

**SECOND AMENDED MEMORANDUM OF UNDERSTANDING BETWEEN
THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT
AND THE COUNTY OF CONTRA COSTA
FOR MEETING THE REQUIREMENTS OF THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989**

This Amended Memorandum of Understanding ("Amended MOU") is entered into by and between the Kensington Police Protection and Community Services District, a public agency formed pursuant to California Government Code section 61000, et seq. (hereinafter "District") and the County of Contra Costa, a political subdivision of the State of California, (hereinafter "County"). District and County may be referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS

A. The County Board of Supervisors and the District Board of Directors represent, within their respective boundaries, the residents in the unincorporated area of Contra Costa County.

B. District is a community services district providing solid waste management, resource recovery and disposal services to residents and businesses within the unincorporated area of Contra Costa County known as Kensington.

C. The California Legislature has enacted the California Integrated Solid Waste Management Act of 1989, Chapter 1095, Statutes of 1989 (hereinafter "the ACT"). Amendments to the ACT have been adopted and others may be adopted in the future. The ACT is codified in California Public Resources Code section 40000 et seq.

D. The ACT requires that the County prepare and adopt a Source Reduction and Recycling Element (hereinafter "SRRE") and a Household Hazardous Waste Element (hereinafter "HHWE") for the unincorporated areas of Contra Costa County. The County has adopted these elements, which were approved by the State and are included in the Countywide Integrated Waste Management Plan for Contra Costa County. The ACT requires the County to implement diversion programs identified in the SRRE and HHWE. The County may modify and eliminate these programs and add new diversion programs from time to time as circumstances warrant. The SRRE programs and HHWE programs then in effect during the term of this Amended MOU will be referred to, respectively and individually, as the "SRRE Programs" and "HHWE Programs" and collectively as the "SRRE and HHWE Programs."

E. The ACT, as amended, also requires County to implement a commercial solid waste recycling program and a commercial organic waste recycling program (collectively "Commercial Recycling Programs"), and to prepare and submit annual reports to the State on County's progress in implementing these programs.

F. The ACT further requires the diversion of 50 percent of all solid waste through source reduction, recycling and composting activities. County is designated within the ACT as the responsible agency for meeting this waste reduction mandate in the unincorporated areas of Contra Costa County.

G. County and District have statutory powers to contract and enter into agreements.

H. District is authorized and empowered by State of California Community Services District Law, California Government Code section 61000 et seq., to collect and dispose of waste and garbage. On or about September 1, 1997, District entered into a franchise agreement with Bay View Refuse and Recycling Services, Inc. ("Bay View"), to provide solid waste collection and disposal services within District's jurisdictional boundaries.

I. Concurrently with the approval of the above franchise agreement, County and District entered into a Memorandum of Understanding (the "1997 MOU") for the purpose of meeting the mandates of the ACT with regard to the unincorporated territory of Contra Costa County within District's jurisdictional boundaries, and further coordinate with each other to facilitate County's achievement of the countywide goals pursuant to the ACT.

J. Following the District's 1997 franchise agreement with Bay View, the District entered into a new franchise agreement with Bay View, effective October 23, 2014. The District's 2014 franchise agreement with Bay View, as amended, has a term through August 31, 2026.

K. The 1997 MOU expired on September 1, 2016. County and District entered into an Amended MOU to replace the 1997 MOU.

L. County and District now wish to enter into this Second Amended MOU to replace the Amended MOU.

NOW, THEREFORE, for good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, County and District agree as follows:

ARTICLE 1: PURPOSE OF THE AMENDED MOU

1.1 GENERAL. The purpose and Intent of this Amended MOU is to provide a representative, economical and effective means by which the unincorporated areas of Contra Costa County may achieve the waste reduction goals set forth in the ACT and County may satisfy reporting obligations to the State.

ARTICLE 2: FRANCHISE, ACT AND OTHER SOLID WASTE REQUIREMENTS

2.1 FRANCHISE. The current franchise agreement between District and Bay View, the term of which commenced on September 1, 2015, and, as amended, will expire on August 31, 2026 ("Franchise Agreement"), is attached as Exhibit A to this Amended MOU. County acknowledges that the Franchise Agreement provides for the implementation of recycling and organic waste collection and diversion services that are consistent with the SRRE. County further acknowledges that the Franchise Agreement authorizes District to modify the scope of services to be provided by Bay View, including mandating additional collection services necessary to meet the goals and mandates of the ACT and other laws regarding solid waste management or recycling, as may be adopted from time to time.

2.2 COUNTY PROGRAMS.

2.2.1 County intends to continue to implement the SRRE and HHWE Programs and the Commercial Recycling Programs, as required by State law, in the unincorporated area, including the Kensington area. District and County shall cooperate in the implementation of such programs as appropriate.

