
1249 that such failure or refusal to perform has occurred or constitutes a material breach of
1250 this Agreement nor corrected or developed an action plan for correcting such breach
1251 or refusal to perform, to be approved by the District Contract Manager, within such
1252 fifteen (15) day period from receipt of the notice given pursuant to the clause (i) of this
1253 subsection (but if the Contractor shall have submitted to District an action plan to
1254 correct such default within a reasonable period of time, the same shall not constitute
1255 an Event of Default for as long as the Contractor remains in compliance with the action
1256 plan and continues to take such steps to correct such default in a timely manner).

1257 5. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of
1258 a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor to
1259 the appointment by a court of a receiver or trustee for all or a substantial portion of its
1260 property or business, or the making by the Contractor of any arrangement with or for the
1261 benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary,
1262 regardless of how designated, of all or a substantial portion of the Contractor's property or
1263 business.

1264 6. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition
1265 under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until
1266 the same is no longer being contested by the Contractor nor until the order of the adjudication
1267 is no longer appealable.

1268 7. The failure of the Contractor to provide or maintain the performance bond required pursuant
1269 to Section 10.3 hereof.

1270 8. Any failure by the Contractor to comply with Applicable Law, including the District Code,
1271 following the specified notice and opportunity to cure.

1272 9. Failure of the Contractor to timely implement the operational changes and adjusted
1273 maximum Rates resulting from the Change in Law or District-directed change in scope. The
1274 Contractor shall have thirty (30) days after notice of breach from the District to implement
1275 the operational changes. Should the Contractor thereafter not implement the operational
1276 changes it shall be in default of the Agreement. In addition to being liable for all damages and
1277 penalties to the District resulting from such default, the District may terminate the Agreement
1278 in accordance with Section 11.1.B.

1279 B. **Right to Terminate Upon Default.** Upon a determination by the District Contract Manager that an
1280 Event of Default has occurred, the District Board shall conduct a hearing upon ten (10) days notice
1281 to the Contractor to determine if termination of the Agreement is in the best interests of the public

1282 health, safety, and general welfare of the citizens of the District. If the fact finder makes such a
1283 determination, the Contractor shall be deemed to have waived any right it may have under
1284 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth
1285 herein.

1286 C. **District's Remedies Cumulative: Specific Performance.** The District's right to terminate this
1287 Agreement under this Section 11.1 is not exclusive, and the District's termination of the Agreement
1288 shall not constitute an election of remedies. Instead, they shall be in addition to any and all other
1289 legal and equitable rights and remedies which the District may have, including but not limited to
1290 specific performance, and fees and expenses incurred by or on behalf of the District in enforcing
1291 payment or performance of the Contractor's obligations hereunder if such non-performance results
1292 in a judicially determined Event of Default by the Contractor.

1293 D. **Possession of Property upon Termination or Suspension.** In the event of termination or suspension
1294 for default, the District shall have the right to take possession of any and all of Contractor's
1295 equipment and other property used or useful in the Collection, Transportation, Transfer, Processing,
1296 and Disposal of Solid Waste, Recyclable Materials, or Organic Materials and the billing and collection
1297 of fees for these services and to use such property. The District shall have the right to retain the
1298 possession of such property until such time as Contractor remedies the default or substitute services
1299 can be provided by another contractor. If the District retains possession of Contractor's equipment
1300 or other property after the period of time for which Contractor has already been paid by means of
1301 bills issued in advance of providing service for the service involved, the Contractor shall be entitled
1302 to the reasonable rental value of such property (which shall be offset against any damages due the
1303 District for the Contractor's default). Contractor shall furnish Kensington with immediate access to
1304 all of its business records related to its Customers and billing of accounts for Collection services.

1305 11.2 Liquidated Damages

1306 In addition to any other remedies provided for in this Agreement, the District Contract Manager may levy
1307 a charge in the amounts listed below for the Contractor's failure to meet the requirements enumerated
1308 below that constitute a breach of the terms and conditions of this Agreement. The District Contract
1309 Manager's decision to levy such a charge shall not be deemed an election of remedies, but shall be
1310 cumulative with any other remedies provided for in this Agreement. The District Contract Manager's
1311 decision not to levy any such charge shall not be deemed a waiver of any breach by Contractor under this
1312 Agreement. The Parties agree that the following Liquidated Damages represent a reasonable estimate of
1313 the amount of such damages, considering all of the circumstances existing on the date of the Agreement,
1314 including the relationship of the sums to the range of harm to the District that reasonably could be
1315 anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this
1316 Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that
1317 each Party had ample opportunity to consult with legal counsel and obtain an explanation of this
1318 Liquidated Damage provision at the time that this Agreement was entered into.

1319 A. **Excessive complaints.** When Contractor or the District Contract Manager receives complaints from
1320 more than one percent (1%) of its client base within a six (6) month period, Contractor will be
1321 assessed twenty-five dollars (\$25) per complaint per occurrence during that period; and an
1322 additional twenty-five dollars (\$25) each twenty-four (24) hours until the complaint is reasonably
1323 resolved. For purposes of this section, "complaints" shall mean substantive and credible Customer
1324 notifications to the Contractor or the District Contract Manager of missed pick-ups, property

1325 damage, missed commitments, employee misconduct or poor quality of service (e.g. litter on
26 property or public right-of-way or misplacement of Containers).

1327 B. **Failure to Remit Fees or Submit Reports.** Failure to remit the fees due to the District and/or County
1328 as required by Article 10, or file required reports in an accurate and complete manner by the fifth
1329 working day following the due date of such fees or reports: fifty dollars (\$50) per day for the first
1330 five (5) days, then five hundred dollars (\$500) per day for each day after the first five (5) days.

1331 C. **Failure to Provide District Access.** Failure to provide access to Operating Assets or any other
1332 documents or information within fourteen (14) days of a request by the District Contract Manager:
1333 one hundred dollars (\$100) per day per occurrence.

1334 D. **Failure to Properly Charge Customer.** Failure to charge a Customer at or below the maximum
1335 approved Rate, where not refunded on the next invoice: fifty dollars (\$50) per occurrence per
1336 Customer where the number of Customers overcharged is less than twenty-five (25); five hundred
1337 dollars (\$500) per occurrence per Customer where the number of Customers overcharged is twenty-
1338 five (25) or more. In addition, Contractor shall be responsible for refunding any amount overcharged
1339 to each Customer determined to be overcharged. Contractor shall not be entitled to any refund
1340 from the District or County for Franchise fees or other fees paid on overcharged amounts.

1341 E. **Unauthorized Collection Hours.** For Collection outside permitted hours: one hundred dollars (\$100)
1342 per occurrence.

1343 F. **Use of Unauthorized Facilities.** Delivery of Collected Solid Waste, Recyclable Materials, or Organic
44 Materials to a location that is not a facility approved by the District for Transfer, Processing, and/or
1345 Disposal of the material: one hundred dollars (\$100) per Ton.

