



## CITY OF MARTINEZ

## CITY COUNCIL AGENDA

May 4, 2011

**TO:** Mayor and City Council  
**FROM:** Michael Chandler, Senior Management Analyst  
**SUBJECT:** Solid Waste and Residential Recycling Franchise Extensions  
**DATE:** April 27, 2011

### **RECOMMENDATION:**

Conduct a public hearing to consider the following:

- A. Resolution authorizing the City Manager to execute ten-year extensions to the franchise agreements between the City of Martinez and Allied Waste Systems, Inc., d.b.a. Pleasant Hill Bayshore Disposal, for Solid Waste and Residential Recycling Services; and
- B. Resolution approving the March 2011 Rate Setting Process and Methodology Manual for Solid Waste Charges.

Staff met with the Solid Waste Ad Hoc Subcommittee on April 21, 2011, to review the final terms of the extensions and the Subcommittee recommended forwarding to Council for approval.

### **BACKGROUND**

The City's current franchise agreements for refuse and residential recycling commenced on January 5, 2005, and are due to expire on January 5, 2013. Given the scope and complexity of the franchise agreements, it is best practice for public agencies to begin negotiating franchise extension terms and conditions, or soliciting new franchise agreements via a Request for Proposal (RFP), well in advance of the existing franchise expiration dates. The RFP process requires significant expense and considerable time to evaluate proposals before selecting a hauler with which to negotiate an agreement.

The Solid Waste Ad Hoc Subcommittee met on November 3, 2009, to discuss a variety of issues, including the possibility of negotiating conditions for extensions to the existing franchise agreements. Both City staff and the Subcommittee expressed their satisfaction with Allied Waste Systems (AWS) for its consistently outstanding quality of service to residents and businesses, as well as its longstanding commitment to the Martinez community, and recommended pursuing franchise extensions. The City Council later adopted Resolution No. 019-10 on March 3, 2010, to authorize the City Manager to begin the process of extending the franchise agreements. After receiving AWS' formal request for extending the franchise agreements on April 1, 2010 (see Attachment A), the City subsequently enlisted the consulting firm NewPoint Group to assist the City with a franchise extension assessment.

NewPoint Group provided the City a preliminary draft report on September 17, 2010, that included a survey of comparable rates; a customer satisfaction survey of AWS' performance; a list of franchise extension terms and conditions agreed to in selected other jurisdictions; and a series of potential franchise extension terms and conditions for the City to consider. Over the course of the next 6 months, the City and AWS negotiated in good faith to arrive at a series of terms and conditions that offer tremendous value to customers and the City in exchange for extending both franchise agreements by 10 years. A complete copy of NewPoint Group's Final Report, dated March 11, 2011, is included as Attachment B. A summary of the City's recommended franchise extension terms and conditions is included as Attachment C.

The following is a brief recap of the new negotiated franchise terms and conditions to illustrate some of the key benefits to customers and the City of Martinez:

- ***Rate Stability*** – AWS agrees to freeze all refuse and recycling collection rates for calendar 2012, and simplify the calculation for interim year rate increases to equal 90% of the area Consumer Price Index (CPI), with a cap (maximum) of 4% in any one interim year, barring any extraordinary rate adjustments (for point of reference, only one such extraordinary rate adjustment was awarded in the prior 11 year period).
- ***Expanded Special Pickups*** – AWS currently provides 4 special pickups per year for single family unit residents, 2 for recycling/yardwaste, and 2 for refuse (with up to 2 cubic yards allowable). AWS agrees to provide residential customers with a total of 9 free special pickups each year, representing a better service level than is currently provided to residents in other neighboring local jurisdictions. These pickups will include four recycling/yardwaste collections (which will now include household battery, cellular telephone, and compact fluorescent light bulb recycling); two refuse collections (with up to three cubic yards allowable); two “bulky item” collections (such as mattresses, furniture, or appliances); and one pre-scheduled “spring cleanup” day. Furthermore, an additional benefit for multi-family unit residents was negotiated in April 2011 whereby multi-family complexes will receive three (3) special pickups each year, two (2) for refuse and one (1) for recycling. The new and/or expanded pickups will be effective as of July 1, 2011.
- ***Additional Recycling and Yardwaste Carts at No Charge*** – AWS agrees to provide single family unit residents an additional recycling and/or yardwaste cart at no charge upon request. This provision, in conjunction with the expanded special pickups, will in particular provide a substantial accommodation to those few customers who expressed interest in weekly (instead of bi-weekly) yardwaste collection.
- ***Litter and Debris Control on City Streets and Public Rights of Way*** – AWS agrees to provide, for the first time, on-demand pickup of illegally dumped items throughout the City, and to provide litter and debris pickup at selected locations identified by the City.
- ***Community Impact Payment*** – AWS agrees to provide a one-time \$500,000 “Community Impact Payment” to the City, for the purpose of providing City services related to the differential impacts from AWS collection trucks on City streets. These services would include items such as City street pavement and storm drain maintenance. The Community Impact Payment would not be cost recovered in the rate base.

- ***AB939 and Climate Action Plan Initiative Payments*** – AWS agrees to provide the City with \$25,000 annually to cover implementation of the City’s AB939 programs and Climate Action Plan initiatives.

Incorporation of the franchise extension provisions pertaining to the process of setting rates necessitates an update to the January 2000 Rate Setting Process and Methodology Manual for Solid Waste Charges, or “Rate Manual.” As a result, NewPoint Group assisted the City to prepare an updated version of the Rate Manual. This revision was submitted in March 2011 and is included as Exhibit D to the franchise agreements. A summary of the updates to the Rate Manual is included as Attachment D. Copies of the proposed Restated and Amended Solid Waste and Residential Recycling franchise agreements are included as Attachment E and Attachment F, respectively, with related exhibits A – E to both agreements.

**FISCAL IMPACT:**

AWS has agreed to provide the City with a one-time Community Impact Payment of \$500,000, to be paid in two equal installments of \$250,000, the first paid within 30 days of the franchise extension, and the final paid by January 31, 2012. AWS will also provide the City with annual AB 939 and Climate Action Plan support payments of \$25,000 commencing in July 2011, and including a prorated portion for the remainder of FY2010-11. The full value of both the Community Impact Payment and the AB 939/Climate Action Plan support payments over the life of the franchise is in excess of \$750,000. Both payments will be assigned to the Special Revenue Recycling Fund.

**ACTION:**

- A. Motion approving a resolution authorizing the City Manager to execute ten-year extensions to the franchise agreements between the City of Martinez and Allied Waste Systems, Inc., d.b.a. Pleasant Hill Bayshore Disposal, for Solid Waste and Residential Recycling Services; and
- B. Motion adopting a resolution approving the March 2011 Rate Setting Process and Methodology Manual for Solid Waste Charges.

**Attachments:**

Resolutions A and B

Attachment A: Allied Waste Letter of April 1, 2010

Attachment B: NewPoint Group Final Report of March 11, 2011

Attachment C: Summary of Recommended Franchise Extension Terms

Attachment D: Summary of Updates to Rate Manual

Attachment E: Solid Waste Franchise Agreement (with exhibits A – E)

Attachment F: Residential Recycling Franchise Agreement (with exhibits A – E)

Exhibit A: Franchise Area, Exhibit B: Residential Solid Waste & Recycling Services

Exhibit C: Schedule of Rates; Exhibit D: March 2011 Rate Setting Process & Methodology Manual for Solid Waste Charges; and

Exhibit E: Solid Waste & Recycling Services – City Facilities



**APPROVED BY:** City Manager

**RESOLUTION NO. -11**

**AUTHORIZING THE CITY MANAGER TO EXECUTE TEN YEAR EXTENSIONS TO THE FRANCHISE AGREEMENTS BETWEEN THE CITY OF MARTINEZ AND ALLIED WASTE SYSTEMS, INC., D.B.A. PLEASANT HILL BAYSHORE DISPOSAL, FOR SOLID WASTE AND RESIDENTIAL RECYCLING SERVICES**

**WHEREAS**, the City of Martinez entered into Restated and Amended Solid Waste and Residential Recycling franchise agreements on January 5, 2005, with Pleasant Hill Bayshore Disposal, Inc. (PHBD), for the collection, transportation, and disposal of solid waste, and the collection, transportation, and diversion of recyclables; and

**WHEREAS**, said franchise agreements are due to expire on January 5, 2013; and

**WHEREAS**, best practice dictates that franchise extensions, when desired, commence well in advance of the existing franchise expiration dates; and

**WHEREAS**, the City Council adopted Resolution No. 019-10 on March 3, 2010, to authorize the City Manager to begin the process of extending the franchise agreements; and

**WHEREAS**, PHBD submitted a formal request to the City to extend the franchise agreements by 10 years on April 1, 2010; and

**WHEREAS**, the City subsequently enlisted the services of NewPoint Group, Inc. ("NewPoint"), to conduct an assessment of the extension of the franchise agreements; and

**WHEREAS**, NewPoint's report on the process, and recommendations for enhanced or expanded service to PHBD customers and the City of Martinez in exchange for a 10-year extension to the franchise agreements, is included as Attachment B; and

**WHEREAS**, the City believes that the negotiated terms of the extension to the franchise agreements represent a high degree of service and value to residents, businesses, and the City.

**NOW, THEREFORE, BE IT RESOLVED that the** City Council of the City of Martinez hereby authorizes the City Manager to execute the restated and amended franchise agreements and related exhibits A - E between the City of Martinez and Allied Waste Systems, Inc., d.b.a. Pleasant Hill Bayshore Disposal, for Solid Waste and

Residential Recycling Services, substantially in the form attached hereto, with any non-substantive modifications subject to the review and approval of the City Manager and City Attorney.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 4<sup>th</sup> day of May, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

RESOLUTION NO. -11

APPROVING THE MARCH 2011 RATE SETTING PROCESS AND METHODOLOGY  
MANUAL FOR SOLID WASTE CHARGES

**WHEREAS**, the City of Martinez established a rate setting process for solid waste collection by adopting the January 2000 Rate Setting Process and Methodology Manual for Solid Waste Charges ("January 2000 Rate Manual"), prepared by NewPoint Group, Inc. ("NewPoint") via Resolution No. 146-99 on December 20, 1999; and

**WHEREAS**, the City has negotiated and on this date by separate resolution adopted extensions to its Solid Waste and Residential Recycling franchise agreements with Allied Waste Systems, Inc., d.b.a. Pleasant Hill Bayshore Disposal, Inc. (PHBD) dated January 5, 2005, for the collection, transportation, and disposal of solid waste, and the collection, transportation, and diversion of recyclables; and

**WHEREAS**, said extensions to the aforementioned franchise agreements include various terms and conditions which necessitate an update to the January 2000 Rate Manual; and

**WHEREAS**, NewPoint has prepared an update to the January 2000 Rate Manual entitled the March 2011 Rate Setting Process and Methodology Manual for Solid Waste Charges ("March 2011 Rate Manual"), a true and correct copy of which is attached hereto as Exhibit D to the restated and amended franchise agreements; and

**WHEREAS**, it is the desire of the City and PHBD that the March 2011 Rate Manual replace the January 2000 Rate Manual.

**NOW, THEREFORE, BE IT RESOLVED that the** City Council of the City of Martinez hereby rescinds and replaces the January 2000 Rate Setting Process and Methodology Manual for Solid Waste Charges with the attached March 2011 Rate Setting Process and Methodology Manual for Solid Waste Charges.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 4<sup>th</sup> day of May, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ



April 1, 2010

Mr. Phil Vince  
City Manager  
City of Martinez  
525 Henrietta St.  
Martinez, CA 94553

RE: Contract Extension and Implementation of New Services

Dear Mr. Vince:

Recycling and Refuse collection contracts are best served by long-term business partnerships. This is in part due to the capital intensive nature of the business, the time required to depreciate new purchases and the complexity of providing high quality service to communities such as Martinez. Allied Waste has been committed to providing the City of Martinez with leading edge innovative approaches to diversion programs and waste collection. Our intent is to continue providing the City with high quality service for years to come and we have prepared a summary of service offerings to facilitate discussions to that end.

Allied Waste Services' respectfully requests an extension of the Agreement for Collection Services between the City of Martinez and Allied Waste Services Inc. (Allied) to the year 2023. We believe that we have demonstrated high quality, consistent, reliable and on time delivery of services over the last ten years and have built productive relationships with key stakeholders in the community.

The benefits of an extension are described below as well as a proposal to augment the current service offerings.

## **BENEFITS**

### ▶ Community Partnerships

Allied Waste Services has been a strong community partner for the City of Martinez:

- Member and corporate sponsor of the Martinez Chamber of Commerce. Susan Hurl currently serves as a Board Member.
- Increase school recycling programs and helped a preschool start a composting program. Presentations to Vicente High School to improve recycling program and helped start a compost program for a graduation project.
- Staff educational booths at the King of the County BBQ and John Muir Earth Day.

- Major sponsor of Main Street Martinez.
- Tours of the Contra Costa Transfer and Recovery Station to Martinez groups such a Cub Scouts, Boy Scouts, Girl Scouts and Vicente High School
- Arrange activities for groups such as the Martinez Girl Scout Troop at the Bird Sanctuary. Discussed recycling and make notebooks out of reused paper and chip board.
- Support the Diablo Boys and Girls Club, Morello Elementary School, Coastal Cleanup, Hidden Valley Elementary School, Willows Theatre and Alhambra High School Grad Night (partial list).
- Provided pharmaceutical container for collection program for the Central Sanitary District.

► Multifamily and Commercial Outreach Activities

Allied Waste Services has contacted multifamily complexes and commercial businesses about starting or improving their recycling program:

**Multifamily Complexes:**

- Successfully implemented a mandatory multifamily recycling program with no additional charge.
- Conducts waste audits on all apartment complexes in the City of Martinez.
- Sends out letters to all apartment complexes regarding recycling.
- Sends out follow up letters to every complex that did not respond.
- Sets up recycling programs for complexes in Martinez.
- Creates flyers and information for tenants regarding new recycle programs including Jennifer Brennan, Recycle Coordinator, personally going door to door with flyers and door hangers.
- Provides indoor recycle containers for complexes to distribute to tenants.
- Sends out thank you letters to all complexes that started a recycle program.

- Provides information to complexes to give to their tenants about proper disposal of other materials like oil, HHW, lamps, batteries, sharps and pharmaceuticals.

**Commercial:**

- Conducts waste audits upon request and random waste audits based on service level.
- Sends out letters to businesses who received random waste audits with recommendations for garbage and recycle service levels.
- Sends out thank you letters to all businesses that started a recycle program.
- Provides information regarding proper disposal of materials such as oil, HHW, lamps, batteries and how to get set up as a small waste generator at the Central Sanitary District.
- Works with the Green Business program to conduct solid waste audits and promoted the program to Martinez businesses.
- Partners with Main Street Martinez and assists with educating downtown merchants about the relocation of the cardboard bin by visiting each business and providing a flyer of the changes.

▶ Absorption of Significant Regulatory and Operations Cost

Within the last two years Allied has upgraded a portion of the Martinez fleet by replacing the solid waste collection vehicles with state of the art automated vehicles at a cost of \$1MM. All vehicles (8) servicing the City of Martinez are fitted with Cummins Clearaire Filters that reduce normal diesel engine emissions (ie. nitrous oxide or NOX2) gas by 25% and particulate matter (PM) by 85% at a cost of \$15,000 per truck. Allied did not request a rate increase to comply with new regulatory requirements as allowed for in the contract. Allied also absorbed the cost of substantial increases in the price of fuel over the past several years without relief for extraordinary circumstances in the rates.

▶ Landfill Capacity

The City of Martinez will have guaranteed landfill capacity at the Keller Canyon Landfill located in Pittsburg. Other landfills in close proximity are rapidly reaching capacity so a commitment of space for Martinez is critical. This facet of our service offering will enable the City to have long term security in terms of state of the art disposal capacity, coverage of closure-post closure liability and rate predictability. Other entities whose disposal options are in question have incurred nearly 100%

increases over the past decade (Sonoma County). Our collection and post-collection assets will provide the City with surety in terms of a capacity reservation and a rate structure that is pre-determined for an extended period.

## PROGRAMS

▶ Collection of household batteries, cell phones and compact fluorescent light bulbs.

Management of household batteries, discarded cell phone and compact fluorescent light bulbs is becoming increasingly regulated by federal and state agencies. Public entities such as the City of Martinez are being asked to provide solutions for managing and re-use of these waste streams without much guidance or funding from the state. Allied Waste Services proposes to assist the City with means by which these items do not find their way into landfills and provide a convenient way for residents and businesses to re-use them.

Allied Waste Services will assist the City with outreach that supports the correct way to manage these items. Customers will be notified they can put out sealed bags of these items during either their on call or solid waste cleanup. Our drivers will deposit each bag at the point of collection into a special handling container on the side of each vehicle. There will be a limit on the number (1 quart bag) collected per pick up.

▶ Weekly Yard Waste Collection

Currently, the City of Martinez has biweekly yard waste collection. To maximize diversion, Allied Waste Services will provide weekly yard waste collection for a fee. Cities with weekly recycle programs have a higher pound per set out than cities that have biweekly service. For the month of February 2010 with an estimated participation rate of 80%, the City of Clayton had 38.1 lbs/set out and the City of Pleasant Hill had 29.62. For the same time period, the City of Martinez had a 14.18lb/set out.

▶ Additional on-call recycle pick-up for cardboard/paper and yard waste

To encourage recycling, Allied Waste Services will offer an additional cardboard/paper and/or yard waste cleanup.

▶ Expanded single stream-additional material types

In addition to the list of acceptable materials contained in the existing franchise agreement, Allied will include the following list of additional material types:

- E-waste peripherals (keyboard, mouse, speakers)
- Rigid plastics
- Hard cover books
- Scrap metal/aluminum (under 10 pounds per item)

▶ Provide additional 64 gallon containers for residential single stream

Currently, residential customers in the City of Martinez receive a 64-gallon cart for single stream recycling. To allow for higher volumes, Allied Waste will provide an additional 64 gallon container upon request at no extra charge.

▶ Local Litter Control

To help maintain the city entry ways and highly traveled areas, Allied Waste Services will contract with Commercial Support Services to provide litter pick up on designated streets. These streets will be mutually agreed upon by both the City of Martinez and Allied Waste Services.

▶ Mandatory Commercial Recycling

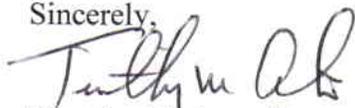
Under the AB 32, the Global Warming Solutions Act Scoping Plan, adopted by the California Air Resources Board in December 2008, the California Integrated Waste Management Board (CIWMB), now Cal Recycle, is charged with developing regulations to implement a mandatory commercial recycling measure. The measure must achieve emissions reductions of at least 5 million metric tons of carbon dioxide equivalents

Most of the focus of recycling programs implemented in Martinez have been in the residential sector, with only a few local agencies implementing a mandatory commercial recycling program. The commercial recycling measure in the AB 32 Scoping Plan focuses on increased commercial waste diversion. An exclusive, mandatory program in Martinez will ensure that all commercial businesses can participate and Martinez' overall diversion rate will increase.

In addition to the above services and benefits, Allied Waste Services would like to discuss modifications to the current rate methodology.

I look forward to discussing these options and other ideas the City has for programs with you in the near future. Feel free to contact me if you have any questions (925) 671-5823.

Sincerely,



Timothy M. Argenti

General Manager

Allied Waste Services of Contra Costa County

## ATTACHMENT B

March 11, 2011

Mr. Michael Chandler  
Senior Management Analyst  
City of Martinez  
525 Henrietta Street  
Martinez, California 94553

**Subject: Allied Waste Services Franchise Extension Assessment**

Enclosed is NewPoint Group's evaluation of Allied Waste Services' (AWS, a Republic Services company, and formerly Pleasant Hill Bayshore Disposal Service) request for a franchise extension. The City of Martinez (City) has two (2) franchise agreements with AWS for refuse and recycling collection services which currently expires on January 5, 2013.

The purpose of this report is to provide background and comparative information for the City to use in evaluating the extension request. The report provides pros and cons of granting an extension; a current comparative rate survey; results of a City customer satisfaction survey; various terms and conditions considered by other jurisdictions when extending franchises; and terms and conditions of a potential franchise extension for AWS.

This report is organized into six (6) sections as follows:

- A. *Franchise Extension Request Background*
- B. *Survey of Comparable Rates*
- C. *Allied Waste Services Performance*
- D. *Other Jurisdiction Franchise Extension Terms*
- E. *Recommended Franchise Extension Terms*
- F. *Recommended Franchise Term.*

There are eight (8) attachments to this report.

### **A. Franchise Extension Request Background**

The City is evaluating whether to extend its franchise agreements with AWS. In 2000, the City entered into two (2) separate franchise agreements with AWS as follows:<sup>1</sup>

---

<sup>1</sup> At that time the company name was Allied Waste Industries, Inc., dba Pleasant Hill Bayshore Disposal.

Mr. Chandler  
March 11, 2011

Page 2

- Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Solid Waste)
- Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Residential Recycling).

Originally, the franchise agreements had ten (10) year terms, set to expire on January 5, 2010. In 2004, the City granted AWS a two-year extension for each franchise agreement and the City later granted AWS a one-year extension for each franchise agreement. As a condition of the AWS merger with Republic Services in December 2008, the City and AWS further amended each franchise agreement on July 1, 2009, via formal addendum to, among other things, enhance the customer service standards required of AWS, and to memorialize an expanded list of service enhancements to be provided by AWS. The current collection franchise agreements with AWS expire on January 5, 2013, less than 2 years from now. Hereafter, we will refer to these two agreements together as the “franchise agreements.”

The City’s *Rate Setting Process and Methodology Manual for Residential Solid Waste Charges*, dated January 2000 (Rate Manual) guides City rate setting. The City and AWS successfully used this Rate Manual for the past ten years.

On April 1, 2010, AWS submitted a letter requesting that the City extend the current franchise agreements to 2023, or by 10 years. In the letter, AWS highlighted positive aspects of its performance since 2000. AWS also offered to make various changes to its current services in exchange for a franchise extension.

## **B. Survey of Comparable Rates**

**Attachment 1** provides a comparison of current City residential, commercial, and light industrial rates with rates of ten (10) neighboring jurisdictions (as of July 2010). As shown in Attachment 1, the results of these City residential rate comparisons are mixed. The City’s 20-gallon residential rate is approximately average, while the City’s 64-gallon rate is 21 percent below average. The City’s 32-gallon and 96-gallon rates are 18 and 25 percent above average, respectively.

Very few City residential customers subscribe to either the 20-gallon or 96-gallon service levels. Virtually all City residential customers either subscribe to the 32-gallon or 64-gallon service levels, and City residential customers are relatively equally divided between subscribing to the 32-gallon service and 64-gallon service levels.

City commercial and light industrial service rates are, in almost all cases, below the comparative average. For three of five commercial and light industrial rate categories compared,

Mr. Chandler  
March 11, 2011

Page 3

commercial and light industrial rates are well below average (i.e., at least 22 percent below average).

City rates have been relatively stable since 2000. Since that Manual's adoption, the City has conducted three base year rate reviews (in 2000, 2004, and 2008), and rates were adjusted during interim years 2001, 2002, 2005, 2006, 2007, 2009, and 2011. Rates remain unchanged in 2003, 2008, and 2010. Implemented rate changes since 2000 (including program changes) were as follows:

- 2000: + 5.0 percent (base year, addition of yardwaste and mixed paper recycling programs)
- 2001: + 3.3 percent (interim year)
- 2002: + 7.1 percent (interim year)
- 2003: + 0.0 percent
- 2004: + 3.8 percent (base year, addition of single stream recycling program)
- 2005: + 1.9 percent (interim year)
- 2006: + 3.2 percent (interim year)
- 2007: + 3.7 percent (interim year)
- 2008: + 0.0 percent (base year, addition of expanded multi-family recycling)
- 2009: + 4.0 percent (interim year)
- 2010: + 0.0 percent (interim year)
- 2011: + 3.1 percent (interim year).

For the 2000 to 2011 period, City rate changes averaged 2.93 percent per year (including four program enhancements). During this same timeframe, the San Francisco-Oakland-San Jose Consumer Price Index (CPI) increased an average of 2.50 percent per year.

### **C. Allied Waste Services Performance**

We conducted a small survey of customer satisfaction with services provided by AWS. We administered the survey to residential and commercial customers. Survey questionnaire areas included:

- Garbage services
- Recycling services
- Yardwaste services (residential services only)

Mr. Chandler  
March 11, 2011

Page 4

- Customer services
- New services.

We provide copies of the customer satisfaction survey, for the residential and commercial sectors, in **Attachment 2**.

AWS generated a list of customer contacts, including 150 residential customers and 150 commercial customers. NewPoint Group randomly selected customers from this list to survey. We surveyed thirty (30) residential customers, and twenty (20) commercial customers, by telephone, between July 7, 2010 and July 20, 2010.<sup>2</sup>

Based on the survey results, we found the City's overall customer satisfaction rating for AWS was about 95 percent for residential collection services.<sup>3</sup> The City's overall customer satisfaction rating for AWS was about 92 percent for commercial collection services.

**Attachment 3** summarizes these customer survey results.

For both residential and commercial services, customers surveyed indicated they were at least satisfied with AWS services. No customer rated AWS services as poor. Most residential and commercial customers we surveyed (i.e., 90 percent) indicated services levels were adequate, and that no new services were needed.

For the residential sector, about 80 percent of customers surveyed rated the services (i.e., garbage collection, recycling collection, yardwaste collection, and customer services) as either excellent or good. Just under 90 percent of residential customers surveyed rated their service levels (i.e., recycling, yardwaste, and new services) as adequate.

For the commercial sector, about 80 percent of customers surveyed rated the services (i.e., garbage collection, recycling collection, and customer services) as either excellent or good. Slightly more than 80 percent of commercial customers surveyed rated their service levels (i.e., recycling and new services) as adequate.

We compared the City customer satisfaction survey results with fourteen (14) other California jurisdictions (see **Attachment 4**). We found that these other cities determine customer. AWS's 92.0 percent customer satisfaction rating compares favorably with the average 88.8 percent customer satisfaction rating of these other cities.<sup>4</sup>

Based on discussions with City staff, AWS has continued to provide professional services to the City over the franchise term. AWS has worked to implement new diversion-related

---

<sup>2</sup> The survey was not based on a statistically valid random sample of the population of City customers.

<sup>3</sup> Where we defined customer satisfaction as service quality that was fair, good, or excellent; and service levels that were adequate.

<sup>4</sup> A total of ten of the fourteen cities had numeric data.

Mr. Chandler  
March 11, 2011

Page 5

programs, has kept rate increases to relatively acceptable levels, and has met the City's service needs. AWS complaints also have been minimal.

In conclusion, AWS currently has relatively high City customer satisfaction. This conclusion is supported by the survey results, and a comparison with the fourteen other jurisdictions surveyed.

#### **D. Other Jurisdiction Franchise Extension Terms**

**Attachment 5** shows terms agreed to by 26 jurisdictions that recently negotiated franchise agreement extensions (a total of 31 franchise negotiations). As shown in Attachment 5, a variety of outcomes result from extension negotiations, with terms based on the needs of each jurisdiction. The average franchise extension length, from this selected survey, was just under eight (8) years.

#### **E. Recommended Franchise Extension Terms**

For any jurisdiction considering a franchise extension there are pros and cons. Examples of these pros and cons are shown in **Attachment 6**.

Based on the City's own needs, we identified nineteen (19) franchise extension terms for initial consideration (identified in **Attachment 7**). We recommend that the City require AWS to agree to the seventeen (17) franchise extension terms, presented below, in exchange for a franchise extension.

Our recommendation rational, and the costs and benefits, of each franchise extension term are described below.<sup>5</sup> In parenthesis following each franchise term is a notation whether the term is primarily a City direct benefit, a City ratepayer direct benefit, or a combination of both. AWS would be required to implement these changes immediately upon execution of a franchise agreement extension (unless specified otherwise).

- 1. Provide Litter and Debris Control and Collection on Selected City Streets and Public Right of Ways (Primarily a City Direct Benefit)** – AWS would be responsible for the litter collection services on streets and public right of ways. This includes the pickup of litter scattered on local streets and materials illegally dumped on sidewalks and near local waterways in the areas identified by the City.

---

<sup>5</sup> Where possible costs and benefits are linked either to City ratepayers or to the City. In some cases actual cost and benefit data is not quantifiable and therefore is presented qualitatively.

Mr. Chandler  
March 11, 2011

Page 6

AWS would publicize the Contra Costa Clean Water Program toll free number, 1-800 NO DUMPING as a resource for people to report illegal dumping of debris. Reports of illegal dumping of debris made to this number for sites within the City shall be forwarded to AWS for resolution. The number of calls, the amount of material collected, and locations of the material will be reported to the City monthly.

AWS would contract with Commercial Support Services (or another third party service provider) to provide litter and debris pickup on City streets and public right of ways. Commercial Support Services is a non-profit organization that provides work for the mentally and physically challenged. The City and AWS would mutually agree on the City streets and public right ways to target for this litter and debris control and collection effort. AWS would provide the litter pickers and vests for the Commercial Support Services staff that would assist with litter control and collection. The City would benefit as the City has had some recent concerns over litter getting into storm drains which can violate the City's National Pollutant Discharge Elimination System (NPDES) permit. This litter control and collection effort would be an allowable cost in the rate base.

AWS would indemnify the City for any work that Commercial Support Services (or another third party service provider) provides within City limits.

2. **Provide an Additional \$25,000 Annual Cost to Cover City Implementation of AB 939 and Climate Action Plan Initiatives (Primarily a City Direct Benefit)** – AWS would provide the City with \$25,000 annually to cover implementation of the City's Assembly Bill 939 programs and Climate Action Plan initiatives. This cost would be treated as a pass-through cost in the rate base (without profit). This payment would be made on a proportionate basis for the remainder of the City's fiscal year 2010-11 (the period of July 1, 2010 to June 30, 2011), and due within 30 days of execution of the extension. The full annual payments to the City shall be due by July 31<sup>st</sup> of each year, beginning in July 2011.
3. **Subject to Future Regulatory Requirements, Work with the City to Develop A Mandatory Commercial Recycling Program (Primarily a City Direct Benefit)** – Should the State follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012 (the current target date specified in the State's draft regulations), AWS would agree to implement a new mandatory commercial collection program to be offered to City customers by June 30, 2012, and hire a half-time Recycling Coordinator assigned to work exclusively on recycling programs, projects, and effort within Martinez. The City would amend its franchise agreements with AWS at that

Mr. Chandler  
March 11, 2011

Page 7

time to provide AWS with exclusive rights to commercial and industrial recycling in the City of Martinez. These provisions are directly dependent on the State's imposition of mandatory commercial recycling, and should the State not implement mandatory commercial recycling, the City would not require AWS to implement a mandatory commercial recycling program.

AWS would agree to assist with education, outreach, and monitoring for the mandatory commercial recycling program as required by the City. AWS would assist the City with providing all data required for the City's reporting to CalRecycle for commercial recycling. AWS would work with City commercial customers to provide recycling carts or bins and provide weekly collection.

The additional costs of this program and the half-time position would be passed on to commercial customers. The City and AWS would work out a mutually agreeable method for charging commercial customers for this service. The City would benefit from additional diversion from this program. This mandatory commercial recycling cost would be an allowable cost in the rate base.

Should the State not follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012, the City may still want to work with AWS to implement a mandatory commercial recycling program at some later date. In this case, the City and AWS would work out a mutually agreeable timeline for implementation of a mandatory commercial recycling program.

4. **Work with the City to Develop A Commercial Food Waste Collection Program (Primarily a Company Direct Benefit)** – AWS would implement a new commercial food waste collection program to be offered to City commercial customers by January 1, 2012. The additional cost of this program would be passed on to commercial customers. The City would benefit from additional diversion from this program. The Company would benefit because it has identified a nearby buyer for this material. This commercial food waste recycling cost would be an allowable cost in the rate base.
5. **Provide Two (2) Additional Annual Residential On-call Recycling Only Pickups at the Curb (Primarily a Ratepayer Direct Benefit)** – Under the terms of the current AWS franchise agreements with the City, residents are allowed two (2) on-call recycling (cardboard/paper) and/or yardwaste collections per year (an enhancement implemented as part the 2008 Base Year Rate Review). AWS has agreed to provide residents with two (2) more on-call recycling and/or yardwaste cleanup for a total of four (4) on-call

Mr. Chandler  
March 11, 2011

Page 8

recycling and/or yardwaste cleanups. This additional cost would be an allowable cost in the rate base.

6. **Provide Two (2) Annual Residential On-call Refuse Pickups at the Curb with Expanded Quantity Limit (Primarily a Ratepayer Direct Benefit)** – Currently, residents are allowed two (2) on-call refuse collections per year, with a quantity limit of two (2) cubic yards. AWS would allow residents to set out up to three (3) cubic yards of refuse during these pickups. This additional cost for this expansion of on-call refuse pickup quantity would be an allowable cost in the rate base.
7. **Provide Two (2) Annual Residential On-call Bulky Waste Pickups at the Curb (Primarily a Ratepayer Direct Benefit)** – AWS also would agree that in addition to the on-call pickups specified in Items #5 and #6, residents could schedule two (2) separate on-call pickups to set out large bulky items (a list of large bulky items is provided in **Attachment 8**). As part of this service, AWS would collect up to two (2) large bulky items at no charge per year. Additional items, beyond the two (2) free items, would be picked up for a fee as agreed by the City and AWS. The additional on-call bulky waste pickup cost would be an allowable cost in the rate base.
8. **Provide One (1) Annual Pre-Scheduled Residential Cleanup Day (Primarily a Ratepayer Direct Benefit)** – In addition to the on-call pickups specified in Items #5, #6, and #7, AWS would agree to provide residents with one annual curbside cleanup day per year. AWS would agree to collect recycling, yardwaste, and refuse (up to 3 cubic yards) during this pre-scheduled cleanup day. The City and AWS would mutually agree to the timing of this cleanup day at the beginning of each year. AWS would provide this curbside service to residents during their regularly scheduled collection day, completing this service for all City customers over one service week. This additional cleanup day cost would be an allowable cost in the rate base.

In summary, with Items #5, #6, #7, and #8 AWS would provide residents with a total of nine (9) pickups per year, eight (8) on-call and one (1) pre-scheduled by the City and AWS. For four (4) of the eight (8) on-call pickups, residents would be allowed to set out an unlimited amount of recycling/yardwaste materials. For two (2) of the eight (8) on-call pickups, residents would be allowed to set out refuse (up to 3 cubic yards). The remaining two (2) on-call pickups would be dedicated exclusively to pickup of large bulky items, and allow residents to set out up to two (2) large bulky items per year for pickup, free of charge.

Mr. Chandler  
March 11, 2011

Page 9

The City and AWS would evaluate these cleanup service enhancements up until the next base year (2013). At the time of the next base year, should the City determine additional residential yardwaste services are necessary, the City may request that AWS change the frequency of residential yardwaste collection from every other week to every week. The additional costs for this change in yardwaste collection frequency would be an allowable cost in the rate base.

AWS will provide outreach to identify that the eight (8) pickups and annual residential curbside cleanup day are available. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

9. **Provide a Means to Dispose of Household Batteries, Cellular Telephones, and Compact Fluorescent Light Bulbs (Primarily a Ratepayer Direct Benefit)** – AWS would allow customers to set out household batteries, cellular telephones, and compact fluorescent light bulbs, on any of their four (4) on-call recycling pickup days, plus one pre-scheduled residential clean up day. Customers would be allowed to set out these items in a single customer-provided one quart plastic bag. This cost would be an allowable cost in the rate base.

AWS will provide outreach to identify that these materials are available for set out as part of the on-call pickups. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

10. **Allow Customers to Place Additional Material Types in the Recycling Cart (Primarily a Ratepayer Direct Benefit)** – AWS would expand the types of material collected in the 64-gallon recycling container to include:

- E-waste peripherals (keyboards, mouse, speakers)
- Hard cover books
- Rigid plastics (e.g., toys, buckets, trays, crates)
- Scrap metal/aluminum (under ten pounds per item).

There would be no additional cost to the ratepayer from this additional service.

AWS will provide outreach to identify that these additional materials can be included in the recycling cart. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

Mr. Chandler  
March 11, 2011

Page 10

- 11. Provide Customers an Additional Recycling Cart or Yardwaste Cart Upon Request (Primarily A Ratepayer Direct Benefit)** – For larger volume residential recyclers, AWS would provide an additional recycling or yardwaste cart, upon request, at no extra charge to the residential customer. Based on current request levels, this is likely a service that would only be used for a small number of customers. There would be no additional cost to the ratepayer from this additional service.

AWS will provide outreach to identify that this additional recycling cart is available. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

- 12. Freeze All Rates in Calendar Year 2012 (Primarily a Ratepayer Direct Benefit)** – AWS would agree not to change rates in calendar year 2012. AWS would not submit a base year rate application in 2012, but would be allowed to submit a base year application on July 31, 2012 for rates to be implemented on January 1, 2013. This 2013 base year would start the new rate setting cycle. Years 2014, 2015, and 2016 would be interim years.

AWS would agree to implement all of the program changes identified in Items #1, #2, and #4 through #10 without any changes to rates in 2012. AWS would agree that there would be no opportunity to recover the new costs for Items #1, #2, and #4 through #10 until 2013. Year 2013 rates also would not reflect any retroactive rate increases to cover the costs of Items #1, #2, and #4 through #10 implemented in years 2011 and 2012.

There is one exception to this rate freeze for 2012. Should the State mandate commercial recycling by mid 2012, and the provision described in Item #3 above become a requirement, AWS would be allowed to submit support for an adjustment to commercial rates to cover the new costs required to fund a mandatory commercial recycling program in the City (i.e., for costs associated with the commercial recycling program only, including labor, carts/bins, trucks, and overhead). This mandatory commercial recycling rate adjustment request would be subject to City review and City Council approval.

- 13. Use an 88 to 92 percent Operating Ratio Range for Base Year Rate Setting (No Clear Benefit to Any One Party)** – Currently the City and AWS use the Incentive Risk-Based Operating Ratio Methodology for rate setting as specified on page 1-13 of the Rate Manual. This method allows base year profitability to range from 85 percent upward without a rate change. AWS would agree to a more narrow operating ratio range of 88 to 92 percent, with a target of 90 percent, as specified in the Base Case Operating Ratio

Mr. Chandler  
March 11, 2011

Page 11

Method (page 1-12 of the Rate Manual). This means that should the company's projected operating ratio, in a base year, fall outside the 88 to 92 percent operating ratio range, the company's operating ratio would be reset to 90 percent in that base year.

- 14. Calculate Interim Year Rate Changes Based on 90 Percent of the Prior Year Consumer Price Index (Primarily a Ratepayer Direct Benefit)** – Currently the Rate Manual specifies that interim year rate setting separate “controllable costs” (i.e., non-tipping fee costs) from “uncontrollable costs” (i.e., tipping fee) in calculating interim year adjustments. The City applies the CPI to the controlled cost portion of the rate, and reviews AWS projected changes to uncontrollable costs. AWS would agree that, beginning in 2014, interim year rates would be adjusted by a more simplified calculation, equal to ninety (90) percent of the prior year change in the August-to-August San Francisco-Oakland-San Jose CPI applied to each rate in the rate structure.<sup>6</sup> Rate changes could be either positive or negative.

Additionally, the Rate Manual called for interim year adjustments which were tied to the company's profitability in base years (see Figure 1-1 on page 1-14). This provision replaces interim year adjustments with a simplified 90 percent of the CPI in all interim years regardless of profitability in base years.

This provision would make the City's administration of interim years more streamlined and allow the City Council to clearly understand the basis for the interim year adjustment. This provision would reduce the administrative costs associated with preparing and reviewing interim year applications.

- 15. Remove the Interim Year “Consumer Price Index Adjustment Factor” (Primarily a Ratepayer Direct Benefit)** – Currently, the Rate Manual specifies an adjustment factor in the interim year calculation to allow for “truing up” of differences between the prior year projected, and prior year actual, change in the CPI. AWS would agree to remove this interim year “adjustment factor,” replacing the interim year calculation with the simplified 90 percent of CPI method identified in Item #12 above.
- 16. Add an Interim Year Rate Cap (Primarily a Ratepayer Direct Benefit)** – Currently, there is no limit to the size of an Interim Year rate increase. For this franchise term, beginning in 2014 (2012 is a freeze year, and 2013 is a base year), AWS would agree to limit Interim Year rate increases in any given year to four (4) percent. There are no costs

---

<sup>6</sup> AWS has already submitted its interim year rate application for 2011. Year 2012 is a rate freeze year. Year 2013 is the next base year.

Mr. Chandler  
March 11, 2011

Page 12

associated with implementing this term. This term would benefit City ratepayers by stabilizing the size of any annual interim rate changes in times of higher inflation. While the past ten years have been a time of relatively low inflation, this protection definitely has significant value to the City ratepayer over the length of a long-term franchise agreement.

This term adds a provision to allow either the City or AWS to request an extraordinary rate adjustment. This extraordinary rate adjustment would be subject to City review and City Council approval.

- 17. Provide the City with a \$500,000 Community Impact Payment (Primarily a Ratepayer Direct Benefit)** – The company would pay the City a one-time community impact payment of \$500,000 to cover various City costs incurred as a result of the refuse and recycling collection franchise with AWS. City services, covered by this payment, would include such ongoing services as City street pavement maintenance to cover differential impacts from AWS collection trucks on City streets, and storm drain maintenance caused by litter produced from AWS collection operations (necessitated by new National Pollutant Discharge Elimination System (NPDES) permit requirements).

The company would make \$250,000 of this community impact payment to the City within 30 days of execution of the franchise extension. The company would make the remaining \$250,000 of this community impact payment to the City by January 31, 2012. This community impact payment would not be a cost recovered in the rate base.

The City would place this community impact payment into a special dedicated fund which would be used for City services related to the refuse and recycling collection franchise. The City would not put the community impact payment into the general fund to use for City services not related to the refuse and recycling collection franchise.

x      x      x

Approval of Items #13 through #16 in Section E of this report will necessitate an update to the City's Rate Manual. The City and AWS agree that the City will prepare an updated version of the Rate Manual, incorporating Items #13 through #16, for City Council approval. The City and AWS agree that the updated Rate Manual will be incorporated by reference into the City's new franchise agreements with AWS.

Mr. Chandler  
March 11, 2011

Page 13

**F. Recommended Franchise Term**

Based on AWS's agreement to the seventeen (17) terms described above in Section E, all of which add significant value to both the City and the City ratepayer, we recommend an extension of ten (10) years beyond the current term. The resulting term would expire on January 5, 2023. These seventeen (17) terms improve both the quality and quantity of City residential solid waste services, and most importantly provide service and rate stability to the City ratepayers.

\* \* \* \* \*

If you have any questions regarding this report, please call Mr. Erik Nylund at (916) 442-2456 in Sacramento.

Very truly yours,

NewPoint Group®, Inc.



James A. Gibson, Ph.D.  
Director

Mr. Chandler  
March 11, 2011

Page 14

**Attachment 1**  
**Comparative Rate Survey**

Mr. Chandler  
March 11, 2011

**City of Martinez  
Comparative Residential Rates  
As of July, 2010**

No.	Jurisdiction	20 gal.	32 gal.	64 gal.	96 gal.	Size/Frequency of Collection		Annual Refuse Cleanups	Annual Recycling/Yardwaste Only Cleanups
						Recycling	Yardwaste		
1	Antioch	\$ 20.99	\$ 24.65	\$ 39.80	\$ 46.75	64	96 B	2 on-call per year	2 on-call per year
2	Clayton	20.36	21.58	31.64	34.54	64	64	2 on-call per year	4 on-call per year
3	Concord	-	23.00	31.00	38.00	64	96	3 on-call per year	0 per year
4	Danville	15.48	17.85	35.71	53.56	64	64	2 scheduled + 1 on-call per year	Once per month
5	Lafayette	20.44	23.57	47.12	70.69	64	64	2 scheduled + 1 on-call per year	Once per month
6	Moraga	18.75	21.65	43.30	64.95	64	64	2 scheduled + 1 on-call per year	Once per month
7	Orinda	24.28	28.01	56.02	84.03	64	64	2 scheduled + 1 on-call per year	Once per month
8	Pleasant Hill	19.58	22.66	30.91	46.36	64	64	2 on-call per year, 1 spring cleanup	2 on-call per year
9	Uninc. County (CCCSWA)	16.35	18.87	37.73	56.60	64	64	2 scheduled + 1 on-call per year	Once per month
10	Walnut Creek	14.19	17.00	33.99	50.99	64	64	2 scheduled + 1 on-call per year	Once per month
	Average	\$ 18.94	\$ 21.88	\$ 38.72	\$ 54.65				
	Martinez	\$ 19.15	\$ 27.45	\$ 30.60	\$ 64.30	64	96 B	2 on-call per year	2 on-call per year
	Percent Difference	1%	25%	-21%	18%				

**City of Martinez  
Comparative Commercial Rates  
As of July, 2010**

No.	Jurisdiction	2-yd/1 per week	2-yd/2 per week	3-yd/1 per week	3-yd/2 per week
1	Antioch	\$ 219.57	\$ 439.19	\$ 330.36	\$ 640.89
2	Clayton	196.16	392.24	264.91	529.82
3	Concord	269.00	490.00	364.00	680.00
4	Danville	246.18	492.37	369.27	738.54
5	Lafayette	301.90	603.78	452.84	905.68
6	Moraga	269.35	538.70	404.03	808.06
7	Orinda	333.16	666.31	499.74	999.47
8	Pleasant Hill	189.84	379.16	284.40	568.93
9	Uninc. County (CCCSWA)	240.59	481.17	360.88	721.76
10	Walnut Creek	173.17	346.32	259.75	519.49
	Average	\$ 243.89	\$ 482.92	\$ 359.02	\$ 711.26
	Martinez	\$ 222.11	\$ 378.68	\$ 380.97	\$ 443.94
	Percent Difference	-9%	-22%	6%	-38%

**City of Martinez  
Comparative Industrial Rates  
As of July, 2010**

No.	Jurisdiction	20 cu. yd.
1	Antioch	\$ 479.67
2	Clayton	393.98
3	Concord	420.00
4	Danville	582.83
5	Lafayette	609.74
6	Moraga	582.84
7	Orinda	645.34
8	Pleasant Hill	349.83
9	Uninc. County (CCCSWA)	575.57
10	Walnut Creek	644.43
	Average	\$ 528.42
	Martinez	\$ 407.00
	Percent Difference	-23%

**Note:**

After this survey was conducted, the City of Martinez implemented a 3.11 percent rate increase effective January 1, 2011.

Mr. Chandler  
March 11, 2011

Page 16

**Attachment 2**  
**Customer Satisfaction Survey**  
**Residential and Commercial Sectors**

Mr. Chandler  
March 11, 2011

Page 17

### **Allied Waste Services 2010 Residential Customer Satisfaction Survey**

Hello, my name is \_\_\_\_\_. On behalf of the City of Martinez, we are conducting a customer satisfaction survey about your waste collection services from Allied Waste Services. We are not trying to sell anything, and we are only interested in your opinions about the quality of hauler's services.

Would you have a few minutes to participate in our survey? (If Yes – Continue; If No – Ask would there be a better time to call)?

#### **Garbage Services**

(1) How would you rate your current garbage collection services?

Excellent     Good         Fair         Poor

#### **Recycling Services**

(2) How would you rate your current recycling collection services?

Excellent     Good         Fair         Poor

(3) Is your current recycling service level adequate?

Yes    No   If no, please explain \_\_\_\_\_

#### **Yardwaste Services**

(4) How would you rate your current yardwaste collection services?

Excellent     Good         Fair         Poor

(5) Is your current yardwaste service level adequate?

Yes    No   If no, please explain \_\_\_\_\_

#### **Customer Services**

(6) How would you rate the company's customer services?

Excellent     Good         Fair         Poor         N/A

#### **New Services**

(7) Are there new waste and recycling collection services you would like to have made available?

Yes    No   If yes, please specify  
\_\_\_\_\_

Mr. Chandler  
March 11, 2011

Page 18

### Allied Waste Services 2010 Commercial Customer Satisfaction Survey

Hello, my name is \_\_\_\_\_. On behalf of the City of Martinez, we are conducting a customer satisfaction survey about your waste collection services from Allied Waste Services. We are not trying to sell anything, and we are only interested in your opinions about the quality of hauler's services.

Would you have a few minutes to participate in our survey? (If Yes – Continue; If No – Ask would there be a better time to call)?

#### Garbage Services

(1) How would you rate your current garbage collection services?

Excellent     Good         Fair         Poor

#### Recycling Services

(2) How would you rate your current recycling collection services?

Excellent     Good         Fair         Poor

(3) Is your current recycling service level adequate?

Yes     No    If no, please explain \_\_\_\_\_

#### Customer Services

(4) How would you rate the company's customer services?

Excellent     Good         Fair         Poor         N/A

#### New Services

(5) Are there new waste and recycling collection services you would like to have made available?

Yes     No    If yes, please specify \_\_\_\_\_

Mr. Chandler  
March 11, 2011

Page 19

**Attachment 3**  
**Customer Satisfaction Survey Results**

Mr. Chandler  
March 11, 2011

**Attachment 3**  
**Allied Waste Services**  
**2010 Customer Satisfaction Survey Results**

2010 Residential Service Results								
<i>Basic Services</i>								
Rating	Satisfactory			Poor, or N/A		Total	Satisfaction Rate	
	Excellent	Good	Fair	Poor	N/A		Excellent+Good+Fair	Excellent+Good
Garbage Services	6	19	5	-	-	30	100.00%	83.33%
Recycling Services	6	19	5	-	-	30	100.00%	83.33%
Yardwaste Services	6	15	7	-	2	30	100.00%	75.00%
Customer Services	1	14	5	-	10	30	100.00%	75.00%
Subtotal	19	67	22	-	12	120	100.00%	79.63%
<i>Service Levels</i>								
Rating	Adequate			Non-Adequate	N/A	Total	Satisfaction Rate	
Recycling Services	27			3	-	30	90.00%	
Yardwaste Services	25			3	2	30	89.29%	
New Services	27			3	-	30	90.00%	
Subtotal	79			9	2	90	89.77%	
<i>Overall Services</i>								
Rating	Satisfactory			Non-Satisfactory	N/A	Total	Satisfaction Rate	
Total Rating	187			9	14	210	95.41%	
2010 Commercial Service Results								
<i>Basic Services</i>								
Rating	Satisfactory			Poor, or N/A		Total	Satisfaction Rate	
	Excellent	Good	Fair	Poor	N/A		Excellent+Good+Fair	Excellent+Good
Garbage Services	3	13	4	-	-	20	100.00%	80.00%
Recycling Services	1	7	3	-	9	20	100.00%	72.73%
Customer Services	3	8	2	-	7	20	100.00%	84.62%
Subtotal	7	28	9	-	16	60	100.00%	79.55%
<i>Service Levels</i>								
Rating	Adequate			Non-Adequate	N/A	Total	Satisfaction Rate	
Recycling Services	10			1	9	20	90.91%	
New Services	15			5	-	20	75.00%	
Subtotal	25			6	9	40	80.65%	
<i>Overall Services</i>								
Rating	Satisfactory			Non-Satisfactory	N/A	Total	Satisfaction Rate	
Total Rating	69			6	25	100	92.00%	

Mr. Chandler  
March 11, 2011

Page 21

**Attachment 4**  
**Comparative Jurisdiction**  
**Customer Satisfaction Surveys Results**

Mr. Chandler  
March 11, 2011

**Exhibit 4**  
**Comparative Customer Satisfaction Survey Results**

<b>Jurisdiction</b>	<b>Rating of Refuse Collection Services</b>
1. City of Berkeley	77 percent rated favorably
2. City of Burbank	In top two services rated
3. City of Carlsbad	89 percent satisfaction rating for residential trash, 80 percent for curbside recycling
4. City of Claremont	92 percent satisfaction
5. City of Concord	Top service rated, 96 percent rated average or better (i.e., rated at least 5.0 out of 10.0)
6. City of Monterey	2003: 93 percent rated as average or better 2005: 94 percent rated as average or better
7. City of Palo Alto	2001: 96 percent rated excellent or satisfactory 2003: 94 percent rated as excellent or good 2005: 97.5 percent rated excellent or satisfactory
8. City of Sacramento	Among the top three highest rated services
9. City of San Diego	2001: 96 percent satisfaction rating (#1) 2002: 96 percent satisfaction rating for residential trash, 94 percent for curbside recycling 2003: 96 percent satisfaction rating for residential trash, 97 percent for curbside recycling 2004: 92 percent satisfaction rating for residential trash, 91 percent for curbside recycling 2010: Top service rated (rated 3.25 of 4.00 scale)
10. City of San Jose	87 percent satisfaction rating for garbage collection, 85 percent for recycling collection
11. City of San Rafael	Ranked garbage collection second highest of 31 services; recycling ranked fourth highest
12. City of Santa Monica	2001: 78 percent rated as excellent or good 2009: 78 percent rated as excellent or good
13. City of Sunnyvale	2002: 97 percent rated as average or better, 88 percent above average 2005: 85 percent rated as above average
14. City of Temecula	2001: Among top three of ten services rated 2007: Among top four of twenty-one services rated
Average of ten (10) cities with numeric rating of satisfactory or better	88.8 <sup>1</sup>

<sup>1</sup> Based on the most current data available for each City. As shown in Table 2-1, customer satisfaction ratings were not uniform. Some cities rate customer satisfaction using “average and above” data and others rate customer satisfaction using “good and above” data.

Mr. Chandler  
March 11, 2011

Page 23

**Attachment 5**  
**Comparative Jurisdiction**  
**Franchise Extension Terms**

Mr. Chandler  
March 11, 2011

**Attachment 5**  
**Other Jurisdiction Franchise Extension Provisions**  
**(As of July 2010)**

No.	Jurisdiction	Year Extension Granted	Year Originally Franchise Ended	Term of Extension (Years)	Year Now Franchise Ends (Ended)	Terms of Extension/New Award	Hauler
1	City of Albany	2003	2004	10	2014	Free collection from city parks (\$36,000/year), contractor provided green waste bins, increase in franchise fees.	Waste Management of Alameda County
2	City of Antioch #	2010	2015	10	2025	Community impact payment of \$1 million in exchange for the extension; expand existing services; increase the on-call pick-up for one bulky item to two times per calendar year.	Allied Waste Services
3	City of Barstow	1996	2007	5	2012	Waive a \$2.51 increase that was necessary to fund recycling, freeze rates for two years.	Desert Disposal Service
4	City of Belmont	2005	2006	4	2010	Enter a 15-year agreement with the South Bayside Waste Management Authority (SBWMA) for disposal at Ox Mountain landfill at "most favored client" rates, which would reduce Belmont's total costs about 7 percent. Make \$11.6 million cash payments to SBWMA over a period of three years beginning January 1, 2005.	BFI Waste Systems of North America, Inc.
5	City of Concord	2006	2011 (with five year option to 2016)	10	2021 (with five year option to 2026)	Required relocation of maintenance facility. Established fixed city franchise fees through 2020. Established free City parks disposal and increased neighborhood cleanup debris boxes. Provided 70 percent of the CPI for interim year adjustments. Established a five (5) percent interim year rate cap.	Concord Disposal Service
6	City of El Cerrito	2009	2009	8	2017	No specific new provisions.	East Bay Sanitary Company
7	City of Hayward	2006	2007	7	2014	Provide service enhancements including: co-mingled recyclables collection; annual residential clean-up service; free disposal of two cubic yards of self-hauled waste; batteries collection; Christmas tree collection; public litter cans; free compost; food waste collection; dirt and debris; and biosolids disposal for residential services, commercial recycling services, and alternative fuel vehicles.	Waste Management of Alameda County
8	City of Healdsburg	2010	2010	10	2015 or 2020	At minimal annual rate increases, provide new services including neighborhood clean-up events, more recycling education programs, Christmas tree disposal, commercial food waste composting, and free tire recycling. Provided one-time contract extension fee of \$150,000.	Redwood Empire Disposal
9	City of Livermore*	2009	2010	10	2020	Develop an indoor recyclable materials transfer facility in the City to transfer recyclable and compostable material collected from within the City into large trailers for transport to offsite recycling facilities. Minimize rate increases for residential services. New compressed natural gas vehicles and new containers.	Livermore Sanitation, Inc.
10	City of Manhattan Beach	1998	1999	3	2002	Froze rate adjustments for 1998 and 1999, with a rate adjustment resuming in 2000. Put a specialized collection vehicle, one that is smaller and quieter, in the downtown area.	Waste Management
11	City of Manhattan Beach	2002	2002	9	2011	Divert at least 50 percent of the waste stream collected and controlled by Waste Management from landfills.	Waste Management
12	City of Martinez	2004	2011	2	2013	Reduction in cost of new single stream recycling program by extending the term (equipment depreciated over longer term).	Allied Waste Industries, dba PHBD
13	City of Milpitas	2004	2007	10	2017	Waive the cost of the street sweeping program for up to 3 years (an approximately \$225,000 annual cost to the General Fund).	Allied Waste Industries, dba BFI
14	City of Oceanside #	2010	2012	3	2015	Offered to pay the City at least \$1 million a year for five years in exchange for a three-year franchise extension.	Waste Management of North County, Inc.
15	City of Piedmont *	2008	2008	10	2018	Provide three new wheeled carts for garbage, recycling, and green waste to each household; and for the first time, provide an option for curbside pick-up services.	Richmond Sanitary Services, Inc.

