

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

AGENDA

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District will be held **Thursday, October 9, 2014, at 6:00 P.M.**, at the Community Center, 59 Arlington Avenue, Kensington, California. The Board will commence its monthly Regular Meeting in open session at **7:30 P.M.** If further Closed Door Session is required, the Board will return to Closed Door Session following the end of the Regular Meeting.

Roll Call
Public Comments

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

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

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

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

A Regular Meeting of the Board of Directors of the Kensington Police Protection and Community Services District will be held **Thursday, October 9, 2014, at 7:30 P.M.**, at the Community Center, 59 Arlington Avenue, Kensington, California.

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

Roll Call
Public Comments
Board Member/ Staff Comments

APPROVAL OF CONSENT CALENDAR

- a) Minutes of the Special Closed Door Meeting September 3, 2014, Page 3
- b) Minutes of the Special & Regular Meeting September 11, 2014, Page 5
- c) Profit & Loss Budget Performance for September 2014, Page 13
- d) Park Revenue & Expenses Report for September 2014, Page 18
- e) Board Member Reports- None This Month
- f) Training & Reimbursement Reports, Page 23
- g) Correspondence- None This Month
- h) Police Department Update, Page 25
- i) Monthly Calendar, Page 35
- j) Recreation Report, Page 37
- k) General Manager's Report, Page 38

DISTRICT - NEW BUSINESS

1. Dr. Harter, Superintendent of the West Contra Costa County Unified School District will provide a presentation to the Board and public on the West County Unified School District.
2. Directors Chuck Toombs and Pat Gillette will update the Board and public on the contract negotiations and/or present for Board discussion a draft of the purposed contract with the Kensington Police Officer's Association. Possible Board Action.

3. Board President Len Welsh will present for Board discussion a draft of a purposed contract between the District and Bay View Refuse & Recycling for services following the expiration of the current Bay View contract in August 2015. Possible Board Action. Page 43
4. Director Linda Lipscomb will present for a second reading the draft of KPPCSD Board Policy Section 1000 and for a first reading the Introduction for the KPPCSD Board Policy Manual. Possible Board Action. Page 112
5. General Manager/ Chief of Police Greg Harman will ask Board approval to attend the POST approved November 2014 Contra Costa County Police Chief's Association Annual Workshop, being held November 3rd- 6th, at Bodega Bay, at a total cost of \$825.42 which is reimbursed by POST. Board Action. Page 135

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

ADJOURNMENT

General Information

Accessible Public Meetings

NOTE: UPON REQUEST THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT WILL PROVIDE WRITTEN AGENDA MATERIALS IN APPROPRIATE ALTERNATIVE FORMATS, OR DISABILITY-RELATED MODIFICATION OR DISABILITIES TO PARTICIPATE IN PUBLIC MEETINGS. PLEASE SEND A WRITTEN REQUEST, INCLUDING YOUR NAME, MAILING ADDRESS, PHONE NUMBER AND A BRIEF DESCRIPTION OF THE REQUESTED MATERIALS AND PREFERRED ALTERNATIVE FORMAT OR AUXILARY AID OR SERVICE AT LEAST 2 DAYS BEFORE THE MEETING. REQUESTS SHOULD BE SENT TO:

General Manager/ Chief of Police Greg Harman, Kensington Police Protection & Community Services District, 217 Arlington Ave, Kensington, CA 94707

POSTED: Public Safety Building-Colusa Food-Library-Arlington Kiosk- and at www.kensingtoncalifornia.org
Complete agenda packets are available at the Public Safety Building and the Library.

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

Meeting Minutes for 9/3/14

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Wednesday, September 3, 2014, at 6:00 P.M. at the Community Center, 59 Arlington Avenue, Kensington, California.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	
Linda Lipscomb, Vice President	
Chuck Toombs, Director	
Tony Lloyd, Director	
Pat Gillette, Director	
<u>Staff Members</u>	
GM/COP Gregory Harman	
Lynn Wolter, District Administrator	

Board President Welsh called the meeting to order at 6:22 P.M.

PUBLIC COMMENTS

None

BOARD COMMENTS

Vice President Lipscomb reported that a candidates' forum would take place on October 11, 2014, from 9:00 – 12:00.

STAFF COMMENTS

GM/COP Harman thanked the board for his performance review and goals and objectives and said he was ready to sign. He made one correction: He is not a member of the Finance Committee; he is staff.

The Board dismissed District Administrator Wolter and entered into Closed Session at 6:26 P.M. to:

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

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

At 8:45 P.M., the Board returned to Open Session and reported that it had taken no action.

MOTION: President Welsh moved, and Director Gillette seconded, that the meeting be adjourned.

Motion passed 5 – 0.

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



Meeting Minutes for 9/11/14

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, September 11, 2014, at 6:30 P.M. at the Community Center, 59 Arlington Avenue, Kensington, California. The Regular Meeting of the Board of Directors (BOD) of the Kensington Police Protection and Community Services District (KPPCSD) followed.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Sandy Waters
Linda Lipscomb, Vice President	Rachelle Sherris-Watt
Chuck Toombs, Director	Aaron Gobler, Pagepoint
Pat Gillette, Director	John Stein
	Kathy Stein
<u>Staff Members</u>	Karl Kruger
GM/COP Gregory Harman	David Spath
Officer Ramos (on duty)	Charles Ramsey, WCCUSD Board Pres.
Officer Wilkens (on duty)	John Sullivan
Lynn Wolter, District Administrator	Barbara Dilts
Sgt. Barrow (own time)	Mabry Benson
<u>Press</u>	Matthew Rinaldi
Joel Koosed, Outlook	Simon Brafman
	Celia Concus
	Paul Dorroh
	Gloria Morrison
	Vanessa Cordova

Board President Welsh called the meeting to order at 6:39 PM and took roll call. President Welsh, Vice President Lipscomb, Director Gillette, Director Toombs, General Manager/Chief of Police Harman, and District Administrator Wolter were present. Director Lloyd was absent.

PUBLIC COMMENTS

Sandy Waters announced that Kensington had been invited to participate in El Cerrito's upcoming citywide garage sale.

CLOSED SESSION

The Board entered into Closed Session at 6:41 P.M. to:

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

2. Pursuant to California Government Code Section 54957b
 - a. Discuss the General Manager/Chief of Police performance review pursuant to California Government Code Section 54957b.
 - b. Discuss the possible contract extension and terms of the extension of the General Manager/Chief of Police.

OPEN SESSION

The Board returned to Open Session at 7:47 P.M.

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

President Welsh reported that the Board took no action.

PUBLIC COMMENTS

Charles Ramsey, West Contra Costa Unified School District (WCCUSD) Board President, reported that Back-to-School night was the same night. He distributed the WCCUSD newsletter and said it provided a status report on the schools. He said there would be increased funding for the schools in the amount of \$50 - \$75 million and there would be reduced class sizes, with ratios of 24 to 1. He reported that after-school programs had been enhanced and that the WCCUSD was no longer in State receivership. He said he would get the KPPCSD-WCCUSD agreement back to the District for ratification.

Director Toombs thanked Mr. Ramsey for his 21 years of service with the WCCUSD.

Aaron Gobler of Pagepoint made a presentation on the District's website conversion. He said his company had been working in Kensington since 2001 and had provided service to the Kensington Fire Protection District, the Kensington Community Council, and had developed the KPPCSD's first website. He distributed a handout of the proposed new homepage. He said the two most important objectives of the new website were:

- For it to be clear and easy to use for all ages.
- That it would be easy for staff to make updates.

He summarized features of the new homepage and said the new website should be available by the end of September.

President Welsh complimented Mr. Gobler and Lynn Wolter for their work on the new website project.

Matthew Rinaldi, an attorney involved in litigation for an accident that had occurred at the intersection of Coventry and Arlington, said the markings for this intersection were poor. He encouraged the Board to urge the County to attend to the intersection.

BOARD MEMBER COMMENTS

Director Gillette noted the significance of the date and asked that everyone remember what had happened on 9/11.

Director Toombs said it was nice to see so many community members present.

President Welsh thanked those who had continued to work on the fuel reduction project, especially Charli Danielsen, Katie Gluck, Peter Liddell, and Ray Barraza. He cautioned that the community was at high fire risk because of the ongoing drought.

STAFF COMMENTS

GM/COP Harman reported that Drug Take-back Day would occur on September 27th, between 10:00 AM and 2:00 PM.

CONSENT CALENDAR

President Welsh asked to pull Item (i), the Monthly Calendar. He noted that the calendar showed that the Blessing of the Animals Faire would occur on September 26th but that the event would actually occur on September 27th.

Karl Kruger asked that Board pull Item (c), the Profit & Loss Budget Performance for August 2014. President Welsh reported that the Finance Committee would, in the future, report on District financial matters discussed at the Committee meetings. Director Gillette inquired how one could be appointed to the Finance Committee. President Welsh suggested that people contact him and that such volunteer sign-ups be made available on the new website.

President Welsh asked to pull Item (k), the General Manager's Report, and asked GM/COP Harman to discuss the overtime matter contained in his monthly report. GM/COP Harman said he would like to discuss this in the context of answering questions posed in an email by Director Toombs regarding the monthly P&L Report.

Director Toombs' questions and GM/COP Harman's responses:

- Account 401 Shortfall – The July/August drop (\$1.2 million) was less than the amount that had been budgeted (\$1.4 million). GM/COP explained that, early in the fiscal year, the County credits the District the amount of property tax revenue that's anticipated. Later, the District would receive the actual cash to offset the credit. GM/COP Harman said he still expects to receive the amount budgeted.
- Account 404 Measure G – The budgeted amount (\$501,000) should be received from the County.
- Account 427 Community Center Rental – The District had earned more in rental fees than had been budgeted.
- Account 521-T – The new actuarial amount was reflected in the budget. He said that the net amount to be sent to CalPERS would be \$58,000.
- Account 564 Communications – The overrun was the result of timing, with respect to when invoices were paid.
- Account 574 Reserve Officers – The overrun reflects one-time costs associated with hiring a new Reserve Officer.
- Account 594 Community Policing – The overrun was due to the unbudgeted Board-approved expenditure of \$7,500 for a new website.
- Account 672 Park – The amount expensed was less than what had been budgeted.
- Account 506 Officers' Overtime – GM/COP reported that \$9,700 in Overtime had been paid during July. He said that Karl Kruger and another resident had made Public Records Act Requests for information about the expenditure. GM/COP Harman said that \$40,000 had been budgeted for Overtime in Fiscal Year 2013-14 and \$45,000 had been budgeted for the current fiscal year. He reported that the majority of the Overtime paid in July had been the result of a single incident, and he summarized the details of the Overtime expenditures for June and July, both of which were reflected in the July payments because Overtime is paid in arrears. GM/COP Harman explained that a Police Department could not foresee or budget for major investigations.

President Welsh suggested that the Finance Committee address Overtime expenses to ensure adequate funding for extraordinary events.

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

Motion passed 4 to 0.

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

DISTRICT NEW BUSINESS

1. The Board presented a District Proclamation to Walter and Gretchen Gillfillan, who celebrated their 60th wedding anniversary during the month of August.

Vice President Lipscomb read and presented a Proclamation to Gretchen Gillfillan citing Gretchen's and her husband's numerous accomplishments, their positive influence on the community, and their 60th wedding anniversary celebration. Mrs. Gillfillan expressed her gratitude and said that she and her husband had lived in Kensington for almost all of their married life. Gretchen received a standing ovation.

2. The Policy Committee presented to the Board, for a second reading, the revised KPPCSD Board of Directors Policy Manual's Section 1000.

Vice President Lipscomb provided an introduction and suggested that the Board amend Section 1000.10 to add "principal" between the words "a" and "resource", in consideration of Leonard Schwartzburd.

Director Gillette responded that she preferred that the wording remain as presented because the Policy and Procedures Manual should serve as a guideline, not as a contractual obligation.

It was the consensus of the Board that the word "principal" not be added.

Mabry Benson suggested that the Policy Manual should govern the Board. She said she expected the Board to follow the policies and questioned what was the point of having them if the Board wasn't going to follow them. Director Toombs responded that the Board was obligated to follow State law, which trumped the District's policies.

Gloria Morrison said she agreed with Ms. Benson and questioned when the Board would and would not follow its Policies and Procedures Manual.

Vice President Lipscomb said the policies were meant to be expressions of intention but that laws were mandates.

Ms. Benson said she was not asking the Board not to follow the law. She said it was a citizen expectation that the Policies and Procedures Manual be followed.

John Stein said he had served on the Policies and Procedures Committee for a number of years and said it was important to keep the Manual as flexible as possible to avoid lawsuits.

Paul Dorroh said debate was pointless – the legislative body couldn't tie the hands of future boards. He recommended keeping the policies flexible.

Director Gillette said she had a question about Section 1030.30. She wondered if the individual conducting an investigation shouldn't be independent in order to avoid the risk of retaliation. She said there was a hierarchy issue. She wondered, what if there were a complaint against the General Manager or against a Director? GM/COP Harman responded that, if there were a complaint against the General Manager, the complaint would go to the full Board. Director Gillette said complaints against the General

Manager were not addressed in the Manual. President Welsh suggested this be addressed at the Board's October meeting.

Vice President Lipscomb asked Director Gillette to draft language that would help resolve this matter, and Director Gillette said she would do so. Vice President Lipscomb asked that Section 1030.30 be put over to the next meeting.

GM/COP Harman asked for direction – would the Board discuss both Sections 1000 and 3000 at the October meeting. Board consensus was that it would discuss only Section 1000 at the October meeting.

Director Toombs asked about the missing exhibits. Vice President Lipscomb confirmed that the exhibits were not included.

Director Toombs suggested that Section 1050.36 be amended and said he would draft an amendment for the next Board meeting.

Celia Concus said the introductory section about the District's history was missing and that she would like to see it included in the revised version of the Manual. Board consensus was this should be included.

Mabry Benson questioned the grievance policy for non-sworn employees. GM/COP Harman said that non-sworn employees receive no special treatment.

Vanessa Cordova asked what the review process for the Manual would be. President Welsh responded that the Board would be addressing the Manual by sections and said that this evening's review was just a reading.

Barbara Dilts said she had, upon re-reading the Manual, discovered some typographical and grammatical errors and said she'd like to include these in the revised version. GM/COP Harman responded that, now that the revised version had gone from the Committee to the Board, only the Board could make changes.

3. KPPCSD Board President Len Welsh and General Manager/Chief of Police Greg Harman provided the Board with a draft of a possible contract with Bay View Refuse & Recycling and an update to the request for proposal process for solid waste and recycling services due to start September 2015.

President Welsh said that the Board had had a spirited discussion at its August meeting. He said the work was continuing on two tracks: ongoing discussions with Bay View Refuse and the Request for Proposal. He reported that HF&H had attended one of the two meetings between the District and Bay View Refuse. He introduced Tracy Swanborn of HF&H.

President Welsh reviewed the September 4, 2014 letter of intent that the District had received from Bay View Refuse. He said the franchise fee would be increased to 8% for twelve months and would then drop to 5%. The rationale President Welsh provided for this was that the MOU with the County would expire by the end of the first year and that, from that point forward, the District would cease paying 3% to the County and the District would receive this 3% fee plus the 2% fee it currently received. President Welsh said that, instead of Bay View Refuse forwarding documents to the County, as it does now, the District would assume reporting responsibilities. President Welsh said the negotiations with Bay View were 75-80% complete and that HF&H had provided a state-of-the-art agreement. He said the letter of intent had addressed the big items: pricing and franchise fees. He asked the Board if negotiations with Bay View should continue.

Vice President Lipscomb said she had hoped for better rates. She said the fee to the County was important and that she wanted Bay View to pick up that cost. She said she would like to see a bigger spread between the mini-can and the standard can rates but said Bay View's reason for there not being a bigger price spread was that it was just as expensive to service a mini can as to service a regular can. She wondered if the difference could be expressed as a percentage, rather than a dollar amount, to provide incentive. She

addressed the Multi-index Rate Adjustment that would be used under the proposed agreement, saying it would address fuel, labor, and cost-of-living increases.

Director Gillette asked what the budgeted RFP costs were. GM/COP Harman responded that \$79,000 had been budgeted for the rate review consultants, HF&H, and \$35,000 had been budgeted for legal fees. The total amount budgeted was \$114,000.

Director Toombs questioned why the District should give up the RFP for a proposal that didn't appear to be a good economic deal – the proposal wasn't low enough.

Tracy Swanborn said HF&H had been in the solid waste consulting business for 25 years, it served municipal agencies, and that its specialty was solid waste. She said the every agency was unique and this made it difficult to compare rates among communities.

At 9:45 President Welsh interrupted the meeting.

MOTION: Director Gillette moved, and Vice President Lipscomb seconded, to extend the meeting until the Board had completed all its business. Motion passed 4 to 0.

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

Ms. Swanborn summarized the comparative rate information for 12 other agencies and said the rates were net of franchise fees. She reported:

- Other agencies' franchise fees were as high as 20%.
- Kensington residents were doing a great job at recycling.
- Kensington's 20-gallon and 32-gallon can rates were a bit lower than in other communities.
- Kensington's 64-gallon and 96-gallon can rates were significantly higher.
- The current rate adjustment process was complex and the proposed process would be simpler and would, therefore, be less expensive. She said this proposed process was being used throughout the State and said that Bay View Refuse had agreed to it.

Director Gillette asked if there were other companies that might participate in the RFP. Ms. Swanborn and GM/COP Harman responded that they hoped two or three companies would propose and that these might include Republic and other local private companies. Ms. Swanborn said Kensington was not a highly desirable area to serve. She said that, if the District selected a new service provider, there likely would be a transition period, while the new company became familiar with Kensington. Ms. Swanborn said that two to three proposals would generate the best market deal but that going through the RFP could be a bit of a gamble.

Director Gillette asked if spending a few more weeks negotiating with Bay View Refuse would put the District behind, with respect to the RFP. Ms. Swanborn responded that she needed to begin the RFP process during the final month of the District's trying to conclude negotiations with Bay View Refuse.

Director Gillette asked if other companies would be deterred from participating in the RFP because of the early discussions with Bay View Refuse. Ms. Swanborn replied, no.

Vice President Lipscomb said Bay View's proposed rates were "in the ballpark".

A discussion ensued about franchise fees and other amounts that might be due to the County, following the termination of the District's MOU with the County.

- During the first year of the proposed agreement with Bay View, the franchise fee to the District would be 8%, with Bay View paying 3% to the County.
- Household Hazardous Waste (HHW) fees of approximately \$2,300 per quarter were paid by Bay View to the County.

John Stein said the County MOU provided the mechanism for Kensington to participate in the HHW program.

GM/COP Harman clarified that the HHW fees that Bay View paid were actually derived from the rates charged to residents.

Vice President Lipscomb said that, when the County MOU expired in 2016, the District would need to enter into another MOU with the County to address reporting and HHW issues.

Karl Kruger said the process was not as complicated as the Board thought.

President Welsh said he thought it would make sense to talk to the two jurisdictions that had sued the County in the late nineties – and won – what arrangements they had with the County.

