

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # \*B-6

Urgent  Routine

AGENDA DATE May 22, 2012

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Amend the Assembly Bill 939 Memorandum of Understanding Between Stanislaus County and the City of Waterford Regarding Waste Management and Disposal Reduction

STAFF RECOMMENDATIONS:

1. Approve an amendment to the Assembly Bill 939 Memorandum of Understanding between the County of Stanislaus and the City of Waterford to extend the agreement to remain in effect until such time as the parties agree to terminate the agreement.
2. Authorize the Director of Environmental Resources, or her designee, to sign the amendment.

FISCAL IMPACT:

There is no impact to the Department of Environmental Resources' budget associated with the recommendation to extend the existing Assembly Bill 939 Memorandum of Understanding (MOU) with the City of Waterford. Funds collected from the \$3.00 per ton surcharge at the Waste-to-Energy facility that are in excess of the MOU contract amount are a straight pass-through cost to the jurisdictions that utilize the Waste-to-Energy facility. Under this agreement, the City of Waterford's Assembly Bill 939 reimbursement from the disposal fee surcharge collected at the Waste-to-Energy facility is on average about \$4,000 per year.

BOARD ACTION AS FOLLOWS:

No. 2012-241

On motion of Supervisor Monteith, Seconded by Supervisor Withrow  
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

## Approval to Amend the Assembly Bill 939 Memorandum of Understanding Between Stanislaus County and the City of Waterford Regarding Waste Management and Disposal Reduction

### DISCUSSION:

The California Integrated Waste Management Act of 1989, otherwise known as Assembly Bill (AB) 939, went into effect on January 1, 1990. AB 939 required cities and counties to reduce waste disposal by 25% by 1995 and by 50% by the year 2000. Cities and counties had to develop and implement plans on how these disposal reduction mandates would be achieved. In recognition of this unfunded mandate, the law allows jurisdictions to charge fees for solid waste planning and program implementation, as well as to fund the State-required monitoring and reporting.

Stanislaus County and its nine incorporated cities established a funding mechanism for implementation and operational costs of programs needed to achieve the AB 939 goals through a disposal fee surcharge on waste sent to the Waste-to-Energy facility (Facility). In this scenario, each jurisdiction would pay a proportional share of the cost of AB 939 program based on the solid waste tonnage sent to the Facility. In addition, the California Integrated Waste Management Board, now the Department of Resource Recycling and Recovery (CalRecycle), allows each jurisdiction delivering municipal solid waste to the Facility a 10% diversion credit towards their AB 939 diversion requirements.

In October of 1990, the Stanislaus County Board of Supervisors and the Modesto City Council, as partners in the Waste-to-Energy project, approved the disposal fee surcharge of a \$1.50 per ton for the AB 939 program. At this same time, a disposal fee surcharge of \$1.50 per ton was also approved for the Household Hazardous Waste (HHW) Program. The current disposal fee surcharge is \$3.00 per ton each for the AB 939 and HHW programs. The disposal fee surcharge was raised on August 1, 2007, due to the increased operating costs of these programs.

Shortly after the passage of the 1990 disposal fee surcharge, the County entered into Memorandum of Understanding (MOU) agreements with each of the cities to formalize the AB 939 responsibilities, reporting, accounting, and the fee the County would be paid to provide these services, along with the reimbursement of any surplus disposal surcharge fees. The AB 939 funding would be used to meet the mandates under AB 939 which included planning and implementation of recycling programs in addition to the required reporting to the State. The County established a set amount for providing the annual AB939 reporting and/or accounting services for each city, which is withheld from each city's disposal surcharge fees based on the tonnage sent to the Facility.

In the late 1990s, in subsequent amendments to the MOU agreements, contract expiration dates were removed from all but two city MOUs. Rather than having a fixed expiration date, a mutual termination clause was added which allowed either party to give a 30-day written notice to terminate the MOU agreement. This provision, however, was not elected by the City of Waterford MOU and the agreement inadvertently expired although the parties continued to execute all tasks agreed to in the original MOU agreements.