1346 The District Contract Manager shall give the Contractor written notice of charges levied pursuant to this
1347 Section. Any such damages shall be paid directly to the District, and may not be included by the Contractor
1348 as an expense in calculating a request for an upward adjustment in the Rate schedule or offset against
1349 any fees.

1350 The decision of the District Contract Manager shall be final and binding on the Contractor unless the
1351 Contractor files a Notice of Appeal with the Secretary of the District Board within fifteen (15) days of
1352 receipt of the District Contract Manager's decision. The Notice of Appeal shall be in writing and shall
1353 contain a detailed statement of the basis for the appeal. Upon receipt of the Notice of Appeal, the District
1354 Contract Manager shall set the matter for a public hearing within thirty (30) days. The District Contract
1355 Manager shall give the Contractor and any interested Person requesting the same, ten (10) days written
1356 notice of the time and place of the hearing. At the hearing, the District Board shall determine, based on
1357 the record, the appropriate action to be taken. The decision of the District Board shall be final and
1358 conclusive.

1359 11.3 Uncontrollable Circumstances

1360 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations
1361 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a default of this
1362 Agreement, so long as the Party in good faith has used its best efforts to perform its respective
63 obligations.

1364 The Party claiming excuse from performance shall, within five (5) days after such Party has notice
1365 of the effect of such cause, give the other Party notice of the facts constituting such cause and
1366 asserting its claim to excuse under this Section. Specifically, such information shall include the
1367 following:

- 1368 1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1369 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated
1370 duration, and the estimated time during which the performance of such Party's obligations
1371 hereunder will be delayed;
- 1372 3. Its estimated impact on the other obligations of such Party under this Agreement; and
- 1373 4. Potential mitigating actions which might be taken by the Contractor or District and any areas
1374 where costs might be reduced and the approximate amount of such cost reductions.

1375 While the delay continues, the Contractor or District shall give daily notice to the other Party
1376 updating the information previously submitted.

1377 In the event that either Party validly exercises its rights under this Section, the Parties hereby waive
1378 any claim against each other for any damages sustained thereby.

1379 B. **District's Right to Terminate.** The partial or complete interruption or discontinuance of the
1380 Contractor's services caused by one (1) or more of the events described in this Section 11.3 shall
1381 not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing,
1382 however, if the Contractor is excused from performing its obligations hereunder because of any
1383 Uncontrollable Circumstance for a period of thirty (30) days or more, the District shall nevertheless
1384 have the right, in its sole discretion, to terminate this Agreement by giving sixty (60) days notice.

1385 C. **Work Stoppages.** Notwithstanding anything in this Agreement to the contrary, any strikes, work
1386 stoppages, or other labor disputes or disturbances occurring with respect to an activity performed
1387 or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with
1388 the Operating Assets or the Franchise Services and which last beyond seven (7) days shall not
1389 constitute an Event of Default under Section 11.1.A.

1390 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to
1391 Collect, Transport, Transfer, Process, and/or Dispose of any or all the Solid Waste, Recyclable
1392 Materials, and/or Organic Materials which it is obligated under this Agreement to Collect, Transport,
1393 Transfer, Process, and Dispose of for a period of more than seventy-two (72) hours and the District
1394 Contract Manager, in his or her discretion, should find that such accumulation endangers or
1395 menaces the public health, safety or welfare, then District shall have the right, upon twenty-four
1396 (24) hours notice to Contractor, to find the Contractor in Default and to contract with any other
1397 third parties to Collect, Transport, Transfer, Process, and/or Dispose any and all Solid Waste,
1398 Recyclable Materials, and Organic Materials which Contractor would otherwise be obligated to
1399 Collect, Transport, Transfer, Process, and/or Dispose pursuant to this Agreement. Contractor agrees
1400 that in such event, it will fully cooperate with District and its third-party contractor to affect such
1401 transfer of operations in as smooth and efficient a fashion as is practicable. All costs, fees, rates or
1402 other expenses incurred by District and/or its third-party contractor that exceed those that would

1403 have been incurred by District had no such emergency arisen shall be the responsibility of the
1404 Contractor and shall be paid to District within thirty (30) days of receipt of written notice to pay.

1405 **11.4 Right to Demand Assurances of Performance**

1406 If the District believes in good faith that the Contractor's ability to perform under the Agreement has been
1407 placed in substantial jeopardy by one (1) of the events enumerated below, the District Contract Manager
1408 may, at his/her option and in addition to all other remedies the District may have, require that Contractor
1409 provide District Contract Manager with sufficient proof that none of the events enumerated below will in
1410 fact impair Contractor from performing its obligations under the Agreement:

- 1411 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,
1412 picketing, or other concerted job action;
- 1413 B. Contractor appears, in the reasonable judgment of the District, to be unable to regularly pay its bills
1414 as they become due; or,
- 1415 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, State, County,
1416 regional, or local agency for violation of an environmental law.

1417 If the Contractor fails or refuses to provide to the District adequate information to establish its ability to
1418 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of Section
1419 11.1.A.

20 **11.5 Waiver of Defenses**

1421 In order to ensure the non-interruption of a vital public service, except as provided in Section 11.3, the
1422 Contractor acknowledges that it is solely responsible for providing the Franchise Services described
1423 herein, and hereby irrevocably waives the following defenses to the payment and performance of its
1424 obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion,
1425 impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-
1426 existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that
1427 may be a basic assumption of the Contractor with regard to any provision of this Agreement.

1428 **ARTICLE 12: MISCELLANEOUS PROVISIONS**

1429 **12.1 Relationship of the Parties**

1430 Neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided
1431 or contract obligations or liabilities assumed by the other Party hereto, whether accrued, absolute,
1432 contingent or otherwise, or whether due or to become due. The Contractor is an independent Contractor
1433 and Agreement holder and nothing in this Agreement shall be deemed to constitute either Party a partner,
1434 agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

1435 **12.2 Notice to Parties**

1436 All notices required or provided for in this Agreement shall be provided to the Parties at the following
1437 addresses, by email and by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or
1438 certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon
1439 receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may
1440 change the address to which notice is given by giving notice as provided herein.

1441 To District:

1442 Kensington Police Protection and Community Service District Attn: Greg Harman
1443 General Manager/ Chief of Police
1444 217 Arlington Avenue
1445 Kensington, CA 94707
1446 gregharman@kensingtoncalifornia.org

1447 To Contractor:

1448 {Proposer: Insert Contact Information}
1449

1450 **12.3 Resolution of Disputes**

1451 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
1452 time during the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give
1453 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
1454 meet and confer in good faith to resolve any dispute that may arise. In the event such dispute cannot be
1455 resolved by the Parties themselves within thirty (30) days of such notice, either Party may propose the
1456 appointment of a mediator. If the other Party is in agreement, both Parties may refer the matter in dispute
1457 to such mediator for advice and non-binding mediation. If the mediator is unable, within thirty (30) days
1458 thereafter, to reach a determination as to the matter in dispute in a manner acceptable to the Parties
1459 hereto, the matter may be referred by either Party to a court of competent jurisdiction.