Gloria Morrison asked if changes in rates would occur only if there were changes in law or in scope of service.

John Sullivan asked if it would be possible to get the County MOU “in sync” with the term of the solid waste agreement.

Director Gillette noted that the proposed agreement had a five-year term and that Bay View would use existing equipment. She said the RFP called for a term of seven to ten years. GM/COP Harman responded that Bay View currently had one truck dedicated to Kensington and that, under the proposed agreement, Bay View could use any one of its 15 trucks in Kensington.

GM/COP Harman said the proposed agreement allowed for the reduction of current expenses by eliminating things such as the multiple financial reports provided throughout the year.

Rachelle Sherris-Watt asked about the Multi-Index Rate Adjustment process.

Ms. Swanborn noted that backyard service added \$3 to \$10 to monthly rates.

Kathy Stein said the District needed a decent franchise fee and wondered how the District would afford another RFP in five years without a significantly higher fee. GM/COP Harman responded that the District had asked for a 10% - 12% fee but that Bay View had not incorporated this into its proposal.

Director Gillette said she was concerned that Bay View could back the District into a difficult situation and that there were still a lot of elements that needed to be negotiated.

Director Toombs suggested that extending Bay View’s current contract, on a month-by-month basis, could eliminate the pressure of time. Vice President Lipscomb responded she didn’t like this idea.

Director Toombs questioned whether President Welsh and Vice President Lipscomb could return in a month with a “done deal”. He said that, if that didn’t occur, the District would need to proceed with the RFP. GM/COP Harman urged further discussion and said negotiations with Bay View were “90% there”. Director Toombs said that, if negotiations weren’t completed by October, the District would need to proceed with the RFP.

Kathy Stein said that the District’s current 2% franchise fee generated \$24,000 per year to Kensington and that Bay View Refuse had caused the District to spend this amount and more on the recent arbitration. She said the franchise fee account needed to be over-funded to protect the District.

John Stein said he was troubled by the absence of a completed agreement, citing that, at the prior month’s meeting, the Board had agreed that the September Board meeting would be the date by which negotiations were to have been concluded. He said the District needed a signed contract, as provided by HF&H. Tracy

Swanborn said Bay View had not provided any feedback to the HF&H contract. Mr. Stein said the Board had nothing and that the trust provision of Bay View's future organization hadn't been addressed.

Paul Dorroh said the District had a financial terms sheet and that this was just the start to negotiations.

Mabry Benson said she didn't believe that Bay View's first offer was its best offer.

Director Gillette said, if the proposed deal was unacceptable, the District needed to obtain a second proposal and that, if the second proposal wasn't terrific, the District should proceed with the RFP.

President Welsh said he agreed and that, if a completed agreement wasn't ready by the October Board meeting, the District would proceed with the RFP.

Kathy Stein asked, if there were another big migration to the mini-can, would this trigger a rate increase request by Bay View. Ms. Swanborn responded that changes in the customer base would be excluded.

MOTION: Director Gillette moved, and Director Toombs seconded, that the Board authorize GM/COP Harman and President Welsh to continue negotiations, with the requirement that there be a firm and acceptable offer by September 30th and that GM/COP Harman and President Welsh take HF&F with them to discussions with Bay View Refuse.

Motion passed 4 – 0.

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

4. General Manager/Chief of Police Greg Harman discussed the letter received from Kensington resident Barbara Steinberg regarding reestablishing a Kensington Post Office branch and asked the Board if it would like to participate in this effort.

GM/COP Harman said that Barbara Steinberg would like to see Kensington's post office reopened and wondered if the Board would like to participate in the effort. He said he didn't have the time to become involved and said the U.S. Postal Service didn't want to resume providing the service. President Welsh asked why there was resistance on the part of the Post Office. GM/COP responded, cost.

Director Toombs pointed out that Ms. Steinberg was seeking a letter of support. President Welsh and Director Gillette volunteered to write one.

MOTION: President Welsh moved, and Vice President Lipscomb seconded, to adjourn the meeting.

Motion passed: 4 – 0.

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

The meeting was adjourned at 11:17 P.M.

Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

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

FORWARDED TO:

Date: Saturday, October 04, 2014

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

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

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

KPPCSD
Unaudited Profit & Loss Budget Performance
 September 2014

	Sep 14	Budget	Jul - Sep 14	YTD Budget	Annual Budget
Ordinary Income/Expense					
Income					
400 · Police Activities R...					
401 · Levy Tax	0.00		1,267,778.56	1,413,620.00	1,413,620.00
402 · Special Tax-Poli...	0.00		0.00	680,000.00	680,000.00
403 · Misc Tax-Police	0.00		69.00		
404 · Measure G Sup...	0.00		0.00		501,443.00
410 · Police Fees/Ser...	226.15	375.00	678.65	375.00	1,500.00
415 · Grants-Police	0.00		8,827.81		
416 · Interest-Police	0.00		0.00		2,500.00
418 · Misc Police Inc...	1,972.54	1,500.00	6,132.09	4,500.00	18,000.00
400 · Police Activities...	20.00		20.00		
Total 400 · Police Activi...	2,218.69	1,875.00	1,283,506.11	2,098,495.00	2,617,063.00
420 · Park/Rec Activitie...					
424 · Special Tax-L&L	0.00		0.00		33,000.00
427 · Community Cen...	3,105.00	1,800.00	16,533.00	5,900.00	30,000.00
436 · Interest-Park/Rec	0.00		0.00		100.00
438 · Misc Park/Rec ...	0.00	50.00	42.00	150.00	500.00
Total 420 · Park/Rec Ac...	3,105.00	1,850.00	16,575.00	6,050.00	63,600.00
440 · District Activities ...					
448 · Franchise Fees	8,371.23		16,870.54		21,000.00
456 · Interest-District	0.00		0.00		350.00
Total 440 · District Acti...	8,371.23		16,870.54		21,350.00
Total Income	13,694.92	3,725.00	1,316,951.65	2,104,545.00	2,702,013.00
Expense					
500 · Police Sal & Ben					
502 · Salary - Officers	81,478.14	81,748.58	244,128.70	245,245.78	980,983.00
504 · Compensated A...	0.00	0.00	2,315.83	2,933.33	8,800.00
506 · Overtime	3,926.14	3,750.00	16,539.52	11,250.00	45,000.00
508 · Salary - Non-Sw...	3,990.94	6,825.00	12,840.84	20,475.00	81,900.00

KPPCSD

Unaudited Profit & Loss Budget Performance

September 2014

	Sep 14	Budget	Jul - Sep 14	YTD Budget	Annual Budget
516 · Uniform Allowa...	666.60	666.66	1,999.80	1,999.98	8,000.00
518 · Safety Equipment	0.00		0.00	2,500.00	2,500.00
521-A · Medical/Visio...	1,628.73	15,858.83	44,872.58	63,435.36	190,306.00
521-R · Medical/Visio...	1,551.32	11,312.33	36,162.95	45,249.36	135,748.00
521-T · Medical/Visio...	0.00		0.00		58,058.00
522 · Insurance - Police	526.50	436.67	1,961.00	1,309.97	5,240.00
523 · Social Security/...	1,320.89	1,359.00	1,537.22	4,077.00	16,308.00
524 · Social Security ...	283.99	423.17	899.21	1,269.47	5,078.00
527 · PERS - District ...	31,726.74	31,565.00	95,062.14	94,695.00	378,780.00
528 · PERS - Officers ...	7,393.04	7,417.33	22,151.60	22,252.03	89,008.00
530 · Workers Comp	25,444.24	18,000.00	28,817.91	20,000.00	50,000.00
Total 500 · Police Sal & ...	159,937.27	179,362.57	509,289.30	536,692.28	2,055,709.00
550 · Other Police Expe...					
552 · Expendable Poli...	780.95	125.00	2,777.26	375.00	1,500.00
553 · Range/Ammunit...	0.00	2,000.00	0.00	2,000.00	3,000.00
560 · Crossing Guard	584.15	876.25	584.15	2,628.75	10,515.00
562 · Vehicle Operation	6,924.65	5,000.00	8,747.09	15,000.00	60,000.00
564 · Communication...	0.00	13,005.83	15,200.33	39,017.53	156,070.00
566 · Radio Maintena...	181.69	1,812.50	363.38	5,437.50	21,750.00
568 · Prisoner/Case E...	1,909.78	450.00	1,350.78	1,350.00	5,400.00
570 · Training	3,136.46	833.33	4,115.06	2,500.03	10,000.00
572 · Recruiting	899.76	541.67	899.76	1,624.97	6,500.00
574 · Reserve Officers	959.45	337.50	1,952.19	1,012.50	4,050.00
576 · Misc. Dues, Mea...	1,250.00	261.67	2,240.00	784.97	3,140.00
580 · Utilities - Police	69.44	746.67	882.16	2,239.97	8,960.00
581 · Bldg Repairs/M...	0.00	83.33	0.00	250.03	1,000.00
582 · Expendable Offi...	-241.42	500.00	1,093.31	1,500.00	6,000.00
588 · Telephone(+Ric...	629.83	742.00	1,469.75	2,226.00	8,904.00
590 · Housekeeping	421.02	333.33	1,154.66	1,000.03	4,000.00
592 · Publications	0.00	183.33	88.50	550.03	2,200.00
594 · Community Poli...	2,026.49	166.67	5,380.44	499.97	2,000.00
596 · WEST-NET/CAL ...	0.00		13,655.00	13,925.00	13,925.00
599 · Police Taxes Ad...	855.31	825.00	1,681.81	1,650.00	3,300.00

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KPPCSD
Unaudited Profit & Loss Budget Performance
 September 2014

	Sep 14	Budget	Jul - Sep 14	YTD Budget	Annual Budget
Total 550 · Other Police...	20,387.56	28,824.08	63,635.63	95,572.28	332,214.00
600 · Park/Rec Sal & Ben					
601 · Park & Rec Adm...	589.58	650.00	1,662.49	1,950.00	7,800.00
602 · Custodian	1,750.00	1,895.83	5,250.00	5,687.53	22,750.00
623 · Social Security/...	0.00	49.75	0.00	149.25	597.00
Total 600 · Park/Rec Sal...	2,339.58	2,595.58	6,912.49	7,786.78	31,147.00
635 · Park/Recreation E...					
640 · Community Cen...					
642 · Utilities-Com...	643.51	468.00	1,188.27	1,404.00	5,616.00
643 · Janitorial Sup...	868.49	66.67	868.49	199.97	800.00
646 · Community C...	10.98		10.98	3,000.00	3,000.00
Total 640 · Communit...	1,522.98	534.67	2,067.74	4,603.97	9,416.00
672 · Kensington Par...	6,398.65		13,005.31	79,524.00	79,524.00
Total 635 · Park/Recrea...	7,921.63	534.67	15,073.05	84,127.97	88,940.00
800 · District Expenses					
810 · Computer Maint...	9,331.95	2,024.00	11,631.95	6,072.00	24,288.00
820 · Cannon Copier ...	582.00	475.00	1,853.10	1,425.00	5,700.00
830 · Legal (District/P...	23,561.35	12,500.00	23,561.35	37,500.00	150,000.00
835 · Consulting	0.00	625.00	0.00	1,875.00	7,500.00
840 · Accounting	520.00	2,979.17	1,527.50	8,937.47	35,750.00
850 · Insurance	1,000.00		29,531.20	28,750.00	30,000.00
860 · Election	0.00	1,000.00	0.00	1,000.00	10,000.00
865 · Police Bldg. Lea...	0.00		0.00	1.00	1.00
870 · County Expendi...	0.00		1,352.76		22,300.00
890 · Waste/Recycle	1,536.62	9,883.33	10,683.03	29,650.03	118,600.00
898 · Misc. Expenses	-40.00	1,100.00	40.40	3,100.00	12,300.00
Total 800 · District Exp...	36,491.92	30,586.50	80,181.29	118,310.50	416,439.00
950 · Capital Outlay					
962 · Patrol Cars	0.00		0.00		30,000.00

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KPPCSD
Unaudited Profit & Loss Budget Performance
 September 2014

	Sep 14	Budget	Jul - Sep 14	YTD Budget	Annual Budget
963 · Patrol Car Acce...	0.00		0.00		16,000.00
972 · Park Buildings I...	0.00		0.00		
Total 950 · Capital Outlay	0.00		0.00		46,000.00
Total Expense	227,077.96	241,903.40	675,091.76	842,489.81	2,970,449.00
Net Ordinary Income	-213,383.04	-238,178.40	641,859.89	1,262,055.19	-268,436.00
Other Income/Expense					
Other Expense					
700 · Bond Issue Expen...					
710 · Bond Admin.	2,381.08		4,681.72		
720 · Bond Principal	123,024.10		123,024.10		
730 · Bond Interest	20,606.66		20,606.66		
Total 700 · Bond Issue ...	146,011.84		148,312.48		
Total Other Expense	146,011.84		148,312.48		
Net Other Income	-146,011.84	0.00	-148,312.48	0.00	0.00
Net Income	-359,394.88	-238,178.40	493,547.41	1,262,055.19	-268,436.00

Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

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

Date: Saturday, October 04, 2014

FORWARDED TO:

Subject: Consent Calendar Item D- Park Revenue & Expenses

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

This information is obtained through our QuickBooks software. Revenue and expenses from July 1, 2014 through September 30, 2014 are attached to this memo.

KPPCSD
Account QuickReport
 July 1 through October 4, 2014

10:36 AM
 10/04/14
 Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount
420 · Park/Rec Activities Revenue						
427 · Community Center Revenue						
Deposit	7/9/2014	V918...		CCC Primary...	112 · General ...	100.00
Deposit	7/9/2014	109		July & Aug 2...	112 · General ...	90.00
Deposit	7/9/2014			Partial Paym...	112 · General ...	125.00
Deposit	7/9/2014	150		Partial Paym...	112 · General ...	175.00
Deposit	7/9/2014	2073		CC Rental 7/...	112 · General ...	600.00
Deposit	7/9/2014	6717		CC Rental ad...	112 · General ...	75.00
Deposit	7/9/2014	7397		2nd Half of R...	112 · General ...	7,500.00
Deposit	7/9/2014			CC Rental 5/...	112 · General ...	450.00
Deposit	8/4/2014	731		CC Rental 7/...	112 · General ...	375.00
Deposit	8/4/2014	3358		CC Rental 7/...	112 · General ...	900.00
Deposit	8/4/2014	3201		CC Rental 8/...	112 · General ...	500.00
Deposit	8/18/2014	9001		AA rent for A...	112 · General ...	90.00
Deposit	8/18/2014	1023		CC Rental 8/...	112 · General ...	1,400.00
Deposit	8/18/2014	602		CC Rental 8/...	112 · General ...	450.00
Deposit	8/18/2014	1139		East Bay Coll...	112 · General ...	598.00
Deposit	9/9/2014	3274		CC Rental on...	112 · General ...	600.00
Deposit	9/9/2014			CC Rental ad...	112 · General ...	75.00
Deposit	9/9/2014	3052		CC Rental on...	112 · General ...	1,200.00
Deposit	9/9/2014	4157		CC Rental on...	112 · General ...	600.00
Deposit	9/30/2014			9-13-14 CC ...	112 · General ...	450.00
Deposit	9/30/2014	5927...		10-18-14 CC ...	112 · General ...	180.00
Total 427 · Community Center Revenue						16,533.00
438 · Misc Park/Rec Rev						
Deposit	7/9/2014			Tennis court f...	112 · General ...	2.00
Deposit	8/18/2014	4314		Tennis court f...	112 · General ...	40.00
Total 438 · Misc Park/Rec Rev						42.00
Total 420 · Park/Rec Activities Revenue						16,575.00
TOTAL						16,575.00

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KPPCSD
Account QuickReport
 July 1 through October 4, 2014

Type	Date	Num	Name	Memo	Split	Amount
600 · Park/Rec Sal & Ben						
601 · Park & Rec Administrator						
Paycheck	7/14/2014		Di Napoli, Andrea		112 · General ...	286.25
Paycheck	7/29/2014		Di Napoli, Andrea		112 · General ...	257.00
Paycheck	8/14/2014		Di Napoli, Andrea		112 · General ...	274.25
Paycheck	8/28/2014		Di Napoli, Andrea		112 · General ...	255.41
Paycheck	9/14/2014		Di Napoli, Andrea		112 · General ...	276.94
Paycheck	9/29/2014		Di Napoli, Andrea		112 · General ...	312.64
Total 601 · Park & Rec Administrator						1,662.49
602 · Custodian						
Check	7/15/2014	15698	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	7/30/2014	15726	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	8/15/2014	15754	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	8/29/2014	15784	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	9/15/2014	15817	William Driscoll	Com. Center ...	112 · General ...	875.00
Check	9/30/2014	15850	William Driscoll	9/16 - 9/30/1...	112 · General ...	875.00
Total 602 · Custodian						5,250.00
Total 600 · Park/Rec Sal & Ben						6,912.49
TOTAL						6,912.49

KPPCSD
Account QuickReport
 July 1 through October 4, 2014

10:37 AM
 10/04/14
 Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount
635 · Park/Recreation Expenses						
640 · Community Center Expenses						
642 · Utilities-Community Center						
General Journal	7/1/2014	REV ...	Kensington Police P...		210 · Account...	-445.60
Check	7/15/2014	15696	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	7/30/2014	15720	EBMUD	840 Coventry...	112 · General ...	29.47
Check	7/30/2014	15722	PG&E	Community C...	112 · General ...	224.30
Check	8/15/2014	15750	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	8/15/2014	15775	PG&E	Community C...	112 · General ...	196.93
Check	8/15/2014	15778	EBMUD	2 Arlmont 6/2...	112 · General ...	383.66
Check	9/15/2014	15813	Olivero Plumbing Co.	Test and certi...	112 · General ...	116.00
Check	9/15/2014	15833	Pacific Telemanage...	CC Pay Phon...	112 · General ...	78.00
Check	9/15/2014	15847	EBMUD	2 Arlmont 7/3...	112 · General ...	32.12
Check	9/15/2014	15847	EBMUD	1 Windsor 7/...	112 · General ...	204.55
Check	9/30/2014	15853	PG&E	Community C...	112 · General ...	212.84
Total 642 · Utilities-Community Center						1,188.27
643 · Janitorial Supplies						
Check	9/15/2014	15839	UBS	Com. Center ...	112 · General ...	716.07
Check	9/30/2014	15857	UBS	Com. Center ...	112 · General ...	85.01
Check	9/30/2014	15870	UBS	Community C...	112 · General ...	67.41
Total 643 · Janitorial Supplies						868.49
646 · Community Center Repairs						
Check	9/15/2014	15838	William Driscoll	Com. Center ...	112 · General ...	10.98
Total 646 · Community Center Repairs						10.98
Total 640 · Community Center Expenses						2,067.74
672 · Kensington Park O&M						
General Journal	7/1/2014	REV ...	Kensington Police P...		210 · Account...	-2,774.60
General Journal	7/1/2014	REV ...		NBS	153 · Prepaid ...	1,091.66
Check	7/30/2014	15720	EBMUD	1 Windsor Irri...	112 · General ...	2,038.49
Check	7/30/2014	15726	William Driscoll	Park Restro...	112 · General ...	425.00
Check	7/30/2014	15738	Summer Rain Land...	July Monthly ...	112 · General ...	2,615.00

