AMENDED AND RESTATED
SOLID WASTE FRANCHISE AGREEMENT

This Amended and Restated Solid Waste Franchise Agreement ("Agreement") dated for reference purposes as of April 15, 2019 ("Date of Agreement") is entered into by and between Concord Disposal Service, Inc., a California corporation dba Mount Diablo Resource Recovery-Concord ("MDRR"), and the City of Concord, a California municipal corporation ("City").

RECITALS

1. The Legislature of the State of California, by enactment of the Solid Waste Management and Resource Recovery Act of 1972 (Government Code Sections 66700, et seq. "SWMRRRA") and the California Integrated Waste Management Act of 1989 (Assembly Bill 939 codified as California Public Resources Code Sections 40000 et seq., as amended by Assembly Bill 341 "CIWMA"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste, including Garbage, Recyclables Organic Materials, and C&D Debris handling within their jurisdictions.

2. Pursuant to California Public Resources Code Section 40059(a)(1), the Concord City Council ("City Council") has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection and recovery of Garbage, Recyclables, Organic Materials, Construction and Demolition Debris, and Drop Box Services from residential, industrial and commercial generators in the City.

3. City and MDRR are mindful of the provisions of the laws governing the safe collection, transfer, transportation, processing and disposal ("Handling" or "Handle") of Solid Waste.

4. City has not, and, by this Agreement does not, instruct MDRR on its collection methods, nor supervise Solid Waste Handling.

5. City has made substantial investment in the collection and service support infrastructure provided by MDRR, much of which is now amortized, and collection vehicles and equipment, routing maps and schedules, database development, and customer service equipment and procedures have been developed and funded through service fees paid by City ratepayers and the City wishes to continue to enjoy these efficiencies.

6. Continuance of Solid Waste Handling with MDRR minimizes or avoids the risk of service disruption that may come with a transition to a new company.

7. MDRR’s residential and commercial Solid Waste rates compare favorably to surrounding communities and the City Council desires to maintain reasonable rates within City Limits. "City Limits" means the boundaries of the City of Concord together with all amendments and changes thereto, which current boundaries are shown on the City’s 2030 General Plan Land Use Map and incorporated herein by reference and which is on file in the office of the City of Concord City Clerk.
8. City residents rate customer service provided by MDRR as good or excellent as shown by periodic customer satisfaction surveys, and City is satisfied with the services of MDRR.

9. City and MDRR have entered into the following agreements with respect to Solid Waste Materials Handling within City Limits, and satisfaction of SWMRRA and CIWMA requirements: (i) Contract dated June 5, 1967, superseded in its entirety by the Agreement to Extend Franchise; (ii) Agreement to Extend Franchise dated July 14, 1980; (iii) Amendment to Agreement dated August 9, 1982; (iv) Second Amendment to Agreement dated May 21, 1984; (v) Third Amendment to Agreement dated December 8, 1986; (vi) Fourth Amendment to Franchise Agreement dated October 24, 1989; (vii) Fifth Amendment to Franchise Agreement and Companion Agreement dated August 28, 1990; (viii) Sixth Amendment to Franchise Agreement dated March 23 1993; (ix) Seventh Amendment to Franchise Agreement dated July 29, 1997; (x) Eighth Amendment to Franchise Agreement dated June 22, 2004; (xi) Ninth Amendment to Franchise Agreement dated October 2, 2007; (xii) Tenth Amendment to Franchise Agreement dated December 14, 2009; (xiii) Eleventh Amendment to Franchise Agreement dated February 16, 2012; (xiv) Twelfth Amendment to Franchise Agreement dated July 26, 2012; and (xv) Thirteenth Amendment to Franchise Agreement dated August 2, 2016. The foregoing are collectively referred to herein as the “Original Franchise Agreement.”

10. In addition, the City and MDRR are subject to newly enacted legislation including the following:

a. The Legislature of the State of California, by enactment of Assembly Bill 341 (“AB 341”) adopted a goal that seventy-five percent (75%) of solid waste generated statewide be diverted from landfill by the year 2020. Furthermore, AB 341 requires that each commercial solid waste generator, including multi-family dwellings of five or more units, provide for recycling services, and each City or County implement recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units.

b. The Legislature of the State of California, by enactment of Assembly Bill 1594 (“AB 1594”) eliminates cities and counties from receiving landfill diversion credit from green waste used as Alternative Daily Cover, effective January 1, 2020.

c. The Legislature of the State of California, by enactment of Assembly Bill 1826 (“AB 1826”) adopted requirements for each commercial solid waste generator, including multi-family dwellings of five or more units, to provide for organics recycling services, and for each City or County to implement organics recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units by April 1, 2016.

11. The Original Franchise Agreement has become outdated and internally inconsistent and would benefit from a revision and/or consolidation of its terms. As such, the City and MDRR desire to enter into this Agreement in order to set forth the terms and conditions of the parties’ agreement in one comprehensive, updated document, and amend and restate the Original Franchise in its entirety.

12. City and MDRR have adopted “Rate Setting Process and Methodology Manual for Residential Solid Waste Fees” (“Rate Setting Manual”) for the purposes of determining
Handling rates which are fair to City of Concord residents while at the same time providing a fair return to the franchise hauler. The front cover of the Rate Setting Manual dated January 12, 2010 is attached hereto as Attachment A; a full copy thereof is on file with and may be obtained from: City of Concord, Planning Division, 1950 Parkside Drive MS/53, Concord, CA 94519.