1460 Costs incurred by the District, including attorney's fees, consulting fees, and other costs related to dispute
1461 resolution shall be paid for by the Contractor. The costs shall not be included as an expense in Contractor's
1462 calculated costs for the purpose of determining Contractor compensation or in setting Rates at any point
1463 during the Term of the Agreement.

1464 **12.3 Actions of the District in its Governmental Capacity**

1465 Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the District in its
1466 governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action
1467 against the District, not based on this Agreement, arising out of any act or omission of the District in its
1468 governmental or regulatory capacity.

1469 **12.4 Binding Effect**

1470 This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee
1471 acquiring an interest hereunder consistent with the provisions hereof.

155

1472 **12.5 Amendments**

1473 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except
1474 by written agreement duly executed by both Parties.

1475 **12.6 Further Assurance**

1476 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or
1477 reasonably requested by the other in order to give full effect to this Agreement.

1478 **12.7 Assignment and Transfer of Agreement**

1479 A. **Consent of the District Required.** This Agreement shall not be transferred, sold, pledged,
1480 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,
1481 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto or
1482 thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or vest
1483 in any Person, except the Contractor, either by action or inaction of the Contractor, or by operation
1484 of law, without the prior written consent of the District, which may be withheld or delayed in its
1485 sole and absolute discretion.

1486 The Contractor shall provide written notice of any request to assign or transfer this Agreement, and
1487 shall provide the District with any information requested by the District in connection with the
1488 proposed transfer, including but not limited to information regarding the general business
1489 qualifications of the proposed assignee, as well as its ability to perform the Franchise Services and
1490 a statement of its financial resources. The Contractor's notice of request to assign this Agreement
1491 shall contain a statement of the allocation of dollars in the consideration to be paid by the assignee
1492 to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset transfer which has any
1493 connection with said assignment, all as agreed upon by the Contractor and the assignee. The notice
1494 shall also contain a statement showing the method of payment for the consideration and whether
1495 the Contractor proposes to hold some security interest as security for the payment of the unpaid
1496 balance of the consideration.

1497 The District shall respond to any such request within ninety (90) days after receipt of any
1498 information requested by the District pursuant to the preceding sentence. The Contractor
1499 acknowledges that, prior to approving such a transfer, the District must find that such a transfer is
1500 in the best interests of the public health, safety, and general welfare. Any attempt by the Contractor
1501 to effectuate any of the foregoing without such consent of the District shall be null and void, and
1502 any effectuation of any of the foregoing without such consent of the District shall constitute an
1503 Event of Default resulting in the immediate termination of this Agreement as provided in Section
1504 11.1.A hereof.

1505 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of Section
1506 12.7.A above, the Contractor shall not, without the prior written consent of the District which may
1507 be withheld or delayed in its sole and absolute discretion, consolidate with or merge with another
1508 entity or permit one or more other entities to consolidate with or merge into it.

1509 C. **Transfer of Voting Stock.** The District's prior written consent, which may be withheld or delayed in
10 its sole and absolute discretion, shall be required for the sale or transfer by any means, whether by

1511 agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce),
1512 of any of the voting stock of the Contractor.

1513 D. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of
1514 the District for any transaction described in Section 12.7 hereof, the proposed assignee, as a
1515 condition of assignment, shall reimburse the District for all costs and expenses incurred by the
1516 District in reviewing, examining, and analyzing the request, including all direct and indirect
1517 administrative expenses of the District and consultants and attorney's fees and expenses. Along
1518 with its written request for the review of the assignment, Contractor shall remit to District an
1519 assignment review fee in the amount of thirty thousand dollars (\$30,000) which shall be intended
1520 to compensate the District for the costs of its review of the requested assignment. Such fee shall
1521 not be refundable to the Contractor in the event that the District determines, in its sole discretion,
1522 that the proposed assignment is unacceptable. In the event that the District's total costs for the
1523 review of the assignment exceed thirty thousand dollars (\$30,000) the Contractor shall compensate
1524 the District for its actual and reasonable costs within thirty (30) days of receiving the District's
1525 invoice. Such costs shall be supported with evidence of the expense or cost incurred. If the District's
1526 total costs for the review of the assignment are less than thirty thousand dollars (\$30,000), the
1527 District shall remit to the Contractor the difference between its actual costs and thirty thousand
1528 dollars (\$30,000).

1529 E. **Transfer Fee.** On the date the District approves the Contractor's written request for an assignment,
1530 Contractor or the assignee shall pay the District a transfer fee in the amount of one percent (1%) of
1531 the Gross Receipts for the most-recently completed Rate Period. The District's approval of such an
1532 assignment shall be conditioned on the receipt of the transfer fee.

1533 12.8 Interpretation

1534 In this Agreement, unless the context otherwise requires:

1535 A. **References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms refer
1536 to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before,
1537 the date of execution of this Agreement.

1538 B. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the
1539 feminine and neuter genders, and words importing the singular number mean and include the plural
1540 number and vice versa.

1541 C. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,
1542 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal
1543 entitles, including Governmental Bodies, as well as individuals.

1544 D. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and
1545 subsections of this Agreement shall be solely for convenience of reference and shall not constitute
1546 a part of this Agreement, nor shall they affect its meaning, construction, or effect.

1547 E. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with
1548 respect to the transactions contemplated by this Agreement. Furthermore, nothing in this
1549 Agreement is intended to confer on any Person other than the Parties hereto and their respective
1550 successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

1551 F. **Reference to Days.** All references to days herein are to calendar days, including Saturdays, Sundays,
52 and holidays, except as otherwise specifically provided.

1553 G. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.
1554 Standard terms of measurement, unless State or federal law or regulation specifies the system of
1555 measurement to be used.

1556 H. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such
1557 counterparts shall constitute but one and the same Agreement.

1558 I. **Applicable Law.** This Agreement shall be governed by and construed in accordance with Applicable
1559 Law. This Agreement is intended to be fully consistent with the requirements of the District Code
1560 and any subsequent amendments thereto. In the event there is an inconsistency or conflict
1561 between this Agreement and the Code, the Code is controlling and shall substitute for the
1562 inconsistent provision.

1563 J. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be
1564 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:

1565 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article which
1566 shall, to the greatest extent legally permissible, effect the intent of the Parties therein.

1567 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared such
1568 invalidity for a judicial construction of the invalidated portion of this Agreement.

1569 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this
1570 Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above,
1571 to effect the intent of the Parties in the invalid provision. The invalidity of such clause,
1572 provision, subsection, section, or article shall not affect any of the remaining provisions
1573 hereof, and this Agreement shall be construed and enforced as if such invalid portion did not
1574 exist.

1575 12.9 Jurisdiction

1576 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1577 courts of the Contra Costa County in the State of California, which shall have exclusive jurisdiction over
1578 such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be
1579 performed in Contra Costa County.