Department staff recently conferred with City of Waterford staff about extending their agreement in a manner consistent with the seven other cities; i.e., to extend the agreement to remain in effect until such time as the parties agree to terminate the agreement. On March 29, 2012, the Waterford City Council executed this recommended amendment to their MOU

**Approval to Amend the Assembly Bill 939 Memorandum of Understanding Between Stanislaus County and the City of Waterford Regarding Waste Management and Disposal Reduction**

(Attachment A) which now requires the Director of Environmental Resources' signature in order for the agreement to be fully executed. Department staff is also working with one additional city, the City of Modesto, to execute a similar amendment, and will bring this item forward for the Board's consideration in a separate agenda item.

**POLICY ISSUE:**

Approval of this agenda item to authorize the Director of Environmental Resources to amend the MOU agreement between Stanislaus County and the City of Waterford is consistent with the Board's priorities of A Safe Community, A Healthy Community, A Well Planned Infrastructure System, Effective Partnerships, and the Efficient Delivery of Public Services.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Sonya K. Harrigfeld, Director of Environmental Resources Telephone: 209-525-6770

**AMENDMENT NO. 2**  
to  
**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE CITY OF WATERFORD AND STANISLAUS COUNTY**

WHEREAS, pursuant to Public Resources Code section 40976, the COUNTY OF STANISLAUS ("County") and The CITY OF WATERFORD ("City") entered into a Memorandum of Understanding dated September 19, 1994, and Amended December 20, 1999, regarding the use and distribution of funds from the AB-939, Source Reduction and Recycling Account (the "Account"), hereafter the "AB-939 MOU"; and

WHEREAS, the City and the County desire to amend the AB-939 MOU retroactive from the date of expiration to provide for the continuance of the existing MOU.

NOW, THEREFORE, the County and the City hereby amend the AB-939 MOU as follows:

Paragraph B of Section IV of AB-939 MOU is amended to read as follows:

"This MOU will remain in effect until such time as the parties agree to terminate the MOU, effective upon 30 days written notice to the other party."

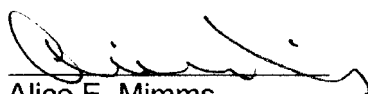
IN WITNESS WHEREOF, the parties have executed this Agreement of the AB 939 MOU in duplicate on this 29 day of MARCH, 2012

COUNTY OF STANISLAUS

By \_\_\_\_\_  
Sonya K. Harrigfeld, Director  
Department of Environmental Resources

"County"

APPROVED AS TO FORM:  
JOHN P. DOERING  
COUNTY COUNSEL

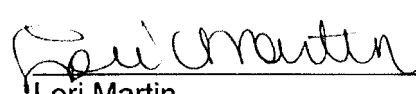
By   
Alice E. Mimms  
Deputy County Counsel

CITY OF WATERFORD

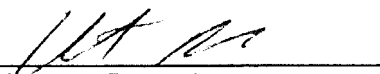
By   
Tim Ogden  
City Manager

"City"

ATTEST:  
LORI MARTIN  
CITY CLERK

  
Lori Martin  
City Clerk

APPROVED AS TO FORM:  
CITY ATTORNEY

  
Corbett Browning  
City Attorney

# MEMORANDUM OF UNDERSTANDING

Between the City of Waterford and Stanislaus County  
Use and Distribution of Funds  
AB 939 - Source Reduction & Recycling Account  
(Index #401000)

## I. PURPOSE AND SCOPE

This Memorandum of Understanding (MOU) is entered into between the County of Stanislaus, Department of Environmental Resources (hereinafter referred to as the "County") and the city of Waterford (hereinafter referred to as the "City") to ensure cooperation and coordination in the use and distribution of funds from the AB 939 - Source Reduction & Recycling Account (hereinafter known as the "Account"). The purpose of the MOU is to provide a specific set of operating guidelines designed to ensure that the limited funds in the Account are utilized in the most effective way to help achieve the waste reduction and diversion goals specified in AB 939 - The Integrated Waste Management Act of 1989.