13. On March 25, 1997, the City Council adopted Resolution 97-6042.1 and Resolution 97-53 which required specific updates to the Rate Setting Manual. Additional revisions to the Rate Setting Manual were effected via certain amendments identified in Recital 9 above.

14. The City recognizes that affiliated and/or related entities of MDRR undertake activities including Solid Waste handling, gathering, collecting, and disposal outside of the limits of the City of Concord, and such activities are not governed or otherwise addressed in this Agreement.

15. The parties believe that this Agreement represents a high degree of service and value to the City of Concord, its residents, and businesses.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and MDRR hereby agree as follows:

1. DEFINITIONS. For the purpose of this Agreement, the definitions contained in this Section apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of the word or phrase as contained in the Concord Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

  a. “Agreement” means this Amended and Restated Solid Waste Franchise Agreement, including all exhibits and attachments incorporated by reference, between the City and MDRR for the collection, transfer, transportation, processing and disposal of Garbage, Recyclables, Organic Materials, and C&D Debris, and other related services.

  b. “Applicable Laws” means without limitation, AB 341, AB 876, AB 901, AB 939, AB 1594, AB 1826, SB 1016, SB 1383 and all amendments and related subsequent legislation, as well as all existing and new bills, laws, statutes, ordinances, municipal, state, and federal authorities and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and all rules, regulations, orders, written interpretations, directives, licenses and permits of any state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government applicable to MDRR or its property or in respect of its operations, all as may be amended from time to time, and any successors thereto.
c. "Bin" means a container with capacity of one to eight cubic yards, with hinged lid and wheels/no wheels serviced by collection truck. Bins shall be available for Garbage, Recyclables, and Organic Materials and labeled as such to specify the type of allowable waste.

d. "Bulky" or "Bulky Items" means discarded large household appliances such as washers and dryers, dishwashers and other appliances without freon (white goods), E-Waste, furniture, tires, carpets, mattresses and similar large items which require special handling due to their size, but can be collected without special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned vehicles or Household Hazardous Waste (except for E-Waste).


f. "CalRecycle" means California's Department of Resources Recycling and Recovery that administers and provides oversight for all of California's state-managed waste handling and recycling programs.

g. "Cart" means a container with a hinged lid and wheels serviced by an automated or semi-automated loading truck with varying capacities of approximately 20 to 100 gallons.

h. "City Manager" means the City Manager of Concord or his/her designee.

i. "Collection," "Collect," and "Collection Services" means the collection of: Garbage and its transportation to a transfer station or landfill; Recyclables and their transportation to a processing or materials recovery facility; Organic Materials and their transportation to a processing facility; and C&D Debris and their transportation to a processing facility.

j. "Commercial" means a primarily non-residential use, including retail sales, professional services, wholesale operations, manufacturing and industrial operations, healthcare and educational operations, and institutional, governmental and non-profit uses.

k. "Commercially generated Recyclable materials" means Recyclables generated at commercial property and separated by the Generator for collection in a manner different from Garbage.

l. "Construction and Demolition Debris" or "C&D Debris" means wood, wallboard, metals, glass, paper, plastic, concrete, and other recyclable and non-recyclable Solid Waste, including mixed waste, generated by residential, commercial and industrial demolition, remodeling, and construction activities.

m. "Container" means an approved container used for the disposal and storage until collection of Solid Waste, Organic Materials or Recyclables. It includes Carts, Bins and Drop Boxes.

n. "Disposal" means the ultimate disposition of Solid Waste collected by MDRR at a landfill in full regulatory compliance or other fully permitted disposal site. Disposal does not include alternative daily cover (ADC) to the extent state law defines ADC as landfill diversion for the purposes of AB 939. Commencing January 1, 2020, the use of green material, as defined
in the California Public Resources Code, as ADC will be considered Disposal and not diversion
in accordance with AB 1594.

o. "Divert" or "Diversion" means the act of recycling, composting, recovering and
otherwise preventing Solid Waste from landfill Disposal.

p. "Drop Box" means an open-top container, or compactor, with a capacity of four
to fifty cubic yards that is serviced by a roll-off truck.

q. "E-Waste" or "Electronic Waste" means discarded electronic equipment such as
stereos, radios, speakers, televisions, computers, monitors, VCRs, printers, copiers, facsimile
machines, DVDs, microwaves, telephones and similar items (including cathode ray tubes and
other universal waste which may require special handling) and other items as defined by the

r. "Exempt Waste" means biohazardous or biomedical waste, Hazardous Waste,
sludge, contaminated soil and dirt, contaminated concrete, contaminated asphalt, automobiles,
automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries,
any matter or materials which are not acceptable for disposal at a solid waste landfill as defined
in the Act and those wastes under the control of the Nuclear Regulatory Commission.

s. "Food Waste" means food scraps that will decompose and/or putrefy including (i)
all residential and commercial kitchen and table food waste, and animal or vegetable waste that
attends or results from the storage, preparation, cooking or handling of food stuffs, and (ii) paper
waste contaminated with food waste or otherwise not accepted as recyclable pursuant to the
service specifications.

