

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

DEPT: Environmental Resources

BOARD AGENDA # *B-8

Urgent

Routine

AGENDA DATE July 29, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Authorization to Extend the Termination Date of the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services to September 30, 2014

STAFF RECOMMENDATIONS:

1. Extend the termination date from August 12, 2014 to September 30, 2014 to allow for the negotiation of a new "Memorandum of Understanding" between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services.
2. Direct the Director of Environmental Resources to provide notice to the City of Turlock of the extension of the termination date to September 30, 2014.

FISCAL IMPACT:

The extension of the Memorandum of Understanding (MOU) with the City of Turlock will allow for the continued collection of the tipping fee at the Waste-to-Energy facility to fund Assembly Bill 939 waste reduction and recycling program services. The annual revenue from the MOU is \$28,200 for the City of Turlock.

BOARD ACTION AS FOLLOWS:

No. 2014-401

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

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

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. C-5-E-16

Authorization to Extend the Termination Date of the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services to September 30, 2014

DISCUSSION:

On February 11, 2014 the Board of Supervisors approved termination of the Memorandum of Understanding (MOU) between the City of Turlock and Stanislaus County (County), for Assembly Bill 939 Waste Reduction and Recycling Program services to be effective August 12, 2014. Section IV of the MOU (Attachment A) states that for the 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 the specific date of termination. The original notice sent to the City of Turlock (Attachment B) provided a 6 month termination notice with an effective date of August 12, 2014. The Department is requesting the termination date be extended beyond the 6 month minimum notice in order to allow additional time to negotiate a new MOU with the City of Turlock, which has agreed in principle to resume sending all their waste to our landfill and Waste-to-Energy (WTE) facilities.

The reason for the termination goes back to the intended purpose of the MOU with the City of Turlock. In 1989 legislation known as the California Integrated Waste Management Act, otherwise known as Assembly Bill (AB) 939 became law. AB 939 brought about significant new mandates for cities and counties, requiring that they reduce the amount of waste disposed at landfills by 25% no later than 1995 and by 50% no later than 2000, but also provided 10% credit for WTE transformation toward the 50% mandate. 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.

To fund these mandates, Stanislaus County negotiated MOUs with its nine incorporated cities to establish a funding mechanism through a disposal fee surcharge on waste sent to the WTE facility. In this agreement, each jurisdiction would pay a proportional share of the cost of AB 939 programs based on the solid waste tonnage sent to the WTE facility.

On July 9, 2013, the Turlock City Council unanimously approved sending 90% of the City's municipal solid waste (MSW) to Merced County beginning July 15th while they entered into a 120-day contract negotiation period. The diverting of waste from the WTE facility to Merced County's landfill has created a shortfall in revenue from the WTE tipping fees, and no longer covered expenses for the AB 939 program services for the City of Turlock. In addition, it also significantly reduced funding for the Household Hazardous Waste (HHW) program services to the point where services would also have to be terminated.

Since the July 9th council meeting, the City of Turlock and the County have reached a tentative agreement pending the negotiation of a new ten-year agreement. With the impending termination date on August 12th, Department staff consulted with County Counsel, and determined the date of termination could be extended by amending the date in the original notification letter and notifying the City of the new extended date. The extension is needed to continue negotiations with all the MOU cities, which include the cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock, and Waterford. The Department is currently meeting with all MOU cities to expedite the negotiation process. At this time the Department is requesting the Board's authorization to extend the termination date to the existing MOU with

Authorization to Extend the Termination Date of the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services to September 30, 2014

the City of Turlock from August 12, 2014 to September 30, 2014 to allow adequate time to reach agreement with all member cities of the Regional Agency.

POLICY ISSUE:

Approval of this item to extend the MOU agreement with the City of Turlock is consistent with the Board's priority of the Efficient Delivery of Public Services by allowing additional time to negotiate a new ten-year agreement.

STAFFING IMPACTS:

Staff from the Department of Environmental Resources and Chief Executive Office are currently negotiating new agreements with the cities.