## II. BACKGROUND

- A. The Integrated Waste Management Act of 1989 requires each city and county in California to develop plans and implement programs to reduce the amount of solid waste that must be sent to disposal facilities. The City's documents, along with the planning documents from each of the other cities and the County, will be combined to complete the Countywide Integrated Waste Management Plan (CoIWMP).
- B. In 1990 the City agreed to support a surtax of \$1.50 per ton on the solid waste delivered to the Stanislaus Resource Recovery Facility. The revenue from the surtax was to be used to help pay for the preparation of all the required planning documents.
- C. The City, along with the eight other incorporated cities and the County, mutually agreed to have the County prepare the initial planning documents (Source Reduction and Recycling Elements - SRREs) for each of the jurisdictions. A budget of \$309,693 was developed and approved to pay for the County's costs in preparing the ten (10) SRREs.
- D. AB 2707 (LaFollette) mandated each city and county to create a second jurisdiction-specific document: The Household Hazardous Waste Element (HHWE). The County agreed to prepare the ten (10) HHWEs under the original agreement and budget.

- E. AB 3001 (Cortese) mandated each city and county to create a third jurisdiction-specific document: The Non-Disposal Facility Element (NDFE)
- F. The revenue from the surtax has been accruing in the Account since October 1990 and the unencumbered balance was \$1,372,131.55 as of June 30, 1994. Of this amount, the City of Waterford's remaining balance is \$15,093.45, as shown in Exhibit 1.

### III. GENERAL PROVISIONS OF THIS MOU

- A. The County and the City mutually agree that both past and future revenue to the Account shall be apportioned to all ten (10) jurisdictions based on the tonnage that the jurisdiction delivered to the waste-to-energy facility. The estimate of the tonnage shall be revised at least once a year, and shall be based on the most current data available to the County.
- B. The County agrees to prepare the mandated NDFE's for nine of the ten jurisdictions in Stanislaus County at a total cost not to exceed \$27,529. The City agrees to allocate \$468 from their portion of the Account for the completion of these documents.
- C. For the CoIWMP to be complete, the county and the nine cities must prepare two other documents: The Countywide Siting Element and The Summary Plan. The County agrees to prepare these documents at a total cost not to exceed \$67,280. The City agrees to allocate \$740 from their portion of the Account for the completion of these documents.
- D. The County and the City recognize the long term benefit of sharing information and pooling staff resources whenever possible to help all ten jurisdictions successfully meet the mandated goals specified by AB 939. To that end, the City agrees to annually allocate no less than \$4,400 from their portion of the Account to the County through the term of this MOU. The amount of the annual allocation may be increased upon mutual consent of the City and the County.

- E. The County and the City agree to meet at least once a year to plan, discuss and mutually confirm how the funds allocated in section III, D will be utilized in the following twelve (12) months.
- F. If the City allocates funds from the Account per section III D, the County will provide an annual report documenting the cost of all services and materials provided to the City during the previous twelve (12) months.
- G. The City's portion of the Account, not allocated to the County, shall be disbursed to the City upon execution of this MOU and on a quarterly basis, as accrued, thereafter. Pursuant to PRC Section 41901, the City affirms that these funds shall be used only for those costs directly related to the preparation, adoption, and implementation of the City's AB 939 Plan and any amendments to the Act.
- H. The County and the City recognize that future legislation and regulations may require additional "countywide" and/or "regional" responses to State law. In those cases where both parties concur in writing that the "County" is required by the State to meet "countywide" or "regional" mandates, the City agrees to pay its proportional share of the effort. The City may use funds from their portion of the Account or from other funds, at their discretion, to pay those costs. If both parties do not concur, they shall request third party arbitration from appropriate staff and/or counsel at the California Integrated Waste Management Board. Where possible, the County will keep the City informed in advance of potential new State requirements, and the anticipated impact on the Account.

IV. TERM

- A. This MOU shall become effective upon signature by both parties.
- B. This MOU will remain in effect until January 1, 2000 and may be extended by mutual agreement.
- C. This MOU may be terminated by mutual agreement at any time by the parties hereto or upon the express written notice of one party to the other expressly stating termination of this agreement. For such notice of termination to be effective the terminating party must serve said notice on the nonterminating party at least six calendar months prior to the effective date of termination and the notice must set forth a specific date of termination. It is not necessary for the notice contemplated herein to specify any grounds for said termination and nothing in this paragraph shall preclude the termination of this agreement by mutual agreement on shorter notice.