t. "Garbage" has the meaning identified in Concord Municipal Code Section 8.20,
and shall be defined as all non-recyclable packaging and putrescible waste attributed to normal
activities. Garbage must be generated by and at the location wherein the garbage is collected.
Garbage does not include recyclable materials, organic material, construction and demolition
debris, bulky items, Bulky Waste, E-Waste, Universal Waste, hazardous waste, Household
Hazardous Waste or Exempt Waste.

u. "Green Waste" means organic material from trees, shrubs, plants, weeds,
branches, grass, lawn clippings, other vegetation, and material capable of being composted;
provided that trees may not be more than six inches in diameter. Green waste includes “garden
waste” as that term is defined in Concord Municipal Code Section 8.20, but does not include
plastic bags, bricks, rocks, gravel, large quantities of dirt, concrete, sod, non-organic wastes,
loose fruits and vegetables, tree trunks, stumps, palm fronds, branches more than six inches in
diameter or three feet in length, or pet waste.

v. "Handling" or "Handle" has the meaning identified in Recital 3 above.

w. "Hazardous Waste" has the meaning of 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.
("RCRA"), 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 thereover, the term
"Hazardous Waste" shall be construed to have the broader, more encompassing definition.
"Hazardous Waste" shall also have the meaning as that term is defined in Public Resources Code
Section 40141.

x. "Household Hazardous Waste" means hazardous waste generated at residential
sites in the City, including normal residential amounts of household chemicals, pesticides, motor
oil, paint, products containing mercury, E-Waste categorized as Universal Waste (such as
television tubes or monitors), anti-freeze, and lead-acid batteries.

y. "Master Fee Schedule" means Exhibit A to Resolution No. 78-6042 (Fees and
Charges for Various Municipal Services) as periodically updated.

z. "Material Change in Law" means any change in (or any new) Applicable Laws,
on or after the Date of Agreement, that applies to the Solid Waste industry (including, for the
avoidance of doubt and without limitation, changes to the California Integrated Waste
Management Act (CIWMA), changes to CalRecycle regulations, or changes to other Applicable
Laws relating specifically to any aspect of "Solid Waste Handling," "Solid Waste Disposal" or
"Solid Waste Facilities," as such terms are defined by CalRecycle).

aa. "Medical Waste" or "Infectious Waste" means waste which may cause disease or
reasonably be suspected of harboring pathogenic organisms, including waste resulting from
medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks,
mortuaries, veterinary facilities, hospitals, and similar facilities processing wastes which may
include human or animal parts, contaminated bandages, pathological specimens, hypodermic
needles, sharps, contaminated clothing and surgical gloves. (Reference: 17 Cal. Adm. Code
314(d); Health and Safety Code Sections 118215 and 25015 et seq.).

bb. "Original Franchise Agreement" has the meaning identified in Recital 9 above.

c. "Organic Materials" means organic material that can biologically decompose into
a specific mixture of decayed matter, including without limitation, Green Waste and Food Waste.

dd. "Recyclables" means any non-hazardous materials or by-products that are set
aside, handled, and/or packaged for the purpose of being recycled, including without limitation,
glass, paper, cardboard, wood, concrete, plastic, used motor oil & filters, ferrous and non-ferrous
metal, aluminum, and any other waste materials that are capable of being recycled. The terms
recycle, recycled and recycling each mean and refer to the process of collecting, sorting,
cleansing, treating, reconstituting and/or selling recycling materials, and returning them to the
use in the economy. It includes Construction and Demolition Debris, including asphalt and
concrete.

ee. "Refuse Rate Index" or "RRI" is a tool used to calculate the customer Rate
change. The calculations are based on six (6) factors: Labor, Diesel Fuel, Compressed Natural
Gas ("CNG") Fuel, Vehicle Replacement, Vehicle Maintenance, and All Other (insurance, taxes,
office expenses, utilities, etc.). RRI is designed to more accurately reflect the change in costs
related to the operation of a Solid Waste, Recyclables, and Organic Materials hauling and
collection company than the Consumer Price Index which is designed to measure the change in
costs of a household. RRI factors are used to calculate rate adjustments according to the methodology outlined in Attachment B of this Agreement.

ff. "Solid Waste" has the meaning identified in Concord Municipal Code Section 8.20, and includes Garbage, Recyclables, Organic Materials, Construction and Demolition Debris, E-Waste, Universal Waste or Exempt Waste, and other discarded solid and semi-solid wastes as defined in the California Public Resource Code Section 40191, as that section may be amended from time to time. Solid waste means all such materials defined in PRC 40191. Solid Waste does not include any of the following wastes: (1) hazardous waste, as defined in Public Resources Code Section 40141; (2) radioactive waste; and (3) medical waste regulated pursuant to the Medical Waste Management Act.

gg. "Special Waste" has the meaning of any designated wastes, as defined in 23 Cal. Code of Regulations Section 66261.124 or other applicable regulation, and special handling wastes generated by industrial facilities or processes, but shall not include “Hazardous Waste” as defined herein. Special Wastes shall include asbestos, sewage sludge, water treatment sludge, Infectious wastes, drilling muds, contaminated soils, agricultural wastes, filter cake/dewatered sludge, spent catalyst fines, refinery ash and byproducts; except where any such wastes are deemed to be Hazardous Waste.

hh. "Universal Waste" or “U-Waste” means televisions, computer monitors, consumer electronics with circuit boards, fluorescent lamps, cathode ray tubes, non-empty aerosol cans, instruments and switches that contain mercury, and dry cell batteries containing cadmium copper or mercury.

ii. “Waste Generator” or “Generator” means the person or entity who produces the Solid Waste, Recyclables or Organic Materials, or whose act first causes the Solid Waste to become subject to regulation (See Public Resources Code §§40170, 40191).