Mr. Chandler  
March 11, 2011

**Attachment 5**  
**Other Jurisdiction Franchise Extension Provisions**  
**(As of July 2010)**

16	City of Pleasant Hill	2003	2006	9	2015	Restructure franchise agreement entirely, set up rate setting process, fixed residential rates for one year.	Allied Waste Industries, dba PHBD
17	City of Richmond	2003	2003	22	2025	Increase in franchise fee from 2.5 to 5.0 percent of gross revenues, City residents get free use of landfill.	Republic Waste Services
18	City of San Mateo	2005	2006	4	2010	Provide a total settlement payment of \$2.7 million to the City. The settlement payment represents reimbursement of a portion of the landfill disposal fees previously charged to the City. These funds were credited to the City over a four-year period and were used to moderate rate increases.	Republic Services (formerly Allied Waste)
19	City of San Rafael	2001	2021	1	2022	No specific new provisions.	Marin Sanitary Service
20	City of Santa Rosa	2010	2012	5 (+5 year Option)	2017	Increase franchise fee from 10 to 11 percent; establish an additional franchise extension fee of 4.5%, which cannot be passed on to the rate payer; and provide service enhancements to benefit ratepayers.	North Bay Corporation
21	City of Seaside	2003	2010	5	2015	.y). City option to increase citywide clean ups from existing two (2) per year to four (4) per year (at \$0.50 per customer, per month, additional cost).	Carmel Marina Waste Management
22	City of Stockton	2003	2003	15 (+5 year option)	2018	Create 10 percent senior rate discount (at age 65, or 6,000 customers); free stickers for extra waste pickup; seasonal leaf collection; enhanced neighborhood cleanup with free bins and boxes for target areas; televisions, computer monitors, and appliances added to curbside collection; a best effort requirement to meet 50 percent diversion; a cap on rate increases; interim year adjustments limited to 50 percent of the CPI and subject to City approval.	Stockton Scavenger/Sunrise Sanitation
23	City of Sunnyvale*	1991	1991	10	2001	Reduction in rates by 16 percent.	Bay Counties Waste Services
24	City of Sunnyvale	1992	2001	3	2004	Change to OR-based rate setting; purchased new trucks.	Bay Counties Waste Services
25	City of Sunnyvale	1996	2004	7	2011	Change in operating ratio (OR) level.	Bay Counties Waste Services
26	City of Sunnyvale	2003	2011	7	2018	Changes in depreciation schedule to 10 years for rolling stock and containers (from 7 years and 5 years, respectively). Savings with conversion split 50%/50% to the City/hauler.	Bay Counties Waste Services
27	Central Contra Costa Solid Waste Authority	2004	2005	10	2015	Implementation of single stream recycling by 9/1/2004, minimum diversion tonnage goals, incorporation of food waste pickup with yardwaste, website required, pre-set compensation levels in years 1 and 2, company guarantee of recycling revenues.	Valley Waste Management
28	Central Contra Costa Solid Waste Authority	2004	2005	10	2015	Pre-set tipping fees over the life of the contract. Pre-set compensation in years 1 and 2 of the contract.	Allied Waste Industries
29	Pebble Beach Community Services District	2003	2010	5	2015	Rate increase of 3.5 percent vs. 5.1 percent and implementation of single stream.	Carmel Marina Waste Management
30	Monterey County	2010	2012	8	2020	Consolidation of the two existing franchise agreements (Northeastern and Western Franchise Agreements) into a single, unified franchise agreement that would provide economies of scale. Standardized service package featuring wheeled refuse and recycling carts.	USA Waste of California, Inc., dba Carmel Marina Corporation
31	Santa Clara County	2007	2007	7	2014	No specific new provisions.	Los Altos Garbage
Average				7.55			

\* Franchise re-bid. All of the other examples in this table were negotiations with franchise holders and were not re-bid.

# Currently under negotiations.

Mr. Chandler  
March 11, 2011

Page 26

**Attachment 6**  
**Franchise Extension Pros and Cons**

Mr. Chandler  
March 11, 2011

Page 27

## **Attachment 6**

### **Franchise Extension Pros and Cons**

#### *Pros*

- Maintains continuity of collection services
- Takes advantage of hauler's local knowledge of City streets/operations (e.g., route optimization, customer requirements, and service delivery methods)
- If applicable, retains a high quality hauler (in terms of minimal complaints, consistent on-time delivery, other measurable parameters)
- Retains rates which may be competitive with other jurisdictions with similar service offerings and objectives
- Rewards a current hauler, who may have demonstrated a willingness to implement program changes at affordable costs, with the ability to gauge the impact of those changes
- Realizes that refuse collection contracts are best served by long-term business partnerships between the City and hauler (due to their capital intensive nature of the business, the high costs of new vehicles/equipment, and the time required to depreciate new purchases)
- Recognizes that a formal procurement can be expensive and administratively time-consuming for the City, without a guarantee that all service parameters will be met

#### *Cons*

- Potentially reduces the quality of service if let out to bid (particularly by simply selecting a low bidder), though this may be for a limited timeframe
- Restricts potential leverage gained from competition. A formal competitive procurement has the potential to provide benefits to the City, which may include:
  - A one-time reduction in rates
  - New programs or changes to existing programs
  - Guaranteed periods of rate stabilization
  - Changes to the rate structure (if desired)
- If granted with limited benefits realized by the City, potentially fails to recognize that a contract extension has tremendous value to a hauler in terms of future profitability. Many jurisdictions use this value proposition to negotiate some service modifications, or possibly some rate relief. Absent a fair negotiation result, a procurement often becomes the only solution
- Limits the time required for a hauler to demonstrate an extension is merited (if granted early in the franchise term)
- Requires rebuilding City/hauler relationship. Potentially, results in a new hauler who may not be motivated to work as closely with the City to meet program needs (e.g., in the case where margins already are slim)
- Causes displacement of local laborers

Mr. Chandler  
March 11, 2011

Page 28

**Attachment 7**  
**Potential Franchise Extension Terms**

Mr. Chandler  
March 11, 2011

Page 29

## **Attachment 7**

### **Potential Franchise Extension Terms**

#### *City benefit - At ratepayer expense*

1. Increases in franchise fees
2. New programs to increase diversion (so that 50 percent goal is met and sustained, e.g., convert more apartments to recycling, single stream recycling, more commercial recycling)
3. Increase in free services to City (e.g., drop boxes)
4. Commercial foodwaste program
5. Mandatory commercial recycling

#### *City benefit - At hauler expense*

6. Franchise re-assignment fees
7. Diversion penalty payments
8. Performance penalties

#### *Ratepayer benefit – At hauler expense*

#### Rates Stability and Relief

9. Rate freezes over specific intervals
10. Rate reductions
11. Reductions in the current 90 percent operating ratio, the profitability level<sup>7</sup>
12. Caps on interim year rate changes (a discounted percent of CPI and an overall CPI cap)
13. Long-term caps on tipping fees
14. Rate reviews at the extension point, where if rates not “at market” then deny extension
15. Community impact payments

#### Service Changes

16. On-call clean ups (customer identified)

#### Other Changes

17. Website
18. Newsletter
19. Credit card and bank bill pay

---

<sup>7</sup> We surveyed recent returns of both publicly and privately held waste management companies and concluded that the 90 percent OR level continues to be consistent with industry averages.

Mr. Chandler  
March 11, 2011

Page 30

**Attachment 8**  
**Bulky Item Maximum Price List**

Mr. Chandler  
March 11, 2011

Page 31

**Attachment 8**  
**Bulky Item Maximum Price List <sup>8</sup>**

<u>Description</u>	<u>Per Unit Fee</u>
Twin mattress	\$40.00
Twin box spring	\$40.00
Double mattress	\$40.00
Double box spring	\$40.00
Queen mattress	\$40.00
Queen box spring	\$40.00
King mattress	\$40.00
King box spring	\$40.00
Stove	\$40.00
Dryer	\$40.00
Washer	\$40.00
Dishwasher	\$40.00
Hot water heater	\$40.00
Couch/sofa	\$40.00
Hide a bed	\$40.00
Refrigerator (pick up and Freon removal)	\$100.00
Freezer (pick up and Freon removal)	\$100.00
Air conditioner (pick up and Freon removal)	\$100.00
Swamp cooler	\$40.00
Tires (less than 19")	\$6.00
Tires with rim (less than 19")	\$8.00
Tires (larger than 19")	\$9.00
Tires with rim (larger than 19")	\$14.00
TV (32" or smaller)	\$25.00
TV (32" or larger)	\$40.00
Computer monitors	\$25.00
E-waste (3 pieces)	\$5.00
Extra 32-gallon bag	\$2.50

---

<sup>8</sup> This price list is applicable only for bulky items placed at the curb as part of the three annual on-call cleanup days. The fee would be charged for each unit placed at the curb beyond the two free units allowed as part of the on-call cleanup program.

## ATTACHMENT C

### Summary of Recommended Franchise Extension Terms

- 1. Provide Litter and Debris Control and Collection on Selected City Streets and Public Rights of Way (Primarily a City Direct Benefit)** – Allied Waste Systems, Inc. (AWS) would provide for the first time on-demand pickup of illegally dumped bulky items throughout the City. Additionally, AWS would be responsible for litter and debris pickup on selected streets, public rights of way, or other public places as identified by the City. This debris and litter control effort would be an allowable cost in the rate base. *Added to Section 6 G and 6 H of the Solid Waste Franchise Agreement.*
- 2. Provide an Additional \$25,000 Annual Cost to Cover City Implementation of AB 939 and Climate Action Plan Initiatives (Primarily a City Direct Benefit)** – AWS would provide the City with \$25,000 annually to cover implementation of the City’s Assembly Bill 939 programs and Climate Action Plan initiatives. These payments would be made on a pro-rated basis for the remainder of the current fiscal year ending June 30, 2011 (approximately \$4,000), with full annual payments due by July 31<sup>st</sup> of each year, beginning in July 2011. This cost would be treated as a pass-through cost in the rate base (without profit). *Added to Section 3 C of both franchise agreements.*
- 3. Subject to Future Regulatory Requirements, Work with the City to Develop A Mandatory Commercial Recycling Program (Primarily a City Direct Benefit)** – Should the State follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012 (the current target date specified in the State’s draft regulations), AWS would agree to implement a new mandatory commercial collection program to be offered to City customers by June 30, 2012. AWS would hire a half-time Recycling Coordinator assigned to work exclusively on recycling programs in Martinez. The City would amend its Recycling Franchise Agreement with AWS at that time to provide AWS with exclusive rights to commercial and industrial recycling in Martinez, with any exceptions to be determined at that time. The additional costs of the program and the half-time position would be passed on to commercial customers. *Added to Section 6 E (1) of the Recycling Franchise Agreement.*
- 4. Work with the City to Develop A Commercial Food Waste Collection Program (Primarily a Company Direct Benefit)** – AWS would implement a new commercial food waste collection program (i.e. for “clean” food scraps provided by local restaurants) to be offered to City commercial customers by January 1, 2012. The additional cost of this program would be passed on to commercial customers. The City would benefit from additional diversion from this program. AWS would benefit because it has identified a nearby buyer for this material. This commercial food waste recycling cost would be an allowable cost in the rate base. *Added to Section 6 E (2) of the Recycling Franchise Agreement.*
- 5. Provide Residents with a Total of Nine (9) Special Pickups per Year (Primarily a Ratepayer Direct Benefit)** – AWS is currently obligated to provide single family residents with four (4) special on-call pickups, two (2) for collecting an unlimited amount of recycling/yardwaste

materials, and two (2) for collecting refuse (up to 2 cubic yards per pickup). AWS would agree to provide single family residents with a total of nine (9) special pickups per year, eight (8) on-call and one pre-scheduled by the City and AWS (ie a “spring cleanup” day). For four (4) of the eight (8) on-call pickups, residents would be allowed to set out an unlimited amount of recycling/yardwaste materials. For two (2) of the eight (8) on-call pickups, residents would be allowed to set out refuse with an expanded quantity limit of up to 3 cubic yards. For the remaining two (2) of the eight (8) on-call pickups, residents would be allowed to set out up to two large bulky items per year (such as mattresses, furniture, or appliances), free of charge. The new and/or expanded pickups would be effective as of July 1, 2011. The additional costs for the special pickups would be an allowable cost in the rate base. *Added to Exhibit B to the franchise agreements.*

6. **Provide a Means to Dispose of Household Batteries, Cellular Telephones, and Compact Fluorescent Light Bulbs (Primarily a Ratepayer Direct Benefit)** – AWS would allow customers to set out household batteries, cellular telephones, and compact fluorescent light bulbs, on any of their now four (4) on-call recycling pickup days. Customers would be allowed to set out these items in a single customer-provided one quart plastic bag. This cost would be an allowable cost in the rate base. *Added to Exhibit B to the franchise agreements.*
7. **Allow Customers to Place Additional Material Types in the Recycling Cart (Primarily a Ratepayer Direct Benefit)** – AWS would expand the types of material collected in the 64-gallon recycling container to include:
  - E-waste peripherals (keyboards, mouse, speakers)
  - Hard cover books
  - Rigid plastics (e.g., toys, buckets, trays, crates)
  - Scrap metal/aluminum (under ten pounds per item).

There would be no additional cost to the ratepayer from this expanded service. *Added to Exhibit B to the franchise agreements; list of additional materials added to Section 6 A (3) of the Recycling Franchise Agreement.*

8. **Provide Customers an Additional Recycling Cart or Yardwaste Cart Upon Request (Primarily A Ratepayer Direct Benefit)** – For larger volume residential recyclers, AWS would provide an additional recycling or yardwaste cart, upon request, at no extra charge to the residential customer. Based on current request levels, this is likely a service that would only be used for a small number of customers. There would be no additional cost to the ratepayer from this additional service. *Added to Exhibit B to the franchise agreements; prior reference to cost of additional cart removed from Section 6 A (2) of the Recycling Franchise Agreement.*
9. **Freeze All Rates in Calendar Year 2012 (Primarily a Ratepayer Direct Benefit)** – AWS would agree not to change refuse and recycling collection rates in calendar year 2012. AWS

would not submit a base year rate application in 2012, but would be allowed to submit a base year application on July 31, 2012 for rates to be implemented on January 1, 2013. This 2013 base year would start the new rate setting cycle. Years 2014, 2015, and 2016 would be interim years. AWS would agree that all the new and/or expanded services it provides as negotiated under the franchise extension, which are allowable costs in the rate base, are not recoverable until 2013, and that the 2013 rates will not reflect any retroactive rate increases to cover AWS costs incurred implementing the new and/or expanded services implemented in 2011 and 2012. There is one exception to this rate freeze for 2012. Should the State mandate commercial recycling by mid 2012, and the provision described in Item #3 above become a requirement, AWS would be allowed to submit support for an adjustment, but only to commercial rates, to cover the new costs required to fund a mandatory commercial recycling program in the City (i.e., for costs associated with the commercial recycling program only, including labor, carts/bins, trucks, and overhead). This mandatory commercial recycling rate adjustment request would be subject to City review and City Council approval. *Added to Section 20 B (1) and 20 B (2) of both franchise Agreements.*

10. **Use an 88 to 92 percent Operating Ratio Range for Base Year Rate Setting (No Clear Benefit to Any One Party)** – Currently the City and AWS use the Incentive Risk-Based Operating Ratio Methodology for rate setting as specified on page 1-13 of the January 2000 Rate Manual. This method allows base year profitability to range from 85 percent upward without a rate change. AWS would agree to a more narrow operating ratio range of 88 to 92 percent, with a target of 90 percent, as specified in the Base Case Operating Ratio Method (page 1-12 of the Rate Manual). This means that should the company’s projected operating ratio, in a base year, fall outside the 88 to 92 percent operating ratio range, the company’s operating ratio would be reset to 90 percent in that base year. *Referenced in the revised March 2011 Rate Manual.*
11. **Calculate Interim Year Rate Changes Based on 90 Percent of the Prior Year Consumer Price Index and Add an Interim Year Rate Cap (Primarily a Ratepayer Direct Benefit)** – AWS would agree that, beginning in 2014 (after the 2011 interim year adjustment, 2012 rate freeze, and 2013 Base Year), interim year rates would be adjusted by a more simplified calculation, equal to ninety (90) percent of the prior year change in the August-to-August San Francisco-Oakland-San Jose CPI applied to each rate in the rate structure, regardless of AWS’ profitability in base years. Additionally, interim year rate increases would be capped at four (4) percent, offering the ratepayer protection against high inflation. Changes could be either positive or negative. Either the City or AWS could request an “extraordinary rate adjustment” as is currently allowed, which would be subject to City review and City Council approval. *Referenced in the revised March 2011 Rate Manual.*
12. **Remove the Interim Year “Consumer Price Index Adjustment Factor” (Primarily a Ratepayer Direct Benefit)** – Currently, the Rate Manual specifies an adjustment factor in the interim year calculation to allow for “truing up” of differences between the prior year projected, and prior year actual, change in the CPI. AWS would agree to remove this interim year “adjustment factor,” replacing the interim year calculation with the simplified 90 percent of CPI method mentioned above. *Referenced in the revised March 2011 Rate Manual.*

13. **Provide the City with a \$500,000 Community Impact Payment (Primarily a Ratepayer Direct Benefit)** – AWS would pay the City a one-time community impact payment of \$500,000 to cover various City costs incurred as a result of the refuse and recycling collection franchise with AWS. City services covered by this payment would include such ongoing services as City street pavement maintenance to cover differential impacts from AWS collection trucks on City streets, and storm drain maintenance caused by litter produced from AWS collection operations, necessitated by new National Pollutant Discharge Elimination System (NPDES) permit requirements.

AWS would make this community impact payment to the City in two equal installments of \$250,000, the first within 30 days of execution of the franchise extension, and the remainder by January 31, 2012. The City would place this community impact payment into a special dedicated fund which would be used for City services related to the refuse and recycling collection franchise. The City would not put the community impact payment into the General Fund to use for City services not related to the refuse and recycling collection franchise. This community impact payment would not be a cost recovered in the rate base. *Added to Section 3 of both franchise agreements.*

## **ATTACHMENT D**

### **City of Martinez Summary of Updates to Rate Setting Process and Methodology Manual for Solid Waste Charges**

1. Revised franchise agreement references in Manual to reflect current agreements (page I-2)
2. Identified rate freeze for 2012 and timing for next base year application (page I-7)
3. Revised interim year rate adjustment to reflect ninety (90) percent of the CPI (Page I-9, III-1)
4. Identified interim year rate cap (maximum) of 4 percent (page I-9, III-1)
5. Changed allowable operating profit calculation to Option A - Base Case Operating Ratio Method (a 90 percent target OR, with a range of 88 to 92 in base years) from Option B – Incentive/Risk-Based Operating Ratio (page I-13, II-17)
6. Updated waste management industry operating ratio data in support of 90 percent target (Pages I-14, I-15)
7. Identified future enhancements to AWS services based on 2011 franchise extension negotiations (pages I-17 to I-20)
8. Updated application form line items throughout Section II (beginning on page II-6)
9. Updated rate survey contents (page II-19)
10. Removed distinction between uncontrollable and uncontrollable costs, and the interim year adjustment factor, from interim year rate setting (page III-5, III-6, III-7)
11. Added the March 11, 2011 franchise extension assessment letter (as Exhibit A-2)
12. Made minor revisions to the Base Year Rate Application to reflect policy changes noted above, the City's new franchise fee level, the full residential rate structure, and changes in more commercial refuse collection rates (Appendix B)
13. Revised Interim Year Rate Change Application to reflect policy changes noted above (Appendix B)

## ATTACHMENT E

RESTATED AND AMENDED  
FRANCHISE AGREEMENT BETWEEN CITY OF MARTINEZ  
AND ALLIED WASTE SYSTEMS, INC., D.B.A.  
PLEASANT HILL BAYSHORE DISPOSAL, INC.  
(SOLID WASTE)

This Franchise Agreement ("Franchise Agreement") is entered into on May 4, 2011, between the City of Martinez ("City") and Allied Waste Systems, Inc., d.b.a. Pleasant Hill Bayshore Disposal, Inc., a California corporation, ("Grantee"), for the collection, transportation, and disposal of solid waste.

### RECITALS

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), codified as California Public Resources Code Section 40000 et seq., has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, pursuant to California Public Resources Code Section 40059 (a) (1), the City Council of the City has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection and recovery of solid waste from residential, industrial and commercial areas in the City; and

**WHEREAS**, City and Grantee are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

**WHEREAS**, City has not, and, by this Restated and Amended Franchise Agreement ("Franchise Agreement") does not, instruct Grantee on its collection methods, nor supervise the collection of waste; and

**WHEREAS**, Grantee has represented and warranted to City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the City for the collection and safe transport to disposal facilities of municipal solid wastes, the City Council of the City determines and finds that the public interest, health, safety and well-being would be best served if Grantee were to make arrangements with residents and other entities to perform these services; and

**WHEREAS**, the City Council of the City declares its intention of maintaining reasonable rates for collection and transportation of solid waste within City limits; and

**WHEREAS**, the City and Grantee's predecessor in interest entered into a Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. ("Solid Waste"), dated March 1, 1993 ("Original Document"); and

**WHEREAS**, the City and Grantee entered into a restated and amended franchise agreement between the City of Martinez and Pleasant Hill Bayshore Disposal, Inc. ("Solid Waste"), on January 5, 2005 ("2005 Agreement") covering the same subjects as were included in the Original Document; and

**WHEREAS**, as a condition of the 2008 Base Year Rate Review, Grantee agreed to expand its multi-family recycling program to include free cart and bin service to over

150 multi-family dwellings; and

**WHEREAS**, as a condition of the 2008 Base Year Rate Review, Grantee also agreed to provide a free on-call residential bulky recyclables collection program; and

**WHEREAS**, on July 1, 2009, the parties entered into an Addendum to the 2005 Agreement to memorialize certain services provided by the Grantee, and to enhance the customer service provisions expressed in Section 22 A of the 2005 Agreement; and

**WHEREAS**, the parties desire to consolidate the various aforementioned modifications made to the 2005 Agreement and incorporate a series of new terms into the Franchise Agreement as part of a 10-year extension of the franchise; and

**WHEREAS**, it is the desire of the parties that this Franchise Agreement dated May 4, 2011, supersede and replace the 2005 Agreement; and

**WHEREAS**, the City believes this Franchise Agreement represents a high degree of service and value to residents, businesses, and the City.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL FRANCHISE

A. City grants to Grantee, for the term of and in accordance with this Franchise Agreement (including all extensions or renewals), an exclusive privilege and duty to make and enter into independent arrangements with residents of single family units, residents and/or owners of multifamily units and persons in charge of commercial, industrial, institutional and other entities in the City for the collection, transportation and removal to solid waste disposal facilities, all residential, industrial, and commercial solid waste generated or accumulated within the City which has been placed in an authorized solid waste container, in the areas covered by this Franchise Agreement, as shown on Exhibit "A" "FRANCHISE AREA" as its boundaries are now constituted or may hereafter be amended.

B. Grantee agrees to be bound by and comply with all the requirements of this Franchise Agreement. Grantee waives any right or claim to serve any part of the City as its boundaries exist as of the date of execution of this Franchise Agreement under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity.

C. In the event and to the extent that any of the following require or are amended to require that either party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the parties hereunder, then this Franchise Agreement shall be amended to provide provisions that have as their purpose the satisfaction of such requirements. Furthermore, should such amendments to this Franchise Agreement result in the Grantee having to incur additional expenses in performing its obligations hereunder, then Grantee may seek rate adjustments therefor in accordance with the procedures specified under Section 20, below.

- (1) the City's Municipal Code, the California Public Resources Code, AB 939, other applicable state and federal laws, rules and regulations promulgated thereunder, and
- (2) the Contra Costa County County-wide Integrated Waste Management Plan and the City's Source Reduction and Recycling Element and Household Hazardous Waste Element; and
- (3) any and all amendments to said laws, plans and regulations.

D. The exclusive privilege granted by this Agreement shall not apply where:

- (1) A person handles, hauls or transports solid waste from his/her own residence for purposes of disposing of same at an authorized disposal area or transfer station either personally or through the uncompensated services of another. However, nothing in this Section shall permit such person to hire or compensate another person or entity (not affiliated with the franchisee) to dispose of such person's solid waste; or
- (2) A person or entity contracts for the removal and disposal or recycling of organic refuse or garden waste and such removal and disposal or recycling are incidental to work such as remodeling or gardening occasionally performed by or for the customer; or
- (3) A person or entity contracts for the removal and recycling of construction or demolition waste and such removal and recycling are incidental to work such as construction, demolition, or remodeling, occasionally performed by or for the customer.

E. This agreement is not intended to and does not affect or limit the right of any person to sell, donate or otherwise dispose of any valuable commodity to the Grantee or to any other person lawfully doing business within the City limits or Franchise Area provided that the valuable commodity is separated at the source by the generator and that the person acquiring the valuable commodity (other than the Grantee) does not collect and dispose of other solid wastes.

## SECTION 2 - DEFINITIONS

Whenever any term used in this Franchise Agreement has been defined by the Municipal Code of the City ("Municipal Code") or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

A. AB 939

"AB 939" shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

B. Bulky Waste

"Bulky Waste" shall have the same meaning as that term is defined in Chapter 8.1.6 of the City's Municipal Code.

C. City Limits

"City Limits" shall mean the boundaries of the City together with all amendments and changes thereto, which current boundaries are shown on Land Use Map 1 incorporated herein by reference and which is on file in the office of the City Clerk.

D. Commercial Solid Waste

"Commercial Solid Waste" includes all types of solid wastes generated by commercial, industrial, governmental and other sources which have been placed in an authorized solid waste container used for the temporary storage of solid waste awaiting pickup. The term "Commercial Solid Waste" does not include hazardous wastes generated by commercial, industrial, governmental and other sources and which are placed in separate containers and which are covered by hazardous waste manifests.

E. Compostables or Compostable Materials

"Compostables" or "compostable materials" shall have the same meaning as "compost" specified in CA Public Resource Code §40116.

F. Franchise Fee

"Franchise Fee" means the fee or assessment imposed by the City on Grantee solely because of its status as party to this Franchise Agreement, and which, *inter alia*, is intended to compensate City for its expenses in administering this Franchise Agreement, for use of public rights of way granted by this Agreement, and for damage to its roads, curbs, sidewalks and other parts of the City's infrastructure.

G. Grantee

"Grantee" shall mean the entity granted the Franchise to arrange for the collection of solid wastes pursuant to this Franchise Agreement.

H. Gross Revenues

"Gross Revenues" means any and all revenue or compensation in any form derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents or any other person or entity in which Grantee has a financial interest, in collecting, transporting, arranging, handling and/or disposing of solid wastes generated in the Franchise Area pursuant to this Franchise Agreement.

I. Hazardous Waste or Materials

- (1) "Hazardous Waste or Materials" means any waste materials or mixture of wastes defined as such pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, or the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 *et seq.*, and all future amendments to either of them, or as defined by the California Environmental Protection Agency or the California Department of Resources, Recycling and Recovery (CalRecycle), or either of them. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or solid waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.
- (2) "Hazardous Waste" shall also have the meaning as that term is defined in Chapter 8.16 of the City's Municipal Code.

J. Industrial Solid Waste

"Industrial Solid Waste" means all solid waste and semisolid waste which results from industrial processes and manufacturing operations, excluding Recyclables.

K. Multi-Family Units

"Multi-Family Units" shall mean any residence, or group of residences, with two (2) or more dwelling units, including any flat, apartment, duplex, triplex, condominium, town home or other premises, other than a hotel or motel, used for housing persons, including such premises when combined in the same building with commercial establishments, and serviced with one (1) or more common containers.

L. Municipal Solid Waste

"Municipal Solid Waste" means all Solid Waste generated within the City which is designated for collection under this Franchise Agreement.

M. Recyclables or Recyclable Material

"Recyclables or Recyclable Material" shall have the same meaning as provided in the City's Municipal Code and includes materials which are reused or processed or are in the future reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the California Integrated Waste Management Act. The term "Recyclables or Recyclable Material" includes, but is not limited to, mixed paper, glass, aluminum, cardboard, chipboard (i.e. cereal and shoe boxes), newsprint, plastic food and beverage containers #1-7, tin/bimetal containers, compostable materials, used motor oil, oil filters, automotive batteries, brick, stone, wood, soil, or concrete in reusable condition, and such other materials designated by City's AB 939 Coordinator, or designated as Recyclables by the California Department of Resources, Recycling and Recovery (CalRecycle), or other agency with jurisdiction.

N. Residential Solid Waste

"Residential Solid Waste" means all types of solid waste which originate from single-family units.

O. Single-Family Unit

"Single-Family Unit" means any residence, including a house, flat, duplex, triplex, condominium, town home or other premises, other than a hotel or motel, used for housing persons, including such premises when combined in the same building with commercial establishments, and which is not serviced with common containers.

P. Solid Waste

"Solid Waste" shall have the same meaning as provided in the City's Municipal Code, and shall exclude Recyclables placed in an approved recycling container.

Q. Special Wastes

"Special Wastes" shall mean any designated wastes, as defined in 23 Cal. Code of Regs. §2522, and special handling wastes generated by industrial facilities or processes, but shall not include "hazardous waste" as defined herein. Special wastes shall include, but not necessarily be limited to: asbestos, sewage sludge, water treatment sludge, infectious wastes, drilling muds, contaminated soils, shredder waste, agricultural wastes, filter cake/dewatered sludge, spent catalyst fines, refinery ash and byproducts; except where any such wastes are deemed to be hazardous waste.

R. Yard Waste

- (1) Leaves, grass clippings, weeds, brush, prunings, tree trimmings, roots, and other organic materials which accumulate or originate from ordinary residential landscaping and gardening, and which have been placed at or near the curb, or within another City approved location, in City approved yard waste receptacles, for collection by the Grantee.
- (2) Yard waste does not include fish, meat, bones, or any other animal by products, oils, grains, rocks, stones, sand, clay, soil, nor animal feces.

- (3) Yard waste does not include hazardous waste or materials as defined in this Section 2, nor does it include recyclable materials as defined in this Section 2.

### SECTION 3 - FRANCHISE FEE; OTHER COMPENSATION

A. Franchise Fee

Grantee shall pay to City a franchise fee set by City Council resolution, which said fee shall be based on the gross revenues derived by Grantee from operations pursuant to this Franchise Agreement. The Franchise Fee shall be due and payable quarterly within twenty (20) days following the end of each quarter. If payment is not received within said twenty (20) day period, interest shall accrue thereon at the maximum interest rate permitted under California law, but not to exceed ten (10) percent per annum. Any such fee shall have prospective effect only; provided, however, that should any rate adjustment be given retroactive effect, the applicable franchise fee shall in the Council's discretion, also be given such effect.

B. Community Impact Payment

Grantee shall pay to the City a one-time community impact payment of Five Hundred Thousand Dollars (\$500,000.00) to cover various City costs incurred as a result of the Grantee's refuse and recycling collection franchise operations. City will place this payment into a special dedicated fund to be used for City services related to the refuse and recycling collection franchise. City services covered by this payment will include, but not be limited to, such ongoing services as City street pavement maintenance to cover differential impacts from Grantee's collection trucks on City streets, and storm drain maintenance caused by litter produced from Grantee's collection operations and necessitated by the new National Pollutant Discharge Elimination System (NPDES) permit requirements. Grantee shall pay Two Hundred and Fifty Thousand Dollars (\$250,000.00) of this community impact payment to the City within thirty (30) days of execution of this Franchise Agreement. Grantee shall pay the remaining Two Hundred and Fifty Thousand Dollars (\$250,000.00) of the community impact payment to the City by January 31, 2012. Grantee shall not be entitled to recover the cost of this community impact payment in the rate base.

C. AB 939 and Climate Action Plan Support Payments

Grantee shall provide the City with annual payments of Twenty Five Thousand Dollars (\$25,000.00) to cover implementation of the City's AB 939 programs and Climate Action Plan initiatives. The cost to Grantee will be treated as a pass-through in the rate base (without profit). This payment will be made on a proportionate basis for the remainder of the City's Fiscal Year 2010-11 (the period of July 1, 2010 to June 30, 2011), and due within thirty (30) days of execution of the Franchise Agreement. The full annual payments to the City shall be due by July 31<sup>st</sup> of each year, beginning in July 2011.

### SECTION 4 - COMPLIANCE WITH LAWS AND REGULATIONS

Grantee warrants that it will comply with all applicable laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. ("RCRA"), the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California, the County of Contra Costa, ordinances of the City, the City's Source Reduction and Recycling Element, the City's Household Hazardous Waste Element, the County of Contra Costa's Countywide Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Grantee under this agreement. Grantee shall comply with all final and binding judgments entered against Grantee regarding its services performed under

this agreement.

## SECTION 5 - FRANCHISE AREA

### A. Franchise Area Defined

The Franchise Area granted by this Franchise Agreement shall be the areas within the City limits of the City of Martinez as delineated on Exhibit "A," and as may hereafter be changed by reason of annexation, deannexation or re-organization.

### B. Annexation Covered by Existing Franchise

Territory annexed to the City that is covered by an existing solid waste permit, license, agreement or franchise granted by another public entity shall be added to the Franchise Area granted by this Franchise Agreement, and Grantee agrees to defend, indemnify and hold harmless the City against any claims by such other franchisee that it continues to have any right to service the area so annexed.

### C. Mountain View Overlap

This Franchise Agreement shall be binding upon Grantee's activities in those areas within the City's limits alleged to be within the jurisdiction of the Mountain View Sanitary District and shall be enforceable against Grantee by the City.

## SECTION 6 - SERVICES PROVIDED BY GRANTEE

### A. City to Approve All Services

The nature of the services Grantee offers and provides to customers residing or doing business in the Franchise Area shall be determined by the City Council. The services that Grantee offers and provides to its customers affected by this Franchise Agreement shall be subject to the prior approval of the City Council or its designee.

- (1) The services that Grantee shall provide to its residential customers under this Franchise Agreement are set forth in Exhibit "B" attached hereto and made a part hereof by this reference.
- (2) In addition to the services Grantee shall provide to its residential customers pursuant to A (1) above, Grantee shall provide all additional services otherwise set forth in this Agreement.

### B. Once a Week Service

In order to protect the public health and safety, arrangements made by Grantee with its customers in the City for the collection of solid waste not defined in the Franchise Agreement as recyclable material, shall provide for the collection of such waste generated or accumulated in residential, commercial, and industrial premises within the City at least once per week, or more frequently, as Grantee or its customers may agree.

#### (1) Single-Family Units

Grantee shall collect from Single-Family Units solid waste (except bulky wastes and special wastes) which have been placed, kept, or accumulated in authorized solid waste containers, at curbside or other authorized collection station(s) prior to Grantee's

normal weekly collection time.

(2) Multi-Family Units

Grantee shall empty all Multi-Family authorized solid waste containers not less often than once per week, and more frequently if required to handle the Multi-Family Unit waste stream of the premises where the containers are located, in a manner consistent with public health and safety.

C. Hours of Collection

Grantee agrees that, in order to protect the peace and quiet of residents, its arrangements for the collection of solid waste will provide that collections for residential and commercial areas shall not start before 6 a.m. or continue after 7 p.m., six (6) days per week, excluding Sunday.

D. Collection on Holidays

Grantee has informed City that Grantee's arrangements with its solid waste customers will provide that if the day of collection on any given route falls on a legal holiday, i.e. New Year's Day or Christmas Day, observed by the materials recovery facility, landfill or other lawful disposal site to which solid waste collected within the Franchise Area is taken for disposal, Grantee shall provide collection service for such route on the work day next following such Holiday and shall not provide collection service on such Holiday, and all subsequent collection days during that Holiday week shall be moved back one day in the discretion of Grantee.

E. Special Wastes

Grantee shall have the right under this franchise, but is not obligated to, collect, transport and dispose of material defined as "special waste" in paragraph 2 Q. Grantee shall negotiate separate contracts and rates for special waste collection with each individual customer, which rates shall not require advance City Council approval but may be reviewed by the Council in its discretion at the request of any special waste customer. All revenues received by the Grantee for the collection, transport and disposal of special waste shall be included in Grantee's gross revenues for purposes of calculating Grantee's franchise fee for the City.

F. City Facilities

Grantee agrees to provide approved recycling containers and authorized solid waste containers at the City facilities as is described on Exhibit "E," attached hereto and incorporated by this reference, and to provide collection service thereat, at no charge to City.

G. Pick-Up of Illegally Dumped Bulky Waste

Grantee agrees to provide on-demand pick-up of illegally-dumped Bulky Waste at City's request. Grantee shall provide this service within two (2) calendar days of City's requests. Grantee shall publicize, to the satisfaction of City, the Contra Costa Clean Water Program toll free number 1-800-NO DUMPING as a resource for people to report illegal dumping of debris. Reports of illegal dumping made to the above identified number shall be forwarded to Grantee. Grantee shall pick up and dispose of illegally-dumped Bulky Waste identified through the above number within two (2) calendar days of the report being made. The number of calls, amount of material collected, and locations of the material shall be reported to the City each month by Grantee.

#### H. Litter and Debris Control and Collection

Grantee shall provide litter and debris pickup on City streets and public rights of way. City shall identify the City streets, public rights of way, or other public property upon which Grantee shall perform this service. If Grantee performs this service by contract with a third party, Grantee shall be responsible for all compensation to said third party and shall provide the litter pickers and vests to assist the third party with the litter control and collection. Grantee will defend, indemnify, and hold harmless the City for all claims, actions, and proceedings arising out of or in any way associated with the work that the third party provides within the City limits in accordance with Section 25 A hereof.

### SECTION 7 - SALVAGE RIGHTS

#### A. City Controls Wastestream

The parties hereto agree that under this Franchise Agreement the City has the right to own and/or control the collection, disposal and diversion of all waste, including Recyclables, generated within the Franchise Area ("wastestream"). As part of the rights agreed to herein, the parties hereto agree that: (i) the City has the right to direct the wastestream to be disposed of or diverted at any solid waste facility or in any manner, respectively, the City may designate; (ii) the City has the right to market and process Recyclables, and (iii) the City has the right to direct the wastestream to be disposed of or diverted at any transfer or processing station the City may designate.

#### B. City's Jurisdiction

The parties hereto agree that City currently has jurisdiction to regulate the collection, removal, handling and disposal of all solid wastes generated in the Franchise Area. The intent of this Agreement is to regulate residential, commercial and industrial solid waste handling services. However, this Agreement does not regulate the collection, removal and disposal of infectious waste, hazardous waste or septage, irrespective of origin.

- (1) Throughout the term of this Agreement, unless the City gives notice as provided for herein and subject to the terms of this Agreement, it shall be the Grantee's sole responsibility and duty to dispose of the solid waste collected by virtue of this Agreement and do so in a safe manner and in compliance with all federal, state and local laws and regulations. In this connection, the Grantee agrees that it shall dispose of all solid waste collected in the Franchise Area at a solid waste facility that is fully licensed and appropriately permitted and, to Grantee's knowledge, is not in material violation of any health, safety or hazardous materials laws, rules, regulations or orders.
- (2) City shall be entitled to the right or grant to a third party the right of salvage, at the expense of the City, from the solid waste collection pursuant to this agreement, but at its sole discretion may delegate this right to, or waive the same in favor of, the Grantee. By entering into this agreement, the City has temporarily waived its right to salvage and has delegated such to the Grantee; and such waiver and delegation shall continue until notice in writing by the City to the contrary is given. In the event the City independently wishes to exercise its right to salvage, the City shall give in writing to the Grantee notice of its intent and said right shall commence and accrue to the City ninety (90) days from the date of said notice. The salvage rights set forth in this Section specifically are intended to refer to salvage operations once the solid waste is placed by the generator in the waste stream.

#### C. Rights Reserved as to Hazardous Wastes

The City reserves the right to contract with other parties to have hazardous wastes collected, transported, disposed of, processed and/or diverted.

D. Effect of City's Control

- (1) Notwithstanding anything to the contrary stated above in this Section 7, should the City exercise the rights described herein and through that exercise direct Grantee to dispose of solid waste at a specific landfill or landfills, then the City shall indemnify and hold Grantee harmless (i) from any increased operations costs incurred by Grantee arising out of the disposal of the City's solid waste at the landfill designated by the City and (ii) from any liabilities and damages (including clean-up and remediation costs connected with hazardous waste or materials releases) arising out of the disposal of the City's solid waste at the landfill designated by the City, except that this indemnification and hold harmless provision shall not apply to liabilities and damages caused by the negligence of Grantee.
- (2) Grantee shall indemnify and hold the City harmless from any liabilities and damages (including but not limited to clean-up and remediation costs connected with hazardous waste or hazardous materials releases) arising out of disposal of City's wastestream at the Keller Canyon Landfill or any other landfill not directed by City.

SECTION 8

INTENTIONALLY LEFT BLANK.

SECTION 9 - CASH BOND AND INSURANCE

A. Cash Bond

The Grantee shall deposit a cash bond in the sum of One Hundred Thousand Dollars (\$100,000.00) in an interest bearing account. The cash bond shall be on terms acceptable to the City Attorney. The cash bond shall serve as security for the faithful performance by Grantee of all the provisions and obligations of this Franchise Agreement. All interest shall be paid to the Grantee.

- (1) After thirty (30) days following Grantee's failure to pay the City an amount owing under this Franchise Agreement plus interest at the rate of ten percent (10%) per annum, the cash bond may be accessed by the City upon five (5) days' prior written notice to the Grantee for purposes including, but not limited to:
  - (a) Failure of Grantee to pay the City sums due under the terms of the Franchise Agreement;
  - (b) Reimbursement of costs borne by the City to correct Franchise Agreement violations not corrected by Grantee, after due notice; and
  - (c) Monetary remedies or damages assessed against Grantee due to breach of Franchise Agreement.
- (2) The Grantee shall deposit a sum of money sufficient to restore the cash bond to the original amount within thirty (30) days after notice from the City that any amount has been withdrawn from the cash bond. The amount of the cash bond shall be adjusted annually by the annual percentage December to December change in the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose region ("CPI"). It is acknowledged that as of April 1, 2011, Grantee had deposited a cash bond in the amount of \$146,303.34 in conformance with this Agreement.

B. Insurance Coverage

The Grantee shall deposit with the City Clerk copies of insurance policies or endorsements evidencing the existence of policies of insurance and coverages required pursuant to this Franchise Agreement.

SECTION 10 - TERMS: EXTENSIONS

The term of this Franchise Agreement shall commence immediately upon execution and terminate on January 5, 2023.

SECTION 11 - FRANCHISE TRANSFERABLE; CITY CONSENT REQUIRED

A. The franchise granted by this Franchise Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operations of law, without the prior written consent of the City expressed by resolution. Any attempt by Grantee to assign this franchise without the consent of City shall be void.

B. The City shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement. The City may impose reasonable conditions of approval on a Franchise Agreement transfer, including, but not limited to, conditions requiring acceptance of amendments to the City's Municipal Code and this Franchise Agreement, and the payment of a transfer fee to the City.

C. The term "assignment" shall include any dissolution, merger, consolidation or other reorganization of the Grantee, which results in change of control of the Grantee, or the sale or other transfer by probate proceeding or otherwise of a controlling percentage of Grantee's capital stock to a person not a shareholder on the date of the execution of this Agreement.

D. City consent is required for any change in control of Grantee. "Change in control" shall mean any sale, transfer or acquisition of Grantee. If Grantee is a corporation, any acquisition of more than ten percent (10%) of Grantee's voting stock by a person, or group of persons acting in concert, who already owns less than 50% of the voting stock, shall be deemed a change in control; provided, however, any transfer of ownership of any or all of the stock or assets of Grantee to another wholly-owned subsidiary of Allied Waste Systems, Inc. shall not constitute a change in control.

E. Any change in control of the Grantee occurring without prior City approval shall constitute a material breach of this Franchise Agreement.

F. In the event the Grantee herein attempts to assign or subcontract this agreement or any part hereof or any obligation hereunder, the City shall have the right to elect to terminate this agreement forthwith, without suit or other proceeding.

G. No interest of the Grantee in this agreement shall be assignable by operation of law. Each or any of the following acts shall be considered an involuntary assignment providing the City with the right to elect to terminate the agreement forthwith, without suit or other proceeding:

- (1) If Grantee is or becomes insolvent, or makes an assignment for the benefit of creditors;
- (2) If Writ of Attachment or Execution is levied on this agreement or other property of

Grantee such that would affect Grantee's ability to perform its duties and obligations under this agreement;

- (3) If in any proceeding to which Grantee is a party, a Receiver is appointed with authority to take possession of Grantee's property such that would affect Grantee's ability to perform its duties and obligations under this agreement;
- (4) In the event of a probate proceeding where the rights of Grantee under the Agreement would pass to another individual or other individuals.

H. The City's consent to an assignment or change of control may be withheld if inter alia, the following conditions are not satisfied:

- (1) The Grantee shall give the City at least ninety (90) days advance written, notice of the Grantee's intent to sell, transfer or assign this agreement. As part of that notice, the Grantee shall provide to the City the following written information:
  - (a) The name, address, and telephone number of the proposed assignee.
  - (b) The character of the legal entity owning or controlling the assignee, and the names, addresses and telephone numbers of all principals, partners, and/or shareholders thereof, as the case may be.
  - (c) A copy of any and all purchase and assignment agreements containing, at a minimum, the terms and conditions (but excluding the financial terms) of the sale, transfer or assignment of this agreement and of Grantee's solid waste and recycling business.
- (2) The proposed transferee must be shown, by credible and sufficient evidence, to be qualified, by financial condition, background and experience to be able to fully assume and satisfactorily perform all of the Grantee's obligations hereunder, and, particularly, to be able to perform under this agreement in a fashion that will assure the City of complying with AB 939 and its SRRE.
- (3) Grantee cannot be in default under any of the material terms and conditions hereof.
- (4) The transferee must be willing to, in writing, assume all of the obligations hereunder.

#### SECTION 12 - FRANCHISE TRANSFER: FEES

A. Any application for a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by City by Resolution of the Council, to cover the anticipated cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, the Grantee shall reimburse the City for all costs not covered by a transfer fee in an amount not to exceed Ten Thousand Dollars (\$10,000.00). City's request for reimbursement shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

B. These franchise transfer fees are over and above any franchise fees specified in this Franchise Agreement and shall not be recoverable costs for rate setting purposes.

## SECTION 13 - TERMINATION

A. If the City Manager determines that the Grantee's performance pursuant to this Franchise Agreement has not been in conformity with the provisions of this Franchise Agreement, the City Manager may advise Grantee in writing of such deficiencies ("Notice of Default"). The City Manager may, in said Notice of Default, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction (or the commencement and diligent pursuit of measures reasonably calculated to correct the deficiencies within a reasonable period of time) shall be sixty (60) days from the receipt by Grantee of the Notice of Default. Any such Notice of Default shall expressly refer to Grantee's right to appeal the Notice of Default within thirty (30) days of receipt of the Notice of Default. The Grantee shall respond to such Notice of Default in writing within ten (10) calendar days of receipt of the Notice of Default. Said response shall detail how and when Grantee intends to remedy the default. The City Manager shall review the Grantee's response and decide whether the response of Grantee is sufficient to remedy the default and shall notify the Grantee of that decision, in writing (City Manager Decision). The City Manager Decision shall be final and binding on Grantee unless the Grantee files a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the City Manager Decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager may meet and confer with Grantee regarding any issues in dispute, or refer the appeal to the City Council for proceedings in accordance with Section 13 B - C, below. In the event the City Manager determines to meet and confer with Grantee and the matter is not resolved thereby, the City Manager shall set the appeal for public hearing before the City Council in accordance with Section 13 B - C, below.

B. The City Council, in such case, may meet and confer with Grantee or shall set the matter for public hearing. In the event that the City Council determines to meet and confer with Grantee and the matter is not resolved thereby, the City Council shall set the matter for public hearing. The City Council shall give Grantee, and any other person requesting the same, fourteen (14) days written notice of the time and place of any hearing set pursuant to this paragraph. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Grantee, or its representatives and any other interested persons, a reasonable opportunity to be heard.

C. Based on the evidence presented at the public hearing, the Council shall determine by resolution whether the Franchise Agreement should be terminated. If the evidence presented at the public hearing establishes that the Grantee has committed a material breach of this Franchise Agreement, the City Council shall make written findings supporting its determinations and, based thereon, may elect to terminate the Franchise Agreement, reduce the rates then being charged by the Grantee or take other appropriate action regarding the Franchise Agreement or Grantee. Grantee's performance under its Franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

D. This right to terminate, reduce rates and/or to take any other appropriate action is in addition to any other rights of City upon a failure of Grantee to perform its obligations under this Franchise Agreement.

E. The City, subject to the procedures set forth in Section 13 A - C, further reserves the right to terminate Grantee's Franchise, or reduce rates or to take other appropriate action in the event (a) any of the following occurs and (b) Grantee fails to commence efforts to timely cure any such deficiencies (except in the case of intentional fraud described in subparagraph 1, in which case no cure period shall apply) within the time period specified in Section 13 A:

- (1) If the Grantee practices, or attempts to practice, any intentional fraud upon the City, or makes any intentional material misrepresentations to the City in any of the reports required by this Franchise Agreement.
- (2) If the Grantee becomes insolvent, unable to unwilling to pay its debts, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.
- (3) If the Grantee fails to provide or maintain in full force and effect, the workers compensation, liability and indemnification coverages or cash bond as required by the

Franchise Agreement.

- (4) If the Grantee willfully violates any final and binding orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Franchise Agreement; provided, however, that the Grantee may contest any orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise Agreement shall be deemed to have occurred.
- (5) If the Grantee ceases to provide collection service as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reasons within the control of the Grantee.
- (6) If the Grantee willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide City with required information, reports and/or test results in a timely manner as provided in the Franchise Agreement.
- (7) Any other act or omission by the Grantee which materially violates the terms, conditions or requirements of the Franchise Agreement and which is not corrected or remedied within the time set forth in this Franchise Agreement or, if the Grantee cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Grantee should fail to commence to correct or remedy such violation within the time set in such notice and diligently effect such correction or remedy thereafter.
- (8) Multiple or repeated breaches, or a pattern of breaches and subsequent attempts to cure said breaches by Grantee notwithstanding whether any of the breaches are ultimately cured by the Grantee.

F. Any waiver of a breach shall not be deemed to be a waiver of any subsequent breach or to be construed as approval of a course of conduct.

G. Upon the occurrence of a material breach and the declaration of such and termination of this agreement by the City Manager or City Council, as the case may be, this agreement and the franchise granted thereunder shall be of no further force and effect, excepting those provisions concerning City's right to temporarily assume Grantee's obligations. City then shall be free to enter into whatever other arrangements are deemed justified and necessary for the collection, removal and disposal of solid waste within the Franchise Area.

#### SECTION 14 - RIGHTS OF CITY TO PERFORM DURING EMERGENCY

A. Should Grantee, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 26 A, "Force Majeure," below, refuse or be unable to collect, transport and dispose of any or all the solid waste which it is obligated under this Franchise Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof, solid waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager in the exercise of his or her sole discretion, after consultation with City and County health officials should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, upon twenty-four (24) hour prior written notice to Grantee, during the period of such emergency, to contract on a temporary basis with third parties to collect and transport any and all solid waste which Grantee would otherwise be obligated to collect and transport pursuant to this Franchise Agreement.

B. Grantee agrees that in such event it will fully cooperate with City and its third-party contractor to effect such a transfer of operations in as smooth and efficient a fashion as is practicable.

C. All costs, fees, rates and other expenses incurred by the City and/or its third-party contractor that exceed those in effect or being incurred or which would have been incurred had no

such emergency arisen shall be the responsibility of the Grantee and shall be paid to the City within 30 days of Grantee's receipt of written notice to so pay.

#### SECTION 15 – PRIVACY

A. Grantee shall use its best efforts to observe and protect the rights of privacy of customers. Information identifying individual customers, or the composition or contents of a customer's refuse shall not be revealed to any person, private agency or company, unless upon the request of federal or state law enforcement personnel, the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Grantee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939 or any other reports requested by the City under the Franchise Agreement or required or requested by any governmental agency.

B. Grantee shall not market or distribute outside the normal course of its business, mailing lists with the names and addresses of customers.

#### SECTION 16 - GRANTEE'S BOOKS AND RECORDS: AUDITS

A. Grantee shall maintain a proper set of books and records in accordance with generally accepted accounting principles, accurately reflecting the business done by it under this agreement.

B. Grantee shall maintain all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, maps, AB 939 records, and customer complaints, for the full term of this Franchise Agreement, and an additional period of not less than three (3) years, or any longer period required by law. The City or its agent(s) shall have the right, upon ten (10) business days' advance notice, to inspect all maps, AB 939 records, Grantee's books and records, customer complaints, and other like materials of the Grantee which reasonably relate to Grantee's compliance with the provisions of the Franchise Agreement. Such records shall be made available to City at Grantee's regular place of business, but in no event outside the County of Contra Costa. Grantee shall further maintain and make available to City, records as to number of customers, total and by type, route maps, service records and other materials and operating statistics in such manner and with such detail as City may require. City shall treat the information required by this paragraph that affects the competitive position of the Grantee as confidential information to the extent permitted by law. City shall not make or retain copies or photocopies containing information set forth in Grantee's confidential financial and business records pertaining to the establishment of rates and payment of franchise fees without executing a Confidentiality Agreement providing that City shall hold and keep such copies and photocopies confidential. The Confidentiality Agreement shall be negotiated in good faith between the City and Grantee and commemorated in a separate legally binding document prior to any subsequent rate increase. Any data which the Grantee seeks to be excluded from provisions of the California Public Records Act or any similar federal or state law shall be clearly identified as such by Grantee with the basis for such exclusion clearly specified. In the event the City receives a request under the Public Records Act or any similar federal or state law, or by subpoena, the City shall notify Grantee to permit Grantee to object to the release of the information requested or subpoenaed. In such case, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, the City shall make a good faith effort to notify Grantee of the intended release.

C. Should any examination or audit of Grantee's records reveal an underpayment of any fee required under this Franchise Agreement, the amount of such underpayment shall become due and payable to City not later than thirty (30) days after written notice of such underpayment is sent to Grantee by City. Should an underpayment of more than three percent (3%) be discovered, Grantee shall bear the entire cost of the City's audit or examination and said cost shall not be recoverable through rate setting.

D. The information required by this Section shall pertain to Grantee's operations covered and regulated by this agreement, and nothing contained herein shall require the Grantee to provide the City with information pertaining to the Grantee's operations which are not regulated by the City,

except in conformance with this Section.

E. The City and/or its agents may examine Grantee's books, records and financial statements pertaining to operations not regulated by the City for the sole purpose of gathering information necessary to allow the agents to ascertain whether income, expenses, assets and liabilities are reasonably and consistently allocated among operations regulated by City and those not regulated by the City. Grantee shall obtain City's written approval of its method of segregating its financial records between City-regulated and non-City regulated operations.

F. Information gained from examination of records pertaining to operations not regulated by the City shall be treated by the City and its agents as confidential information, except as may be required by state or federal law.

G. For review of books and other financial records necessary to verify the Grantee's income, expenses, assets and liabilities, "Agent" shall mean an independent Certified Public Accountant, public accountancy firm or designated City employee. For all other information or records, including the results of financial verification, "Agency" shall mean any consultant designated by the City or City employees.

H. Nothing in this Section will prevent City from allowing public access to City records as provided for under the California Government Code, and in the event any dispute arises as to the public access to information provided by Grantee under the terms of this agreement, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Grantee of the intended release.

I. Upon reasonable notice or as otherwise agreed herein, and at those times designated by the City, Grantee shall supply to the City lists of the names of all customers of Grantee who are provided any service by Grantee within the Franchise Area. At the same or other time, the City may request and the Grantee shall provide information specifying each customer's address, type of service provided to that customer, the number and type of authorized solid waste containers used by or provided to each customer, whether and which customers are believed to be violating this Agreement, any mandatory subscription ordinance or any other provision of the law, and any other information that the City determines, in its sound discretion, reasonably required to monitor implementation of this Agreement and/or discharge the City's responsibilities under the law.

## SECTION 17 - REPORTS, ADVERSE INFORMATION, AB 939 REQUIREMENTS, AND WASTE AUDIT

### A. Annual Reports

Within one hundred twenty (120) days after the close of Grantee's fiscal year (Grantee's fiscal year ends on December 31st of each year), Grantee shall submit to the City a written annual report, in a form approved by the City, including, but not limited to, the following information:

- (1) A summary of the previous year's (or, in the case of the initial year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class and level of service;
- (2) A revenue statement, setting forth quarterly Franchise Fees, and the basis for the calculation thereof, certified by an officer of Grantee; and
- (3) A list of Grantee's officers and members of its board of directors.

B. Adverse Information

Grantee shall provide City two copies of all reports, or other material adversely reflecting on Grantee's performance under this Franchise Agreement, submitted by Grantee to the California or U. S. EPA, the California Department of Resources, Recycling and Recovery (CalRecycle) or any other federal, state or county agency. Copies shall be submitted to City simultaneously with Grantee's filing of such matters with said agencies. Grantee's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request, as provided in Section 16.

- (1) The Grantee shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating specifically to Grantee's performance of services pursuant to this Franchise Agreement. Any data which the Grantee seeks to be excluded from provisions of the California Public Records Act or any similar federal or state law shall be clearly identified as such by Grantee with the basis for such exclusion clearly specified. In the event City receives a request under the Public Records Act or any similar federal or state law, or by subpoena, the City shall notify Grantee to permit Grantee to object to the release of the information requested or subpoenaed. In such case, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Grantee of the intended release.
- (2) Grantee shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.
- (3) All reports and records required under this or any other Section shall be furnished at the sole expense of the Grantee.

C. AB 939 Requirements

- (1) During the term of this Franchise Agreement, the Grantee, at Grantee's sole expense, shall submit information and reports required by City to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, in a manner approved by City. Grantee agrees to submit such reports and information electronically if requested by City. In responding to requirements established by AB 939, the Grantee agrees to meet the following requirements of the City's Source Reduction and Recycling Element (SRRE), and its amendments:

Section 4 - "Source Reduction". Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Increasing Per Can Rate
- Waste Evaluations
- Educational Efforts

Section 5 - "Recycling Component". Programs listed under "Programs Selected" for short- and medium-term planning periods, including-

- Continuation of Single-Family Curbside Collection
- Implement Multi-Family Curbside Collection
- Continuation of Existing collection of Commercial Recyclables
- Continued Operation of existing drop-off facilities
- Continuation of single-family curbside collection and multi-family collection of Recyclables, with

- expansion of programs to include additional material types
- Utilize a mixed waste recovery facility to remove Recyclables from waste stream
- Expansion of the commercial recycling program.

Section 6 - "Composting Component". Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Implementation of a Curbside Collection of Yard waste program
- Establish a drop-off facility for yard waste (primarily for commercial use)
- Recover yard waste at the transfer station from self haul loads and roll-off bins
- Continued operation of the Curbside Collection of Yard waste program
- Continued operation of the drop-off facility for Yard waste
- Enhanced program to recover yard waste at the transfer station from self haul loads and roll-off bins.