10:37 AM

10/04/14

Accrual Basis

KPPCSD
Account QuickReport
 July 1 through October 4, 2014

Type	Date	Num	Name	Memo	Split	Amount
Check	8/15/2014	15747	EBMUD	1 Windsor Sc...	112 · General ...	736.11
Check	8/29/2014	15784	William Driscoll	Park Restro...	112 · General ...	425.00
Check	8/29/2014	15790	Summer Rain Land...	Aug. Monthly ...	112 · General ...	2,050.00
Check	9/15/2014	15847	EBMUD	1 Windsor Irri...	112 · General ...	1,402.69
Check	9/30/2014	15850	William Driscoll	9/1 - 9/30/1...	112 · General ...	425.00
Check	9/30/2014	15872	NBS Government Fi...	LMD Quarate...	112 · General ...	1,129.96
Check	9/30/2014	15875	Summer Rain Land...	September 2...	112 · General ...	2,050.00
Check	9/30/2014	15875	Summer Rain Land...	upper wood s...	112 · General ...	505.00
Check	9/30/2014	15875	Summer Rain Land...	hand railing r...	112 · General ...	880.00
Check	9/30/2014	15877	Andrea DiNapoli	Greg - Certifi...	112 · General ...	6.00
Total 672 · Kensington Park O&M						13,005.31
Total 635 · Park/Recreation Expenses						15,073.05
TOTAL						15,073.05

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Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED YES NO

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

FORWARDED TO:

Date: Saturday, October 04, 2014

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

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

APPENDIX A - EXPENSE PREPAYMENT/REIMBURSEMENT FORM

Name: GREG HAZMAN

Event/Activity: CSDA ANNUAL CONFERENCE

Location of Event/Activity: SALEM SPRINGS

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

	Prepay	Reimburse
1. Event/Activity Registration Fee	\$ <u>550.00</u>	\$ _____
2. Transportation		
• Airfare	\$ <u>204.20</u>	\$ _____
• Car Rental (\$ _____ per day for _____ days)	\$ _____	\$ _____
• Car Mileage (\$ _____ per mile for _____ miles)	\$ _____	\$ _____
• Taxi	\$ _____	\$ _____
• Parking <u>BISE LATE 134.00</u>	\$ <u>54.00</u>	\$ _____
3. Lodging (\$ _____ per night for <u>3</u> nights)	\$ <u>471.27</u>	\$ _____
4. Meals (Complete information requested on next page of form)		
a. Breakfast	\$ _____	\$ <u>11.90</u>
b. Lunch	\$ _____	\$ _____
c. Dinner	\$ <u>30.07</u>	\$ <u>16.90</u>
5. Other (Explain details of request)	\$ _____	\$ _____
Total Requested	\$ <u>1309.57</u>	\$ <u>28.80</u>

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

Signed: [Signature]

Approved by: KPPCS BOT

Date: 100414

Signed: _____

Print Name: _____

Date: 100914

September 2014 Police Department Report

October 4, 2014

- Department Personnel
 - We are fully staffed at 10 sworn positions with three reserve officers.
 - We are continuing the background process for a fourth reserve officer candidate.
- Commendations and Correspondence- None this Month
- Investigation of Alleged Misconduct
 - Citizen's Complaint #CI 2014-03 was initiated on May 12th on an allegation that an officer failed to perform his duty and that another allowed this failure to occur and had used a despairing remark in describing the community. This investigation is being conducted by Sergeant Hui.
 - Department Investigation 2014-04 was initiated on May 23rd on an allegation that an officer engaged in conduct unbecoming an officer while off duty. This investigation is being conducted by Chief Harman.
- 9-1-1 / Richmond Communication Center Information.
 - The Ring Time Report for September has not been received as of this report date and will be included in next month's report.
- Community Networking
 - On 09-08-14, Officer Wilson attended the Kensington Public Safety Council meeting.
 - On 09-13-14, Officer Wilkens attended the Norwood Block Party and the KCC Movie Night.
 - On 09-20-14, Officer Turner participated in the Public Safety Tri City Day at the El Cerrito Plaza.

- On 09-27-14, Chief Harman attended the Animal Faire held at the Community Center.

Corporal Stegman and members of the Kensington Fire Department held a Drug Take Back Day at the Public Safety Building and collected 151 pounds of unwanted pharmaceuticals.

- Community Criminal Activity

- This section of the Watch Commanders Reports are prepared by Corporal Stegman for Team One, Sergeant Hui for Team Two, and Sergeant Barrow for Investigations.

- Watch Commander Reports

- **Corporal Stegman**

Team 1 Statistics

Officer:	Ramos K41 (0800 - 1800)	Turner (0600- 1800)	Wilson (1800- 0600)
Days Worked	16	17	17
Traffic Stops	30	37	8
Moving Citations	18	17	4
Parking Citations	1	1	5
Vacation Security Checks	7	32	26
Field Interviews	0	0	0
Traffic Collision Reports	2	0	1
Cases	1	7	2
Arrests	0	3	0
Calls for Service	29	65	30

BRIEFING/TRAINING:

- Reviewed Animal Services Memo.
- Reviewed Motions to suppress.
- Reviewed Motions to Quash Search Warrants.
- Reviewed Brady Client Alert.
- Reviewed Contra Costa Countie's lack of noise ordinance.

SERGEANT'S SUMMARY:

Some of you may have noticed there have been some significant changes at the Colusa Avenue and Santa Fe Avenue intersection. For starters one of the crosswalks was removed. Now the only crosswalks in the area are those at intersections controlled by a stop sign. Although I can only speculate at the reason for the removal of the crosswalk I would estimate there are far less vehicle versus pedestrian accidents at crosswalks which are part of controlled intersections, versus those crosswalks where traffic flow is otherwise uncontrolled.

Additionally, the striping at the intersection has been changed, creating a painted triangular median. **Most importantly**, a no left hand turn sign has been erected along the east curb line facing Colusa Avenue's north bound lane. Due to the change in signage and roadway markings it is now unlawful to make a left hand turn on to Santa Fe Ave. from Colusa Ave. when traveling north on Colusa Ave.

SIGNIFICANT EVENTS:

- 2014-4492 –On 9/2/14, Officer Turner took a report of a burglary, on the unit block of Arlmont Dr.
- 2014-4510 –On 9/3/14, Officer Turner arrested a subject for an outstanding warrant, on the unit block of Highland Blvd.
- 2014-4515 –On 9/3/14, Corporal Stegman arrested (cite/ released) a suspect for driving with a suspended license, at Arlington Ave/ and Oberlin Ave.
- 2014-4621 –On 9/8/14, Officer Wilson took a report of a petty theft, on the 200 block of Purdue Ave.
- 2014-4631 –On 9/9/14, Officer Ramos responded to a non-injury vehicle accident, at Colusa Ave/ Santa Fe Ave.
- 2014-4744 –On 9/12/14, Officer Turner arrested a suspect for DUI, on the 200 block of Arlington Ave.
- 2014-4822 –On 9/15/14, Officer Turner took a report of a burglary, on the 100 block of Colusa Ave.
- 2014-4832 –On 9/16/14, Officer Turner took a report of an identity theft, on the 100 block of Arlington Ave.

- 2014-4840 –On 9/16/14, Officer Turner took a report of a theft, on the unit block of Highgate Rd.
- 2014-4857 –On 9/17/14, Officer Wilson responded to a single vehicle, non-injury accident, on the 100 block of Arlington Ave.
- 2014-4861 –On 9/18/14, Officer Wilson took a report of a vandalism, on the unit block of Arlington Ave.
- 2014-4965 –On 9/22/14, Officer Turner arrested a suspect for possession of narcotics, on the unit block of Arlington Ave.
- 2014-4631 –On 9/30/14, Officer Ramos responded to a hit and run accident, on the 300 block of Yale Ave.

TRAFFIC STATISTICS:

Team #1 took 3 traffic collision reports during the month of September.

- 28 Moving citations were issued on Arlington Ave.
- 6 Moving citations were issued on Colusa Ave.
- 1 Moving citation was issued on Sunset Dr/ Franciscan Way.
- 2 Moving citations were issued on Grizzley Peak Blvd.
- 1 Moving citation was issued on Highland Blvd.

•• Sergeant Hui
TEAM #2 STATISTICS

Sergeant Hui (K42) - (1600-0400)

Master Sergeant Hull (K17) – issued 67 moving citations and 14 parking citations this month.

Officer:	Martinez (K31) (0600-1800)	Wilkins (K50) (1800-0600)
Days Worked	14	13
Traffic Stops	48	16
Moving Citations	34	14
Parking Citations	4	0
Vacation/Security	16	91
Checks		
Cases	8	0
Arrests	0	0
Traffic Accident Reports	1	0
Calls for Service	64	31

- Sergeant Hui recovered 10 hours of comp time.
- Sergeant Hui attended a 36 hour Background Investigator class.
- Officer Wilkens recovered 12 hours of comp time.

BRIEFING/TRAINING:

- Reviewed Animal Services Memo.
- Reviewed Motions to Suppress.
- Reviewed Motions to Quash Search Warrants.
- Reviewed Brady Client Alert.
- Reviewed Contra Costa County's lack of noise ordinance.

SERGEANT'S SUMMARY:

We are quickly approaching the holiday shopping season! As many of us start thinking about purchasing gifts this holiday season, a significant portion of us will order at least a few items from online vendors. Every year, the theft of packages left on front door steps is an issue. If you are considering ordering items online, here are a few tips that will help reduce the likelihood of losing your packages to a would be thief:

1. Try and time your purchases so that they will be delivered on a day that you are likely to be home. Many times, online vendors will have shipping calculators that will estimate your delivery date. If at all possible, try to time your purchases on a day where your package won't be left on your doorstep for an extended period of time. Some vendors will also offer the option to require a signature on delivery. This requires that a person at your residence signs for the package. Just make sure that someone will be home to sign for the package because shipping companies will not leave a package without a signature.
2. Have the package held for delivery at the nearest shipping station. Many online vendors will email you with a ship confirmation and tracking number. If you track your package and you find out that you won't be home to receive the package, many shippers (FedEx and UPS, for example) have the option to hold your package at their delivery sub-station for pickup. Make sure you check where the nearest pickup location is and what times you can stop by to pick up your package first. This ensures that you will receive your package.
3. See if a neighbor or friend is available to pick up your package. If you are out of town or won't be home until late, then try and have a neighbor or nearby friend that can stop by and grab your package for you.

4. If you are purchasing items from Amazon.com, they now have the ability to ship your package to a drop site. I've noticed that there are now Amazon lockers inside of the Lucky's in El Cerrito Plaza. If you typically are not home when packages are delivered, this appears to be a safe alternative to leaving packages at your door.

If you are shopping at local retailers, I would recommend taking your purchases inside your house when you get home. A car full of holiday gifts is often an irresistible target for a burglar.

SIGNIFICANT EVENTS:

- 2014-4707– On 9/12/2014, Officer Martinez responded to the unit blk of Arlington Ave on a report of a non-injury hit and run collision.
- 2014-4988– On 9/24/2014, Officer Martinez responded to the unit blk of Highgate Dr on a report of a fraud.
- 2014-5048- On 9/27/2014, Officer Martinez responded to the 200 blk of Cambridge Ave report of a vandalism.
- 2014-5049- On 9/27/2014, Officer Martinez responded to the 200 blk of Cambridge Ave on a report of a vandalism.
- 2014-5050- On 9/27/2014, Officer Martinez responded to the 400 blk of Beloit Ave on a report of a vandalism.
- 2014-5051- On 9/27/2014, Officer Martinez responded to the unit blk of Highgate Dr on a report of a vandalism.
- 2014-5052- On 9/27/2014, Officer Martinez responded to the unit blk of Highgate Dr on a report of a vandalism.
- 2014-5053- On 9/27/2014, Officer Martinez responded to the unit blk of Highgate Dr on a report of a vandalism.

Reserve Officer:	Armanino (K47)
Days Worked	2
Traffic Stops	7
Moving Citations	2
Parking Citations	0
Vacation/Security	4
Checks	
Cases	0
Arrests	0
Traffic Accident Reports	0
Calls for Service	0

Traffic Totals for Team 2 – includes Master Sergeant Hull

104 citations were issued on Arlington Ave
 6 citations were issued on Colusa Ave
 6 citations were issued on Kenyon Ave

1 citation was issued on Franciscan Way
1 citation was issued on Grizzly Peak Blvd

•• **Detective Sergeant Barrow**

SIGNIFICANT EVENTS:

2014-4492 Residential Burglary

On Tuesday, September 2, 2014, KPD Officers responded to a residential burglary in the 00 block of Arlmont Drive. The suspect(s) entered through a rear smashed glass door. Several items were stolen and this case is under investigation. Just a side note, El Cerrito Police also took several burglaries the same day with similar MO's.

2014-4655 Probation Violation and Public Intoxication

On Tuesday, September 9, 2014, at approximately 2221 hours, I contacted a subject in the Colusa Circle who was later determined to be on probation for weapon and alcohol related offences. I arrested the subject for being in violation of his probation and public intoxication. He was booked into county jail without incident.

2014-4822 Grand Theft / from an unlocked vehicle.

On Monday, September 15, 2014, between 10:00 AM and 13:00 PM an older white male adult driving a blue newer Toyota Avalon with tinted windows took a purse out of an unlocked vehicle at the Sunset Cemetery located at 101 Colusa Avenue. The Suspect(s) used the victim's credit cards at numerous locations in the area. This case is being investigated.

2014-5048 – 5053 Vandalisms

On Saturday, September 27, 2014, KPD Officers were dispatched to several streets, Cambridge Ave, Beloit Ave, and Highgate Drive for reported vandalisms to vehicles. Officers arrived and found six vehicle windows had been smashed or shoot out with an unknown object(s) between the hours of 10:00 PM on the 9/26/2014 and 04:00 AM on 9/27/2014. No items were taken from the victim vehicles and appeared to be random in nature.

There have been several other reported identity thefts, thefts, hit and run vehicle accidents, and vandalisms during this month. These cases are also being looked into by the officers who took the initial reports and I may conduct further investigation at a later time.

KPD Monthly Crime Statistics

September 2014

Part 1 Crimes	Reported	Open/ Pending	Suspended	Closed	Arrest
Homicide	0	0	0	0	0
Rape	0	0	0	0	0
Robbery	0	0	0	0	0
Assault	1	0	0	1	1
Residential Burglary	1	0	1	0	0
Larceny Theft	3	1	2	0	0
Vehicle Theft	0	0	0	0	0
Arson	0	0	0	0	0
Part 1 Totals	<u>5</u>	<u>1</u>	<u>3</u>	<u>1</u>	<u>1</u>
Other Crimes					
Auto Burglary	0	0	0	0	0
Identity Theft	3	0	3	0	0
Fraud	1	0	1	0	0
Forgeries	0	0	0	0	0
Restraining Order Violations/ Stalking/ Criminal Threats	0	0	0	0	0
Sex Crimes (other)	0	0	0	0	0
Assault/ Battery (other)	0	0	0	0	0
Vandalism	7	6	1	0	0
Drugs	2	0	0	2	2
Warrant	2	0	0	2	2
Hit and Run Felony	0	0	0	0	0
Hit and Run Misdemeanor	2	2	0	0	0
Other Misdemeanor Traffic	2	0	0	2	1
Other Crime Totals	<u>19</u>	<u>8</u>	<u>5</u>	<u>6</u>	<u>5</u>
All Crime Totals	<u>24</u>	<u>9</u>	<u>8</u>	<u>7</u>	<u>6</u>

Traffic Accidents (Non Injury) 5
 Traffic Accidents (Injury) 0

* Stats not received

KPD Crime Statistics

YTD 2014

Part 1 Crimes	Reported	Open/ Pending	Suspended	Closed	Arrest
Homicide	0	1*	0	0	0
Rape	1	0	0	1	1
Robbery	0	0	0	0	0
Assault	8	1	0	7	3
Residential Burglary	10	5	5	0	0
Larceny Theft	19	2	16	1	0
Vehicle Theft	3	3	0	0	0
Arson	1	0	1	0	0
Part 1 Totals	<u>42</u>	<u>11</u>	<u>22</u>	<u>9</u>	<u>4</u>
Other Crimes					
Auto Burglary	0	0	0	0	0
Identity Theft	22	9	13	0	0
Fraud	6	1	5	0	0
Forgeries	0	0	0	0	0
Restraining Order Violations/ Stalking/ Criminal Threats	1	0	0	1	1
Sex Crimes (other)	1	0	1	0	0
Assault/ Battery (other)	3	0	0	3	1
Vandalism	16	6	10	0	0
Drugs	8	0	0	8	8
Warrant	10	0	0	10	10
Hit and Run Felony	1	0	0	1	0
Hit and Run Misdemeanor	15	4	10	1	0
Other Misdemeanor Traffic	12	1	0	11	10
Other Crime Totals	<u>95</u>	<u>21</u>	<u>39</u>	<u>35</u>	<u>30</u>
All Crime Totals	<u>137</u>	<u>32</u>	<u>61</u>	<u>44</u>	<u>34</u>

Traffic Accidents (Non Injury) 31
 Traffic Accidents (Injury) 3

* 2011 case

•• **Chief Harman**

In September, schools have returned back to full sessions and with the return of students, soccer Mom's, and commuters, our focus returns to traffic and pedestrian safety.

We issued 156 traffic citations during the month of September in our effort to make the streets of Kensington safe for all. Contrary to some comments you may hear, especially from those who may have received a traffic citation for violation of a traffic law, we do not issue traffic citations to generate revenue, because we have nothing better to do, because there is no real crime in Kensington, or because police officers are mean people, we issue traffic citations to change drivers, bicyclist, and pedestrian behavior.

Believe me, I hear it all. "I was just driving 5 MPH over the speed limit", "I slowed down for the stop sign", "Why should I use my turn signal", "I was only stopping for a minute to...", and one of my all-time favorites, "I pay your salary, you shouldn't be giving me a ticket!". Our only goal when we conduct traffic enforcement is to change unsafe behavior to ensure the safety of everyone on the roadways.

We have investigated 31 non-injury accidents and 3 injury accidents so far this year and we are only 9 months into the year. Traffic accidents are caused by illegal and unsafe behavior. This includes using a cell phone, texting, and the worse of all, impaired driving due to alcohol or drug intoxication.

So as we head into the last quarter of the year, and the upcoming holiday season, please observe all traffic regulations and drive safely. Or you may receive a traffic citation, or a free ride in the back seat of a police car.

October 2014

October 2014

November 2014

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

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

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

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November 2014

December 2014

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

November 2014

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

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

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Office Report prepared by Marty Westby, Administrator
Kensington Community Council Board Meeting
October 6, 2014

KASEP:

KASEP Fall session started Monday, September 15th and continues through to December 19th. The final shake-out of fall classes offered includes a total of 60 KCC/KASEP classes with 430 seats filled, up from approximately 320 seats in 2013. The growth can be attributed to the 12 additional new KASEP classes offered fall of 2014. KCC is providing a service to 193 Kensington families.