2. AMENDMENT AND RESTATEMENT. City and MDRR hereby agree that this Agreement amends, restates, and replaces the Original Franchise Agreement in its entirety. Notwithstanding the foregoing, the parties intend to preserve and carry forward any and all currently existing breaches, defaults, claims, obligations, and defenses that either party may have under the Original Franchise Agreement to the extent they arise out of or are related to acts or omissions (known or unknown) on or before the Date of Agreement; provided, however, that this provision shall not be interpreted to revive or reinstate any alleged breaches, defaults, claims, obligations or defenses that have been previously waived by either party or have expired under an applicable statute of limitations. No rate changes or service alterations are being proposed as part of this Agreement.

3. TERM. The term of this Agreement will terminate on the day immediately preceding the fifteenth (15th) anniversary of the Date of Agreement. The term of this Agreement shall upon termination of each twelve (12) month period, automatically extend for an additional twelve (12) month period, so that, upon each anniversary date of this Agreement, the term shall always be fifteen (15) years. The provisions of this Section 3 (Term) are subject to the provisions of Section 4 (Termination) and Section 34 (Successors and Assigns; No Third Party Beneficiaries; No Joint Venture).
4. **TERMINATION.**

a. Either party may terminate this automatic renewal provision by giving at least one hundred twenty days (120) notice in writing to the other of such termination. Thereafter, the automatic renewal provision shall terminate and this Agreement, as amended, shall terminate upon the expiration of the remaining term of this Agreement.

b. Notwithstanding the foregoing, City retains the right to terminate the exclusive nature of this Agreement at any time as the parties recognize that City’s ability to grant this exclusive franchise may be subject to the provisions of the Sherman Anti-Trust Act as a result of the United States Supreme Court ruling in Community Communications, Inc. v. City of Boulder, Colorado (1982) 455 U.S. 40, but that corrective legislation may remedy any problem, if any associated with this case. In the event that corrective legislation may remedy any problem, the City and MDRR agree to promptly meet and confer in good faith to discuss potential corrective legislation that could be enacted to remediate any actual or threatened problem. Any such activities shall be at MDRR’s sole cost and expense, and City’s participation in corrective legislation shall be at City’s sole discretion. MDRR recognizes and agrees that City shall not be liable to MDRR for any damages, lost profits, lost business, or otherwise resulting from said termination. As an alternative to said termination, MDRR shall have the right to defend any action brought to challenge the terms of this agreement, provided MDRR agrees in writing to pay all costs and any judgment (exclusive of City’s insurance coverage of said costs and judgment, if any) associated with said defense. City shall notify MDRR within 5 days of receipt of a demand or suit which includes this Agreement.

c. MDRR acknowledges and agrees that this Section D constitutes the notice required under Public Resources Code Section 49520.

d. **Transition to next contractor.** Should City decide to transition to a new Contractor, and in the event MDRR is not awarded an Agreement to continue to provide Solid Waste, Recyclables, and Organic Materials Handling and other services following the expiration or early termination of this Agreement, MDRR shall cooperate fully with City and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Customers; providing a complete inventory of all Carts and Bins; providing adequate labor and equipment to complete performance of all Solid Waste, Recyclables and Organic Materials Handling and other services required under this Agreement and providing other reports and data required by this Agreement.

5. **GRANT OF FRANCHISE.** MDRR and the City, based upon the decades of satisfactory service that MDRR has provided to the residents of the City, mutually agree that MDRR has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the City for Handling of Garbage, Recyclables, Organic Materials, Construction and Demolition Debris, and Drop Box Services. As such, the City Council determines and finds that the public interest, health, safety and well-being would be best served if MDRR were to continue to provide its residents and other entities with the services enumerated below.
a. **Grant.** City hereby grants and extends to MDRR the exclusive contract right, franchise and privilege to collect and dispose of all Garbage, Recyclables, Organic Materials, Construction and Demolition Debris, and Drop Box Services within the City Limits, upon the terms and conditions contained in this Agreement. MDRR covenants and agrees to fully and faithfully comply with all of the provisions of the Concord Municipal Code relating to the Solid Waste, Recyclables and Organic Materials Handling, and applicable local, state, and federal laws, rules, and regulations, all as may be amended from time to time, and any successors thereto.

b. **Ownership.** City is committed to recovery and recycling of Garbage, Recyclables, Organic Materials, and C&D Debris as a means to conserve resources, energy, money, and to protect the environment. MDRR supports City’s commitment. Once Solid Waste, Recyclables, Organic Materials, and C&D Debris are placed in Containers and properly presented for collection, ownership and the right to possession shall transfer directly from the Waste Generator to MDRR by operation of this Agreement. MDRR is hereby granted the right to retain, process, dispose of, and otherwise use such Solid Waste, Recyclables, Organic Materials, and C&D Debris or any part thereof, in any lawful fashion or for any lawful purpose desired by MDRR, insofar as those lawful purposes are in keeping with the intentions of this Agreement, in particular the Diversion of Solid Waste. Subject to the provisions of this Agreement, MDRR shall have the right to retain any benefit resulting from its right to retain, process, dispose of, or use the Solid Waste, Recyclables, Organic Materials, and C&D Debris which it collects. Solid Waste, or any part thereof, which is disposed of at a disposal site or facility (whether landfill, transformation facility, transfer station, or materials recovery facility) shall become the property of the owner or operator of the disposal site(s) or facility once deposited there by MDRR. MDRR shall be entitled to retain all revenues, if any, from the sale of Recyclables, Organic Materials, and C&D Debris subject to the franchise fee obligations of MDRR in Section 17 herein, collected by MDRR pursuant to this Agreement.