1580 12.10 Entire Agreement

1581 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with
1582 respect to the matters covered herein. Each of the Exhibits identified as Exhibits "A" through "F" is
1583 attached hereto and incorporated herein and made a part hereof by this reference.

1584 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below:

1585

1586

1587 Kensington Police Protection
1588 and Community Service District
1589

Bay View Refuse and Recycling Services, Inc.

1590 By: _____
1591 Len Welsh, President, Board of Directors

By: _____
Lois Fagone, President

1592 Dated: _____, 2014.

Dated: _____, 2014.

1594
1595
1596 Attest:

1597
1598 By: _____
1599 (District Board of Directors Secretary)

1600
1601 _____
1602 Printed name

1603
1604 Dated: _____, 2014

1605
1606 Approved as to Form:

1607
1608 By: _____
1609 (District Attorney)

1610
1611 _____
1612 Printed name

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 of approval of this Agreement by the District.

"**Annual Percentage Change**" means the average of the percentage monthly changes in the value of an index for the 12-month period ending December of the then-current Rate Period minus the average of the percentage monthly changes in the index value for the 12-month period ending December of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

Commented [tas1]: HF&H to revise month to match rate setting process.

For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period 2, the Annual Percentage Change in CPI shall be calculated as follows: $[(\text{Average CPI for January 2015 through December 2015}) - (\text{Average CPI for January 2014 through December 2014})] / (\text{Average CPI for January 2014 through December 2014})$.

"**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.

EXHIBIT A DEFINITIONS

"Approved Disposal Facility" means the [Insert Facility Name] located at [Insert Facility Address].

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

"Approved Organic Materials Processing Facility" means the [Insert Facility Name] located at [Insert Facility Address].

"Approved Recyclable Materials Processing Facility" means the [Insert Facility Name] located at [Insert Facility Address].

"Approved Transfer Facility" means the [Insert Facility Name] located at [Insert Facility Address].

"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.

"Audit Fee" means the quarterly fee used to offset expenses including staffing costs related to contract management, compliance, monitoring, and auditing and to enforce the Agreement with respect to any violations by third parties, including initiating and/or assisting in prosecuting enforcement actions.

"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):

EXHIBIT A DEFINITIONS

- 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 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.

"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 – CUURA422SAO

EXHIBIT A DEFINITIONS

"Container(s)" mean Bins, Carts, Compactors, and Drop Boxes or other plastic 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, companies, related-parties, affiliates, subsidiaries, and Subcontractors. As of the effective date of the Agreement, Lewis Figone, president of Refuse and Recycling Service, Inc., 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 4.5 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 Code" means the District's codified ordinances and resolutions, as the same may be amended, supplemented, or modified from time to time.

"District Contract 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.

EXHIBIT A DEFINITIONS

"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 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 Contract Manager.

"Employment Cost Index (ECI)" shall mean the index, compiled and published by the BLS with the following parameters:

- Compensation – Total Compensation
- Ownership – Private Industry
- Periodicity – Index Number
- Group – 210 - Service-Providing Industries
- Seasonally Adjusted

"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.

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EXHIBIT A DEFINITIONS

"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 A to this Agreement. Exhibit A may be amended from time to time to reflect changes of boundaries of the Franchise Area in such a manner as to identify each alteration to the Franchise Area and the effective date thereof.

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

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

"Fuel Index" shall mean the Producer Price Index-Commodities for #2 Diesel Fuel compiled and published by the BLS, using the following parameters:

- Not Seasonally Adjusted
- Group – Fuels and Related Products and Power
- Item – #2 Diesel Fuel
- Base Date – 8200

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

"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:

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EXHIBIT A DEFINITIONS

- 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.

"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.

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EXHIBIT A DEFINITIONS

"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.

"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.

"Pass-Through Cost" means those District Fees, County fees, Tipping Fees, Governmental Fees, and other costs, as specifically identified in Exhibit B, that Contractor may include in the determination of Contractor's Compensation but which are not included in the calculation of Contractor's allowable profit.

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

EXHIBIT A DEFINITIONS

"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 and the initial Rates for Rate Period One are presented in Exhibit D. 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.

"Rate Period" means a twelve (12) month period, commencing September 1 and concluding August 31.

Commented [tas2]: District/Bay View - Is this consistent with the current rate setting schedule?

"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 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 effective date of this Agreement.

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EXHIBIT A DEFINITIONS

"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.

Commented [tas3]: Bay View to amend list to be consistent with the processing facilities capabilities.

"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 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 Contract 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.

EXHIBIT A DEFINITIONS

"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, Backyard Service, 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 Contract Manager.

Commented [tas4]: HF&H - Include reference to backyard service only if District sets different rate for backyard service.

"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 3.2.

"Tipping Fee" shall mean the Rate or 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.

"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, the approved Processing Facility, the Designated Disposal 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

EXHIBIT A DEFINITIONS

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 Contract 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;
- 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;

EXHIBIT A DEFINITIONS

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.

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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 Contract Manager on or before June 1 of each Rate Period. Contractor's Rate calculations shall include all supporting schedules, and any other documentation or evidence determined by the District Contract 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.

Commented [tas5]: District Bay View to discuss methodology. The method presented herein may be more complicated than the District desires. It can be simplified to address only the CPL.

Commented [tas6]: HF&H - revise date as needed to match timing of District's annual rate adjustment process. Section 9.3 of the current franchise shows November 1 submittal date for application.

The District Board shall make a good faith effort to approve Rates by September 1 of each year, and such Rates shall be effective on each subsequent September 1. If Rates are not effective by September 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 September 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.

Multi-Index Rate Adjustment

The multi-index Rate adjustment methodology involves adjusting the Rates for the current Rate Period by the CPI, ECI, and Fuel Index to determine the Rates for the coming Rate Period. The intent of performing the multi-index-based adjustment is to allow Contractor's Compensation to be adjusted throughout the Term of this Agreement (giving consideration to those specific cost categories of "fuel" and "labor" that may be more volatile than the CPI) using simple, readily available surrogates for the actual changes in Contractor's costs for providing service.

If the ECI, CPI, or Fuel Index is/are 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: Calculate the "Operating Component Factor" or "OCF".

Step 1a: Determine the Labor-Related Factor of the OCF by calculating the Annual Percentage Change in the ECI. The factor shall be rounded to the nearest tenth (percent (0.1%).

Step 1b: Determine the Fuel Factor of the OCF by calculating the Annual Percentage Change in the Fuel Index. The factor shall be rounded to the nearest tenth percent (0.1%).

Step 1c: Determine the Other Factor of the OCF by calculating the Annual Percentage Change in

EXHIBIT B RATE ADJUSTMENT METHODOLOGY

the CPI. The factor shall be rounded to the nearest tenth percent (0.1%).

