

**MEMORANDUM OF UNDERSTANDING WITH
KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT**

CONTRA COSTA COUNTY

September 1, 1997 (term = 194.5) (199)

**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 Memorandum of Understanding ("MOU") is made and entered into between the Kensington Police Protection and Community Services District, a public agency formed pursuant to California Government Code Sections 61000, et seq. (hereinafter "District") and the County of Contra Costa, a political subdivision of the State of California, (hereinafter "County") and shall be effective on September 1, 1997 provided it is executed by both parties on or before November 1, 1997.

RECITALS

This MOU is entered into in consideration of the following matters:

- A. The County Board of Supervisors and the District Board of Directors represent, within their respective boundaries, the residents in the unincorporated area of the County.
- B. District is a community services district providing solid waste management, resource recovery and disposal services to the public, as well as 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 the California Public Resources Code, Sections 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 the County. The ACT further mandates the diversion of twenty-five percent (25%) of identified solid waste from land disposal by January 1, 1995 and the diversion of fifty percent (50%) of said solid waste by January 1, 2000. The County is also designated within the ACT as the responsible agency for meeting these waste reduction goals for the unincorporated areas of the County.

E. The County and the District have statutory powers to contract and enter into agreements.

F. The County has adopted Ordinance 91-31 (Solid Waste Collection, Disposal and Recycling Agreements) providing for the franchising of solid waste activities within the unincorporated areas of Contra Costa County unless memoranda of understanding (MOUs) are entered into by the current franchisors and the County. Further, the County has prepared the SRRE and HHWE for the unincorporated areas of the County.

G. The District is authorized and empowered by State of California Community Services District Law, Sections 61000, et seq. of the California Government Code, to collect and dispose of waste and garbage. The District currently is a party to a franchise agreement pursuant to which solid waste collection and disposal has been provided since 1981 by Bay View Refuse Service, Inc.

H. The District and County wish to enter into a MOU for the purpose of meeting the mandates of the ACT with regard to the unincorporated territory of the County within the jurisdictional boundaries of the District, and further coordinate with each other to facilitate the County's achievement of the countywide goals pursuant to the ACT.

NOW, THEREFORE, the County and the District enter into this MOU to define their respective roles and responsibilities regarding the provision of solid waste collection service within the boundaries of the District.

ARTICLE 1: PURPOSE OF THE MOU

1.1 General. The purpose and intent of this MOU is to provide a representative, economical and effective means by which the unincorporated areas of the County may achieve the waste reduction goals set forth in the ACT and to meet the requirements of County Ordinance Code Chapter 418-7.

ARTICLE 2: FRANCHISE, ACT AND OTHER SOLID WASTE REQUIREMENTS

2.1 SRRE and HHWE The ACT mandates that the County prepare and adopt a SRRE and a HHWE for the unincorporated portion of the County, which elements are included as parts of the Countywide Integrated Waste Management Plan for Contra Costa County. The County, prior to the effective date of this MOU, has prepared the SRRE and HHWE for the unincorporated areas of the County, which have been approved by the California Integrated Waste Management Board. The County intends to continue to implement the programs in the HHWE and SRRE, as amended from time

to time, as required by State law in the unincorporated area of the County, including the Kensington area.

2.2 FRANCHISE. The District will concurrently enter into a franchise agreement with Bay View Refuse and Recycling Services Inc. ("Bay View") for the provision of solid waste services in Kensington. Attached as Exhibit A to this MOU is the franchise agreement executed by the District and Bay View Refuse and Recycling Services, Inc. ("Bay View"), dated as of September 1, 1997. County acknowledges that the attached franchise agreement adequately provides for County's ability to implement programs as required by the Act, and to meet the goals and other mandates of the Act and/or any other law regarding solid waste management and/or recycling as may be adopted from time to time.

2.3 COUNTY PROGRAMS.

2.3.1 Pursuant to the SRRE, the County is responsible for setting up programs in all parts of the County. Initially, as part of that responsibility the County will provide Source Reduction and Recycling programs to individual communities, (such as compost workshops) as well as the coordination for countywide programs (such as variable can rates, mini-can rates, source reduction programs [i.e.: Shop Smart], commercial recycling programs, collection programs for reusable items, develop full scale recycling programs for both single family and multifamily residential and commercial developments). The County shall work with the District in establishing such programs in the Kensington area. The District and County shall cooperate in the implementation of such programs, as appropriate.

2.3.2 Prior to making any changes to these programs which the County is aware may significantly affect the District's jurisdictional area, the County shall notify the District of the proposed change and provide an opportunity to comment on said proposal. To the extent practically possible, the County shall integrate the District's comments into any significant program change prior to its implementation.