CONTACT PERSON:

Jami Aggers, Director of Environmental Resources

Telephone: 209-525-6770

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

WHEREAS, pursuant to Public Resources Code section 40976, the COUNTY OF STANISLAUS ("County") and the CITY OF TURLOCK ("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 for 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 such time as the parties agree to terminate them, which can be done by 30 days written notice."

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the AB-939 MOU in duplicate on this 30th day of December, 1999.

COUNTY OF STANISLAUS
By Gordon Dewers
Gordon Dewers, Director
Department of Environmental Resources

"County"

CITY OF TURLOCK
By Steven Kyte
Steven Kyte
City Manager

"City"

APPROVED AS TO FORM:
MICHAEL H. KRAUSNICK
COUNTY COUNSEL

ATTEST:
CITY CLERK

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

Chonda Meece
APPROVED AS TO FORM:
CITY ATTORNEY

RWB

EXHIBIT A

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

SCHEDULE OF SERVICES & COMPENSATION AMOUNTS

December, 1999

<u>AMOUNT OF</u> <u>ANNUAL ALLOCATION</u>	<u>DESCRIPTION OF SERVICE</u>
1. \$28,200.00	AB-939 Plan Implementation

MEMORANDUM OF UNDERSTANDING

Between the City of Turlock 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 Turlock (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 Turlock's remaining balance is \$182,493.50, 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 \$5,946 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 \$8,948 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 \$28,200 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 TURLOCK



CURT ANDRE, MAYOR
TITLE

10-20-94
DATE

A:TURLOCK.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

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

A RESOLUTION BEFORE THE CITY)
COUNCIL OF THE CITY OF TURLOCK)
IN THE MATTER OF APPROVING THE)
USE OF AB 939 SPECIAL REVENUE)
FUND FOR THE IMPLEMENTATION OF)
SOLID WASTE MANAGEMENT
PROGRAMS)

RESOLUTION NO. 93-213

WHEREAS, in September 1990, the City Council passed Resolution No. 90-241 in support of Stanislaus County establishing a fund to finance activities to assist the City of Turlock in complying with the Solid Waste Management Act of 1989,

WHEREAS, this fund (AB 939 Special Revenue Fund) has approximately \$100,000. The City of Turlock may request money from this fund provided the intended use of these monies is for solid waste activities.

WHEREAS, this money would be used to partially defray the salary costs of those of the City's Conservationist/Solid Waste Coordinator and implement solid waste programs.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby authorize the City of Turlock to request allocations from the AB 939 Special Revenue Fund.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 28th day of September, 1993, by the following roll call vote:

AYES: Councilmembers Ratto, Lazar, Palmberg, Hillberg and Mayor Andre

NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:
LINDA K. LEITAKER, CMC, City Clerk,
City of Turlock, County of
Stanislaus, State of California


By Rhonda Greenlee, Deputy City Clerk



DEPARTMENT OF ENVIRONMENTAL RESOURCES
Administration

Jami Aggers
Director

3800 Cornucopia Way, Suite C, Modesto, CA 95358-9494
Phone: 209.525.6770 Fax: 209.525.6773

February 11, 2014

Roy Wasden, City Manager
City of Turlock
156 S. Broadway, Suite 270
Turlock, A 95380

RE: Termination of Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program

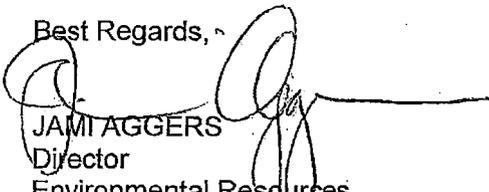
Dear Mr. Wasden:

On this date, February 11, 2014, and with the authorization of the Stanislaus County Board of Supervisors (Agenda item B-2 [2014-55]), the Department of Environmental Resources is exercising the right to terminate the "Memorandum of Understanding between the City of Turlock and Stanislaus County Use and Distribution of Funds Assembly Bill 939 Source Reduction and Recycling Account", effective August 12, 2014.

Section IV, paragraph c. states, "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".

If you have any questions, please feel free to contact me at (209) 525-6770.

Best Regards,


JAMI AGGERS
Director
Environmental Resources

ATTACHMENT B
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