Section 7 - "Special Waste Component"- Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Continuation of Bulky Materials/Community Clean Up Collection Days for residents and Businesses
- Transfer Station/MRF Salvaging of Tires, Wood Waste, and White Goods.

Section 8 - "Education and Public Information Component"- Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Residential Brochures
- Bill Inserts
- Direct Mail
- Local Newspaper Advertisements
- Commercial Brochures identifying recyclable materials generated at work.

- (2) If in City's sole determination, changes arise that necessitate program additions, deletions, or modifications, the Grantee shall implement such additions, deletions, or modifications upon direction from the City to do so. Upon implementation, the parties shall negotiate any necessary cost changes or amendments to the Agreement which may be necessary as a result of such changes to the work, as directed by City.
- (3) City reserves the right to enter into agreements with other parties for the conduct of Household Hazardous Waste pickups and hazardous waste services.

#### D. Waste Audits

Upon initiation of new and/or significant change in service to solid waste commercial customers, the Grantee shall perform a waste audit as to the affected customer. The audit shall consist of drivers filling out a form approved by the City that identifies volume and characteristics of solid waste being generated by the customer, and to provide information upon which suggestions can be made to reduce such generation and/or recycle the waste generated. A copy of the audit shall be provided by the Grantee to: the customer, the City and to Grantee's own files.

#### E. Monetary Charges For Untimely Report Submittal

The parties agree that at the time of execution of this Franchise Agreement between the City of Martinez and Allied Waste Systems, Inc., dba Pleasant Hill Bayshore Disposal, Inc. (Grantee), it is not possible to quantify all of the damages accruing to City by reason of the Grantee's future failure to timely submit the reports and submittals specified in this Section 17. The City and Grantee therefore agree that in the event Grantee fails to timely submit the reports required under this Section 17 of the Franchise Agreement, after receipt of written Notice of Non-Compliance with the Franchise Agreement as specified in subsection E (1) below for failing to do so, the City Manager may assess Grantee, subject to subsection E (2) immediately below, monetary charges of Two Hundred Dollars (\$200.00) per day for each calendar day past the due date

specified in the Notice of Non-Compliance that the report(s) are not submitted. The maximum charge which may be assessed for a report not being timely submitted is Ten Thousand Dollars (\$10,000.00). Notwithstanding anything to the contrary above, assessment of said charges shall be without prejudice to the City's right to compel Grantee to indemnify and defend the City for any consequential damages resulting from such nonperformance, including without limitation any monetary charges assessed against the City by the California Department of Resources, Recycling and Recovery (CalRecycle).

- (1) Written Notice: City shall provide Grantee with a Notice of Non-Compliance with Franchise Agreement ("Notice of Non-Compliance") upon the failure of Grantee to timely submit any report required by the provisions of Section 17 of his Franchise Agreement. The Notice of Non-Compliance shall state that the Grantee is in non-compliance with the applicable report submittal provisions of Section 17 of the Franchise Agreement, and provide a reasonable time, no less than twenty (20) calendar days from the date of the Notice of Non-Compliance, within which the report(s) must be submitted. The City Manager may extend the time specified in the Notice of Non-Compliance for Grantee to submit the required report(s) upon written request of the Grantee. Any request of the Grantee for an extension of time to submit the report(s) must be submitted to the City Manager in writing at least five (5) days prior to the submittal date specified in the Notice of Non-Compliance.
- (2) Appeal To City Council. In the event that Grantee does not agree with the assessment of monetary charges by the City Manager for Grantee's failure to submit the required reports as specified in Section 17 and as set forth in the Notice of Non-Compliance, Grantee may appeal the assessment of monetary charges to the City Council. Grantee must file a Notice of Appeal with the City Clerk within thirty (30) days of receipt of the City Manager's determination that monetary charges should be assessed for failure to comply with the date as specified in the Notice of Non-Compliance.
- (3) Appeal Hearing. The appeal hearing shall be limited to the issue of whether the assessment of monetary charges pursuant to this subsection is justified based on the facts and circumstances of the matter on appeal. The Council shall receive a report from the City Manager and shall give the Grantee and/or its representatives a reasonable opportunity to be heard and to present evidence to the City Council. The City Council shall thereafter make a written determination with respect to the assessment of monetary charges. Grantee shall pay to the City all monetary charges imposed hereunder within ten (10) working days after the date of the Council's decision. Amounts owed hereunder shall accrue interest at the rate of 10%-per annum from the date due until fully paid. If said charges are not fully and timely paid, the City may proceed against the performance bond required by this Agreement in addition to exercising any other remedy it may have hereunder or at law or in equity.
- (4) Failure to Report After Monetary Charges. In the event that Grantee fails to provide the requisite report(s) notwithstanding the City's assessment of and Grantee's payment (or nonpayment) of monetary charges, then City may proceed in accordance with the provisions of Section 13. The refusal, failure or neglect of the Grantee to file any of the reports required, or to provide required information to City or the intentional inclusion of any materially false or misleading statement or representation made knowingly by the Grantee shall be deemed a material breach of the Franchise Agreement, and shall subject the Grantee to all remedies, legal or equitable, which are available to the City under the Franchise Agreement, including, but not limited to, those specified in Section 13.

## SECTION 18 - ANNUAL REVIEW OF PERFORMANCE AND QUALITY OF SERVICE

A. From time to time, at its sole discretion, City may examine Grantee's operation in order to evaluate whether or not the Grantee is operating at a satisfactory level of efficiency and customer satisfaction.

Grantee agrees to cooperate in any such examination and shall permit City representatives to inspect, at Grantee's principal place of business, such information pertaining to Grantee's obligations hereunder as City may require, including, but not limited to, such things as customer inquiry records, collection routes and equipment records. Access to Grantee's records shall be subject to Section 16.

B. At City's sole option, within ninety (90) days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, City may hold a public hearing at which the Grantee shall be present and shall participate, to review the Grantee's performance and quality of service. The reports required by this Franchise Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

C. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Franchise is found, City may direct Grantee to correct the inadequacies or initiate proceedings in accordance with Section 13 above.

D. Grantee shall provide prompt, efficient, continuous and professional service to its customers.

E. Upon the request of the City, as part of the Annual Review of Performance described above, and not less than six (6) months prior to Grantee's notice of contract renewal, assignment or extension of term, Grantee shall conduct a survey or surveys of all customers to determine their satisfaction with Grantee's service, including, without limitation, response to customer complaints. The survey methodology, format and content shall be subject to the prior review and approval of the City Manager or his/her designee. A copy of the survey results shall be sent to the City within sixty (60) days of completion of the survey. Nothing in this paragraph shall limit the right of the City to conduct additional surveys. The Grantee shall cooperate with the City in such cases.

F. Upon initiation of service, and at least once a year, Grantee shall send or deliver to its customers information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), days of collections, the amount and manner of refuse to be collected, service level and inquiry/complaint procedures, including the name, address and local telephone number of Grantee. The form and content shall be subject to the review and approval of the City Manager or his/her designee.

## SECTION 19 - SYSTEM AND SERVICES REVIEW

To provide for technological, economic, and regulatory changes in solid waste collection, to facilitate renewal procedures, to promote competition in the solid waste industry, and to achieve a continuing, advanced solid waste collection system, the following system and services review procedures are hereby established.

A. At City's sole option, City may hold a public hearing on or about the first anniversary date of the Franchise Agreement in which it reviews the collection systems and services.

Subsequent system and services review hearings may be scheduled by City each two (2) years thereafter. It is City's intent to conduct any system and services review concurrently with any Annual Review of Performance and Quality of Service as provided for in Section 18, above.

B. Sixty (60) days after receiving notice from the City, Grantee shall submit a report to City indicating the following:

- (1) All solid waste collection and recycling services reported in solid waste collection and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided by Grantee to City; and
- (2) Changes recommended to improve the City's ability to meet the goals of AB 939;
- (3) Any specific plans for provision of such new services by the Grantee along with the estimated expenses and adjustments to rates necessary to compensate Grantee for providing such services, or a justification indicating why Grantee believes that such services are not feasible for the franchise area; and
- (4) A capital and equipment purchasing and improvement plan, covering at least the following two years, in which is described, among other things, the nature of the capital and equipment which Grantee proposes to acquire, estimated costs of same and the likely effect said plan will have on rates.

C. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals and regulatory constraints.

D. City and the Grantee may each select additional topics for discussion at any system and services review hearing. The Grantee agrees to cooperate in any such examination and shall provide for inspection to the City or its designated representatives, at the Grantee's principal place of business, such information as the City may require, including but not limited to, such things as collection routes and equipment records.

E. Not later than sixty (60) days after the conclusion of each system and services review hearing, City shall issue a report. The report shall summarize the systems and services review hearing and address services not being provided to City that are considered technically and economically feasible by City. City may require Grantee to provide such services within a reasonable time, for reasonable rates and compensation.

## SECTION 20 - COMPENSATION

### A. Grantee Rates

Grantee shall provide the services described in this Franchise Agreement for the rates specified in Exhibit "C." Said rates shall be subject to the following conditions.

#### (1) Effective Date

The rates specified in Exhibit "C" are effective as of January 1, 2011. The rates specified in Exhibit "C" shall include the implementation of all the services described in Section 6 and Exhibit "B" hereto, as well as the services described in Section 6 and

Exhibit "B" to the Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Residential Recycling) of even date. Grantee shall deliver written notice to the City certifying that said services have been implemented. Unless otherwise stated, the cost of the services provided by Grantee are assumed to be recoverable in the rate base.

(2) City's Powers

Except as provided under the "Dispute Resolution" provision of the Rate Setting Process and Methodology Manual for Solid Waste Charges dated March 2011 and prepared by NewPoint Group Management Consultants ("Rate Setting Manual" attached hereto as Exhibit "D"), the City Council shall set and regulate all rates and charges assessed by Grantee for any and all services and activities it performs or engages in the Franchise Area. The fact that only some of Grantee's services and activities are rate-regulated by this Franchise Agreement shall not be construed as a waiver of the City's rights to regulate the rates or charges assessed by Grantee for services covered by this Franchise Agreement.

B. Rate Setting Procedures

During the term of this agreement, commercial and industrial solid waste collection rates and residential solid waste collection and recycling rates will be established and adjusted in accordance with the Rate Setting Manual. A true and correct copy of the Rate Setting Manual is attached hereto as Exhibit "D" and hereby incorporated by reference as though fully set forth herein. At such time as the State mandates and/or the City adopts a mandatory commercial recycling ordinance, and Grantee receives exclusive rights to commercial and industrial recycling in the Franchise Area as is generally described in Section 6 E (1) of the Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc., (Residential Recycling) of even date, Grantee rates for commercial and industrial recycling shall also be established and adjusted in accordance with the Rate Setting Manual.

(1) Calendar Year 2012 Rate Freeze

Grantee agrees not to change its refuse and recycling collection rates in calendar year 2012. Grantee is allowed to submit a base year application on July 31, 2012 for rates to be implemented on January 1, 2013. This 2013 base year would start the new rate setting cycle. Years 2014, 2015, and 2016 would be interim years. Grantee acknowledges that the new and/or expanded services it provides pursuant to this Franchise Agreement, which are allowable costs in the rate base, are not recoverable until 2013. Grantee further acknowledges that year 2013 rates will not reflect any retroactive rate increases to recover its costs for the aforementioned new and/or expanded services implemented in 2011 and 2012.

(2) Exception to Calendar Year 2012 Rate Freeze

Should the State mandate and/or the City adopt a mandatory commercial recycling ordinance, and Grantee receives exclusive rights to commercial and industrial recycling in the Franchise Area as is generally described in Section 6 E (1) of the Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Residential Recycling) of even date, Grantee would be allowed to submit support for an adjustment to commercial and industrial rates in accordance with the Rate Setting Manual to cover the new costs required to fund a mandatory commercial recycling program in the City. This mandatory commercial recycling rate adjustment request would be subject to City review and City Council approval in accordance with the terms hereof.

C. Resolution of Issues Regarding the Rate Adjustments

Except as provided under the "Dispute Resolution" provision of the Rate Setting Manual, any issue regarding rates, or the computation thereof, or any other question regarding Grantee's reimbursement for fees, special services or extraordinary costs described in Exhibit "C," shall be decided by the City Council or the arbitrators under the Rate Setting Manual, as the case may be. The rates in effect at the time any issue or dispute is submitted to the City Council shall remain in effect pending resolution of any issue or dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall reasonably be determined by the City Council or the arbitrators appointed under the Rate Setting Manual, as the case may be.

D. Billing and Payment

- (1) Grantee shall bill all customers for all services, whether regular or special. Grantee shall provide bills showing, in one amount, all charges for all classifications of services. However, the charges for late payments shall be separately shown. The Grantee shall collect, for City, AB 939 fees, but shall not designate that portion of a customer's bill attributable to the franchise fee collected by Grantee for City, as a separate item on a customer's bills. Billings may be made every two months (and if in advance, for no more than two (2) months) for all services to residential customers.
- (2) City may, at City's sole option, upon such terms and conditions as may be mutually agreed upon between the parties, elect to bill residents for solid waste collection. If City elects to do so, mutually agreed upon guidelines will be established and amended into this agreement. The portion of the solid waste collection rates paid to Grantee which is attributable to billing for services shall be assigned to City.

E. Delinquent Accounts

Grantee may discontinue service as set forth in this Section. Persons who have not remitted required payments within thirty (30) days after the date of billing shall be notified on forms approved by the City. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. Upon payment of the delinquent fees as set forth in Exhibit "C," Grantee shall resume collection on the next regularly scheduled collection day.

F. Refunds

Grantee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is lawfully discontinued by the customer or for service not provided by Grantee due to no fault of the customer.

G. Bills Paid Locally

At its sole cost, Grantee shall establish a method by which customers may pay bills at a minimum of one location located in the Downtown area of the City, Monday through Friday, excluding holidays. Currently, the approved location is Char's Flower Shoppe, 516 Main Street, Martinez, California. Payments will be accepted during normal banking hours. Any changes in the location must be approved by the City.

SECTION 21 - COLLECTION EQUIPMENT

A. Grantee warrants that it shall provide an adequate number of vehicles and equipment for the collection, and transportation services for which it is responsible under this Franchise Agreement. All vehicles used by Grantee under this Franchise Agreement shall be registered with the

Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted. Solid waste collection vehicles shall be washed such that they are maintained in a clean and sanitary condition. Grantee's name, telephone number and vehicle number shall be visibly displayed on its vehicles. Loads shall be kept completely covered at all times except when material is being loaded or unloaded or when vehicles are en route in the process of collection. Collection vehicles shall be designed and operated while en route in such a manner as to prevent solid waste and leachate from leaking, escaping or spilling. Any spillage of materials shall be immediately cleaned up by Grantee at Grantee's sole expense. The noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall be such that it does not unreasonably interfere with the quiet enjoyment of nearby properties. Grantee shall submit to City, annually, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The equipment of Grantee used under this Franchise Agreement shall be subject to inspection by City on a semiannual basis but shall not be subject to any permit fees therefor.

Notwithstanding the generality of the forgoing, Grantee's equipment shall at all times be in conformance with the City's Municipal Code provisions applicable thereto.

B. At least annually, the Grantee shall provide the City a written list of all equipment (including trucks, processing equipment and containers) being used within the City's limits, including make and model, age, mileage, type of vehicle, etc.

## SECTION 22 - PUBLIC ACCESS TO GRANTEE

### A. Location; Telephone Service

The Grantee shall maintain an office within one mile of the City limits where bills may be paid and complaints can be received, which shall be located at 441 N. Buchanan Circle, Pacheco, California. The office shall be open, at a minimum, from 8 a.m. to 4:30 p.m. on all business/collection days. The Grantee shall also maintain telephone services with a number which does not involve a toll call from within the City. The average hold time on customer calls should not exceed 60 seconds. The Grantee shall provide either a representative; telephone answering service; or recorded message (with an emergency telephone number available) to receive customer inquiries during those times when the office is closed. Call back messages left on a business/collection day before noon shall be returned by the end of the same day. Calls received after noon or after normal business hours shall be returned before noon of the next business/collection day. Grantee shall maintain the capability of responding to telephone calls: (1) in English and such other languages as City may direct; and (2) through telecommunications device for the deaf (TDD) services. Grantee shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest days and such telephone equipment shall be capable of recording the responsiveness to each call.

### B. Service Complaints

- (1) All customer complaints shall be directed to Grantee. Grantee shall record all complaints received by mail, by telephone or in person (including date, name, address of complainant and nature of complaint). Grantee agrees to use its best efforts to resolve all complaints by close of business of the second business (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City's Solid Waste and Recycling Coordinator ("Coordinator"), or his/her designee. Unless a resolution satisfactory to the complainant, the Grantee and the Coordinator is reached, the complainant may refer the matter to the City Manager or his/her designee for review.
- (2) Grantee will maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and what action was

taken by the Grantee to resolve the complaint. All such records shall be maintained for a period of twenty-four (24) months and shall be available for inspection by the City.

C. Government Liaison Person

The Grantee shall designate a "government liaison person" who shall be responsible for working with the Coordinator to resolve customer complaints. Unless a resolution satisfactory to the complainant, the Grantee and the Coordinator is reached, the complainant may refer the matter to the City Manager or his/her designee for review.

D. Regular Meetings with City

At least every other month, or as often as requested by the City, Grantee shall meet with the City at City Hall to discuss matters of mutual concern including but not limited to, problems in Grantee's service, compliance with AB 939 and future planning. The person attending these meetings on behalf of Grantee shall be vested with sufficient authority to make decisions binding on Grantee.

SECTION 23 - CUSTOMER COMPLAINTS

A. The Grantee shall notify customers of this complaint arbitration procedure at the time customers apply for service, and subsequently, annually.

B. A customer dissatisfied with Grantee's decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer must request City review within thirty (30) days of receipt of Grantee's response to the complaint, or within forty-five (45) days of submitting the complaint to the Grantee, if the Grantee has failed to respond to the complaint. The City may extend the time to request its review for good cause.

C. The City Manager shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Franchise Agreement.

SECTION 24 - SERVICE EXCEPTIONS: HAZARDOUS WASTE NOTIFICATIONS

A. The parties hereto recognize that federal, state and local agencies with responsibility for defining hazardous waste and for regulating the collection, hauling or disposing of such substances, are continually providing new definitions, tests and regulations concerning these substances. Under this agreement, it is Grantee's responsibility to keep current with the regulations and tests on such substances, to identify such substances and to comply with all federal, state and local regulations concerning such substances. Grantee shall make every reasonable effort to prohibit the collection and the disposal of hazardous waste in any manner inconsistent with applicable law.

B. When Recyclables are not collected from any approved recycling container, Grantee shall notify its customer why the collection was not made and shall attach tags approved by the City to the Recyclables or waste not so collected which clearly identify the reasons for such non-collection.

C. Grantee has represented to City that Grantee will carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substances Control and Local Emergency Response Providers, and, if appropriate, the National Response Center, of reportable quantities of hazardous waste, found or observed by Grantee in solid waste anywhere within the City, including on, in, under or about City property, including streets, easements, rights of way and City waste containers. In addition to other required notifications, if Grantee observes any

substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on City property, including streets, storm drains, or public rights of way, Grantee also will immediately notify the City Manager, or the City Manager's designee.

D. Grantee shall conduct visual surface inspections, in accordance with its current operating practices, of all solid wastes that it collects, transports and/or disposes pursuant to this Franchise Agreement for the purpose of discovering, identifying and refusing to collect, transport and dispose of hazardous wastes or materials.

E. Household Hazardous Waste Program

Except as provided in this subsection 24 E, Grantee shall not collect, handle, process, transport, arrange for the transport of or dispose of hazardous waste pursuant to this Franchise Agreement. Notwithstanding the immediately preceding sentence to the contrary, the Grantee shall provide hazardous waste materials handling in accordance with the program it is presently offering which is described in Section 6 A (3) of the Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Residential Recycling) of even date, and Exhibit "B".

SECTION 25 - INDEMNIFICATION AND INSURANCE

A. Indemnification of City

- (1) Grantee shall defend with counsel reasonably acceptable to the City and indemnify and hold harmless the City from and against any and all liabilities, costs, claims and damages which are caused by Grantee's failure to comply with the laws described in Section 4, including but not limited to liabilities, costs, claims and damages described in Section 7 D (2), but excluding liabilities, costs, claims and damages pertaining to hazardous waste and materials not described in Section 7D (2).
  - (a) The City takes the position that the former franchise agreement with Martinez Sanitary Service and assigned to Grantee includes the obligation on the part of the Grantee to defend and indemnify the City for hazardous waste liabilities arising out of the Grantee's performance under the Franchise Agreement, including those liabilities arising out of Grantee's generation of, arranging for, collecting of, handling of, disposing of or releasing of hazardous wastes under CERCLA, RCRA, or any other pollution or hazardous materials law or regulation. Grantee contends that it has no such obligation under the Franchise Agreement or under the law and disputes the City's contention in its entirety. Consequently, except as is provided in Sections 7 and 25 A (1) above, no agreement has been reached between the City and the Grantee on this indemnification issue and, as such, it is not resolved as part of the Franchise Agreement.
- (2) Grantee agrees that it shall protect, defend with counsel reasonably acceptable to the City, indemnify and hold harmless the City, its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or resulting in any way from Grantee's exercise of the franchise, unless such claim is due to the sole active negligence or willful misconduct acts of the City, its officers, employees, agents or contractors, or from City's grant of this franchise to Grantee.
- (3) In addition, Grantee shall defend with counsel reasonably acceptable to the City,

indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising therefrom, brought to enforce or to challenge the Franchise Agreement and/or Grantee's exclusive rights granted thereunder; provided, however, that Grantee's obligations hereunder extend only to actions brought against or by persons not parties to this agreement; and, provided, further, that Grantee's obligations hereunder do not extend to any litigation or dispute between the City and Mt. View Sanitary District concerning their respective powers to control the collection and disposal of solid waste in the City's corporate limits. Notwithstanding the immediately preceding sentence, Grantee hereby waives any and all claims for damages that it may now or hereafter have relating to any dispute between the City and Mountain View Sanitary District concerning the respective powers of same, and in this regard, Grantee shall not be entitled to any damages or any compensation whatsoever as a result of any reduction of the Franchise Area or termination of this Franchise Agreement due to claims by Mountain View Sanitary District relating thereto.

B. Indemnification of Grantee

The City shall defend, with counsel reasonably acceptable to Grantee, indemnify and hold Grantee harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City and/or Grantee for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure is due to the sole active negligence or willful misconduct of the City, including but not limited to the City's failure to adopt source reduction and recycling elements mandated under AB 939.

C. AB 939 Indemnification

- (1) In addition, Grantee shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure results from Grantee's failures as described in Exhibit "C" to the Consent to Assignment of Franchise Agreement between the City and the Grantee dated March 30, 1992, or its failures to comply with this Franchise Agreement and/or Grantee's failure to comply with said laws, rules or regulations, including but not limited to failing to timely supply to the City the reports and information required by the City in order to comply with AB 939.
- (2) In addition, Grantee will defend, indemnify and hold the City harmless and pay all fines, assessments and penalties resulting from the City's failure to comply with AB 939, its amendments and successor legislation, and/or all regulations and rules promulgated thereunder to the extent said failure is a consequence of the City's residents' failure to participate in the solid waste programs and/or services made available to them by the City and/or Grantee; provided, however, that this indemnity and hold harmless shall not apply unless, upon the request of Grantee, the City Council has passed a resolution providing for an increase in Grantee's rates to fully compensate Grantee for its payments hereunder, which resolution shall become effective upon Grantee's payment of such fines, assessments and penalties.

D. Workers' Compensation Insurance

Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this

Franchise Agreement. Such policy shall provide that it will not be cancelled without first giving thirty (30) days written notice to the City. Said Worker's Compensation insurance shall include the following endorsement: "All rights of subrogation are hereby waived against the City, its officers and employees acting within the scope of their appointment or employment."

E. General Liability Insurance

Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding \$200,000.00 per occurrence. Said insurance shall protect Grantee and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from ongoing and completed operations performed pursuant to this Franchise Agreement, whether such operations be by Grantee itself, or by its agents, employees and/or subgrantees. Copies of the policies or endorsements evidencing the above required insurance coverage shall be filed with the City Clerk. Endorsements are required to be made a part of all of the following insurance policies required by this Section:

- (1) "The City, its employees, agent, Grantees and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Grantee."
- (2) "This policy shall be considered primary insurance as respects any other valid collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."
- (3) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
- (4) "Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Clerk."

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy. The City shall be included as an additional insured on each of the policies, or policy endorsements.

F. Modification

The insurance requirements provided herein may be modified or waived in writing by the City Council, provided the City Council determines that such waiver or modification does not unreasonably increase the risk of exposure to the City, including the fact that the parent of Grantee may be self-insured up to a certain acceptable amount.

SECTION 26 - GENERAL PROVISIONS

A. Force Majeure

Grantee shall not be in default under this Franchise Agreement in the event that the

collection, transportation and/or disposal services of Grantee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of Grantee. Events of force majeure and "other catastrophic events" do not include labor disturbances, the financial inability of the Grantee to perform each and every obligation of Grantee or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or Grantee's inability to obtain or maintain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Grantee.

(1) Labor Disturbance

Notwithstanding anything in subsection A above to the contrary, in the event a labor disturbance interrupts collection, transportation and/or disposal of solid waste or Recyclables by Grantee as required under this Franchise Agreement, City may elect to exercise its rights under Section 13 of this Franchise Agreement only upon the expiration of 14 calendar days from the commencement of a service interruption due to a labor disturbance. "Labor disturbance" includes, without limitation, strikes, lockouts, sick-outs, or similar actions.

B. Independent Contractor

Grantee is an independent contractor and not an officer, agent, servant or employee of City. Grantee is solely responsible for the acts and omissions of its officers, agents, employees, Grantees and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Grantee. Neither Grantee nor its officers, employees, agents or subgrantees shall obtain any rights to retirement or other benefits which accrue to City employees.

C. Pavement Damage

Notwithstanding the Franchise Fee, community impact and AB939 and Climate Action Plan support payments specified in Section 3, Grantee shall be responsible for any extraordinary damage to City's driving surfaces, whether or not paved, resulting from the weight of vehicles providing collection services at the location of bins and containers on public property. This Franchise Agreement does not purport to affect, in any way, Grantee's civil liability to any third parties.

D. Property Damage

Notwithstanding the Franchise Fee, community impact and AB939 and Climate Action Plan support payments specified in Section 3, any physical damage caused by the negligent or willful acts or omissions of employees, Grantees or subgrantees of the Grantee to private or public property shall be repaired or replaced by Grantee, at Grantee's sole expense.

E. Right of Entry

Grantee may assume, until receipt of written notice revoking permission to pass is delivered to Grantee, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting solid waste pursuant to this Franchise Agreement.

F. Law to Govern: Venue

The law of the State of California shall govern this Franchise Agreement. In the event of

litigation between the parties, venue in state trial courts shall lie exclusively in the County of Contra Costa. In the event of litigation in a U. S. District Court exclusive venue shall lie in the Northern District of California.

G. Fees and Gratuities

Grantee shall not, nor shall it permit any agent, employee or subgrantee employed by it to, request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of solid waste otherwise required to be collected under this Franchise Agreement.

H. Prior Agreements and Amendment

No amendment of this Franchise Agreement shall be valid unless in writing duly executed by the parties. Except as to Exhibit "C" to the Consent to Assignment of Franchise Agreement dated March 30, 1992, and as to the Consent to Franchise Assignment dated March 3, 1999, by and between the City, the Grantee and Browning-Ferris Industries of California, Inc., this Franchise Agreement contains the entire agreement between the parties and no promises, representations, warranty or covenant not included in this Franchise Agreement have been or are relied upon by either party. This Franchise Agreement is intended to and does supersede and replace the January 4, 1978, and January 14, 1987 agreements between Martinez Sanitary Service and the City, City Resolutions 170-80, 220-81, 154-85, 157-87, 134-89, 175-90 and 74-91, the Second Addendum to Contract Between City of Martinez and Bart Bisio, dba Martinez Sanitary Service executed on March 30, 1992 and the Original Agreement.

I. Compliance with Franchise Agreement

Grantee shall comply with those provisions of the City's Municipal Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Franchise Agreement, subject to Section 1 C.

J. Notices

All notices required or permitted to be given under this Franchise Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553-2394  
Telecopier Number (925) 229-5012

Copy to: Solid Waste and Recycling Coordinator  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553-2394  
Telecopier Number (925) 229-5012

And to: City Attorney  
City of Martinez  
670 West Napa Street, Suite F  
Sonoma, CA 95476  
Telecopier Number (707) 996-9603

To Grantee: Mr. Tim Argenti  
Allied Waste Systems, Inc.  
441 N. Buchanan Circle  
Pacheco, CA, 94553  
Telecopier Number (925) 685-8153

Copy to: Mr. Tom Bruen  
Law Office of Thomas M. Bruen  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telecopier Number: (925) 295-3132

Or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or sent by Telecopier or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

K. Savings Clause and Entirety

If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

L. Exhibits Incorporated

Exhibits "A" through "E" are attached to and incorporated in this Franchise Agreement by reference.

M. Identification Required

Grantee shall provide its employees, Grantees and subgrantees with identification for all individuals who may make personal contact with residents of the City.

N. Joint Drafting

This Franchise Agreement was drafted jointly by the parties to the Franchise Agreement.

O. Contest of Agreement's Terms by the Parties

In the event either party to this agreement attempts to challenge the validity of any portion of this agreement, such action in attempting to challenge the agreement shall constitute a material breach of this agreement and the nonbreaching party shall have the right to elect to terminate forthwith without suit or other proceeding.

P. Police Powers

Nothing in this agreement is intended to or may limit City authority pursuant to its police power.

Q. Affiliated Entities

Whether or not Grantee shall provide information necessary to satisfy City that the charges made by any affiliated entity are reasonable, shall be determined as part of the rate review process described in Section 20 B. Information gained from examination of books and records pertaining to operations not regulated by the City shall be treated by the City and its agents as confidential information in accordance with a Confidentiality Agreement described in Section 16 B. Any data which the Grantee seeks to be excluded from provisions of the California Public Records Act or any similar federal or state law shall be clearly identified as such by Grantee with the basis for such exclusion clearly specified. In the event City receives a request under the Public Records Act or similar state or federal law, or by subpoena, the City shall notify Grantee to permit Grantee to object to the release of the information requested or subpoenaed. In such case, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Grantee of the intended release.

"Affiliated entity" shall be defined, for purposes of this paragraph, as any entity which provides products or services to Grantee and in which either Grantee or the affiliated entity owns a ten percent (10%) or greater interest in the other, or where one person or entity owns ten percent (10%) or greater interest in both. City shall have the right to inspect the financial records of any affiliated entity. For purposes of this paragraph, the term "Grantee" shall include Grantee, and if Grantee is an individual, or a group of individuals (partnership) all immediate family members, or if a corporation, major shareholders and any major shareholder is an individual, said individuals' immediate family members. For the purpose of this paragraph, "immediate family" includes spouses and relatives of the first degree of sanguinity, and their spouses.

WITNESS the execution of this Agreement on the day and year first written above.

CITY OF MARTINEZ

By: \_\_\_\_\_  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ALLIED WASTE SYSTEMS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas M. Bruen, Attorney for Grantee

## ATTACHMENT F

RESTATED AND AMENDED  
FRANCHISE AGREEMENT BETWEEN CITY OF MARTINEZ  
AND ALLIED WASTE SYSTEMS, INC., D.B.A.  
PLEASANT HILL BAYSHORE DISPOSAL, INC.  
(RESIDENTIAL RECYCLING)

This Franchise Agreement ("Franchise Agreement") is entered into on May 4, 2011, between the City of Martinez ("City") and Allied Waste Systems, Inc., d.b.a. Pleasant Hill Bayshore Disposal, Inc., a California corporation, ("Grantee"), for the collection, transportation, and diversion of Recyclables.

### RECITALS

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), codified as California Public Resources Code Section 40000 et seq., has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, pursuant to California Public Resources Code Section 40059 (a) (1), the City Council of the City has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection and recovery of solid waste from residential, industrial and commercial areas in the City; and

**WHEREAS**, City and Grantee are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

**WHEREAS**, City has not, and, by this Restated and Amended Franchise Agreement ("Franchise Agreement") does not, instruct Grantee on its collection methods, nor supervise the collection of waste; and

**WHEREAS**, Grantee has represented and warranted to City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the City for the collection and safe transport to disposal facilities of municipal solid wastes, the City Council of the City determines and finds that the public interest, health, safety and well-being would be best served if Grantee were to make arrangements with residents and other entities to perform these services; and

**WHEREAS**, the City Council of the City declares its intention of maintaining reasonable rates for collection and transportation of solid waste within City limits; and

**WHEREAS**, the City and Grantee's predecessor in interest entered into a Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. ("Solid Waste"), dated March 1, 1993 ("Original Document"); and

**WHEREAS**, the City and Grantee entered into a restated and amended franchise agreement between the City of Martinez and Pleasant Hill Bayshore Disposal, Inc., ("Residential Recycling"), on January 5, 2005 ("2005 Agreement"), covering the same subjects as were included in the Original Document; and

**WHEREAS**, as a condition of the 2008 Base Year Rate Review, Grantee agreed to expand its multi-family recycling program to include free cart and bin service to over

150 multi-family dwellings; and

**WHEREAS**, as a condition of the 2008 Base Year Rate Review, Grantee also agreed to provide a free on-call residential bulky recyclables collection program; and

**WHEREAS**, on July 1, 2009, the parties entered into an Addendum to the 2005 Agreement to memorialize certain services provided by the Grantee, and to enhance the customer service provisions expressed in Section 22 A of the 2005 Agreement; and

**WHEREAS**, the parties desire to consolidate the various aforementioned modifications made to the 2005 Agreement and incorporate a series of new terms into the Franchise Agreement as part of a 10-year extension of the franchise; and

**WHEREAS**, it is the desire of the parties that this amended and restated franchise agreement dated May 4, 2011, supersede and replace the 2005 Agreement; and

**WHEREAS**, the City believes this Franchise Agreement represents a high degree of service and value to residents, businesses, and the City.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL FRANCHISE

A. City grants to Grantee, for the term of and in accordance with this Franchise Agreement (including all extensions or renewals), an exclusive privilege and duty to make and enter into independent arrangements with residents of single family units, residents and/or owners of multifamily units in the City for the collection, transportation and, diversion of Recyclables, (including multi-family unit Recyclables, subject to Section 6 B), generated or accumulated within the City which has been placed in an authorized recycling container, in the areas covered by this Franchise Agreement, as shown on Exhibit "A" "FRANCHISE AREA" as its boundaries are now constituted or may hereafter be amended.

B. Grantee agrees to be bound by and comply with all the requirements of this Franchise Agreement. Grantee waives any right or claim to serve any part of the City as its boundaries exist as of the date of execution of this Franchise Agreement under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity.

C. In the event and to the extent that any of the following require or are amended to require that either party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the parties hereunder, then this Franchise Agreement shall be amended to provide provisions that have as their purpose the satisfaction of such requirements. Furthermore, should such amendments to this Franchise Agreement result in the Grantee having to incur additional expenses in performing its obligations hereunder, then Grantee may seek rate adjustments therefor in accordance with the procedures specified under Section 20, below.

- (1) the City's Municipal Code, the California Public Resources Code, AB 939, other applicable state and federal laws, rules and regulations promulgated thereunder, and
- (2) the Contra Costa County County-wide Integrated Waste Management Plan and the City's Source Reduction and Recycling Element and Household Hazardous Waste Element; and
- (3) any and all amendments to said laws, plans and regulations.

D. The exclusive privilege granted by this Agreement shall not apply where:

- (1) A person handles, hauls or transports Recyclables from his/her own residence for purposes of disposing of same at an authorized Recycling Facility either personally or through the uncompensated services of another. However, nothing in this Section shall permit such person to hire or compensate another person or entity (not affiliated with the franchisee) to dispose of such person's Recyclables; or
- (2) A person or entity contracts for the removal and disposal or recycling of organic refuse or garden waste and such removal and disposal or recycling are incidental to work such as remodeling or gardening occasionally performed by or for the customer; or
- (3) A person or entity contracts for the removal and recycling of construction or demolition waste and such removal and recycling are incidental to work such as construction, demolition, or remodeling, occasionally performed by or for the customer.

E. This agreement is not intended to and does not affect or limit the right of any person to sell, donate or otherwise dispose of any valuable commodity to the Grantee or to any other person lawfully doing business within the City limits or Franchise Area provided that the valuable commodity is separated at the source by the generator and that the person acquiring the valuable commodity (other than the Grantee) does not collect and dispose of other solid wastes.

## SECTION 2 - DEFINITIONS

Whenever any term used in this Franchise Agreement has been defined by the Municipal Code of the City ("Municipal Code") or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or Public Resources Code<sup>2</sup> shall apply unless the term is otherwise defined in this Agreement.

A. AB 939

"AB 939" shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

B. Bulky Waste

"Bulky Waste" shall have the same meaning as that term is defined in Chapter 8.1.6 of the City's Municipal Code.

C. City Limits

"City Limits" shall mean the boundaries of the City together with all amendments and changes thereto, which current boundaries are shown on Land Use Map 1 incorporated herein by reference and which are on file in the office of the City Clerk.

D. Commercial Solid Waste

"Commercial Solid Waste" includes all types of solid wastes generated by commercial, industrial, governmental and other sources which have been placed in an authorized solid waste container used for the temporary storage of solid waste awaiting pickup. The term "Commercial Solid Waste" does not include hazardous wastes generated by commercial, industrial, governmental and other sources and which are placed in separate containers and which are covered by hazardous waste manifests.

E. Compostables or Compostable Materials

"Compostables" or "compostable materials" shall have the same meaning as "compost" specified in CA Public Resource Code §40116.

F. Franchise Fee

"Franchise Fee" means the fee or assessment imposed by the City on Grantee solely because of its status as party to this Franchise Agreement, and which, *inter alia*, is intended to compensate City for its expenses in administering this Franchise Agreement, for use of public rights of way granted by this Agreement, and for damage to its roads, curbs, sidewalks and other parts of the City's infrastructure.

G. Grantee

"Grantee" shall mean the entity granted the Franchise to arrange for the collection of solid wastes pursuant to this Franchise Agreement.

H. Gross Revenues

"Gross Revenues" means any and all revenue or compensation in any form derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents or any other person or entity in which Grantee has a financial interest, in collecting, transporting, arranging, handling and/or disposing of solid wastes generated in the Franchise Area pursuant to this Franchise Agreement.

I. Hazardous Waste or Materials

- (1) "Hazardous Waste or Materials" means any waste materials or mixture of wastes defined as such pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, or the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 *et seq.*, and all future amendments to either of them, or as defined by the California Environmental Protection Agency or the California Department of Resources, Recycling and Recovery (CalRecycle), or either of them. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or solid waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.
- (2) "Hazardous Waste" shall also have the meaning as that term is defined in Chapter 8.16 of the City's Municipal Code.

J. Industrial Solid Waste

"Industrial Solid Waste" means all solid waste and semisolid waste which results from industrial processes and manufacturing operations, excluding Recyclables.

K. Multi-Family Units

"Multi-Family Units" shall mean any residence, or group of residences, with two (2) or more dwelling units, including any flat, apartment, duplex, triplex, condominium, town home or other premises, other than a hotel or motel, used for housing persons, including such premises when combined in the same building with commercial establishments, and

serviced with one (1) or more common containers.

L. Municipal Solid Waste

"Municipal Solid Waste" means all Solid Waste generated within the City which is designated for collection under this Franchise Agreement.

M. Recyclables or Recyclable Material

"Recyclables or Recyclable Material" shall have the same meaning as provided in the City's Municipal Code and includes materials which are reused or processed or are in the future reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the California Integrated Waste Management Act. The term "Recyclables or Recyclable Material" includes, but is not limited to, mixed paper, glass, aluminum, cardboard, chipboard (i.e. cereal and shoe boxes), newsprint, plastic food and beverage containers #1-7, tin/bimetal containers, compostable materials, used motor oil, oil filters, automotive batteries, brick, stone, wood, soil, or concrete in reusable condition, and such other materials designated by City's AB 939 Coordinator, or designated as Recyclables by the California Department of Resources, Recycling and Recovery (CalRecycle), or other agency with jurisdiction.

N. Residential Solid Waste

"Residential Solid Waste" means all types of solid waste which originate from single-family units.

O. Single-Family Unit

"Single-Family Unit" means any residence, including a house, flat, duplex, triplex, condominium, town home or other premises, other than a hotel or motel, used for housing persons, including such premises when combined in the same building with commercial establishments, and which is not serviced with common containers.

P. Solid Waste

"Solid Waste" shall have the same meaning as provided in the City's Municipal Code, and shall exclude Recyclables placed in an approved recycling container.

Q. Special Wastes

"Special Wastes" shall mean any designated wastes, as defined in 23 Cal. Code of Regs. §2522, and special handling wastes generated by industrial facilities or processes, but shall not include "hazardous waste" as defined herein. Special wastes shall include, but not necessarily be limited to: asbestos, sewage sludge, water treatment sludge, infectious wastes, drilling muds, contaminated soils, shredder waste, agricultural wastes, filter cake/dewatered sludge, spent catalyst fines, refinery ash and byproducts; except where any such wastes are deemed to be hazardous waste.

R. Yard Waste

(1) Leaves, grass clippings, weeds, brush, prunings, tree trimmings, roots, and other organic materials which accumulate or originate from ordinary residential landscaping and gardening, and which have been placed at or near the curb, or within another Cityapproved location, in City approved yard waste receptacles, for collection by the Grantee.

- (2) Yard waste does not include fish, meat, bones, or any other animal by products, oils, grains, rocks, stones, sand, clay, soil, nor animal feces.
- (3) Yard waste does not include hazardous waste or materials as defined in this Section 2. Nor does it include recyclable materials as defined in this Section 2.

### SECTION 3 - FRANCHISE FEE; OTHER COMPENSATION

#### A. Franchise Fee

Grantee shall pay to City a franchise fee set by City Council resolution, which said fee shall be based on the gross revenues derived by Grantee from operations pursuant to this Franchise Agreement. The Franchise Fee shall be due and payable quarterly within twenty (20) days following the end of each quarter. If payment is not received within said twenty-(20) day period, interest shall accrue thereon at the maximum interest rate permitted under California law, but not to exceed ten (10) percent per annum. Any such fee shall have prospective effect only; provided, however, that should any rate adjustment be given retroactive effect, the applicable franchise fee shall in the Council's discretion, also be given such effect.

#### B. Community Impact Payment

Grantee shall pay to the City a one-time community impact payment of Five Hundred Thousand Dollars (\$500,000.00) to cover various City costs incurred as a result of the Grantee's refuse and recycling collection franchise operations. City will place this payment into a special dedicated fund to be used for City services related to the refuse and recycling collection franchise. City services covered by this payment will include, but not be limited to, such ongoing services as City street pavement maintenance to cover differential impacts from Grantee's collection trucks on City streets, and storm drain maintenance caused by litter produced from Grantee's collection operations and necessitated by the new National Pollutant Discharge Elimination System (NPDES) permit requirements. Grantee shall pay Two Hundred and Fifty Thousand Dollars (\$250,000.00) of this community impact payment to the City within thirty (30) days of execution of this Franchise Agreement. Grantee shall pay the remaining Two Hundred and Fifty Thousand Dollars (\$250,000.00) of the community impact payment to the City by January 31, 2012. Grantee shall not be entitled to recover the cost of this community impact payment in the rate base.

#### C. AB939 and Climate Action Plan Support Payments

Grantee shall provide the City with annual payments of Twenty Five Thousand Dollars (\$25,000.00) to cover implementation of the City's AB 939 programs and Climate Action Plan initiatives. The cost to Grantee will be treated as a pass-through in the rate base (without profit). This payment will be made on a proportionate basis for the remainder of the City's Fiscal Year 2010-11 (the period of July 1, 2010 to June 30, 2011), and due within thirty (30) days of execution of the Franchise Agreement. The full annual payments to the City shall be due by July 31<sup>st</sup> of each year, beginning in July 2011.

### SECTION 4 - COMPLIANCE WITH LAWS AND REGULATIONS

Grantee warrants that it will comply with all applicable laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. ("RCRA"), the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California, the County of Contra Costa, ordinances of the City, the City's Source Reduction and Recycling Element, the City's Household

Hazardous Waste Element, the County of Contra Costa's Countywide Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Grantee under this agreement. Grantee shall comply with all final and binding judgments entered against Grantee regarding its services performed under this agreement.

## SECTION 5 - FRANCHISE AREA

### A. Franchise Area Defined

The Franchise Area granted by this Franchise Agreement shall be the areas within the City limits of the City of Martinez as delineated on Exhibit "A," and as may hereafter be changed by reason of annexation, deannexation or re-organization.

### B. Annexation Covered by Existing Franchise

Territory annexed to the City that is covered by an existing solid waste permit, license, agreement or franchise granted by another public entity shall be added to the Franchise Area granted by this Franchise Agreement, and Grantee agrees to defend, indemnify and hold harmless the City against any claims by such other franchisee that it continues to have any right to service the area so annexed.

### C. Mountain View Overlap

This Franchise Agreement shall be binding upon Grantee's activities in those areas within the City's limits alleged to be within the jurisdiction of the Mountain View Sanitary District and shall be enforceable against Grantee by the City.

## SECTION 6 - SERVICES PROVIDED BY GRANTEE

### A. Single Family Residential Curbside Recycling

- (1) The Grantee shall collect and recycle all recyclables placed at the curb, or other approved recycling locations, in approved recycling containers from all single family unit customers from whom the Grantee presently, or during the term of this agreement, collects solid waste in the Franchise Area. Recyclables may be commingled in the recycling container provided by the Grantee and the customer shall not be required to separate Recyclables from other Recyclables. The customer shall be required to separate recyclable material from solid waste. The Grantee shall provide residential recycling services in the manner described in Exhibit "B" attached hereto.
- (2) **Distribution of Recycling Containers.** Approved recycling containers shall be purchased and distributed by the Grantee to all Single Family Units for which Grantee provides solid waste collection services within the purview of this agreement. The Grantee shall provide, to all Single Family Unit customers, one or more recycling containers within fifteen (15) days after the Grantee has established solid waste collection service with these new customers. The number, nature, configuration, color, and symbols identifying said containers shall be subject to approval of the City. Without charge, the Grantee shall provide to its customers one replacement container per calendar year in those circumstances where the container has been lost, stolen, or damaged. Grantee may charge a fee to replace additional containers. The Grantee shall deliver these recycling containers to all Single Family Unit customers, and shall not require individuals to be present to accept or sign for them.

- (3) Recyclables to be Collected. Grantee shall provide commingled collection of, at a minimum, mixed paper, glass, aluminum, cardboard, chipboard (i.e. cereal and shoe boxes), newsprint, plastic food and beverage containers #1-7, tin/bimetal containers, E-waste peripherals (such as keyboards, mouse, and speakers), hardcover books, rigid plastics (such as toys, buckets, trays, and crates), and scrap metal/aluminum (under ten pounds per item). Additionally, yard waste, auto and truck batteries, motor oil, oil filters, and other designated electronic waste items (for a fee) will be collected separately from commingled Recyclables. Curbside collection of motor oil and oil filters shall be collected at Grantee's expense. Recyclables collected at curbside shall be collected, transported, and processed so as not to be contaminated with solid waste or other non-Recyclables.

City may require Grantee to provide curbside collection of other Recyclables when practical, if at the time the City determines, among other reasons, that markets for such materials have developed or if the City, County, or State regulations or policies require that such materials be included in the City's Recycling program. Curbside collection of additional materials may be required at the time of rate reviews. Grantee shall furnish its Single Family Unit customers with additional labeled or color coded reusable plastic containers, as necessary if such new materials are required to be included in Grantee's duties. If the City requires that the Grantee provide curbside collection of Recyclables, other than those specified in this Section, City shall provide at least ninety (90) days notice of the requirement unless earlier implementation of the expanded recycling program is required by agencies other than the City. If Grantee decides to or is required to provide expanded curbside collection of materials other than those mentioned above, prior to expanding the service, Grantee shall distribute an informational flier with customer billing, and include an informational flier with delivery of any additional containers.

If in City's sole determination changes arise that necessitate any additions or deletions to the work described herein, including the type of items included as recyclable materials, the Grantee shall implement such additions or deletions upon direction from the City to do so. Upon implementation, the parties shall negotiate any necessary cost changes or amendments to the Agreement which may be necessary as a result of such additions or deletions to the work as directed by City.

- (4) Same Day Service. Grantee shall provide weekly curbside collection of recyclable materials, which shall occur on the same day as regular solid waste collection performed by the Grantee.
- (5) Sales of Recyclables. Grantee shall sell the Recyclables materials at fair market value to any company engaged in purchasing recyclable materials. City may conduct a survey of companies that purchase recyclable materials to assure that income received from the sale of recyclable materials by grantee is competitive with the market value for sale of recyclable materials by other recycling companies. Monthly records of weight and value of recyclable materials sold to any company shall be retained by the Grantee and shall be available for City review. Grantee shall keep all revenues from the sale of recyclable materials.
  - (a) City Authority to Direct. Notwithstanding any provision of this agreement, the City retains the right, upon reasonable notice to the grantee, to direct to whom and under what conditions the Grantee must sell recyclable materials in order to assure that fair market value has been received.
  - (b) Sale of Recyclable Materials. During the term of this Franchise Agreement, City grants to Grantee the right to sell at fair market value the recyclable material that it collected as set forth herein in order to defray its operating costs incurred in performing under this agreement.

- (6) **Billing.** Grantee shall bill its customers for curbside recycling services at the same time and for the same period as are applicable to Grantee's solid waste billings.
- (7) **Pick-Up of Containers.** If this Franchise Agreement is terminated for any reason, upon notice from the City, Grantee shall pick up the recycling containers it provided for the program on the last day of collection.
- (8) **Advance Payment Refunds.** If this Franchise Agreement expires or is terminated for any reason, Grantee shall reimburse its customers for any advance payment for service which was not provided.
- (9) **Promotional and Educational Materials.** Promotional and educational materials explaining the commingled curbside recycling program shall be distributed by the Grantee prior to distribution of new recycling containers. Duplicate or supplemental promotional and educational materials explaining the commingled curbside recycling program will also be distributed by the Grantee to each customer when the recycling container is delivered to that customer. The Grantee shall, at minimum, distribute promotional and educational materials to all its solid waste customers, pre approved by the City, at least twice a year. These materials shall, at a minimum, specify all recyclable items to be collected, and shall further provide any additional information as necessary in order to satisfy the recycling goals set forth in the City's most current Source Reduction Recycling Element (SRRE). The Grantee shall, prior to distribution of the promotional and educational materials, provide the City Manager, or his designated representative, with a copy(s) of said material. The City shall review and comment on this material within fifteen (15) days of receipt. The City reserves the authority to reject all or any portion of any said promotional material prepared by the grantee. If the City rejects any or all of said promotional material, the City reserves the right to prepare its own material to be distributed by the Grantee and Grantee shall reimburse the cost of the City's promotional efforts.
- (10) **Information Required.** During the term of this Franchise Agreement, Grantee shall provide the City with a quarterly accounting of participating single-family units, the volume of each of the recyclable materials collected, segregated by type, and accounting of non-recyclable materials produced during processing of recyclable materials. On March 1, June 1, September 1, and December 1 of each year during the term of this agreement, Grantee shall provide the City with an accounting for the commingled curbside recycling program. Said accounting shall include (1) number of participating households; (2) volume of each of the materials collected; (3) the volume of non recyclable materials disposed of at the landfill; (4) any additional information required by the City to enable the City to determine any reduced garbage collection and disposal volume, and percent reduction in residential waste stream.
- (11) **Establishment of Fees.** The fees described in Exhibit "C" may not be charged to any Single-Family Unit customer until recycling containers have been provided and recycling service for that household has been established.
- (12) **City's Authorized Recycling Agent.** During the term of this agreement and pursuant to the provisions of Public Resources Code sections 40058, 40059, Grantee shall be the City's "authorized recycler" for all Single Family Units which receive individual weekly solid waste collection service from the Grantee and any Multi-Family Unit which is included in the program under Section 6 B.
- (13) **Non Profit Community Groups.** Notwithstanding anything to the contrary stated herein, Grantee agrees that non-profit groups, as defined in Section 501(c) (3) of the

Internal Revenue Code, shall retain their right to pick up Recyclable materials within the Franchise Area at collection stations or elsewhere. Except as provided herein, Grantee shall not interfere with any non-profit community group engaged in curbside recycling activities provided that such non-profit group does not pick up Recyclable materials placed in approved recycle containers and at collection stations for collection by the Grantee on days of regular solid waste collection by Grantee.

B. Multi-Family Residential Curbside Recycling

Grantee shall establish and make available to all Multi-Family Unit residents in the City a comprehensive recycling program for Multi-Family Unit residential complexes, free of charge to all Multi-Family Unit residents. The recycling program, as described in Exhibit "B," shall allow for the commingling of Recyclables in the recycling container provided by the Grantee. The customer shall not be required to separate Recyclables from other Recyclables. The customer shall be required to separate recyclable material from solid waste. Grantee shall notify all affected residents of the availability of said program. If the Grantee fails to comply with subsection B, or fails to exercise due diligence in complying with this subsection, then the City shall be entitled to seek and secure contracts or arrangements with other entities or persons to provide multi-family residential recycling services, irrespective of any multi-family curbside recycling program or service that the Grantee may have implemented or designed.

C. Yard Waste Collection

Grantee shall provide for all single-family units and multi-family units a yard waste collection program as described in Exhibit "B" attached hereto.

D. Residential Recycling Drop-Off Services

Grantee shall provide for recycling drop-off services as described in Exhibit "B" attached hereto.

E. Commercial and Industrial Recycling

- (1) Grantee is not being granted any exclusive rights, privileges or licenses respecting the collecting, transporting, handling, processing, marketing, selling and/or diverting of Recyclables generated by commercial and/or industrial operations. This Franchise Agreement expressly excludes such activities. Grantee is required to provide free sorting of Construction and Demolition (C & D) debris at the transfer station in support of the City's C & D Ordinance. Notwithstanding the aforementioned statements, should the State require implementation of a mandatory commercial recycling program (the State's draft regulations specify the target date for implementation by July 2012), and/or the City adopt a mandatory commercial recycling ordinance, Grantee shall implement a new mandatory commercial recycling collection program for City customers by June 30, 2012 as directed by the City. Prior to implementation of the program, the City and Grantee shall amend the Franchise Agreement to provide Grantee with exclusive rights to commercial and industrial recycling collection in the City of Martinez, with any exceptions to be determined at that time. Additionally, the amended Franchise Agreement would allow Grantee to hire a half-time Recycling Coordinator assigned to work exclusively on recycling programs, projects, and efforts within Martinez. Grantee would be allowed to submit support for an adjustment to commercial rates to cover the new costs required to fund a mandatory commercial recycling program in the City, including the costs for the half-time Recycling Coordinator. This mandatory commercial recycling rate adjustment request would be subject to City review and City Council approval.

Should the State not follow through with requiring the City to implement a mandatory commercial recycling program, the City may still wish to work with Grantee to implement this program at a later date. In this case, the City and Grantee will work out a mutually agreeable timeline for implementation.

- (2) Grantee shall work in good faith with the City to offer a commercial food waste recycling collection program to City commercial customers, on terms mutually agreeable to the Grantee and the City, by January 1, 2012.

F. Hours of Collection

Grantee agrees that, in order to protect the peace and quiet of residents, its arrangements for the collection of solid waste, will provide that collections for residential and commercial areas shall not start before 6 a.m. or continue after 7 p.m., six (6) days per week, excluding Sunday.

G. Collection on Holidays

Grantee has informed City that Grantee's arrangements with its solid waste customers will provide that if the day of collection on any given route falls on a legal holiday, i.e., New Year's Day, or Christmas Day, observed by the materials recovery facility, landfill or other lawful disposal site to which solid waste collected within the Franchise Area is taken for disposal, Grantee shall provide collection service for such route on the work day next following such Holiday and shall not provide collection service on such Holiday, and all subsequent collection days during that Holiday week shall be moved back one day in the discretion of Grantee.

H. City Facilities; Martinez Unified School District Sites

Grantee agrees to provide approved recycling containers and authorized solid waste containers at the City facilities as is described on Exhibit "E," attached hereto and incorporated by this reference, and to provide collection service thereat, at no charge to City. Grantee further agrees to provide free recycling support and services for Martinez Unified School District sites so long as Grantee's solid waste collection services are provided at that site.

I. Avoidance of Use of Landfill

The intent of this franchise agreement is that Grantee shall recycle all Recyclable materials collected by it under this agreement, and shall not dispose of such materials in any solid waste landfill site without the prior written consent of the City Manager.

- (1) The Parties acknowledge that the Contra Costa County Board of Supervisors adopted Ordinance No. 92-105 which has been codified as Code 418-10 of the Contra Costa County Municipal Code and requires, inter alia, that by January 1, 1996, the City shall have implemented a recycling program that requires collection and/or diversion of twelve specified Recyclable materials which include (a) aluminum cans, (b) glass containers, (c) newsprint, (d) PET containers, (e) clear HDPE containers, (f) colored HDPE containers, (g) steel/tin plated containers, (h) cardboard, (i) polystyrene, (j) plastic film, (k) yard waste, (l) paper. Grantee shall collect and recycle all Recyclable materials specified in Contra Costa County Ordinance Code Chapter 418-10 as part of the curbside and drop-off recycling services described in this Section 6 and Exhibit "B" to this Franchise Agreement.
- (2) If in City's sole determination changes arise that necessitate any additions or deletions to the work described herein, including the type of items included as recyclable materials, the Grantee shall implement such additions or deletions upon direction from the City to do so. Upon implementation, the parties shall negotiate any necessary cost

changes or amendments to the Agreement which may be necessary as a result of such additions or deletions to the work as directed by City.

J. City to Approve All Service

The nature of the services Grantee offers and provides to customers residing or doing business in Martinez shall be determined by the City Council. The services that the Grantee offers and provides to its customers affected by this Franchise Agreement shall be subject to the approval of the City Council or its designee.

