

SETTLEMENT AGREEMENT AND RELEASE

RECITALS

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is entered into by and between Bay View Refuse and Recycling, Inc. ("Bay View") and the Kensington Police Protection and Community Services District ("District");

WHEREAS, the parties entered into a Franchise Agreement on September 11, 1997, in which Bay View is the franchisee that handles the District's refuse and recycling franchise and the District is the franchisor for a term ending on August 30, 2015 ("Franchise Agreement");

WHEREAS, based on Bay View's demand under the Franchise Agreement, the parties initiated an arbitration proceeding in the Judicial Arbitration and Mediation Services ("JAMS") before the Honorable William L. Bettinelli, Ref. No. 1100071172 ("Arbitration") to resolve Bay View's claim for a rate increase;

WHEREAS, on September 12, 2012, Bay View filed a Statement of Claims in the Arbitration, attached hereto as Exhibit A, seeking a determination that it was entitled to a rate increase based on its interpretation of terms in Section 9 of the Franchise Agreement and Proposition 218 (California Constitution, Article XIII D, section 6), and the District's actions related thereto;

WHEREAS, on January 7, 2013, the parties had an arbitration hearing before Judge Bettinelli. Prior to the hearing, the parties briefed: (1) an interpretation of Proposition 218 (California Constitution, Article XIII D, section 6) and the District Board of Directors' actions related thereto; and (2) whether Bay View was entitled to a comprehensive rate review pursuant to Section 9.3 and 9.4 of the Franchise Agreement ("2013 Rate Review");

WHEREAS, On February 5, 2013, the Honorable William L. Bettinelli issued an Interim Arbitration Award ("Interim Award"), attached hereto as Exhibit B, finding that: (1) Bay View was not entitled to an award implementing a rate increase based on its claims regarding Proposition 218; (2) Bay View was entitled to receive a four-year comprehensive rate review in

2013 to establish and set rates commencing January 1, 2014 for the balance of the contract term subject to an increase based upon the Consumer Price Index to be effective January 1, 2015; and (3) all other claims were denied. In addition, the Interim Award left for further determination whether either party was entitled to recover attorneys' fees and whether issues remained concerning the process and procedures to implement the 2013 Rate Review;

WHEREAS, on April 2, 2013, Bay View, two District representatives and counsel for both parties met with Judge Bettinelli at JAMS in an effort to mediate their dispute before a final award. The parties desire to enter into this Settlement Agreement to resolve this dispute in full settlement and discharge of all claims which are, or might have been, the subject matter of this Arbitration, and agree to work in good faith to reach an agreement as to what rates will be implemented effective January 1, 2014 pursuant to a District-adopted ordinance to be implemented pursuant to a Proposition 218 notice to rate-payers, upon the terms and conditions set forth below.

WHEREAS, similarly, the District's general manager and counsel are recommending to the District's Board of Directors acceptance of the terms identified in this Settlement Agreement. However, final approval of this Settlement Agreement rests with the District's Board of Directors. This Settlement Agreement shall be binding on the District only if it is approved by the Board of Directors.

WITNESSETH

IT IS THEREFORE AGREED by and among the parties hereto as follows:

1. **Incorporation of Recitals.** The Recitals above are incorporated herein as terms of this Settlement Agreement.
2. **Mutual Dismissal with Prejudice.** Within 15 days of execution of this Settlement Agreement, Bay View shall serve an executed Stipulation of Dismissal of the Arbitration with Prejudice ("Dismissal") on the District, and the District shall execute and serve the Dismissal on JAMS within 15 days thereof.

3. **Equitable Relief.** The parties agree to the following with regard to implementation of the 2013 Rate Review:

(a) the 2013 Rate Review will be the final rate review conducted following the process described in Section 9.4 of the Franchise Agreement through the end of the term of the Franchise Agreement (through August 30, 2015). All other rate adjustments (if any) including, but not limited to, the annual rate adjustments for Consumer Price Index (Section 9.3), rate adjustments due to extraordinary changes in disposal costs, extraordinary events and other changes (Sections 9.5 through 9.8) will continue to apply through the end of the term;

(b) the District shall engage the consultant firm of HF&H Consultants to perform the 2013 Rate Review on behalf of the District, and that the District shall pay the cost of the 2013 Rate Review;

(c) Bay View has until May 31, 2013 to provide the District with the report described in Section 9.4 of the Agreement that it would otherwise be required to submit on April 30, 2013.

4. **Attorneys' Fees and Costs.** Each party shall bear their own attorneys' fees, litigation expenses, and costs incurred in connection with the Arbitration. Bay View agrees that the attorneys' fees, litigation expenses and costs it has incurred that are related to this dispute are not "Legal Fees" as that term is used in Exhibit C of the Franchise Agreement and cannot be passed through to Kensington rate-payers in the calculation of rates that result from the 2013 Rate Review pursuant to Section 9.4 of the Agreement.