2.2.2 When the County submits its annual report to the State as required under Public Resources Code section 41821, the County shall provide District with a copy of the report to serve as notification of any new, modified or discontinued SRRE or HHWE Programs.

2.3 COORDINATING COMMITTEE. County and District may mutually determine to convene a coordinating committee, which consists of five members: one member of the District Board of Directors or the member's alternate, one District staff person, one representative of Bay View, one member of the County Board of Supervisors or the member's alternate, and one County staff person. If convened, District shall provide support staff to the coordinating committee. The purposes of the coordinating committee are to facilitate communications among County, District and Bay View and to assist in developing diversion programs in a cost effective manner.

2.4 DATA COLLECTION.

2.4.1 Pursuant to the ACT, as amended, the County is responsible for reporting specified information to the state periodically regarding solid waste disposal and diversion within the unincorporated areas of Contra Costa County. District agrees to implement monitoring, reporting and data collection methodologies as established by County from time to time in response to State requirements. District shall provide information to County in the computerized or non-computerized form (including format) as requested by County, in a timely manner.

2.4.2 District shall require Bay View to provide complete recycling reports in the form attached as Exhibit B to County on a quarterly and annual basis. The first quarterly report shall be submitted by November 15, 2024, for the prior July/August/September quarter, followed by quarterly reports on the following schedule: February 15 for October/November/ December; May 15 for January/February/March;

and August 15 for April/May/June. An annual report is due February 15, 2025, for calendar year 2024 and then each year thereafter on the same schedule. The scheduling and required content of these reports may be modified by County as needed from time to time.

2.4.3 District shall require Bay View to provide the following information for each calendar year to the County in writing no later than February 15 of each year for inclusion in County's annual report to the State:

- a) Evidence of outreach efforts by District and Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling, including a copy of any District web page that contains information pertaining to either of these recycling programs.
- b) Samples of written notices, outreach materials and noncompliance letters sent by District or Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling.
- c) The number of businesses that District deemed to be out of compliance with requirements of the commercial solid waste recycling or commercial organic waste recycling programs during the calendar year.
- d) Descriptions of any other related activities conducted or technical assistance provided by District or Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling.

2.4.4 District shall provide to County the following information in a timely manner or by the applicable deadlines specified below:

- a) notification of any rate application received from contractor (copy of rate application to be made available upon request);
- b) notification of District's notice to contractor of rate decrease;
- c) notification of contractor's written notice of CPI rate change;
- d) notification of any rate change approved by District, including CPI change or rate reduction;
- e) copy of draft customer satisfaction survey, for County review and approval;
- f) copy of final customer satisfaction survey and recycling survey (at the time the surveys are provided to Kensington residents) and results;

- g) copy of draft annual customer information, for County review and approval;
- h) final copy of annual customer information;
- i) copy of draft waste reduction, recycling and HHWE promotional information, for County review and approval;
- j) final copy of waste reduction, recycling and HHWE promotional information, at the time the information is provided to Kensington residents;
- k) notification of the number of Bay View's customers and types of services provided as of December 31 of each year;
- l) notification regarding any requested or planned changes in collection services provided under the Franchise Agreement (including but not limited to types of materials collected for recycling or composting and methods and frequency of collection);
- m) copy of notice from contractor of intent to change disposal site for solid waste and/or intent to change delivery site for recyclables (including green waste) or reusables;
- n) copy of request by contractor for authority not to collect materials for which there is no adequate market, for County review and approval;
- o) copy of any written notice of breach sent by District to the contractor; and
- p) copy of any proposed or approved amendment, modification, notice of termination, request to assign, assignment and consent to assignment of the Franchise Agreement.

County shall have 30 days to review drafts submitted under e), g), and i), and respond to District with any reasonable modifications. If District does not receive a response to within 30 days, it may assume that County has approved a draft as submitted. County shall have 30 days to review and respond to requests submitted under subparagraph n). If District does not receive a response to such a request within 30 days, it may assume that County has approved the request.

2.5 PUBLIC INFORMATION. District shall provide a means for County to disseminate information to individual customers relating to the SRRE and/or HHWE. If dissemination of information will be through customer billings, District shall inform County of applicable deadlines for including information with customer billings. In addition, District will arrange for distribution to individual customers of other materials

provided by County related to environmental programs at no cost to County other than direct costs such as incremental postage.

2.6 DISTRICT PROGRAMS.

2.6.1 District will implement the SRRE and HHWE Programs in good faith and in a manner that is reasonably calculated to achieve the County's diversion mandate under the ACT.