- (1) The services that Grantee shall provide to its residential customers under this Franchise Agreement are set forth in Exhibit "B" attached hereto and made a part hereof by this reference.
- (2) In addition to the services Grantee shall provide to its residential customers pursuant to paragraph J (1) above, Grantee shall provide all additional services otherwise set forth in this Agreement.

SECTION 7 - SALVAGE RIGHTS

A. City Controls Wastestream

The parties hereto agree that under this Franchise Agreement the City has the right to own and/or control the collection, disposal and diversion of all waste, including Recyclables, generated within the Franchise Area ("wastestream"). As part of the rights agreed to herein, the parties hereto agree that: (i) the City has the right to direct the wastestream to be disposed of or diverted at any solid waste facility or in any manner, respectively, the City may designate; (ii) the City has the right to market and process Recyclables, and (iii) the City has the right to direct the wastestream to be disposed of or diverted at any transfer or processing station the City may designate.

B. City's Jurisdiction

The parties hereto agree that City currently has jurisdiction to regulate the collection, removal, handling and disposal of all solid wastes generated in the Franchise Area. The intent of this Agreement is to regulate residential, commercial and industrial solid waste handling services. However, this Agreement does not regulate the collection, removal and disposal of infectious waste, hazardous waste or septage, irrespective of origin.

- (1) Throughout the term of this Agreement, unless the City gives notice as provided for herein and subject to the terms of this Agreement, it shall be the Grantee's sole responsibility and duty to dispose of the solid waste collected by virtue of this Agreement and do so in a safe manner and in compliance with all federal, state and local laws and regulations. In this connection, the Grantee agrees that it shall dispose of all solid waste collected in the Franchise Area at a solid waste facility that is fully licensed and appropriately permitted and, to Grantee's knowledge, is not in material violation of any health, safety or hazardous materials laws, rules, regulations or orders.
- (2) City shall be entitled to the right or grant to a third party the right of salvage, at the expense of the City, from the solid waste collection pursuant to this agreement, but at its sole discretion may delegate this right to, or waive the same in favor of, the Grantee. By entering into this agreement, the City has temporarily waived its right to salvage and has delegated such to the Grantee; and such waiver and delegation shall continue until notice in writing by the City to the contrary is given. In the event the City independently wishes to exercise its right to salvage, the City shall give in writing to the Grantee notice of its intent and said right shall commence and accrue to the City ninety (90) days from the date of said notice. The salvage rights set forth in this Section

specifically are intended to refer to salvage operations once the solid waste is placed by the generator in the waste stream.

C. Effect of City's Control

- (1) Notwithstanding anything to the contrary stated above in this Section 7, should the City exercise the rights described herein and through that exercise direct Grantee to dispose of solid waste at a specific landfill or landfills, then the City shall indemnify and hold Grantee harmless (i) from any increased operations costs incurred by Grantee arising out of the disposal of the City's solid waste at the landfill designated by the City and (ii) from any liabilities and damages (including clean-up and remediation costs connected with hazardous waste or materials releases) arising out of the disposal of the City's solid waste at the landfill designated by the City, except that this indemnification and hold harmless provision shall not apply to liabilities and damages caused by the negligence of Grantee.
- (2) Grantee shall indemnify and hold the City harmless from any liabilities and damages (including but not limited to clean-up and remediation costs connected with hazardous waste or hazardous materials releases) arising out of disposal of City's wastestream at the Keller Canyon Landfill or any other landfill not directed by City.

SECTION 8

INTENTIONALLY LEFT BLANK.

SECTION 9 - CASH BOND AND INSURANCE

A. Cash Bond

The Grantee shall deposit a cash bond in the sum of One Hundred Thousand Dollars (\$100,000.00) in an interest bearing account. The cash bond shall be on terms acceptable to the City Attorney. The cash bond shall serve as security for the faithful performance by Grantee of all the provisions and obligations of this Franchise Agreement. All interest shall be paid to the Grantee.

- (1) After thirty (30) days following Grantee's failure to pay the City an amount owing under this Franchise Agreement plus interest at the rate of ten percent (10%) per annum, the cash bond may be accessed by the City upon five (5) days' prior written notice to the Grantee for purposes including, but not limited to:
  - (a) Failure of Grantee to pay the City sums due under the terms of the Franchise Agreement;
  - (b) Reimbursement of costs borne by the City to correct Franchise Agreement violations not corrected by Grantee, after due notice; and
  - (c) Monetary remedies or damages assessed against Grantee due to breach of Franchise Agreement.
- (2) The Grantee shall deposit a sum of money sufficient to restore the cash bond to the original amount within thirty (30) days after notice from the City that any amount has been withdrawn from the cash bond. The amount of the cash bond shall be adjusted annually by the annual percentage December to December change in the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose region

("CPI"). It is acknowledged that as of April 1, 2011, Grantee had deposited a cash bond in the amount of \$146,303.34 in conformance with this Agreement.

B. Insurance Coverage

The Grantee shall deposit with the City Clerk copies of insurance policies or endorsements evidencing the existence of policies of insurance and coverages required pursuant to this Franchise Agreement.

SECTION 10 - TERMS: EXTENSIONS

The term of this Franchise Agreement shall commence immediately upon execution and terminate on January 5, 2023.

SECTION 11 - FRANCHISE TRANSFERABLE; CITY CONSENT REQUIRED

A. The franchise granted by this Franchise Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operations of law, without the prior written consent of the City expressed by resolution. Any attempt by Grantee to assign this franchise without the consent of City shall be void.

B. The City shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement. The City may impose reasonable conditions of approval on a Franchise Agreement transfer, including, but not limited to conditions requiring acceptance of amendments to the City's Municipal Code and this Franchise Agreement, and the payment of a transfer fee to the City.

C. The term "assignment" shall include any dissolution, merger, consolidation or other reorganization of the Grantee, which results in change of control of the Grantee, or the sale or other transfer by probate proceeding or otherwise of a controlling percentage of Grantee's capital stock to a person not a shareholder on the date of the execution of this Agreement.

D. City consent is required for any change in control of Grantee. "Change in control" shall mean any sale, transfer or acquisition of Grantee. If Grantee is a corporation, any acquisition of more than ten percent (10%) of Grantee's voting stock by a person, or group of persons acting in concert, who already owns less than 50% of the voting stock, shall be deemed a change in control; provided, however, any transfer of ownership of any or all of the stock or assets of Grantee to another wholly-owned subsidiary of Allied Waste Systems, Inc. shall not constitute a change in control.

E. Any change in control of the Grantee occurring without prior City approval shall constitute a material breach of this Franchise Agreement.

F. In the event the Grantee herein attempts to assign or subcontract this agreement or any part hereof or any obligation hereunder, the City shall have the right to elect to terminate this agreement forthwith, without suit or other proceeding.

G. No interest of the Grantee in this agreement shall be assignable by operation of law. Each or any of the following acts shall be considered an involuntary assignment providing the City

with the right to elect to terminate the agreement forthwith, without suit or other proceeding:

- (1) If Grantee is or becomes insolvent, or makes an assignment for the benefit of creditors;
- (2) If Writ of Attachment or Execution is levied on this agreement or other property of Grantee such that would affect Grantee's ability to perform its duties and obligations under this agreement;
- (3) If in any proceeding to which Grantee is a party, a Receiver is appointed with authority to take possession of Grantee's property such that would affect Grantee's ability to perform its duties and obligations under this agreement;
- (4) In the event of a probate proceeding where the rights of Grantee under the Agreement would pass to another individual or other individuals.

H. The City's consent to an assignment or change of control may be withheld if inter alia, the following conditions are not satisfied:

- (1) The Grantee shall give the City at least ninety (90) days advance written, notice of the Grantee's intent to sell, transfer or assign this agreement. As part of that notice, the Grantee shall provide to the City the following written information:
  - (a) The name, address, and telephone number of the proposed assignee.
  - (b) The character of the legal entity owning or controlling the assignee, and the names, addresses and telephone numbers of all principals, partners, and/or shareholders thereof, as the case may be.
  - (c) A copy of any and all purchase and assignment agreements containing, at a minimum, the terms and conditions (but excluding the financial terms) of the sale, transfer or assignment of this agreement and of Grantee's solid waste and recycling business.
- (2) The proposed transferee must be shown, by credible and sufficient evidence, to be qualified, by financial condition, background and experience to be able to fully assume and satisfactorily perform all of the Grantee's obligations hereunder, and, particularly, to be able to perform under this agreement in a fashion that will assure the City of complying with AB 939 and its SRRE.
- (3) Grantee cannot be in default under any of the material terms and conditions hereof.
- (4) The transferee must be willing to, in writing, assume all of the obligations hereunder.

#### SECTION 12 - FRANCHISE TRANSFER: FEES

A. Any application for a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by City by Resolution of the Council, to cover the anticipated cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, the Grantee shall reimburse the City for all costs not

covered by a transfer fee in an amount not to exceed Ten Thousand Dollars (\$10,000.00). City's request for reimbursement shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

B. These franchise transfer fees are over and above any franchise fees specified in this Franchise Agreement and shall not be recoverable costs for rate setting purposes.

### SECTION 13 - TERMINATION

A. If the City Manager determines that the Grantee's performance pursuant to this Franchise Agreement has not been in conformity with the provisions of this Franchise Agreement, the City Manager may advise Grantee in writing of such deficiencies ("Notice of Default"). The City Manager may, in said Notice of Default, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction (or the commencement and diligent pursuit of measures reasonably calculated to correct the deficiencies within a reasonable period of time) shall be sixty (60) days from the receipt by Grantee of the Notice of Default. Any such Notice of Default shall expressly refer to Grantee's right to appeal the Notice of Default within thirty (30) days of receipt of the Notice of Default. The Grantee shall respond to such Notice of Default in writing within ten (10) calendar days of receipt of the Notice of Default. Said response shall detail how and when Grantee intends to remedy the default. The City Manager shall review the Grantee's response and decide whether the response of Grantee is sufficient to remedy the default and shall notify the Grantee of that decision, in writing ("City Manager Decision). The City Manager Decision shall be final and binding on Grantee unless the Grantee files a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the City Manager Decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager may meet and confer with Grantee regarding any issues in dispute, or refer the appeal to the City Council for proceedings in accordance with Section 13 B - C, below. In the event the City Manager determines to meet and confer with the Grantee and the matter is not resolved thereby, the City Manager shall set the appeal for public hearing before the City Council in accordance with Section 13 B - C, below.

B. The City Council, in such case, may meet and confer with Grantee or shall set the matter for public hearing. In the event that the City Council determines to meet and confer with Grantee and the matter is not resolved thereby, the City Council shall set the matter for public hearing. The City Council shall give Grantee, and any other person requesting the same, fourteen (14) days written notice of the time and place of any hearing set pursuant to this paragraph. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Grantee, or its representatives and any other interested persons, a reasonable opportunity to be heard.

C. Based on the evidence presented at the public hearing, the Council shall determine by resolution whether the Franchise Agreement should be terminated. If the evidence presented at the public hearing establishes that the Grantee has committed a material breach of this Franchise Agreement, the City Council shall make written findings supporting its determinations and, based thereon, may elect to terminate the Franchise Agreement, reduce the rates then being charged by the Grantee or take other appropriate action regarding the Franchise Agreement or Grantee. Grantee's performance under its Franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

D. This right to terminate, reduce rates and/or to take any other appropriate action is in addition to any other rights of City upon a failure of Grantee to perform its obligations under this Franchise Agreement.

E. The City, subject to the procedures set forth in Section 13 A - C, further reserves the right to terminate Grantee's Franchise, or reduce rates or to take other appropriate action in the event (a) any of the following occurs and (b) Grantee fails to commence efforts to timely cure any such deficiencies (except in the case of intentional fraud described in subparagraph 1, in which case no cure period shall apply) within the time period specified in Section 13 A:

- (1) If the Grantee practices, or attempts to practice, any intentional fraud upon the City,

or makes any intentional material misrepresentations to the City in any of the reports required by this Franchise Agreement.

- (2) If the Grantee becomes insolvent, unable to unwilling to pay its debts, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.
- (3) If the Grantee fails to provide or maintain in full force and effect, the workers compensation, liability and indemnification coverages or cash bond as required by the Franchise Agreement.
- (4) If the Grantee willfully violates any final and binding orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Franchise Agreement; provided, however, that the Grantee may contest any orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise Agreement shall be deemed to have occurred.
- (5) If the Grantee ceases to provide collection service as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reasons within the control of the Grantee.
- (6) If the Grantee willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide City with required information, reports and/or test results in a timely manner as provided in the Franchise Agreement.
- (7) Any other act or omission by the Grantee which materially violates the terms, conditions or requirements of the Franchise Agreement and which is not corrected or remedied within the time set forth in this Franchise Agreement or, if the Grantee cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Grantee should fail to commence to correct or remedy such violation within the time set in such notice and diligently effect such correction or remedy thereafter.
- (8) Multiple or repeated breaches, or a pattern of breaches and subsequent attempts to cure said breaches by Grantee notwithstanding whether any of the breaches are ultimately cured by the Grantee.

F. Any waiver of a breach shall not be deemed to be a waiver of any subsequent breach or to be construed as approval of a course of conduct.

G. Upon the occurrence of a material breach and the declaration of such and termination of this agreement by the City Manager or City Council, as the case may be, this agreement and the franchise granted thereunder shall be of no further force and effect, excepting those provisions concerning City's right to temporarily assume Grantee's obligations. City then shall be free to enter into whatever other arrangements are deemed justified and necessary for the collection, removal and disposal of solid waste within the Franchise Area.

#### SECTION 14 - RIGHTS OF CITY TO PERFORM DURING EMERGENCY

A. Should Grantee, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 26 A, "Force Majeure," below, refuse or be unable to collect, transport and dispose of any or all the solid waste which it is obligated under this Franchise Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof, solid waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager in the exercise of his or her sole discretion, after consultation with City and County health officials should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, upon twenty-four (24) hour prior written notice to Grantee, during the period of such emergency, to contract on a temporary basis with third parties to collect and transport any and all solid waste which Grantee would otherwise be obligated to collect and transport pursuant to this Franchise

Agreement.

B. Grantee agrees that in such event it will fully cooperate with City and its third-party contractor to effect such a transfer of operations in as smooth and efficient a fashion as is practicable.

C. All costs, fees, rates and other expenses incurred by the City and/or its third-party contractor that exceed those in effect or being incurred or which would have been incurred had no such emergency arisen shall be the responsibility of the Grantee and shall be paid to the City within 30 days of Grantee's receipt of written notice to so pay.

#### SECTION 15 – PRIVACY

A. Grantee shall use its best efforts to observe and protect the rights of privacy of customers. Information identifying individual customers, or the composition or contents of a customer's refuse shall not be revealed to any person, private agency or company, unless upon the request of federal or state law enforcement personnel, the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Grantee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939 or any other reports requested by the City under the Franchise Agreement or required or requested by any governmental agency.

B. Grantee shall not market or distribute outside the normal course of its business, mailing lists with the names and addresses of customers.

#### SECTION 16 - GRANTEE'S BOOKS AND RECORDS: AUDITS

A. Grantee shall maintain a proper set of books and records in accordance with generally accepted accounting principles, accurately reflecting the business done by it under this agreement.

B. Grantee shall maintain all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, maps, AB 939 records, and customer complaints, for the full term of this Franchise Agreement, and an additional period of not less than three (3) years, or any longer period required by law. The City or its agent(s) shall have the right, upon ten (10) business days' advance notice, to inspect all maps, AB 939 records, Grantee's books and records, customer complaints, and other like materials of the Grantee which reasonably relate to Grantee's compliance with the provisions of the Franchise Agreement. Such records shall be made available to City at Grantee's regular place of business, but in no event outside the County of Contra Costa. Grantee shall further maintain and make available to City, records as to number of customers, total and by type, route maps, service records and other materials and operating statistics in such manner and with such detail as City may require. City shall treat the information required by this paragraph that affects the competitive position of the Grantee as confidential information to the extent permitted by law. City shall not make or retain copies or photocopies containing information set forth in Grantee's confidential financial and business records pertaining to the establishment of rates and payment of franchise fees without executing a Confidentiality Agreement providing that City shall hold and keep such copies and photocopies confidential. The Confidentiality Agreement shall be negotiated in good faith between the City and Grantee and commemorated in a separate legally binding document prior to any subsequent rate increase. Any data which the Grantee seeks to be excluded from provisions of the California Public Records Act or any similar federal or state law shall be clearly identified as such by Grantee with the basis for such exclusion clearly specified. In the event the City receives a request under the Public Records Act or any similar federal or state law, or by subpoena, the City shall notify Grantee to permit Grantee to object to the release of the information requested or subpoenaed. In such case, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, the City shall make a good faith effort to notify Grantee of the intended release.

C. Should any examination or audit of Grantee's records reveal an underpayment of any fee

required under this Franchise Agreement, the amount of such underpayment shall become due and payable to City not later than thirty (30) days after written notice of such underpayment is sent to Grantee by City. Should an underpayment of more than three percent (3%) be discovered, Grantee shall bear the entire cost of the City's audit or examination and said cost shall not be recoverable through rate setting.

D. The information required by this Section shall pertain to Grantee's operations covered and regulated by this agreement, and nothing contained herein shall require the Grantee to provide the City with information pertaining to the Grantee's operations which are not regulated by the City, except in conformance with this Section.

E. The City and/or its agents may examine Grantee's books, records and financial statements pertaining to operations not regulated by the City for the sole purpose of gathering information necessary to allow the agents to ascertain whether income, expenses, assets and liabilities are reasonably and consistently allocated among operations regulated by City and those not regulated by the City. Grantee shall obtain City's written approval of its method of segregating its financial records between City-regulated and non-City regulated operations.

F. Information gained from examination of records pertaining to operations not regulated by the City shall be treated by the City and its agents as confidential information, except as may otherwise be required by state or federal law.

G. For review of books and other financial records necessary to verify the Grantee's income, expenses, assets and liabilities, "Agent" shall mean an independent Certified Public Accountant, public accountancy firm or designated City employee. For all other information or records, including the results of financial verification, "Agency" shall mean any consultant designated by the City or City employees.

H. Nothing in this Section will prevent City from allowing public access to City records as provided for under the California Government Code, and in the event any dispute arises as to the public access to information provided by Grantee under the terms of this agreement, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Grantee of the intended release.

I. Upon reasonable notice or as otherwise agreed herein, and at those times designated by the City, Grantee shall supply to the City lists of the names of all customers of Grantee who are provided any service by Grantee within the Franchise Area. At the same or other time, the City may request and the Grantee shall provide information specifying each customer's address, type of service provided to that customer, the number and type of authorized solid waste containers used by or provided to each customer, whether and which customers are believed to be violating this Agreement, any mandatory subscription ordinance or any other provision of the law, and any other information that the City determines, in its sound discretion, reasonably required to monitor implementation of this Agreement and/or discharge the City's responsibilities under the law.

#### SECTION 17 - REPORTS, ADVERSE INFORMATION, AB 939 REQUIREMENTS, AND WASTE AUDIT

##### A. Annual Reports

Within one hundred twenty (120) days after the close of Grantee's fiscal year (Grantee's fiscal year ends on December 31st of each year), Grantee shall submit to the City a written annual report, in a form approved by the City, including, but not limited to, the following information:

- (1) A summary of the previous year's (or, in the case of the initial year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class and level of service;
- (2) A revenue statement, setting forth quarterly Franchise Fees, and the basis for the calculation thereof, certified by an officer of Grantee; and
- (3) A list of Grantee's officers and members of its board of directors.

B. Adverse Information

Grantee shall provide City two copies of all reports, or other material adversely reflecting on Grantee's performance under this Franchise Agreement, submitted by Grantee to the California or U. S. EPA, the California Department of Resources, Recycling and Recovery (CalRecycle) or any other federal, state or county agency. Copies shall be submitted to City simultaneously with Grantee's filing of such matters with said agencies. Grantee's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request, as provided in Section 16.

- (1) The Grantee shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating specifically to Grantee's performance of services pursuant to this Franchise Agreement. Any data which the Grantee seeks to be excluded from provisions of the California Public Records Act shall be clearly identified as such by Grantee with the basis for such exclusion clearly specified. In the event City receives a request under the Public Records Act or any similar federal or state law, or by subpoena, the City shall notify Grantee to permit Grantee to object to the release of the information requested or subpoenaed. In such case, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Grantee of the intended release.
- (2) Grantee shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.
- (3) All reports and records required under this or any other section shall be furnished at the sole expense of the Grantee.

C. AB 939 Requirements

- (1) During the term of this Franchise Agreement, the Grantee, at Grantee's sole expense, shall submit information and reports required by City to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, in a manner approved by City. Grantee agrees to submit such reports and information electronically if requested by City. In responding to requirements established by AB 939, the Grantee agrees to meet the following requirements of the City's Source Reduction and Recycling Element (SRRE), and its amendments:

Section 4 - "Source Reduction". Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Increasing Per Can Rate

- Waste Evaluations
- Educational Efforts.

Section 5 - "Recycling Component". Programs listed under "Programs Selected" for short- and medium-term planning periods, including-

- Continuation of Single-Family Curbside Collection
- Implement Multi-Family Curbside Collection
- Continuation of Existing collection of Commercial Recyclables
- Continued Operation of existing drop-off facilities
- Continuation of single-family curbside collection and multi-family collection of Recyclables, with expansion of programs to include additional material types
- Utilize a mixed waste recovery facility to remove Recyclables from waste stream
- Expansion of the commercial recycling program.

Section 6 - "Composting Component". Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Implementation of a Curbside Collection of Yard waste program
- Establish a drop-off facility for yard waste (primarily for commercial use)
- Recover yard waste at the transfer station from self haul loads and roll-off bins
- Continued operation of the Curbside Collection of Yard waste program
- Continued operation of the drop-off facility for Yard waste
- Enhanced program to recover yard waste at the transfer station from self haul loads and roll-off bins.

Section 7 - "Special Waste Component"- Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Continuation of Bulky Materials/Community Clean Up Collection Days for residents and Businesses
- Transfer Station/MRF Salvaging of Tires, Wood Waste, and White Goods.

Section 8 - "Education and Public Information Component"- Programs listed under "Programs Selected" for short- and medium- term planning periods, including-

- Residential Brochures
- Bill Inserts
- Direct Mail
- Local Newspaper Advertisements
- Commercial Brochures identifying recyclable materials generated at work.

- (2) If in City's sole determination, changes arise that necessitate program additions, deletions, or modifications, the Grantee shall implement such additions, deletions, or modifications upon direction from the City to do so. Upon implementation, the parties shall negotiate any necessary cost changes or amendments to the Agreement which may be necessary as a result of such changes to the work, as directed by City.

D. Waste Audits

Upon initiation of new and/or significant change in service to solid waste commercial customers, the Grantee shall perform a waste audit as to the affected customer. The audit shall consist of drivers filling out a form approved by the City that identifies volume and characteristics of solid waste being generated by the customer, and to provide information upon which suggestions can be made to reduce such generation and/or recycle the waste generated. A copy of the audit shall be provided by the Grantee to: the customer, the City and to Grantee's own files.

E. Monetary Charges For Untimely Report Submittal

The parties agree that at the time of execution of this Franchise Agreement between the City of Martinez and Allied Waste Systems, Inc., dba Pleasant Hill Bayshore Disposal, Inc., (Grantee), it is not possible to quantify all of the damages accruing to City by reason of the

Grantee's future failure to timely submit the reports and submittals specified in this Section 17. The City and Grantee therefore agree that in the event Grantee fails to timely submit the reports required under this Section 17 of the Franchise Agreement, after receipt of written Notice of Non-Compliance with the Franchise Agreement as specified in subsection E (1) below for failing to do so, the City Manager may assess Grantee, subject to subsection E (2) immediately below, monetary charges of Two Hundred Dollars (\$200.00) per day for each calendar day past the due date specified in the Notice of Non-Compliance that the report(s) are not submitted. The maximum charge which may be assessed for a report not being timely submitted is Ten Thousand Dollars (\$10,000.00). Notwithstanding anything to the contrary above, assessment of said charges shall be without prejudice to the City's right to compel Grantee to indemnify and defend the City for any consequential damages resulting from such nonperformance, including without limitation any monetary charges assessed against the City by the California Department of Resources, Recycling and Recovery (CalRecycle).

- (1) Written Notice: City shall provide Grantee with a Notice of Non-Compliance with Franchise Agreement ("Notice of Non-Compliance") upon the failure of Grantee to timely submit any report required by the provisions of Section 17 of his Franchise Agreement. The Notice of Non-Compliance shall state that the Grantee is in non-compliance with the applicable report submittal provisions of Section 17 of the Franchise Agreement, and provide a reasonable time, no less than twenty (20) calendar days from the date of the Notice of Non-Compliance, within which the report(s) must be submitted. The City Manager may extend the time specified in the Notice of Non-Compliance for Grantee to submit the required report(s) upon written request of the Grantee. Any request of the Grantee for an extension of time to submit the report(s) must be submitted to the City Manager in writing at least five (5) days prior to the submittal date specified in the Notice of Non-Compliance.
- (2) Appeal To City Council. In the event that Grantee does not agree with the assessment of monetary charges by the City Manager for Grantee's failure to submit the required reports as specified in Section 17 and as set forth in the Notice of Non-Compliance, Grantee may appeal the assessment of monetary charges to the City Council. Grantee must file a Notice of Appeal with the City Clerk within thirty (30) days of receipt of the City Manager's determination that monetary charges should be assessed for failure to comply with the date as specified in the Notice of Non-Compliance.
- (3) Appeal Hearing. The appeal hearing shall be limited to the issue of whether the assessment of monetary charges pursuant to this subsection is justified based on the facts and circumstances of the matter on appeal. The Council shall receive a report from the City Manager and shall give the Grantee and/or its representatives a reasonable opportunity to be heard and to present evidence to the City Council. The City Council shall thereafter make a written determination with respect to the assessment of monetary charges. Grantee shall pay to the City all monetary charges imposed hereunder within ten (10) working days after the date of the Council's decision. Amounts owed hereunder shall accrue interest at the rate of 10%-per annum from the date due until fully paid. If said charges are not fully and timely paid, the City may proceed against the performance bond required by this Agreement in addition to exercising any other remedy it may have hereunder or at law or in equity.
- (4) Failure to Report After Monetary Charges. In the event that Grantee fails to provide the requisite report(s) notwithstanding the City's assessment of and Grantee's payment (or nonpayment) of monetary charges, then City may proceed in accordance with the provisions of Section 13. The refusal, failure or neglect of the Grantee to file any of the reports required, or to provide required information to City or the intentional inclusion of any materially false or misleading statement or representation made knowingly by the Grantee shall be deemed a material breach of

the Franchise Agreement, and shall subject the Grantee to all remedies, legal or equitable, which are available to the City under the Franchise Agreement, including, but not limited to, those specified in Section 13.

#### SECTION 18 - ANNUAL REVIEW OF PERFORMANCE AND QUALITY OF SERVICE

A. From time to time, at its sole discretion, City may examine Grantee's operation in order to evaluate whether or not the Grantee is operating at a satisfactory level of efficiency and customer satisfaction.

Grantee agrees to cooperate in any such examination and shall permit City representatives to inspect, at Grantee's principal place of business, such information pertaining to Grantee's obligations hereunder as City may require, including, but not limited to, such things as customer inquiry records, collection routes and equipment records. Access to Grantee's records shall be subject to Section 16.

B. At City's sole option, within ninety (90) days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, City may hold a public hearing at which the Grantee shall be present and shall participate, to review the Grantee's performance and quality of service. The reports required by this Franchise Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

C. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Franchise is found, City may direct Grantee to correct the inadequacies or initiate proceedings in accordance with Section 13 above.

D. Grantee shall provide prompt, efficient, continuous and professional service to its customers.

E. Upon the request of the City, as part of the Annual Review of Performance described above, and not less than six (6) months prior to Grantee's notice of contract renewal, assignment or extension of term, Grantee shall conduct a survey or surveys of all customers to determine their satisfaction with Grantee's service, including, without limitation, response to customer complaints. The survey methodology, format and content shall be subject to the prior review and approval of the City Manager, or his/her designee. A copy of the survey results shall be sent to the City within sixty (60) days of completion of the survey. Nothing in this paragraph shall limit the right of the City to conduct additional surveys. The Grantee shall cooperate with the City in such cases.

F. Upon initiation of service, and at least once a year, Grantee shall send or deliver to its customers information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), days of collections, the amount and manner of refuse to be collected, service level and inquiry/complaint procedures, including the name, address and local telephone number of Grantee. The form and content shall be subject to the review and approval of the City Manager or his/her designee.

#### SECTION 19 - SYSTEM AND SERVICES REVIEW

To provide for technological, economic, and regulatory changes in solid waste collection, to facilitate renewal procedures, to promote competition in the solid waste industry, and to achieve a continuing, advanced solid waste collection system, the following system and services review procedures are hereby established.

A. At City's sole option, City may hold a public hearing on or about the first anniversary date of the Franchise Agreement in which it reviews the collection systems and services. Subsequent system and services review hearings may be scheduled by City each two (2) years thereafter. It is City's intent to conduct any system and services review concurrently with any Annual Review of Performance and Quality of Service as provided for in Section 18, above.

B. Sixty (60) days after receiving notice from the City, Grantee shall submit a report to City indicating the following:

- (1) All solid waste collection and recycling services reported in solid waste collection and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided by Grantee to City; and
- (2) Changes recommended to improve the City's ability to meet the goals of AB 939;
- (3) Any specific plans for provision of such new services by the Grantee along with the estimated expenses and adjustments to rates necessary to compensate Grantee for providing such services, or a justification indicating why Grantee believes that such services are not feasible for the franchise area; and
- (4) A capital and equipment purchasing and improvement plan, covering at least the following two years, in which is described, among other things, the nature of the capital and equipment which Grantee proposes to acquire, estimated costs of same and the likely effect said plan will have on rates.

C. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals and regulatory constraints.

D. City and the Grantee may each select additional topics for discussion at any system and services review hearing. The Grantee agrees to cooperate in any such examination and shall provide for inspection to the City or its designated representatives, at the Grantee's principal place of business, such information as the City may require, including but not limited to, such things as collection routes and equipment records.

E. Not later than sixty (60) days after the conclusion of each system and services review hearing, City shall issue a report. The report shall summarize the systems and services review hearing and address services not being provided to City that are considered technically and economically feasible by City. City may require Grantee to provide such services within a reasonable time, for reasonable rates and compensation.

## SECTION 20 - COMPENSATION

### A. Grantee Rates

Grantee shall provide the services described in this Franchise Agreement for the rates specified in Exhibit "C." Said rates shall be subject to the following conditions.

(1) Effective Date

The rates specified in Exhibit "C" shall be effective as of January 1, 2011. The rates specified in Exhibit "C" shall include the implementation of all the services described in Section 6 and Exhibit "B" hereto, as well as the services described in Section 6 and Exhibit "B" to the Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Solid Waste) of even date. Grantee shall deliver written notice to the City certifying that said services have been implemented. Unless otherwise stated, the cost of the services provided by Grantee are assumed to be recoverable in the rate base.

(2) City's Powers

Except as provided under the "Dispute Resolution" provision of the Rate Setting Process and Methodology Manual for Solid Waste Charges dated March 2011 and prepared by NewPoint Group Management Consultants ("Rate Setting Manual" attached hereto as Exhibit "D"), the City Council shall set and regulate all rates and charges assessed by Grantee for any and all services and activities it performs or engages in the Franchise Area. That only some of Grantee's services and activities are rate-regulated by this Franchise Agreement shall not be construed as a waiver of the City's rights to regulate the rates or charges assessed by Grantee for services covered by this Franchise Agreement.

B. Rate Setting Procedures

During the term of this agreement, commercial and industrial solid waste collection rates and residential solid waste collection and recycling rates will be established and adjusted in accordance with the Rate Setting Manual. A true and correct copy of the Rate Setting Manual is attached hereto as Exhibit "D" and hereby incorporated by reference as though fully set forth herein. At such time as the State mandates and/or the City adopts a mandatory commercial recycling ordinance, and Grantee receives exclusive rights to commercial and industrial recycling in the Franchise Area as is generally described in Section 6 E (1) of this Franchise Agreement, Grantee rates for commercial and industrial recycling shall also be established and adjusted in accordance with the Rate Setting Manual.

(1) Calendar Year 2012 Rate Freeze

Grantee agrees not to change its refuse and recycling collection rates in calendar year 2012. Grantee is allowed to submit a base year application on July 31, 2012 for rates to be implemented on January 1, 2013. This 2013 base year would start the new rate setting cycle. Years 2014, 2015, and 2016 would be interim years. Grantee acknowledges that the new and/or expanded services it provides pursuant to this Franchise Agreement, which are allowable costs in the rate base, are not recoverable until 2013. Grantee further acknowledges that year 2013 rates will not reflect any retroactive rate increases to recover its costs implementing the aforementioned new and/or expanded services implemented in 2011 and 2012.

(2) Exception to Calendar Year 2012 Rate Freeze

Should the State mandate and/or the City adopt a mandatory commercial recycling ordinance, and Grantee receive exclusive rights to commercial and industrial recycling in the Franchise Area as is generally described in Section 6 E (1) of this Franchise Agreement, Grantee would be allowed to submit support for an adjustment to commercial and industrial rates in accordance with the Rate Setting Manual to cover the new costs required to fund a mandatory commercial recycling program in the City. This mandatory commercial recycling rate adjustment request would be subject to City review and City Council approval in accordance with the

terms hereof.

C. Resolution of Issues Regarding the Rate Adjustments

Except as provided under the "Dispute Resolution" provision of the Rate Setting Manual, any issue regarding rates, or the computation thereof, or any other question regarding Grantee's reimbursement for fees, special services or extraordinary costs described in Exhibit "C," shall be decided by the City Council or the arbitrators under the Rate Setting Manual, as the case may be. The rates in effect at the time any issue or dispute is submitted to the City Council shall remain in effect pending resolution of any issue or dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall reasonably be determined by the City Council or the arbitrators appointed under the Rate Setting Manual, as the case may be.

D. Billing and Payment

- (1) Grantee shall bill all customers for all services, whether regular or special. Grantee shall provide bills showing, in one amount, all charges for all classifications of services. However, the charges for late payments shall be separately shown. The Grantee shall collect, for City, AB 939 fees, but shall not designate that portion of a customer's bill attributable to the franchise fee collected by Grantee for City, as a separate item on a customer's bills. Billings may be made every two months (and if in advance, for no more than two (2) months) for all services to residential customers.
- (2) City may, at City's sole option, upon such terms and conditions as may be mutually agreed upon between the parties, elect to bill residents for solid waste collection. If City elects to do so, mutually agreed upon guidelines will be established and amended into this agreement. The portion of the solid waste collection rates paid to Grantee which is attributable to billing for services shall be assigned to City.

E. Delinquent Accounts

Grantee may discontinue service as set forth in this Section. Persons who have not remitted required payments within thirty (30) days after the date of billing shall be notified on forms approved by the City. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. Upon payment of the delinquent fees as set forth in Exhibit "C," Grantee shall resume collection on the next regularly scheduled collection day.

F. Refunds

Grantee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is lawfully discontinued by the customer or for service not provided by Grantee due to no fault of the customer.

G. Bills Paid Locally

At its sole cost, Grantee shall establish a method by which customers may pay bills at a minimum of one location located in the Downtown area of the City, Monday through Friday, excluding holidays. Currently, the approved location is Char's Flower Shoppe, 516 Main Street, Martinez, California. Payments will be accepted during normal banking hours. Any changes in the location must be approved by the City.

## SECTION 21 - COLLECTION EQUIPMENT

A. Grantee warrants that it shall provide an adequate number of vehicles and all equipment for the collection, and transportation services for which it is responsible under this Franchise Agreement. All vehicles used by Grantee under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted. Solid waste collection vehicles shall be washed such that they are maintained in a clean and sanitary condition. Grantee's name, telephone number and vehicle number shall be visibly displayed on its vehicles. Loads shall be kept completely covered at all times except when material is being loaded or unloaded or when vehicles are en route in the process of collection. Collection vehicles shall be designed and operated while en route in such a manner as to prevent solid waste and leachate from leaking, escaping or spilling. Any spillage of materials shall be immediately cleaned up by Grantee at Grantee's sole expense. The noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall be such that it does not unreasonably interfere with the quiet enjoyment of nearby properties. Grantee shall submit to City, annually, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The equipment of Grantee used under this Franchise Agreement shall be subject to inspection by City on a semiannual basis but shall not be subject to any permit fees therefor.

Notwithstanding the generality of the forgoing, Grantee's equipment shall at all times be in conformance with the City's Municipal Code provisions applicable thereto.

B. At least annually, the Grantee shall provide the City a written list of all equipment (including trucks, processing equipment and containers) being used within the City's limits, including make and model, age, mileage, type of vehicle, etc.

## SECTION 22 - PUBLIC ACCESS TO GRANTEE

### A. Location; Telephone Service

The Grantee shall maintain an office within one mile of the City limits where bills may be paid and complaints can be received, which shall be located at 441 N. Buchanan Circle, Pacheco, California. The office shall be open, at a minimum, from 8 a.m. to 4:30 p.m. on all business/collection days. The Grantee shall also maintain telephone services with a number which does not involve a toll call from within the City. The average hold time on customer calls should not exceed 60 seconds. The Grantee shall provide either a representative; telephone answering service; or recorded message (with an emergency telephone number available) to receive customer inquiries during those times when the office is closed. Call back messages left on a business/collection day before noon shall be returned by the end of the same day. Calls received after noon or after normal business hours shall be returned before noon of the next business/collection day. Grantee shall maintain the capability of responding to telephone calls: (1) in English and such other languages as City may direct; and (2) through telecommunications device for the deaf (TDD) services. Grantee shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest days and such telephone equipment shall be capable of recording the responsiveness to each call.

### B. Service Complaints

- (1) All customer complaints shall be directed to Grantee. Grantee shall record all complaints received by mail, by telephone or in person (including date, name, address of complainant and nature of complaint). Grantee agrees to use its best efforts to resolve all complaints by close of business of the second business (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City's Solid Waste and Recycling Coordinator ("Coordinator"), or his/her designee. Unless a resolution satisfactory to the complainant, the Grantee and

the Coordinator is reached, the complainant may refer the matter to the City Manager or his/her designee for review.

- (2) Grantee will maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Grantee to resolve the complaint. All such records shall be maintained for a period of twenty-four (24) months and shall be available for inspection by the City.

C. Government Liaison Person

The Grantee shall designate a "government liaison person" who shall be responsible for working with the Coordinator to resolve consumer complaints. Unless a resolution satisfactory to the complainant, the Grantee and the Coordinator is reached, the complainant may refer the matter to the City Manager or his/her designee for review.

D. Regular Meetings with City

At least every other month, or as often as requested by the City, Grantee shall meet with the City at City Hall to discuss matters of mutual concern including but not limited to, problems in Grantee's service, compliance with AB 939 and future planning. The person attending these meetings on behalf of Grantee shall be vested with sufficient authority to make decisions binding on Grantee.

SECTION 23 - CUSTOMER COMPLAINTS

A. The Grantee shall notify customers of this complaint arbitration procedure at the time customers apply for service, and subsequently, annually.

B. A customer dissatisfied with Grantee's decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer must request City review within thirty (30) days of receipt of Grantee's response to the complaint, or within forty-five (45) days of submitting the complaint to the Grantee, if the Grantee has failed to respond to the complaint. The City may extend the time to request its review for good cause.

C. The City Manager shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Franchise Agreement.

SECTION 24 - SERVICE EXCEPTIONS: HAZARDOUS WASTE NOTIFICATIONS

A. The parties hereto recognize that federal, state and local agencies with responsibility for defining hazardous waste and for regulating the collection, hauling or disposing of such substances, are continually providing new definitions, tests and regulations concerning these substances. Under this agreement, it is Grantee's responsibility to keep current with the regulations and tests on such substances, to identify such substances and to comply with all federal, state and local regulations concerning such substances. Grantee shall make every reasonable effort to prohibit the collection and the disposal of hazardous waste in any manner inconsistent with applicable law.

B. When Recyclables are not collected from any approved recycling container, Grantee shall notify its customer why the collection was not made and shall attach tags approved by the City to the Recyclables or waste not so collected which clearly identify the reasons for such non-collection.

C. Grantee has represented to City that Grantee will carry out its duties to notify all agencies

with jurisdiction, including the California Department of Toxic Substances Control and Local Emergency Response Providers, and, if appropriate, the National Response Center, of reportable quantities of hazardous waste, found or observed by Grantee in solid waste anywhere within the City, including on, in, under or about City property, including streets, easements, rights of way and city waste containers. In addition to other required notifications, if Grantee observes any substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on City property, including streets, storm drains, or public rights of way, Grantee also will immediately notify the City Manager, or the City Manager's designee.

D. Grantee shall conduct visual surface inspections, in accordance with its current operating practices, of all solid wastes that it collects, transports and/or disposes pursuant to this Franchise Agreement for the purpose of discovering, identifying and refusing to collect, transport and dispose of hazardous wastes or materials.

E. Household Hazardous Waste Program

Except as provided in this subsection 24 E, Grantee shall not collect, handle, process, transport, arrange for the transport of or dispose of hazardous waste pursuant to this Franchise Agreement. Notwithstanding the immediately preceding sentence to the contrary, the Grantee shall provide hazardous waste materials handling in accordance with the program it is presently offering, which is described in Section 6 A (3) of this Franchise Agreement and Exhibit "B".

SECTION 25 - INDEMNIFICATION AND INSURANCE

A. Indemnification of City

- (1) Grantee shall defend with counsel reasonably acceptable to the City and indemnify and hold harmless the City from and against any and all liabilities, costs, claims and damages which are caused by Grantee's failure to comply with the laws described in Section 4, including but not limited to liabilities, costs, claims and damages described in Section 7 D (2), but excluding liabilities, costs, claims and damages pertaining to hazardous waste and materials not described in Section 7 D (2).
  - (a) The City takes the position that the former franchise agreement with Martinez Sanitary Service and assigned to Grantee includes the obligation on the part of the Grantee to defend and indemnify the City for hazardous waste liabilities arising out of the Grantee's performance under the Franchise Agreement, including those liabilities arising out of Grantee's generation of, arranging for, collecting of, handling of, disposing of or releasing of hazardous wastes under CERCLA, RCRA, or any other pollution or hazardous materials law or regulation. Grantee contends that it has no such obligation under the Franchise Agreement or under the law and disputes the City's contention in its entirety. Consequently, except as is provided in Sections 7 and 25 A (1) above, no agreement has been reached between the City and the Grantee on this indemnification issue and, as such, it is not resolved as part of the Franchise Agreement.
- (2) Grantee agrees that it shall protect, defend with counsel reasonably acceptable to City, indemnify and hold harmless the City, its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or resulting in any way from Grantee's exercise of the franchise, unless such claim is due to the sole active negligence or willful misconduct acts of the City, its officers, employees, agents or contractors, or from the City's grant of this franchise to Grantee.

- (3) In addition, Grantee shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising therefrom, brought to enforce or to challenge the Franchise Agreement and/or Grantee's exclusive rights granted thereunder; provided, however, that Grantee's obligations hereunder extend only to actions brought against or by persons not parties to this agreement; and, provided, further, that Grantee's obligations hereunder do not extend to any litigation or dispute between the City and Mt. View Sanitary District concerning their respective powers to control the collection and disposal of solid waste in the City's corporate limits. Notwithstanding the immediately preceding sentence, Grantee hereby waives any and all claims for damages that it may now or hereafter have relating to any dispute between the City and Mountain View Sanitary District concerning the respective powers of same, and in this regard, Grantee shall not be entitled to any damages or any compensation whatsoever as a result of any reduction of the Franchise Area or termination of this Franchise Agreement due to claims by Mountain View Sanitary District relating thereto.

B. Indemnification of Grantee

The City shall defend, with counsel reasonably acceptable to Grantee, indemnify and hold Grantee harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City and/or Grantee for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure is due to the sole active negligence or willful misconduct of the City, including but not limited to the City's failure to adopt source reduction and recycling elements mandated under AB 939.

C. AB 939 Indemnification

- (1) In addition, Grantee shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure results from Grantee's failures as described in Exhibit "C" to the Consent to Assignment of Franchise Agreement between the City and the Grantee dated March 30, 1992, or its failures to comply with this Franchise Agreement and/or Grantee's failure to comply with said laws, rules or regulations, including but not limited to failing to timely supply to the City the reports and information required by the City in order to comply with AB 939.
- (2) In addition, Grantee will defend, indemnify and hold the City harmless and pay all fines, assessments and penalties resulting from the City's failure to comply with AB 939, its amendments and successor legislation, and/or all regulations and rules promulgated thereunder to the extent said failure is a consequence of the City's residents' failure to participate in the solid waste programs and/or services made available to them by the City and/or Grantee; provided, however, that this indemnity and hold harmless shall not apply unless, upon the request of Grantee, the City Council has passed a resolution providing for an increase in Grantee's rates to fully compensate Grantee for its payments hereunder, which resolution shall become effective upon Grantee's payment of such fines, assessments and penalties.

D. Workers' Compensation Insurance

Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the

required coverage shall be filed and maintained with the City Clerk throughout the term of this Franchise Agreement. Such policy shall provide that it will not be cancelled without first giving thirty (30) days written notice to the City. Said Worker's Compensation insurance shall include the following endorsement: "All rights of subrogation are hereby waived against the City, its officers and employees when acting within the scope of their appointment or employment."

E. General Liability Insurance

Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding \$200,000.00 per occurrence. Said insurance shall protect Grantee and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from ongoing and completed operations performed pursuant to this Franchise Agreement, whether such operations be by Grantee itself, or by its agents, employees and/or subgrantees. Copies of the policies or endorsements evidencing the above required insurance coverage shall be filed with the City Clerk. Endorsements are required to be made a part of all of the following insurance policies required by this Section:

- (1) "The City, its employees, agent, Grantees and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Grantee."
- (2) "This policy shall be considered primary insurance as respects any other valid collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."
- (3) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
- (4) "Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Clerk."

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy. The City shall be included as an additional insured on each of the policies, or policy endorsements.

F. Modification

The insurance requirements provided herein may be modified or waived in writing by the City Council, provided the City Council determines that such waiver or modification does not unreasonably increase the risk of exposure to the City, including the fact that the parent of Grantee may be self-insured up to a certain acceptable amount.

SECTION 26 - GENERAL PROVISIONS

A. Force Majeure

Grantee shall not be in default under this Franchise Agreement in the event that the collection, transportation and/or disposal services of Grantee are temporarily interrupted or

discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of Grantee. Events of force majeure and "other catastrophic events" do not include labor disturbances, the financial inability of the Grantee to perform each and every obligation of Grantee or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or Grantee's inability to obtain or maintain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Grantee.

(1) Labor Disturbance

Notwithstanding anything in subsection A above to the contrary, in the event a labor disturbance interrupts collection, transportation and/or disposal of solid waste or Recyclables by Grantee as required under this Franchise Agreement, City may elect to exercise its rights under Section 13 of this Franchise Agreement only upon the expiration of 14 calendar days from the commencement of a service interruption due to a labor disturbance. "Labor disturbance" includes, without limitation, strikes, lockouts, sick-outs, or similar actions.

B. Independent Contractor

Grantee is an independent contractor and not an officer, agent, servant or employee of City. Grantee is solely responsible for the acts and omissions of its officers, agents, employees, Grantees and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Grantee. Neither Grantee nor its officers, employees, agents or subgrantees shall obtain any rights to retirement or other benefits which accrue to City employees.

C. Pavement Damage

Notwithstanding the Franchise Fee, community impact and AB939 and Climate Action Plan support payments specified in Section 3, Grantee shall be responsible for any extraordinary damage to City's driving surfaces, whether or not paved, resulting from the weight of vehicles providing collection services at the location of bins and containers on public property. This Franchise Agreement does not purport to affect, in any way, Grantee's civil liability to any third parties.

D. Property Damage

Notwithstanding the Franchise Fee, community impact and AB939 and Climate Action Plan support payments specified in Section 3, any physical damage caused by the negligent or willful acts or omissions of employees, Grantees or subgrantees of the Grantee to private or public property shall be repaired or replaced by Grantee, at Grantee's sole expense.

E. Right of Entry

Grantee may assume, until receipt of written notice revoking permission to pass is delivered to Grantee, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting solid waste pursuant to this Franchise Agreement.

F. Law to Govern: Venue

The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of

Contra Costa. In the event of litigation in a U. S. District Court exclusive venue shall lie in the Northern District of California.

G. Fees and Gratuities

Grantee shall not, nor shall it permit any agent, employee or subgrantee employed by it to, request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of solid waste otherwise required to be collected under this Franchise Agreement.

H. Prior Agreements and Amendment

No amendment of this Franchise Agreement shall be valid unless in writing duly executed by the parties. Except as to Exhibit "C" to Consent to Assignment of Franchise Agreement dated March 30, 1992, and as to the Consent to Franchise Assignment dated March 3, 1999, by and between the City, the Grantee and Browning-Ferris Industries of California, Inc., this Franchise Agreement contains the entire agreement between the parties and no promises, representations, warranty or covenant not included in this Franchise Agreement have been or are relied upon by either party. This Franchise Agreement is intended to and does supersede and replace the January 4, 1978, and January 14, 1987 agreements between Martinez Sanitary Service and the City, City Resolutions 170-80, 220-81, 154-85, 157-87, 134-89, 175-90 and 74-91, the Second Addendum to Contract Between City of Martinez and Bart Bisio, dba Martinez Sanitary Service executed on March 30, 1992 and the Original Agreement.

I. Compliance with Franchise Agreement

Grantee shall comply with those provisions of the City's Municipal Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Franchise Agreement, subject to Section 1 C.

J. Notices

All notices required or permitted to be given under this Franchise Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553-2394  
Telecopier Number (925) 229-5012

Copy to: Solid Waste and Recycling Coordinator  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553-2394  
Telecopier Number (925) 229-5012

And to: City Attorney  
City of Martinez  
670 West Napa Street, Suite F  
Sonoma, CA 95476  
Telecopier Number (707) 996-9603

To Grantee: Mr. Tim Argenti  
Allied Waste Systems, Inc.  
441 N. Buchanan Circle  
Pacheco, CA, 94553  
Telecopier Number (925) 685-8153

Copy to: Mr. Tom Bruen  
Law Office of Thomas M. Bruen  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telecopier Number (925) 295-3132

Or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or sent by Telecopier or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

K. Savings Clause and Entirety

If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

L. Exhibits Incorporated

Exhibits "A" through "E" are attached to and incorporated in this Franchise Agreement by reference.

M. Identification Required

Grantee shall provide its employees, Grantees and subgrantees with identification for all individuals who may make personal contact with residents of the City.

N. Joint Drafting

This Franchise Agreement was drafted jointly by the parties to the Franchise Agreement.

O. Contest of Agreement's Terms by the Parties

In the event either party to this agreement attempts to challenge the validity of any portion of this agreement, such action in attempting to challenge the agreement shall constitute a material breach of this agreement and the nonbreaching party shall have the right to elect to terminate forthwith without suit or other proceeding.

P. Police Powers

Nothing in this agreement is intended to or may limit City authority pursuant to its police power.

Q. Affiliated Entities

Whether or not Grantee shall provide information necessary to satisfy City that the charges made by any affiliated entity are reasonable, shall be determined as part of the rate review process described in Section 20 B. Information gained from examination of books and records pertaining to operations not regulated by the City shall be treated by the City and its agents as confidential information in accordance with a Confidentiality Agreement described in Section 16 B. Any data which the Grantee seeks to be excluded from provisions of the California Public Records Act or any similar federal or state law shall be clearly identified as such by Grantee with the basis for such exclusion clearly specified. In the event City receives a request under the Public Records Act or similar state or federal law, or by subpoena, the City shall notify Grantee to permit Grantee to object to the release of the information requested or subpoenaed. In such case, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Grantee. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Grantee of the intended release.

"Affiliated entity" shall be defined, for purposes of this paragraph, as any entity which provides products or services to Grantee and in which either Grantee or the affiliated entity owns a ten percent (10%) or greater interest in the other, or where one person or entity owns ten percent (10%) or greater interest in both. City shall have the right to inspect the financial records of any affiliated entity. For purposes of this paragraph, the term "Grantee" shall include Grantee, and if Grantee is an individual, or a group of individuals (partnership) all immediate family members, or if a corporation, major shareholders and any major shareholder is an individual, said individuals' immediate family members. For the purpose of this paragraph, "immediate family" includes spouses and relatives of the first degree of sanguinity, and their spouses.

WITNESS the execution of this Agreement on the day and year first written above.

CITY OF MARTINEZ

By: \_\_\_\_\_  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ALLIED WASTE SYSTEMS, INC.

By: \_\_\_\_\_

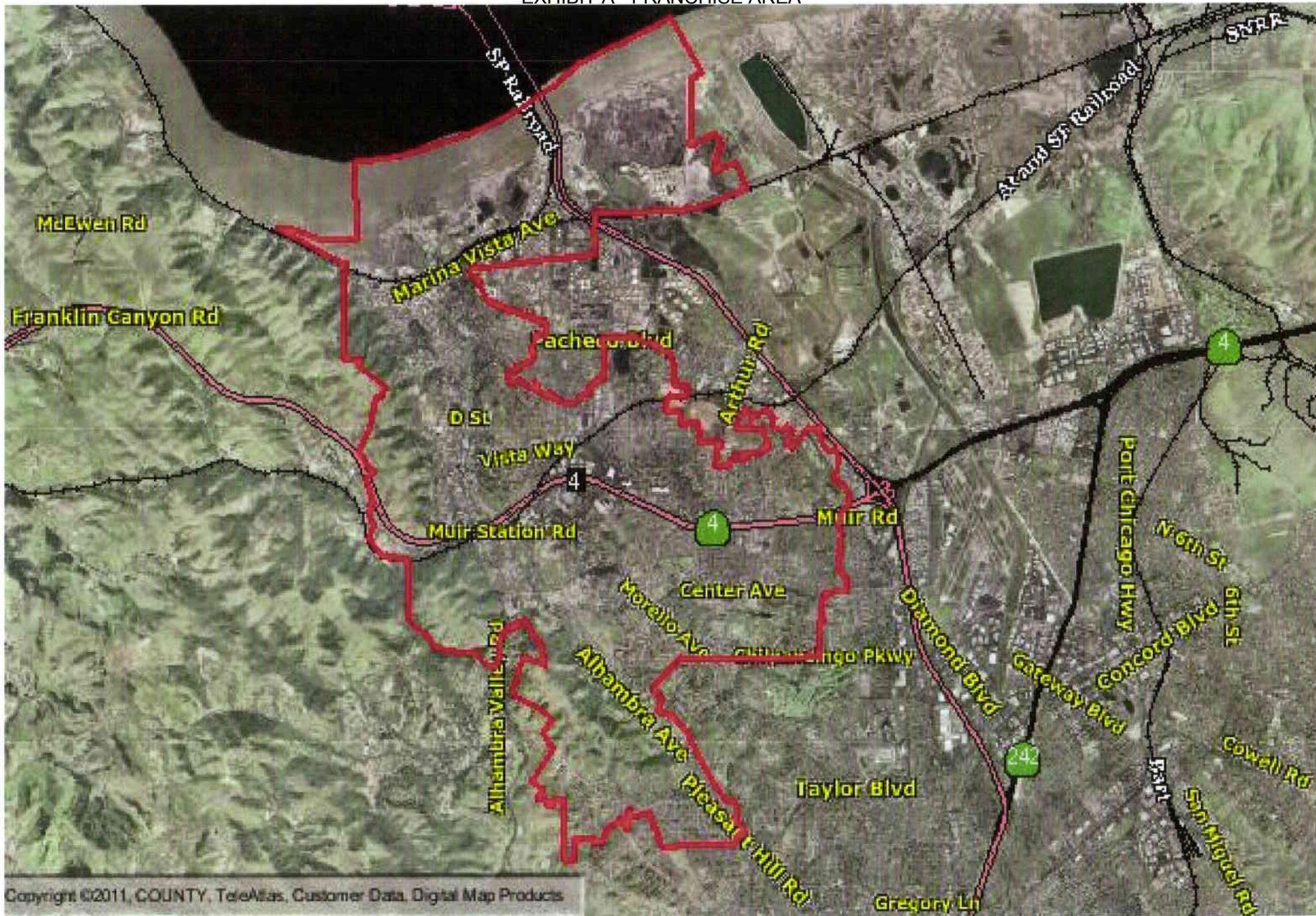
Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas M. Bruen, Attorney for Grantee

EXHIBIT A - FRANCHISE AREA



# Exhibit B.

## Residential Solid Waste and Recycling Services

### Residential Solid Waste Services– Single Family Units

1. PHBD shall provide each City resident with a 20, 32, 64, or 96-gallon cart for weekly solid waste service. PHBD shall have sufficient reserves of carts to allow for future changes in customer cart size preferences and carts that are stolen or lost. PHBD shall automate the City's residential refuse collection operations in areas where automation is determined feasible.
2. Effective July 1, 2011, and twice each calendar year, any single family residential unit customer may call PHBD to have the customer's solid waste collected at no charge with a three (3) cubic yard quantity limit and subject to materials and weight limitations. Such limitations are subject to prior approval from the City.
3. Effective July 1, 2011, PHBD shall provide at no charge to all single family residential customers two (2) separate on-call pickups at the curb each calendar year for large bulky items. A list of allowable items is included for reference. Additional items beyond the two (2) free items would be picked up for a fee not to exceed that shown on the price list below:

### Bulky Item Maximum Fee List

<u>Description</u>	<u>Per Unit Fee</u>
1. Twin mattress	\$40.00
2. Twin box spring	\$40.00
3. Double mattress	\$40.00
4. Double box spring	\$40.00
5. Queen mattress	\$40.00
6. Queen box spring	\$40.00
7. King mattress	\$40.00
8. King box spring	\$40.00
9. Stove	\$40.00
10. Dryer	\$40.00
11. Washer	\$40.00
12. Dishwasher	\$40.00
13. Hot water heater	\$40.00
14. Couch/sofa	\$40.00
15. Hide a bed	\$40.00
16. Refrigerator (pick up and Freon removal)	\$100.00

17.	Freezer (pick up and Freon removal)	\$100.00
18.	Air conditioner (pick up and Freon removal)	\$100.00
19.	Swamp cooler	\$40.00
20.	Tires (less than or equal to19")	\$6.00
21.	Tires with rim (less than or equal to19")	\$8.00
22.	Tires (larger than 19")	\$9.00
23.	Tires with rim (larger than 19")	\$14.00
24.	TV (32" or smaller)	\$25.00
25.	TV (larger than 32")	\$40.00
26.	Computer monitors	\$25.00
27.	E-waste (up to 3 pieces)	\$5.00
28.	Extra 32-gallon bag	\$2.50

### **Residential Solid Waste Services– Multi Family Units**

1. PHBD shall provide multi-family units with a 32, 64, or 96-gallon cart for weekly solid waste service, or;
2. PHBD shall provide multi-family complexes which are considered commercial accounts with one (1) eight (8) cubic yard box service, collected not less often than once per week.
3. Effective July 1, 2011, PHBD shall provide Multi-Family complexes with two (2) on-call solid waste pickups each calendar year. The property manager or designated representative must call in advance to schedule a box, and PHBD will determine the appropriate box size based on the size of the complex. PHBD will provide the property manager/designee with information to distribute to the tenants regarding the acceptable material for the cleanups. PHBD will provide Bulky Item pick-up for a fee not to exceed that specified in the “Bulky Item Maximum Fee List” included with this Exhibit B.