2.4 COORDINATING COMMITTEE. The District shall form 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. The purposes of the coordinating committee are to facilitate communications between the County, the District and Bay View and to assist in developing source reduction and recycling programs in a cost effective manner.

2.5 DATA COLLECTION.

2.5.1 Pursuant to the Act, the County is responsible for: reporting disposal, recycling and program information to the State on a regular basis; tracking all waste originating within the County and waste deposited in County landfills; reporting the amounts to all Cities and Counties and to the State for purpose of determining overall compliance with the waste diversion goal of 50% by 2000; and for reporting to the state the amounts of various materials recycled and waste reduction programs instituted in the unincorporated County. The District agrees to implement such uniform monitoring, reporting and data collection methodologies as established by the County from time to time in response to State requirements. The District shall provide information to the County in the computerized or noncomputerized form (including format) as requested by County, in a timely manner.

2.5.2 Initially, the District General Manager shall provide complete recycling reports on at least a quarterly basis. The first quarterly report shall be submitted by November 15, 1997, 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. The first Annual Report is due February 15, 1998 for 1997 and then each year thereafter on the same schedule. The District shall be responsible for obtaining reports from Bay View that provide a breakdown by material/tonnage, and sales price and buyer of all materials recycled, and of the amount of solid waste and green waste disposed and at what location for the Kensington community. The scheduling of reports may be modified by the County. The reports shall initially be provided in the format shown in Exhibit B.

2.5.3 The District shall provide to the County the following information in a timely manner:

- a) copy of rate application from contractor;
- b) copy of District's notification to contractor of rate decrease;
- c) copy of contractor's written notice of CPI rate change;
- d) notification of any rate change approved by the District, including CPI change or rate reduction;
- e) draft customer satisfaction survey, for review and approval;
- f) copy of survey results;

- g) copy of draft annual customer information, for review and approval;
- h) final copy of annual customer information;
- i) draft recycling promotional information, for review and approval;
- j) final copy of recycling promotional information;
- k) copy of Bay View records regarding number of customers and type of service;
- l) 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;
- m) copy of request by contractor for authority not to collect materials for which there is no adequate market for review and approval;
- n) copy of any written notice of breach sent by the District to the contractor; and
- o) copy of any proposed or approved amendment or modification of the Franchise Agreement.

The County shall have thirty days to review e), g), and i), and require reasonable modifications to the drafts. The County shall have thirty (30) days to respond to requests submitted under subparagraph l). If the District does not receive a response within thirty (30) days, it may assume that drafts are approved as submitted and that a request submitted under subparagraph l) is approved.

2.6 PUBLIC INFORMATION. The District shall provide a means for the County to disseminate information to individual customers relating to the SRRE and/or HHWE. If dissemination of information will be through customer billings, the District shall inform the County of applicable deadlines for including information with customer billings. Customers shall be kept informed regarding program implementation and goals, and their progress toward meeting those goals. In addition, the District will arrange for distribution to individual customers of other materials provided by the County related to environmental programs at no cost to the County other than direct costs such as incremental postage. Promotional material generated by the District or Bay View relating to recycling, reuse etc. shall be submitted to County for review and approval prior to distribution to assure compatibility with County source reduction and recycling efforts which review shall be completed in 30 days. District shall provide County with copies of all solid waste or recycling surveys and public information provided to Kensington residents by Bay View or by the District.

2.7 DISTRICT PROGRAMS.

2.7.1 The District will implement "reduce, reuse and recycle" programs described in the County SRRE, as amended from time to time, in a manner sufficient to achieve a reduction in the amount of solid waste originating in the District area, which is landfilled, comparable to the amount of reduction that is required in similar residential areas in the unincorporated area of the County, to meet the requirements of the Act.

2.7.2 The District shall design and modify programs and/or rate structures as needed to meet the overall SRRE goals. Specifically, the District will implement each of the selected programs contained in the source reduction component, the recycling component, and the composting component of the SRRE, as amended from time to time, which are identified as programs to be implemented by franchisor agencies and/or haulers. The District will provide local publicity and generate local interest in solid waste and recycling 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. The District shall notify the County of the implementation or reduction or elimination of any "reduce, reuse, recycle" programs required for the implementation of the SRRE.

2.7.3 If the County considers the 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 in the SRRE) it may bring the matter to the attention of the Coordinating Committee. If, thereafter, the County continues to consider the District's implementation to be inadequate it may notify the District in writing, specifying the deficiency and proposing specific changes. If the District does not implement the changes in a reasonable time, the County may independently arrange for the implementation of such program changes and may require the District to pay the costs thereof.