c. **Not Affected by Franchise.** Notwithstanding anything in this Agreement to the contrary, the exclusive privilege granted by this Agreement shall not apply to any of the following:

i. **Residential Hauling.** A person handles, hauls or transports Solid Waste, from his/her own residence for purposes of disposing or diverting of same at a disposal or diversion area or transfer station either personally or through the uncompensated services of another. However, no such person may hire or directly or indirectly compensate another person or entity (not affiliated with MDRR) to dispose or divert such person’s Solid Waste. Furthermore, nothing in this section relieves any person from the requirement to have Solid Waste services as may be required by the Concord Municipal Code.

ii. **Incidental Hauling of Organic Materials.** A person or entity contracts for the removal and disposal or diversion of Organic Materials and such removal and disposal or diversion are incidental to work such as remodeling, gardening, landscaping, or tree trimming, provided that this work is only occasionally performed by or for the customer.

iii. **Self-Hauling.** “Self-hauling” (as defined in Concord Municipal Code Section 8.20) of Solid Waste.
iv. **Bulky Waste.** Hauling of Bulky Waste.

v. **Non-Covered Projects.** 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 that is not defined as a “covered project” under Concord Municipal Code Section 8.20.350.

vi. **Hazardous Waste.** City reserves the right of the City, other persons, or entities to contract with other parties to have Hazardous Waste collected, transported, disposed of, processed and/or diverted. MDRR may, but is not obligated to, collect, transport and dispose of Hazardous Waste. In such event, MDRR shall negotiate separate contracts and rates for Hazardous Waste collection with each individual customer, which rates shall not require advance City Council approval but may be reviewed by the City Council in its discretion at the request of any Hazardous Waste customer. “Hazardous Waste” is defined in Section A: Definitions.

vii. **Special Wastes.** The right of the City, other persons, or entities to contract with other parties to have Special Wastes collected, transported, disposed of, processed and/or diverted. MDRR may, but is not obligated to, collect, transport and dispose of Special Wastes. In such event, MDRR shall negotiate separate contracts and rates for Special Wastes 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 Wastes customer. “Special Wastes” is defined in Section A: Definitions.

viii. **Recyclables, U-Waste, or Organic Materials.** Recyclables, U-Waste, or Organic Materials which are source separated at any premises by the waste generator and donated to youth, civic or charitable organizations.

ix. **Residential Waste, Commercial Waste, City Waste or Recyclables.** Residential Waste, Commercial Waste, City Waste or Recyclables that are removed from a premise by a company through the performance of a service for which MDRR has no franchise under this Agreement, and any other service that MDRR has elected not to or has not provided.

x. **Recyclables or Bulky Items.** Recyclables or Bulky Items that are source separated from Garbage by a Service Recipient, for which the waste generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator.

xi. **Other.** As otherwise expressly set forth in applicable laws, rules, and regulations, including Concord Municipal Code Section 8.20.290, all as may be amended from time to time, and any successors thereto; provided that such law, rules, and/or regulation does not infringe on the rights granted to MDRR hereunder.

6. **SCOPE OF SERVICES.** At all times during the term of this Agreement, MDRR shall and will, at its own cost and expense, subject to the right of MDRR to recover costs it incurs as “allowable costs” under the Rate Setting Manual, provide and maintain an adequate and sanitary
service sufficient to systematically and efficiently perform the services described in this Agreement, including without limitation, those services enumerated in this Agreement.

a. **Solid Waste Handling.** Handle all Solid Waste found or located within City Limits. Subject to waste diversion requirements under state law (including AB 341, AB 1826, AB 1594, SB 1383 and AB 939), MDRR shall transport all such Solid Waste to the Recycling Center and Transfer Station located at 1300 Loveridge Road, Pittsburg, CA (each, a “Transfer Station”), which is to be maintained during the term hereof or any extension of the term hereof, by an affiliate of MDRR at its own cost and expense and to the satisfaction and approval at all times of the County Health Officer of the County of Contra Costa and of the California State Board of Health. MDRR may utilize additional Disposal and/or Diversion facilities if approved by City.

b. **Recyclables and Organic Materials Handing.** See Section 8, Section 9, and Section 10, below.

c. **Accessibility.** MDRR shall provide Collection Service for all Garbage Carts and Bins, Recycling Carts and Bins, and Organics Carts and Bins that are accessible by MDRR’s collection vehicles.

d. **Commingling of Garbage, Recyclables or Organic Materials.** Except contaminated loads, MDRR shall not at any time commingle Garbage with Organic Materials or with Recyclables, or commingle Organic Materials with Recyclables collected pursuant to this Agreement without the express prior written authorization of the City Representative. Such approval by the City will not be unreasonably withheld.