### **Commercial Solid Waste Services**

<b>Service Description</b>	<b>Service Level Per Week</b>
32 Gallon Commercial Can Service	1 to 5 times
32, 64, 96 Gallon Commercial Cart Service	1 to 5 times
One (1) 8 cubic yard container	1 to 5 times
Special Service	On-Call

### **Industrial Solid Waste Services**

<b>Service Description</b>	<b>Service Level Per Week</b>
Roll-Off Debris Box Service	Scheduled or On-Call
20,30, 40 Cubic Yard Debris Boxes	Monday-Friday with some Saturday Service

## **Residential Recycling Services – Single Family Units**

1. PHBD shall provide weekly curbside collection of commingled recyclables. Collection shall take place on the same day as refuse collection between the hours of 6 AM and 7 PM, using a fully automated collection system. PHBD shall collect recyclables from the curb of the roadway. An alternative collection location may be used if the resident is physically unable to move the collection container to the curb, at no cost to the resident.

PHBD shall provide each resident with one new 64 gallon, wheeled cart consisting of undivided holding capacity for collection of commingled recyclables, which includes, but is not limited to, mixed paper, glass, aluminum, cardboard, chipboard (i.e. cereal and shoe boxes), newsprint, plastic food and beverage containers #1-7, tin/bimetal containers, E-waste peripherals (such as keyboards, mouse, and speakers), hardcover books, rigid plastics (such as toys, buckets, trays, and crates), and scrap metal/aluminum (under ten pounds per item). Used motor oil, oil filters, and auto/truck batteries will be collected separately from the contents of the recycling cart. A 32 gallon wheeled cart will be provided as a smaller alternative to the 64 gallon wheeled cart, on a case by case basis. Recycling carts will incorporate distinctive color, symbols, and text that clearly identify their purpose. PHBD shall provide outreach through its website and its annual customer guide to identify a comprehensive list of materials that can be included in the recycling cart. Each time PHBD includes additional materials that can be included in the recycling cart (in this case, the addition of E-waste peripherals, hardcover books, rigid plastics, and scrap metal/aluminum), the additional materials will be collected at no extra cost to the ratepayer. PHBD will provide advance notification of additional materials which may be included in the recycling cart as an insert within the customer bill.

2. PHBD will conduct necessary public education to inform residents how to use commingled recycling collection and to respond to increased levels of refuse contamination. Promotional and educational materials explaining the commingled curbside recycling program shall be distributed by PHBD prior to distribution of new recycling carts. Duplicate or supplemental promotional and educational materials explaining the commingled curbside recycling program will also be distributed by PHBD to each customer when the recycling container is delivered. PHBD shall, at minimum, distribute promotional and educational materials to all its solid waste customers, pre-approved by the City, at least twice a year. This material shall, at a minimum, specify all recyclable items to be collected, and shall further provide any additional information as necessary in order to satisfy the requirements set forth in Section 5 – “ Recycling Component”, and Section 8 – “Education and Public Information Component” of the City’s most current SRRE.
3. PHBD will provide customers with an additional recycling cart upon request at no extra charge, and promote the availability of this service in the same manner as described in #2 above.

## **Residential Recycling Services – Multi-Family Units**

1. PHBD shall provide multi-family units with weekly, commingled recycling collection service free of charge. Collection shall take place on the same day as refuse collection between the hours of 6 AM and 7 PM, using a fully automated collection system. Carts will be shared by occupants of the multi-family units. Contractor will work with the property manager, owner, or HOA representative to determine the most efficient and easily accessible location for the recycle carts for the customer and PHBD.
2. Contractor shall provide new 96 gallon, wheeled carts consisting of undivided holding capacity in sufficient numbers to serve all units in the development for the collection of commingled recyclables. Collected recyclables will include, but are not limited to, mixed paper, glass, aluminum, cardboard, chipboard (i.e. cereal and shoe boxes), newsprint, plastic food and beverage containers #1-7, tin/bimetal containers, E-waste peripherals (such as keyboards, mouse, and speakers), hardcover books, rigid plastics (such as toys, buckets, trays, and crates), and scrap metal/aluminum (under ten pounds per item).

3. A 32 gallon wheeled cart will be provided as a smaller alternative to the 64 gallon wheeled cart, on a case by case basis. Recycling carts will incorporate distinctive color, symbols, and text that clearly identify their purpose.
4. PHBD will conduct necessary public education to inform multi-family unit residents how to use commingled recycling collection and to respond to increased levels of refuse contamination. Promotional and educational materials explaining the commingled curbside recycling program shall be distributed by PHBD prior to distribution of new recycling containers. After implementation and/or upon request, PHBD will furnish informational materials to property managers, owners, and HOA representatives for distribution during periods of increased refuse contamination. PHBD will advise management of outreach and educational activities that will help reduce levels of contamination.

### **Residential Recycling Services – Drop-Off Collection**

PHBD will provide a drop-off location, for single stream recycling only, at 443 Buchanan Circle, Pacheco, California, from 8:00 a.m. to 4:30 p.m., Monday through Friday, which will be available at no cost for and promoted to Martinez residents and businesses. The location and drop-off center's viability will be evaluated should there be illegal dumping of any material, especially hazardous waste. The site can be closed immediately upon the determination of excessive illegal dumping and another location shall be explored.

### **Residential Recycling Services – Yard Waste Collection**

PHBD will provide one 96 gallon cart to each single family unit receiving solid waste/curbside recycling service for collection of yard waste. PHBD will provide customers with an additional yard waste recycling cart upon request at no extra charge, and promote the availability of this service to customers through its website and its annual customer guide. A 64 or 32 gallon wheeled cart will be provided as alternatives to the 96 gallon cart, on a case by case basis. Yard waste carts will incorporate distinctive color, symbols, and text that clearly identify their purpose. PHBD will provide curbside collection of yard waste every other week (bi-weekly) on regular refuse/recycling collection days for single family and multi-family units. PHBD is required to publish and distribute a collection calendar identifying the weeks that each residence or multi-family unit will be served during the calendar year. Collection will take place between the hours of 6 AM and 7 PM, using a fully automated collection system. All collected yard waste must be diverted from landfilling. Acceptable diversion includes composting, use as biofuel, or alternative daily cover (ADC). At the time of the next base year (2013), should the City determine additional residential yardwaste services are necessary, the City may request that PHBD change the frequency of residential yard waste collection from bi-weekly to weekly.

### **Residential Recycling Services – Special Collection Services**

On-Call Bulky Recycling and Yardwaste Pickups – Single Family Units: Effective July 1, 2011, PHBD shall provide four (4) free on-call bulky recycling and/or yard waste clean-up collections per calendar year for single family residents for recyclable items such as cardboard, yard waste, or wood waste, in addition to customers' regular recycling service. Household batteries, cellular phones, and compact fluorescent light bulbs shall also be collected with the on call pickups. The procedures for such collections shall be established by PHBD and included in their annual customer guides.

On-Call Bulky Recycling Pickups – Multi-Family Complexes: Effective July 1, 2011, PHBD shall provide one (1) free on-call bulky recycling clean-up collection per calendar year for multi-family complexes for recyclable items such as cardboard, yard waste, or wood waste, in addition to customers' regular recycling service. Household batteries, cellular phones, and compact fluorescent light bulbs shall also be collected with the on call pickups. The procedures for such collections shall be established by PHBD and included in their annual customer guides.

Electronic Waste – PHBD shall provide curbside collection and disposal services for Cathode Ray Tube (CRT) and other electronic waste items. Collection and disposal costs will be paid for by the resident using the collection service OR subsidized by the City when outside funding becomes available. PHBD will publish and

promote collection rates for designated electronic waste items.

Holiday Tree Collection – PHBD will provide curbside collection and recycling of holiday trees from residential and multi-family customers during a one week period in January of each year of this agreement. This service will be provided at no cost to the resident. PHBD will coordinate scheduling of the collection week with City Staff and conduct necessary promotion. Holiday trees, cut to a specified size, shall also be accepted in the yard waste collection program.

### **Annual Pre-Scheduled Residential Clean Up Day**

In addition to the various aforementioned on-call pickups, effective July 1, 2011, PHBD shall provide single family residential customers with one pre-scheduled curbside “clean up day” each calendar year. PHBD would agree to collect unlimited recycling and yardwaste, and refuse up to 3 cubic yards, during this pre-scheduled clean up day. The City and PHBD will mutually agree to the timing of this cleanup day each year. PHBD will provide this curbside service to residents during their regularly scheduled collection day, completing this service for all City customers over one service week.

### **Outreach/Promotion of Available Services**

PHBD will provide outreach to customers to identify the availability of the services specified in this Exhibit B. This outreach will include identifying the service on PHBD’s website, within an annual newsletter or customer guide, and within the bill as an insert.

# Exhibit C

## Schedule of Rates

(Effective January 1, 2011)

### RESIDENTIAL RATES

Service Description	Monthly Rate
<b><u>BASIC RESIDENTIAL SERVICE</u></b> –	
One 20 Gallon Container /Weekly 64 gallon Curbside Recycling/Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$19.75
One 32 Gallon Container /Weekly 64 gallon Curbside Recycling/ Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$28.30
One 64 Gallon Container /Weekly 64 gallon Curbside Recycling/ Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$31.55
One 96 Gallon Container /Weekly 64 gallon Curbside Recycling/ Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$66.30
<b><u>SENIOR RESIDENTIAL SERVICE</u></b> (62+ Years) –	
One 20 Gallon Container /Weekly 64 gallon Curbside Recycling/Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$17.01
One 32 Gallon Container/Weekly 64 gallon Curbside Recycling/Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$21.24
One 64 Gallon Container /Weekly 64 gallon Curbside Recycling/ Bi-Weekly 96 Gallon Yard Waste Curbside Collection	\$24.44
<b><u>EXTRA RESIDENTIAL SERVICE</u></b> –	
Each Additional 32 gallon Garbage Container	\$22.32
Each Additional 64 gallon Garbage Container	\$25.57
Each Additional 96 gallon Garbage Container	\$60.32
<b><u>EXTRA RESIDENTIAL SERVICE</u></b> -Each 32 Gallon Bag Service	\$15.00

**Delinquent Charges:**

**1.5% charge per month on all outstanding balances.**

<b>Martinez Commercial Rates - Effective 1/1/11</b>			
Service level	Frequency	Trash	Recycling
1yd	1 x per wk	\$ 129.38	\$ 69.02
	Extra	\$ 39.09	
2yd	1 x per wk	\$ 229.02	\$ 134.01
2yd	2 x per wk	\$ 390.46	\$ 238.51
2yd	3 x per wk	\$ 457.75	\$ -
2yd	4 x per wk	\$ 572.09	\$ -
2yd	5 x per wk	\$ 679.41	\$ -
	Extra	\$ 42.89	\$ -
3yd	1 x per wk	\$ 392.82	\$ 136.03
3yd	2 x per wk	\$ 457.75	\$ -
3yd	3 x per wk	\$ 785.28	\$ -
3yd	4 x per wk	\$ 815.29	\$ -
3yd	5 x per wk	\$ 1,308.80	\$ -
	Extra	\$ 53.63	
4yd	1 x per wk	\$ 390.46	\$ 143.10
4yd	2 x per wk	\$ 572.13	\$ 286.23
4yd	3 x per wk	\$ 815.29	\$ -
4yd	4 x per wk	\$ 1,087.11	\$ -
4yd	5 x per wk	\$ 1,358.87	\$ -
	Extra	\$ 69.71	
5yd	1 x per wk	\$ 381.91	\$ 166.95
5yd	2 x per wk	\$ 679.41	\$ -
5yd	3 x per wk	\$ 1,019.16	\$ -

5yd	4 x per wk	\$ 1,358.87	\$ -
5yd	5 x per wk	\$ 1,698.57	\$ -
Extra		\$ 85.80	
6yd	1 x per wk	\$ 457.75	\$ -
6yd	2 x per wk	\$ 858.24	\$ -
6yd	3 x per wk	\$ 1,222.99	\$ -
6yd	4 x per wk	\$ 1,630.60	\$ -
6yd	5 x per wk	\$ 2,038.28	\$ -
Extra		\$ 101.88	
8yd	1 x per wk	\$ 572.15	\$ -
8yd	2 x per wk	\$ 1,087.11	\$ -
8yd	3 x per wk	\$ 1,630.60	\$ -
8yd	4 x per wk	\$ 2,174.15	\$ -
8yd	5 x per wk	\$ 2,717.72	\$ -
Extra		\$ 128.89	
32 gal can	1 x per wk	\$ 26.64	\$ -
32 gal can	2 x per wk	\$ 52.93	\$ -
32 gal can	3 x per wk	\$ 80.06	\$ -
32 gal can	4 x per wk	\$ 105.85	\$ -
32 gal can	5 x per wk	\$ 132.99	\$ -
	Special	\$ 10.72	
64 gal cart	1 x per wk	\$ 38.30	\$ 29.82
64 gal cart	2 x per wk	\$ 88.18	\$ -
64 gal cart	3 x per wk	\$ 138.12	\$ -
64 gal cart	4 x per wk	\$ 188.07	\$ -

64 gal cart	5 x per wk	\$ 238.07	\$ -
Extra		\$ 20.62	
96gal cart	1 x per wk	\$ 55.81	\$ 36.23
96gal cart	2 x per wk	\$ 124.42	\$ -
96gal cart	3 x per wk	\$ 191.82	\$ -
96gal cart	4 x per wk	\$ 259.20	\$ -
96gal cart	5 x per wk		\$ -
Extra		\$ 32.17	
96 gal yw	Cart	\$ -	\$ 4.26

Compactor/Debris Box Rates Effective January 1, 2011

Compactor Rate	\$336.80
Minimum Monthly	\$406.91
Regular Debris Box	\$419.97
Excess Tonnage Rate	\$ 80.52
Specials	\$ 75.00
Box Liner	\$ 25.00
Dry Run	\$150.00

**Martinez Multi-Family Rates - Effective 1/1/11**

**Recycling Rates are included in Commercial Rates**

1 unit 1 cart 1x/week	1 x per week	\$ 26.06
Duplex 2 carts 1x/week	1 x per week	\$ 47.68
2 units 2 carts 1x/week	1 x per week	\$ 51.88
2 units 3 carts 1x/week	1 x per week	\$ 68.71
3 units 1 cart 1x/week	1 x per week	\$ 26.06
3 units 2 carts 1x/week	1 x per week	\$ 47.68
3 units 3 carts 1x/week	1 x per week	\$ 68.71
4 units 2 carts 1x/week	1 x per week	\$ 50.47
4 units 3 carts 1x/week	1 x per week	\$ 70.14
4 units 4 carts 1x/week	1 x per week	\$ 89.74
4 units 5 carts 1x/week	1 x per week	\$ 110.77
4 units 6 carts 1x/week	1 x per week	\$ 124.82
4 units 7 carts 1x/week	1 x per week	\$ 130.44
4 units 2 carts 2x/week	2 x per week	\$ 89.74
4 units 4 carts 2x/week	2 x per week	\$ 129.03
5 units 4 carts 1x/week	1 x per week	\$ 91.17
5 units 5 carts 1x/week	1 x per week	\$ 127.60
5 units 6 carts 1x/week	1 x per week	\$ 129.03
5 units 10 carts 1x/week	1 x per week	\$ 189.33
5 units 5 carts 2x/week	2 x per week	\$ 129.03
6 units 6 carts 1x/week	1 x per week	\$ 131.80
6 units 8 carts 1x/week	1 x per week	\$ 165.46

# City of Martinez



## Rate Setting Process and Methodology Manual for Solid Waste Charges

As Applied to Allied Waste Services

March 2011





---

# Rate Setting Process and Methodology Manual for Solid Waste Charges

---



*Prepared for*

**City of Martinez**

**Allied Waste Services**

*Prepared by*

**NewPoint Group<sup>®</sup>**  
Management Consultants

**2555 Third Street, Suite 215  
Sacramento, California 95818  
(916) 442-0508**

**March 2011**







# Table of Contents

	Page
I. Rate Setting Overview	I-1
A. Introduction to the Manual	I-1
B. Goals of Rate Setting Process	I-2
C. Policies Guiding Rate Setting Manual	I-4
D. Rate Change Application Process	I-7
E. Allowable and Pass Through Costs	I-9
F. Future Enhancement to AWS Services	I-17
II. Base Year Rate Setting Process	II-1
A. Overview of the Base Year Rate Setting Process	II-1
B. Timing of the Base Year Rate Setting Process	II-3
C. Steps of the Base Year Rate Setting Process	II-4
1. Preparation and Submission of Rate Change Application	II-5
2. Verification of Completeness of Rate Change Application	II-15
3. Review of Rate Change Applications and Preparation of Responses	II-16
4. Survey of Rates in Similar Service Areas	II-19
5. Preparation of Draft Report and Final Report	II-21
6. Presentation of Final Report to the City Council	II-23
7. Implementation of New Rates, If Applicable	II-24
III. Interim Year Rate Setting Process	III-1
1. Preparation and Submission of Rate Change Application	III-5
2. Preparation of Interim Year Rate Change Worksheet and Draft Report	III-7
3. Review and Response to City Analysis and Calculations	III-9
4. Preparation of Final Report and Recommendations	III-10
5. Presentation of Final Report and Recommendations to the City Council	III-11
6. Implementation of New Rates	III-12

*Appendices*

- Appendix A      Letters of Rate Setting Recommendations
- Appendix B      Blank Forms and Worksheets



# List of Exhibits

<i>Exhibit</i>		<i>Page</i>
I-1	City/Hauler Solid Waste Rate Setting Philosophy	I-3
I-2	City/Hauler Solid Waste Rate Setting Policies	I-5
I-3	Timing and Financial Statement Requirements of the City of Martinez Rate Setting Process	I-8
I-4	Definition of Financial Terms	I-10
II-1	Base Year Rate Setting Process Overview	II-2
II-2	Timing of Base Year Rate Change Process	II-3
III-1	Interim Year Rate Change Process Overview	III-3
III-2	Timing of Interim Year Rate Change Process	III-4
<i>Appendix</i>		
A-1	Solid Waste Rate Review of Allied Waste Industries, Inc., dba Pleasant Hill Bayshore Disposal, Inc.	A-1
A-2	Allied Waste Services Franchise Extension Assessment	A-28
B-1	Base Year Rate Change Application	B-1
B-2	Solid Waste Fee Survey	B-7
B-3	Interim Year Rate Change Application	B-9



# Section I

## Rate Setting Overview

---



# Rate Setting Overview



This introduction chapter provides an overview of the rate setting process and details significant guiding policies which are used throughout the manual. The process for how rates are changed is described. Also included is a description of how the refuse collection hauler's costs are treated for rate setting purposes.

This chapter reviews how to use the manual and identifies future enhancements that could be considered as the City of Martinez and the hauler gain experience with the process. The chapter includes the following six (6) sections:

- A. Introduction to the Manual*
- B. Goals of Rate Setting Process*
- C. Policies Guiding Rate Setting Manual*
- D. Rate Change Application Process*
- E. Allowable and Pass Through Costs*
- F. Future Enhancements to AWS Services.*

## A. Introduction to the Manual

This manual provides a guide for the City of Martinez (City) and its franchise hauler, Allied Waste Services (AWS, a Republic Services Company and formerly Pleasant Hill Bayshore Disposal (PHBD)), to use in preparing and approving changes to solid waste collection charges. The manual provides a formal structure for establishing solid waste charges. Prior to adoption of this manual, no formal rate setting process or methodology existed. The manual is based on the current franchise agreement with AWS and existing AWS operating conditions in the City.

The manual establishes rate change policies, provides application forms, specifies reporting formats, identifies required supporting documentation, and describes procedures for requesting, reviewing, and adopting rate changes. Cost and revenue information is required for all residential, commercial, and industrial services.

This manual is organized into three chapters as follows:

### **I. Rate Setting Overview**

This chapter provides an introduction to the manual and discusses the policies followed in establishing the rate setting process.

### **II. Base Year Rate Setting Process**

A detailed discussion of the base year rate setting process is provided in this chapter. This discussion focuses on responsibilities of participants in the process, describes activities performed, and identifies the timing of these activities.

### III. Interim Year Rate Setting Process

A detailed discussion of the interim year rate setting process is provided in this chapter. This discussion focuses on responsibilities of participants in the process, describes activities performed, and identifies the timing of these activities.

The manual also contains the following three appendices:

- A. Letter of Rate Setting Recommendations
- B. Blank Forms and Worksheets
- C. Sample Completed Applications and Worksheets.

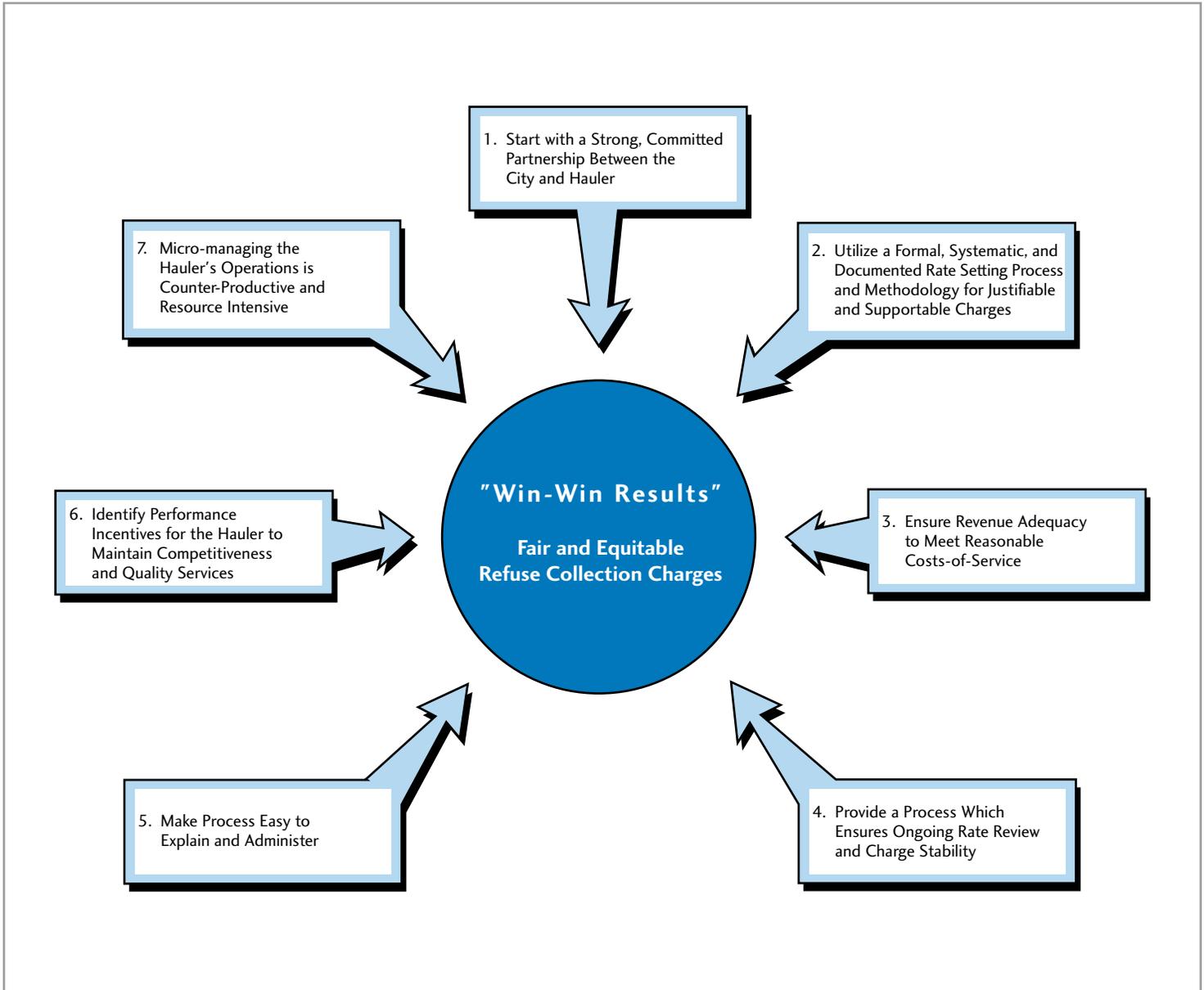
## B. Goals of Rate Setting Process

The primary goal of the rate setting process and methodology is to determine solid waste collection charges which are fair and equitable to City residents, and which provide a reasonable profit to the franchise hauler.

A total of seven (7) key rate setting process goals are summarized in **Exhibit I-1**, on the following page, and described in detail below:

1. The City and hauler should **start with a strong and committed partnership**. In 2000, the City entered into two (2) separate franchise agreements with AWS as follows:
  - ❑ Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Solid Waste)
  - ❑ Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Residential Recycling).Originally, the franchise agreements between the City and AWS had ten (10) year terms, set to expire on January 5, 2010. In 2004, the City granted AWS a two-year extension for each franchise agreement and the City later granted AWS a one-year extension for each franchise agreement. The collection franchise agreements were set to expire on January 5, 2013. The City is currently considering whether to grant AWS a ten (10) year franchise extension.  
  
The amended franchise agreement between the City and AWS would extend ten (10) years through January 5, 2023. The City and hauler should view this franchise as a long-term business partnership where both parties commit to use the formal rate setting methodology, and plan continuous communication on rate setting throughout the franchise term.
2. The charges requested by the franchise hauler **must be justifiable and supportable**. A formal request to change charges, submitted by a franchise hauler, should be based on adopted guidelines for expenses and profits which include only allowable and necessary costs. In determining rates, the City shall consider both the need for fairness to the ratepayer and the need for the hauler to be compensated fairly and consistently with the methodology.

## City/Hauler Solid Waste Rate Setting Philosophy

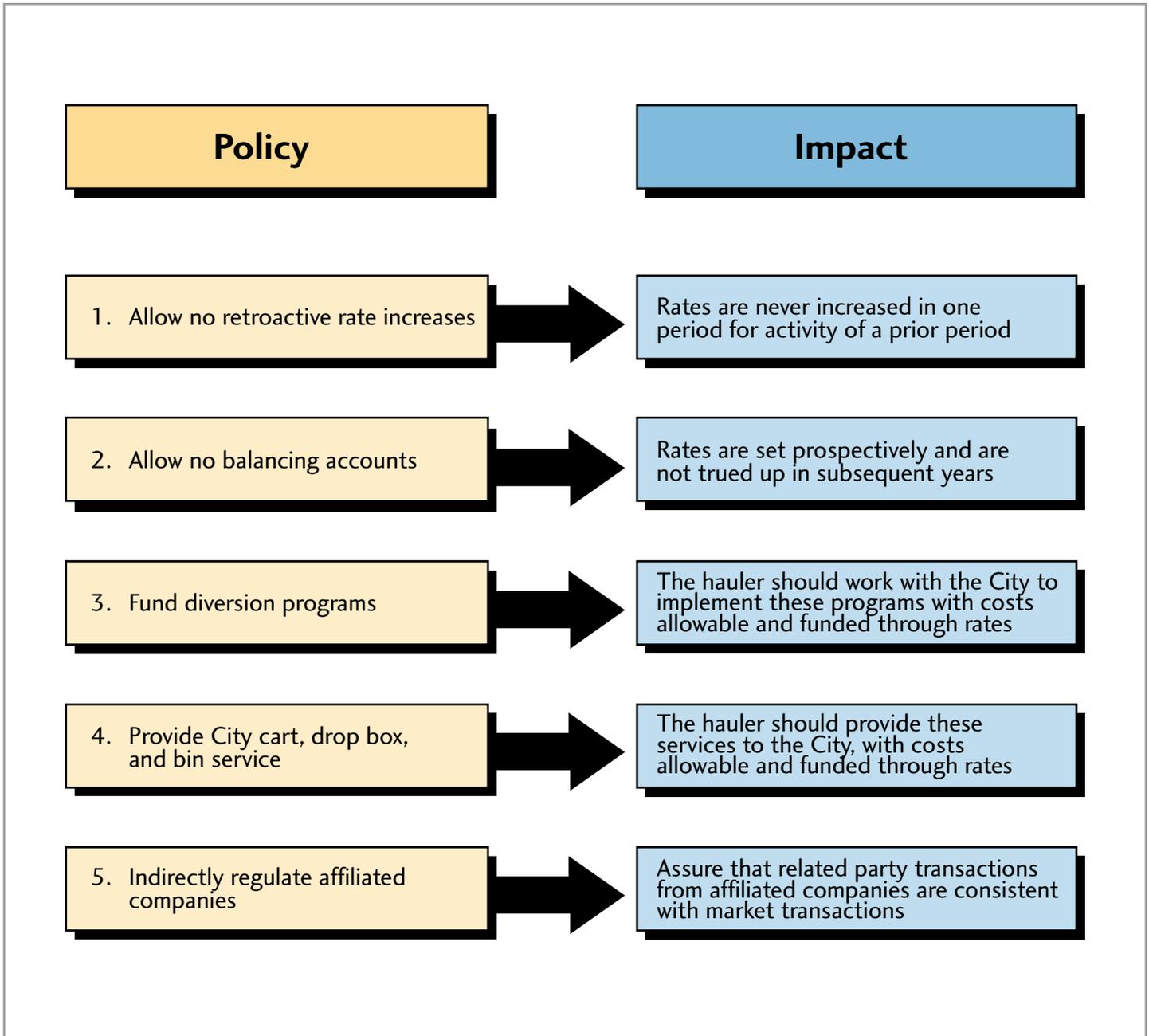


3. The **process should ensure that revenues are adequate to fully meet reasonable costs-of-service**. Estimated costs of service, and resulting solid waste management charges, should be reasonable. Granting a franchise for solid waste collection implicitly recognizes the private sector's ability to provide quality services at reasonable costs. Further, the City acknowledges that maintenance of quality service is related to providing adequate compensation and financial incentives for continued good performance. Revenues generated should be adequate to fully meet reasonable costs-of-service. The resulting monthly charges for solid waste service should be approximately comparable to those charged in other jurisdictions providing similar services with similar cost and rate structures, assuming some efficiency of operations in these other jurisdictions.
4. The rate setting process should **provide mechanisms for ongoing rate review and long-term charge stability**. A periodic formal and thorough City review of financial and operating data will set an expectation for the hauler and ultimately will protect the ratepayer. The process should be designed to prevent large, unexpected fluctuations in charges due to changes in costs or from the need to fund a broadening scope of waste management services.
5. The **process should be easy to administer**, while still ensuring that any rate request is justifiable and reasonable. The process should be easy to explain and not place an undue cost on either the City or the franchise hauler to implement. Rate changes ultimately should be easily explained and defensible to ratepayers.
6. The City and PHBD should strive to **maximize opportunities to improve performance and service quality** while maintaining cost competitiveness in the marketplace. In a "cost-plus-profit" relationship such as exists between the City and hauler, there can be no incentive for the hauler to decrease costs because increases in allowable costs actually result in increases in allowable operating profit levels. However, cost increases cause rates to rise above market levels, and penalize ratepayers. Ideally, the City and hauler should set rates in a base year, and the hauler should attempt to reduce its costs in subsequent interim years. The City and AWS have mutually agreed to use the Base Case Operating Ratio Method described in Section E of this Chapter. This methodology allows the hauler to benefit from operational efficiencies while protecting ratepayers from excessive profit levels.
7. The City should **not micro-manage the hauler's operation**. A policy to micromanage AWS operations is counterproductive, requiring additional administration, which ultimately increases costs to the ratepayer. This methodology requires base year rate reviews every four years, and optional interim year adjustments. These reviews should be sufficient to efficiently manage AWS. Overuse of time-and-motion studies, performance audits, and other efficiency and effectiveness studies requires additional administration time, and costs, for both the City and the hauler. This rate setting process implicitly assumes the hauler is already the expert in running its own business.

### C. Policies Guiding Rate Setting Manual

A total of five (5) guiding policies were considered in developing the processes and methodologies described in this manual. These policies and their impacts are identified in **Exhibit I-2**, on the following page. The remainder of this section describes each of these policies.

### City/Hauler Solid Waste Rate Setting Policies



1. **Allow no retroactive rate increases.** There will be no allowance for a retroactive increase in rates, except by special agreement, or by party default. Retroactive reimbursements can move rates out of alignment with actual costs of providing service. This process and methodology codifies strict rate review timelines and responsibilities. If the City and hauler adhere to these timelines for submission and rate change approval, and no party defaults on these timelines, all future rates should be established such that there is no need for retroactive rate increases.
2. **Allow no balancing accounts.** This rate setting process is based on projecting results during base years. Thus, actual base year results likely will differ from base year projections. In some regulatory environments, these differences are “balanced” in subsequent years by using a balancing account.

Balancing accounts are occasionally used in the waste industry as an accounting-based approach to true up a previous year’s projections to actual financial results. A balancing account can then be used to address differences between actual and projected results. A balancing account requires substantial administration, reporting, and control measures which determine how funds in the account are invested and managed.

When a balancing account is established, terms and conditions related to these accounts are clearly documented as part of a rate setting process and methodology manual. Also, terms and conditions are specifically incorporated by reference into contractual agreements between the respective parties.

Balancing accounts are not commonly utilized. The problem with balancing accounts is that by funding surpluses and deficits using rate revenues, rates charged to customers ultimately do not reflect the true cost of providing service to customers because they include retroactive components. Over time, current ratepayers can end up ultimately subsidizing, or benefiting from, prior generations of ratepayers. For example, if rates are raised to pay off a balancing account, then current ratepayers bear the responsibility of what previous ratepayers should have paid for initially.

Municipal finance principles generally require a strong nexus between (1) cost-of-service and benefits and (2) cost-of-service and rates. Use of a balancing account generally breaks down this nexus and results in rate inequalities.

A balancing account also frequently is less useful when a long-term franchise exists. With a long-term business partnership there is less need to recover variances between actual and projected results on a year-to-year basis. These variances can often be absorbed over the course of a long term franchise, such as is the case between the City and AWS.

Balancing accounts are not designed for accounting for differences between “rates asked for” and “rates received.” They also are not designed for accounting for differences between “rates received” and “a fair rate of return.” Balancing accounts, by their very nature, result in retroactive rates, which do not reflect cost-of-service based rates.

3. **Fund costs to implement State mandated source reduction and household hazardous waste programs.** The City has adopted the *Source Reduction and Recycling Element (SRRE)* and *Household Hazardous Waste Element (HHWE)* as required by the Integrated Waste Management Act of 1989 (AB 939). These elements contain a number of recommended programs whose costs

are projected to be funded by solid waste collection charges. The franchise hauler will work closely with the City to meet diversion goals mandated by the California Integrated Waste Management Board (CIWMB). The franchise hauler and City shall agree on specific programs and activities to show a good faith effort to meet CIWMB diversion goals.

4. **Provide the City cart, drop box, and bin service.** The franchise hauler shall provide solid waste collection, disposal, and recycling services at City facilities at no charge to the City. Costs associated with the franchise hauler providing these services are allowable costs for rate setting.
5. **Indirectly regulate affiliated companies.** Transactions between AWS and affiliates, or related parties, should be examined for reasonableness. These “related party transactions” have potential for mistreatment in rate setting. For example, if a cost of a related party already includes a profit component, and that cost is allowed for rate setting with a profit, a double-counting of profit can occur. For each related party transaction, the hauler should disclose the nature of the relationship and whether the transaction is a market-based transaction. The hauler should be prepared to provide documentation to support the reasonableness of these transactions.

## D. Rate Change Application Process

A *Base Year Rate Change Application* from the franchise hauler is required once every four years as shown in **Exhibit I-3**, on the following page. This process requires detailed financial and operating information which is carefully reviewed and analyzed by the City. These detailed reviews are referred to as “base” years in the methodology.

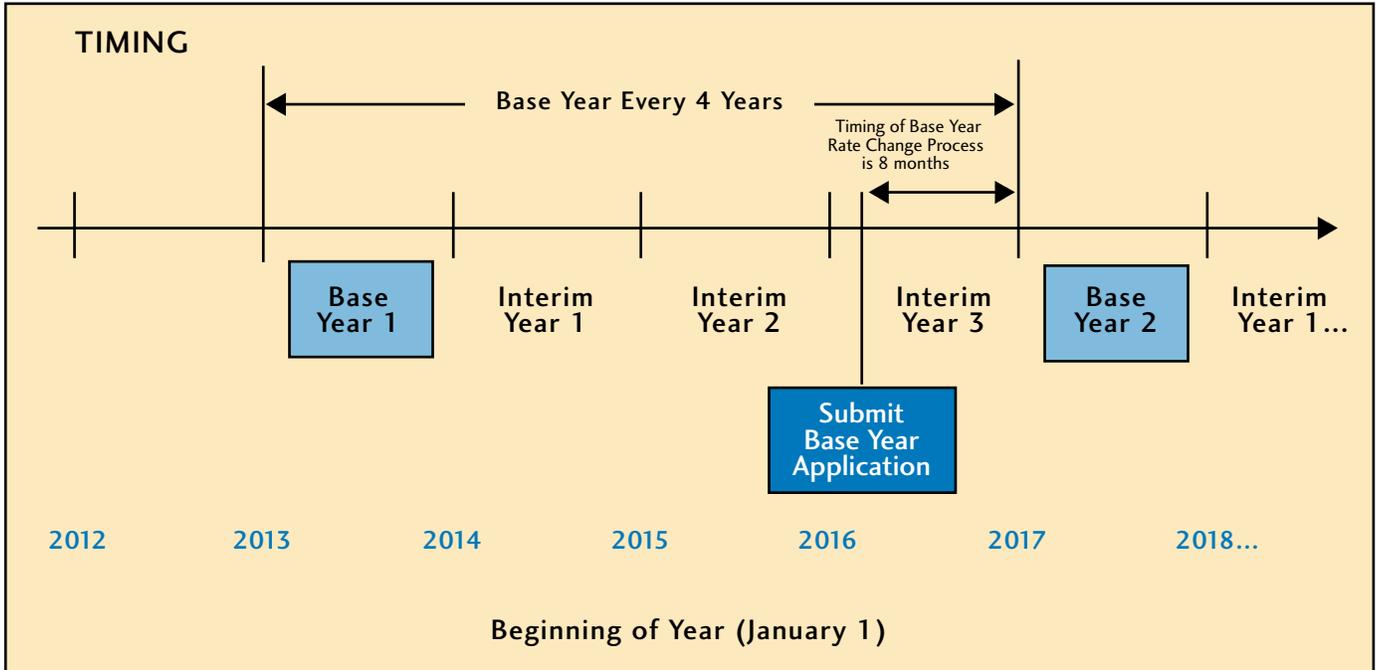
The City and AWS agreed not to change rates in calendar year 2012. AWS will not submit a base year rate application in 2012, but will be allowed to submit a base year application on July 31, 2012 for rates to be implemented on January 1, 2013. This 2013 base year will start the new rate setting cycle. Years 2014, 2015, and 2016 will be interim years.<sup>1</sup>

With the *Base Year Rate Change Application*, the hauler submits annual audited financial statements for the previous year (except for the initial base year application after this manual is adopted). These statements serve as the base documents of the application. Financial forms contained in the application should be reconciled to the audited financial statements to provide assurance that all of the company’s activities are accounted for. At the time a *Base Year Rate Change Application* is submitted, the City shall survey rates and services provided of other neighboring jurisdictions of comparable size and service. The survey will be used for information and comparison purposes only and not as a basis for determining rates.

<sup>1</sup> AWS agreed to implement all of the program changes identified in Items 1, 2, and 4 through 10 of the *Allied Waste Services Franchise Extension Assessment* Report, dated January 19, 2011 (**Appendix A, Exhibit A-2**), without any changes to rates in 2012. AWS agreed that there will be no opportunity to recover the new costs for Items 1, 2, and 4 through 10 of the Franchise Extension Assessment Report until 2013. Year 2013 rates also will not reflect any retroactive rate increases to cover the costs of Items 1, 2, and 4 through 10 implemented in years 2011 and 2012.

There is one exception to this rate freeze for 2012. Should the State mandate commercial recycling by mid 2012, AWS will be allowed to submit support for an adjustment to commercial rates to cover the new costs required to fund a mandatory commercial recycling program in the City (i.e., for costs associated with the commercial recycling program only, including labor, carts/bins, trucks, and overhead). This mandatory commercial recycling rate adjustment request will be subject to City review and City Council approval.

## Timing and Financial Statement Requirements of the City of Martinez Rate Setting Process



**FINANCIAL STATEMENT REQUIREMENTS**

Base Year	Actual	Actual	Audited (Actual)	Estimated	Projected
2013	2009	2010	2011	2012	2013
2017	2013	2014	2015	2016	2017
•	•	•	•	•	•
•	•	•	•	•	•
•	•	•	•	•	•

In each of the “interim” three years, beginning in 2014, rate adjustments will be based on ninety (90) percent of the prior year change in actual, not forecasted, Consumer Price Index (CPI) for all Urban Consumers for the San Francisco-Oakland-San Jose area published by the Bureau of Labor Statistics in their *Monthly Labor Review*. This CPI is applied to both controllable costs and uncontrollable costs (i.e., tipping fees and regulatory fees) of the franchise hauler.

In addition, beginning in 2014, interim year rate increases in any given year are limited to four (4) percent. This cap is designed to benefit City ratepayers by stabilizing the size of annual interim rate changes in times of higher inflation.

This term adds a provision to allow either the City or AWS to request an extraordinary rate adjustment. This extraordinary rate adjustment will be subject to City review and City Council approval.

The franchise hauler has the option to submit an *Interim Year Rate Change Application* for a rate increase between base years. The scope of each interim year application is much more limited than a base year request. A formal application is required each year the company requests an Interim Year Rate Change. The hauler can adjust rates following the City’s interim year rate review of its application, but is not obligated to do so. The hauler is encouraged not to raise rates in interim years except for extraordinary changes in their costs.

The City or franchise hauler may request an extraordinary, or consequential, adjustment outside of the base year and interim year adjustment schedules. For example, an extraordinary adjustment might result from a change in service or additional program requested by the City. The franchise hauler requesting an extraordinary or consequential cost change shall demonstrate, to the satisfaction of the City, that it has incurred extraordinary and consequential cost changes. Extraordinary cost increases for a specific line item cost will be considered only under a case when the hauler can demonstrate that the increase exceeds two (2) times the most recent annual change in the actual Consumer Price Index for all Urban Consumers, for the San Francisco-Oakland-San Jose area.

## E. Allowable and Pass Through Costs

Rates are established for each base year based on the hauler’s projected revenue requirement. The revenue requirement is defined as the sum of the following:

- ❑ Allowable costs
- ❑ Allowable operating profits
- ❑ Pass through costs.

For purposes of computing the revenue requirement, it is necessary to determine which of the franchise hauler’s costs are (1) allowable costs, (2) pass through costs, and (3) non-allowable costs.

When a cost is said to be “allowable,” that cost, plus a profit component associated with that cost is included in rates charged to the ratepayers. Allowable costs are often those costs that are integral to the hauler’s operation and/or are associated with actual activity performed by the hauler.

## Definition of Financial Terms

Application Line Number/Item	Definition
<b>Allowable Costs</b>	
1. <i>Direct Labor Costs</i>	Wages and related benefits paid to refuse, recycling, and yardwaste collection, office, and administrative staff, including wages, overtime, payroll taxes, health and welfare benefits, workers compensation, and pension benefits.
2. <i>Tipping Fees (Profit Allowed)</i>	Costs to dispose of solid waste at transfer stations, transformation facilities, or landfills. These fees are capped with profit at a set amount per ton. The per ton limit is established by the City and is currently \$51.24 per ton.
3. <i>Corporate and Local General and Administrative Costs</i>	All general and administrative costs in addition to corporate overhead. The amount of this item cannot exceed 12.5 percent of the total revenue requirement in any base year. This item includes the following costs: <ul style="list-style-type: none"> <li>• Accounting</li> <li>• Collection fees</li> <li>• Computer equipment</li> <li>• Dues and subscriptions</li> <li>• Insurance</li> <li>• Janitorial</li> <li>• Laundry and uniform</li> <li>• Legal services</li> <li>• Licenses</li> <li>• Management fees</li> <li>• Medical expenses</li> <li>• Postage</li> <li>• Office supplies</li> <li>• Office repair and maintenance</li> <li>• Telephone</li> <li>• Travel</li> <li>• Utilities.</li> </ul>
4. <i>Truck and Equipment Costs</i>	Includes fuel expense, licenses, parts, tires, and associated truck and equipment repair and maintenance expenses.
5. <i>Depreciation and Other Operating Costs</i>	Includes depreciation of trucks, carts, containers, and equipment.
6. <i>Services Provided to the City</i>	Cost of services provided to collect and dispose of waste from City facilities.
7. <i>Total Allowable Costs</i>	Sum of lines 1 through 6.
<b>Allowable Operating Profit</b>	
8. <i>Operating Ratio (OR)</i>	Determines allowable operating profit, and is the ratio of total operating costs to total operating revenue. The City and hauler will use the Base Case Operating Ratio Methodology described in Section E.
9. <i>Allowable Operating Profit</i>	Established by the allowable operating ratio and equal to total allowable costs divided by the allowable OR less total allowable costs. [(Line 7 / Allowable OR) – Line 7].
<b>Pass Through Costs</b>	
11. <i>Tipping Fees (Pass Through)</i>	Cost to dispose of solid waste at transfer stations, transformation facilities, or landfills. These are fees above the \$51.24 per ton limit.
23. <i>Residential/Commercial/Industrial Franchise Fees</i>	Equal to ten (10) percent of total gross residential, commercial, industrial, and recycling revenue.
29. <i>Total Pass Through Costs</i>	Sum of lines 12 and 23.

Pass through costs are costs which also are included in rates charged to customers, however these costs do not have an associated profit component. Pass through costs are generally transactional in nature and often are thought of as costs not associated with any significant effort performed by the hauler.

Non-allowable costs are not allowed in rates charged to ratepayers. These costs are disallowed because (1) they may not be associated with the core business, (2) they may be included implicitly in the profit level allowed by the City (e.g., interest), or (3) they may unnecessarily complicate rate regulation (e.g., income taxes).

### *Allowable Costs*

The hauler is allowed to earn a profit on certain costs. The majority of allowable costs are direct labor, corporate and local general and administrative costs, trucking and equipment costs, depreciation and other operating costs, and tipping fees. These allowable costs are defined in **Exhibit I-4**, on the previous page. The following costs of providing collection service are clarified because of their special treatment for rate setting.

- ❑ **Tipping Fees**—Profit is allowed on tipping fees in each base year. The franchise hauler is allowed to include tipping fees of up to a set amount per ton in the calculation of profit described above. At the time of this rate manual’s development, disposal costs are set by the City at a cap of \$51.24 per ton with profit. Any amounts over this limit are considered pass through costs, and profit is not allowed. If the tipping fee is less than the established limit, actual fees paid are used to calculate total disposal costs.

This tipping fee limit allows the franchise hauler to make a reasonable profit on disposal costs, but removes excess profits caused by dramatically increasing tipping fees. The franchise hauler must conduct certain activities related to disposal such as keeping records and making payments to the disposal facility. As tipping fees increase, the franchise hauler’s workload does not change.

If the franchise hauler utilizes a disposal facility owned by an affiliated company (i.e., the STAR facility), as is the case currently with AWS, the tipping fee limit still applies. However, the tipping fee charged by the disposal facility to the franchise hauler must be equal to, or less than, the rate charged to other non-affiliated franchise haulers for the same service. Tipping fees are defined to include both transfer station and landfill operations.

In each interim year, tipping fees would be automatically adjusted by the CPI, the same as for all controlled costs.

- ❑ **General and administrative costs**—Corporate and local general and administrative (G&A) are allowed up to a capped limit set by the City. G&A costs for 18 separate publicly traded hauling companies over a recent six-year period averaged 12.5 percent of gross revenues.

The hauler is thus allowed a cap of 12.5 percent of the revenue requirement for the combination of corporate, regional, and local G&A in any base year. Corporate and local G&A expenses within the 12.5 percent cap include AWS’s charitable contributions to eligible (i.e., 501(c)(3)) organizations.

General and administrative costs often can include costs which may be mis-stated in rate setting such as: (1) accounting and tax planning expenses,

(2) legal costs, (3) management fees, (4) officer’s salaries, and (5) contributions and donations. The City should continue to examine these costs during future base years. In future base years, the City and AWS shall review the cap on G&A to assure that this cap reflects current industry averages.

- ❑ **Recycling**—costs of providing residential curbside recycling and non-residential recycling services provided to the City by the franchise hauler would be an allowable cost. Therefore, solid waste management rates charged to customers include recovery of allowable costs of providing recycling services, and a profit is allowed on these costs.
- ❑ **Costs to implement State-mandated source reduction and household hazardous waste programs**—the City has adopted the *Source Reduction and Recycling Element (SRRE)* and *Household Hazardous Waste Element (HHWE)* as required by AB 939. These elements contain a number of recommended programs whose costs are paid for by the hauler and funded by solid waste management rates. The franchise hauler will be allowed a profit on these AB 939 surcharges.
- ❑ **Depreciation**—the following **Table I-1** depreciation methods and useful lives are recommended for amortizing future capital costs for rate setting purposes:

**Table I-1  
Depreciation Methods**

<b>Capital Item</b>	<b>Type<sup>(a)</sup></b>	<b>Years</b>
Office Equipment	SL	5 Years
Carts	SL	5 Years
Vehicles and Equipment	SL	8 Years
Buildings and Leasehold Improvements	SL	20 Years

<sup>(a)</sup> SL = straight line depreciation

Current methods used to depreciate capital items, which were in use prior to rate regulation, are allowed to continue. Useful lives in Table I-1 are for new capital purchases (i.e., those made during and after 2000).

*Allowable Operating Profits*

- ❑ **Provide allowable profit**—based on current industry norms, we recommend the City adopt the Base Case Operating Ratio (OR) methodology. The operating ratio determines the profit allowed to the franchise hauler on operating costs. The operating ratio is frequently used in the waste management industry as a basis for determining profit. The operating ratio (OR) is based on the following formula:

$$\text{OR} = \frac{\text{Allowable Expenses}}{\text{Allowable Expenses} + \text{Profit}}$$

The operating ratio is the most commonly used method for refuse rate regulation.

### Base Case Operating Ratio Method

In this methodology the OR would range from 88 to 92 percent, with a target of 90 percent (on an earnings before interest on tax basis, or EBIT). In the first base year, the operating ratio would be set at 90 percent (EBIT). In each succeeding base year (once every four years), the operating ratio could range from 88 to 92 percent (EBIT) without a rate change, which would help stabilize rate changes and afford the hauler an incentive to reduce costs. In any succeeding base year, if the company earned an operating ratio outside this 88 to 92 percent range, then in that base year rates would be reset to a 90 percent operating ratio (EBIT).

This OR methodology would allow the hauler some incentive to operate more efficiently because the hauler could reduce the first year OR from 90 percent to 88 percent by the next base year and not incur a rate decrease at that time. However, there is less incentive for the hauler to continue efficiency gains beyond an 88 percent OR because the OR would be reset to 90 percent during the next base year. Alternatively, the hauler would not bear significant risk that its profit level would decrease beyond a 92 percent OR because during base years the OR would be reset to 90 percent.

From a ratepayer perspective this method brackets the OR in a range so that the hauler would not receive excessive profits over the course of a long-term contract. Likewise, the method offers rate stability because should the OR fall inside the 88 to 92 percent range during a base year, there would be no rate change.

During the three years between each base year the hauler would be entitled to submit an application to the City for an interim year rate change on all residential, commercial, and industrial services. This rate change would equal a ninety (90) percent of the prior year (August-to-August) Consumer Price Index (CPI) increase on the hauler's controllable costs and uncontrollable costs (i.e., tipping fees and regulatory fees). With the 10-year franchise extension, there would be a total of potentially eight years for interim year rate changes.

Our recommended target operating ratio of 90 percent is supported by recently available information for publicly-traded companies and privately-held companies. We reviewed financial information for the following nine (9) publicly-held companies between 1997 and 2010:

- |                                |                            |
|--------------------------------|----------------------------|
| 1. Allied Waste Industries     | 6. Waste Connections, Inc. |
| 2. Browning-Ferris Industries  | 7. Waste Management, Inc.  |
| 3. Casella Waste Systems, Inc. | 8. Waste Industries, Inc.  |
| 4. Republic Services, Inc.     | 9. WCA Waste Corp.         |
| 5. Superior Services, Inc.     |                            |

**Table I-2**, on the following page, shows weighted average and average operating ratios on an EBIT (earnings before interest and tax) basis for publicly held waste management companies, from 1997 to 2010. The data for this period indicates that the weighted average OR has ranged from 82.15 percent in 2002 to 94.96 percent in 1997. The average OR has ranged from 82.47 to 91.80

**Table I-2**  
**Publicly-Held Waste Management Companies**  
**Operating Ratios <sup>a</sup>**  
**(1997 to 2010)**

Year	Weighted-Average Operating Ratio	Average Operating Ratio
1997	94.96%	88.00%
1998	94.68%	89.87%
1999	93.02%	87.47%
2000	86.24%	83.30%
2001	86.23%	84.96%
2002	82.15%	82.47%
2003	84.66%	84.88%
2004	85.69%	88.75%
2005	86.20%	86.45%
2006	84.37%	85.04%
2007	83.30%	85.44%
2008	85.33%	91.80%
2009	83.64%	87.90%
2010	83.10%	84.48%
<b>Mean</b>	86.88%	86.47%
<b>Median</b>	85.51%	85.94%
<b>Minimum</b>	82.15%	82.47%
<b>Maximum</b>	94.96%	91.80%

<sup>a</sup> On an earnings before interest and tax (EBIT) basis.

Source: Published company 10-k reports.

percent over the fourteen-year period. The mean weighted average operating ratio, between 1997 and 2010, was 86.68 percent, while the mean average operating ratio during the same period was 86.47 percent. The median weighted average operating ratio, between 1997 and 2010, was 85.51 percent, and the median average operating ratio during the same period was 85.94 percent.

There were actually eighteen (18) publicly held waste management companies between 1993 and 2000. There has been significant recent acquisition and merger activity in the waste management industry, so some of these companies are now part of other companies. As an example, Waste Management acquired USA Waste, Philip, and Sanifill. Likewise, Allied Waste Industries acquired Laidlaw, and Browning Ferris Industries. We believe however that using historic data for all of these companies represents the best available information for publicly held companies for the period of 1997 to 2010.

We also reviewed data published by Robert Morris & Associates (RMA). RMA publishes its “Annual Statement Studies” for an array of industries, including

**Table I-3**  
**Privately Held Waste Management Companies**  
**Operating Ratios <sup>a</sup>**  
**(2001 to 2008)**

Year	Total Number of Companies	Weighted Average Operating Ratio			
		\$1 to \$3M	\$3 to \$5M	\$5 to \$10M	\$10 to \$25M
2001 to 2002	162	96.70%	91.10%	94.10%	92.00%
2002 to 2003	66	95.90%	97.00%	97.70%	88.80%
2003 to 2004	94	96.70%	96.20%	97.70%	94.70%
2004 to 2005	96	95.20%	96.20%	95.40%	90.30%
2005 to 2006	109	92.70%	94.20%	94.20%	96.30%
2006 to 2007	142	92.70%	97.20%	94.70%	93.80%
2007 to 2008	127	94.30%	93.40%	93.00%	93.30%
2008 to 2009	171	95.00%	95.40%	96.40%	93.30%
2009 to 2010	211	94.70%	94.70%	96.30%	94.60%
<b>Operating Ratio Mean</b>		<b>94.61%</b>			
<b>Operating Ratio Median</b>		<b>94.70%</b>			
<b>Operating Ratio Range</b>		<b>88.80% to 97.70%</b>			

<sup>a</sup> For SIC Code 4953, Refuse Systems, on an earnings before interest and tax (EBIT) basis.

Source: Robert Morris & Associates Annual Statement Studies.

privately-held waste management companies. RMA data is for companies doing business as refuse systems (SIC Code 4953). These are systems “primarily engaged in the collection and disposal of refuse by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials.” This data “does not include companies primarily engaged in collecting and transporting refuse without disposal.” As shown in **Table I-3**, the operating ratio, on an EBIT basis, of over 66 companies surveyed in each of the ten (10) years from 2001 to 2010, ranged from 88.8 to 97.7 percent.

Profit methods other than the operating ratio often are harder to determine, or don’t compensate the hauler sufficiently. For example, a return on assets profit methodology might encourage a hauler to over-invest in assets, or alternatively, over time might cause a hauler’s profits to decrease as book assets are depreciated. A return on equity calculation may be problematic as limited comparable benchmark data exists, determining equity contributions is difficult, and returns can be insufficient for less capitalized companies.

There is no contractual obligation by the City to provide the hauler with a fair rate of return through this review process. Rather, the City reviews revenues, costs, and profits as a basis for recommended changes to residential refuse collection charges. Charges should be sufficient to cover costs of operations and allow a reasonable profit to the hauler. However, this profit level is not guaranteed.