Step 1d: Determine the OCF, rounded to the nearest tenth percent (0.1%), as follows :

OCF = ((Insert Percentage) x Labor-Related Factor calculated in Step 1a above) + ((Insert Percentage) x Fuel Factor calculated in Step 1b above) + ((Insert Percentage) x Other Factor calculated in Step 1c above)

For example, assuming:

1. Proposed labor-related costs are 30% of proposed total annual operating costs.
2. Proposed fuel costs are 9% of proposed total annual operating costs.
3. Proposed other costs are 61% of proposed total annual operating costs.
4. Labor-Related Factor = 3% (calculated in Step 1a)
5. Fuel Factor = 17% (calculated in Step 1b)
6. Other Factor = 1% (calculated in Step 1c)
7. $OCF = (30\% \times 3\%) + (9\% \times 17\%) + (61\% \times 1\%) = 0.0304 = 3.04\%$

Step 2: 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 + OCF)

For example, assuming:

1. Then-current Rate for a 32-gallon can = \$40.00
2. OCF = 3.04%
3. Adjusted Rate for a 32-gallon can = $\$40.00 \times (1 + 0.0304) = \41.22

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**EXHIBIT C
OPERATING STATISTICS AND COST**

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EXHIBIT D
INITIAL RATES FOR COLLECTION SERVICE

**EXHIBIT E
IMPLEMENTATION PLAN AND SCHEDULE**

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**EXHIBIT F
PUBLIC EDUCATION AND OUTREACH PLAN**

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EXHIBIT G
APPROVED SUBCONTRACTORS

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EXHIBIT H 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.

EXHIBIT H 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.).
- D. Number of hits and unique visitors to the Contractor's website.

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 4.9.
- 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

EXHIBIT H REPORTING REQUIREMENTS

shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in 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 financial statement compiled by an independent certified public accountant in accordance with GAAP for the most-recently completed calendar period.

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EXHIBIT I
FORM OF CONTRACTOR'S PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the _____, hereinafter called OBLIGEE, in the penal sum of _____ and No/100 Dollars (\$ _____) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a SOLID WASTE FRANCHISE AGREEMENT with the Kensington Police Protection and Community Services District, to do and perform the following work, to wit: Collect Solid Waste, Recyclable Materials, and Organic Materials generated within the Kensington Police Protection and Community Services District, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, the original term of this bond is _____ to _____. Renewal of this bond for any additional periods shall be at the sole option of the Surety. Non-renewal of the bond by the Surety shall not constitute any right or claim against the bond by the OBLIGEE.

Name/Title: _____

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 201__.

a California Corporation
By: _____
(PRINCIPAL)
(SEAL)

SURETY
By: _____
(ATTORNEY IN FACT)
(SEAL)

The bond in all terms, conditions and limitations is acknowledged and accepted
by: _____ By: _____

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Marva M. Sheehan, CPA
Robert C. Hilton, CMC

MEMORANDUM

Date: September 4, 2014
To: Greg Harman, General Manager/Chief of Police, Kensington Police Protection and Community Services District
From: Tracy Swanborn, HF&H Consultants, LLC
Subject: Solid Waste Rate Survey

As requested, HF&H performed a solid waste rate survey for the Kensington Police Protection and Community Services District (District) to provide a comparison of Kensington's current rates to rates in other communities. The survey presents rates for Kensington and 20 jurisdictions in Contra Costa County, Alameda County, and Marin County. Rates were gathered through city website searches, phone calls to municipality staff, phone calls to the hauler, HF&H's in-house materials, or government documents (e.g., franchise agreements or Council/Board minutes, staff reports, or resolutions).

To provide comparability, the rates presented herein are all effective of as September 1, 2014. It is important to note that rates are not directly comparable to one another as there are numerous differences in the collection services provided, geographic conditions, facility locations, etc. As a result, the rate comparison provides a general sense of how Kensington's rates compare to others, but it is important to recognize that Kensington's rates reflect the scope of collection services in the District, the mix of residential and commercial customer base, and the terrain, which differ from others.

Summary of Findings

We concluded that 12 of the 20 jurisdictions are more comparable to Kensington for several reasons described in more detail in the following section. The figure on the next page presents a comparison of Kensington's current rates (net of franchise fees) for both backyard and curbside collection for 20-, 32-, 64- and 96-gallon service levels with the average of the rates (net franchise fees) for the 12 more comparable jurisdictions. Our findings are summarized below.

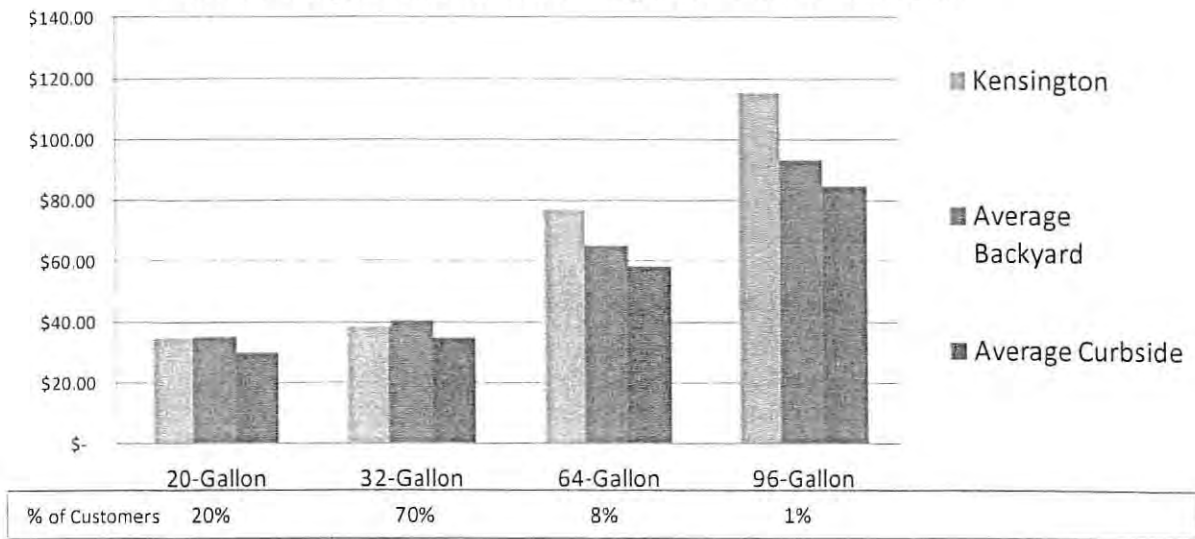
- For the 20- and 32-gallon rate (which applies to 90% of Kensington's residents), the Kensington rate is less than the average backyard rate for the 12 jurisdictions (1.6% less than average for the 20-gallon rate and 4.8% less than average for the 32-gallon).

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- For the 64- and 96-gallon rates (which apply to 10% of the residential customers), the Kensington rate is 18% and 24% above the average backyard rate, respectively.
- When comparing Kensington rates to the average curbside rates, Kensington rates are 10% to 36% above the average, which is not unexpected given the difference in the collection location.

Rate Comparison with Average for 12 Jurisdictions



Attachment A presents a bar chart with rates (net of franchise fees) for Kensington and the 12 more comparable jurisdictions. Attachment B includes data regarding each jurisdiction's number of residential and commercial accounts, franchise fees, base rates, and rates net of franchise fees.