Winter KASEP Online Registration is scheduled for Tuesday, December 2nd at 7:30pm. To register, go to the website, WWW.KensingtonCommunityCouncil.Org. Winter KASEP class information will be available for viewing online, beginning November 11th. KASEP Class Brochures will be going home in student's backpacks the week of November 17th.

KCC Classes and Events:

Adult Exercise classes taught by Kevin Knickerbocker continue Jazzercise, Monday – Friday, 8:15 – 9:15am, Body Sculpting, Tuesday-Thursday, 9:15 – 10:15 and Zumba for seniors on Fridays at 9:45 – 10:45. All classes are taught at the community center.

The KCC Annual Family Parade and Picnic is scheduled for Sunday, October 19th. Parade meets downtown Kensington and everyone marches to the community center for food, pumpkin decorating, live music and family fun activities. Parade starts at noon and picnic continues until 3:00 pm.

Historic Maybeck walk is scheduled for Sunday, October 26th from 3:00 – 5:00pm. Paul Grunland and Bob Shaner are the historical hosts for this event. Cost \$15; pre-registration is required; call the KCC Office at 510-525-0292.

KCC Administrative:

KCC donated two classes to the Kensington Hilltop Garden Party, one for Winter KASEP class and one for Spring KASEP class.

KCC Annual Fund Drive launched in September and envelopes with generous donations are being received with thanks.

The Recreation Building's annual fire alarm system was tested and passed.

Maintenance of some of the indoor lights (replace/upgraded 4 florescent lights) and replaced the Wall Switch Timer unit for the outside lighting system.

General Manager September 2014 Report

Budget

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

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

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

At this point, I will be contacting the County Assessor and the County Tax Collector in an effort to get a better forecast to what our property tax revenue will be this year and I will be reporting this information to the Finance Committee at our October meeting.

Kensington Park

Community Center & Annex

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

Park Repairs

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

Hand railing repair to the steps leading to the tennis courts as a result of a traffic accident, \$880.

Repair to the steps leading from the upper meadow to Highland, \$140.

Repair of two irrigation rotors, \$185.

Painting over graffiti on the Annex building, \$120.

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

Fuel Reduction Project

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

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

Emergency Preparedness

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

The next meeting of the Kensington Public Safety Council will take place Monday, October 13th, at 6:00 PM at the Community Center Room #3.

The next workshop hosted by the KPSC will be on Thursday, October 16th, at 7PM, on "Reducing Fraud Risks", at the Community Center.

Solid Waste & Recycling

The solid waste and recycling service survey went live in August and the survey results, as well as a draft of a contract proposal for continuing service with Bay View are part of the agenda packet for the October 9th, KPPCSD Board meeting. You can review the agenda packet on line on the KPPCSD website listed below.

Colusa Street Lights

We learned at the end of July that PG&E was planning on replacing several streetlights around the Colusa Circle area. Our County Supervisor John Gioia, arranged a public meeting with representatives from the County and PG&E that

was held August 4th at Kensington resident Rodney Paul's home. Those in attendance were able to participate in the initial selection process of the replacement lights and poles. The selection process is continuing and for more information log into colusa-improvement@googlegroups.com.

Website

The new and improved District website is up and running!

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

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

Check it out!

EBMUD

On Wednesday, October 15th, at 6:30 PM, EBMUD will be holding a neighborhood meeting to discuss the Summit Reservoir Replacement Project, at the Shepherd of the Hills Lutheran Church, located at 401 Grizzly Peak, Berkeley. If you have questions about the meeting or the project, you can contact Michelle Blackwell in Community Affairs at 510-287-2053 or mblackwe@ebmud.com.

DISTRICT - NEW BUSINESS

- 1. Dr. Harter, Superintendent of the West Contra Costa County Unified School District will provide a presentation to the Board and public on the West County Unified School District.**

DISTRICT- NEW BUSINESS

- 2. Directors Chuck Toombs and Pat Gillette will update the Board and public on the contract negotiations and/or present for Board discussion a draft of the purposed contract with the Kensington Police Officer's Association.**

Possible Board Action.

DISTRICT - NEW BUSINESS

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

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

October 7, 2014

KY

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- C. Approved Subcontractors
- D. Reporting Requirements
- E. Map of District Franchise Area

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

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

9 **RECITALS**

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

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

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

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

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

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

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

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

48

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
40 they arise;

41 NOW THEREFORE, in consideration of the respective and mutual covenants and promises
42 herein, 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
47 Agreement and Applicable Law, the Franchise granted to Contractor shall be the exclusive right to
48 Collect, Transport, handle, Process, Recycle, and, Dispose of all Solid Waste, Recyclable Materials, and
49 Organic Materials generated by Residential Premises and Commercial Premises in the District, as more
50 particularly set out in the scope of services described in Article 4 of this Agreement and subject to the
51 limitations described below in Section 1.1.A and except where otherwise precluded by federal, State,
52 and local laws and 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
60 is 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 or arrange
62 for Processing of Solid Waste, Recyclable Materials, Organic Materials, and C&D generated
63 in or on their own Premises using their own vehicles and equipment, and, with respect to a
64 Commercial business, its own employees in conformance with all Applicable Laws and
65 regulations, including the County's 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

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

77 6. Animal, Grease Waste, and Used Cooking Oil. Animal waste and remains from
78 slaughterhouse 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,
94 now 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
97 agrees that the scope of the Agreement will be limited to those services and materials which may be
98 lawfully included herein and that the District shall not be responsible for any lost profits or losses
99 claimed by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth
100 herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of
101 such future judicial interpretations or new laws and the Contractor may meet and confer with the
102 District and may petition 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,
119 the certificate of incorporation of the Contractor), or instrument to which the Contractor or any
120 Affiliate is a party or by which the Contractor or any Affiliate or any of their properties or assets
121 are bound, or constitutes a default under any such judgment, decree, agreement, or instrument.
122 The Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100
123 et seq. of the California Government Code relating to conflicts of interest for public officers and
124 employees. Contractor represents it is unaware of any financial or economic interest of any public
125 officer or 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
139 Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a
140 material fact that is necessary in order to make the statements made, in light of the circumstances
141 in which they were 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
146 Agreement.
- 147 H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
148 manage, Collect, Transport, Transfer, and Dispose of the Solid Waste and to manage, Collect,
149 Transport, Transfer (if applicable), Process Recyclable Materials and Organic Materials; and
150 Contractor possesses the equipment, facility, and employee resources required to perform this
151 Agreement.

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

161 **ARTICLE 3: TERM OF AGREEMENT**

162 **3.1 Term of Agreement**

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

165 **ARTICLE 4: COLLECTION SERVICES**

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

172 **4.1 Residential Services**

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

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

- 178 **Containers:** 20-, 32-, 40-, 45- gallon (or similar sizes) Containers to be provided by
179 Customer.
- 180 **Service Frequency:** One (1) time per week
- 181 **Service Location:** Back-yard or Curbside service at Customer’s option
- 182 **Acceptable Materials:** Solid Waste
- 183 **Additional Service:** On Customer’s regularly scheduled Collection day, Contractor shall
184 Collect additional Solid Waste Containers (beyond the Customer’s
185 regular Service Level) and shall charge Customer for the extra pick-up at
186 the District-approved Rate.

52

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

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

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

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

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

267 **Containers:** Customer-provided boxes or Containers (or no Container if Customer
 268 bundles or ties materials)
 269 **Service Frequency:** Two (2) times every month
 270 **Service Location:** Curbside or other Customer-selected service location
 271 **Acceptable Materials:** Green Waste

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272 **Additional Service:** Restaurants may subscribe to wet or dry Collection service depending
273 on the type of materials generated and Contractor shall charge
274 Customer for such service at District-approved Rates

275 **Other Requirements:** None

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

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

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

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

294 4.3 Collection Service Operating Requirements

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

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

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

55

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

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

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

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

336 **4.4 Other Services**

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

- 343 **Containers:** Not applicable
- 344 **Service Level:** Up to one and a half (1.5) cubic yards of Solid Waste and/or Recyclable
345 Materials
- 346 **Service Frequency:** Once (1) per year per Customer in September
- 347 **Service Location:** Curbside
- 348 **Acceptable Materials:** Solid Waste, Recyclable Materials provided that any single item is less
349 than two hundred (200) pounds in weight
- 350 **Additional Service:** Contractor shall Collect additional items that exceed the above
351 described service level, as requested by Customer, and may charge the
352 Rate approved by the District for such service.

353 Contractor shall provide additional general pick-up Collection events for
354 a Customer beyond the one event in September, as requested by
355 Customer, and may charge the Rate approved by the District for such
356 service.

357 In such case, the Contractor shall provide the service to the Customer
358 within five (5) Business Days of the Customer's requested service date,
359 as mutually agreed upon by the Customer and Contractor.

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

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

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

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

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

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

390 G. **Collection of Illegally Dumped Materials.** Within the Franchise Area, Contractor shall, without
391 charge to the District or Customers, Collect materials that have been illegally dumped in public
392 roadways or alleys, at locations and in sizes requested by District Contract Manager; provided that
393 Contractor shall not be obligated to Collect more than three (3) cubic yards per event of non-

394 Hazardous Waste. Contractor shall perform such Collections when observed by Contractor's
395 personnel or within one (1) Business Day of request by District.

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

398 **4.5 Standard of Performance**

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

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

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

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

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

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

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

425 C. **Employees**

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

- 430 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
431 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
432 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its
433 drivers for safety.
- 434 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of
435 its employees who operate Collection Vehicles or equipment. Contractor shall train its
436 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the
437 District Contract Manager's request, Contractor shall provide a copy of its safety policy and
438 safety training program, the name of its safety officer, and the frequency of its trainings.
- 439 D. **Improper Loading of Containers.** The Contractor may decline to Collect any Solid Waste,
440 Recyclable Materials, and/or Organic Materials that have been left for Collection in any manner
441 which would prohibit its safe Collection.
- 442 E. **Record of Non-Collection.** When any Solid Waste, Recyclable Materials, and/or Organic Materials
443 placed for Collection are not Collected by the Contractor, the Contractor shall leave a tag listing
444 the reasons for such non-Collection and a telephone number where the Customer may contact
445 the Contractor. This information shall either be in writing or by means of a checked box on a form.
446 The Contractor shall maintain, at its place of business, a log book listing all such circumstances in
447 which Collection is denied. The log book shall contain the names and/or addresses of the
448 Collection Premises involved, the date of such tagging, the reason for non-Collection, and the date
449 and manner of disposition of each case. The log book shall be kept so that it may be conveniently
450 inspected by the District Contract Manager upon request. The log relating to any particular tagging
451 shall be retained for a period of one (1) year following such tagging. As an alternative to non-
452 Collection, where the basis for the non-Collection notice is not resolved by the Customer and
453 where photographic evidence is provided by the Contractor, Contractor may complete the
454 Collection and charge the Customer at the "extra can or bag of Solid Waste" Rate, at the District-
455 approved Rate, equivalent to the Customer's Container size to compensate it for the costs of extra
456 pickups and/or sorting of materials.
- 457 F. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or
458 Subcontractor employed by it, to accept, request, solicit, or demand, either directly or indirectly,
459 any compensation for the Collection of Solid Waste, Recyclable Materials, and/or Organic
460 Materials or other Franchise Services, except such compensation as is specifically provided for
461 herein as approved by the District.
- 462 G. **Compliance with Applicable Law.** The Contractor shall comply with all Applicable Law relating to
463 any aspect of the Collection Services or this Agreement, shall obtain and maintain all legal
464 entitlements required for the Operating Assets and the Collection Services, shall comply with all
465 valid acts, rules, regulations, orders, and directions of any Governmental Body applicable to the
466 Operating Assets and the Franchise Services provided hereunder, and shall pay all taxes in
467 connection therewith.
- 468 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in
469 respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any
470 revenues of the Contractor there from, and shall provide and pay the cost of all utilities necessary

471 for the operation of the Operating Assets and the provision of the Franchise Services, when the
472 same shall become due.

473 4.6 Collection Locations

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

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

492 4.7 Other Wastes

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

502 4.8 Changes in Scope of Franchise Services

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

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

511 4.9 Billing

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

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

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

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

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

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

537 4.10 Public Awareness

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

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

555 **4.11 Transition to Next Contractor at End of Agreement**

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

563 **4.12 Ownership of Materials**

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

569 **4.13 Annexation and Change of Franchise Area Boundaries**

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

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

581 **5.1 Approved Facilities**

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

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

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

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

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

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

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

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

628 capacity at the Approved Facilities for all materials Collected by Contractor in the City throughout
629 the Term of this Agreement.

630 **5.2 Marketing of Recovered Materials**

631 Contractor shall be responsible for Processing or causing Processing of Recyclable Materials and Organic
632 Materials to recovery and market such materials. At a minimum, Contractor shall guarantee that
633 Processing will result in significant diversion of Recyclable Materials Collected from Disposal so that
634 Residual Waste from the Recyclable Materials that is less than ten percent (10%) by weight of the
635 Recyclable Materials Collected measured on an average monthly basis. At a minimum, Contractor shall
636 guarantee that Processing will result in significant diversion of Organic Materials Collected from Disposal
637 so that Residual Waste from the Organic Materials that is less than one percent (1%) by weight of the
638 Green Waste Collected measured on an average monthly basis. The residual level shall be calculated as
639 the monthly Tonnage of Processing Residual Waste divided by the total monthly Tonnage of Recyclable
640 Materials Collected or Organic Materials Collected as appropriate.

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

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

658 **5.3 Weighing and Record Requirements**

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

665 **5.4 District Right to Modify Facility Arrangements**

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

64

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

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

681 **5.5 Title to Recovered Materials**

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

688 **ARTICLE 6: OPERATING ASSETS**

689 **6.1 Operating Assets**

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

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

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

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

722 6.2 Operation and Maintenance of the Operating Assets

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

731 6.3 Containers

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

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

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

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

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

758 **6.4 Vehicle Requirements**

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

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

776 **ARTICLE 7: GENERAL REQUIREMENTS**

777 **7.1 Public Access to the Contractor**

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

781 B. **Office Hours and Telephone Access.** The Contractor's office hours shall be, at a minimum, from
782 8:00 a.m. to 5:00 p.m. daily except Saturdays, Sundays, and Holidays. These hours may be altered

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

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

792 7.2 Service Complaints

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

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

807 7.3 Accounting and Records

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

822 In the event that a Special Circumstance Rate adjustment is requested pursuant to Section 9.3,
823 such records shall be subject to review at any reasonable time by an independent third party in

824 accordance with appropriate professional standards, and inspection, for the primary purpose of
825 reviewing changes in costs to the Contractor attributable to the Special Circumstance request.
826 The District Contract Manager shall, in its sole discretion, select the independent third party and
827 define the scope of work for such review. The independent reviewer shall provide any and all
828 drafts of its review to the District and the Contractor. The Party requesting the Special
829 Circumstance Rate review shall bear the cost of the review.

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

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

842 **7.4 Reporting**

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

853 **7.5 AB 939 and AB 341 Compliance**

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

865 Manager to meet State or federal regulatory requirements as those requirements may be amended
866 from time to time.

867 **7.6 Personnel and Subcontractors**

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

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

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

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

891 **7.7 District Contract Manager**

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

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

902 In the event of dispute between the District Contract Manager and the Contractor regarding the
903 interpretation of, or the performance of services under, this Agreement, the District Contract Manager's
904 determination shall be conclusive except where each such determination results in a material impact to

905 the Contractor’s revenue and/or cost of operations. In the event of a dispute between the District
906 Contract Manager and the Contractor that results in such material impact to the Contractor, Contractor
907 may appeal the determination of the District Contract Manager to the District Board, whose
908 determination shall be conclusive. For the purposes of this definition, “material impact” is an amount
909 equal to or greater than two percent (2.0%) of Contractor’s annual Gross Receipts under this
910 Agreement.

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

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

917 **8.1 District and County Fees**

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

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

924 C. **County Household Hazardous Waste Fee.** The Contractor shall pay a Household Hazardous Waste
925 Fee to the County in an amount equal to the County’s billing for the actual number of District
926 residents that use the County’s Household Hazardous Waste Facility.

927 **8.2 Payment Schedule and Late Fees**

928 Contractor shall remit to District and County all fees as described in this Article on a monthly basis on or
929 before the last day of each month, during the Term of this Agreement and including final remittance due
930 to the District due after the end of the Term of this Agreement such as remittance of Franchise Fees on
931 Gross Receipts for services performed under this Agreement which were received after the end of the
932 Term. Such fees shall be payable to District and sent or delivered to the District Contract Manager with
933 the exception of County Household Hazardous Waste fees which shall be payable to the County and sent
934 or delivered to the County if so directed by the District pursuant to Section 8.1.B.

935 If such remittance is not paid to the District or the County on or before the last day of each month, all
936 fees due shall be subject to a delinquency penalty of three percent (3%), which attaches on the first day
937 of delinquency. The delinquency penalty shall be increased an additional three percent (3%) and applied
938 to both the original amount due as well as any delinquency penalties previously applied for each
939 additional month the payment remains delinquent. For example, if the amount of the original fees
940 owed equals ten thousand dollars (\$10,000) the initial delinquency amount applied on the first day of
941 delinquency will be three hundred dollars (\$300) bringing the total amount to ten thousand three
942 hundred dollars (\$10,300). If that amount becomes past due for an additional month, the additional

943 delinquency penalty shall be applied to the ten thousand three hundred dollars (\$10,300) therefore, the
944 new total amount due would be ten thousand six hundred and nine dollars (\$10,609).

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

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

957 **ARTICLE 9: CONTRACTOR'S COMPENSATION**
958 **AND RATE SETTING**

959 **9.1 General**

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

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

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

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

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

983 **9.2 Rates and Annual Adjustments**

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

991 B. **Maximum Rates on Commencement Date.** Maximum Rates effective on the Commencement
992 Date of this Agreement shall be the Rates approved by the Board that became effective in
993 January 2015. These maximum Rates shall be effective from the Commencement Date of this
994 Agreement through December 31, 2015.

995 C. **Annual Rate Adjustment.** Maximum Rates shall be adjusted annually in accordance with Exhibit
996 B, with adjusted Rates taking effect on January 1 of each year (subject to District approval).

997 **9.3 Special Circumstances Rate Adjustments**

998 Contractor accepts the risk for changes in cost of providing services and the Service Levels requested by
999 Customers and therefore the Special Circumstance adjustments to Rates shall be limited to: (i) a Change
1000 in Applicable Law (as defined in Exhibit A); or (ii) a District-directed change in scope (pursuant to Section
1001 4.8). If a Change in Applicable Law or a District-directed change in scope occurs and an adjustment to
1002 maximum Rates is desired, the Contractor or District Contract Manager shall petition the District Board
1003 for such an adjustment to the maximum Rates calculated in accordance with Section 9.2.