*Pass Through Costs*

The following pass through costs do not earn a profit, but are included in determining total revenue requirements to establish solid waste management charges:

- ❑ **Tipping Fees (Pass Through)**—at the time of this rate manual’s development, tipping fees with profit were set at a cap of \$51.24 per ton. Any amounts over this limit in the future are considered pass through costs, and profit is not allowed. If the tipping fee is less than the established cap, actual fees paid are used to calculate total disposal costs and there is no pass through component of tipping fees.
- ❑ **Franchise fees**—franchise fees paid to the City by AWS are set equal to ten (10) percent of gross residential, commercial and industrial refuse and recycling revenues. These fees help provide funding for administering the Franchise Agreement and damage to roads, curbs, sidewalks, and other parts of the City’s infrastructure. These fees are paid to the City in return for providing an exclusive franchise to the hauler.

*Non-Allowable Costs*

The following costs are not allowable for rate setting, and as a result will not be passed on to the ratepayers:

- ❑ **Amortization of franchise purchases**—consistent with the waste management industry, we recommend that the City disallow amortization of franchise purchases because the operating ratio is designed to provide a return to AWS sufficient to compensate for its investment in the business.
- ❑ **Political contributions**—costs associated with attempting to influence the outcomes of any federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities.
- ❑ **Fines and penalties**—costs associated with violations of, or failure of, the hauler to comply with federal, state, local, or foreign laws and regulations. This category of non-allowable costs can also include costs in connection with alteration or destruction of records, or other false or improper charging or recording of costs.
- ❑ **Income taxes**—the operating ratio is typically provided on a pre-tax basis. To allow income tax expense would unnecessarily add complexity to the rate review process.
- ❑ **Interest expenses**—consistent with the waste management industry, the operating ratio is typically used on a before interest and tax basis. The operating ratio allowed is intended to provide the hauler with sufficient returns to pay its debt and equity holders. Disallowing interest expense eliminates artificial incentives for the hauler to finance its operations using either debt or equity financing. In other words, a company’s financing decisions are independent of the amount of profit earned. Further, in cases where the operating ratio used is on an after interest basis, the operating ratio often is adjusted upward (i.e., the hauler earns less profit) to account for interest as an allowable expense.

The City has disallowed interest on historical operations. However, the City has allowed interest expense on the purchase of new equipment for its year 2000 AB 939 programs. The interest is allowable to provide the hauler an incentive to invest in new trucks, carts, and bins. Should the City request that AWS invest in new programs (e.g., AB 939 programs) the interest will be considered allowable for rate setting purposes. However, interest resulting from new financing necessary to fund any replacement or maintenance of existing equipment will be considered non-allowable for rate setting purposes.

## F. Future Enhancements to AWS services

In exchange for the 10-year franchise extension requested in 2010, AWS has agreed to several service enhancements that have rate setting implications:

- **Provide Litter and Debris Control and Collection on Selected City Streets and Public Right of Ways** – AWS will be responsible for the litter collection services on streets and public right of ways. This includes the pickup of litter scattered on local streets and materials illegally dumped on sidewalks and near local waterways in the areas identified by the City.

AWS will publicize the Contra Costa Clean Water Program toll free number, 1-800 NO DUMPING as a resource for people to report illegal dumping of debris. Reports of illegal dumping of debris made to this number for sites within the City shall be forwarded to AWS for resolution. The number of calls, the amount of material collected, and locations of the material will be reported to the City monthly.

AWS will contract with Commercial Support Services (or another third party service provider) to provide litter and debris pickup on City streets and public right of ways. Commercial Support Services is a non-profit organization that provides work for the mentally and physically challenged. The City and AWS will mutually agree on the City streets and public right ways to target for this litter and debris control and collection effort. AWS will provide the litter pickers and vests for the Commercial Support Services staff that would assist with litter control and collection. This litter control and collection effort will be an allowable cost in the rate base.

- **Provide an Additional \$25,000 Annual Cost to Cover City Implementation of AB 939 and Climate Action Plan Initiatives** – AWS will provide the City with \$25,000 annually to cover implementation of the City's Assembly Bill 939 programs and Climate Action Plan initiatives. This cost will be treated as a pass-through cost in the rate base (without profit). This payment will be made on a proportionate basis for the remainder of the City's fiscal year 2010-11 (the period of July 1, 2010 to June 30, 2011), and due within 30 days of execution of the extension. The full annual payments to the City shall be due by July 31st of each year, beginning in July 2011.
- **Subject to Future Regulatory Requirements, Work with the City to Develop A Mandatory Commercial Recycling Program** – Should the State follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012 (the current target date specified in the State's draft regulations), AWS will agree to implement a new mandatory

commercial collection program to be offered to City customers by June 30, 2012, and hire a half-time Recycling Coordinator assigned to work exclusively on recycling programs, projects, and effort within Martinez. The City would amend its franchise agreements with AWS at that time to provide AWS with exclusive rights to commercial and industrial recycling in the City of Martinez. These provisions are directly dependent on the State's imposition of mandatory commercial recycling, and should the State not implement mandatory commercial recycling, the City will not require AWS to implement a mandatory commercial recycling program.

AWS will agree to assist with education, outreach, and monitoring for the mandatory commercial recycling program as required by the City. AWS will assist the City with providing all data required for the City's reporting to CalRecycle for commercial recycling. AWS will work with City commercial customers to provide recycling carts or bins and provide weekly collection.

The additional costs of this program and the half-time position will be passed on to commercial customers. The City and AWS will work out a mutually agreeable method for charging commercial customers for this service. The City will benefit from additional diversion from this program. This mandatory commercial recycling cost will be an allowable cost in the rate base.

Should the State not follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012, the City may still want to work with AWS to implement a mandatory commercial recycling program at some later date. In this case, the City and AWS will work out a mutually agreeable timeline for implementation of a mandatory commercial recycling program.

- ❑ **Work with the City to Develop A Commercial Food Waste Collection Program** – AWS will implement a new commercial food waste collection program to be offered to City commercial customers by January 1, 2012. The additional cost of this program will be passed on to commercial customers. The City will benefit from additional diversion from this program. The Company will benefit because it has identified a nearby buyer for this material. This commercial food waste recycling cost will be an allowable cost in the rate base.
- ❑ **Provide Two (2) Additional Annual Residential On-call Recycling Only Pickups at the Curb** – Under the terms of the current AWS franchise agreements with the City, residents are allowed two (2) on-call recycling (cardboard/paper) and/or yardwaste collections per year (an enhancement implemented as part of the 2008 Base Year Rate Review). AWS has agreed to provide residents with two (2) more on-call recycling and/or yardwaste cleanup for a total of four (4) on-call recycling and/or yardwaste cleanups. This additional cost will be an allowable cost in the rate base.
- ❑ **Provide Two (2) Annual Residential On-call Refuse Pickups at the Curb with Expanded Quantity Limit** – Currently, residents are allowed two (2) on-call collections per year, with a quantity limit of two (2) cubic yards. AWS will allow residents to set out up to three (3) cubic yards of refuse during these pickups. The additional cost of this expansion of on-call refuse pickup quantity will be an allowable cost in the rate base.

- ❑ **Provide Two (2) Annual Residential On-call Bulky Waste Pickups at the Curb** – AWS will agree that in addition to the on-call pickups specified in Items #5 and #6, residents could schedule two (2) separate on-call pickups to set out large bulky items (a list of large bulky items is provided in **Appendix A, Exhibit A-2, Attachment 8**). As part of this service, AWS will collect up to two (2) large bulky items at no charge per year. Additional items, beyond the two (2) free items, will be picked up for a fee as agreed by the City and AWS. The additional on-call bulky waste pickup cost will be an allowable cost in the rate base.
- ❑ **Provide One (1) Annual Pre-Scheduled Residential Cleanup Day** – In addition to the on-call pickups specified in Items #5, #6, and #7, AWS will agree to provide residents with one annual curbside cleanup day per year. AWS will agree to collect recycling, yardwaste, and refuse (up to 3 cubic yards) during this pre-scheduled cleanup day. The City and AWS will mutually agree to the timing of this cleanup day at the beginning of each year. AWS will provide this curbside service to residents during their regularly scheduled collection day, completing this service for all City customers over one service week. This additional cleanup day cost will be an allowable cost in the rate base.

The City and AWS will evaluate these cleanup service enhancements up until the next base year (2013). At the time of the next base year, should the City determine additional residential yardwaste services are necessary, the City may request that AWS change the frequency of residential yardwaste collection from every other week to every week. The additional costs for this change in collection yardwaste collection frequency will be an allowable cost in the rate base.

AWS will provide outreach to identify that the eight (8) pickups and annual residential curbside cleanup day are available. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

- ❑ **Provide a Means to Dispose of Household Batteries, Cellular Telephones, and Compact Fluorescent Light Bulbs** – AWS will allow customers to set out household batteries, cellular telephones, and compact fluorescent light bulbs, on any of their four (4) on-call recycling pickup days, plus one pre-scheduled residential clean up day. Customers will be allowed to set out these items in a single customer-provided one quart plastic bag. This cost will be an allowable cost in the rate base.

AWS will provide outreach to identify that these materials are available for set out as part of the on-call pickups. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

- ❑ **Allow Customers to Place Additional Material Types in the Recycling Cart** – AWS will expand the types of material collected in the 64-gallon recycling container to include:
  - E-waste peripherals (keyboards, mouse, speakers)
  - Hard cover books

- Rigid plastics (e.g., toys, buckets, trays, crates)
- Scrap metal/aluminum (under ten pounds per item).

There will be no additional cost to the ratepayer from this additional service.

AWS will provide outreach to identify that these additional materials can be included in the recycling cart. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

- **Provide Customers an Additional Recycling Cart or Yardwaste Cart Upon Request** – For larger volume residential recyclers, AWS will provide an additional recycling or yardwaste cart, upon request, at no extra charge to the residential customer. Based on current request levels, this is likely a service that will only be used for a small number of customers. There will be no additional cost to the ratepayer from this additional service.

AWS will provide outreach to identify that this additional recycling cart is available. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

# Section II

## Base Year Rate Setting Process

---



# Base Year Rate Setting Process



The City of Martinez rate setting follows a four-year cycle. In the first year of the cycle, the franchise hauler is required to submit a *Base Year Rate Change Application*. In the second through fourth years, the franchise hauler is allowed to submit an *Interim Year Rate Change Application*. The cycle repeats itself in year five. This section describes the detailed processes and steps involved, from the franchise hauler completing a base year application through to the City's approval of new rates.

Topics covered in this section of the manual include:

- ❑ **Who** is responsible for the various steps in each process
- ❑ **What** tasks must be completed within each step
- ❑ **When** each task should be performed
- ❑ **How** to complete various worksheets and forms.

This chapter is organized into three subsections:

- A. *Overview of the Base Year Rate Setting Process*
- B. *Timing of the Base Year Rate Setting Process*
- C. *Steps of the Base Year Rate Setting Process.*

## A. Overview of the Base Year Rate Setting Process

The base year rate setting process requires the franchise hauler to submit to the City a Base Year Rate Change Application every four years, beginning in 1999. In this application, the franchise hauler completes a number of forms, and provides supporting financial and operational information. Unlike the *Interim Year Rate Change Application* which is optional, the *Base Year Rate Change Application* is mandatory regardless of whether it will result in a rate change.

**Exhibit II-1**, on the following page, overviews the base year rate setting process. For each of the seven (7) steps, participant responsibilities, tasks, and associated outcomes (i.e., documents or deliverables) are identified for each step.

After reviewing the application, the City evaluates whether proposed rate changes will be fair to both residents of the City and the franchise hauler. Fairness is demonstrated through an analysis of the franchise hauler's actual and projected revenues and expenses included in the *Base Year Rate Change Application*.

Information required in the rate setting process which is considered confidential by the franchise hauler will not be disclosed at any public meeting. The hauler should make the City aware of such confidential information.

### Base Year Rate Setting Process Overview

Steps	Responsibility	Tasks	Document(s)/Deliverable(s)
1. Preparation and Submission of Rate Change Application	Franchise Hauler	a. Prepare Cost Information b. Prepare Revenue Information c. Prepare Operating Information d. Calculate Allowable Operating Profit e. Determine Franchise Fee f. Calculate Revenue Requirement g. Calculate Net Surplus/Shortfall and Percent Change in Rates h. Calculate New Rates i. Prepare and Submit Rate Change Application	<ul style="list-style-type: none"> <li>● Rate Application</li> <li>● Audited Financial Statements</li> <li>● Supporting Financial Information</li> </ul>
2. Verification of Completeness of Rate Change Application	City	a. Verify Financial Data and Format b. Verify Supporting Documents and Schedules c. Notify the Franchise Hauler	<ul style="list-style-type: none"> <li>● Notification Letter to Franchise Hauler</li> </ul>
3. Review of Rate Change Application and Preparation of Responses	City	a. Review Actual and Projected Revenue Requirements b. Review Actual and Projected Revenues c. Review and Verify Operating Ratio d. Determine Components of Requested Change in Rates e. Review Performance Data f. Request Additional Data and Clarification, if Necessary g. Document Staff Review and Prepare Written Response	<ul style="list-style-type: none"> <li>● Workpapers</li> <li>● Correspondence with the Franchise Hauler</li> </ul>
4. Survey of Rates in Similar Service Areas	City	a. Survey Residential and Commercial Solid Waste Rates and Charges in Similar Service Areas b. Summarize Survey Results c. Prepare and Submit Summary to the Franchise Hauler	<ul style="list-style-type: none"> <li>● Summary of Survey of Other Jurisdictions</li> </ul>
5. Preparation of Draft Report and Final Report	City	a. Prepare Draft Report b. Provide Franchise Hauler with Copy of Draft Report and Review Comments c. Prepare Final Report	<ul style="list-style-type: none"> <li>● Draft Report</li> <li>● Supporting Documentation</li> <li>● Final Report</li> </ul>
6. Presentation of Final Report to the City Council	City	a. Distribute Final Report and Summary to City Council b. Obtain City Council Approval	<ul style="list-style-type: none"> <li>● Notice of City Council Review</li> <li>● Approved Resolution</li> </ul>
7. Implementation of New Rates, If Applicable	Franchise Hauler	a. Prepare Notification of Rate Change b. Implement Rate Change c. Dispute Resolution	<ul style="list-style-type: none"> <li>● Notification to Customer</li> <li>● Rate Schedule</li> </ul>

**B. Timing of the Base Year Rate Setting Process**

Timing of the base year rate setting process is shown in **Exhibit II-2**, below. Certain key points are noted in the exhibit by circled letters. The rate change process should begin eight months prior to the beginning of the new calendar year.

The franchise hauler should begin preparing the application during the prior May, with the document submitted to the City on July 1. The application is submitted by the franchise hauler at least six (6) months in advance of when the proposed base year rate change would take place on January 1 of that base year. The City has up to thirty (30) days to verify the application is complete. After the City verifies that the hauler’s application is complete, the process is scheduled to take five (5) months until rates are implemented. New rates are to become effective on January 1 of each base year.

EXHIBIT II-2

**Timing of Base Year Rate Change Process**

Step	Preparation		30 Day Review	Formal Review Process				Implement
	May	June	July	August	September	October	November	December
1. Preparation and Submission of Rate Change Application	<b>Step 1</b>							
2. Verification of Completeness of Rate Change Application		(A)	<b>Step 2</b>					
3. Review of Rate Change Application and Preparation of Responses			(B)	<b>Step 3</b>				
4. Survey Rates in Similar Service Areas				<b>Step 4</b>				
5. Preparation of Draft Report and Final Report					(D)	<b>Step 5</b>		
6. Presentation of Final Report to the City Council					(E)	(F)	<b>Step 6</b>	
7. Implementation of New Rates, If Applicable							(G)	<b>Step 7</b>
								(H) (I)

<b>LEGEND</b>	A. Submit Rate Change Application to City	F. Final Report
	B. Notification Letter	G. Application Approved
	C. Additional Information from Hauler	H. Customer Notification
	D. Survey of Other Jurisdictions	I. New Rates Implemented on Jan. 1
	E. Draft Report	

### C. Steps of the Base Year Rate Setting Process

The remainder of this chapter describes each of the seven steps of the base year rate setting process. Each step includes an overview of the step and a detailed description of the tasks required to complete the step.

## Preparation and Submission of Rate Change Application



Responsibility:	Franchise Hauler
Timing:	Completed six months prior to the date new rates become effective
Tasks:	<ol style="list-style-type: none"> <li>a. Prepare Cost Information</li> <li>b. Prepare Revenue Information</li> <li>c. Prepare Operating Information</li> <li>d. Calculate Allowable Operating Profit</li> <li>e. Determine Franchise Fee</li> <li>f. Calculate Revenue Requirement</li> <li>g. Calculate Net Surplus/Shortfall and Percent Change in Rates</li> <li>h. Calculate New Rates</li> <li>i. Prepare and Submit Rate Change Application</li> </ol>

### Description of Tasks

#### Overview

During this step, the franchise hauler prepares the *Base Year Rate Change Application*. This six-page form includes detailed financial and operating information and is used to determine the actual costs and revenues of the franchise hauler. Blank copies of the Base Year Rate Change Application are provided in **Appendix B, Exhibit B-1**.

These forms identify all areas to be completed with double outlined boxes. If data are to be entered in the form, the box has no shading. If a calculation is required, the box has light shading.

Several lines in the application contain five columns. These columns are intended to show the relationship between the three most recently completed years, the current year, and projections for the new “base” year. These columns are organized as follows:

- ❑ **Columns One through Three** include information for the franchise hauler’s three prior fiscal years. These are the most recent years that financial information is available and that actual costs and revenues can be verified.
- ❑ **Column Four** is for estimating performance during the current fiscal year. The “current year” is the franchise hauler’s fiscal year prior to the new base year. The base year rate change application is prepared during the course of the current year. Data in this column should include year-to-date performance plus estimated performance during the remaining months of the current fiscal year.
- ❑ **Column Five** is used to report projected performance during the new base year. This information is entirely a projection and is utilized to determine any rate changes. Projected information should be developed by estimating anticipated service levels during the base year, and determining the revenues and expenses which will be incurred to provide these services. Each cost element in the application should be reviewed and any anticipated change in specific line items should be included in the base year projection. For example, if negotiated labor rates are scheduled to change, or if tipping fees are expected to change, these changes should be included in projections for the base year.

The relationship between these five columns for any given line item should be consistent. Any substantial difference between each of the five years should be explained by the franchise hauler and considered by the City during the review process.

A copy of audited financial statements for the previous fiscal year should be obtained. Financial information from the audit is consolidated into specific categories identified in the application. All financial information shall be in accordance with generally accepted accounting principles. Supplemental documentation should be prepared which reconciles the financial audit for the most recently completed calendar year to information provided in the application. This documentation should be included in the application package.

### a. Prepare Cost Information

Cost information from the franchise hauler is provided in the *Base Year Rate Change Application*. Cost information is reported for the three most recently completed fiscal years, the current fiscal year, and the new base year. Information reported in each line item is the total cost for residential, commercial, and industrial waste and recycling services. Segregation of costs by residential, commercial, and industrial services is not required.

Cost information which is reported includes:

- ❑ Allowable Costs

- Line 1 Direct Labor Costs
- Line 2 Tipping Fees (Profit Allowed)
- Line 3 Corporate and Local General and Administrative Costs
- Line 4 Truck and Equipment Costs
- Line 5 Depreciation and Other Operating Costs
- Line 6 Services Provided to City.

- ❑ Pass Through Costs

- Line 11 Tipping Fees (Pass Through)
- Line 23 Franchise Fees.

Specific components of these cost categories are described in **Exhibit I-4** in Chapter I.

By aggregating costs into these line items, the City and hauler can focus on major changes without becoming distracted by large changes in insignificant cost components. For example, if office equipment maintenance doubled from \$10,000 in the current year to \$20,000 in the base year (i.e., a 100 percent increase), this might only cause Corporate and Local General and Administrative Costs to increase by one percent, resulting in little impact on the overall rate. Minor components of Corporate and Local General and Administrative Costs may decrease between the current year and the base year, while others may increase.

If one of the major cost line items in the application changes at an unusual rate, then the hauler should be able to explain the change. An unusual change in cost is any increase which is greater than the change in the San Francisco-Oakland-San Jose Consumer Price Index, or any decrease. The Consumer Price Index used in the analysis should be based on the most current actual information for the San Francisco-Oakland-San Jose Metropolitan Area. This information is available from the United States Department of Labor, Bureau of Labor Statistics, and is prepared monthly.

Cost information for the current year and base year must account for any increases or decreases in the number of customers served, or tons of waste and recyclable material collected. Actual increases in costs also must be included. For example, if labor costs will increase in the base year as a result of existing labor agreement terms, this additional cost should be included.

Cost information provided in the application is used with operating profit to calculate the franchise hauler's revenue requirement. The revenue requirement is equal to the sum of the following three categories:

- Allowable costs
- Allowable operating profits
- Pass through costs.

This revenue requirement is compared to anticipated revenues. Because the City and hauler are using the Base Case OR Methodology, if a surplus exists (i.e., at an OR less than 88 percent), rates may need to decrease; and if a shortfall exists (i.e., at an OR more than 92 percent), rates may need to increase.

### b. Prepare Revenue Information

Revenue information is provided in this task. Similar to cost information, revenues are reported for the three most recently completed fiscal years, the current fiscal year, and the projected base year. Revenue is reported in three separate categories:

- Residential
- Commercial and industrial
- Recycled material sales.

Revenue in the base year is projected *without* any changes in rates. Revenue projections are prepared based on existing rates and number of customers which the franchise hauler anticipates serving in the base year.

**1. Determine Residential Revenue**

To calculate projected residential revenue for the base year, enter the current monthly rates by service type in the first column of cells on page 4 of 6. Then enter the projected number of accounts by service type in the second column of cells on page 4 of 6. Total revenue for each service type is calculated based on the following:

*Calculation of Projected Base Year Revenue*

	Current rate per month
Multiplied by	Twelve months
Equals	Rate per year
Multiplied by	Projected residential accounts
Equals	Revenue by service type

Revenue by service type then is entered in the third column of cells on page 4 of 6. These values then are added together and entered and totaled in line 60. Residential revenue should reflect all revenue generated for providing curbside collection services of refuse, recyclables, and yardwaste.

The number of accounts in each service category may change throughout the year. For example, some customers may request one can service part of the year and an additional can during the remainder of the year. The *average* number of accounts by service type should be used in these calculations. In addition, the number of accounts identified for these calculations must agree with operating data provided in Section XI (page 5) of the application. This base year amount should reconcile with line 46, column 5 on page 3 of 6.

Single family and multi-family residential revenue figures should be completed for all five years in lines 43 through 48 on page 3 of 6.

**2. Determine Commercial and Industrial Revenue**

Commercial and industrial revenue information is entered in lines 49 through 57 of page 3 of 6 of the application. In the first three columns of this line, actual revenue generated by commercial and industrial accounts during the prior three years is reported. The third year amount must reconcile with the financial audit for that same year. Commercial and industrial revenue for the current year is based on actual revenue to-date plus an estimate of the revenue that will be received through the end of the fiscal year. Commercial and industrial revenue in the current year should be comparable to revenue in the prior year, after taking into account changes in rates and service levels.

Projected commercial and industrial revenue for the new base year is entered in the fifth column. This amount, net of any projected uncollectible accounts, is based on the estimated annual revenue received during the current fiscal year plus any additional revenue generated from additional accounts. Operating data provided in Section XI (page 5) of the application should support any service level changes.

In order to analyze changes in commercial rates, rate information must be provided for specific commercial services. These services are:

*Can Service*

- 1, 32-gallon cart—once per week
- 1, 32-gallon cart—twice per week
- 1, 32-gallon cart—three times per week

*Bin and Box Service*

- 3 Yard Bin—once per week
- 2 Yard Bin—once per week
- Debris Box—per pickup

In the columns of lines 75 through 80, the franchise hauler enters the rate for these services for the prior three years, the current year, and the base year, respectively. Percentage changes then are entered in columns 2, 4, 6 and 8. This information provides an indication of the overall changes in commercial rates.

### **3. Determine Allowance for Uncollectible Accounts**

The franchise hauler likely will not be paid by all customers served. While this amount is expected to be relatively small, it must be accounted for in the calculation of base year net revenues. These amounts are reported in two places for each service type: on lines 15 and 47 for the allowance for uncollectible residential accounts, and lines 18 and 56 for the allowance for uncollectible commercial and industrial accounts.

These amounts can be calculated based on a formula, such as one percent of anticipated revenues, or based on actual experience. All assumptions related to the projection of uncollectible accounts must be documented and included as a supplement to the application.

### **4. Determine Revenue from Recycled Material Sales**

In addition to revenue generated through residential, commercial, and industrial services, some additional revenue is generated by selling recyclable materials collected through the curbside recycling program. The amount of recycling revenue generated through the sale of these materials is dependent upon the quantity of material collected and the market price for these materials. Both of these factors are outside direct control of the franchise hauler. Therefore, revenues generated by recycled material sales are not subject to an across-the-board rate change. Revenue generated from charging residential customers for curbside recycling services should not be included here, but should be included as part of residential revenue (#1 above).

In the first three columns of lines 20 and 58, actual revenues received during the most recently completed fiscal years are reported. In the fourth column of lines 20 and 58, estimated revenues for the current year are reported. For the base year, revenue from recycled material sales is determined by projecting scrap

prices for recycled materials and the anticipated quantity of materials sold. The projected scrap prices are multiplied by the projected volume of materials to be sold to determine projected scrap revenue. This projected revenue is reported in the fifth column of lines 20 and 58 of the application.

**5. Calculate Total Revenue**

*Calculation of Total Revenue*

	<i>Line 16</i>	Total residential revenue
<i>Plus</i>	<i>Line 19</i>	Total commercial and industrial revenue
<i>Plus</i>	<i>Line 20</i>	Recycled material sales
<i>Equals</i>		Total revenue

Total revenue is entered on lines 21 and 59.

**c. Prepare Operating Information**

During this task, non-financial operating information is compiled by the franchise hauler. Operating information requested in the application, provides an important indicator of the franchise hauler’s performance. If costs are changing at an unusual rate, operating data may provide some explanation of these changes. For example, cost increases could be attributed to the increased level of service provided (i.e., accounts served). Information to be provided independently for residential, commercial, and industrial sectors includes:

- Number of accounts
- Quantity of waste tonnage collected
- Quantity of recyclable tonnage collected
- City carts provided
- City bins provided
- City drop boxes provided.

Similar to cost data, the first three years are "historical," the fourth year is the "current" year, and the fifth year is the "base" year. Historical data are based on actual annual operating statistics during the last three complete fiscal years and reflect the same year used in the financial sections of the application. Current year performance is based on performance to-date plus estimated performance for the remaining months of the current year. Projected base year data represents the franchise hauler's best estimate of service levels during the new base year.

Year-to-year percentage changes then are determined for each set of operating metrics. The franchise hauler should be able to explain any significant changes. A significant change in an operating characteristic is an increase or decrease of more than two percent.

This information allows both the City and the franchise hauler to monitor changes in the service characteristics, to estimate total revenues at existing rates, and to compare these to changes in total costs. The hauler should identify to the City any operating information submitted as part of the application that it considers confidential.

**d. Calculate Allowable Operating Profit**

For the three historical years of actual data, the hauler will calculate the actual operating ratio based on the formula below:

**Method For Calculating Actual  
Operating Ratio on Allowable Costs**

Step 1	
	Total operating revenues (Line 21)
<i>Minus</i>	Total operating costs (Line 7 + 12 + 23)
<i>Equals</i>	Operating profit (Line 9)
Step 2	
	Operating ratio on allowable costs (Line 8)
<i>Equals</i>	Total allowable costs (Line 7)
<i>Divided by</i>	Total allowable costs (Line 7)
	<i>Plus</i> Operating profit (Line 9)

These actual operating ratios on allowable costs will reveal how well past base year projections corresponded to actual results. Similarly, the formula estimated above is used to calculate the operating ratio for the current year (column 4) and the base year (column 5). The actual operating profit received by the franchise hauler in the three most recently completed fiscal years is entered on line 9, columns 1 through 3. The estimated operating profit for the current fiscal year is entered on line 9, column 4 also using the above formula. To calculate the projected operating ratio for the base year (without a rate change), the same formula used for calculating actual operating ratios for the historical years is utilized.

The base year rate review is based on the Base Case OR method described in Section E of Chapter I. In this methodology, the OR ranges from 88 to 92 percent, with a target of 90 percent. Should the franchise hauler’s projected operating ratio, in a base year, fall outside the 88 to 92 percent operating ratio range, the franchise hauler’s operating ratio will be reset to 90 percent in the base year.

To calculate the allowable target operating profit in the base year, the equation below is utilized:

**Method For Calculating  
Allowable Target Operating Profit in Base Year**

	Total Operating costs (Line 7)
<i>Divided by</i>	Target operating ratio (90 percent)
<i>Equals</i>	Allowable operating revenues
<i>Minus</i>	Total Operating costs (Line 7)
<i>Equals</i>	Allowable operating profit (Line 9)

The allowable operating profit is entered on line 9, column 5 of the application. Should the franchise hauler’s projected operating ratio, in a base year, fall within the 88 to 92 percent operating ratio range, the franchise hauler’s projected operating ratio is allowed, and entered on line 9, column 5 of the application.

In each base year, the operating ratio will be allowed to fall within the 88 to 92 percent without a rate change, which will help stabilize rate changes and afford the franchise hauler an incentive to reduce costs. In any base year, if the franchise hauler is projected to earn an operating ratio outside the 88 to 92 percent, then the hauler’s OR will be reset to 90 percent.

**e. Determine Franchise Fee**

The current franchise fees paid to the City is set equal to 10 percent of gross revenues. The calculation of the franchise fee is not a straightforward exercise because as revenue is increased (e.g., via a rate change), so does the amount of franchise fees increase because franchise fees are based on a percent of gross revenues. To calculate the franchise fee for the base year requires solving for two simultaneous equations with one unknown value, the franchise fee, which is identified as X. The equations are summarized in the bottom left corner of Page 1 of 6 of the Base Year Rate Change Application and are as follows:

1. Revenue Requirement x 0.10 = X
2. Revenue Requirement = Line 13 + X, or in more detail [Total Allowable Costs (Line 7) plus Allowable Operating Profit (Line 9) plus Total Pass Through Costs (without Franchise Fees) (Line 12)] + X.

By substituting equation 2 into equation 1, the calculation is simplified to:

$$(Line\ 13 + X) \times 0.10 = X, \text{ or}$$

$$(Line\ 13 \times 0.10) = 0.90X, \text{ or}$$

$$X = (Line\ 13 \times 0.10) \div 0.90$$

Projected franchise fees, X, should be entered on line 23 of the application.

The sum of lines 10 and 11 should be entered on line 12, total pass through costs without franchise fees. Any significant changes in total pass through costs should be explained and documented.

**f. Calculate Revenue Requirement**

The revenue requirement establishes the level of revenue needed to meet all allowable costs and operating profit. This includes residential, commercial, and industrial waste and recycling costs, and assumes a reasonable profit margin based on the operating ratio calculation.

Total revenue requirements are determined as the sum of:

- Total allowable operating costs (Line 7)
- Allowable operating profit (Line 9)
- Total Pass through costs (Line 12 + 23).

The revenue requirement is entered on line 30 of the application.

**g. Calculate Net Surplus/Shortfall and Percent Change in Rates**

The net surplus/shortfall, prior to the franchise fee, is first determined based on the following calculation:

<i>Surplus/Shortfall Prior to Franchise Fee</i>		
	<i>Line 13</i>	Revenue requirement (without franchise fee) [equal to total allowable costs (Line 7) plus allowable operating profit (Line 9) plus total pass through costs without franchise fees (Line 12)]
<i>Less</i>	<i>Line 21</i>	Total revenue
<i>Equals</i>	<i>Line 22</i>	Net surplus/ shortfall, without franchise fee

Next the franchise fee calculated in Line 23 is added to the surplus/shortfall in Line 22 to get the total net surplus/shortfall (Line 24). If a shortfall exists (i.e., line 24 is positive), rates will need to be increased. If a surplus exists then the amount in line 24 will be negative and rates will need to be decreased.

The projected amount of revenue generated during the base year from the sale of recycled materials was calculated in Step 1.b.4; therefore, any change in revenue required must come from a change in residential, commercial, and industrial rates.

If applicable, the percent change in existing rates is calculated as follows:

<i>Percent Change in Existing Rates</i>		
	<i>Line 24</i>	Net Shortfall (Surplus)
<i>Divided by</i>	<i>Line 25</i>	Total residential, commercial, and industrial revenue without rate change
<i>Equals</i>		Percent change in rates.

The percent change in rates is entered on line 26 of the application. If there is no shortfall (surplus) then there is no need to calculate line 26 and the hauler should enter “0.00 percent”.

**h. Calculate New Rates**

If applicable, the rate change identified on page 1, line 26 should be entered on page 6, line 81 of the *Base Year Rate Change Application*. Current residential rates for solid waste collection should be entered on page 6 of 6. The adjusted rates then are calculated by multiplying the current rate by one plus the rate change identified in line 81.

The adjusted rates are rounded up or down to the nearest five cent increment. This simplifies record keeping for the franchise hauler and should not make a material difference to customers. The adjustment required to reach the nearest five cent increment should be calculated and entered in the third column. To determine new residential rates, column two should be added to column three and the result should be entered in column four. This column provides the new rate schedule.

Current and revised commercial rate schedules should be provided by the hauler as an attachment to the application. These rates should also be rounded to the nearest five cent increment.

### i. Prepare and Submit Rate Change Application

The completed *Base Year Rate Change Application* is submitted by the franchise hauler to the City. The application should include the following items:

Management Representation Letter

The management representation letter transmits the application to the City, and should provide a listing of included documents. The letter should identify the requested adjustment in rates and include a discussion of specific issues which impact new rates (e.g., significant increases in tipping fees). The letter should state that:

- Management reviewed and accepts responsibility for the rate application
- The application is based upon management's judgment of the most likely set of conditions and course of action
- All significant relevant information are made available
- Assumptions are reasonable and are accurate.

An authorized representative from the franchise hauler should sign and date the application. This signature provides a certification of the franchise hauler that the application is complete, accurate, and consistent with the instructions provided in this manual.

Base Year Rate Change Application

The franchise hauler should provide a *Base Year Rate Change Application*, including completed application forms and supporting documentation. Supporting documentation includes the current rate schedules for residential, commercial, and industrial customers.

Supplemental Audited Financial Information

For applications received after 1999, audited financial statements for the most recently completed fiscal year should be included, as well as other documentation which support operating and financial data provided in the application. Because audited financial statements serve as base documents for the application, statements of revenues and expenses and other reports contained in the application shall be reconciled to the audited financial statements to provide assurance that all activities are accounted for.

Once the application materials have been prepared, the franchise hauler submits one reproducible hard copy, 15 bound hard copies, and one disk copy formatted to the City's specifications. They are submitted to the City. The thirty (30) day review for completeness will begin upon receipt of the application.

## Verification of Completeness of Rate Change Application



Responsibility:	City
Timing:	Completed within thirty (30) days after the rate change application is submitted
Tasks:	<ol style="list-style-type: none"> <li>Verify Financial Data and Format</li> <li>Verify Supporting Documents and Schedules</li> <li>Notify Franchise Hauler</li> </ol>

### Description of Tasks

#### Overview

During this step, the City ensures that the application has been fully completed by the franchise hauler and that the data provided are consistent. During the 30-day period, the City will obtain from the franchise hauler any information necessary to complete the application.

#### a. Verify Financial Data and Format

City staff reviews the application package to determine if it is complete and ready for analysis. Detailed analysis of the contents of the application occurs during Step 3.

The City reviewer should determine the following:

- Has the applicant included all required forms?
- Are all forms complete?
- Are audited financial statements included?
- Are all financial calculations mathematically correct?

#### b. Verify Supporting Documents and Schedules

Various documents may be included in the application package to support the rate change. The purpose of these supporting documents should be clearly identified by the franchise hauler.

#### c. Notify Franchise Hauler

If the application is complete the City will notify the franchise hauler that it will begin the process of evaluating the application. If incomplete, the City will attempt to obtain from the hauler additional required information within the 30-day verification period. A revision of rates shall not be authorized until the 1st day of the first calendar month following a five (5) month period from the date that an application is verified to be complete.

# Review of Rate Change Application and Preparation of Responses



Responsibility:	City
Timing:	Completed within one and one half month after determining that the application package is complete
Tasks:	<ul style="list-style-type: none"> <li>a. Review Actual and Projected Revenue Requirements</li> <li>b. Review Actual and Projected Revenues</li> <li>c. Review and Verify Operating Ratio</li> <li>d. Determine Components of Requested Change in Rates</li> <li>e. Review Performance Data</li> <li>f. Request Additional Data and Clarification, if Necessary</li> <li>g. Document Staff Review</li> </ul>

## Description of Tasks

### Overview

During this step, City staff evaluates the entire rate change application. This review includes examining significant changes in costs or operating performance and evaluating explanations of these changes provided by the franchise hauler.

#### a. Review Actual and Projected Revenue Requirements

In this task, costs and operating profit are reviewed and analyzed for reasonableness. Reconciliations of costs to audited financial statements shall be checked for consistency. Explanations are sought from the hauler for items significantly different than would otherwise normally be expected.

Absolute and percentage changes in costs for the five years identified on the application should be calculated and reviewed. Projections prepared from previous years in prior *Base Year Rate Change Applications* are compared with actual results. Costs are correlated with operating collection efficiency statistics provided by the hauler.

Any unusual trends or variances in aggregate areas should be explained by the franchise hauler. An unusual increase would be a change in cost which is greater than the change in the San Francisco-Oakland-San Jose Consumer Price Index, published by the Bureau of Labor Statistics, and which can not be attributed to changes in the number of customers serviced or tons of waste or recyclable materials collected. If these unusual changes are not adequately explained in the application, the City should request additional clarification from the franchise hauler.

The City should review the allocation methodology used by the hauler to obtain City costs, if applicable. At a minimum, the City should check that allocations used to assign costs to City customers are reasonably consistent with other operating metrics such as average number of accounts and tons collected.

## b. Review Actual and Projected Revenues

The City should review actual and projected revenues in this task. Current rates provided in the application are verified. Any changes in the number of customers serviced should be identified and explained by the franchise hauler.

The application requires the franchise hauler to report five years of residential and commercial and industrial revenues: (1) calendar year three years ago (2) calendar year two years ago, (3) most recent calendar year, (4) current year, and (5) projected “base” year. For applications received after 1999, the City should reconcile the most recent year revenues with audited financial statements. Revenues for the current year are compared with year-to-date unaudited financial statements and documentation supplied by the hauler. Projected revenues for the fifth, or “base” year, are evaluated by the City for reasonableness. All assumptions made by the hauler in preparing these projections are reviewed. Revenues reported by the hauler should not include any rate changes in the base year (year 5). Account information included in the application is reviewed to determine changes in the number of accounts served.

Allowances for uncollectible accounts also are reviewed. These figures should be deducted from total revenue projections. These allowances may be based on a fixed percentage of total revenues or on actual experience. Assumptions related to allowances for uncollectible accounts should be reviewed with the hauler.

Revenue from recyclable material sales is provided in the application. Amounts identified in the third year of the five years provided should reconcile with the financial audit. Amounts identified in the current (fourth) year, the base (fifth) year should be documented by the hauler. The City will review these projections to ensure they are consistent with trends in recycling collection costs, scrap values, processing costs, as well as estimated diversion rates and tonnage.

## c. Review and Verify Operating Ratio

The operating ratio must be determined for the base year. The City should calculate the projected-actual OR for the base year using the first formula provided in section d of this chapter (i.e., titled Method For Calculating Actual Operating Ration in Allowable Costs). If this OR is outside the 88 to 92 percent range, then the OR should be reset to 90 percent. If there are any errors by the hauler in calculating the OR or allowable operating profits, these deficiencies are noted.

## d. Determine Components of Requested Change in Rates

The City evaluates all costs, revenues, and operating profits provided in the application to determine the components of the requested adjustment in rates. This would include determining the proportion of the requested adjustment in rates which is due to changes in each of the following:

- Costs
- Residential revenues
- Commercial revenues
- Industrial revenues
- Revenues from the recyclable sales
- Operating profit (or loss).

### e. Review Performance Data

City staff reviews and analyzes performance data, which are included in the application (number of accounts and tons collected). Operating statistics are reviewed to explain past historical trends and justify future expenses. Both actual and percentage increases are examined and any unusual changes in performance are investigated to determine their cause and effect on future cost performance. An unusual change in operating statistics is any increase or decrease of more than the Consumer Price Index (CPI) published by the Bureau of Labor Statistics in their *Monthly Labor Review*. Changes in accounts served, number of routes, tons collected, or direct labor hours generally should correspond to changes in cost and revenue. In accordance with the Franchise Agreement, all operating statistics, which affect the competitive position of the hauler, should be treated as confidential.

### f. Request Additional Data and Clarification, if Necessary

Throughout the analysis of the application, City staff may request clarification and/or additional data from the franchise hauler to explain any unusual changes in costs or operating performance. City staff may have identified missing information, or changes in the financial or operating data between the five fiscal years which require clarification or further explanation. The franchise hauler should respond to the City's request for additional information within two weeks. Responses will vary depending on the specific requirements of the City.

### g. Document Staff Review

During this task, City staff prepares workpaper documentation of the review of the Base Year Application.

## Survey of Rates in Similar Service Areas



Responsibility:	City
Timing:	Conducted concurrently with the application review (Step 3)
Tasks:	<ol style="list-style-type: none"> <li>Survey Residential and Commercial Solid Waste Rates and Charges in Similar Service Areas</li> <li>Summarize Survey Results</li> <li>Prepare and Submit Summary to the Franchise Hauler</li> </ol>

### Description of Tasks

#### Overview

The City conducts a survey of solid waste rates in communities similar in size and location to the City. Blank copies of the survey of solid waste rates are provided in **Appendix B, Exhibit B-2**. The purpose of this survey is for comparison purposes to benchmark the rates proposed by the hauler to determine if the rates are reasonable. The survey should cover the following topics:

- Residential service
- Commercial service
- Industrial service.

The survey is not meant to be used as a basis for determining new rates.

#### a. Survey Residential, Commercial, and Industrial Solid Waste Rates in Similar Service Areas

In this task, the survey of rates in other areas, which are similar to the City, is conducted. In order to avoid mailing and response delays, the survey is conducted by telephone. A minimum of six other jurisdictions should be surveyed. Jurisdictions selected should be located in Northern California and have operating environments, which are similar to, the City.

While all questions in the survey provide valuable comparative information, there are several key questions including:

- Monthly rates for a range of residential service
- Monthly rate for standard commercial and industrial services.

### b. Summarize Survey Results

After the survey has been conducted, the results are tabulated and compared. Rates proposed in the rate change application should be compared to rates in other jurisdictions. If the rates proposed in the application are significantly higher than in other jurisdictions, then City staff should request the franchise hauler's assistance in explaining the differences.

### c. Prepare and Submit Summary to the Franchise Hauler

The City then prepares a summary report, which makes conclusions about how rates and services provided by the current franchise hauler compare with those in other jurisdictions. The report also should document residential refuse, recycling, greenwaste, commercial, and industrial refuse collection services and rates. It should include the following information:

- Number of jurisdictions surveyed
- Average and median monthly charges for comparable residential can services
- Average and median charges for comparable commercial services.
- Average and median charges for comparable industrial services.

The report should compare the proposed City rates with weighted averages and median results from the survey. The report should summarize in a matrix format all results of the survey listed by jurisdiction surveyed.

A copy of the survey summary is provided to the franchise hauler. The City may require an explanation and/or clarification from the franchise hauler about how the proposed rates compare to rates in the survey. This summary is included as an attachment to the Final Report. This information also is used in the evaluation of the franchise hauler's application.

## Preparation of Draft Report and Final Report



Responsibility:	City
Timing:	Completed approximately three and one half months after determining the application package is complete
Tasks:	<ol style="list-style-type: none"> <li>a. Prepare Draft Report</li> <li>b. Provide Franchise Hauler with Copy of Draft Report and Receive Comments</li> <li>c. Prepare Final Report</li> </ol>

### Description of Tasks

#### Overview

A draft report with recommendations from City staff is prepared and submitted to the franchise hauler for review. The draft report will be reviewed by the franchise hauler. The franchise hauler will have an opportunity to provide written comments regarding the draft report. The City will address these comments and prepare a final report.

#### a. Prepare Draft Report

In this step, City staff prepares a draft report including recommendations for a rate change. The draft report includes the following sections:

- ❑ Executive Summary

This is a one or two-page summary of the review process and may include a chart showing current and proposed rates, and the recommended rate change.

- ❑ Introduction and Background

The section identifies any proposed changes in services provided by the hauler. The section also identifies the review goals, objectives, scope, and other relevant background information. This section of the report may provide a brief overview of the rate change process and discussion of significant historical rate issues. If applicable, this section of the report will document the rate change proposed by the City.

- ❑ Analysis and Discussion of Rate Change Application

This section of the report will include a review of the analysis work completed by City staff. This section might include the following sub-sections:

*Review of Rate Changes*, including a discussion of interim year or extraordinary rate changes during each year since the last base year, the relationship of these changes to changes in the Bay Area Consumer Price Index, and an analysis of the significant components of the change in rates (e.g., changes in tipping fees or changes in operating profit).

*Analysis of Projected Costs*, including a discussion of any unusual changes in costs which were discovered and unresolved during the review process.

*Discussion of Service Issues*, including changes in frequency or type of curbside service. If significant service issues are not involved with a rate change, this section would be omitted.

Recommendations

City staff would present its recommendations regarding specific changes in rates in this section of the document.

Appendices

Appendices to the report would include:

- Rate change application
- Revised rate schedule
- Audited financial statements of the franchise hauler
- Other relevant supporting materials provided by the franchise hauler
- Results of the rate survey.

### b. Provide Franchise Hauler with Copy of Draft Report and Receive Comments

During this task, the franchise hauler will review the draft report. Each section of the report should be reviewed to ensure that correct data are included, the City staff analysis is consistent with the methodology, and if applicable the proposed rate change was determined accurately.

If any issues are identified during this step, the franchise hauler works with City staff to fully explore and resolve these outstanding issues. A written response to the draft report is then prepared. The response may cover one or more of the following topics:

- If data discrepancies exist in any of the areas noted in the prior task, the City should be notified of these discrepancies.
- If the analysis conducted by City staff can be clarified or considered differently, this information should be provided to the City staff.
- If the report is acceptable and no clarification or comments can be offered, this should be relayed to City staff.

If no written response is received by the City within two weeks of delivering the City's Draft Report, then the City will assume that the hauler has no issues with the report.

### c. Prepare Final Report

Any additional or outstanding comments or issues raised during the franchise hauler's review of the draft report are addressed during this task. If necessary, meetings are conducted with representatives from the City and the franchise hauler. Final solutions to outstanding issues are included in the report. After final comments from the franchise hauler have been considered, the Final Report package is prepared. A copy of the Final Report is submitted to the franchise hauler.

## Presentation of Final Report to the City Council



Responsibility:	City
Timing:	Completed three weeks prior to the expected implementation of new rates
Tasks:	<ul style="list-style-type: none"> <li>a. Distribute Final Report and Summary to City Council</li> <li>b. Obtain City Council Approval</li> </ul>

### Description of Tasks

#### Overview

During this step, the Final Report is presented to the City Council for review, comment, and approval.

#### a. Distribute Report and Summary to City Council

In this task, the Final Report is provided to members of the City Council. The report is included as an agenda item for City Council consideration at a regular City Council meeting. The rate change may be placed on either the regular, or consent calendar. The City Clerk should be notified four weeks prior to the meeting at which the rate change will be considered and reports should be provided two weeks prior to the meeting.

#### b. Obtain City Council Approval

Council members review the report and proposed rate changes. If the City Council agrees with the recommendations of the City staff, the report and rates are approved. If the City does not agree with the recommendations, the report is returned to City staff for additional analysis. If the report and rates are not approved, the City Council should specifically identify deficiencies.

## Implementation of New Rates, If Applicable



Responsibility:	Franchise Hauler
Timing:	Conducted following City Council approval of the new rates
Tasks:	<ol style="list-style-type: none"> <li>a. Prepare Notification of Rate Decrease</li> <li>b. Implement Rate Decrease</li> <li>c. Dispute Resolution</li> </ol>

### Description of Tasks

#### Overview

During this final step, the franchise hauler implements new rates, if applicable.

#### a. Prepare Notification of Rate Change

Once the report is approved, a notification of a rate change is mailed by the franchise hauler to all customers. This notification may be included with a regular billing or may be mailed separately. The notification must be performed at least 30 days prior to the effective date of the rate change. The franchise hauler should provide a copy or facsimile of the notice to the City at the time of customer notification.

#### b. Implement Rate Change

During this final task, the new rates are entered into the franchise hauler’s billing system and included in the billing cycle. If the franchise hauler prepares billings once every two or three months, and a rate change occurs during the middle of a billing cycle, overbilled or underbilled amounts in the current billing cycle due to the rate change are calculated and adjusted for the next billing cycle.

#### c. Dispute Resolution

If the parties are unable to agree upon new rates upon the results of and at the time of a Base Year Rate Review, the parties shall submit the issue of the appropriate rates (“arbitration issue”) to binding arbitration in accordance with the following provisions.

- ❑ The arbitration shall take place in Martinez, CA, or any other place which the parties and the arbitrators agree is reasonable.

- ❑ Either party (“Initiating Party”) may give notice of such party's demand for arbitration of such dispute to the other party ("Other Party"), stating in such notice the Initiating Party's appointment of an arbitrator to serve in such arbitration proceeding. The Other Party shall appoint a second arbitrator and notify the Initiating Party of such appointment within fourteen (14) days after receipt of the Initiating Party's notice of demand and appointment.
- ❑ Within ninety days after the Initiating Party's receipt of the Other Party's notice of appointment the arbitrators shall schedule and conduct a hearing at which time the parties shall present their evidence and make their arguments concerning the arbitration issue. The arbitrators shall render their decision in writing and make an award as to the arbitration issue within thirty (30) days after the conclusion of said hearing, or by a date otherwise mutually agreed upon by the parties. Said decision shall be final and binding upon the parties. In the event that said arbitrators cannot render a decision with which they each agree within said thirty (30) day period, they shall select a third arbitrator who shall, if s/he deems necessary, conduct another hearing which said hearing shall occur within thirty (30) days after the third arbitrator has been selected. At said hearing the parties may present their evidence as allowed and make their arguments concerning the arbitration issue. The third arbitrator shall render his/her decision in writing and make an award as to the arbitration issue within thirty (30) days after the conclusion of said hearing, or by a date otherwise mutually agreed upon by the parties. Said decision shall be final and binding upon the parties.
- ❑ In any arbitration proceeding conducted under this provision, the evidence which is submitted to the arbitrators and upon which the arbitrators may make their decision(s) shall only be the evidence which was submitted by the parties to the City as part of its Base Year Rate Review.
- ❑ Any award shall be a conclusive determination of the arbitration issue and shall be binding upon the parties and shall not be contested by either of them.
- ❑ Each party shall bear its own costs (including the fees and expenses of its appointed arbitrator and its respective attorneys) incurred in connection with the resolution of dispute under the provision, and each shall each bear one-half (½) of the fees and expenses of any third arbitrator.

[This page intentionally left blank.]

# Section III

## Interim Year Rate Setting Process

---



# Interim Year Rate Setting Process



Interim year rate adjustment requests are accepted in the three years between base years. The interim year process requires less information and preparation time, while still allowing fair and reasonable rate adjustments.

During interim years, beginning in 2014<sup>1</sup>, rates can be adjusted annually through application of ninety (90) percent of the prior year change in actual, not forecasted, Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose published by the Bureau of Labor Statistics in their Monthly Labor Review applied to both controllable costs and uncontrollable costs.

In addition, beginning in 2014, interim year rate increases in any given year are limited to four (4) percent. This cap is designed to benefit City ratepayers by stabilizing the size of annual interim rate changes in times of higher inflation.

This term adds a provision to allow either the City or AWS to request an extraordinary rate adjustment. This extraordinary rate adjustment will be subject to City review and City Council approval.

In each interim year, the franchise hauler is responsible for determining ninety (90) percent of the actual annual change in the CPI for the most recent 12-month period (August-to-August). This CPI annual change is applied to both controllable and uncontrollable costs of the franchise hauler.

Even if the interim-year adjustment would justify an increase in rates, the franchise hauler is not required to apply for the increase. This will help stabilize rate adjustments even when small increases might be warranted.

Special extraordinary adjustments are allowed outside of the annual schedules of the base year and interim year adjustments. Both the City and franchise hauler may initiate the extraordinary rate adjustment process. For these adjustments, the franchise hauler will provide necessary information and documentation so the City can make a judgment as to the reasonableness of such a rate adjustment. With City Council approval, an extraordinary adjustment can be made by the franchise hauler.

This extraordinary adjustment will only be allowed under the case where the hauler can demonstrate that a change in one of the cost line items specified in the Base Year Rate Change Application will exceed two (2) times the most recent annual change in the Consumer Price Index for the San Francisco-Oakland-San Jose published by the Bureau of Labor Statistics. The City cannot arbitrarily request a rate review outside the Base Year Process unless it has reason to believe the hauler has incurred an extraordinary cost adjustment.

<sup>1</sup> AWS has already submitted its interim year rate application for 2011. Year 2012 is a rate freeze year. Year 2013 is the next base year. Therefore, year 2014 is the next interim year.

**Exhibit III-1**, following this page, provides an overview of the interim year rate adjustment process. **Exhibit III-2** following Exhibit III-1 shows the timing of the interim year process.

The rate change process should begin four months prior to the beginning of the new calendar year and the rate change application should be submitted to the City a minimum of three months prior to the implementation of the rates. For rate changes effective January 1, the application should be submitted to the City by the previous August 31st. Certain key products are noted in the exhibit by circled letters. Following these exhibits is a description of each step in the interim year process.

### Interim Year Rate Change Process Overview

Steps	Responsibility	Tasks	Document(s)/Deliverable(s)
1. Preparation and Submission of Rate Change Application	Franchise Hauler	<ul style="list-style-type: none"> <li>a. Prepare an Interim Year Rate Change Application</li> <li>b. Submit Application to City</li> </ul>	<ul style="list-style-type: none"> <li>● Rate Application</li> </ul>
2. Preparation of Interim Year Rate Change Worksheet and Draft Report	City	<ul style="list-style-type: none"> <li>a. Identify Consumer Price Index</li> <li>b. Complete Interim Year Rate Change Worksheet and Determine New Rates</li> <li>c. Request Additional Data and Clarification, if Necessary</li> <li>d. Prepare Draft Report</li> </ul>	<ul style="list-style-type: none"> <li>● Interim Year Rate Change Worksheet</li> <li>● Additional Documents and Information</li> <li>● Draft Report</li> </ul>
3. Review and Response to City Analysis and Calculations	Franchise Hauler	<ul style="list-style-type: none"> <li>a. Review City Staff Calculations and Analysis</li> <li>b. Prepare and Submit Response</li> </ul>	<ul style="list-style-type: none"> <li>● Written Response to Draft Report</li> </ul>
4. Preparation of Final Report	City	<ul style="list-style-type: none"> <li>a. Incorporate the Franchise Hauler's Comments in Final Report</li> <li>b. Prepare Final Report</li> </ul>	<ul style="list-style-type: none"> <li>● Final Report</li> </ul>
5. Presentation of Final Report to the City Council	City	<ul style="list-style-type: none"> <li>a. Distribute Final Report to City Council</li> <li>b. Obtain City Council Approval</li> </ul>	<ul style="list-style-type: none"> <li>● Notice to City Council</li> <li>● Approve Resolution</li> </ul>
6. Implementation of New Rates	Franchise Hauler	<ul style="list-style-type: none"> <li>a. Notify Customers</li> <li>b. Implement Rate Change</li> </ul>	<ul style="list-style-type: none"> <li>● Notification to Customer</li> <li>● Rate Schedule</li> </ul>

### Timing of Interim Year Rate Change Process

Step	Preparation	Formal Review Process			Implement
	August	September	October	November	December
1. Preparation and Submission of Rate Change Application	<b>Step 1</b>				
2. Preparation of Interim Year Rate Change Worksheet and Draft Report		<b>Step 2</b>			
3. Review and Response to City Analysis and Calculations			<b>Step 3</b>		
4. Preparation of Final Report				<b>St 4</b>	
5. Presentation of Final Report to the City Council				<b>Step 5</b>	
6. Implementation of New Rates					<b>Step 6</b>

<b>LEGEND</b>	<p>A. Submit Rate Change Application to City</p> <p>B. Final Report</p> <p>C. Application Approved</p> <p>D. Customer Notification</p> <p>E. New Rates Implemented on January 1</p>
---------------	---

## Preparation and Submission of Rate Change Application



Responsibility:	Franchise Hauler
Timing:	Completed four months prior to the implementation of the new rates
Tasks:	<ul style="list-style-type: none"> <li>a. Prepare an Interim Year Rate Change Application</li> <li>b. Submit Application to City</li> </ul>

### Description of Tasks

#### Overview

During this first step, the franchise hauler prepares the *Interim Year Rate Change Application*. Blank Forms are provided in **Appendix B, Exhibit B-3**. Please note that data included in these forms are provided for illustrative purposes only and are not intended to reflect actual operating or financial conditions.

Similar to the base year forms, these forms identify all areas to be completed with double outlined boxes. If data are to be entered in the form, the box has no shading. If a calculation is required, the box has light shading.

#### a. Prepare an Interim Year Rate Change Application

##### 1. Summarize Rate Change Requested

The first task in this step is to summarize the percent residential rate change requested on line 1, page 1 of the application. This percent is obtained from line 11, on page 2, of the application.

##### 2. Apply Rate Change to Rate Schedule

The franchise hauler applies the percent residential rate change requested, as an adjustment factor, to the current rate structure. The same percent change is applied to each of the six rate categories.

The adjustment factor which is multiplied by each of the current monthly rates is equal as follows: Line 1, in percent, converted to its number equivalent, and this term then added to 1.00. For example,  $2.05\% = 0.0205$ ,  $0.0205 + 1.00 = 1.0205$  (Adjustment Factor).