Limitations with Rate Comparisons

The cost of collection, processing, and disposal services and rates resulting from those costs differ in each community for a variety of reasons listed below. It is not practical to adjust for such differences as adjustments would require access to and evaluation of detailed cost information, which is not readily available, and because the nature and complexity of collection operations do not allow for easy separation of the cost and rate components. As a result, it is important to recognize such differences and not draw conclusions based solely on this rate survey, because rate comparisons can be misleading. Factors that impact costs and rates include, but are not limited to the following:

- Geographic considerations (i.e., difficult topography, narrow streets, on-street parking, large lot sizes creating greater distance between collection stops, etc.)

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- Program requirements, such as:
 - Frequency and quantity of recyclables and yard waste collection
 - Method of collection, container types, and collection vehicle selection (e.g., manual, semi-automated, and automated collection equipment)
 - Recyclables collection and processing methods
 - Curbside or on-property/backyard service
 - "Free" services provided to City facilities and special events
 - Number and nature of electronic waste collection and/or drop-off events
 - Number and nature of residential bulky/clean-up programs
 - Holiday tree collection
 - Extent of commercial recycling required of franchise haulers
 - Return of compost and/or mulch products to the City or community
 - Specification of alternative fuel vehicles
 - Extent of public education program and technical assistance programs
- Inclusion of additional fees (i.e., franchise fees, street sweeping fees, integrated waste management fees, IRRF Charges, landfill closure fees, AB 939 fees, county landfill surcharge fees, etc.);
- Rate structure/rate relationships (i.e., use of uniform rate structures, progressive rate structures, frequency surcharges, etc.);
- Distance to processing, transfer, and disposal facilities;
- Per-ton costs for processing, transfer, and disposal facilities; and,
- Contract terms and conditions.

Selection of "More Comparable" Jurisdictions

In making our initial selection of jurisdictions to include in this rate survey, we considered variables such as the size of the jurisdiction, the number of residential and commercial accounts, the percentage of commercial accounts, service conditions and the type of services offered (including, but not limited to the geographic properties of these locations such as narrow roads or hilly or mountainous landscapes which may make the area hard to service, on-property/backyard collection, frequency of recycling and yard waste collection, etc.). Between HF&H's staff selections and Kensington staff direction, we have assembled a list of 20 jurisdictions to examine.

From this group, we identified 12 "more comparable" jurisdictions, which included Belvedere, Tiburon, Marin County (MVRs), Homestead, Ross, Las Gallinas, Marin County (MSS area), Ross Valley Sanitary District (South), Orinda, Danville, Central Contra Costa County, and Piedmont. These jurisdictions were considered more comparable because they have hard-to-service/hill rates and on-property/backyard service. **We advise that Kensington focus on these more comparable jurisdictions.**

We concluded that 8 jurisdictions were "less comparable" including Berkeley, Richmond, San Pablo, Pinole, unincorporated West Contra Costa County, Hercules, Crockett/Port Costa, and El Cerrito. While



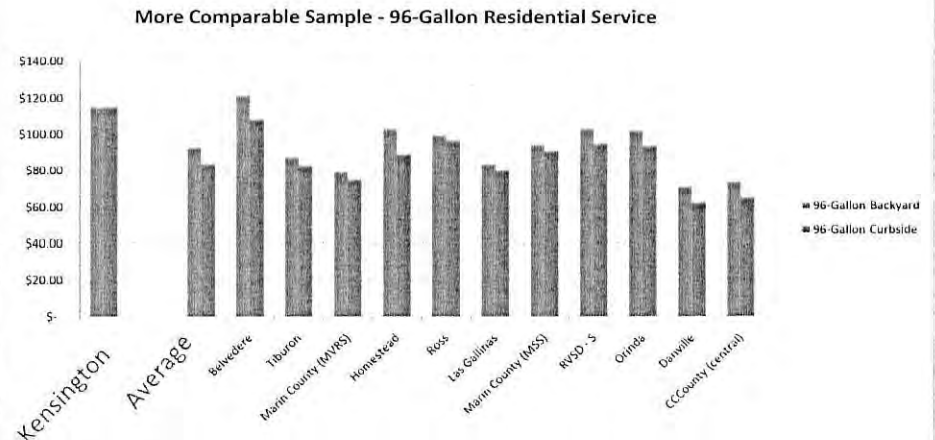
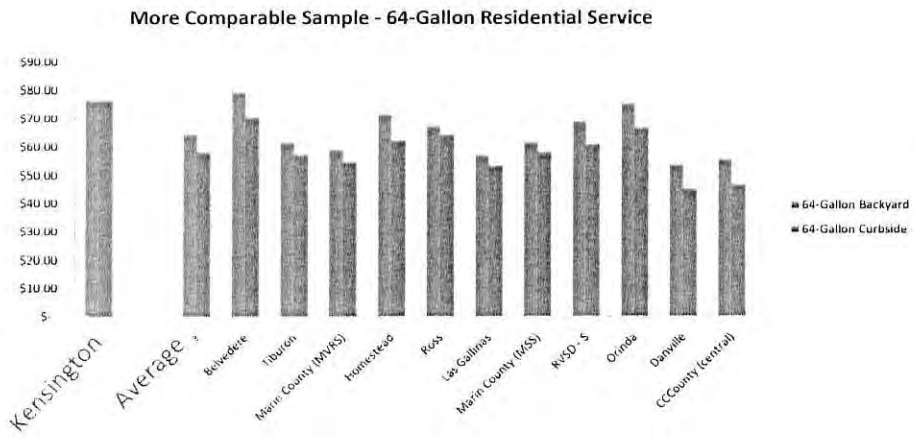
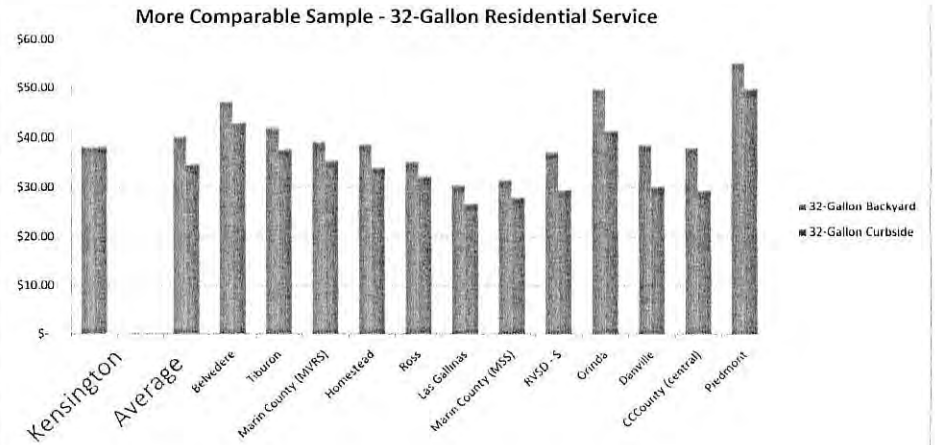
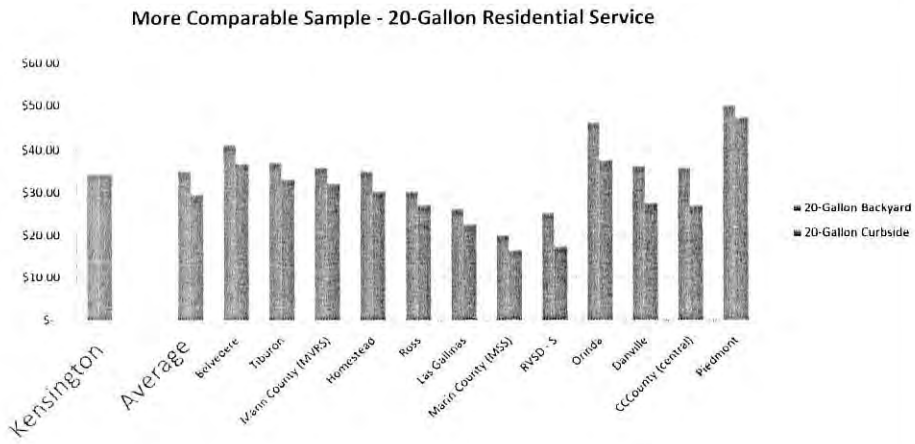
MEMORANDUM