1004 Contractor shall prepare an application for the Special Circumstances Rate adjustment calculating the
1005 net financial effect on its operations (both increases and decreases of costs and revenues) resulting from
1006 the Change in Applicable Law or District-directed change in scope (but not resulting from unrelated
1007 changes in costs and revenues), clearly identifying all assumptions related to such calculations and
1008 providing the underlying documentation supporting the assumptions. District Contract Manager shall
1009 evaluate the application for reasonableness. As part of that review, the District Contract Manager
1010 and/or its agent shall be granted access to the financial statements and accounting records maintained
1011 by the Contractor in order to determine the reasonableness of the Contractor’s application.

1012 In the event of such an application for Special Circumstances Rate adjustment, it is understood that the
1013 Contractor shall have the burden of demonstrating the reasonableness of the requested adjustment.

1014 The Contractor may appeal the decision of the District Contract Manager to the District Board, which
1015 shall then make the final determination as to whether an adjustment to the maximum Rates will be
1016 made, and if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to any
1017 Special Circumstances Rate adjustment, the District Board shall make the final determination as to
1018 whether an adjustment to the maximum Rates will be made, and if a Rate adjustment is permitted, the
1019 amount of the Rate adjustment.

73

1020 **9.4 Publication of Rates**

1021 Following Board approval and prior to the date Rate changes shall become effective, Contractor shall
1022 provide written notice to Customers of Rate changes resulting from the annual Rate adjustment process.
1023 Such written notice shall be delivered to all Customers as part of the next quarterly or monthly billing
1024 statement which Contractor sends to Customers. Contractor shall also publish such Rates in a
1025 convenient and easily found location on its website.

1026 **ARTICLE 10: INDEMNITY, INSURANCE,**
1027 **AND PERFORMANCE BOND**

1028 **10.1 Indemnification**

1029 A. **General.** Contractor shall indemnify, defend with counsel acceptable to District, and hold
1030 harmless (to the full extent permitted by law) District and its officers, officials, employees,
1031 volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability,
1032 loss, injuries, damage, expense, and costs (including without limitation costs and fees of
1033 litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature
1034 arising out of or in connection with Contractor's performance under this Agreement, or its
1035 failure to comply with any of its obligations contained in the Agreement, except to the extent
1036 such loss or damage was caused by the negligence or willful misconduct of the District.

1037 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the
1038 entire Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport,
1039 use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

1040 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
1041 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly
1042 take all investigatory and/or remedial action reasonably required for the remediation of such
1043 environmental contamination. Prior to undertaking any investigatory or remedial action,
1044 however, Contractor shall first obtain the District's approval of any proposed investigatory or
1045 remedial action. Should Contractor fail at any time to promptly take such action, the District
1046 may undertake such action at Contractor's sole cost and expense, and Contractor shall
1047 reimburse the District for all such expenses within thirty (30) calendar days of being billed for
1048 those expenses, and any amount not paid within that thirty (30) calendar day period shall
1049 thereafter be deemed delinquent and subject to the delinquent fee payment provision of
1050 Section 8.3. These obligations are in addition to any defense and indemnity obligations that
1051 Contractor may have under this Agreement. The provisions of this Section shall survive the
1052 termination or expiration of this Agreement.

1053 Notwithstanding the foregoing, however, Contractor is not required to indemnify the
1054 Indemnitees against claims arising from Contractor's delivery of Collected Materials to a
1055 Processing Facility, Disposal Site, or Transfer Station owned or operated by a third party, unless
1056 such claims are a direct result of Contractor's negligence or willful misconduct. The foregoing
1057 indemnity is intended to operate as an agreement pursuant to Section 107(e) of the
1058 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.

1059 Section 9607(e), California Health and Safety Code Section 25364, and the Resource
1060 Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless,
1061 and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination
1062 of this Agreement.

1063 C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold the District harmless
1064 against and from any and all claims, suits, losses, penalties, damages, and liability for damages
1065 of every name, kind and description, including attorneys' fees and costs incurred, attributable to
1066 the negligence or willful misconduct of Contractor in handling Excluded Waste.

1067 D. **Related to AB 939 and AB 341.** Contractor's duty to defend and indemnify herein includes all
1068 fines and/or penalties imposed by CalRecycle if the requirements of AB 939 and/or AB 341 are
1069 not met by the Contractor with respect to the waste stream Collected under this Agreement
1070 and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the
1071 failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor
1072 delays in providing information that prevents Contractor, the District, or the County from
1073 submitting reports to regulators in a timely manner.

1074 E. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
1075 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
1076 (Commonly Proposition 218), which impacts the Rates for the Franchise Services established in
1077 accordance with this Agreement, Contractor agrees to meet and confer with the District to
1078 discuss the impact of such Change in Law on either Party's ability to perform under this
1079 Agreement.

1080 If, at any time, a Rate adjustment determined to be appropriate by the District to compensate
1081 Contractor for increases in costs as described in this Agreement cannot be implemented for any
1082 reason, Contractor shall be granted the option to negotiate with the District, in good faith, a
1083 reduction of services equal to the value of the Rate adjustment that cannot be implemented. If
1084 the District and Contractor are unable to reach agreement on such a reduction in services, then
1085 Contractor may terminate this Agreement upon one hundred eighty (180) calendar days prior
1086 written notice to the District, in which case the Contractor and the District shall each be entitled
1087 to payment of amounts due for contract performance through the date of termination.

1088 Should a court of competent jurisdiction determine that the Contractor cannot charge and/or
1089 increase its Rates for charges related to any new or increased Franchise fee(s) and
1090 Governmental Fees and charges, Contractor shall reduce the Rates it charges Customers by a
1091 corresponding amount and shall discontinue payment of any new or increased Franchise fee(s),
1092 Governmental Fees, and/or charges which have been invalidated by the court.

1093 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to
1094 the Rates established for services provided under this Agreement; rather this Section is provided
1095 merely to allocate risk of an adverse judicial interpretation between the Parties.

1096 F. **Provisions Survive Agreement.** This provision (i.e., Section 10.1) will survive the expiration or
1097 earlier termination of this Agreement and shall not be construed as a waiver of any rights by the
1098 District to indemnity from third parties.

25

1099 **10.2 Insurance**

1100 A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all
1101 times during the Term of this Agreement insurance that meets at a minimum the coverage and
1102 limits of insurance described in this Section 10.2.

1103 B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
1104 maintain, at its expense, the following coverages and requirements. The comprehensive general
1105 liability insurance shall include broad form property damage insurance.

1106 1. Insurance coverage shall be with limits not less than the following:

1107 (a) **Comprehensive General Liability** – \$2,000,000 combined single limit per
1108 occurrence for bodily injury, personal injury, and property damage.

1109 (b) **Automobile Liability** – \$2,000,000 combined single limit per accident for bodily
1110 injury and property damage (include coverage for hired and non-owned Vehicles).

1111 (c) **Workers' Compensation – Statutory Limits/Employers' Liability** - \$2,000,000 per
1112 accident for bodily injury or disease.

1113 (d) **Employee Blanket Fidelity Bond** – \$500,000 per employee covering dishonesty,
1114 forgery, alteration, theft, disappearance, and destruction (inside or outside).

1115 (e) **Pollution Legal Liability** – \$1,000,000 per claim/occurrence and \$2,000,000
1116 aggregate for bodily injury, property damage, and remediation of contaminated
1117 site.

1118 2. The District, its officers, agents, employees, and volunteers shall be named as additional
1119 insured on all but the workers' compensation and professional liability coverages.

1120 3. Said policies shall remain in force through the life of this Agreement and, with the
1121 exception of professional liability coverage, shall be payable on a "per occurrence" basis
1122 unless the District's Risk Manager specifically consents in writing to a "claims made"
1123 basis. For all "claims made" coverage, in the event that the Contractor changes
1124 insurance carriers Contractor shall purchase "tail" coverage or otherwise provide for
1125 continuous coverage covering the Term of this Agreement and not less than three (3)
1126 years thereafter. Proof of such "tail" or other continuous coverage shall be required at
1127 any time that the Contractor changes to a new carrier prior to receipt of any payments
1128 due.

1129 4. The Contractor shall declare all aggregate limits on the coverage before commencing
1130 performance of this Agreement, and the District's Risk Manager reserves the right to
1131 require higher aggregate limits to ensure that the coverage limits required for this
1132 Agreement as set forth above are available throughout the performance of this
1133 Agreement.

1134 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
1135 the sole responsibility of the Contractor.

1136 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
1137 suspended, voided, canceled, reduced in coverage or in limits except after thirty (30)
1138 calendar days prior written notice (by certified mail, return receipt requested) has been
1139 given to the District Contract Manager, and in the case of delinquent insurance
1140 premiums after ten (10) Business Days.

1141 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than
1142 A-VII, unless otherwise approved by the District Risk Manager.

1143 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
1144 volunteers arising out of or in connection with this Agreement.

1145 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
1146 primary, including as respects the District, its officers, agents, employees, and
1147 volunteers. Any insurance maintained by the District shall apply in excess of, and not
1148 contribute with, insurance provided by Contractor's liability insurance policy.

1149 10. The Contractor shall waive all rights of subrogation against the District, its officers,
1150 employees, agents, and volunteers related to the performance of services under this
1151 Agreement.

1152 C. **Endorsements.** Prior to the effective date pursuant to this Agreement, Contractor shall furnish
1153 the District Contract Manager with certificates or original endorsements reflecting coverage
1154 required by this Agreement. The certificates or endorsements are to be signed by a Person
1155 authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to
1156 be received by, and are subject to the approval of, the District Risk Manager before work
1157 commences.

1158 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish the District Contract
1159 Manager with certificates or original endorsements reflecting renewals, changes in insurance
1160 companies, and any other documents reflecting the maintenance of the required coverage
1161 throughout the entire Term of this Agreement. The certificates or endorsements are to be
1162 signed by a Person authorized by that insurer to bind coverage on its behalf.

1163 E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
1164 by State law, and prior to the effective date pursuant to this Agreement, Contractor shall file the
1165 following statement with the District.

1166 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
1167 to be insured against liability for workers' compensation or to undertake self-insurance in
1168 accordance with the provisions of that code, and I will comply with such provisions before
1169 commencing any services required by this Agreement.

1170 The Person executing this Certificate on behalf of Contractor affirmatively represents that
1171 she/he has the requisite legal authority to do so on behalf of Contractor, and both the Person
1172 executing this Agreement on behalf of Contractor and Contractor understand that the District is
1173 relying on this representation in entering into this Agreement."

1174 **10.3 Performance Bond**

1175 Within seven (7) calendar days of the District’s notification to Contractor that the District has executed
1176 this Agreement, Contractor shall file with the District a surety bond, payable to the District, securing the
1177 Contractor's performance of its obligations under this Agreement and such bond shall be renewed
1178 annually if necessary so that the performance bond is maintained at all times during the Term. The
1179 principal sum of the bond shall be equal to ten thousand dollars (\$10,000.00) and shall be adjusted
1180 every three (3) years, commencing on September 1, 2018, by the change in the CPI over the previous
1181 three year period. The bond shall be executed as surety by a corporation licensed and authorized to
1182 issue surety bonds in the State of California that has a rating of A or better in the most recent edition of
1183 Best’s Key Rating Guide, and that has a record of service and financial condition satisfactory to the
1184 District. The bond shall be in a form approved by the District. In lieu of the corporate surety bond,
1185 Contractor may provide District a letter of credit, cash bond, or other security acceptable and in a form
1186 satisfactory to the District Contract Manager.

1187 Any action by District to proceed against the bond shall not limit or affect any other rights or remedies
1188 available to District under the Agreement or in courts of law or equity, notwithstanding the foregoing.

1189 In the event District requires a performance bond in an amount greater than the amount above, the
1190 District may request that Contractor increases the principal sum of the bond and the District shall pay
1191 for or reimburse Contractor for the incremental increase in the cost of the performance bond.
1192 Contractor shall cooperate in the application for the increased bond.

1193 **ARTICLE 11: DEFAULT, REMEDIES AND TERMINATION**

1194 **11.1 Default and Remedies**

1195 A. **Events of Default.** Each of the following shall constitute an Event of Default:

1196 1. Any transaction, without any requirement of notice or cure opportunity, attempted or
1197 completed, not complying with the requirements of Section 11.3 hereof.

1198 2. The failure by the Contractor for any reason to consistently deliver to the Collected Solid
1199 Waste, Recyclable Materials, and Organic Materials to the Approved Facilities.

1200 3. Any criminal conviction, plea bargain, or settlement, without any requirement of notice or
1201 cure opportunity, of Contractor, its officers, managers, or employees related directly or
1202 indirectly to performance of this Agreement or any other agreement held with the District.

1203 4. Failure or refusal of the Contractor to perform any term, covenant, obligation or condition in
1204 this Agreement, other than a failure or refusal described in items (1), (2), or (3) above,
1205 except that no such failure or refusal shall give the District the right to terminate this
1206 Agreement under this Section unless:

1207 (i) The District has given prior written notice to the Contractor, stating the existence of a
1208 specific failure or refusal to perform exists which will, unless corrected, constitute a
1209 material breach of this Agreement on the part of the Contractor and which will, in the

1210 District's opinion, give the District a right to terminate this Agreement for cause under
1211 this Section unless such default is corrected within fifteen (15) days, and

1212 (ii) The Contractor has neither challenged in an appropriate forum the District's
1213 conclusion that such failure or refusal to perform has occurred or constitutes a
1214 material breach of this Agreement nor corrected or developed an action plan for
1215 correcting such breach or refusal to perform, to be approved by the District Contract
1216 Manager, within such fifteen (15) day period from receipt of the notice given pursuant
1217 to the clause (i) of this subsection (but if the Contractor shall have submitted to
1218 District an action plan to correct such default within a reasonable period of time, the
1219 same shall not constitute an Event of Default for as long as the Contractor remains in
1220 compliance with the action plan and continues to take such steps to correct such
1221 default in a timely manner).

1222 5. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of
1223 a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor to
1224 the appointment by a court of a receiver or trustee for all or a substantial portion of its
1225 property or business, or the making by the Contractor of any arrangement with or for the
1226 benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary,
1227 regardless of how designated, of all or a substantial portion of the Contractor's property or
1228 business.

1229 6. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition
1230 under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and
1231 until the same is no longer being contested by the Contractor nor until the order of the
1232 adjudication is no longer appealable.

1233 7. The failure of the Contractor to provide or maintain the performance bond required
1234 pursuant to Section 10.3 hereof.

1235 8. Any failure by the Contractor to comply with Applicable Law following the specified notice
1236 and opportunity to cure.

1237 9. Failure of the Contractor to timely implement the operational changes and adjusted
1238 maximum Rates resulting from the Change in Law or District-directed change in scope. The
1239 Contractor shall have thirty (30) days after notice of breach from the District to implement
1240 the operational changes. Should the Contractor thereafter not implement the operational
1241 changes it shall be in default of the Agreement. In addition to being liable for all damages
1242 and penalties to the District resulting from such default, the District may terminate the
1243 Agreement in accordance with Section 11.1.B.

1244 B. **Right to Terminate Upon Default.** Upon a determination by the District Contract Manager that an
1245 Event of Default has occurred, the District Board shall conduct a hearing upon ten (10) days notice
1246 to the Contractor to determine if termination of the Agreement is in the best interests of the
1247 public health, safety, and general welfare of the citizens of the District. If the fact finder makes
1248 such a determination, the Contractor shall be deemed to have waived any right it may have under
1249 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth
1250 herein.

1251 C. **District's Remedies Cumulative: Specific Performance.** The District's right to terminate this
1252 Agreement under this Section 11.1 is not exclusive, and the District's termination of the
1253 Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any
1254 and all other legal and equitable rights and remedies which the District may have, including but
1255 not limited to specific performance, and fees and expenses incurred by or on behalf of the District
1256 in enforcing payment or performance of the Contractor's obligations hereunder if such non-
1257 performance results in a judicially determined Event of Default by the Contractor.

1258 D. **Possession of Property upon Termination or Suspension.** In the event of termination or
1259 suspension for default, the District shall have the right to take possession of any and all of
1260 Contractor's equipment and other property used or useful in the Collection, Transportation,
1261 Transfer, Processing, and Disposal of Solid Waste, Recyclable Materials, or Organic Materials and
1262 the billing and collection of fees for these services and to use such property. The District shall
1263 have the right to retain the possession of such property until such time as Contractor remedies
1264 the default or substitute services can be provided by another contractor. If the District retains
1265 possession of Contractor's equipment or other property after the period of time for which
1266 Contractor has already been paid by means of bills issued in advance of providing service for the
1267 service involved, the Contractor shall be entitled to the reasonable rental value of such property
1268 (which shall be offset against any damages due the District for the Contractor's default).
1269 Contractor shall furnish Kensington with immediate access to all of its business records related to
1270 its Customers and billing of accounts for Collection services.

1271 **11.2 Liquidated Damages**

1272 In addition to any other remedies provided for in this Agreement, the District Contract Manager may
1273 levy a charge in the amounts listed below for the Contractor's failure to meet the requirements
1274 enumerated below that constitute a breach of the terms and conditions of this Agreement. The District
1275 Contract Manager's decision to levy such a charge shall not be deemed an election of remedies, but shall
1276 be cumulative with any other remedies provided for in this Agreement. The District Contract Manager's
1277 decision not to levy any such charge shall not be deemed a waiver of any breach by Contractor under
1278 this Agreement. The Parties agree that the following Liquidated Damages represent a reasonable
1279 estimate of the amount of such damages, considering all of the circumstances existing on the date of the
1280 Agreement, including the relationship of the sums to the range of harm to the District that reasonably
1281 could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In
1282 signing this Agreement, each Party specifically confirms the accuracy of the statements made above and
1283 the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation
1284 of this Liquidated Damage provision at the time that this Agreement was entered into.

1285 A. **Excessive complaints.** When Contractor or the District Contract Manager receives complaints
1286 from more than one percent (1%) of its client base within a six (6) month period, Contractor will
1287 be assessed twenty-five dollars (\$25) per complaint per occurrence during that period; and an
1288 additional twenty-five dollars (\$25) each twenty-four (24) hours until the complaint is reasonably
1289 resolved. For purposes of this section, "complaints" shall mean substantive and credible Customer
1290 notifications to the Contractor or the District Contract Manager of missed pick-ups, property
1291 damage, missed commitments, employee misconduct or poor quality of service (e.g. litter on
1292 property or public right-of-way or misplacement of Containers).

PO

1293 B. **Failure to Remit Fees or Submit Reports.** Failure to remit the fees due to the District and/or
1294 County as required by Article 10, or file required reports in an accurate and complete manner by
1295 the fifth working day following the due date of such fees or reports: fifty dollars (\$50) per day for
1296 the first five (5) days, then five hundred dollars (\$500) per day for each day after the first five (5)
1297 days.

1298 C. **Failure to Provide District Access.** Failure to provide access to Operating Assets or any other
1299 documents or information within fourteen (14) days of a request by the District Contract
1300 Manager: one hundred dollars (\$100) per day per occurrence.