  
\_\_\_\_\_  
STANISLAUS COUNTY

GORDON M. DEWERS, DIRECTOR  
DEPARTMENT OF ENVIRONMENTAL  
RESOURCES

8-26-94  
DATE

  
\_\_\_\_\_  
CITY OF WATERFORD

LESLIE J. CRIST, CITY ADMINISTRATOR  
\_\_\_\_\_  
TITLE

SEPT. 19, 1994  
DATE

A:WATERFORD.MOU



# EXHIBIT 1

## AB 939 SOURCE REDUCTION & RECYCLING ACCOUNT

### Revenue:

FY 90/91	=	\$296,388.00
FY 91/92	=	428,621.59
FY 92/93	=	436,876.83
FY 93/94	=	519,938.13
<hr/>		
TOTAL	=	\$1,681,824.55

### Expenditures:

Budgeted for the production of the SRREs and HHWEs

Total = \$309,693.00

### Account Balance & Estimated Annual Revenue:

<u>Jurisdiction</u>	<u>Percentage</u>	<u>Balance</u>	<u>Annual Revenue</u>
Ceres	7.1	97,421.34	28,400
County	28.7	393,801.75	115,600
Hughson	0.8	10,977.05	3,200
Modesto	38.7	531,014.91	154,800
Newman	1.5	20,581.97	6,000
Oakdale	3.7	50,768.87	14,800
Patterson	2.7	37,047.55	10,800
Riverbank	2.4	32,931.16	9,600
Turlock	13.3	182,493.50	53,200
Waterford	1.1	15,093.45	4,400

A: EXHIBIT1

WATERFORD CITY COUNCIL

RESOLUTION 99-74

RESOLUTION APPROVING AMENDMENT NO. 1 TO MEMORANDUM  
OF UNDERSTANDING BETWEEN THE COUNTY OF STANISLAUS  
AND CITY OF WATERFORD RELATING TO ADMINISTERING  
SOLID WASTE PROGRAM

WHEREAS, the City of Waterford and the County of Stanislaus entered into a Memorandum of Understanding (hereinafter "MOU") on September 19, 1994 to ensure cooperation and coordination in the use and distribution of funds from the AB939- Source Reduction & Recycling, and

WHEREAS, the City of Waterford wishes to amend the MOU as stated in the Amendment attached hereto as Exhibit "A", with the County of Stanislaus;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATERFORD DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council does hereby approve the Amendment with Stanislaus County and authorizes the Mayor of the City of Waterford to execute on their behalf;

The foregoing Resolution was passed and adopted by the City Council of the City of Waterford, County of Stanislaus, State of California, at a regular meeting thereof held on the 20<sup>th</sup> day of December, 1999, by the following vote:

AYES: TURNER, RORABAUGH, BURNS, BISHOP, KRAUSE  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE

CITY OF WATERFORD

  
CHARLES TURNER, Mayor

APPROVED AS TO FORM:

  
WILLIAM E. GNASS,  
City Attorney

ATTEST:

  
TRACEY JONES,  
Deputy City Clerk

AMENDMENT NO. 1  
to  
MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF WATERFORD AND STANISLAUS COUNTY

WHEREAS, pursuant to Public Resources Code section 40976, the COUNTY OF STANISLAUS ("County") and the CITY OF WATERFORD ("City") entered into a Memorandum of Understanding dated August 26, 1994, regarding the use and distribution of funds from the AB-939, Source Reduction and Recycling Account (the "Account"), hereafter the "AB-939 MOU"; and

WHEREAS, Paragraph D of Section III of the AB-939 MOU provides that the County and the City recognize the long-term benefit of sharing information and pooling staff resources whenever possible to help all ten jurisdictions successfully meet the mandated goals specified by AB 939, including, but not limited to, the requirement to divert 50 percent of all solid waste by January 1, 2000 (Public Resources Code, §41780(a)(2)); and

WHEREAS, California Code of Regulations (CCR) Section 18813(c) requires, among other things, that "A jurisdiction shall also determine the tons of solid waste disposed from January 1, 2000, to December 31, 2000. A jurisdiction shall use this disposal amount for the purposes of measuring achievement of the 50% goal;" and

WHEREAS, CCR Section 18794(e) requires, among other things, that "Jurisdictions shall submit subsequent annual reports every August 1, thereafter, that address all of a jurisdiction's Planning Documents...;" and