e. **Containers.**

i. **Ownership of Containers.** Ownership of Containers shall rest with MDRR.

ii. **Cart or Bin Exchange.** Upon notice to MDRR by the City or a customer that a change in the size or number of Carts or Bins is required, MDRR shall deliver such Carts or Bins to the customer at no additional charge to customer.

iii. All Carts and Bins must be constructed and maintained to prevent leaks and litter from escaping. All Carts and Bins shall be clean prior to delivery to a customer.

iv. **Upon notice to MDRR by the City or a customer that the customer’s Cart or Bin has been lost, stolen or substantially damaged, MDRR shall deliver a replacement Cart or Bin to such customer.**

v. To the extent feasible, MDRR shall recycle, or cause to have recycled used, discarded, or unwanted collection containers that are collected from customers as part of fulfilling this Agreement.

vi. **Collection containers including carts, bins, and roll-offs shall be of color which depends upon the material type to be collected (Solid Waste, Recyclables, or Organic Materials), or, lid color shall indicate material type to be collected.**
f. **Neighborhood Preservation Program.** MDRR shall provide and collect a total of two hundred seventy-five (275) 20-cubic yard Drop Boxes annually for use in the City’s Neighborhood Preservation Program, at no cost to City; provided that any cost incurred by MDRR under this subsection shall be allowed to be recovered by MDRR as an “allowable cost” in the rate structure in accordance with the policies of the Rate Setting Manual. Beginning July 1, 2020, MDRR shall provide and collect an additional twenty-five (25) 20-cubic yard Drop Boxes for use in the City’s Neighborhood Preservation Program for a total of 300 Drop Boxes annually, at no cost to City; provided that any cost incurred by MDRR under this subsection shall be allowed to be recovered by MDRR as an “allowable cost” in the rate structure in accordance with the policies of the Rate Setting Manual.

g. **City Property/Site Drop Boxes and Bins.** MDRR shall provide and collect 540 20-cubic yard debris boxes annually for the City at no cost. All debris boxes are to be provided and collected at no cost to City; provided that any cost incurred by MDRR under this subsection shall be allowed to be recovered by MDRR as an “allowable cost” in the rate structure in accordance with the policies of the Rate Setting Manual. MDRR shall also provide bin services to the City at no cost. Costs incurred by MDRR to provide debris box and bin services to the City shall be allowed to be recovered by MDRR by the rate structure in accordance with the policies of the Rate Setting Manual. Significant fluctuations in the quantity of City debris boxes and bins provided by MDRR between base years shall be addressed in base year rate reviews.

h. **City Street Cans.** MDRR further agrees to empty, free of any charge, at least once each week, City owned street cans, placed by the City at various points on its City streets; provided that any cost incurred by MDRR under this subsection shall be allowed to be recovered by MDRR as an “allowable cost” in the rate structure in accordance with the policies of the Rate Setting Manual. The City agrees to notify MDRR in writing the location of each such container. MDRR further agrees that it shall pick up and dispose of all of Solid Waste and Recyclables from the City’s corporation yard, Civic Center, Centre Concord, public bus stops, municipal parks, and other municipal facilities at least once per week but more frequently if required, free of any charge, and MDRR shall provide all bins and/or receptacles for this purpose.

i. **Waste Generation/Characterization Studies.** MDRR agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of the Applicable Laws including AB 939, AB 341, AB 1594 and AB 1826.

j. **Implementation of Additional Diversion Services.** If the City determines that MDRR has not fulfilled its diversion requirements, City may request that MDRR perform additional, reasonable diversion programs. City may additionally request other changes to services associated with legislation including State Bill 1383. MDRR shall be entitled to a rate adjustment in accordance with this Agreement for providing such additional or modified services as the City may request. The City Council will adjust MDRR’s rates to compensate MDRR for its reasonable costs of providing such additional or modified services. MDRR shall present, within thirty (30) calendar days of a request by the City hereunder, a proposal to provide the additional or expanded services described in this Section. At a minimum, the proposal shall contain a complete description of the following:
Collection methodology to be employed (equipment, manpower, etc.).

Equipment to be utilized (vehicle number, types, capacity, age, etc.).

Labor requirements (number of employees by classification).

Type of materials.

Containers to be utilized.

Provision for program publicity/education/marketing.

vii. Five year projection of the financial results of the program’s operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

MDRR acknowledges and agrees that the City may permit other persons besides MDRR to provide the additional programs not otherwise contemplated in this Agreement if MDRR and the City cannot agree on terms and conditions of such services in one hundred twenty (120) calendar days from the date when the City first requests a proposal from the MDRR to perform such services.

k. Recovery of Costs Incurred by MDRR. MDRR may recover only those costs covered under this Agreement’s terms, and as described in the Rate Setting Manual.

l. All references in this Agreement relating to the ability of MDRR to recover certain costs incurred in the rate structure provided for in the Rate Setting Manual shall be construed and interpreted by the parties as allowing MDRR to categorize those costs incurred as “allowable costs” for purposes of calculating rate adjustments under the Rate Setting Manual, unless expressly indicated otherwise herein.

m. Scope of Agreement. The scope of this Agreement shall be interpreted to be consistent with applicable law, now and during the Term. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of City to lawfully provide for the scope of services as specifically set forth herein, MDRR agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that City shall not be responsible for any lost profits or losses claimed by MDRR to arise out of limitations of the scope of the Agreement set forth herein.