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the "less comparable" jurisdictions were similar to Kensington in the aspect of bi-weekly recycling and yard waste collection (also part of the reason the costs in these areas were cheaper), they did not offer on-property/backyard garbage collection, nor did any of them list hard-to-service/hill rates which the "more comparable" group did. While we have included rates in Attachment C for the less comparable jurisdictions, we have only done so for informational purposes as we know the District, its Board members, and interested parties are likely to ask about rates in these nearby jurisdictions. **These jurisdictions only offer curbside service and do not have extra charges for on-property service or hilly/hard-to-serve areas; therefore, we discourage use of this information.**

Other statistics for comparison such as size of the jurisdiction, food scrap collection, and commercial accounts varied within each of these groups and would be hard to say one group is more comparable than the other based on these aspects.

Attachment A
Rate Comparison of Solid Waste Collection Rates for Kensington



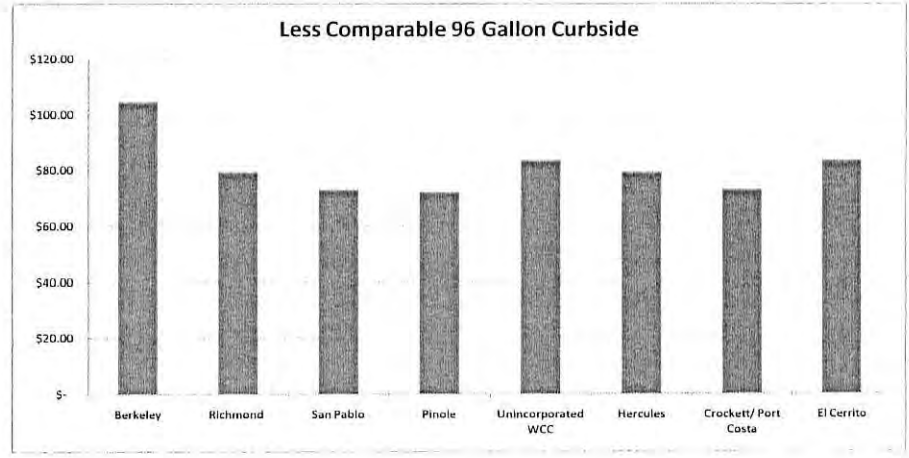
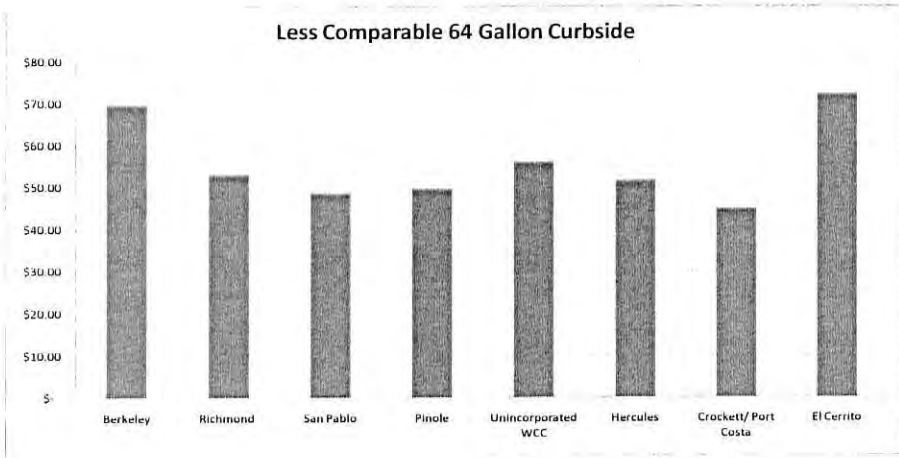
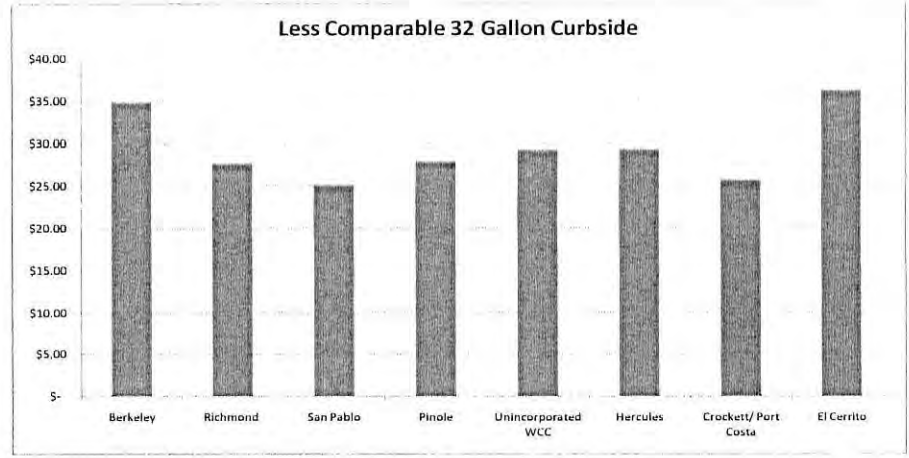
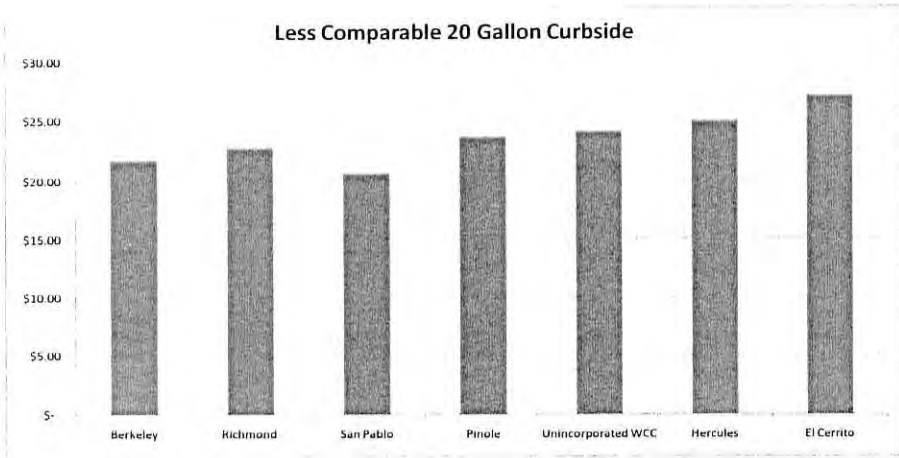
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Attachment B
Rate Survey Data for Comparable Jurisdictions