WHEREAS, the City and the County desire to amend the AB-939 MOU to provide for payment of the City's proportional share of the cost of services provided by the County pursuant to the Act, including but not limited to Disposal-Based Reporting and preparation of the Annual Report; and

NOW, THEREFORE, the County and the City hereby amend the AB-939 MOU as follows:

1. Paragraph D of Section III is amended to read as follows:

"D. The County and the City recognize the long term benefit of sharing information and pooling staff resources whenever possible to help all ten jurisdictions successfully meet the mandates of AB-939. To this end, the City agrees that for the remainder of the term of this MOU, the City shall annually allocate funds from its portion of the Account not to exceed the amount(s) set forth in Exhibit A, attached hereto and, by this

reference, made a part hereof, which funds shall compensate the County for performing the services described in Exhibit A. The services provided by the County and the amount allocated for each service, as listed in Exhibit A, may be modified from time-to-time upon the mutual written consent of the parties."

2. Exhibit A, attached hereto, is added to the AB-939 MOU.
3. Paragraph B of section IV of the AB-939 MOU is amended to read as follows:

"This MOU will remain in effect until August 1, 2001 and may be extended by mutual agreement."

4. Except as modified herein, the remainder of said Agreement entered into on September 19, 1994 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the AB-939 MOU in duplicate on this 20TH day of DECEMBER, 1999.

COUNTY OF STANISLAUS

By Gordon Dewers  
Gordon Dewers, Director  
Department of Environmental  
Resources

"County"

APPROVED AS TO FORM:  
MICHAEL H. KRAUSNICK  
COUNTY COUNSEL

By John P. Doering  
John P. Doering  
Deputy County Counsel

CITY OF WATERFORD

By Charles E. Deschenes  
Charles Deschenes  
City Administrator

"City"

ATTEST:

CITY CLERK

Frank Jones

APPROVED AS TO FORM:

CITY ATTORNEY

[Signature]

EXHIBIT A

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF WATERFORD AND STANISLAUS COUNTY  
RE USE AND DISTRIBUTION OF FUNDS  
(AB-939 SOURCE REDUCTION AND RECYCLING ACCOUNT)

SCHEDULE OF SERVICES & COMPENSATION AMOUNTS

DECEMBER 20, \_\_\_\_\_, 1999

AMOUNT OF  
ANNUAL ALLOCATION

DESCRIPTION OF SERVICE

1. \$4,400.00

AB-939 Plan Implementation

**AMENDMENT NO. 2**  
to  
**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE CITY OF WATERFORD AND STANISLAUS COUNTY**

WHEREAS, pursuant to Public Resources Code section 40976, the COUNTY OF STANISLAUS ("County") and The CITY OF WATERFORD ("City") entered into a Memorandum of Understanding dated September 19, 1994, and Amended December 20, 1999, regarding the use and distribution of funds from the AB-939, Source Reduction and Recycling Account (the "Account"), hereafter the "AB-939 MOU"; and

WHEREAS, the City and the County desire to amend the AB-939 MOU retroactive from the date of expiration to provide for the continuance of the existing MOU.

NOW, THEREFORE, the County and the City hereby amend the AB-939 MOU as follows:

Paragraph B of Section IV of AB-939 MOU is amended to read as follows:

"This MOU will remain in effect until such time as the parties agree to terminate the MOU, effective upon 30 days written notice to the other party."

IN WITNESS WHEREOF, the parties have executed this Agreement of the AB 939 MOU in duplicate on this 29 day of MARCH, 2012

COUNTY OF STANISLAUS

By \_\_\_\_\_  
Sonya K. Harrigfeld, Director  
Department of Environmental Resources

"County"

APPROVED AS TO FORM:  
JOHN P. DOERING  
COUNTY COUNSEL

By \_\_\_\_\_  
Alice E. Mimms  
Deputy County Counsel

CITY OF WATERFORD

By \_\_\_\_\_  
Tim Ogden  
City Manager

"City"

ATTEST:  
LORI MARTIN  
CITY CLERK

\_\_\_\_\_  
Lori Martin  
City Clerk

APPROVED AS TO FORM:  
CITY ATTORNEY

\_\_\_\_\_  
Corbett Browning  
City Attorney

ATTACHMENT A