SERVICE FREQUENCY.

a. Regular Collection. MDRR covenants and agrees to make regular minimum weekly collections of Garbage, Recyclables, and Organic Materials one time per week on a scheduled route basis, except for Bulky Waste or Bulky Item collection, on-call recycling, and holiday tree collection. Collection services shall be provided beginning no earlier than 5:00 a.m. and ending no later than 6:00 p.m. for residential pickup services and beginning no earlier than 4:00 a.m. and ending no later than 11:00 p.m. for industrial and commercial pickup services, Monday through Saturday. The hours or days of collection may be extended due to extraordinary circumstances with the prior consent of the City Manager.
b. Contractor shall complete one hundred percent (100%) of each route on the regular scheduled collection work day.

c. The size of the Bin or Cart and the frequency (above the minimum) of collection shall be determined by the customer and MDRR. However, size and frequency shall be sufficient to provide that no Garbage, Recyclable Material or Organic Materials need be placed outside the Bin or Cart on a regular basis.

8. GENERAL RECYCLING/AB 939/SB 1016.

a. Goals. MDRR will work with the City to meet diversion goals mandated by CalRecycle, as may be amended from time to time. MDRR and City shall agree on specific programs and activities necessary to show good faith effort to meet CalRecycle diversion goals.

b. Diversion Performance Requirement. Subject to the procedure and terms and conditions identified in this Agreement, MDRR shall implement additional recycling programs at the direction of the City to meet diversion goals mandated by CalRecycle, as may be amended from time to time. In any year that the City’s Annual Report to CalRecycle indicates an expected finding of non-compliance by CalRecycle, then MDRR and the City shall meet and confer to discuss implementing additional recycling strategies to achieve compliance, subject to the terms and conditions identified in this Agreement, including but not limited to those listed below:

i. Expanded range of cart sizes;

ii. Enhanced industrial, commercial, apartment, and retail recycling;

iii. Strategies for diverting self-haul and construction & demolition waste from the landfill to the Transfer Station; and

iv. Other diversion programs as directed by City or proposed by MDRR.

Non-compliance with CalRecycle diversion requirements is defined as the issuance of an official citation outlining a finding of non-compliance issued by CalRecycle.

9. RESIDENTIAL CURBSIDE RECYCLING AND ORGANIC MATERIALS COLLECTION.

The residential Recyclables Handling service provided by MDRR will be governed by the following terms and conditions:

a. Collection. MDRR shall provide residential recycling service to all customers whose Recyclables and Organic Materials are properly containerized and set out. MDRR is not required to collect Recyclables or Organic Materials if the customer does not segregate the Recyclables or Organic Materials from residential Garbage. If Recyclables or Organic Materials are contaminated through commingling with residential Garbage, MDRR shall, if practical, separate the residential Garbage from the Recyclables or Organic Materials. The Recyclables or Organic Materials shall then be collected and the Garbage shall be left in the recycling Cart along with a non-collection notice. However, if the Recyclables or Organic Materials and
Garbage are commingled to the extent that they cannot easily be separated by MDRR or the nature of the Garbage renders the entire Cart contaminated, MDRR may leave the Cart unemptied along with a non-collection notice. For purposes of clarity, as of the Date of Agreement, all Food Waste is required to be disposed of in a residential Garbage Container, which shall remain the required practice until Applicable Laws require a change in the disposal method of Food Waste, or if the City and MDRR negotiate a service and rate amendment to otherwise change the disposal method of Food Waste.

b. Cardboard. Corrugated cardboard that will not fit inside the recycling cart shall be placed as specified by MDRR and picked up pursuant to an on-call recycle cleanup as described herein.

c. MDRR shall collect Garbage, Recyclables, and Organic Materials on the same day from any one residential customer.

10. COMMERCIAL RECYCLING/AB 341 AND AB 1826. The commercial Recyclables Handling service provided by MDRR will be governed by the following terms and conditions:

a. Conditions of Service. MDRR shall provide commercial recycling and Organic Materials service to all commercial customers whose Recyclables and Organic Materials are properly containerized and set out. MDRR is not required to collect if the customer does not segregate the Recyclables and Organic Materials from commercial Solid Waste. If Recyclables or Organic Materials are contaminated through commingling with Solid Waste, MDRR shall, if practical, separate the Solid Waste from the Recyclables and Organic Materials. The Recyclables and/or Organic Materials shall then be collected and the Solid Waste shall be left in the Container along with a non-collection notice. However, if the Recyclables and/or Organic Materials and Solid Waste are commingled to the extent that they cannot easily be separated by MDRR or the nature of the commercial Solid Waste renders the entire recycling Container contaminated, MDRR may leave the Container un-emptied along with a non-collection notice. For purposes of clarity, as of the Date of Agreement, all Food Waste is required to be disposed of in a commercial Solid Waste Container, which shall remain the required practice until Applicable Laws require a change in the disposal method of Food Waste, or if the City and MDRR negotiate a service and rate amendment to otherwise change the disposal method of Food Waste. MDRR may bill its customers for commercial recycling services in arrears, on a quarterly basis. The charge for commercial Recyclables Handling shall be clearly set forth as a separate line item on the quarterly billing statements from MDRR to its commercial customers or shall be billed separately. In the alternative, MDRR may provide with its quarterly Solid Waste billing statement an additional notice that such billing includes a charge for commercial Recyclables Handling. Each February 1st, MDRR shall provide City with a written report identifying its commercial and multifamily customers who are and are not utilizing MDRR's recycling and Organic Materials services.