2.8 HOUSEHOLD HAZARDOUS WASTE PROGRAM. District shall be responsible for its pro rata share of costs incurred by the 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 District's share of HHWE costs for each year, based on estimates from County. The amount of District's share for FY1996-97 was approximately \$4,000, which has been paid. County will bill Bay View directly, and Bay View will pay County directly. County will provide District the amount of its share for FY 1997-98, together with a statement of how that share was calculated, no later than April 15, 1998, and will continue to do so by April 15 of succeeding years.

2.9 FRANCHISE FEES. The District shall include in the rates charged by Bay View, a Franchise Fee in an amount determined by the County, to pay for County expenses and costs incurred in implementing the SRRE, as amended from time to time, and other solid waste management costs incurred in connection with solid waste management, 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 the County's costs of administering solid waste programs, including costs of implementing the SRRE, 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 programs, including costs of implementing the SRRE decreases, the District may request a decrease in the franchise fee. The District shall have no duty to defend the County in any suit challenging the County's franchise fee.

2.10 INITIAL PROGRAM IMPLEMENTATION

2.10.1 REUSE PROGRAM: The District and County shall work together with Bay View to design a pilot reusables pick-up program. The program may include pickup of reusables by either a non-profit or a for-profit organization. (e.g. Goodwill or Urban Ore).

2.10.2 METHOD OF RECYCLING: The District shall consult with Bay View and the County to determine the most cost effective method of accomplishing the required recycling. Possible methods include:

- a) picking up at curbside, different materials on different days,
- b) allow for mixed curbside pickup to be sorted at a transfer station or central sorting area,
- c) designated containers for each material to be picked up at curbside,
- d) local neighborhood drop off sites for some materials.

2.10.3 SOURCE REDUCTION AND RECYCLING ELEMENT (SRRE):
The District shall work with Bay View to provide for the following SRRE requirements:

- a) After a survey to determine the level of interest, set mini-can and variable can rates, and establish a variable can rate structure and provide for mini-can service by July 1, 1999.
- b) Collection of cardboard, mixed paper and other items required by Chapter 418-10 shall begin in January 1998.

c) Monthly collection of green waste beginning in January 1998.

2.11 FREE SERVICE FOR COUNTY. District shall provide Solid Waste collection and disposal services at those County buildings within the Franchise Area (currently, the Library) designated by the Director of Community Development from time to time, at no charge to the County.

2.12 COUNTY AUTHORITY, DISCRETION.

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

2.12.2 The District franchise with Bay View provides for District/County control over the location at which solid waste is disposed. The 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) The 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 the County, and so advises the District, and other agencies in the County using such landfill, in writing;

b) The 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 wastestream are lower than those then paid by the District at the landfill it is using;

c) The County determines that the solid waste diversion goal required by the Act will not be met in the unincorporated area of the County, has made a diligent effort to implement the SRRE programs which are the responsibility of the 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.

2.12.3 If the County determines that it is necessary for proper implementation of SRRE programs, the County may direct the 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. The County will not exercise its discretion, as described in this paragraph, unless it has or will also direct all similarly situated recyclable materials collected in other County franchised areas.

ARTICLE 3: TERM AND TERMINATION

3.1 TERM. The term of this MOU is for 19 years, subject to termination as provided herein.

3.2 INCORPORATION, ANNEXATION. Upon the annexation to a municipal corporation or the incorporation of any of the territory covered by this MOU, as to said territory, this MOU shall be terminated as provided by law, upon the effective date of the municipal corporation's determination to franchise or otherwise regulate solid waste and recycling in said territory.

3.3 TERMINATION OF FRANCHISE AGREEMENT. This MOU shall automatically terminate one year after the termination of the Franchise Agreement unless the District enters a new Franchise Agreement that provides for the effective implementation of the SRRE and HHWE and complies with Ordinance Code Chapter 418-7, as amended from time to time, no less effectively than as provided in Exhibit A.

ARTICLE 4: INSURANCE INDEMNITY, FINES AND ALLOCATION OF LIABILITY

4.1 INSURANCE AND INDEMNITY. Neither the County nor the District, as a condition of the execution of this 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 MOU.

4.2 ACT REQUIREMENTS. District shall indemnify the County for any fines imposed on the County by the state for failure to properly implement the County's SRRE, where the failure is partly or wholly attributable to action or inaction by the District. The District's share of any fines shall be proportionate to the District's share of responsibility for the failure. The District's share will be calculated as the ratio which the number of tons of solid waste disposed of on land that originate in the District in excess of the number of tons which could be so disposed without violating the Act bears to the number of tons of solid waste disposed of on land which originate in the unincorporated area of the County in excess of the number of tons which could be so disposed without violating the Act.