5. **Release of All Claims.** For good and valuable consideration hereunder, and of the provisions, terms, covenants and promises contained in the Agreement, Bay View, on behalf of itself, owners, officers, directors and representatives, successors and assigns, and each of them, hereby fully, finally and forever releases, acquits and discharges District, and each of its successors, assigns, officers, directors, agents, representatives, employees, attorneys, indemnitors, and insurers, and each of them, of and from any and all claims, claims for money,

demands, actions, causes of action, liabilities, obligations, damages of any kind whatsoever (including, but not limited to those for monies, monetary or pecuniary damages, and pecuniary loss), equitable relief of any kind whatsoever, attorneys' fees, costs or expenses of any kind whatsoever, whether known or unknown, arising from the subject matter of the arbitration or related thereto including, but not limited to those referred to, connected with or arising from causes of action, matters, events, occurrences, failures to act and omissions which were or could have been alleged in the Arbitration. It is the intent of the parties that the Agreement and this release will be broadly construed for the purpose of carrying out the intentions of the parties. The terms and conditions of the Agreement shall survive the foregoing release.

6. **Civil Code Section 1542 Release.** Bay View acknowledges and agrees that it is aware of and understands the provisions of Code of Civil Procedure Section 1542 quoted below and freely, voluntarily and knowingly waives the benefits of said section which provides:

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

7. **No Admission - Compromise.** It is understood that the Settlement Agreement does not constitute an admission by the parties of any liability but is in compromise of disputed claims, and the Agreement shall not be admissible in any action or proceeding of any kind whatsoever, as an admission or concession of liability or fault.

8. **Representation and Warranty.** Bay View represents and warrants that it has not sold, assigned, conveyed or otherwise transferred, prior to the date of the Agreement, any interest in any claim or demand which it had or now has or may claim to have which is released hereunder, and hereby agrees that it shall not ever sell, assign, convey or otherwise transfer any such claim or demand.

Bay View shall protect and indemnify the District (and each of its successors, assigns, officers, directors, agents, representatives, employees, attorneys, indemnitors, and insurers, and

each of them) in any action or claim against any and all liens, subrogation claims and other rights that may be asserted by any person for such claim related to the subject of the Arbitration.

9. **Defense to Other Proceeding.** This Agreement may be pled as a full-and-complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted or attempted in breach of this Agreement.

10. **Advice of Counsel.** The parties hereto, and each of them, represent and warrant that they have been fully advised by their respective attorneys concerning their rights and have further been advised by their attorneys as to the terms and effect of the Agreement and/or Dismissal.

11. **Voluntary and Entire Agreement.** It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties, and each of them, that no representations or promises of any kind other than as contained in the Agreement have been made by any party to induce any other party to enter into the Agreement (including, without limitation, any representations or promises concerning any tax ramifications of this Agreement, as to which each party relies solely upon the advice (if any) of his or its own counsel and/or accountant), that the Agreement constitutes the entire understanding of the parties with respect to the settlement, and that the Agreement may not be altered, amended, modified or otherwise changed except by a writing executed by each of the parties hereto.

12. **Cooperation and Further Documentation.** Each party hereto agrees to execute and deliver any and all documents and to take any and all actions necessary or appropriate to consummate the Agreement and to carry out its terms and provisions.

13. **Inure to Benefit of Successors, Heirs and Assigns.** The Agreement shall be binding on and inure to the benefit of the successors, heirs and assigns of the respective parties hereto.

14. **Effectiveness and Board Approval.** This Settlement Agreement shall become effective immediately following execution by each of the Parties, conditioned upon the approval of the District's Board of Directors.

15. **Entire Agreement.** The Agreement contains the entire written agreement between the parties. The Agreement is contractual and not a mere recital; any representations or promises not specifically detailed in this document will not be valid or binding on the parties to this Agreement. Any modification to the terms of this Agreement must be made in writing and signed by all parties to this Agreement.

16. **Applicable Law.** The Agreement shall be construed in accordance with the substantive laws of the State of California. Should any dispute arise related to this Agreement, venue shall be in the Superior Court for Contra Costa County, California.

17. **Ambiguities.** Bay View and the District have both reviewed the Agreement and have been given full opportunity to participate in choosing the language to be used herein. The parties further acknowledge that they have been given the opportunity to discuss the contract language with their respective attorneys, and have bargained concerning the same. The language in this Agreement shall be interpreted as to its fair meaning and not strictly construed for or against any party.

18. **Saving Clause.** If any provision or term of this Agreement or its application to any person or entity or circumstance shall be held by a court to be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons, entities or circumstances other than those to which it is held invalid or enforceable shall not be affected and each provision of this Agreement shall be enforced to the fullest extent permitted by law.

19. **Counterparts and Facsimile Signatures.** The Agreement may be executed in counterpart and fully executed agreements by counterparts shall serve as if one document had been executed in full by all parties hereto, and facsimile signatures shall be valid and of the same force and effect as original signatures.

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT
INCLUDES A RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS.**

Dated: April 20, 2013

BAY VIEW REFUSE AND RECYCLING, INC.

BY: *[Signature]*

Dated: April 2013

KENSINGTON POLICE POWERS AND COMMUNITY SERVICE DISTRICT

By: *[Signature]*
GREG HARMAN
General Manager

APPROVED AS TO FORM:

HANSON BRIDGETT, LLP

SCAMPINI, MORTARA & HARRIS

By: *[Signature]*
JULIA H. VETT
Attorneys for Defendant
KENSINGTON POLICE POWERS AND
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