2.6.2 District shall design and modify programs and/or rate structures as needed to meet the overall goals and requirements of the ACT, as amended. Specifically, District will implement each of the selected SRRE and HHWE Programs that require implementation by franchisor agencies and/or haulers. District will provide local publicity and generate local interest in solid waste and diversion programs, provide locations for activities such as compost workshops, determine any special needs that the community may have in regards to solid waste pickup services, including recycling and green waste and work with County staff to develop "reduce, reuse and recycle" programs that will be effective in the Kensington community. District shall notify County of the implementation of any "reduce, reuse, recycle" programs required for the implementation of the SRRE or HHWE or overall compliance with the ACT. The SRRE and HHWE Programs and other programs that must be implemented to comply with the ACT shall not be reduced or eliminated by Bay View or District unless agreed upon in advance in writing by County's Conservation and Development Director.

2.6.3 If County considers District's implementation of one or more such programs to be inadequate (as measured against the description of the program and its anticipated impact on waste diversion), County may bring the matter to the attention of the Coordinating Committee. If, thereafter, County continues to consider District's implementation to be inadequate, County may notify District in writing specifying the deficiency and proposing specific changes. If District does not implement the changes in a reasonable time, County may independently arrange for the implementation of such program changes and may require District to pay the costs thereof.

2.7 HOUSEHOLD HAZARDOUS WASTE PROGRAM. District shall be responsible for its pro rata share of costs incurred by County in implementing the HHWE. In order to accomplish this, District will include in Bay View's rates, as a pass through expense, the amount of County's actual or projected HHWE costs for each year. County will bill Bay View directly for the amount invoiced by the operator of the West County Household Hazardous Waste Facility based on the actual number of Kensington users. District shall require Bay View to mail the payment requested on behalf of the operator to the County directly within 30 days of receiving County's billing.

2.8 FRANCHISE FEES. District shall include in the rates charged by Bay View, a Franchise Fee in an amount determined by County, to pay for County expenses and costs incurred in implementing the SRRE and HHWE, the Commercial Recycling Programs and other costs incurred in connection with solid waste management and diversion, including, but not limited to, costs associated with this MOU. Unless

otherwise directed by County, the Franchise Fee to be paid to County shall be 3% of Bay View's gross receipts. County shall not increase the Franchise Fee above 3% unless County's costs of administering solid waste and diversion programs, including but not limited to costs of implementing the SRRE, HHWE, and the Commercial Recycling Programs, exceed the then applicable Franchise Fee. Any increase shall be proportional to District's share of the costs. If County's costs of administering solid waste and diversion programs, including costs of implementing the SRRE, HHWE and the Commercial Recycling Programs, decreases, District may request a decrease in the Franchise Fee. District shall have no duty to defend County in any suit challenging County's Franchise Fee. County shall have no duty to defend District in any suit challenging the rates charged by Bay View.

2.9 FREE SERVICE FOR COUNTY. District shall provide solid waste collection and disposal services at those County buildings within the District's jurisdictional boundaries (currently, the Library) designated by the Director of Conservation and Development from time to time, at no charge to County.

2.10 COUNTY AUTHORITY DISCRETION.

2.10.1 The ACT, other California statutes, and the California Constitution, authorize, and/or require County to undertake a number of activities involving solid waste handling and disposal. The ACT specifically empowers County to undertake certain planning functions including the development of SRRE's, HHWE's and the Countywide Integrated Waste Management Plan.

2.10.2 The Franchise Agreement provides for District control over the location at which solid waste is disposed. District agrees to direct Bay View to transport (or not transport) solid waste to specified landfills or solid waste handling facilities as directed by County in the following circumstances:

- a) County determines that the landfill currently being used is unpermitted, is in violation of its permits, or is otherwise out of compliance with federal or state environmental laws, regulations or standards such that the disposal of solid waste from Kensington creates a potential liability for County, and so advises District, and other agencies in the unincorporated area of Contra Costa County using such landfill, in writing;
- b) County requires the ability to commit the solid waste from several jurisdictions, including Kensington, to a particular landfill in order to secure volume reductions on tipping fees charged at such landfill, and the tipping fees for the aggregated waste stream are lower than those then paid by the District at the landfill it is using;
- c) County determines that the solid waste diversion goal required by the ACT will not be met in the unincorporated area of Contra Costa County, has made a diligent effort to implement the SRRE and HHWE Programs and Commercial Recycling Programs which are the

responsibility of County, and has determined that it is necessary for an overall Countywide effort which includes the use by its franchisees and franchisor agencies in the unincorporated areas of materials recovery facilities to secure the additional recycling needed to comply with the ACT.

2.10.3 If County determines that it is necessary for proper implementation of the SRRE Program or HHWE Program, County may direct District to direct specified recyclable materials, including green waste, collected within the District's boundaries to be delivered to a particular purchaser of such material. County will not exercise its discretion, as described in this paragraph, unless it has or will also direct similarly situated recyclable materials collected in other County franchised areas.