**3. Provide Most Recent Twelve Month CPI Data**

The franchise hauler identifies the most recent actual, August-to-August, twelve month CPI data. These data are obtained from the U.S. Department of Labor, Bureau of Labor Statistics. The data series are “All Urban Consumers; Not Seasonally Adjusted; San Francisco-Oakland-San Jose, California; 1982-1984=100”.

**4. Calculate Percentage Change in CPI**

The franchise hauler calculates the percentage change in CPI for the most recent actual, August-to-August, 12-month period. The percentage change is determined as follows:  $(\text{CPI data in Line 9} - \text{CPI data in Line 8}) / \text{CPI data in Line 8}$ .

The product of this equation, rounded to the nearest two decimal places, is entered on line 10.

**5. Calculate Ninety (90) Percent Change in CPI, but Not to Exceed Four (4) Percent**

The franchise hauler calculates ninety (90) percent change in the CPI. This change is determined as follows:  $0.90 \times \text{Line 10}$ .

The product of this equation, again rounded to the nearest two decimal places, is entered on Line 1, page 1, of the application, as long as it does not exceed four (4) percent. If this calculation exceeds four percent, then four (4) percent is entered on Line 1.

**6. Certify Application**

An authorized representative from the franchise hauler should sign and date the application. This signature provides certification by the franchise hauler that the application is complete, accurate, and consistent with the instructions provided in this manual.

At this point, the application should be complete. The application is submitted to the City for review and calculation of the rate change, as described in the following subsection.

**b. Submit Application to City**

The completed application is sent to the City for review and calculation of new rates. The franchise hauler’s application does not include any new rates; these are determined by the City during Step 2.

## Preparation of Interim Year Rate Change Worksheet and Draft Report



Responsibility:	City
Timing:	Completed within three weeks of receiving a completed Interim Year Rate Change Application
Tasks:	<ol style="list-style-type: none"> <li>Identify Appropriate Consumer Price Index</li> <li>Complete Interim Year Rate Change Worksheet and Determine New Rates</li> <li>Prepare Draft Report and Recommendations</li> </ol>

### Description of Tasks

#### Overview

City staff use the franchise hauler's existing residential rates, by category; verify changes in the Consumer Price Index; and then calculate the rate change and new rates for the next interim year. The Interim Year Rate Change Application is used to complete this step.

#### a. Identify Appropriate Consumer Price Index (CPI)

Ninety (90) percent of the annual, August-to-August change in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (CPI) (All Items) provides the factor for determining new rates during interim years. The interim year rate increase in any given year shall not exceed four (4) percent. The actual change in this index during the twelve months prior to the date the interim year rate change application is submitted to the City is used for this methodology. The CPI information is available from the United States Department of Labor, Bureau of Labor Statistics, and is prepared monthly.

#### b. Complete Interim Year Rate Change Worksheet and Determine New Rates

##### 1. Verify Percentage Change in CPI

City staff prepare their own Interim Year Rate Change calculation of new residential rates during this task. This task requires current rates, per customer, per month. This task also requires the Bay Area Consumer Price Index information collected in Task a.

The application form is used to calculate the new residential rates. Detailed instructions on how to complete this application are provided in Step 1 of this Chapter.

##### 2. Verify Ninety (90) Percent Change in CPI, but Not to Exceed Four (4) Percent

Again, the application form is used to calculate the new residential rates and detailed instructions on how to complete this application are provided in Step 1 of this Chapter.

### 3. Verify New Rates

City staff verify new rates by applying the percent residential rate change verified in the above step, as an adjustment factor, to the current rate structure.

#### c. Prepare Draft Report and Recommendations

City staff prepares a high level draft report with recommendations of new rates for City Council consideration. This report should be brief and include the following sections:

Executive Summary

This is a summary of the review process and includes a chart showing current and proposed rates, and the recommended rate change.

Background

This section of the report provides a brief overview of the rate change process and discussion of any significant historical issues.

Analysis and Discussion of Issues

This section includes a review of the analysis work completed by City staff. This section also includes a discussion of an identification of the ninety (90) percent change in CPI used by the City.

Recommendation

City staff presents its recommendation regarding any change in rates in this section.

Attachments

Attachments to the report would include:

- Rate change application
- Revised rate schedule.

After the draft report and recommendations have been prepared, the document should be submitted to the franchise hauler for comment and review.

## Review and Response to City Analysis and Calculations

### Step 3 Interim Year

Responsibility:	Franchise Hauler
Timing:	Completed within three weeks of receiving the completed interim year draft report from the City
Tasks:	<ol style="list-style-type: none"> <li>Review City Staff Calculations and Analysis</li> <li>Prepare and Submit Response</li> </ol>

### Description of Tasks

#### Overview

The franchise hauler reviews the draft report to ensure that any calculations and analysis completed by City staff are fair, reasonable, and justified.

#### a. Review City Staff Calculations and Analysis

The franchise hauler reviews the draft report to ensure the following:

- Correct data are included
- City staff analysis is accurate and fair
- Rate changes are reasonable and acceptable.

#### b. Prepare and Submit Response

A written response to the draft report is prepared. The response may cover one or more of the following topics:

- Data discrepancies in any of the areas noted in the prior task
- Clarification for the City or alternative analysis of the application
- Responses to the City's request for additional information.

## Preparation of Final Report and Recommendations



Responsibility:	City
Timing:	Conducted within two weeks of receiving comments from the franchise hauler
Tasks:	<ol style="list-style-type: none"><li>Incorporate the Franchise Hauler's Comments in Final Report</li><li>Prepare Final Report and Recommendations</li></ol>

### Description of Tasks

#### Overview

The City prepares the Final Report and Recommendations incorporating comments from the franchise hauler, as appropriate.

#### a. Incorporate the Franchise Hauler's Comments in Final Report and Recommendations

Any comments or issues raised during the franchise hauler's review of the draft report are addressed during this task. If necessary, meetings should be conducted with representatives from the City and the franchise hauler. Final solutions to outstanding issues should be included in the report.

#### b. Prepare Final Report and Recommendations

After final comments from the franchise hauler have been considered, the Final Report and Recommendations are prepared. A copy of the Final Report and Recommendations should be submitted to the franchise hauler.

## Presentation of Final Report and Recommendations to the City Council



Responsibility:	City
Timing:	Completed within ninety days of receiving a completed Interim Year Rate Change Application
Tasks:	<ol style="list-style-type: none"> <li>Distribute Final Report to City Council</li> <li>Obtain City Council Approval</li> </ol>

### Description of Tasks

#### Overview

In this step, the Final Report and Recommendations are submitted to the City Council for review, comment, and approval, during this step.

#### a. Distribute Final Report and Recommendations to City Council

The Final Report and Recommendations are included as an agenda item for City Council consideration at a regular City Council meeting. This item may be placed on either the regular or consent calendar. Copies of the report are provided to the City Clerk for distribution with other agenda materials. The Clerk of the City should be notified four weeks prior to the meeting at which the rate change will be considered and reports will be provided two weeks prior to the meeting.

#### b. Obtain City Council Approval

City Council members will review the report and proposed rate changes. If the City Council agrees with the recommendations of City staff, the report and rates should be approved. If the City Council does not agree with the recommendations, the report is returned to City staff for additional analysis. If the report and rates are not approved, the City Council should be asked to specifically identify deficiencies.

## Implementation of New Rates



Responsibility:	Franchise Hauler
Timing:	Conducted following the approval of the new rates by the City Council
Tasks:	<ol style="list-style-type: none"><li>a. Notify Customers</li><li>b. Implement Rate Change</li></ol>

### Description of Tasks

#### Overview

After new rates have been approved by City Council, the final step in the process is to implement the new rates.

#### a. Notify Customers

After the report is approved, a notification of a rate change should be mailed to all customers.

#### b. Implement Rate Change

During this final task, the franchise hauler enters the new rates into their billing system and includes the new rates on the next appropriate customer invoice. If a rate change occurs during the middle of a billing cycle, overbilled or underbilled amounts are calculated and adjusted in the next billing cycle.

# Appendix A

## Letters of Rate Setting Recommendations

---





January 2000

Ms. Patty Friesen  
Solid Waste/Recycling Manager  
City of Martinez  
525 Henrietta Street  
Martinez, California 94553

*Regarding:*    **Solid Waste Rate Review of Allied Waste Industries, Inc., dba  
Pleasant Hill Bayshore Disposal, Inc.**

Dear Ms. Friesen:

NewPoint Group, Inc. (NewPoint Group) is pleased to present the City of Martinez (City) with results of our independent rate review of your refuse collection hauler, Allied Waste Industries, Inc., dba Pleasant Hill Bayshore Disposal, Inc. (PHBD). This report is intended to complete the Phase II rate review work required under our June 29, 1999 agreement with the City. This letter report summarizes results of our review and is organized as follows:

- A. Project Background*
- B. Scope of Services Performed*
- C. Survey of Other Jurisdictions*
- D. NewPoint Group Rate Setting Recommendations*
- E. Rate Impacts of Proposed Year 2000 Programs*
- F. Conclusions and Recommended Rate Adjustment.*

Available under separate cover is the “*Solid Waste Rate Setting Process and Methodology Manual for Solid Waste Charges*,” also dated January 2000. This manual is a comprehensive, step-by-step guide for the City to use in refuse collection rate setting. The manual documents key City goals and policies; outlines roles, responsibilities, and timelines for submitting applications for rate changes; and provides a format and procedures for submitting rate applications. The manual, along with this letter of rate setting recommendations, shall be incorporated by reference into the existing franchise agreement between the City and PHBD. This rate review was conducted consistent with the methodology provided in the manual.

## A. Project Background

In July of 1992, Martinez Sanitary Service sold its business to Pleasant Hill Bayshore Disposal, Inc., at the time a subsidiary of Browning-Ferris Industries (BFI). The current “*Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore, Inc. (Solid Waste)*” (Franchise Agreement) went into effect on March 22, 1993. The City of Martinez and PHBD also have a franchise agreement for residential recycling, dated March 22, 1993.

Allied Waste Industries, Inc. (Allied) recently acquired the City of Martinez franchise from Browning Ferris Industries, Inc. as part of a swap of assets that was approved by the Martinez City Council on March 3, 1999. The assets, valued at \$120 million, included franchises in several other Contra Costa County jurisdictions and the Keller Canyon Landfill. The other jurisdictions also had to approve the asset swap. On March 8, 1999, Allied Waste Industries subsequently bought BFI to create the second largest waste management company in the world. This merger received final approval by the U.S. Justice Department in August of 1999.

Allied provides service to a number of other neighboring jurisdictions in addition to the City. Allied serves the following areas, most of which are located in Contra Costa County:

- ❑ Antioch
- ❑ Benicia
- ❑ Castro Valley (Recycling)
- ❑ Clayton
- ❑ Pleasant Hill
- ❑ Unincorporated Contra Costa County
- ❑ Central Contra Costa Solid Waste Authority (CCCSWA) areas, including:
  - Danville
  - Lafayette
  - Moraga
  - Orinda
  - Walnut Creek
  - Unincorporated Contra Costa County.

PHBD has an exclusive franchise with the City for residential, commercial, and industrial solid waste collection that extends through January 4, 2000. Under terms of this franchise, PHBD has been granted a renewal option to extend the franchise with the City for ten (10) years, beginning January 5, 2000 and ending January 4, 2010. On April 1, 1999, Bruen & Gordon submitted a letter to the City on behalf of PHBD that indicates its intent to exercise this renewal option. The renewal option may be exercised only if PHBD is in compliance with the terms and conditions of the Franchise Agreement, both at the time the option was exercised (i.e., on April 1, 1999) and on January 5, 2000.

The City has the right to own and/or control the collection, disposal, and diversion of all waste generated in the City. Currently, all waste collected from the City is disposed of at the Contra Costa Transfer and Recovery Station, a related party to PHBD. Waste is then transferred from the Contra Costa Transfer and Recovery Station to Keller Canyon Landfill, also a related party to PHBD.

This is the first time that PHBD shall be rate regulated by the City. Under terms of the Franchise Agreement, the City intended to work with PHBD to agree upon a new rate review process prior to September 20, 1993. The City and PHBD were not able to agree upon a rate review process until this year.

**Table 1** on the following page shows that since 1993, residential rates have decreased between 8.5 and 16.6 percent depending upon the service type. Note that 64 gallon and 96 gallon service was not available in 1993. Table 1 also shows that since 1993 commercial rates decreased 11.3 percent for the 2 and 3 cubic yard bin picked up twice per week and the 1-32 gallon can picked up one, two, and three times per week. Rate decreases were primarily the result of tipping fee reductions at the Contra Costa Transfer and Recovery Station.

Prior to initiating this rate review the City and PHBD discussed the City's interest in implementing the following new programs and service changes in an effort to better meet State Assembly Bill 939 (AB 939) waste diversion objectives:

- ❑ A new yardwaste program
- ❑ A new mixed paper recycling program
- ❑ Automation of refuse and yardwaste collection operations
- ❑ A new commercial recycling franchise.

**Table 1**  
**City of Martinez**  
**Six-Year Rate Decrease Between 1993 and 1999**

<b>Service</b>	<b>Rate as of March 22, 1993</b>	<b>Rate as of November 30, 1999</b>	<b>Percent Change</b>
<i>Residential b)</i>			
10 gallon can	\$14.70	\$13.36	-9.1%
20 gallon can	\$16.70	\$14.02	-16.1%
32 gallon can	\$23.10	\$20.04	<b>-13.3%<sup>a</sup></b>
64 gallon cart	N/A	\$22.39	N/A
96 gallon cart	N/A	\$47.02	N/A
2, 32 gallon cans	\$48.10	\$44.02	-8.5%
32 gallon can (senior)	\$18.40	\$15.34	-16.6%
<i>Commercial</i>			
1-2 cubic yard bin/2 per week	\$340.10	\$301.77	-11.3%
1-3 cubic yard bin/2 per week	\$398.70	\$353.77	-11.3%
<i>Commercial</i>			
1, 32 gallon can/1 per week	\$23.20	\$20.59	-11.3%
1, 32 gallon can/2 per week	\$46.10	\$40.90	-11.3%
1, 32 gallon can/3 per week	\$69.75	\$61.89	-11.3%

<sup>a</sup>Approximately 76 percent of residents subscribe to 32-gallon service.

<sup>b</sup>Does not include separate yardwaste services, but does include recycling services.

## **B. Scope of Services Performed**

NewPoint Group completed the following eight (8) tasks in conducting this rate review:

1. Requested and reviewed PHBD financial and operational data for calendar years 1997, 1998, and year-to-date 1999 (i.e., January 1 to May 31, 1999) to determine the revenues and costs associated with providing refuse collection services
2. Interviewed selected City staff and PHBD management level personnel to develop detailed assumptions for projected year 2000 financial and operational data
3. Assessed the validity of labor, equipment, depreciation, disposal, and general and administrative costs
4. Prepared a formal template for PHBD to submit new proposed yardwaste and mixed paper recycling program costs
5. Compared PHBD profitability with waste management industry norms
6. Prepared a detailed financial model
7. Conducted a rate survey of collection services in neighboring communities
8. Facilitated numerous structured rate discussion meetings with the City and hauler.

NewPoint Group did not conduct an audit of PHBD financial information nor did we perform detailed audit testing of financial information provided by PHBD. Rather, our rate review was intended to review PHBD financial information for reasonableness based on industry norms and our experience in the waste management industry. The review was conducted in conjunction with City policies and goals provided in the rate-setting manual.

PHBD has indicated that they would like to keep certain revenue and cost information confidential. Thus, this report does not reveal detailed financial information that could compromise the competitive position of PHBD. Rather, financial information in this report has been presented in more qualitative and general terms. Information provided for this study was reconciled to audited information, therefore we did not conduct detailed audit testing of revenue and expense information provided by PHBD. A separate unpublished detailed financial model and analysis was prepared to determine the rate impacts of our recommendations. This analysis was confidentially verbally shared with City management and

PHBD staff. In future base year rate reviews the hauler will be required to provide audited financial statements for the most recently completed year and to reconcile information provided in the rate application to these audited statements.

**C. Survey of Other Jurisdictions**

We did not use results of our rate survey as a basis for developing rate-setting recommendations but rather only as a general indication of how the City compares with similar neighboring jurisdictions. Comparative rate surveys generally should be used with great caution because jurisdictions usually have:

- Different rate histories and legacies
- Different cost-of-service and operation impacts
- Different economies-of-scale
- Different frequency distributions of the customer base
- Different rate structure approaches (e.g., variable can service)
- Different rate setting methodologies.

**Attachment 1** summarizes results of our survey of the following ten (10) neighboring jurisdictions:

1. Antioch	6. Moraga (CCCSWA)
2. Clayton	7. Orinda (CCCSWA)
3. Concord	8. Pleasant Hill
4. Danville (CCCSWA)	9. Walnut Creek (CCCSWA)
5. Lafayette (CCCSWA)	10. Unincorporated Contra Costa County (CCCSWA)

These jurisdictions were selected based on their proximity to the City of Martinez. We compared average and median rates for residential service, 1, 2, 3, 4, and 6-cubic yard bin commercial service (both one and two pickups per week), and 32, 64, and 96-gallon commercial can service (one, two and three pickups per week).

For rate comparisons we generally place more weight on comparisons to median rates rather than average rates simply because one large or small rate in the survey can significantly skew an average. In this survey the trends for the median comparisons were similar to the trends for the average comparisons.

- Results of the residential rate survey were mixed, but generally indicated that City rates were higher than the average and median rates of the ten comparative jurisdictions. Residential rates were between 12.2 percent and 53.3 percent higher than the median for one 20, 32, and 96-gallon container service and two 32-gallon container service. For 64-gallon container service, City rates were 8.2 percent lower than the median. For the most frequently used service, the 32-gallon container, the City rate was 38.5 percent higher than the median. The rates for 32-gallon senior service were just 1.2 percent above the median, though only two of the ten jurisdictions offered this service.

Part of what is contributing to these unfavorable comparisons is that six of the ten jurisdictions surveyed are part of the Central Contra Costa Solid Waste Authority (CCCSWA). CCCSWA areas use a *linear rate structure* where for example 64-gallon container rates are twice the 32-gallon container rates. A linear rate structure is designed to encourage customers to generate less refuse. This rate structure penalizes large quantity generators by charging them high rates and provides incentives to lower quantity generators by charging them low rates. The City does not currently employ a linear rate structure, which partly explains why City rates for smaller can sizes are higher than the average of the ten other jurisdictions.

If City rates are compared with residential rates of the four non-CCCSWA areas (Antioch, Clayton, Concord, and Pleasant Hill) only (i.e., those that do not have a linear can rate structure), the 20 and 32-gallon container rates are below the median rate while the 64 gallon container rate and the 2-32 gallon container rate approximate the median rate.

- Depending upon the size and frequency of commercial bin service, rates in Martinez are between 27.7 percent below and 36.5 percent above the median rates of those surveyed. In general, for smaller bin sizes, Martinez rates are greater than the average and median rates of the ten jurisdictions surveyed, with the greatest disparity in the 3 cubic yard bin service. The City's 3 cubic yard bin rate picked up once per week is 36.1 percent above

the average and 36.5 percent above the median rate. For larger bin sizes, City rates are generally at or below the average and median rates. Additionally, City rates for two pickups per week are no more than two percent greater than the median rates of those surveyed. Similar trends are observed in comparisons with non-CCCSWA areas.

- ❑ In almost all cases rates for Martinez commercial can service are above the average and median rates. In general, for smaller bin sizes, Martinez rates are greater than the average and median rates of the ten jurisdictions surveyed, with the greatest disparity in the 1-32 gallon can service at 54.8 percent above the median. The City's 1-64 gallon commercial can rates picked up once, twice, or three times per week are 1.8 to 16.5 percent higher than the median. The City's 1-96 gallon commercial can rates picked up once, twice, or three times per week are 2.3 to 11.4 percent higher than the median. Generally, similar trends are observed in comparisons with non-CCCSWA areas, with the exception of 32-gallon container rates. In all cases, 32-gallon container rates were less than the median rates of non-CCCSWA areas.

#### **D. NewPoint Group Rate Setting Recommendations**

This section describes rate-setting recommendations for this first base year rate change application. NewPoint Group worked with PHBD management to identify sufficient revenue and cost information so that PHBD could prepare its first base year rate change application. PHBD was ultimately responsible for the financial information provided. Following our review of this financial information, NewPoint Group recommends that the City perform the ten (10) rate-setting adjustments identified in **Table 2** on the following page and that PHBD shall comply with these recommendations.

In conjunction with these recommended rate setting adjustments the proposed new rate-setting process and methodology shall require a formal "base year" rate review every four years in which the hauler submits a rate application and the City reviews revenue and cost information in detail. During "interim years", the hauler may be allowed an increase in rates by an inflation factor, depending upon the year of the franchise and the financial results occurring in base years. This factor is the most recent annual change in the Consumer Price Index (CPI) applied to the hauler's controllable costs (i.e., all costs other than tipping fees and regulatory fees).

**Table 2**  
**Recommended Rate Setting Adjustments**  
**For Projected Year 2000**

Number	Description of Recommendation
1	Establish Allowable, Pass-Through, and Non-Allowable Cost Categories
2	Establish Allowable Profit Levels
3	Cap General and Administrative Costs
4	Cap Tipping Fees With Profit
5	Disallow Amortization of Franchise Purchases
6	Disallow Income Tax Expense
7	Disallow Interest Expense on All Historical Operations
8	Allow Interest Expense on Year 2000 Capital Outlays
9	Pass-Through Franchise Fees
10	Use an Escalation Factor on Year 2000 Costs

The remainder of this section describes each of these recommendations in detail. To maintain confidentiality, rather than provide the dollar value impact for each recommendation we rate the impact either as a significant, moderate, or minor increase or decrease to the revenue requirement, where significant is greater than \$150,000 per year, moderate is between \$75,000 and \$150,000 per year, and minor is less than \$75,000 per year.

**1. Establish Allowable, Pass-through, and Non-allowable Cost Categories**

In setting rates, we recommend that the City adopt an operating ratio methodology that identifies allowable, pass-through, and non-allowable costs. When a cost is said to be “allowable” that cost is allowed to earn a profit, the component of which is included in the rates. Allowable costs are generally those costs that are integral to the hauler’s operation and/or are associated with actual significant activity performed by the hauler. The majority of allowable costs are direct labor, trucking/hauling costs, corporate and local general and administrative costs, trucking and equipment costs, and equipment depreciation.

Pass-through costs are those costs that a profit is not applied to, but will be passed within the rates because they represent costs that must be reimbursed. An example of a pass-through cost would be a franchise fee paid by the hauler.

Certain costs are considered “non-allowable” for rate setting because they: (1) are not associated with the core business, (2) are included implicitly in the profit level allowed by the City (e.g., interest expense), (3) would unnecessarily complicate rate regulation (e.g., income taxes), or (4) do not provide a direct benefit to the ratepayer.

*Overall impact on revenue requirement = significant decrease.*

## 2. Establish Allowable Profit Levels

We recommend that the City use the operating ratio (OR) methodology for determining profit to the hauler. The OR is frequently used in the waste management industry as a basis for determining profit. The OR is based on the following formula:

### Definition of OR

---

$$\text{OR} = \frac{\text{Operating Expenses}}{\text{Operating Expenses} + \text{Profit}}$$

---

The OR is frequently expressed on an earnings before interest and taxes (EBIT) basis (i.e., expenses do not include interest and taxes) and an earnings before taxes (EBT) basis (i.e., expenses do not include taxes). A lower OR corresponds to a higher profit level. As an example, a 90 percent OR is equivalent to an 11.1 percent return on operating expenses. We recommend the City use an OR on an EBIT basis.

Profit methods for the solid waste management industry other than the OR are harder to determine, or don’t compensate the operator sufficiently. For example, a return on assets profit methodology might encourage an operator to over-invest in assets, or alternatively, over time might cause an operator’s profits to decrease as book assets are depreciated. A return on equity calculation may be problematic as limited comparable benchmark data exists, determining equity contributions is difficult, and returns can be insufficient for less capitalized companies.

For this first base year rate review, we recommend that the City set the OR at 90 percent EBIT. For subsequent base years, we recommended the City adopt either one of the following two OR methodology options:

*Option A Base Case Operating Ratio Methodology*

*Option B Incentive/Risk-Based Operating Ratio Methodology.*

All references to the OR in the Option A and B descriptions below are for an OR on an earnings before interest and tax basis (EBIT).

Subsequent to our recommending these two options, PHBD selected Option B and we concur that this is the best option for this particular City and hauler because it potentially provides the most hauler financial incentives with the least potential ratepayer costs.

### **Option A - Base Case Operating Ratio Methodology**

In this methodology, the OR during base years would range from 88 percent to 92 percent, with a target of 90 percent. In the first base year, the OR would be set at 90 percent. In each succeeding base year (occurring once every four years), the OR could range from 88 to 92 percent without a rate change, which would help stabilize rate changes and afford the hauler an incentive to reduce costs. In any succeeding base year, if the hauler earns an OR outside this 88 to 92 percent range, then the rates would be reset at a 90 percent OR in that base year. The methodology is summarized below:

#### **Base Case OR Method**

---

Scenario (1)	88% <= OR <= 92%	No rate change
Scenario (2)	OR < 88%	OR set to 90% (with rate decrease)
Scenario (3)	OR > 92%	OR set to 90% (with rate increase)

---

This OR methodology would allow the hauler some incentive to operate more efficiently because the hauler could reduce the first year OR from 90 percent to 88 percent by the next base year and not incur a rate decrease at that time. However, there is less incentive for the hauler to continue efficiency gains beyond an 88 percent OR because the OR would be reset to 90 percent during the next base year. Alternatively, the hauler would not bear significant risk that its profit

level would decrease beyond a 92 percent OR because during base years the OR would be reset to 90 percent.

From a ratepayer perspective this method brackets the OR in a range so that the hauler would not receive excessive profits over the course of a long-term contract. Likewise, the method offers rate stability because should the OR fall inside the 88 to 92 percent range during a base year, there would be no rate change.

During the three years between each base year the hauler would be entitled to submit an application to the City for an interim year rate change on all residential, commercial, and industrial services. This rate change would equal a Consumer Price Index (CPI) increase on the hauler's controllable costs (all costs other than tipping fees and regulatory fees) and any projected change in uncontrollable costs (tipping fees and regulatory fees). Assuming that the City and hauler have a 10-year franchise, there would be a total of potentially eight years for interim year rate changes.

The following scenario illustrates the potential impacts of the interim year process on the newly proposed July 1, 2000 residential 32-gallon container rates of \$21.04 per customer, per month. Currently, controllable costs represent approximately 74 percent of the hauler's total costs. Using an estimated CPI of 2.88 percent (see recommendation #10), rates would increase by 2.13 percent (i.e., 74 percent multiplied by 2.88 percent), without any changes in tipping fees and regulatory fees. This 2.13 percent rate change represents a \$0.45 per customer, per month, rate increase. Over the ten-year franchise term, proposed July 1, 2000 32-gallon rates could increase by an estimated \$3.87 per customer, per month, to \$24.91 per customer, per month. This analysis assumes no rate changes resulting from the base year rate setting process, no change in tipping fees and regulatory fees, and a constant CPI of 2.88 percent, in each of the eight interim years over the ten-year period.

### **Option B - Incentive/Risk-Based Operating Ratio Methodology**

Traditional OR approaches can provide the hauler with less incentive to operate efficiently because as the hauler reduces its costs by becoming more efficient, the hauler's profit also declines because the OR is applied to its allowable costs (allowable costs divided by the OR equals allowable profits). In other words as allowable costs decrease, so do allowable profits. Our incentive/risk-based operating ratio methodology balances the ability of the hauler to benefit from efficiencies through increased profits with the risk that the hauler's profitability could decrease far below the 90 percent OR industry standard.

The proposed incentive/risk-based operating ratio methodology uses the first year baseline 90 percent OR (as in the base case methodology). However, this method provides the hauler with an incentive to operate more efficiently than in the base case by allowing the OR to drop to 85 percent without a rate adjustment in base years. Should the OR fall below 85 percent in a given base year, the OR would be reestablished at 87 percent for that year.

As a benefit to the ratepayer and to facilitate rate stability, should the OR increase in a given base year beyond the first year 90 percent OR, it will not be lowered back to a baseline level (e.g., 90 percent) as required with the base case OR methodology. Thus, though the hauler has some control over its profitability it also entirely bares the risk for poor financial/operational performance. This risk-sharing OR methodology also results in greater rate stability during base years because the only potential rate change that could occur would be a rate reduction should the OR decrease below 85 percent. This methodology is illustrated in **Figure 1**, on the following page.

As in the base case, during the three years between each base year the hauler would be entitled to submit an application to the City for an interim year rate change on residential, commercial, and industrial services. This rate change would equal a Consumer Price Index (CPI) increase on the hauler's controllable costs (all costs other than tipping fees and regulatory fees) and any projected change in uncontrollable costs (tipping fees and regulatory fees). However as shown in Figure 1, the amount of the CPI on controllable costs would vary based on a sliding scale in years 5 and 6 (repeating in years 9 and 10) depending upon the OR level that occurred in the base year 4 (repeating in year 8).

As an example, in year 5 if the OR equals 85 percent, the hauler would receive 50 percent of the CPI on its controllable costs in year 5, 75 percent of the CPI on its controllable costs in year 6, returning to 100 percent of its controllable costs in year 7. This sliding scale is designed to control the level of profit such that it does not fall below an 85 percent OR.

The Incentive/Risk-Based Operating Ratio Methodology benefits the City ratepayers by allowing four lower interim year CPI increases than does the base case operating ratio methodology. The Incentive/Risk-Based Operating Ratio Methodology also benefits City ratepayers by never allowing a rate increase in base years four and eight.

**Table 3**, on page 15 shows three scenarios of potential 32-gallon rate CPI increases resulting from using the incentive/risk-based operating ratio methodology. In contrast to the base case, the \$3.87 per customer, per month, figure represents a ceiling potential estimated increase based on the full estimated CPI applied to controllable costs for all eight years. This scenario would occur should the hauler operate at an OR equal to or above 90 percent during both base years. Alternatively, if the OR was as low as 85 percent in both base years 4 and 8, the sliding scale CPI would reduce the estimated increase to \$3.10 per customer, per month, or the floor estimated

**Figure 1**  
**City of Martinez**  
**Proposed Incentive/Risk-Based Operating Ratio Methodology**  
Percent of CPI Applied to Allied Controllable Costs During Each Year of 10 Year Franchise

CPI (%)	Year												
	0	1	2	3	4	5	6	7	8	9	10		
	Base	Interim	Interim	Interim	Base	Result of Base Year Rate Review	Interim	Interim	Interim	Base	Result of Base Year Rate Review	Interim	Interim
100+													
99													
98													
97													
96													
94													
92													
91													
90	See All 90%												
89													
88													
87													
86													
85													
84													

**Notes:**

- 1) The Inlet Operating Ratio (IOR) is set at 90 percent in year zero.
- 2) The IOR is allowed to decrease to 85 percent in base year should PHBD be efficient.
- 3) If the IOR is equal to or above 85 percent in a base year, the in-rate change would occur during the base year.
- 4) If the IOR is below 85 percent in a base year, it could be reset to 87 percent. This would require a rate decrease. Thus, a rate decrease would be the only type of rate change possible during a base year.
- 5) The risk to PHBD is that the IOR could increase to above 90 percent (e.g., to 90) increase faster than allowed CPI.
- 6) For 6 of the 10 years, PHBD may be allowed some form of the CPI on controllable costs. Note that if the IOR is 86 percent in a base year, then the next interim year change would equal 86% of the CPI on controllable costs.
- 7) For 2 of the 10 years, PHBD will not be allowed a CPI because the same base year.
- 8) In the 3 interim years to base year, PHBD would be allowed 100 percent of the CPI on controllable costs.
- 9) In the 5 interim years to base year 4 and 8 base years, PHBD will be within an IOR of between 85 and 89 during that base year, the CPI would vary depending upon the IOR level (see above).
- 10) In the 5 interim years to base year 4 and 8 base years, PHBD had an IOR during that base year equal to or above 90, PHBD would be allowed 100 percent of the CPI on controllable costs.
- 11) In all cases the IOR refers to the CPI on controllable costs (i.e., all costs other than tipping fees and regulatory fees).
- 12) In all 8 interim years, PHBD would be allowed increases in "non-controllable costs" (i.e., tipping fees and regulatory fees).
- 13) In January 1, 2001, there would be the first full CPI increase on controllable costs.

potential rate increase under this methodology. The resulting 32-gallon container rate would equal \$24.14 per customer, per month. Finally, the scenario where the hauler operates at an 87 percent OR in each base year would result in a \$3.40 per customer, per month, increase to \$24.44 per customer, per month.

Numerous other potential scenarios exist. Those presented in Table 3 are provided simply to show the relationship of CPI increases to hypothetical OR levels. Again, this analysis assumes no rate changes resulting from the base year rate setting process, no change in tipping fees and regulatory fees, and a constant CPI of 2.88 percent, in each of the eight interim years over the ten-year period.

The City offered both methodologies A and B to its hauler. Method A could be characterized as more conservative than Method B, with Method B being more entrepreneurial. This hauler has indicated that they only want the Incentive/Risk-Based Operating Ratio Method B. We recommend that the City use Method B to regulate PHBD.

**Table 3**  
**Impact of CPI on Proposed Year 2000 Rates for Three**  
**Different Incentive/Risk-Based Operating Ratio Methodology Scenarios**  
(Rates shown are per customer, per month)

CPI Scenario	Proposed Year July 1, 2000 32-Gallon Rate	Estimated Rate Increase Based on Cumulative CPI on Controllable Costs	Estimated Year 2010 32-Gallon Rate
(1) Full CPI	\$21.04	\$3.87	\$24.91
(2) Partial CPI (i.e., 87% OR in Year 4 and 8)	\$21.04	\$3.40	\$24.44
(3) Partial CPI (i.e., 85% OR in Year 4 and 8)	\$21.04	\$3.10	\$24.14

Our recommended starting year 90 percent OR for either of the above methodologies is supported by recently up-to-date information for publicly held and privately held companies. As support for the OR we compared recent financial data available for publicly and privately held waste management companies. We reviewed financial information for the following eighteen (18) publicly traded companies between 1994 and 1998:

- |   |   |
|---|---|
| <b>1. Allied Waste Industries, Inc.</b> | <b>10. Superior Services, Inc.</b>        |
| 2. American Waste Services              | 11. United Waste Systems                  |
| 3. Browning Ferris Industries           | 12. USA Waste Services                    |
| <b>4. Casella Waste Systems, Inc.</b>   | <b>13. Waste Connections, Inc.</b>        |
| 5. Laidlaw                              | <b>14. Waste Industries, Inc.</b>         |
| 6. Mid-American Waste Systems           | <b>15. Waste Management Inc.</b>          |
| 7. Philip Environmental                 | <b>16. Waste Management International</b> |
| <b>8. Republic Services, Inc.</b>       | 17. Western Waste Industries              |
| 9. Sanifill                             | 18. Waste Management Technologies.        |

Due to the recent significant acquisition and merger activity in the waste management industry, some of these companies are now part of other companies. Only the eight companies shown in bold are still in existence. As an example, USA Waste acquired Philip and Sanifill. Likewise, Allied Waste Industries acquired Laidlaw. Additionally, USA Waste Services merged with Waste Management Inc., and retained the name of Waste Management. And as indicated, Allied and BFI have merged, with BFI currently a subsidiary company. We believe however that using historic data for all of these companies represents the best available information for publicly held companies for the period of 1993 to 1998.

**Table 4**, on the next page, shows weighted average and median operating ratios on an EBIT (earnings before interest and tax) basis between 1993 and 1998. The data for this period indicates that the weighted average OR has ranged from 84 percent in 1994, to 95 percent in both 1997 and 1998. The median operating ratio ranged from 85 to 90 over the six-year period. The weighted average OR for the six-year period was 90 percent, while the median OR was 88 percent.

**Table 4**  
**Publicly-Held**  
**Waste Management Companies**  
**Weighted Average and Median Operating Ratios<sup>a</sup>**  
**(1993 to 1998)**

Year(s)	Number of Companies	Weighted Average Operating Ratio	Median Operating Ratio
1993	9	88%	86%
1994	15	84%	89%
1995	14	86%	85%
1996	11	91%	90%
1997	6	95%	86%
1998	8	95%	89%
1993 to 1998 <sup>b</sup>	18	<b>90%</b>	<b>88%</b>

<sup>a</sup> On an earnings before interest and tax basis (EBIT)

<sup>b</sup> Represents a total of 63 data points.

We also reviewed data published by Robert Morris & Associates (RMA). RMA publishes its “Annual Statement Studies” for an array of industries, including privately-held waste management companies. RMA data is for companies doing business as refuse systems (SIC Code 4953). These are systems “primarily engaged in the collection and disposal of refuse by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials.” These data “do not include companies primarily engaged in collecting and transporting refuse without disposal.” As shown in **Table 5**, on the following page, the operating ratio, on an EBIT basis, of over 271 companies surveyed in each of the five years from 1993 to 1997, ranged from 90.2 to 92.7 percent. Data for 1998 were not available.

Based on data available for publicly and privately held companies, our recommendation for the City is to use a first base year OR on an EBIT basis of 90 percent.

*Overall impact on revenue requirement = significant decrease.*

**Table 5**  
**Robert Morris & Associates**  
**Operating Ratios<sup>a</sup>**  
**(1993 to 1997)**

<b>Year</b>	<b>Number of Companies</b>	<b>Operating Ratio</b>
1993	313	<b>92.7%</b>
1994	300	90.7%
1995	325	<b>90.2%</b>
1996	304	90.7%
1997	271	91.1%

<sup>a</sup> For SIC Code 4953, Refuse Systems, on an earnings before interest and tax basis (EBIT).

### **3. Cap General and Administrative Costs**

Rather than consider corporate and local general and administrative (G&A) costs separately, we aggregated the two, and evaluated the reasonableness of total G&A costs. The combination of corporate G&A and local G&A proposed by PHBD is within a reasonable level.

From NewPoint Group's database on publicly traded hauling companies between 1993 and 1998, annual G&A ranged from 11.3 to 13.6 percent of total revenues on a weighted average basis, with the weighted average for the six-year period equal to 12.5 percent of total revenues. We recommend that the City use this 12.5 percent average as a cap for the combination of corporate and local G&A in the future.

*Overall impact on revenue requirement = none.*

#### 4. Cap Tipping Fees with Profit

The current effective tipping fee charged to City customers is \$53.62 per ton for waste flowing through the Contra Costa Transfer and Recovery Station to Keller Canyon Landfill. Other comparative “market” tipping fees for neighboring transfer stations include the following:

- ❑ Pittsburg Transfer Station (to Potrero Hills Landfill) = \$48 per ton for self-haul refuse
- ❑ Contra Costa Transfer and Recovery Station (to Keller Canyon Landfill) = \$51.24 per ton for self-haul refuse up to one ton (\$60 per ton over one ton)
- ❑ Central Contra Costa Solid Waste Authority Rate for disposal through the Contra Costa Transfer and Recovery Station (to Keller Canyon Landfill) = \$45.28 per ton (recently adjusted by the CPI)
- ❑ Davis Transfer Station (to Altamont Landfill) = \$70 per ton.

Based on this market analysis we are adjusting PHBD allowable costs to reflect a cap on tipping fees of \$51.24 per ton with profit. Tipping fees above \$51.24 per ton will be considered a pass-through cost.

*Overall impact on revenue requirement = minor decrease.*

#### 5. Disallow Amortization of Franchise Purchases

Consistent with the waste management industry, we recommend that the City disallow amortization of franchise purchases. The operating ratio is designed to provide a return to the hauler sufficient to compensate PHBD for its investment in the business. The hauler has indicated that this amortization amount represents a one-time cost for the first half of fiscal year 1999 and that amortization of franchise purchases will not occur in future rate-setting.

*Overall impact on revenue requirement = minor decrease.*

## **6. Disallow Income Tax Expense**

We recommend that the City disallow income tax expense. The operating ratio is typically provided on a pre-tax basis. To allow income tax expense would unnecessarily add complexity to the rate review process.

*Overall impact on revenue requirement = minor decrease.*

## **7. Disallow Interest Expense on All Historical Operations**

We recommend that the City disallow interest expense on historical operations. Consistent with the waste management industry, the operating ratio is typically used on a before interest and tax basis. The operating ratio allowed is intended to provide the hauler with sufficient returns to pay its debt and equity holders. In cases where the operating ratio used is on an after interest basis, the operating ratio often is adjusted upward (i.e., the hauler earns less profit) to account for interest as an allowable expense.

Disallowing interest expense also eliminates artificial incentives for the hauler to finance its operations using either debt or equity financing. In other words, a company's financing decisions are independent of the amount of profit earned.

*Overall impact on revenue requirement = significant decrease.*

## **8. Allow Interest Expense on Year 2000 Capital Outlays**

We recommend that the City allow interest expense on just capital outlays required for year 2000 programs. These year 2000 programs include a new yardwaste program, a mixed paper recycling program, and automation of collection operations. These programs will require PHBD to make a large \$1.7 million one-time investment in carts, trucks, and equipment that would otherwise not be required for normal day-to-day collection operations.

This interest amount should be distinguished from the interest on historical PHBD operations (considered a non-allowable expense - see finding #7). By compensating PHBD for debt service costs required for this one-time year 2000 investment we provide an incentive for PHBD to assist the City in meeting its AB 939 objectives.

*Overall impact on revenue requirement = moderate increase.*

**9. Pass-Through Franchise Fees**

The franchise fee was adjusted to equal ten (10) percent of gross revenues. Gross revenues are defined in the Franchise Agreement as all revenue in any form derived from collecting, transporting, arranging, handling, and/or disposing of solid waste generated in the franchise area. Consistent with waste management industry practices, franchise fees will be treated as a pass-through expense that will not earn profit.

*Overall impact on revenue requirement = moderate decrease.*

**10. Use an Escalation Factor on Year 2000 Costs**

Because 2000 is a projection year, we assume that certain PHBD costs will increase at levels consistent with historical changes in the December Consumer Price Index for the San Francisco-Oakland-San Jose area (all items, all urban consumers). We are using the compound rate of change in the CPI for the period of 1994 to 1998 of 2.88 percent as an estimate for rate of change in the CPI for 1999. **Table 6** below shows the annual and cumulative changes in the CPI from 1994 to 1998.

**Table 6**  
**Consumer Price Index**  
**San Francisco-Oakland-San Jose**  
**(1994 to 1998)**

<b>Year</b>	<b>December Index</b>	<b>Percent Change in Index</b>	<b>Cumulative Percent Change in Index</b>
1994	149.4		
1995	152.1	1.81%	1.81%
1996	156.0	2.56%	4.42%
1997	162.6	4.23%	8.84%
1998	167.4	2.95%	12.05%
Compound Rate of Change in the CPI (1994 to 1998)			<b>2.88%</b>

We recommend that the City use this 2.88 percent escalation factor to project PHBD expenses for year 2000. This four-year period covers the timeframe since the Franchise Agreement was signed during 1993. This CPI was not applied to the line items of interest on the purchase of new equipment, and franchise fees.

In future interim years, the hauler will be allowed to submit an application for an interim year rate change. This rate change will be applied to all “controllable costs” (all costs other than tipping fees and regulatory fees). The hauler will be required to project any changes in “uncontrollable costs” (tipping fees and regulatory fees). The combination of these two categories of changes in costs will drive the interim year rate changes.

*Overall impact on revenue requirement = moderate increase.*

## **E. Rate Impacts of Proposed Year 2000 Programs**

### **1. Yardwaste Program**

Currently, PHBD provides residential customers with unlimited yardwaste pickup at the curb. However, this yardwaste is collected in bags, commingled with refuse in refuse trucks, and eventually disposed of at Keller Canyon Landfill. The City would like PHBD to separately collect and use yardwaste so it can get the AB 939 diversion credit for this portion of the waste stream.

NewPoint Group and the City developed a template for PHBD to use in estimating the financial and operational impacts of such a yardwaste program. We obtained and reviewed proposals from PHBD for both weekly and biweekly yardwaste service. The City ultimately selected a biweekly yardwaste program because it was the least expensive viable diversion alternative.

The new biweekly yardwaste program to be provided by PHBD shall provide all City residential customers with new 96-gallon carts to use exclusively for yardwaste. The City intends to mitigate some of the increased costs associated with this new yardwaste program by having PHBD implement an automated collection program, which helps reduce overall costs. Note that multi-family dwellings will not receive the new yardwaste service, nor will their rates be increased by the proposed July 1, 2000 rate change described in Section F.

Under the new program PHBD estimates that 4,500 tons of yardwaste would be diverted from the 23,754 tons of total refuse and yardwaste it projects to collect in fiscal year 1999/2000. This yardwaste would be diverted from disposal and used instead as alternative daily cover (ADC). ADC refers to a case where an alternative material is used in place of soil for cover material (i.e., to cover refuse) at the landfill. ADC provides the City with AB 939 diversion credits. The City views use of yardwaste for ADC as a temporary, near-term solution to reaching its AB 939 goals, but does not view it as the ultimate best use of the material.

PHBD has indicated it would not save costs by using the yardwaste material as ADC because Keller Canyon Landfill is a balanced site (i.e., the same amount of soil excavated is stockpiled and then used as cover material). PHBD does not currently bear additional costs for importing soil to Keller Canyon to use as cover material, so ADC does not provide a cost-savings.

PHBD has indicated it is currently considering development of a composting facility at the Keller Canyon Landfill that could be used by jurisdictions in Contra Costa County. The City has expressed an interest to use yardwaste for its most beneficial use. The City considers use of yardwaste for composting as a more beneficial higher-level use than ADC. The City reserves the right to eventually direct its yardwaste material to composting and reevaluate the revenue and cost impacts associated with the yardwaste program should such a composting facility become available in the future.

*Overall impact on revenue requirement = significant increase.*

## **2. Mixed Paper Recycling Program**

The City requested that PHBD shall add mixed paper recycling to its residential curbside recycling program. This program will provide another way for the City to increase its AB 939 diversion results and provide an additional convenience to the customer. Overall costs of this program are small because PHBD already provides curbside recycling service to City customers. Cost increases are to provide City customers with a second new 14-gallon recycling bin. PHBD has estimated that the mixed paper program would divert 685 tons of material in fiscal year 1999/2000. PHBD and the City have agreed that the current mixed paper revenue level will be set at \$0.

*Overall impact on revenue requirement = minor increase.*

### **3. Automation of Refuse and Yardwaste Collection Service**

Currently, PHBD provides non-automated rear loader service to City residential customers. PHBD shall shift from non-automated service to automated service for approximately 77 percent of the City residents. PHBD has indicated it will be unable to serve the remaining 23 percent with automated trucks and thus will continue to provide these customers with non-automated service. All City residential customers (both automated and non-automated) shall be provided with a new 20, 32, 64, or 96-gallon cart. The 20-gallon container shall be inserted into a 32-gallon cart shell.

Shifting to automated collection service will provide greater efficiencies for this hauler. These efficiency savings will help offset the costs of new carts and automated collection vehicles for refuse and yardwaste.

*Overall impact on revenue requirement = significant decrease.*

### **4. Commercial Recycling Franchise**

The City should consider granting PHBD a franchise for commercial recycling services within the City. By doing so, the City would gain greater control over the level of diversion resulting from the commercial waste stream. Currently diversion levels are relatively non-existent from this portion of the waste stream. The City also will collect a franchise fee on these services that can be used to conduct waste audits of commercial customers and fund other programs to increase commercial recycling levels. Details of this proposed franchise need to be worked out including the need for a rate review of the program and the development of this franchise agreement.

*Overall impact on revenue requirement = minor increase.*

## **F. Conclusions and Recommended Rate Adjustment**

The impact of NewPoint Group rate setting adjustments, incorporation of the new yardwaste program, mixed paper program, and automated refuse collection service is a 5.0 percent rate increase in year 2000 on residential customers with no rate increase to other customers. This is because residential ratepayers are the key beneficiaries of these new

services. Note that this increase shall be applied to rates for combined residential refuse and recycling services.

A 5.0 percent rate increase represents exactly a \$1.00 per customer, per month, increase on the most typical 32-gallon container rate of \$20.04 per customer, per month. The proposed new 32-gallon rate shall equal \$21.04 per customer, per month. With this rate increase the 32-gallon rate is approximately 1.0 percent below the \$21.18 per customer per month average rate for non-CCSWA jurisdictions we surveyed, but is 7.7 percent above the \$19.53 median rate for these same non-CCSWA jurisdictions.

The proposed new residential rate structure is shown in **Table 7**, on the following page. The City shall apply the rate change equally to each rate within the current residential rate structure and will not attempt to change the rate structure at this time. This is possible because rates for lower container sizes are sufficiently high to accommodate any potential shift in customer behavior to lower container sizes resulting from automation and the other new services. We generally prefer initially not to modify the rate structure in order to avoid significant additional potential changes in residential rate impacts.

The City and PHBD shall reevaluate the residential rate structure and revenues after year 2000 to determine if a new rate schedule is necessary due to any unforeseen behavior shifts by residential customers. This would only be necessary if there were a material change in the frequency distribution of customers by rate classification.

The City shall now bill for all refuse collection services as one lump sum amount. We do not recommend that the City break out three separate line item charges on the bills for refuse, recycling, and yardwaste services. This is because current line items do not reflect the true costs-of-service and because the 5.0 percent rate increase reflects numerous operational changes.

The City shall implement the 5.0 percent rate change on residential customers at the time that the new services become available to City customers. PHBD projects that the rollout of the new yardwaste, mixed paper, and automated service programs will occur by no later than June 30, 2000.

The City must make a determination whether to make residential yardwaste a mandatory service or consider granting exemptions to yardwaste service for those City customers who do not generate yardwaste. We recommend that the City initially make the service mandatory for all residents with no exclusions.

**Table 7**  
**Proposed Residential Rate Structure**  
**For July 1, 2000**  
(Rates shown are per customer, per month)

<b>Residential Service</b>	<b>Existing Rate</b>	<b>Proposed Increase in Rate</b>	<b>Proposed Year July 1, 2000 Rate</b>
(1) 10 gallon can a)	\$13.36	N/A	Not Available
(2) 20 gallon cart b)	\$14.02	\$0.70	\$14.72
(3) 32 gallon cart c)	\$20.04	\$1.00	\$21.04
(4) 64 gallon cart d)	\$22.39	\$1.12	\$23.51
(5) 96 gallon cart d)	\$47.02	\$2.35	\$49.37
(6) 2, 32 gallon cans a)	\$44.02	N/A	Not Available
(7) 32 gallon cart – senior e)	\$15.34	\$0.77	\$16.11

- a) The 10-gallon and 2, 32-gallon can services will no longer be provided because these services cannot be automated. These customers will need to choose another service. Customers using 10-gallon service can select a 20-gallon cart. Customers using a 2, 32-gallon cans will either select 1-64 gallon cart or two 32-gallon carts. We estimate that approximately 350 customers will be affected by these changes.
- b) Customers currently using 20-gallon can service will be provided with 1, 20-gallon cart.
- c) Customers currently using 32-gallon can service will be provided with 1, 32-gallon cart.
- d) Customers currently using 64-gallon cart or 96-gallon cart service will be provided with a new cart of the same size.
- e) Senior customers currently using 32-gallon can service will be provided with 1, 32-gallon cart.

Should the City later elect to grant some yardwaste exemptions and lower the rates charged to these exempt customers, the City would need to increase rates charged to the remaining non-exempt customers. This will compensate the hauler for its fixed costs of operating the yardwaste program that would change minimally as a result the City granting exemptions. In other words, the hauler's fixed costs of yardwaste operations would need to be spread over the remaining non-exempt customer base. Note that we would expect that multi-family dwellings would not need exemptions because they will not be provided the new yardwaste services, nor will their rates be increased by 5.0 percent. We would expect that the

City of Martinez  
January 2000

Page 27

City's condominium owners would be the primary customers potentially requesting such an exemption from yardwaste service.

The 5.0 percent rate increase on residential customers should not be viewed as associated with the new yardwaste program alone. Rather this rate increase reflects the combination of a necessary package of new operations improvements, including a rate-setting process and methodology, a residential mixed paper program, a residential yardwaste program, and automation of a majority of the City's residential refuse and yardwaste collection services. The 5.0 percent rate increase would have been significantly higher with a yardwaste program alone.

All of the recommendations in this report have been reviewed and approved by PHBD management. At the time of this writing it is our understanding that PHBD has agreed to this package of recommendations and shall work with the City to implement these new solid waste services and rates in accordance with the descriptions in this letter report.

\* \* \* \* \*

NewPoint Group appreciates the assistance of City Manager Marcia Raines, Councilmembers Barbara Woodburn and Rob Schroder, and yourself, as well as the PHBD management team of Michael Caprio and Michael Crosetti in conducting this rate review. Please do not hesitate to contact Dr. James Gibson in Sacramento at (916) 442-0189, or Mr. Erik Nylund in Oakland at (510) 338-0104, should you have any questions regarding this letter report.

Very truly yours,

NewPoint Group®, Inc.



James A. Gibson, Ph.D.  
Director

Attachments



March 11, 2011

Mr. Michael Chandler  
Senior Management Analyst  
City of Martinez  
525 Henrietta Street  
Martinez, California 94553

**Subject: Allied Waste Services Franchise Extension Assessment**

Enclosed is NewPoint Group's evaluation of Allied Waste Services' (AWS, a Republic Services company, and formerly Pleasant Hill Bayshore Disposal Service) request for a franchise extension. The City of Martinez (City) has two (2) franchise agreements with AWS for refuse and recycling collection services which currently expires on January 5, 2013.

The purpose of this report is to provide background and comparative information for the City to use in evaluating the extension request. The report provides pros and cons of granting an extension; a current comparative rate survey; results of a City customer satisfaction survey; various terms and conditions considered by other jurisdictions when extending franchises; and terms and conditions of a potential franchise extension for AWS.

This report is organized into six (6) sections as follows:

- A. *Franchise Extension Request Background*
- B. *Survey of Comparable Rates*
- C. *Allied Waste Services Performance*
- D. *Other Jurisdiction Franchise Extension Terms*
- E. *Recommended Franchise Extension Terms*
- F. *Recommended Franchise Term.*

There are eight (8) attachments to this report.

## **A. Franchise Extension Request Background**

The City is evaluating whether to extend its franchise agreements with AWS. In 2000, the City entered into two (2) separate franchise agreements with AWS as follows:<sup>1</sup>

---

<sup>1</sup> At that time the company name was Allied Waste Industries, Inc., dba Pleasant Hill Bayshore Disposal.

Mr. Chandler  
March 11, 2011

Page 2

- n Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Solid Waste)
- n Restated and Amended Franchise Agreement Between City of Martinez and Pleasant Hill Bayshore Disposal, Inc. (Residential Recycling).

Originally, the franchise agreements had ten (10) year terms, set to expire on January 5, 2010. In 2004, the City granted AWS a two-year extension for each franchise agreement and the City later granted AWS a one-year extension for each franchise agreement. As a condition of the AWS merger with Republic Services in December 2008, the City and AWS further amended each franchise agreement on July 1, 2009, via formal addendum to, among other things, enhance the customer service standards required of AWS, and to memorialize an expanded list of service enhancements to be provided by AWS. The current collection franchise agreements with AWS expire on January 5, 2013, less than 2 years from now. Hereafter, we will refer to these two agreements together as the “franchise agreements.”

The City’s *Rate Setting Process and Methodology Manual for Residential Solid Waste Charges*, dated January 2000 (Rate Manual) guides City rate setting. The City and AWS successfully used this Rate Manual for the past ten years.

On April 1, 2010, AWS submitted a letter requesting that the City extend the current franchise agreements to 2023, or by 10 years. In the letter, AWS highlighted positive aspects of its performance since 2000. AWS also offered to make various changes to its current services in exchange for a franchise extension.

## **B. Survey of Comparable Rates**

**Attachment 1** provides a comparison of current City residential, commercial, and light industrial rates with rates of ten (10) neighboring jurisdictions (as of July 2010). As shown in Attachment 1, the results of these City residential rate comparisons are mixed. The City’s 20-gallon residential rate is approximately average, while the City’s 64-gallon rate is 21 percent below average. The City’s 32-gallon and 96-gallon rates are 18 and 25 percent above average, respectively.

Very few City residential customers subscribe to either the 20-gallon or 96-gallon service levels. Virtually all City residential customers either subscribe to the 32-gallon or 64-gallon service levels, and City residential customers are relatively equally divided between subscribing to the 32-gallon service and 64-gallon service levels.

City commercial and light industrial service rates are, in almost all cases, below the comparative average. For three of five commercial and light industrial rate categories compared,

Mr. Chandler  
March 11, 2011

Page 3

commercial and light industrial rates are well below average (i.e., at least 22 percent below average).

City rates have been relatively stable since 2000. Since that Manual's adoption, the City has conducted three base year rate reviews (in 2000, 2004, and 2008), and rates were adjusted during interim years 2001, 2002, 2005, 2006, 2007, 2009, and 2011. Rates remain unchanged in 2003, 2008, and 2010. Implemented rate changes since 2000 (including program changes) were as follows:

- n 2000: + 5.0 percent (base year, addition of yardwaste and mixed paper recycling programs)
- n 2001: + 3.3 percent (interim year)
- n 2002: + 7.1 percent (interim year)
- n 2003: + 0.0 percent
- n 2004: + 3.8 percent (base year, addition of single stream recycling program)
- n 2005: + 1.9 percent (interim year)
- n 2006: + 3.2 percent (interim year)
- n 2007: + 3.7 percent (interim year)
- n 2008: + 0.0 percent (base year, addition of expanded multi-family recycling)
- n 2009: + 4.0 percent (interim year)
- n 2010: + 0.0 percent (interim year)
- n 2011: + 3.1 percent (interim year).

For the 2000 to 2011 period, City rate changes averaged 2.93 percent per year (including four program enhancements). During this same timeframe, the San Francisco-Oakland-San Jose Consumer Price Index (CPI) increased an average of 2.50 percent per year.

### **C. Allied Waste Services Performance**

We conducted a small survey of customer satisfaction with services provided by AWS. We administered the survey to residential and commercial customers. Survey questionnaire areas included:

- n Garbage services
- n Recycling services
- n Yardwaste services (residential services only)

Mr. Chandler  
March 11, 2011

Page 4

- n Customer services
- n New services.