Agency	County	Res Accts	Comm Accts	% Comm	Recyc		Unlim. YW?	FW?	FF%	On-prop Charge	HTS/Hill Rates	Residential Rates				Residential Rates (Net of FFs)			
					YW Freq	YW Freq						20	32	64	96	20	32	64	96
Kensington	Contra Costa				bi-wkly	bi-wkly	yes	no	5%			\$ 36.50	\$ 40.50	\$ 81.00	\$ 121.50	\$ 34.68	\$ 38.48	\$ 76.95	\$ 115.43
Belvedere	Marin	880	20	2.2%	wkly	wkly	extra can \$12/mo		12.0%	\$5/mo <25ft; \$15/mo >25ft	yes	\$ 47.27	\$ 53.87	\$ 90.74	\$ 138.73	\$ 41.60	\$ 47.41	\$ 79.85	\$ 122.08
Tiburon	Marin	2,828	85	2.9%	wkly	wkly	extra can \$12/mo		16.0%	\$5/mo <25ft; \$15/mo >25ft	yes	\$ 44.73	\$ 50.07	\$ 73.92	\$ 104.46	\$ 37.57	\$ 42.06	\$ 62.09	\$ 87.75
Marin County (MVR)	Marin	707	17	2.3%	wkly	wkly	extra can \$12/mo		24.0%	\$5/mo <25ft; \$15/mo >25ft	no	\$ 47.61	\$ 51.84	\$ 77.77	\$ 105.08	\$ 36.18	\$ 39.40	\$ 59.11	\$ 79.86
Homestead	Marin	908	7	0.8%	wkly	wkly	extra can \$6.97/mo		6.0%	\$15/mo >25ft	no	\$ 37.61	\$ 41.44	\$ 76.84	\$ 110.14	\$ 35.35	\$ 38.95	\$ 72.23	\$ 103.53
Ross	Marin	785	23	2.8%	wkly	wkly			13.60%	\$3.63	yes	\$ 35.45	\$ 41.07	\$ 78.51	\$ 115.95	\$ 30.63	\$ 35.48	\$ 67.83	\$ 100.18
Las Gallinas	Marin	3,597	59	1.6%	wkly	wkly			1.30%	\$3.74	no	\$ 26.91	\$ 31.00	\$ 58.25	\$ 85.51	\$ 26.56	\$ 30.60	\$ 57.49	\$ 84.40
Marin County (MSS)	Marin	652	7	1.1%	wkly	wkly			21.50%	\$4.55	yes	\$ 26.08	\$ 40.37	\$ 79.07	\$ 120.79	\$ 20.47	\$ 31.69	\$ 62.07	\$ 94.82
RVSD - S	Marin	2,235	70	3.0%	wkly	wkly			20.50%	\$9.82	yes	\$ 32.11	\$ 46.92	\$ 86.99	\$ 130.19	\$ 25.53	\$ 37.30	\$ 69.16	\$ 103.50
Orinda	Contra Costa	6,188	115	1.8%	wkly	wkly		yes	13.30%	\$9.70	yes	\$ 53.31	\$ 57.48	\$ 87.11	\$ 118.41	\$ 46.22	\$ 49.83	\$ 75.52	\$ 102.66
Danville	Contra Costa	14,399	350	2.4%	wkly	wkly		yes	11.60%	\$9.70	yes	\$ 41.17	\$ 43.90	\$ 61.13	\$ 81.47	\$ 36.39	\$ 38.81	\$ 54.04	\$ 72.02
CCCounty (central)	Contra Costa	14,645	246	1.7%	wkly	wkly		yes	9.30%	\$9.70	yes	\$ 39.64	\$ 42.10	\$ 61.70	\$ 82.82	\$ 35.96	\$ 38.19	\$ 55.97	\$ 75.12
Piedmont	Alameda	3,866	35	0.9%	wkly	wkly	yes	yes	5.50%	\$2.91	no	\$ 53.12	\$ 58.52	N/A	N/A	\$ 50.19	\$ 55.30	N/A	N/A

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Attachment C
 Rates for Less Comparable Jurisdictions
 PROVIDED FOR INFORMATIONAL PURPOSES ONLY
 NOT RECOMMENDED FOR COMPARISON TO KENSINGTON RATES



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Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED

NO

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

Date: September 6, 2014

FORWARDED TO:

Subject: New Business # 4- District to Assist in Attempting to Reestablish Kensington Post Office

In August, I received a letter from resident Barbara Steinberg, documenting the efforts currently taking place in attempting to reestablish the Kensington Post Office. (See attached letter.)

I am asking the Board for discussion and comment on this issue, and seeking direction as to what if any actions the Board would like the District to take.

Kensington Calif. 94707

8/23/14

Dear Chief / City Manager Harmon

I want to let you know about our efforts to reestablish a branch POST office here in Kensington. Shirley, at Country Chase (used to be Wing's Pharmacy) and her landlord, Mary Yachol Kovsky have worked hard, trying to negotiate a reasonable contract with the POST office. The POST office people in Berkeley have been very resistant and reluctant to do so. Thus, Shirley has backed out from any further negotiations.

I have just started to work on this, with Mary and have sought the advice from Barbara Johnson, an aide to Congressman George Miller. She seems willing to advise and help ~~us~~ us with the POST office administrators. She is in touch with the Washington administrators.

Bob Kim, the owner of Young's market seems very interested in housing the branch POST office. When appropriate, would you be willing to send a letter to Congressman Miller's office and the POST office administrators with whom we would be dealing - a letter stating the need for a POST office in this community and how it would benefit the POST office (this branch POST office under Wing (Pharmacy) brought in for the POST office, \$250,000 ⁰⁰ a year.

Could you let me know if you are willing to do so, and I will give you the appropriate contracts, as soon as Barbara Johnson gets this information.

If you have any ideas, advice etc., I'd love to hear about it and hope to be able to put them to good use.

Sincerely,
Barbara Steinberg