ARTICLE 3: TERM AND TERMINATION

3.1 TERM. The term of this Second Amended MOU will commence on September 1, 2024, and expire on August 31, 2034, unless terminated sooner in accordance with section 3.3.

3.2. INCORPORATION, ANNEXATION. If any of the territory covered by this Amended MOU is annexed to a municipal corporation or becomes incorporated, this Amended MOU shall be terminated as to said territory upon the effective date of the municipal corporation's determination to franchise or otherwise regulate solid waste and recycling in said territory. District shall promptly notify County of all completed annexations and incorporation.

3.3 TERMINATION OF FRANCHISE AGREEMENT. This Amended MOU shall automatically terminate one year after the termination of the Franchise Agreement unless District enters a new Franchise Agreement that provides for the effective implementation of the SRRE and HHWE no less effectively than as provided in Exhibit A.

ARTICLE 4: INSURANCE INDEMNITY. FINES AND ALLOCATION OF LIABILITY

4.1 INSURANCE AND INDEMNITY. Neither County nor District, as a condition of the execution of this Amended MOU, shall be required to provide direct insurance coverage or protection to the other. Except as provided in section 4.2 (ACT Requirements), neither County nor District is required to contractually indemnify the other against damages to any person or property not a party to this Amended MOU.

4.2 ACT REQUIREMENTS. To the greatest authorized by law, District shall indemnify County for any fines or penalties imposed on County by the State for failure to properly implement County's SRRE or HHWE, or the Commercial Recycling Programs, where the failure is partly or wholly attributable to action or inaction by District. District's share of any fines or penalties imposed on County for failure to properly implement County's SRRE or HHWE shall be proportionate to the District's share of responsibility for failure to implement the SRRE and HHWE, as determined by the County in accordance with Public Resources Code section 41821.2, subdivision (d). District's

indemnity obligation under this section 4.2 shall survive the expiration or termination of this Amended MOU.

ARTICLE 5: GENERAL PROVISIONS

5.1 SEVERABILITY. The invalidation of any term, condition, or provision of this Amended MOU as a result of a legal action brought by a person or entity not a party to this Amended MOU shall not affect the validity or enforceability of the remaining provisions. However, if one or more material provisions is affected, the Parties agree to negotiate in good faith to reach agreement on revisions which preserve the substance hereof.

5.2 ENTIRE AGREEMENT; MODIFICATION. This Amended MOU constitutes the entire agreement between the Parties regarding the matters discussed herein and supersedes the 1997 MOU and any other agreements, representations and understandings of the Parties regarding the matters discussed herein. This Amended MOU may be amended or modified only in a writing executed by the Parties.

5.3 ASSIGNMENT AND DELEGATION. Except as provided herein, neither County nor District shall assign any rights nor delegate any obligations as provided under this Amended MOU without written notice to and consent of the other Party to this Amended MOU.

5.4 CALIFORNIA LAW. This Amended MOU, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California.

5.5 NOTICES.

5.5.1 All notices and communications deemed by either Party to be necessary or desirable to be given to the other Party shall be in writing and may be given by personal delivery to a representative of the Parties or by mailing the same postage prepaid, addressed as follows:

If to District: Kensington Police Protection and Community
Services District
217 Arlington Avenue
Kensington, California 94707-1401
Attention: General Manager

If to County: Contra Costa County
Conservation and Development Department
30 Muir Road
Martinez, California 94553
Attention: Solid Waste Program Manager

Notices may also be transmitted electronically to the e-mail addresses designated by the representatives of the Parties identified above. A notice provided by e-mail will be

deemed received by a Party upon delivery of a written acknowledgment of receipt by that Party to the Party sending the notice.

5.5.2 The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

5.6 WAIVER. The waiver by either Party of any breach or violation of any of the provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

5.7 ATTORNEY'S FEES. In the event of litigation between the Parties arising hereunder, each Party shall be responsible for and shall pay its own litigation expenses, including attorney's fees.

5.8 NO THIRD PARTY RIGHTS. This Amended MOU is not intended to and does not benefit any third party. No third party shall have the right to bring suit to enforce any of the provisions hereof.

**Kensington Police Protection and
Community Services District**

County of Contra Costa

By: _____
President, Board of Directors

By: _____
Chair, Board of Supervisors

Date: _____

Date: _____

Attest:

Attest: Monica Nino, Clerk of the Board of
Supervisors and County Administrator

By: _____
Secretary

By: _____
Deputy

Approved as to Form:

Approved as to Form:

Thomas L. Geiger
County Counsel

By: _____
Legal Counsel

By: _____
Deputy

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