1301 D. **Failure to Properly Charge Customer.** Failure to charge a Customer at or below the maximum
1302 approved Rate, where not refunded on the next invoice: fifty dollars (\$50) per occurrence per
1303 Customer where the number of Customers overcharged is less than twenty-five (25); five hundred
1304 dollars (\$500) per occurrence per Customer where the number of Customers overcharged is
1305 twenty-five (25) or more. In addition, Contractor shall be responsible for refunding any amount
1306 overcharged to each Customer determined to be overcharged. Contractor shall not be entitled to
1307 any refund from the District for Franchise fees or other fees paid on overcharged amounts.

1308 E. **Unauthorized Collection Hours.** For Collection outside permitted hours: one hundred dollars
1309 (\$100) per occurrence.

1310 F. **Use of Unauthorized Facilities.** Delivery of Collected Solid Waste, Recyclable Materials, or Organic
1311 Materials to a location that is not a facility approved by the District for Transfer, Processing,
1312 and/or Disposal of the material: one hundred dollars (\$100) per Ton.

1313 The District Contract Manager shall give the Contractor written notice of charges levied pursuant to this
1314 Section. Any such damages shall be paid directly to the District, and may not be included by the
1315 Contractor as an expense in calculating a request for an upward adjustment in the Rate schedule or
1316 offset against any fees.

1317 The decision of the District Contract Manager shall be final and binding on the Contractor unless the
1318 Contractor files a Notice of Appeal with the Secretary of the District Board within fifteen (15) days of
1319 receipt of the District Contract Manager's decision. The Notice of Appeal shall be in writing and shall
1320 contain a detailed statement of the basis for the appeal. Upon receipt of the Notice of Appeal, the
1321 District Contract Manager shall set the matter for a public hearing within thirty (30) days. The District
1322 Contract Manager shall give the Contractor and any interested Person requesting the same, ten (10)
1323 days written notice of the time and place of the hearing. At the hearing, the District Board shall
1324 determine, based on the record, the appropriate action to be taken. The decision of the District Board
1325 shall be final and conclusive.

1326 **11.3 Uncontrollable Circumstances**

1327 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations
1328 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a default of this
1329 Agreement, so long as the Party in good faith has used its best efforts to perform its respective
1330 obligations.

1331 The Party claiming excuse from performance shall, within five (5) days after such Party has notice
1332 of the effect of such cause, give the other Party notice of the facts constituting such cause and

1333 asserting its claim to excuse under this Section. Specifically, such information shall include the
1334 following:

- 1335 1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1336 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated
1337 duration, and the estimated time during which the performance of such Party's obligations
1338 hereunder will be delayed;
- 1339 3. Its estimated impact on the other obligations of such Party under this Agreement; and
- 1340 4. Potential mitigating actions which might be taken by the Contractor or District and any areas
1341 where costs might be reduced and the approximate amount of such cost reductions.

1342 While the delay continues, the Contractor or District shall give daily notice to the other Party
1343 updating the information previously submitted.

1344 In the event that either Party validly exercises its rights under this Section, the Parties hereby
1345 waive any claim against each other for any damages sustained thereby.

1346 B. **District's Right to Terminate.** The partial or complete interruption or discontinuance of the
1347 Contractor's services caused by one (1) or more of the events described in this Section 11.3 shall
1348 not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing,
1349 however, if the Contractor is excused from performing its obligations hereunder because of any
1350 Uncontrollable Circumstance for a period of thirty (30) days or more, the District shall
1351 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving sixty (60)
1352 days notice.

1353 C. **Work Stoppages.** Notwithstanding anything in this Agreement to the contrary, any strikes, work
1354 stoppages, or other labor disputes or disturbances occurring with respect to an activity performed
1355 or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with
1356 the Operating Assets or the Franchise Services and which last beyond seven (7) days shall not
1357 constitute an Event of Default under Section 11.1.A.

1358 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to
1359 Collect, Transport, Transfer, Process, and/or Dispose of any or all the Solid Waste, Recyclable
1360 Materials, and/or Organic Materials which it is obligated under this Agreement to Collect,
1361 Transport, Transfer, Process, and Dispose of for a period of more than seventy-two (72) hours and
1362 the District Contract Manager, in his or her discretion, should find that such accumulation
1363 endangers or menaces the public health, safety or welfare, then District shall have the right, upon
1364 twenty-four (24) hours notice to Contractor, to find the Contractor in Default and to contract with
1365 any other third parties to Collect, Transport, Transfer, Process, and/or Dispose any and all Solid
1366 Waste, Recyclable Materials, and Organic Materials which Contractor would otherwise be
1367 obligated to Collect, Transport, Transfer, Process, and/or Dispose pursuant to this Agreement.
1368 Contractor agrees that in such event, it will fully cooperate with District and its third-party
1369 contractor to affect such transfer of operations in as smooth and efficient a fashion as is
1370 practicable. All costs, fees, rates or other expenses incurred by District and/or its third-party
1371 contractor that exceed those that would have been incurred by District had no such emergency

1372 arisen shall be the responsibility of the Contractor and shall be paid to District within thirty (30)
1373 days of receipt of written notice to pay.

1374 **11.4 Right to Demand Assurances of Performance**

1375 If the District believes in good faith that the Contractor's ability to perform under the Agreement has
1376 been placed in substantial jeopardy by one (1) of the events enumerated below, the District Contract
1377 Manager may, at his/her option and in addition to all other remedies the District may have, require that
1378 Contractor provide District Contract Manager with sufficient proof that none of the events enumerated
1379 below will in fact impair Contractor from performing its obligations under the Agreement:

1380 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,
1381 picketing, or other concerted job action;

1382 B. Contractor appears, in the reasonable judgment of the District, to be unable to regularly pay its
1383 bills as they become due; or,

1384 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, State,
1385 County, regional, or local agency for violation of an environmental law.

1386 If the Contractor fails or refuses to provide to the District adequate information to establish its ability to
1387 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of
1388 Section 11.1.A.

1389 **11.5 Waiver of Defenses**

1390 In order to ensure the non-interruption of a vital public service, except as provided in Section 11.3, the
1391 Contractor acknowledges that it is solely responsible for providing the Franchise Services described
1392 herein, and hereby irrevocably waives the following defenses to the payment and performance of its
1393 obligations under this Agreement: any defense based upon failure of consideration, contract of
1394 adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the
1395 existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or
1396 contingency that may be a basic assumption of the Contractor with regard to any provision of this
1397 Agreement.

1398 **ARTICLE 12: MISCELLANEOUS PROVISIONS**

1399 **12.1 Relationship of the Parties**

1400 Neither Party to this Agreement shall have any responsibility whatsoever with respect to services
1401 provided or contract obligations or liabilities assumed by the other Party hereto, whether accrued,
1402 absolute, contingent or otherwise, or whether due or to become due. The Contractor is an independent
1403 Contractor and Agreement holder and nothing in this Agreement shall be deemed to constitute either
1404 Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship
1405 between the Parties.

1406 **12.2 Notice to Parties**

1407 All notices required or provided for in this Agreement shall be provided to the Parties at the following
1408 addresses, by email and by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or
1409 certified mail, addressed as specified below. Notices delivered personally shall be deemed received
1410 upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party
1411 may change the address to which notice is given by giving notice as provided herein.

1412 To District:

1413 Kensington Police Protection and Community Service District Attn: Greg Harman
1414 General Manager/ Chief of Police
1415 217 Arlington Avenue
1416 Kensington, CA 94707
1417 gregharman@kensingtoncalifornia.org

1418 To Contractor:

1419 Bay View Refuse and Recycling, Inc.
1420 2525 Garden Tract Road
1421 Richmond, CA 94801
1422 bcrsgreg@aol.com
1423

1424 **12.3 Resolution of Disputes**

1425 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
1426 time during the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give
1427 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
1428 meet and confer in good faith to resolve any dispute that may arise. In the event such dispute cannot be
1429 resolved by the Parties themselves within thirty (30) days of such notice, either Party may propose the
1430 appointment of a mediator. If the other Party is in agreement, both Parties may refer the matter in
1431 dispute to such mediator for advice and non-binding mediation. If the mediator is unable, within thirty
1432 (30) days thereafter, to reach a determination as to the matter in dispute in a manner acceptable to the
1433 Parties hereto, the matter may be referred by either Party to a court of competent jurisdiction.

1434 Costs incurred by the District, including attorney's fees, consulting fees, and other costs related to
1435 dispute resolution shall be paid for by the Contractor. The costs shall not be included as an expense in
1436 Contractor's calculated costs for the purpose of determining Contractor compensation or in setting
1437 Rates at any point during the Term of the Agreement.

1438 **12.3 Actions of the District in its Governmental Capacity**

1439 Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the District in its
1440 governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action
1441 against the District, not based on this Agreement, arising out of any act or omission of the District in its
1442 governmental or regulatory capacity.

BY

1443 **12.4 Binding Effect**

1444 This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee
1445 acquiring an interest hereunder consistent with the provisions hereof.

1446 **12.5 Amendments**

1447 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except
1448 by written agreement duly executed by both Parties.

1449 **12.6 Further Assurance**

1450 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary
1451 or reasonably requested by the other in order to give full effect to this Agreement.

1452 **12.7 Assignment and Transfer of Agreement**

1453 A. **Consent of the District Required.** This Agreement shall not be transferred, sold, pledged,
1454 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,
1455 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto
1456 or thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or
1457 vest in any Person, except the Contractor, either by action or inaction of the Contractor, or by
1458 operation of law, without the prior written consent of the District, which may be withheld or
1459 delayed in its sole and absolute discretion.

1460 The Contractor shall provide written notice of any request to assign or transfer this Agreement,
1461 and shall provide the District with any information requested by the District in connection with the
1462 proposed transfer, including but not limited to information regarding the general business
1463 qualifications of the proposed assignee, as well as its ability to perform the Franchise Services and
1464 a statement of its financial resources. The Contractor's notice of request to assign this Agreement
1465 shall contain a statement of the allocation of dollars in the consideration to be paid by the
1466 assignee to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset transfer which
1467 has any connection with said assignment, all as agreed upon by the Contractor and the assignee.
1468 The notice shall also contain a statement showing the method of payment for the consideration
1469 and whether the Contractor proposes to hold some security interest as security for the payment
1470 of the unpaid balance of the consideration.

1471 The District shall respond to any such request within ninety (90) days after receipt of any
1472 information requested by the District pursuant to the preceding sentence. The Contractor
1473 acknowledges that, prior to approving such a transfer, the District must find that such a transfer is
1474 in the best interests of the public health, safety, and general welfare. Any attempt by the
1475 Contractor to effectuate any of the foregoing without such consent of the District shall be null and
1476 void, and any effectuation of any of the foregoing without such consent of the District shall
1477 constitute an Event of Default resulting in the immediate termination of this Agreement as
1478 provided in Section 11.1.A hereof.

1479 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of Section
1480 12.7.A above, the Contractor shall not, without the prior written consent of the District which may

1481 be withheld or delayed in its sole and absolute discretion, consolidate with or merge with another
1482 entity or permit one or more other entities to consolidate with or merge into it.

1483 C. **Transfer of Voting Stock.** The District's prior written consent, which may be withheld or delayed in
1484 its sole and absolute discretion, shall be required for the sale or transfer by any means, whether
1485 by agreement or by operation of law (including transfers resulting from death, bankruptcy or
1486 divorce), of any of the voting stock of the Contractor.

1487 D. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of
1488 the District for any transaction described in Section 12.7 hereof, the proposed assignee, as a
1489 condition of assignment, shall reimburse the District for all costs and expenses incurred by the
1490 District in reviewing, examining, and analyzing the request, including all direct and indirect
1491 administrative expenses of the District and consultants and attorney's fees and expenses. Along
1492 with its written request for the review of the assignment, Contractor shall remit to District an
1493 assignment review fee in the amount of thirty thousand dollars (\$30,000) which shall be intended
1494 to compensate the District for the costs of its review of the requested assignment. Such fee shall
1495 not be refundable to the Contractor in the event that the District determines, in its sole discretion,
1496 that the proposed assignment is unacceptable. In the event that the District's total costs for the
1497 review of the assignment exceed thirty thousand dollars (\$30,000) the Contractor shall
1498 compensate the District for its actual and reasonable costs within thirty (30) days of receiving the
1499 District's invoice. Such costs shall be supported with evidence of the expense or cost incurred. If
1500 the District's total costs for the review of the assignment are less than thirty thousand dollars
1501 (\$30,000), the District shall remit to the Contractor the difference between its actual costs and
1502 thirty thousand dollars (\$30,000).

1503 E. **Transfer Fee.** On the date the District approves the Contractor's written request for an
1504 assignment, Contractor or the assignee shall pay the District a transfer fee in the amount of one
1505 percent (1%) of the Gross Receipts for the most-recently completed calendar year. The District's
1506 approval of such an assignment shall be conditioned on the receipt of the transfer fee.

1507 **12.8 Interpretation**

1508 In this Agreement, unless the context otherwise requires:

1509 A. **References Hereto.** The terms "hereby," "hereof," "herein," "hereunder," and any similar terms
1510 refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means
1511 before, the date of execution of this Agreement.

1512 B. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the
1513 feminine and neuter genders, and words importing the singular number mean and include the
1514 plural number and vice versa.

1515 C. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,
1516 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal
1517 entities, including Governmental Bodies, as well as individuals.

1518 D. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and
1519 subsections of this Agreement shall be solely for convenience of reference and shall not constitute
1520 a part of this Agreement, nor shall they affect its meaning, construction, or effect.

- 1521 E. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto
1522 with respect to the transactions contemplated by this Agreement. Furthermore, nothing in this
1523 Agreement is intended to confer on any Person other than the Parties hereto and their respective
1524 successors and assigns hereunder any rights or remedies under or by reason of this Agreement.
- 1525 F. **Reference to Days.** All references to days herein are to calendar days, including Saturdays,
1526 Sundays, and holidays, except as otherwise specifically provided.
- 1527 G. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.
1528 Standard terms of measurement, unless State or federal law or regulation specifies the system of
1529 measurement to be used.
- 1530 H. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such
1531 counterparts shall constitute but one and the same Agreement.
- 1532 I. **Applicable Law.** This Agreement shall be governed by and construed in accordance with
1533 Applicable Law.
- 1534 J. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be
1535 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:
- 1536 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article
1537 which shall, to the greatest extent legally permissible, effect the intent of the Parties
1538 therein.
 - 1539 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared
1540 such invalidity for a judicial construction of the invalidated portion of this Agreement.
 - 1541 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this
1542 Agreement as may be necessary in addition to and in conjunction with items (1) and (2)
1543 above, to effect the intent of the Parties in the invalid provision. The invalidity of such
1544 clause, provision, subsection, section, or article shall not affect any of the remaining
1545 provisions hereof, and this Agreement shall be construed and enforced as if such invalid
1546 portion did not exist.

1547 **12.9 Jurisdiction**

1548 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1549 courts of the Contra Costa County in the State of California, which shall have exclusive jurisdiction over
1550 such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be
1551 performed in Contra Costa County.

1552 **12.10 Entire Agreement**

1553 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties
1554 with respect to the matters covered herein. Each of the Exhibits identified as Exhibits "A" through "E" is
1555 attached hereto and incorporated herein and made a part hereof by this reference.

1556 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below:

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Kensington Police Protection
and Community Service District
By: _____
Len Welsh, President, Board of Directors

Bay View Refuse and Recycling Services, Inc.
By: _____
Lewis Fagone, President

Dated: _____, 2014.

Dated: _____, 2014.

Attest:

By: _____
(District Board of Directors Secretary)

Printed name

Dated: _____, 2014

Approved as to Form:

By: _____
(District Attorney)

Printed name

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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 August of the then-current calendar year minus the average of the percentage monthly changes in the index value for the 12-month period ending August of the most-recently completed calendar year. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

For example, if the Contractor is preparing its Rate application for Rates to be effective for 2016, the Annual Percentage Change in CPI shall be calculated as follows: $[(\text{Average CPI for September 2015 through August 2015}) - (\text{Average CPI for September 2013 through August 2014})] / (\text{Average CPI for September 2013 through August 2014})$.

"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.

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EXHIBIT A DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 – CUURA422SA0

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

"Contractor" means Bay View Refuse and Recycling Service, Inc., a California corporation. Contractor organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors. As of the effective date of the Agreement, the Lewis Figone Revocable Trust 2014 owns 100% of the company stock.

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

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

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

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

"Designated Collection Location" refers to the location, at each Collection Premises where Containers of Solid Waste, Recyclable Materials, and Organic Materials are customarily placed for Collection, all in accordance with Section 4.5 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 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.

"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.

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EXHIBIT A DEFINITIONS

"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.

"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.

EXHIBIT A DEFINITIONS

"Franchise Area" means the geographic area generally known as the unincorporated community of Kensington in the western portion of the County described in Exhibit E to this Agreement. Exhibit E may be amended from time to time to reflect changes of boundaries of the Franchise Area in such a manner as to identify each alteration to the Franchise Area and the effective date thereof.

"Franchise Fee" means the fees paid by Contractor to the District 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:

- 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

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EXHIBIT A DEFINITIONS

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.

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



EXHIBIT A DEFINITIONS

"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 Household Hazardous Waste fees, Tipping Fees, Governmental Fees, and other costs, 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.

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

EXHIBIT A DEFINITIONS

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

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

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

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

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

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

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

"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

EXHIBIT A DEFINITIONS

with Solid Waste, Recyclable Materials, or Organic Materials but which are collected by any person other than the Contractor as part of any transaction or arrangement involving Solid Waste, Recyclable Materials, and Organic Materials irrespective of whether the Generator pays or receives consideration in connection with such transaction or arrangement.

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

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

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

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

"Special Service" means a level of Collection service in excess of that offered by the Contractor as its basic level of service, at an additional cost to the Customer and may include, but is not limited to, additional Containers or more frequent Collections. "Special Service" does not mean the reasonable

EXHIBIT A DEFINITIONS

accommodation of an individual with a disability. The charge for any Special Service shall be reviewed by the District Contract Manager.

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

"**State**" means the State of California.

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

"**Term**" means the Term of this Agreement, including extension periods if granted, as provided for in Section 3.2.

"**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 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

EXHIBIT A DEFINITIONS

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;
- 7. Any failure of any Subcontractor to furnish labor, materials, service, or equipment for any reason;

EXHIBIT A DEFINITIONS

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 October 1 of each year. 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.

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

Multi-Index Rate Adjustment

The multi-index Rate adjustment methodology involves adjusting then-current Rates by the CPI, ECI, and Fuel Index to determine the Rates for the coming calendar year. 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 = (40% x Labor-Related Factor calculated in Step 1a above) + (4% x Fuel Factor calculated in Step 1b above) + (56% x Other Factor calculated in Step 1c above)

For example, assuming:

1. Proposed labor-related costs are 45% of proposed total annual operating costs.
2. Proposed fuel costs are 4% of proposed total annual operating costs.
3. Proposed other costs are 51% 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. $OCF = (45\% \times 3\%) + (4\% \times 17\%) + (51\% \times 1\%) = 0.0254 = 2.54\%$

Step 1e: If the OCF calculated pursuant to Step 1d is less than 3.0%, the OCF used to determine Rates in Step 2 shall be set equal to 3.0%. If the OCF calculated pursuant to Step 1d is greater than 5.0%, the OCF used to determine Rates in Step 2 shall be set equal to 5.0%.