We provide copies of the customer satisfaction survey, for the residential and commercial sectors, in **Attachment 2**.

AWS generated a list of customer contacts, including 150 residential customers and 150 commercial customers. NewPoint Group randomly selected customers from this list to survey. We surveyed thirty (30) residential customers, and twenty (20) commercial customers, by telephone, between July 7, 2010 and July 20, 2010.<sup>2</sup>

Based on the survey results, we found the City's overall customer satisfaction rating for AWS was about 95 percent for residential collection services.<sup>3</sup> The City's overall customer satisfaction rating for AWS was about 92 percent for commercial collection services.

**Attachment 3** summarizes these customer survey results.

For both residential and commercial services, customers surveyed indicated they were at least satisfied with AWS services. No customer rated AWS services as poor. Most residential and commercial customers we surveyed (i.e., 90 percent) indicated services levels were adequate, and that no new services were needed.

For the residential sector, about 80 percent of customers surveyed rated the services (i.e., garbage collection, recycling collection, yardwaste collection, and customer services) as either excellent or good. Just under 90 percent of residential customers surveyed rated their service levels (i.e., recycling, yardwaste, and new services) as adequate.

For the commercial sector, about 80 percent of customers surveyed rated the services (i.e., garbage collection, recycling collection, and customer services) as either excellent or good. Slightly more than 80 percent of commercial customers surveyed rated their service levels (i.e., recycling and new services) as adequate.

We compared the City customer satisfaction survey results with fourteen (14) other California jurisdictions (see **Attachment 4**). We found that these other cities determine customer. AWS's 92.0 percent customer satisfaction rating compares favorably with the average 88.8 percent customer satisfaction rating of these other cities.<sup>4</sup>

Based on discussions with City staff, AWS has continued to provide professional services to the City over the franchise term. AWS has worked to implement new diversion-related

---

<sup>2</sup> The survey was not based on a statistically valid random sample of the population of City customers.

<sup>3</sup> Where we defined customer satisfaction as service quality that was fair, good, or excellent; and service levels that were adequate.

<sup>4</sup> A total of ten of the fourteen cities had numeric data.

Mr. Chandler  
March 11, 2011

Page 5

programs, has kept rate increases to relatively acceptable levels, and has met the City's service needs. AWS complaints also have been minimal.

In conclusion, AWS currently has relatively high City customer satisfaction. This conclusion is supported by the survey results, and a comparison with the fourteen other jurisdictions surveyed.

#### **D. Other Jurisdiction Franchise Extension Terms**

**Attachment 5** shows terms agreed to by 26 jurisdictions that recently negotiated franchise agreement extensions (a total of 31 franchise negotiations). As shown in Attachment 5, a variety of outcomes result from extension negotiations, with terms based on the needs of each jurisdiction. The average franchise extension length, from this selected survey, was just under eight (8) years.

#### **E. Recommended Franchise Extension Terms**

For any jurisdiction considering a franchise extension there are pros and cons. Examples of these pros and cons are shown in **Attachment 6**.

Based on the City's own needs, we identified nineteen (19) franchise extension terms for initial consideration (identified in **Attachment 7**). We recommend that the City require AWS to agree to the seventeen (17) franchise extension terms, presented below, in exchange for a franchise extension.

Our recommendation rational, and the costs and benefits, of each franchise extension term are described below.<sup>5</sup> In parenthesis following each franchise term is a notation whether the term is primarily a City direct benefit, a City ratepayer direct benefit, or a combination of both. AWS would be required to implement these changes immediately upon execution of a franchise agreement extension (unless specified otherwise).

- 1. Provide Litter and Debris Control and Collection on Selected City Streets and Public Right of Ways (Primarily a City Direct Benefit)** – AWS would be responsible for the litter collection services on streets and public right of ways. This includes the pickup of litter scattered on local streets and materials illegally dumped on sidewalks and near local waterways in the areas identified by the City.

---

<sup>5</sup> Where possible costs and benefits are linked either to City ratepayers or to the City. In some cases actual cost and benefit data is not quantifiable and therefore is presented qualitatively.

Mr. Chandler  
March 11, 2011

Page 6

AWS would publicize the Contra Costa Clean Water Program toll free number, 1-800 NO DUMPING as a resource for people to report illegal dumping of debris. Reports of illegal dumping of debris made to this number for sites within the City shall be forwarded to AWS for resolution. The number of calls, the amount of material collected, and locations of the material will be reported to the City monthly.

AWS would contract with Commercial Support Services (or another third party service provider) to provide litter and debris pickup on City streets and public right of ways. Commercial Support Services is a non-profit organization that provides work for the mentally and physically challenged. The City and AWS would mutually agree on the City streets and public right ways to target for this litter and debris control and collection effort. AWS would provide the litter pickers and vests for the Commercial Support Services staff that would assist with litter control and collection. The City would benefit as the City has had some recent concerns over litter getting into storm drains which can violate the City's National Pollutant Discharge Elimination System (NPDES) permit. This litter control and collection effort would be an allowable cost in the rate base.

AWS would indemnify the City for any work that Commercial Support Services (or another third party service provider) provides within City limits.

2. **Provide an Additional \$25,000 Annual Cost to Cover City Implementation of AB 939 and Climate Action Plan Initiatives (Primarily a City Direct Benefit)** – AWS would provide the City with \$25,000 annually to cover implementation of the City's Assembly Bill 939 programs and Climate Action Plan initiatives. This cost would be treated as a pass-through cost in the rate base (without profit). This payment would be made on a proportionate basis for the remainder of the City's fiscal year 2010-11 (the period of July 1, 2010 to June 30, 2011), and due within 30 days of execution of the extension. The full annual payments to the City shall be due by July 31<sup>st</sup> of each year, beginning in July 2011.
3. **Subject to Future Regulatory Requirements, Work with the City to Develop A Mandatory Commercial Recycling Program (Primarily a City Direct Benefit)** – Should the State follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012 (the current target date specified in the State's draft regulations), AWS would agree to implement a new mandatory commercial collection program to be offered to City customers by June 30, 2012, and hire a half-time Recycling Coordinator assigned to work exclusively on recycling programs, projects, and effort within Martinez. The City would amend its franchise agreements with AWS at that

Mr. Chandler  
March 11, 2011

Page 7

time to provide AWS with exclusive rights to commercial and industrial recycling in the City of Martinez. These provisions are directly dependent on the State's imposition of mandatory commercial recycling, and should the State not implement mandatory commercial recycling, the City would not require AWS to implement a mandatory commercial recycling program.

AWS would agree to assist with education, outreach, and monitoring for the mandatory commercial recycling program as required by the City. AWS would assist the City with providing all data required for the City's reporting to CalRecycle for commercial recycling. AWS would work with City commercial customers to provide recycling carts or bins and provide weekly collection.

The additional costs of this program and the half-time position would be passed on to commercial customers. The City and AWS would work out a mutually agreeable method for charging commercial customers for this service. The City would benefit from additional diversion from this program. This mandatory commercial recycling cost would be an allowable cost in the rate base.

Should the State not follow through with requiring jurisdictions to implement a mandatory commercial recycling program by July 2012, the City may still want to work with AWS to implement a mandatory commercial recycling program at some later date. In this case, the City and AWS would work out a mutually agreeable timeline for implementation of a mandatory commercial recycling program.

4. **Work with the City to Develop A Commercial Food Waste Collection Program (Primarily a Company Direct Benefit)** – AWS would implement a new commercial food waste collection program to be offered to City commercial customers by January 1, 2012. The additional cost of this program would be passed on to commercial customers. The City would benefit from additional diversion from this program. The Company would benefit because it has identified a nearby buyer for this material. This commercial food waste recycling cost would be an allowable cost in the rate base.
5. **Provide Two (2) Additional Annual Residential On-call Recycling Only Pickups at the Curb (Primarily a Ratepayer Direct Benefit)** – Under the terms of the current AWS franchise agreements with the City, residents are allowed two (2) on-call recycling (cardboard/paper) and/or yardwaste collections per year (an enhancement implemented as part the 2008 Base Year Rate Review). AWS has agreed to provide residents with two (2) more on-call recycling and/or yardwaste cleanup for a total of four (4) on-call

Mr. Chandler  
March 11, 2011

Page 8

recycling and/or yardwaste cleanups. This additional cost would be an allowable cost in the rate base.

6. **Provide Two (2) Annual Residential On-call Refuse Pickups at the Curb with Expanded Quantity Limit (Primarily a Ratepayer Direct Benefit)** – Currently, residents are allowed two (2) on-call refuse collections per year, with a quantity limit of two (2) cubic yards. AWS would allow residents to set out up to three (3) cubic yards of refuse during these pickups. This additional cost for this expansion of on-call refuse pickup quantity would be an allowable cost in the rate base.
7. **Provide Two (2) Annual Residential On-call Bulky Waste Pickups at the Curb (Primarily a Ratepayer Direct Benefit)** – AWS also would agree that in addition to the on-call pickups specified in Items #5 and #6, residents could schedule two (2) separate on-call pickups to set out large bulky items (a list of large bulky items is provided in **Attachment 8**). As part of this service, AWS would collect up to two (2) large bulky items at no charge per year. Additional items, beyond the two (2) free items, would be picked up for a fee as agreed by the City and AWS. The additional on-call bulky waste pickup cost would be an allowable cost in the rate base.
8. **Provide One (1) Annual Pre-Scheduled Residential Cleanup Day (Primarily a Ratepayer Direct Benefit)** – In addition to the on-call pickups specified in Items #5, #6, and #7, AWS would agree to provide residents with one annual curbside cleanup day per year. AWS would agree to collect recycling, yardwaste, and refuse (up to 3 cubic yards) during this pre-scheduled cleanup day. The City and AWS would mutually agree to the timing of this cleanup day at the beginning of each year. AWS would provide this curbside service to residents during their regularly scheduled collection day, completing this service for all City customers over one service week. This additional cleanup day cost would be an allowable cost in the rate base.

In summary, with Items #5, #6, #7, and #8 AWS would provide residents with a total of nine (9) pickups per year, eight (8) on-call and one (1) pre-scheduled by the City and AWS. For four (4) of the eight (8) on-call pickups, residents would be allowed to set out an unlimited amount of recycling/yardwaste materials. For two (2) of the eight (8) on-call pickups, residents would be allowed to set out refuse (up to 3 cubic yards). The remaining two (2) on-call pickups would be dedicated exclusively to pickup of large bulky items, and allow residents to set out up to two (2) large bulky items per year for pickup, free of charge.

Mr. Chandler  
March 11, 2011

Page 9

The City and AWS would evaluate these cleanup service enhancements up until the next base year (2013). At the time of the next base year, should the City determine additional residential yardwaste services are necessary, the City may request that AWS change the frequency of residential yardwaste collection from every other week to every week. The additional costs for this change in yardwaste collection frequency would be an allowable cost in the rate base.

AWS will provide outreach to identify that the eight (8) pickups and annual residential curbside cleanup day are available. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

9. **Provide a Means to Dispose of Household Batteries, Cellular Telephones, and Compact Fluorescent Light Bulbs (Primarily a Ratepayer Direct Benefit)** – AWS would allow customers to set out household batteries, cellular telephones, and compact fluorescent light bulbs, on any of their four (4) on-call recycling pickup days, plus one pre-scheduled residential clean up day. Customers would be allowed to set out these items in a single customer-provided one quart plastic bag. This cost would be an allowable cost in the rate base.

AWS will provide outreach to identify that these materials are available for set out as part of the on-call pickups. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

10. **Allow Customers to Place Additional Material Types in the Recycling Cart (Primarily a Ratepayer Direct Benefit)** – AWS would expand the types of material collected in the 64-gallon recycling container to include:

- n E-waste peripherals (keyboards, mouse, speakers)
- n Hard cover books
- n Rigid plastics (e.g., toys, buckets, trays, crates)
- n Scrap metal/aluminum (under ten pounds per item).

There would be no additional cost to the ratepayer from this additional service.

AWS will provide outreach to identify that these additional materials can be included in the recycling cart. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

Mr. Chandler  
March 11, 2011

Page 10

- 11. Provide Customers an Additional Recycling Cart or Yardwaste Cart Upon Request (Primarily A Ratepayer Direct Benefit)** – For larger volume residential recyclers, AWS would provide an additional recycling or yardwaste cart, upon request, at no extra charge to the residential customer. Based on current request levels, this is likely a service that would only be used for a small number of customers. There would be no additional cost to the ratepayer from this additional service.

AWS will provide outreach to identify that this additional recycling cart is available. This outreach will include identifying the service on the AWS website, within an annual newsletter, and within the bill as an insert.

- 12. Freeze All Rates in Calendar Year 2012 (Primarily a Ratepayer Direct Benefit)** – AWS would agree not to change rates in calendar year 2012. AWS would not submit a base year rate application in 2012, but would be allowed to submit a base year application on July 31, 2012 for rates to be implemented on January 1, 2013. This 2013 base year would start the new rate setting cycle. Years 2014, 2015, and 2016 would be interim years.

AWS would agree to implement all of the program changes identified in Items #1, #2, and #4 through #10 without any changes to rates in 2012. AWS would agree that there would be no opportunity to recover the new costs for Items #1, #2, and #4 through #10 until 2013. Year 2013 rates also would not reflect any retroactive rate increases to cover the costs of Items #1, #2, and #4 through #10 implemented in years 2011 and 2012.

There is one exception to this rate freeze for 2012. Should the State mandate commercial recycling by mid 2012, and the provision described in Item #3 above become a requirement, AWS would be allowed to submit support for an adjustment to commercial rates to cover the new costs required to fund a mandatory commercial recycling program in the City (i.e., for costs associated with the commercial recycling program only, including labor, carts/bins, trucks, and overhead). This mandatory commercial recycling rate adjustment request would be subject to City review and City Council approval.

- 13. Use an 88 to 92 percent Operating Ratio Range for Base Year Rate Setting (No Clear Benefit to Any One Party)** – Currently the City and AWS use the Incentive Risk-Based Operating Ratio Methodology for rate setting as specified on page 1-13 of the Rate Manual. This method allows base year profitability to range from 85 percent upward without a rate change. AWS would agree to a more narrow operating ratio range of 88 to 92 percent, with a target of 90 percent, as specified in the Base Case Operating Ratio

Mr. Chandler  
March 11, 2011

Page 11

Method (page 1-12 of the Rate Manual). This means that should the company's projected operating ratio, in a base year, fall outside the 88 to 92 percent operating ratio range, the company's operating ratio would be reset to 90 percent in that base year.

- 14. Calculate Interim Year Rate Changes Based on 90 Percent of the Prior Year Consumer Price Index (Primarily a Ratepayer Direct Benefit)** – Currently the Rate Manual specifies that interim year rate setting separate “controllable costs” (i.e., non-tipping fee costs) from “uncontrollable costs” (i.e., tipping fee) in calculating interim year adjustments. The City applies the CPI to the controlled cost portion of the rate, and reviews AWS projected changes to uncontrollable costs. AWS would agree that, beginning in 2014, interim year rates would be adjusted by a more simplified calculation, equal to ninety (90) percent of the prior year change in the August-to-August San Francisco-Oakland-San Jose CPI applied to each rate in the rate structure.<sup>6</sup> Rate changes could be either positive or negative.

Additionally, the Rate Manual called for interim year adjustments which were tied to the company's profitability in base years (see Figure 1-1 on page 1-14). This provision replaces interim year adjustments with a simplified 90 percent of the CPI in all interim years regardless of profitability in base years.

This provision would make the City's administration of interim years more streamlined and allow the City Council to clearly understand the basis for the interim year adjustment. This provision would reduce the administrative costs associated with preparing and reviewing interim year applications.

- 15. Remove the Interim Year “Consumer Price Index Adjustment Factor” (Primarily a Ratepayer Direct Benefit)** – Currently, the Rate Manual specifies an adjustment factor in the interim year calculation to allow for “truing up” of differences between the prior year projected, and prior year actual, change in the CPI. AWS would agree to remove this interim year “adjustment factor,” replacing the interim year calculation with the simplified 90 percent of CPI method identified in Item #12 above.
- 16. Add an Interim Year Rate Cap (Primarily a Ratepayer Direct Benefit)** – Currently, there is no limit to the size of an Interim Year rate increase. For this franchise term, beginning in 2014 (2012 is a freeze year, and 2013 is a base year), AWS would agree to limit Interim Year rate increases in any given year to four (4) percent. There are no costs

---

<sup>6</sup> AWS has already submitted its interim year rate application for 2011. Year 2012 is a rate freeze year. Year 2013 is the next base year.

Mr. Chandler  
March 11, 2011

Page 12

associated with implementing this term. This term would benefit City ratepayers by stabilizing the size of any annual interim rate changes in times of higher inflation. While the past ten years have been a time of relatively low inflation, this protection definitely has significant value to the City ratepayer over the length of a long-term franchise agreement.

This term adds a provision to allow either the City or AWS to request an extraordinary rate adjustment. This extraordinary rate adjustment would be subject to City review and City Council approval.

17. **Provide the City with a \$500,000 Community Impact Payment (Primarily a Ratepayer Direct Benefit)** – The company would pay the City a one-time community impact payment of \$500,000 to cover various City costs incurred as a result of the refuse and recycling collection franchise with AWS. City services, covered by this payment, would include such ongoing services as City street pavement maintenance to cover differential impacts from AWS collection trucks on City streets, and storm drain maintenance caused by litter produced from AWS collection operations (necessitated by new National Pollutant Discharge Elimination System (NPDES) permit requirements).

The company would make \$250,000 of this community impact payment to the City within 30 days of execution of the franchise extension. The company would make the remaining \$250,000 of this community impact payment to the City by January 31, 2012. This community impact payment would not be a cost recovered in the rate base.

The City would place this community impact payment into a special dedicated fund which would be used for City services related to the refuse and recycling collection franchise. The City would not put the community impact payment into the general fund to use for City services not related to the refuse and recycling collection franchise.

X X X

Approval of Items #13 through #16 in Section E of this report will necessitate an update to the City's Rate Manual. The City and AWS agree that the City will prepare an updated version of the Rate Manual, incorporating Items #13 through #16, for City Council approval. The City and AWS agree that the updated Rate Manual will be incorporated by reference into the City's new franchise agreements with AWS.

Mr. Chandler  
March 11, 2011

Page 13

**F. Recommended Franchise Term**

Based on AWS's agreement to the seventeen (17) terms described above in Section E, all of which add significant value to both the City and the City ratepayer, we recommend an extension of ten (10) years beyond the current term. The resulting term would expire on January 5, 2023. These seventeen (17) terms improve both the quality and quantity of City residential solid waste services, and most importantly provide service and rate stability to the City ratepayers.

\* \* \* \* \*

If you have any questions regarding this report, please call Mr. Erik Nylund at (916) 442-2456 in Sacramento.

Very truly yours,

NewPoint Group<sup>®</sup>, Inc.



James A. Gibson, Ph.D.  
Director

Mr. Chandler  
March 11, 2011

Page 14

[This page intentionally left blank.]

Mr. Chandler  
March 11, 2011

Page 15

**Attachment 1**  
**Comparative Rate Survey**

Mr. Chandler  
March 11, 2011

**City of Martinez  
Comparative Residential Rates  
As of July, 2010**

No.	Jurisdiction	20 gal.	32 gal.	64 gal.	96 gal.	Size/Frequency of Collection		Annual Refuse Cleanups	Annual Recycling/ Yardwaste Only Cleanups
						Recycling	Yardwaste		
1	Antioch	\$ 20.99	\$ 24.65	\$ 39.80	\$ 46.75	64	96 B	2 on-call per year	2 on-call per year
2	Clayton	20.36	21.58	31.64	34.54	64	64	2 on-call per year	4 on-call per year
3	Concord	-	23.00	31.00	38.00	64	96	3 on-call per year	0 per year
4	Danville	15.48	17.85	35.71	53.56	64	64	2 scheduled + 1 on-call per year	Once per month
5	Lafayette	20.44	23.57	47.12	70.69	64	64	2 scheduled + 1 on-call per year	Once per month
6	Moraga	18.75	21.65	43.30	64.95	64	64	2 scheduled + 1 on-call per year	Once per month
7	Orinda	24.28	28.01	56.02	84.03	64	64	2 scheduled + 1 on-call per year	Once per month
8	Pleasant Hill	19.58	22.66	30.91	46.36	64	64	2 on-call per year, 1 spring cleanup	2 on-call per year
9	Uninc. County (CCCSWA)	16.35	18.87	37.73	56.60	64	64	2 scheduled + 1 on-call per year	Once per month
10	Walnut Creek	14.19	17.00	33.99	50.99	64	64	2 scheduled + 1 on-call per year	Once per month
	Average	\$ 18.94	\$ 21.88	\$ 38.72	\$ 54.65				
	Martinez	\$ 19.15	\$ 27.45	\$ 30.60	\$ 64.30	64	96 B	0 per year	2 on-call per year
	Percent Difference	1%	25%	-21%	18%				

**City of Martinez  
Comparative Commercial Rates  
As of July, 2010**

No.	Jurisdiction	2-yd/1 per week	2-yd/2 per week	3-yd/1 per week	3-yd/2 per week
1	Antioch	\$ 219.57	\$ 439.19	\$ 330.36	\$ 640.89
2	Clayton	196.16	392.24	264.91	529.82
3	Concord	269.00	490.00	364.00	680.00
4	Danville	246.18	492.37	369.27	738.54
5	Lafayette	301.90	603.78	452.84	905.68
6	Moraga	269.35	538.70	404.03	808.06
7	Orinda	333.16	666.31	499.74	999.47
8	Pleasant Hill	189.84	379.16	284.40	568.93
9	Uninc. County (CCCSWA)	240.59	481.17	360.88	721.76
10	Walnut Creek	173.17	346.32	259.75	519.49
	Average	\$ 243.89	\$ 482.92	\$ 359.02	\$ 711.26
	Martinez	\$ 222.11	\$ 378.68	\$ 380.97	\$ 443.94
	Percent Difference	-9%	-22%	6%	-38%

**City of Martinez  
Comparative Industrial Rates  
As of July, 2010**

No.	Jurisdiction	20 cu. yd.
1	Antioch	\$ 479.67
2	Clayton	393.98
3	Concord	420.00
4	Danville	582.83
5	Lafayette	609.74
6	Moraga	582.84
7	Orinda	645.34
8	Pleasant Hill	349.83
9	Uninc. County (CCCSWA)	575.57
10	Walnut Creek	644.43
	Average	\$ 528.42
	Martinez	\$ 407.00
	Percent Difference	-23%

**Notes:**

After this survey was conducted, the City of Martinez implemented a 3.11 percent rate increase effective January 1, 2011.

Mr. Chandler  
March 11, 2011

Page 17

**Attachment 2**  
**Customer Satisfaction Survey**  
**Residential and Commercial Sectors**

Mr. Chandler  
March 11, 2011

**Allied Waste Services 2010 Residential Customer Satisfaction Survey**

Hello, my name is \_\_\_\_\_. On behalf of the City of Martinez, we are conducting a customer satisfaction survey about your waste collection services from Allied Waste Services. We are not trying to sell anything, and we are only interested in your opinions about the quality of hauler's services.

Would you have a few minutes to participate in our survey? (If Yes – Continue; If No – Ask would there be a better time to call)?

**Garbage Services**

(1) How would you rate your current garbage collection services?

Excellent     Good         Fair         Poor

**Recycling Services**

(2) How would you rate your current recycling collection services?

Excellent     Good         Fair         Poor

(3) Is your current recycling service level adequate?

Yes    No   If no, please explain \_\_\_\_\_

**Yardwaste Services**

(4) How would you rate your current yardwaste collection services?

Excellent     Good         Fair         Poor

(5) Is your current yardwaste service level adequate?

Yes    No   If no, please explain \_\_\_\_\_

**Customer Services**

(6) How would you rate the company's customer services?

Excellent     Good         Fair         Poor         N/A

**New Services**

(7) Are there new waste and recycling collection services you would like to have made available?

Yes    No   If yes, please specify \_\_\_\_\_

Mr. Chandler  
March 11, 2011

Page 19

### **Allied Waste Services 2010 Commercial Customer Satisfaction Survey**

Hello, my name is \_\_\_\_\_. On behalf of the City of Martinez, we are conducting a customer satisfaction survey about your waste collection services from Allied Waste Services. We are not trying to sell anything, and we are only interested in your opinions about the quality of hauler's services.

Would you have a few minutes to participate in our survey? (If Yes – Continue; If No – Ask would there be a better time to call)?

#### **Garbage Services**

(1) How would you rate your current garbage collection services?

Excellent     Good         Fair         Poor

#### **Recycling Services**

(2) How would you rate your current recycling collection services?

Excellent     Good         Fair         Poor

(3) Is your current recycling service level adequate?

Yes    No   If no, please explain \_\_\_\_\_

#### **Customer Services**

(4) How would you rate the company's customer services?

Excellent     Good         Fair         Poor         N/A

#### **New Services**

(5) Are there new waste and recycling collection services you would like to have made available?

Yes    No   If yes, please specify \_\_\_\_\_

Mr. Chandler  
March 11, 2011

Page 20

[This page intentionally left blank.]

Mr. Chandler  
March 11, 2011

Page 21

**Attachment 3**  
**Customer Satisfaction Survey Results**

Mr. Chandler  
March 11, 2011

**Attachment 3**  
**Allied Waste Services**  
**2010 Customer Satisfaction Survey Results**

2010 Residential Service Results								
<i>Basic Services</i>								
Rating	Satisfactory			Poor, or N/A		Total	Satisfaction Rate	
	Excellent	Good	Fair	Poor	N/A		Excellent+Good+Fair	Excellent+Good
Garbage Services	6	19	5	-	-	30	100.00%	83.33%
Recycling Services	6	19	5	-	-	30	100.00%	83.33%
Yardwaste Services	6	15	7	-	2	30	100.00%	75.00%
Customer Services	1	14	5	-	10	30	100.00%	75.00%
Subtotal	19	67	22	-	12	120	100.00%	79.63%
<i>Service Levels</i>								
Rating	Adequate			Non-Adequate	N/A	Total	Satisfaction Rate	
Recycling Services	27			3	-	30	90.00%	
Yardwaste Services	25			3	2	30	89.29%	
New Services	27			3	-	30	90.00%	
Subtotal	79			9	2	90	89.77%	
<i>Overall Services</i>								
Rating	Satisfactory			Non-Satisfactory	N/A	Total	Satisfaction Rate	
Total Rating	187			9	14	210	95.41%	
2010 Commercial Service Results								
<i>Basic Services</i>								
Rating	Satisfactory			Poor, or N/A		Total	Satisfaction Rate	
	Excellent	Good	Fair	Poor	N/A		Excellent+Good+Fair	Excellent+Good
Garbage Services	3	13	4	-	-	20	100.00%	80.00%
Recycling Services	1	7	3	-	9	20	100.00%	72.73%
Customer Services	3	8	2	-	7	20	100.00%	84.62%
Subtotal	7	28	9	-	16	60	100.00%	79.55%
<i>Service Levels</i>								
Rating	Adequate			Non-Adequate	N/A	Total	Satisfaction Rate	
Recycling Services	10			1	9	20	90.91%	
New Services	15			5	-	20	75.00%	
Subtotal	25			6	9	40	80.65%	
<i>Overall Services</i>								
Rating	Satisfactory			Non-Satisfactory	N/A	Total	Satisfaction Rate	
Total Rating	69			6	25	100	92.00%	

Mr. Chandler  
March 11, 2011

Page 23

**Attachment 4**  
**Comparative Jurisdiction**  
**Customer Satisfaction Surveys Results**

**Exhibit 4**  
**Comparative Customer Satisfaction Survey Results**

<b>Jurisdiction</b>	<b>Rating of Refuse Collection Services</b>
1. City of Berkeley	77 percent rated favorably
2. City of Burbank	In top two services rated
3. City of Carlsbad	89 percent satisfaction rating for residential trash, 80 percent for curbside recycling
4. City of Claremont	92 percent satisfaction
5. City of Concord	Top service rated, 96 percent rated average or better (i.e., rated at least 5.0 out of 10.0)
6. City of Monterey	2003: 93 percent rated as average or better 2005: 94 percent rated as average or better
7. City of Palo Alto	2001: 96 percent rated excellent or satisfactory 2003: 94 percent rated as excellent or good 2005: 97.5 percent rated excellent or satisfactory
8. City of Sacramento	Among the top three highest rated services
9. City of San Diego	2001: 96 percent satisfaction rating (#1) 2002: 96 percent satisfaction rating for residential trash, 94 percent for curbside recycling 2003: 96 percent satisfaction rating for residential trash, 97 percent for curbside recycling 2004: 92 percent satisfaction rating for residential trash, 91 percent for curbside recycling 2010: Top service rated (rated 3.25 of 4.00 scale)
10. City of San Jose	87 percent satisfaction rating for garbage collection, 85 percent for recycling collection
11. City of San Rafael	Ranked garbage collection second highest of 31 services; recycling ranked fourth highest
12. City of Santa Monica	2001: 78 percent rated as excellent or good 2009: 78 percent rated as excellent or good
13. City of Sunnyvale	2002: 97 percent rated as average or better, 88 percent above average 2005: 85 percent rated as above average
14. City of Temecula	2001: Among top three of ten services rated 2007: Among top four of twenty-one services rated
Average of ten (10) cities with numeric rating of satisfactory or better	88.8 <sup>1</sup>

<sup>1</sup> Based on the most current data available for each City. As shown in Table 2-1, customer satisfaction ratings were not uniform. Some cities rate customer satisfaction using “average and above” data and others rate customer satisfaction using “good and above” data.

Mr. Chandler  
March 11, 2011

Page 25

**Attachment 5**  
**Comparative Jurisdiction**  
**Franchise Extension Terms**

**Attachment 5**  
**Other Jurisdiction Franchise Extension Provisions**  
**(As of July 2010)**

No.	Jurisdiction	Year Extension Granted	Year Originally Franchise Ended	Term of Extension (Years)	Year Now Franchise Ends (Ended)	Terms of Extension/New Award	Hauler
1	City of Albany	2003	2004	10	2014	Free collection from city parks (\$36,000/year), contractor provided green waste bins, increase in franchise fees.	Waste Management of Alameda County
2	City of Antioch <sup>#</sup>	2010	2015	10	2025	Community impact payment of \$1 million in exchange for the extension; expand existing services; increase the on-call pick-up for one bulky item to two times per calendar year.	Allied Waste Services
3	City of Barstow	1996	2007	5	2012	Waive a \$2.51 increase that was necessary to fund recycling, freeze rates for two years.	Desert Disposal Service
4	City of Belmont	2005	2006	4	2010	Enter a 15-year agreement with the South Bayside Waste Management Authority (SBWMA) for disposal at Ox Mountain landfill at "most favored client" rates, which would reduce Belmont's total costs about 7 percent. Make \$11.6 million cash payments to SBWMA over a period of three years beginning January 1, 2005.	BFI Waste Systems of North America, Inc.
5	City of Concord	2006	2011 (with five year option to 2016)	10	2021 (with five year option to 2026)	Required relocation of maintenance facility. Established fixed city franchise fees through 2020. Established free City parks disposal and increased neighborhood cleanup debris boxes. Provided 70 percent of the CPI for interim year adjustments. Established a five (5) percent interim year rate cap.	Concord Disposal Service
6	City of El Cerrito	2009	2009	8	2017	No specific new provisions.	East Bay Sanitary Company
7	City of Hayward	2006	2007	7	2014	Provide service enhancements including: co-mingled recyclables collection; annual residential clean-up service; free disposal of two cubic yards of self-hauled waste; batteries collection; Christmas tree collection; public litter cans; free compost; food waste collection; dirt and debris; and biosolids disposal for residential services, commercial recycling services, and alternative fuel vehicles.	Waste Management of Alameda County
8	City of Healdsburg	2010	2010	10	2015 or 2020	At minimal annual rate increases, provide new services including neighborhood clean-up events, more recycling education programs, Christmas tree disposal, commercial food waste composting, and free tire recycling. Provided one-time contract extension fee of \$150,000.	Redwood Empire Disposal
9	City of Livermore*	2009	2010	10	2020	Develop an indoor recyclable materials transfer facility in the City to transfer recyclable and compostable material collected from within the City into large trailers for transport to offsite recycling facilities. Minimize rate increases for residential services. New compressed natural gas vehicles and new containers.	Livermore Sanitation, Inc.
10	City of Manhattan Beach	1998	1999	3	2002	Froze rate adjustments for 1998 and 1999, with a rate adjustment resuming in 2000. Put a specialized collection vehicle, one that is smaller and quieter, in the downtown area.	Waste Management
11	City of Manhattan Beach	2002	2002	9	2011	Divert at least 50 percent of the waste stream collected and controlled by Waste Management from landfills.	Waste Management
12	City of Martinez	2004	2011	2	2013	Reduction in cost of new single stream recycling program by extending the term (equipment depreciated over longer term).	Allied Waste Industries, dba PHBD
13	City of Milpitas	2004	2007	10	2017	Waive the cost of the street sweeping program for up to 3 years (an approximately \$225,000 annual cost to the General Fund).	Allied Waste Industries, dba BFI
14	City of Oceanside <sup>#</sup>	2010	2012	3	2015	Offered to pay the City at least \$1 million a year for five years in exchange for a three-year franchise extension.	Waste Management of North County, Inc.
15	City of Piedmont *	2008	2008	10	2018	Provide three new wheeled carts for garbage, recycling, and green waste to each household; and for the first time, provide an option for curbside pick-up services.	Richmond Sanitary Services, Inc.

Mr. Chandler  
March 11, 2011

**Attachment 5**  
**Other Jurisdiction Franchise Extension Provisions**  
**(As of July 2010)**

16	City of Pleasant Hill	2003	2006	9	2015	Restructure franchise agreement entirely, set up rate setting process, fixed residential rates for one year.	Allied Waste Industries, dba PHBD
17	City of Richmond	2003	2003	22	2025	Increase in franchise fee from 2.5 to 5.0 percent of gross revenues, City residents get free use of landfill.	Republic Waste Services
18	City of San Mateo	2005	2006	4	2010	Provide a total settlement payment of \$2.7 million to the City. The settlement payment represents reimbursement of a portion of the landfill disposal fees previously charged to the City. These funds were credited to the City over a four-year period and were used to moderate rate increases.	Republic Services (formerly Allied Waste)
19	City of San Rafael	2001	2021	1	2022	No specific new provisions.	Marin Sanitary Service
20	City of Santa Rosa	2010	2012	5 (+5 year Option)	2017	Increase franchise fee from 10 to 11 percent; establish an additional franchise extension fee of 4.5%, which cannot be passed on to the rate payer; and provide service enhancements to benefit ratepayers.	North Bay Corporation
21	City of Seaside	2003	2010	5	2015	y). City option to increase citywide clean ups from existing two (2) per year to four (4) per year (at \$0.50 per customer, per month, additional cost).	Carmel Marina Waste Management
22	City of Stockton	2003	2003	15 (+5 year option)	2018	Create 10 percent senior rate discount (at age 65, or 6,000 customers); free stickers for extra waste pickup; seasonal leaf collection; enhanced neighborhood cleanup with free bins and boxes for target areas; televisions, computer monitors, and appliances added to curbside collection; a best effort requirement to meet 50 percent diversion; a cap on rate increases; interim year adjustments limited to 50 percent of the CPI and subject to City approval.	Stockton Scavenger/Sunrise Sanitation
23	City of Sunnyvale*	1991	1991	10	2001	Reduction in rates by 16 percent.	Bay Counties Waste Services
24	City of Sunnyvale	1992	2001	3	2004	Change to OR-based rate setting; purchased new trucks.	Bay Counties Waste Services
25	City of Sunnyvale	1996	2004	7	2011	Change in operating ratio (OR) level.	Bay Counties Waste Services
26	City of Sunnyvale	2003	2011	7	2018	Changes in depreciation schedule to 10 years for rolling stock and containers (from 7 years and 5 years, respectively). Savings with conversion split 50%/50% to the City/hauler.	Bay Counties Waste Services
27	Central Contra Costa Solid Waste Authority	2004	2005	10	2015	Implementation of single stream recycling by 9/1/2004, minimum diversion tonnage goals, incorporation of food waste pickup with yardwaste, website required, pre-set compensation levels in years 1 and 2, company guarantee of recycling revenues.	Valley Waste Management
28	Central Contra Costa Solid Waste Authority	2004	2005	10	2015	Pre-set tipping fees over the life of the contract. Pre-set compensation in years 1 and 2 of the contract.	Allied Waste Industries
29	Pebble Beach Community Services District	2003	2010	5	2015	Rate increase of 3.5 percent vs. 5.1 percent and implementation of single stream.	Carmel Marina Waste Management
30	Monterey County	2010	2012	8	2020	Consolidation of the two existing franchise agreements (Northeastern and Western Franchise Agreements) into a single, unified franchise agreement that would provide economies of scale. Standardized service package featuring wheeled refuse and recycling carts.	USA Waste of California, Inc., dba Carmel Marina Corporation
31	Santa Clara County	2007	2007	7	2014	No specific new provisions.	Los Altos Garbage
Average				7.55			

\* Franchise re-bid. All of the other examples in this table were negotiations with franchise holders and were not re-bid.

# Currently under negotiations.

Mr. Chandler  
March 11, 2011

Page 28

[This page intentionally left blank.]

Mr. Chandler  
March 11, 2011

Page 29

**Attachment 6**  
**Franchise Extension Pros and Cons**

Mr. Chandler  
March 11, 2011

Page 30

**Attachment 6**  
**Franchise Extension Pros and Cons**

*Pros*

- Maintains continuity of collection services
- Takes advantage of hauler's local knowledge of City streets/operations (e.g., route optimization, customer requirements, and service delivery methods)
- If applicable, retains a high quality hauler (in terms of minimal complaints, consistent on-time delivery, other measurable parameters)
- Retains rates which may be competitive with other jurisdictions with similar service offerings and objectives
- Rewards a current hauler, who may have demonstrated a willingness to implement program changes at affordable costs, with the ability to gauge the impact of those changes
- Realizes that refuse collection contracts are best served by long-term business partnerships between the City and hauler (due to their capital intensive nature of the business, the high costs of new vehicles/equipment, and the time required to depreciate new purchases)
- Recognizes that a formal procurement can be expensive and administratively time-consuming for the City, without a guarantee that all service parameters will be met

*Cons*

- Potentially reduces the quality of service if let out to bid (particularly by simply selecting a low bidder), though this may be for a limited timeframe
- Restricts potential leverage gained from competition. A formal competitive procurement has the potential to provide benefits to the City, which may include:
  - § A one-time reduction in rates
  - § New programs or changes to existing programs
  - § Guaranteed periods of rate stabilization
  - § Changes to the rate structure (if desired)
- If granted with limited benefits realized by the City, potentially fails to recognize that a contract extension has tremendous value to a hauler in terms of future profitability. Many jurisdictions use this value proposition to negotiate some service modifications, or possibly some rate relief. Absent a fair negotiation result, a procurement often becomes the only solution
- Limits the time required for a hauler to demonstrate an extension is merited (if granted early in the franchise term)
- Requires rebuilding City/hauler relationship. Potentially, results in a new hauler who may not be motivated to work as closely with the City to meet program needs (e.g., in the case where margins already are slim)
- Causes displacement of local laborers

Mr. Chandler  
March 11, 2011

Page 31

**Attachment 7**  
**Potential Franchise Extension Terms**

Mr. Chandler  
March 11, 2011

Page 32

**Attachment 7**  
**Potential Franchise Extension Terms**

*City benefit - At ratepayer expense*

1. Increases in franchise fees
2. New programs to increase diversion (so that 50 percent goal is met and sustained, e.g., convert more apartments to recycling, single stream recycling, more commercial recycling)
3. Increase in free services to City (e.g., drop boxes)
4. Commercial foodwaste program
5. Mandatory commercial recycling

*City benefit - At hauler expense*

6. Franchise re-assignment fees
7. Diversion penalty payments
8. Performance penalties

*Ratepayer benefit – At hauler expense*

Rates Stability and Relief

9. Rate freezes over specific intervals
10. Rate reductions
11. Reductions in the current 90 percent operating ratio, the profitability level<sup>7</sup>
12. Caps on interim year rate changes (a discounted percent of CPI and an overall CPI cap)
13. Long-term caps on tipping fees
14. Rate reviews at the extension point, where if rates not “at market” then deny extension
15. Community impact payments

Service Changes

16. On-call clean ups (customer identified)

Other Changes

17. Website
18. Newsletter
19. Credit card and bank bill pay

---

<sup>7</sup> We surveyed recent returns of both publicly and privately held waste management companies and concluded that the 90 percent OR level continues to be consistent with industry averages.

Mr. Chandler  
March 11, 2011

Page 33

**Attachment 8**  
**Bulky Item Maximum Price List**

Mr. Chandler  
March 11, 2011

**Attachment 8**  
**Bulky Item Maximum Price List <sup>8</sup>**

<u>Description</u>	<u>Per Unit Fee</u>
Twin mattress	\$40.00
Twin box spring	\$40.00
Double mattress	\$40.00
Double box spring	\$40.00
Queen mattress	\$40.00
Queen box spring	\$40.00
King mattress	\$40.00
King box spring	\$40.00
Stove	\$40.00
Dryer	\$40.00
Washer	\$40.00
Dishwasher	\$40.00
Hot water heater	\$40.00
Couch/sofa	\$40.00
Hide a bed	\$40.00
Refrigerator (pick up and Freon removal)	\$100.00
Freezer (pick up and Freon removal)	\$100.00
Air conditioner (pick up and Freon removal)	\$100.00
Swamp cooler	\$40.00
Tires (less than 19")	\$6.00
Tires with rim (less than 19")	\$8.00
Tires (larger than 19")	\$9.00
Tires with rim (larger than 19")	\$14.00
TV (32" or smaller)	\$25.00
TV (32" or larger)	\$40.00
Computer monitors	\$25.00
E-waste (3 pieces)	\$5.00
Extra 32-gallon bag	\$2.50

---

<sup>8</sup> This price list is applicable only for bulky items placed at the curb as part of the three annual on-call cleanup days. The fee would be charged for each unit placed at the curb beyond the two free units allowed as part of the on-call cleanup program.

# Appendix B

## Blank Forms and Worksheets

---



City of Martinez

**Base Year Rate Change Application**

*Financial Information*

Actual Historical Years			Estimated Current Year	Projected Base Year
Year 1	Year 2	Year 3	Year 4	Year 5

**Section I -- Allowable Costs**

1. Direct Labor Costs	\$	\$	\$	\$	\$
2. Tipping Fees (Profit Allowed)					
3. Corporate and Local General and Administrative Costs					
4. Trucking and Equipment Costs					
5. Depreciation and Other Operating Costs					
6. Services Provided to City					
7. Total Allowable Costs (Lines 1+2+3+4+5+6)	\$ -	\$ -	\$ -	\$ -	\$ -

**Section II -- Allowable Operating Profit**

8. Operating Ratio	%	%	%	%	%
9. Allowable Operating Profit [(Line 7 / 0.9)-Line 7]	\$ -	\$ -	\$ -	\$ -	\$ -

**Section III -- Pass Through Costs without Franchise Fees**

10. City Administrative Fee					
11. Tipping Fees (Pass Through)					
12. Total Pass Through Costs (without Franchise Fees) (Lines 10+11)	\$ -	\$ -	\$ -	\$ -	\$ -

**Section IV -- Revenue Requirement without Franchise Fees**

13. Total Allowable Costs (Line 7) plus Allowable Operating Profit (Line 9) plus Total Pass Through Costs (without Franchise Fees) (Line 12)	\$ -	\$ -	\$ -	\$ -	\$ -
--	------	------	------	------	------

**Section V -- Revenues without Rate Change in Base Year**

14. Residential Revenues					\$ -
15. Less Allowance for Uncollectible Residential Accounts					
16. Total Residential Revenues (without Rate Change in Base Year)					\$ -
17. Commercial and Light Industrial Revenues					\$ -
18. Less Allowance for uncollectible Commercial and Light Industrial Accounts					
19. Total Commercial/Light Industrial Revenues (without rate change in Base Year)					\$ -
20. Recycled Materials Sales					
21. Total Revenues (Lines 16+19+20)	\$ -	\$ -	\$ -	\$ -	\$ -

**Section VI -- Net Shortfall (Surplus)**

22. Net Shortfall (Surplus) without Franchise Fees (Lines 13-Line 21)					\$ -
23. Residential / Commercial / Light Industrial Franchise Fees (see calculation below)					\$ -
24. Net Shortfall (Surplus) with Franchise Fees (Lines 22 + 23)					\$ -

**Section VII -- Percent Change in Rates**

25. Total Commercial / Light Industrial Revenues Prior to Rate Change (Lines 16+19)					\$ -
26. Percent Change in Existing Residential / Commercial / Light Industrial Rates (Line 24 / Line 25)					%

**Franchise Fee Calculation**

**Summary Revenue Requirement**

Franchise fees are set by the City at 5 percent of the revenue requirement  
 Solve for two equations with one unknown, and identify franchise fees as X =>  
 Equation 1) Revenue Requirement x 0.05 = X  
 Equation 2) Revenue Requirement = Line 13 + X, or \$ - +X  
 Substitute equation 2) into equation 1) and solve for X =>  
 ( \$ - + X) x 0.10 = X or X = \$ -

27. Total Allowable Costs (Line 7)	\$ -
28. Allowable Operating Profits (Line 9)	-
29. Total Pass Through Costs (with Franchise Fees) (Lines 12+23)	-
30. Year ___ Revenue Requirements (Line 27 + 28 + 29)	\$ -

Year:

### Base Year Rate Change Application

Cost Summary for Year \_\_\_\_\_

**Section VIII -- Base Year Cost Allocation**

Description of Cost	Martinez	Non-CCCSWA and Non-Martinez	CCCSWA Areas	Audited Financial	Allocation Base(s)
Labor - Regular	\$	\$	\$	\$	
Labor - Overtime					
Benefits					
Payroll Taxes					
<b>31. Total Direct Labor Costs</b>	\$ -	\$ -	\$ -	\$ -	
<b>32. Total Tipping Fees (Profit Allowed)</b>					
Accounting	\$	\$	\$	\$	
Computer Services					
Dues and Subscriptions					
Insurance					
Laundry					
Legal					
Management Fees/Corporate Overhead					
Miscellaneous and Other					
Non-Deductible					
Office Expense					
Operating Supplies					
Outside Services					
Public Relations and Promotion					
Taxes and Licenses					
Telephone					
Travel					
Utilities					
<b>33. Total Corporate and Local General and Administrative Costs</b>	\$ -	\$ -	\$ -	\$ -	
Equipment Rental	\$	\$	\$	\$	
Gas & Oil					
Insurance					
Parts					
Repairs and Maintenance					
Tires					
Other					
<b>34. Total Trucking and Equipment Costs</b>	\$ -	\$ -	\$ -	\$ -	
Depreciation-Buildings	\$	\$	\$	\$	
Depreciation-Vehicles					
Depreciation-Containers					
Other Operating Costs					
<b>35. Total Depreciation and Other Operating Costs</b>	\$ -	\$ -	\$ -	\$ -	
<b>36. Total Services Provided to City</b>					
<b>37. Total Allowable Costs (Lines 31+32+33+34+35+36)</b>	\$ -	\$ -	\$ -	\$ -	
<b>38. Total City Administration Fee</b>					
<b>39. Total Tipping Fees (Pass Through)</b>					
<b>40. Total Residential/Commercial/Light Industrial Franchise Fees</b>					
<b>41. Total Pass Through Costs (Lines 38+39+40)</b>	\$ -	\$ -	\$ -	\$ -	
<b>42. Total Costs (Lines 37+41)</b>	\$ -	\$ -	\$ -	\$ -	

**Base Year Rate Change Application**

Revenue Summary

**Section IX -- Revenues**

	Actual			Estimated	Projected
	Historical Years			Current Year	Base Year
	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Single Family Residential Services</b>					
43. Single Family Residential Revenues (Base Year From Page 4 of 6)					
<b>Multiunit Residential Services</b>					
44. Number of Accounts					
45. Multiunit Residential Revenues					
46. Residential Revenues (w/o Allowable for Uncollectible Accounts) (Lines 43+45)	\$ -	\$ -	\$ -	\$ -	\$ -
47. Allowance for Uncollectible Residential Accounts					
48. <b>Total Residential Revenues (Line 46 - Line 47)</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Commercial and Light Industrial Can Services</b>					
49. Number of Accounts					
50. Commercial and Light Industrial Can Revenues					
<b>Commercial and Light Industrial Bin Services</b>					
51. Number of Accounts					
52. Commercial and Light Industrial Bin Revenues					
<b>Commercial and Light Industrial Drop Box Services</b>					
53. Number of Accounts					
54. Commercial and Light Industrial Drop Box Revenues					
55. Commercial and Light Industrial Revenues (w/o Allowance for Uncollectible Accounts) (Lines 50+52+54)	\$ -	\$ -	\$ -	\$ -	\$ -
56. Allowance for Uncollectible Commercial and Light Industrial Accounts					
57. <b>Total Commercial and Light Industrial Revenues (Line 55 - Line 56)</b>	\$ -	\$ -	\$ -	\$ -	\$ -
58. <b>Recycled Material Sales</b>					
59. <b>Total Revenues (Lines 48+57+58)</b>	\$ -	\$ -	\$ -	\$ -	\$ -

### Base Year Rate Change Application

Single Family Residential Summary

**Section X -- Single Family Residential Revenues**

			Projected Base Year
<b>Single Family Residential Revenues (w/o Rate Change in Base Year)</b>			
	Current Rate/Month	Projected Accounts	Total <sup>a/</sup>
1, 20-gallon cart			\$ -
1, 20-gallon cart - senior			-
1, 20-gallon cart - extra yardwaste			-
1, 32-gallon cart			-
1, 32-gallon cart - senior			-
1, 32-gallon cart - extra yardwaste			-
1, 32-gallon cart - extra recycling			-
1, 32-gallon cart - extra yardwaste senior			-
1, 32-gallon cart - 2 extra yardwaste			-
1, 64-gallon cart			-
1, 64-gallon cart - senior			-
1, 64-gallon cart - extra yardwaste			-
1, 64-gallon cart - extra recycling			-
1, 64-gallon cart - extra yardwaste senior			-
1, 64-gallon cart - 2 extra yardwaste			-
1, 96-gallon cart			-
1, 96-gallon cart - extra yardwaste			-
1, 96-gallon cart - extra recycling			-
2, 64-gallon cart			-
2, 64-gallon cart - extra recycling			-
3, 64-gallon cart			-
2, 96-gallon cart			-
<b>60. Total Base Year Single Family Residential</b>		-	\$ -

Year:

<sup>a/</sup> Equal to the current rate per month multiplied by 12 multiplied by the projected number of accounts.

### Base Year Rate Change Application

*Operating Information*

Historical Information	Percent Change	Historical Information	Percent Change	Historical Information	Percent Change	Current Year Estimated Information	Percent Change	Base Year Projected Information
Year 1	Year 1 to 2	Year 2	Year 2 to 3	Year 3	Year 3 to 4	Year 4	Year 4 to 5	Year 5

**Section XI -- Operating Data**

**Accounts**

- 61. Residential
- 62. Commercial
- 63. Light Industrial
- 64. Total Accounts


**Waste Tonnage**

- 65. Residential
- 66. Commercial
- 67. Light Industrial
- 68. Total Tonnage


**Recyclable Tonnage**

- 69. Residential
- 70. Commercial
- 71. Light Industrial
- 72. Total Tonnage


**City Services**

- 73. City Bins
- 74. City Drop Boxes


**Section XII -- Change in Commercial Rates**

- 75. 1, 32-gallon cart -- Once per week
- 76. 1, 32-gallon cart -- Twice per week
- 77. 1, 32-gallon cart -- Three times per week
- 78. 2 Yard Bin -- Once per Week
- 79. 3 Yard Bin -- Once per Week
- 80. 20 Yard Debris Box -- Per Pick Up


### Base Year Rate Change Application

**Rate Change**

81. Rate Change Requested

**Rate Schedule**

Abbreviated Rate Schedule	Current Rate	Changed Rate	Adjustments <sup>b/</sup>	New Rate
1, 20-gallon cart				\$ -
1, 20-gallon cart - senior				\$ -
1, 20-gallon cart - extra yardwaste				\$ -
1, 32-gallon cart				\$ -
1, 32-gallon cart - senior				\$ -
1, 32-gallon cart - extra yardwaste				\$ -
1, 32-gallon cart - extra recycling				\$ -
1, 32-gallon cart - extra yardwaste senior				\$ -
1, 32-gallon cart - 2 extra yardwaste				\$ -
1, 64-gallon cart				\$ -
1, 64-gallon cart - senior				\$ -
1, 64-gallon cart - extra yardwaste				\$ -
1, 64-gallon cart - extra recycling				\$ -
1, 64-gallon cart - extra yardwaste senior				\$ -
1, 64-gallon cart - 2 extra yardwaste				\$ -
1, 96-gallon cart				\$ -
1, 96-gallon cart - extra yardwaste				\$ -
1, 96-gallon cart - extra recycling				\$ -
2, 64-gallon cart				\$ -
2, 64-gallon cart - extra recycling				\$ -
3, 96-gallon cart				\$ -
2, 96-gallon cart				\$ -

82. Single Family Residential

Rate change of  will be applied to all rates in each structure with each rate rounded up or down to the nearest \$0.05.

**Certificate**

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by City of Martinez.

Name:

Title:

Signature:

Date:

**Year:**

<sup>b/</sup> Calculated rates are rounded up to the nearest \$0.05.

City of Martinez

# Solid Waste Fee Survey

***Residential Refuse, Recycling, and Greenwaste Collection Rates of Comparable Jurisdictions to the City of Martinez.***

	1, 20-gallon container	1, 32-gallon container	1, 64-gallon container	1, 96-gallon container	Senior Citizen
Antioch	\$	\$	\$	\$	\$
Clayton					
Concord					
Danville					
Lafayette					
Moraga					
Orinda					
Pleasant Hill					
Uninc. County (CCCSWA)					
Walnut Creek					
Comparative Average					
Proposed City of Martinez					
% Difference from Average	%	%	%	%	%

# Solid Waste Fee Survey

**Commercial Refuse, Recycling, and Greenwaste Collection Rates of Comparable Jurisdictions to the City of Martinez.**

	1 pickup per week			2 pickups per week			Per pull-loose	
	2 cu. yds.	3 cu. yds.	4 cu. yds.	2 cu. yds.	3 cu. yds.	4 cu. yds.	20-yard debris box	30-yard debris box
Antioch	\$	\$	\$	\$	\$	\$	\$	\$
Clayton								
Concord								
Danville								
Lafayette								
Moraga								
Orinda								
Pleasant Hill								
Uninc. County (CCCSWA)								
Walnut Creek								
Comparative Average								
Proposed City of Martinez								
% Difference from Average	%	%	%	%	%	%	%	%

Notes: Commercial drop box rates for Antioch, Clayton, and Pleasant Hill are for boxes not to exceed 1 ton.

City of Martinez

# Interim Year Rate Change Application

## Summary

### Rate Change

1. Percent Change in Rates

	%
--	---

### Rate Schedule

Rate Schedule a)	Current Rate	Changed Rate	Adjustment b)	New Rate
2. 1, 20-gallon cart				\$ -
3. 1, 32-gallon cart				\$ -
4. 1, 64-gallon cart				\$ -
5. 1, 96-gallon cart				\$ -
6. 1, 20-gallon cart - senior				\$ -
7. 1, 32-gallon cart - senior				\$ -

### Certificate

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by City of Martinez.

Name:

Title:

Signature:

Date:

**Year:**

- a) Does not include all of the rates in the rate structure.
- b) Calculated rates are rounded up to the nearest \$0.05.

# Interim Year Rate Change Application

## Section I -- Consumer Price Index (CPI) Information

CPI - All Urban Consumers  
Not Seasonally Adjusted  
San Francisco - Oakland-San Jose, CA  
All Items  
1982 - 1984 = 100  
U.S. Department of Labor, Bureau of Labor Statistics

	Month	Year	CPI Data
8.			
9.			

## Section II -- % Change in CPI

10. % Change in CPI  %

## Section III -- 90% Change in CPI but Not to Exceed 4%

11. 90% Change in CPI  %

**Exhibit E**  
**Solid Waste and Recycling Services – City Facilities**

<b>Facility</b>	<b>Service</b>
City Hall, 525 Henrietta	1 X 4 Yd Box 2x wk(Refuse), 1 X 4 Yd 1x wk(Recycle)
Senior Center, 818 Green St	1 X 2 Yd Box 1x wk (Refuse), 2 X 64 Gal Cart 1x wk(Recycle)
Water Treatment Plant, 3003 Pacheco Blvd	2 x 20 Yd Box 2x wk (Refuse) 1 20 yd 2x wk (street sweeping) 2 X 64 gal 1x wk (Recycling) 20-40 cubic yards of dirt quarterly
Marina, 111 Tarantino	20 yard cardboard box, on call
City Public Pool, 100 Buckley St	1 X 2 Yd 3x wk (Refuse)
Waterfront Park	1 X 20 Yd Box 1x wk
Off Tarantino Dr	1 X 20 Yd Box on call
City Cans/Cement Cans, Main St	10 X 32 Gal Can 2x wk
Boat Wash Station, N Court St	1 X 8 Yd, 2x wk (Refuse), 1 4yd 2x wk (Refuse), 2 64 gal 1x wk (Recycle)
Kiwanis, 750 Allen St	3 X 32 Gal (Garbage) 1x wk
At Marina	1 X 20 Yd., 1x wk
1111 Ward Street	1 2yd 1x wk (Refuse), 1 64 gal 1x wk (Recycle)
Martinez Amphitheatre Offices	2 96 gal carts, 3x wk (refuse), 1 1yd 1x wk (recycle)

**City Recycling Services:**

1. PHBD shall provide recycling containers to all City Facilities collecting the same materials as in the residential curbside program. No fee shall be charged to the City for providing this service.
2. At the request of the City, PHBD shall provide City approved recycling containers at special events sponsored by the City.

**Services provided change based upon City's needs. Customer list is subject to change upon agreement by both parties.**