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) with the exception that the 20-gallon Rate shall equal the adjusted monthly 32-gallon Rate less \$4.00

For example, assuming:

1. Then-current Rate for a 32-gallon can = \$40.00
2. OCF = 2.54%
3. Adjusted Rate for a 32-gallon can = $\$40.00 \times (1 + 0.0254) = \41.02

EXHIBIT C

APPROVED SUBCONTRACTORS

As of the Commencement Date of this Agreement, approved Subcontractors shall include: (i) Republic Services, Inc. (or its affiliated entities), which own and operate the Approved Transfer Facility, Approved Organics Materials Processing Facility, and Keller Canyon Landfill (an Approved Disposal Facility) and operates the Approved Recyclable Materials Processing Facility, and (ii) Waste Connections, Inc. (or its affiliated entities), which owns and operates Potrero Hills Landfill (an Approved Disposal Facility).

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EXHIBIT D

REPORTING REQUIREMENTS

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

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

CERCLA Reporting

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

Quarterly Report Content

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

1. Tonnage Report

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

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EXHIBIT D REPORTING REQUIREMENTS

2. Customer Report

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

3. Customer Service Report

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

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EXHIBIT D 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 E
MAP OF DISTRICT FRANCHISE AREA

District to provide map

DISTRICT - NEW BUSINESS

- 4. Director Linda Lipscomb will present for a second reading the draft of KPPCSD Board Policy Section 1000 and for a first reading the Introduction for the KPPCSD Board Policy Manual.
Possible Board Action.**

Introduction

The Kensington Police Protection and Community Services District is a special district as defined by California Government Code Section 56036. Thus, it is an agency of the state formed for the local performance of governmental and proprietary functions within limited boundaries. Statutory authority is provided by the Community Services District Law (California Government Code Section 61000 *et seq.*) The District is governed by five members of the Board of Directors who are charged with establishing policies and exercising oversight for the operations of the District.

Scope of Authority

Police Services - Govt. Code Sec. 61100(i)

The District is responsible for providing police protection and law enforcement services by establishing and operating a police department that employs peace officers pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code. The Police Department provides a full range of police services to the community. The Department is staffed with one (1) General Manager/Chief of Police, plus nine (9) officers, and adequate staff to ensure public order.

Recreational Services - Govt. Code Sec. 61100(e)

The District is responsible for providing recreational services to the community. The Community Center Annex, a Recreation Building, and the Kensington Park. The park and recreational services are managed by the General Manager/Chief of Police and the Park Administrator. Recreation programs in the park are managed by the Kensington Community Council, a non profit organization.

Solid Waste Collection - Govt. Code Sec. 61100(c)

The District oversees the solid waste and recycling programs in Kensington and is responsible for rate setting and ensuring the District meets State and Local mandate. It currently operates under a Memorandum of Understanding with Contra Costa County and a long term franchise agreement with Bay View Refuse and Recycling.

Kensington Police Protection and Community Services District

Introduction, 2014

Historical Background

The District was initially formed under the Health and Safety Code in 1946 as a Police Protection District, providing Police Services only. In 1953 The Police protection District was changed to a Community Services District under the Community Services District Law then in effect, (Sections 61600-61749 of the Government Code, since revised), again providing Police Services only.

In 1955, the Kensington Community Services District, acknowledging that adequate recreational facilities and recreation programs were essential for the physical well-being and general welfare of the people of Kensington, added recreational responsibilities to its scope of authority.

In 1981, the voters of the District added the collection and disposal of garbage or refuse matter to its scope of authority.

In 1993, Board of Directors elected to change the name of the District from Kensington Community Services District to Kensington Police Protection and Community Services District so that its name describes the District's essential responsibility of providing police protection services.

In 1995, the Board of Directors believed that it would be in the best interest of the District and the community which it serves for the Board of Directors to be expanded to five directors. The move to increase the Board from three to five members was adopted by the voters in November, 1995.

Kensington Police Protection and Community Services District

Introduction, 2014

**KENSINGTON POLICE PROTECTION AND COMMUNITY
SERVICE DISTRICT
POLICY AND PROCEDURE MANUAL**

POLICY TITLE: Purpose of Board Policies
POLICY NUMBER: 1000

- 1000.10** It is the intent of the Board of Directors (Board) of the Kensington Police Protection and Community Services District (District) to maintain a Board Policy and Procedures Manual (Board Manual). Contained therein shall be a comprehensive listing of the Board's current policies, being the rules and regulations enacted by the Board from time to time. The Board Manual will serve as a resource for Directors, staff, and members of the public in determining the manner in which matters of District business are to be conducted.
- 1000.20** If any policy or portion of a policy contained within the Board Manual is in conflict with rules, regulations or legislation passed or adopted by an entity having authority over the District, said rules, regulations or legislation shall prevail.

POLICY TITLE: Adoption/Amendment of Policies
POLICY NUMBER: 1010

- 1010.10** Any Director or the General Manager/Chief of Police may request that the Board adopt a new policy or amend an existing policy. Members of the community may suggest policy changes or additions to any Director. The proposed policy adoption or amendment shall be initiated by submitting a written draft of the proposed adoption or amendment to each Director and the General Manager/Chief of Police through the District office and requesting that the item be included for consideration on the agenda of the appropriate regular meeting of the Board.
- 1010.20** Before considering adopting or amending any policy, Directors shall have the opportunity to review the proposed adoption or amendment at the regular Board meeting prior to the meeting at which consideration for adoption or amendment is to be given. Copies of the proposed policy adoption or

**KENSINGTON POLICE PROTECTION AND COMMUNITY
SERVICE DISTRICT
POLICY AND PROCEDURE MANUAL**

amendment shall be included in the agenda information packet for any meeting of consideration. Consistent with the Brown Act, the agenda information packets with said copies shall be made available to each Director, and posted on the District's Web site, for review at least three (3) days (72 hours) prior to any meeting of consideration. (See also Policy # 5020.10 for the date by which agenda items may be proposed.)

- 1010.30** Adoption of a new policy or amendment of an existing policy shall be accomplished at a regular meeting of the Board and shall require a 4/5 affirmative vote of the entire Board. There shall be a first reading for consideration of the new policy or amendment, followed by a second reading of the new policy or amendment before the Board may vote to adopt the proposed policy or amendment at the second or a subsequent meeting.

POLICY TITLE: **Conflict of Interest**
POLICY NUMBER: **1020**

- 1020.10** It is the policy of the District to follow all federal, State, and local laws concerning conflicts of interest, including California Government Code Section 1090, *et seq.* (regarding government contracts) and the Political Reform Act codified at Government Code Section 8000, *et seq.*, as well as implementing regulations adopted by the Fair Political Practices Commission, as each may be amended or supplemented from time to time. Pursuant to State law and in furtherance of the purposes of this policy, it is the policy of the District regularly to review and update its Conflict of Interest Code designating disclosure requirements for the economic interest of the District officials, employees, and consultants that could give rise to an actual or apparent conflict, and to enforce compliance with the State's and the District's economic interest disclosure requirements, including those set forth in the Political Reform Act and the District's Conflict of Interest Code.
- 1020.20** The Political Reform Act, Government Code Section 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICE DISTRICT POLICY AND PROCEDURE MANUAL

Interest Codes. The California Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Exhibit 1B in which officials, employees and consultants are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the District.

A public official at any level of state or local government shall not use or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a financial interest. (Government Code § 87100)

Designated officials, employees and consultants shall file statements of economic interests with the District, which will make the statements available for public inspection and reproduction. (Gov. Code Section 81008) Upon receipt of the statements of all designated officials and employees, the District shall make and retain a copy and forward the original of these statements to the County of Contra Costa Clerk of the Board of Supervisors, which shall be the filing officer.

Designated Position	Disclosure Categories
General Manager/Chief of Police	1, 2
Consultants/New Positions	*

* Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The General Manager/Chief of Police may determine in writing that a particular consultant or new position, although a “designated position,” is

**KENSINGTON POLICE PROTECTION AND COMMUNITY
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hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager/Chief of Police's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Government Code Section 81008).

The following positions are NOT covered by the Conflict of Interest Code because they must file a statement of economic interests (Form 700 pursuant to Government Code Section § 87200 and, therefore, are listed for information purposes only:

Members of the District's Board of Directors

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the determination whether a position is covered by Section 87200.

Disclosure Category 1: All investments, business positions, and sources of income (including loans gifts, and travel payments) from sources that provide services, supplies, materials, machinery, or equipment of the type utilized by the District.

Disclosure Category 2: All interests in real property located in whole or in part within the District's jurisdiction or within two miles of the District's jurisdiction.

1020.30 Anti-nepotism

The purpose of this policy is to ensure effective supervision, safety, security, performance, assignments, and discipline while maintaining positive morale by avoiding actual or perceived favoritism, discrimination, or other actual or potential conflicts of interest by or between *District* Board members, employees of the District, and the community.

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1020.31 Definitions

Relative - The parent, stepparent, spouse, ex-spouse, domestic partner, significant other, child (natural, adopted or step), sibling, grandparent, great-grand parent, cousin, niece, nephew grandchild, first cousin once removed, or second cousin of any District Board member or employee. In addition, the parent, stepparent, spouse, ex-spouse, domestic partner, significant other, child (natural, adopted or step), sibling, grandparent, great-grand parent, cousin, niece, nephew grandchild, first cousin once removed, or second cousin of any spouse or ex-spouse of a District Board member or employee.

Personal Relationship - Includes marriage, cohabitation, dating, or any other intimate relationship beyond mere friendship.

Business Relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture, or other transaction where the District Board member's or employee's annual interest, compensation, investment, or obligation is greater than \$250.

Conflict of Interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a District Board member's or employee's action, inaction, or decisions are or may be influenced by the Board member's or employee's personal or business relationship.

Supervisor - A District Board member or employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation, and/or performance of a subordinate employee.

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

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1020.32 Restricted Duties and Assignments

While the District does not prohibit personal or business relationships between its Board members, employees, and the community, the following reasonable restrictions and safeguards shall apply to District Board members and employees in order to avoid actual or perceived nepotism:

- a) District Board members and employees are prohibited from directly supervising, occupying a position in the line of supervision, or being directly supervised by any other Board member or employee who is a relative or with whom they are involved in a personal or business relationship.
 - 1) If circumstances require that such a supervisor/subordinate relationship exists temporarily, the supervisor shall make every reasonable effort to defer matters involving the involved Board member or employee to an uninvolved supervisor.
 - 2) When personnel and circumstances permit, the District will attempt to make every reasonable effort to avoid placing Board members or employees in supervisor/subordinate situations. The District, however, reserves the right to transfer or reassign any Board member or employee to another position within the same classification as it may deem necessary in order to avoid conflicts with any provision of this policy.
- b) District Board members and employees are prohibited from participating in, contributing to, or recommending new hires, promotions, assignments, performance evaluations, transfers or other personnel decisions affecting a Board member or employee who is a relative, or with whom they are involved in a personal or business relationship.

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- c) In order to avoid actual or perceived conflicts of interest, District Board members and employees shall disclose in writing any personal or business relationships with District Board members, employees, or vendors. (AB1234 and Government Code Section 1090, *et seq.*, shall apply to all such conflicts of interest.) The District Board will recommend appropriate action after considering any conflict of interest issues with legal counsel. Directors shall disclose any conflicts of interest regarding any matter which comes before the Board or over which the Board has authority. Directors shall recuse themselves from discussing and/or voting on any matter where they have a conflict of interest.

- d) In the event that conflicts of interest, real or perceived, arising in a selection process cannot be adequately addressed by the provisions of this policy set forth above, the District will create an impartial selection committee to conduct the selection process. The creation of an impartial selection committee may be initiated by either the General Manager/Chief of Police or the District's Board.

POLICY TITLE: **Public Complaints**
POLICY NUMBER: **1030**

1030.10 The Board desires that public complaints be resolved at the lowest possible administrative level and that the method for resolution of complaints be logical and systematic.

1030.20 A public complaint is an allegation in writing by a member of the public of a violation or misinterpretation of a District policy, a state or federal statute by which the individual has been adversely affected.

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1030.30 Non-police complaints, including complaints against a Director, shall be resolved as follows:

The individual with the complaint shall first discuss the complaint with the General Manager/Chief of Police with the objective of resolving the matter informally.

If the General Manager/Chief of Police does not satisfy the individual making the complaint with the disposition of the complaint, the complaint may be filed, in writing, with the General Manager/Chief of Police. At the option of the General Manager/Chief of Police, conferences may be conducted with testimony or written documentation in the resolution of the complaint. The individual filing the complaint may request a written decision from the General Manager/Chief of Police.

If the individual filing the complaint is not satisfied with the disposition of the matter, a written complaint may be filed with the Board within ten (10) days of receiving the General Manager/Chief of Police's decision. The Board may consider the matter at the next regular meeting or may call a special meeting. The Board will resolve the matter expeditiously. In making its final decision, the Board may conduct conferences, hear testimony, as well as utilize any other form of evidence deemed by the Board to be helpful in making its decision. The individual filing the complaint may request a written decision from the Board.

This policy in no way prohibits or is intended to deter a member of the public or staff from appearing before the Board to present verbally, or in writing, any testimony, complaint or statement regarding actions of the Board, District programs services, or impending considerations of the Board.

1030.40 If the Board or Board member receives a complaint against the Police Department (sworn or non-sworn personnel), the complaining party shall be referred to the Kensington Police Department to file a complaint.

The Board is part of the Grievance Procedure as outlined in the Kensington Police Department Manual and therefore must remain neutral in the complaint process.

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The investigation shall be conducted according to guidelines set forth in the Kensington Police Department Manual and, additionally, for sworn personnel, according to the guidance set forth in the Police Officers' Bill of Rights. (Government Code Section 3300-3313 and the Kensington Police Department Manual).

The complaining party shall be notified, in writing, of the disposition of the complaint. Discipline, if any, of sworn personnel shall not be disclosed. (Penal Code 832.5, 832.7, 832.8.)

POLICY TITLE: **Grievance Procedures for District Employees**
POLICY NUMBER: **1040**

1040.10 Purpose and Scope
Grievances of non-sworn personnel shall be handled according to the Grievance and Personnel Complaint procedures outlined in the Kensington Police Department Manual (Policy # 1000, *et seq.*, and 1020, *et seq.*) Grievances alleging harassment and/or discrimination shall be handled according to the procedures set forth in Section 8328, *et seq.*, of the Kensington Police Department Manual. The Disciplinary Policy of Section 340 *et seq.*, of the Kensington Police Department Manual shall apply to sworn and non-sworn personnel.

POLICY TITLE: **Claims Procedures**
POLICY NUMBER: **1050**

1050.10 The purpose of this policy is to describe procedures for handling claims and to inform the public, District staff, and Board of Directors (Board) of these procedures. These policy sections are generally intended to describe the claims procedure, but do not replace or alter existing law relating to Government Tort Claims.

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1050.20 Claims Requirements. The California Government Code beginning with Section 810 sets forth requirements that a claim must meet. These requirements establish the time period within which a claim must be presented to the District and the information that must be included in the claim.

1050.21 Time of Presentation (Government Code Section 911.2).

- a) Six-month claims. If a claim is for injury to person or to personal property, or growing crops, it must be presented to the District no later than six months after the accrual of the cause of action.
- b) One-year claims. If the claim arises out of any other circumstances, it must be presented no later than one year after the accrual of the cause of action.
- c) Definition of “presentation” (Government Code Section 915). If a claim is personally delivered to the District, the date it is received is the date of presentation. If a claim is mailed to the District, the claim is deemed presented at the time it is deposited in the mail (§915 – 915.42). The envelope in which a claim is mailed should be retained in the District office with the claim in case a question arises concerning the date of presentation.

1050.22 Content of Claim. Government Code Section 910 provides that a claim shall include all of the following information:

- a) The name and post office address of the claimant;
- b) The post office address to which the person presenting the claim desires notices be sent;
- c) The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

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- d) A general description of the indebtedness, obligation or injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
- e) The name or names of the public employee or employees causing the injury, damage or loss, if known; and
- f) The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage or loss insofar as it may be known at the time of presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

If the claim does not contain all this information, it is deemed to be insufficient. A claim form is provided in Exhibit 1A.

1050.30 Claims Process. District employees shall follow the process described below when receiving a claim.

1050.31 Telephone/Oral Complaints. All claims against the District shall be in writing. Claimants who call or visit the District office shall be informed that all claims must be presented to the District in writing. District staff shall provide a claims form (Exhibit 1A) to the claimant, in person if the claimant is present at the Public Safety Building, or by mail. District staff shall listen to the person making the complaint and take notes specifying the date and time of the discussion and the nature of the incident. District staff shall not discuss responsibility, liability or make any admission that implicates the District.

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- 1050.32** Request for Acknowledgement of Receipt. The District should time-date stamp the claim when it is received. When a claim is delivered in person to the District or received by mail at the District offices, a written acknowledgement of receipt should not be provided. The District's time-date stamp should be affixed to a copy of the claim and returned to the claimant/messenger as an acknowledgement of receipt. The person receiving the claim may provide his/her name and title. It is not necessary to make a photocopy for the claimant/messenger if an extra copy is not provided. A copy of the page with the time date stamp will suffice as acknowledgement if a copy is not provided. This copy will be kept in the District office.
- 1050.33** Insufficient Claims. If it is determined that a claim does not include all of the required information, the District shall so notify the claimant within 20 days after the claim is presented. (Government Code Section 910.8) The form letter attached as Exhibit 1B is sufficient to meet this requirement.
- 1050.34** Claim Investigations. District staff and/or its designee shall investigate the claim and gather information pertaining to the claim as soon as possible after the claim is presented to the District, except for claims for personal injury or wrongful death, which shall be sent immediately to the District's insurance company and attorney.
- 1050.35** Action on Claims by Board or its Designee. Section 935.4 of the Government Code provides that the District, by ordinance or resolution, may authorize an employee to allow compromise or settle a claim against the District if the amount to be paid is less than \$50,000. The Board designates the General Manager/Chief of Police to act upon claims against the District in an amount up to the District's insurance deductible in any manner outlined in this policy.

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The General Manager/Chief of Police, after evaluating the claim, shall determine whether to present the claim to the Board or to recommend to the Board that an advisory committee comprised solely of two directors be formed to work with District staff regarding the specific claim. No independent investigation of a claim shall be conducted by a Board member. When the claim is presented to the Board, it may be considered in closed session if the attorney for the District is present.

Under Government Code Section 912.4, the Board or its designee must act upon the claim within 45 days after the claim has been presented or the claim is deemed to have been rejected by operation of law.

- 1050.36** Notice of Action Taken on Claims which are denied. A Notice of Action on Claim for each claim that has been denied shall be sent to the claimant within the time prescribed by law. If a notice of Action is sent out, subject to certain exceptions, a claimant generally has only six months from the date the Notice of Action is sent out in which to file a suit. However, if no Notice of Action is sent out, subject to certain exceptions, the claimant generally has two years from the date the cause of action accrued (usually the date of the underlying incident or accident) in which to file suit. (Government Code Section 945.6.)

If a claim has been denied, a Notice of Action Taken on Claim shall be completed to show that the claim was rejected by the Board or its designee, or rejected by operation of law (see Exhibit 1C for form) and it shall be sent to the claimant or to claimant's counsel at the address indicated in the claim. A Declaration of Service by Mail should be attached to this Notice. (See Exhibit 1C for form.) These documents should be retained in the District office.

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1050.37 Notice of Action Taken on Claims which are granted. The following procedure should be followed when a claim has been granted or granted in part:

- a) Send a Notice of Action on Claim completed, and retain a copy in the District office, to show that the claim was allowed in the specified amount (see Exhibit 1C for format) or the claimant or the claimant's counsel at the address indicated in the claim. A Declaration of Service by Mail should be attached to this Notice. (See Exhibit 1D for form.)

- b) All repair work done or money paid shall be documented (with "before" and "after" photographs when appropriate) and placed in the claim file in the District office.

- c) Any payment of claims shall be conditional upon claimant executing a Release of All Claims (Exhibit 1E).

1050.38 Other Requests. Any other applications received from a claimant, such as applications for leave to submit a late claim, insufficient claim, or subrogation claim shall be provided to the General Manager/Chief of Police, who in consultation with the attorney shall determine how to proceed and report the determination to the Board.

EXHIBITS 1A, 1B, 1C, 1D, and 1E follow.

EXHIBIT 1A

CLAIM AGAINST

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

IN THE MATTER OF THE CLAIM of

_____, Claimant,
this matter is hereby presented by Claimant to Kensington Police Protection and Community
Services District pursuant to §910 of the California Government Code.

1. The name and mailing address of Claimant is as follows:

2. The mailing address to which Claimant desires notice of this claim to be sent, if different than
above, is as follows:

3. On _____, 200____, at _____,
(date) (location where injury occurred)
Claimant received personal injuries under the following circumstances:

4. On _____, 200____, at _____,
(date) (location where injury occurred)

Claimant **personal/real** property was damaged by District under the following circumstances:
(circle one)

5. So far it is known to Claimant at the date of filing this claim that Claimant has incurred damages in the amount of \$ _____ due to personal injury or damage to personal or real property.

6. The name(s) of the District employee(s) who caused said damages to Claimant is as follows (if you do not know their names, write "UNKNOWN"):

Date signed: _____

(print or type name of Claimant)

(signature of Claimant)

EXHIBIT 1B

Kensington Police Protection and Community Services District
279 Arlington Ave., Kensington, CA 94707
(510) 526-4141

_____, 20__

Notice of Insufficiency of Claim

Notice is hereby given that the claim that you presented to the Kensington Police Protection and Community Services District on _____, 20__ failed to comply with certain Government Code Sections. It was insufficient for the following reason(s):

For your information, consult California Government Code Sections 910, 910.2, 910.4, 910.8 and other Government Code Sections pertaining to the filing of claims against a public entity. Pursuant to Government Codes Section 910.8, no action will be taken on this claim by the Kensington Police Protection and Community Services District for a period of 15 days after the date of this Notice. Therefore, if you wish to file an amended claim correcting these deficiencies, you should do so within that time period.

General Manager, Chief of Police
Kensington Police Protection and Community Services District

EXHIBIT 1C

NOTICE OF ACTION TAKEN ON CLAIM

TO: _____

REFERENCE: Claim of _____

Notice is hereby given that your claim presented to the Kensington Police Protection and Community Services District, 217 Arlington Avenue, Kensington, California 94707-1401, on the _____ day of _____, 20____, was:

- Rejected
- Allowed in the amount of \$ _____ and rejected as to any balance
- Rejected by operation of law

on the ____ day of _____, 20_____.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. See Government Code Section 945.6. Your time for filing an action in federal court may be less than six months.

Option No. 1

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Option No. 2

Pursuant to Government Code Section 913, your client is to be advised of the right to consult an attorney in connection with this matter. Since you have already been retained, the notification of this right is being given to your client through you.

General Manager of the District

EXHIBIT 1D

Declaration of Service by Mail [Alternative 1]

State of California
County of Contra Costa

I am employed in the County of Contra Costa, State of California I am over the age of 18 and not a party to the within cause or claim. My business address is 217 Arlington Avenue, Kensington, CA, 94707.

I served the foregoing document entitled: _____ by depositing a true copy thereof in the United States Mails in _____, California on _____, 20____, enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

[Name and address of claimant or claimant's attorney]

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____ (month) 20____ at _____, CA.

Name Printed

Signature

[Alternative 2]

State of California
County of Contra Costa

I am employed in the County of Contra Costa, State of California I am over the age of 18 and not a party to the within cause or claim. My business address is 217 Arlington Avenue, Kensington, CA, 94707.

I am familiar with the practice of the Kensington Police Protection and Community Services District for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

I served the foregoing document entitled: _____ by placing a true copy thereof for collection and mailing in the ordinary course of business practice, with other correspondence of the Kensington Police Protection and Community Services District located at 217 Arlington Ave., Kensington, Ca 94707, on _____, 20____, enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

[Name and address of claimant or claimant's attorney]

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____ (month) 20____ at _____, CA.

Name Printed

Signature

EXHIBIT 1E

RELEASE OF ALL CLAIMS (CALIFORNIA FORM)

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, for sole consideration of _____ Dollars(\$ _____) to be paid to _____

do/does hereby and for my/our/its heirs, executors, administrators, successors and assigns release, acquit and forever discharge Kensington Police Protection and Community Services District and its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of any from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the day of _____, 20____, at or near _____, CA.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefor and intend merely to avoid litigation and buy their peace.

Any and all claims against parties not specifically released herein, if any, are hereby assigned in full to the parties hereby released. The releases expressly reserve any and all claims they may have against the undersigned, or any others.

It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

"1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The undersigned hereby declare(s) and represent(s) that the injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the undersigned rely(ies) wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by any physician or surgeon by them employed.

The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and this Release contains the entire agreement between the parties hereto and that the terms of this Release are contractual and not a mere recital.

FOR YOUR PROTECTION CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM:

556 Penalty for Fraudulent Claim for Loss.

(a) It is unlawful to:

- (1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance.
- (2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer with an intent to defraud.
- (3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.
- (4) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented in support of any such claim.

(b) Every person who violates any provision of this section is punishable by imprisonment in the state prison, for two, three, or five years, or by fine not exceeding twenty-five thousand dollars (\$25,000), or by both.

(c) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence by suspended for any adult person convicted of a violation of this section who has been previously convicted of violations of this section as an adult under charges separately brought and tried two or more times. The existence of any fact which would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in open court or found to be true by the jury trying the issue of guilt, or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except where the existence of such fact was not admitted or found to be true or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) or the Welfare and Institutions Code (1935 ch. 145, 1976 ch. 1139 oper. July 1, 1977, 1978 ch. 174 urgency eff. May 31, 1978, 1979 ch. 556, 1986 ch. 1324, 1988 ch. 1609).

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this day of _____, 20_____.

CAUTION: READ BEFORE SIGNING BELOW

Witness

Witness

Witness

STATE OF CALIFORNIA)
COUNTY of CONTRA COSTA) ss.

On this ____th day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public, State of California

DISTRICT - NEW BUSINESS

- 5. General Manager/ Chief of Police Greg Harman will ask Board approval to attend the POST approved November 2014 Contra Costa County Police Chief's Association Annual Workshop, being held November 3rd- 6th, at Bodega Bay, at a total cost of \$825.42 which is reimbursed by POST. Board Action.**

Memorandum

Kensington Police Department



To: KPPCSD Board of Directors

APPROVED _____

NO

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

Date: October 4, 2014

FORWARDED TO:

Subject: New Business # 5- POST Certified Police Chief's Workshop

I would like to attend the Contra Costa County Police Chief's Association POST certified 2014 Chief's Workshop, November 3rd-6th, to be held at the Inn at the Tides, in Bodega Bay.

The cost of my attendance would be \$825.42, which is reimbursed by POST.

The 24-hours of POST certified training counts towards my maintaining my POST certification. The class schedule is attached to this memo for your review.

Contra Costa County Police Chiefs' Association

POST Chief Executives Workshop
The Inn at the Tides, Bodega Bay, CA
November 3 – 6, 2014 (24 Hours)

Hourly Training Schedule

Monday, November 3, 2014

12:00 PM – 1:00 PM	Lunch & Welcome	Charles Gibson
1:00 PM – 3:00 PM	Resources/Case Studies U.S. Marshall's Service	Brad Gill, Deputy in Charge; Bert Tapia, Supervisory Inspector
3:00 PM – 5:00 PM	Resources/Case Studies Bureau of Alcohol, Tobacco, Firearms	Joseph Riehl Special Agent in Charge

Tuesday, November 4, 2014

8:00 AM – 12:00 PM	Legal Updates	Martin Mayer Jones & Mayer
12:00 PM – 1:00 PM	Lunch	
1:00 PM – 5:00 PM	Conflict Resolution	Peter & Susan Glaser Glaser & Associates

Wednesday, November 5, 2014

8:00 AM – 12:00 PM	Leadership Under Pressure/ Dealing with Post Military Employees	Emmett Spraktes
12:00 PM – 1:00 PM	Lunch	
1:00 PM – 5:00 PM	Proactive Leadership Strategies	Jack Enter

Thursday, November 6, 2014

8:00 AM – 10:30 AM	The Capture of Christopher Dorner	Captain Greg Herbert San Bernardino S. O.
10:30 AM – 11:00 AM	Workshop Wrap-up	Mark Evenson
11:00 AM – 12:00 PM	CCCPCA Business Meeting	Charles Gibson
12:00 PM – 1:00 PM	Lunch	

EXPANDED COURSE OUTLINE

Contra Costa County Police Chiefs' Association

POST Chief Executives Workshop
The Inn at the Tides, Bodega Bay
November 3 – 6, 2014 (24 Hours)

Monday, November 3, 2014

- I. **Case Study for the Aaron Bassler Fugitive Investigation in Mendocino County, CA (2011) – Deputy U.S. Marshall Brad Gill (Eureka Sub-Office)**
 - A. Case background
 1. Matt Coleman murder on August 11, 2011
 2. Jere Melo murder on August 27, 2011
 3. Evidence and scene peculiarities identifying Aaron Bassler as suspect
 4. Original investigation area reduced to Approx. 200 sq. miles
 - B. Local and Mutual Aid Response
 1. Mendocino County Sheriff and local agencies respond
 2. Neighboring county, state and federal agencies respond
 - C. US Marshals Service Response
 1. Mobile communication problems resolved with OST assets
 2. USMS Command staff integrated into the existing local command and control structure
 3. Local USMS district assesses resource needs
 4. USMS HQ assets requested
 5. USMS SOG responds and arrives on scene
 - D. Combined law enforcement efforts
 1. Troublesome terrain required specialized transportation methods
 2. Rural, tactical assets required for extended periods
 3. Law enforcement K9s from various agencies throughout the state
 - E. Events that changed the operation
 1. September 12, 2011 game cam photos of Bassler
 2. First contact with Bassler on September 29, 2011
 3. Trying to get ahead
 - F. A break in the case
 1. Bassler was conducting burglaries regularly in the area
 2. Specific items being stolen helped tie burglaries to Bassler
 3. Burglary outside of Ft Bragg
 - G. Conclusion of fugitive investigation on the death of Bassler
 1. Teams located in key locations to watch for Bassler
 2. An armed Bassler is located
 - H. Operation Insights – What worked well
 1. Multi agency coordination and supplies
 2. Communications supplied by OST
 3. Community Support
 - I. What did not work so well
 1. State/county funding sources
 2. Federal funding sources
 - J. Question/Answer Period from audience

- II. **Case Study for the Christopher Dorner Fugitive Investigation (2013) – Supervisory Inspector Bert Tapia (PSWRFTF – Los Angeles)**
 - A. Case background
 - 1. Murder investigation
 - 2. Information that lead to the identification of Dorner as the suspect
 - 3. Case Development & Search
 - B. US Marshals Service Response
 - 1. Resources dedicated
 - 2. Electronic
 - 3. Financial
 - 4. Out of state follow-up
 - 5. International
- III. **Overview of ATF: Its Mission and Case Study – Joseph Riehl, Special Agent in Charge, Bureau of Alcohol, Tobacco, Firearms**
 - A. ATF Overview
 - 1. Mission and Jurisdiction Responsibilities
 - 2. Directorates and Roles Within ATF
 - 3. Programs and Initiatives
 - 4. San Francisco Field Division Makeup
 - 5. “Frontline” Business Model
 - B. Firearms Trafficking Case Study
 - 1. 80% Firearms Issue
 - 2. Networks to acquire and build the firearms
 - 3. Case specifics and outcomes

Tuesday, November 4, 2014

- IV. **Legal Updates – Martin Mayer, Jones & Meyer**
 - A. Long Beach P.O.A. v. City of Long Beach
 - 1. Disclosure of officers’ names/requirements by City
 - 2. Consideration of possible endangerment to officers
 - 3. Exception to blanket rule
 - B. Wood v. Moss
 - 1. Protestors’ First Amendment right
 - 2. Swift decisions by officers regarding safety
 - 3. Security risk of location to the President
 - C. Plumhoff v. Rickard
 - 1. Officers endanger innocent bystanders
 - 2. Fourth Amendment consideration
 - 3. Justifiable until the severe threat to public safety has ended
 - D. Navarette v. California
 - 1. Anonymous 9-1-1 tip
 - 2. Reasonable suspicion/credible tip
 - 3. Ongoing crime as opposed to isolated episode
 - E. White v. County of Los Angeles
 - 1. Evaluation of employee’s fitness after FMLA
 - 2. Physician’s Certification
 - 3. Fitness for Duty Evaluation (FFDE) consistent with the ADA

- V. **BreakThrough Conflict – Peter & Susan Glaser, Glaser & Associates**
 - A. Trust is Not a Prerequisite for Communication
 - 1. Complex challenges for police executives
 - 2. Quality decision making
 - B. Managing Conflict Constructively
 - 1. Necessary conversations
 - 2. Tangible skills and tools
 - 3. Inter-dependent performance required
 - C. Automatic Communication
 - 1. Takes a toll on professional and personal lives
 - 2. Guidelines learned develop positive relationships
 - 3. Trust is created
 - D. Skills will:
 - 1. Decode non-verbal communication
 - 2. Teach others
 - 3. Convert criticism to agreement
 - 4. Raise issues to strengthen relationship
 - 5. Transform from avoidance to engagement
 - 6. Clarify perceptions
 - 7. Create Trust through conflict

Wednesday, November 5, 2014

- VI. **Leadership Under Pressure/Dealing with Post Military Employees – SSG Emmett William Spraktes (Ret)**
 - A. Background Information
 - 1. Family history
 - 2. Tragedy that shaped mindset
 - 3. Family influences toward career goals
 - 4. Military and Law Enforcement background
 - B. Military Deployments
 - 1. Overseas – Central/South America, Iraq, Afghanistan
 - 2. Watapur Rescue/Background
 - C. Battle Development/Understanding the Challenges
 - 1. MEDEVAC crew mindset and mission
 - 2. Ground patrol mindset
 - D. Post deployment change in mindset
 - 1. Nothing changes unless you work to change it
 - 2. Invest in change
 - E. Events from the Ganjgal battle
 - 1. Research
 - 2. SFC Kenneth Westbrook
 - 3. Going to DC
 - F. A change in conversation, a change in culture
 - 1. The struggle is not *should* we change, but HOW we change
 - 2. Soldiers and Service Members survive in greater numbers
- VII. **Proactive Leadership Strategies/Walking the Narrow Road of Leadership – Jack Enter, Ph.D**
 - A. Defining the Themes
 - 1. Reality vs Perception

2. Training Skills
3. Accountability
4. Fear – Fight/Flight
- B. Defining the Problem
 1. The majority of law enforcement managers are rated as inconsistent and ineffective
 2. A major source of stress in the workplace
 3. Proper management of three types of employees
 4. Leadership training impact
- C. Causes of the Problem – Why Managers Fail to Make an Impact
 1. Individual Factors for Leadership Failure
 2. Organizational Factors
- D. Individual Strategies for Becoming a More Effective Leader
 1. Mindset One - Taking Ownership for Your Behavior
 2. Mindset Two – Understand “the Devil is in the details”
 3. Mindset Three – Leadership is Hard
 4. Mindset Four – Proactive Communication
 5. Mindset Five – Reinforce the Culture
- E. Agency Strategies for Building a Leadership Culture
 1. Rethink **Training** Paradigms
 2. Rethink **Accountability** Paradigms
- F. Applications – How are you going to apply this?

Thursday, November 6, 2014

VIII. The Capture of Christopher Dorner/Debrief – Captain Greg Herbert, San Bernardino Sheriff’s Department

- A. Dorner History and Criminal Acts leading up to Feb 7, 2013
 1. U. S. Navy
 2. L.A. PD
 3. Dorner Manifesto
 4. Irvine Murders
 5. LAPD shooting, Corona, CA
 6. Riverside PD shooting
- B. Dorner travels to Big Bear, CA
 1. Dorner’s vehicle located
- C. Final Event
 1. Area wide search during harsh winter conditions
 2. Club View Drive location
 3. Glass Road events
 4. Seven Oaks road events
 5. Seven Oaks Standoff
 6. Dorner Autopsy

End Workshop Outline

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APPENDIX A - EXPENSE PREPAYMENT/REIMBURSEMENT FORM

Name: GREG HARMAN

Event/Activity: 2014 CHIEFS' WORKSHOP

Location of Event/Activity: BODEGABAY

Approved by Board of Directors on: _____

	Prepay	Reimburse
1. Event/Activity Registration Fee	\$ _____	\$ _____
2. Transportation		
• Airfare	\$ _____	\$ _____
• Car Rental (\$ _____ per day for _____ days)	\$ _____	\$ _____
• Car Mileage (\$ _____ per mile for _____ miles)	\$ _____	\$ _____
• Taxi	\$ _____	\$ _____
• Parking	\$ _____	\$ _____
3. Lodging (\$ <u>145.95</u> per night for <u>3</u> nights)	\$ <u>486.03</u>	\$ _____
4. Meals (Complete information requested on next page of form)		
a. Breakfast	\$ <u>70.49</u>	\$ _____
b. Lunch	\$ <u>116.77</u>	\$ _____
c. Dinner	\$ <u>152.13</u>	\$ _____
5. Other (Explain details of request)	\$ _____	\$ _____
Total Requested	\$ <u>825.42</u>	\$ _____

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

Signed: _____

Approved by: _____

Date: _____

Signed: _____

Print Name: _____

Date: _____

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