b. Size and Frequency of Service. MDRR shall provide this service as deemed necessary and as determined between MDRR and the customer, but such service shall be received no less than every other week. Collection service scheduled to fall on a holiday may be rescheduled as determined between the customer and MDRR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart or Drop box at the option of the customer. The size of the Container and the frequency (above the minimum) of collection shall
be determined between the customer and MDRR. MDRR shall provide Containers as part of the commercial collection service rates.

c. **Changes to Work.** If changes in law arise, the Parties shall negotiate as described in Section 14, Changes in Law or Work.

d. **AB 341 and AB 1826.** MDRR shall continue to expand efforts to increase and monitor the number of commercial recycling and Organic Material customers, consistent with the mandatory State requirements of AB 341 and AB 1826, and coordinate with the City in preparation of the City’s annual report describing these efforts.

11. **CUSTOMER SERVICE.**

a. **Additional Residential Customer Services.** MDRR is providing and shall continue to provide the following additional residential customer services:

i. Program for the disposal of sharps (needles) and pharmaceuticals.

ii. Program for the collection and removal of small household batteries.

iii. Three (3) residential clean-up days per year shall be provided. Customers shall also be allowed to schedule three (3) clean-ups on request, with a minimum of seven (7) days’ notice by the residential customer.

iv. Program for the collection and removal of compact fluorescent light bulbs, to be disposed of in strict compliance with all Applicable Laws.

v. Participate in citizen satisfaction surveys or perform independent rate payer satisfaction surveys if requested to do so by the City Manager or the City Council.

vi. Attend and participate fully at public hearings that the City Council may call, at its sole discretion, on MDRR’s service levels.

vii. Problem solve and address performance problems identified by the City in a timely manner.

viii. Company web site capable of accepting credit card and debit card bill-pay and that provides information on recycling, clean-up days, service options, and other information on company services. The web site shall be referenced on bills and on the annual newsletter identified below.

ix. Issue an annual newsletter to customers containing current recycling information and other information relevant to MDRR. The City may submit articles to MDRR for inclusion in the company newsletter. MDRR may elect to include or not include City’s articles in its newsletter.

b. **Enhancement or Modification of Services.** The City may request changes to services or service enhancements by notifying MDRR as follows:
i. The City may request MDRR to perform additional services, establish new educational programs, and/or eliminate activities or in any other way modify their activities to meet State or community needs.

ii. To meet such requests by the City, MDRR may request a rate change modification consistent with the Rate Setting Manual if the service modifications have cost implications.

c. **Customer Service.** MDRR agrees to maintain within City Limits an office for conducting business in connection with this Agreement, and the services described herein, and shall maintain telephone service to and from said office, and shall furnish all customers with adequate statements and receipts.

12. **COMMUNITY BENEFIT PAYMENT.** MDRR shall pay a community benefit payment annually in the amount of $50,000 for use by the City for general purposes, with the payment to be provided to the City on May 1 of each year.

13. **EDUCATION AND OUTREACH.** MDRR currently provides the following services to the City and customers:

a. **Recycling Coordinator.** MDRR will provide for the equivalent 1/2 full-time Recycling Coordinator dedicated to the City, which equates to a minimum of 1,040 hours per Contract Year. MDRR may use a subcontractor as approved by the City to perform some or all of the duties normally assigned to the Recycling Coordinator, which such approval shall not be unreasonably withheld.

b. **Print materials, brochures, guides, bill inserts, and newsletter “MDRR Neighbors.”**

c. **Material.** MDRR shall prepare and distribute an annual newsletter, bill inserts (when possible and necessary), brochure and flyers that shall focus on improving the customers understanding of the services MDRR offers under this agreement.

d. **Schools.** MDRR shall educate schools with flyers of recycling and do on-site trainings and programs (when applicable).

e. **AB 18126 and AB 341.** MDRR shall educate annually commercial and multi-family customers on AB 341 and AB 1826 though website, print media and direct contact, as pursuant to State Law.

f. **Tours and Special Events.** MDRR shall continue to give tours and host special events.

g. **Website/Social Media Outreach.** MDRR shall provide program information on a City-specific web page, and appropriate outreach through other web means, including social media.

h. **Monitoring and Reporting.** MDRR shall provide the City with diversion rates, customer counts when asked and when needed to comply with State laws.
i. **Commercial.**

i. Identify businesses with 4 cu. yds. or more of solid waste per week for garbage service.

ii. Identify # of businesses by category (Retail, Office, Restaurant, Other).

iii. Target % of Businesses.

iv. Identify and Notification to businesses for non-compliance.

v. Follow up calls to businesses.

vi. Conduct visits and recycling audits.

vii. Distribute posters (bi-lingual) to businesses of acceptable recycling materials (including pictures).

viii. The City and hauler plan on recognizing businesses at venues such as City Council Meetings, Chamber Newsletter, or within Newsletters developed by the hauler and or City.

j. **Multi-Family.**

i. Identify multi-family complexes and phase-in outreach as follows:

- 5 units or greater
- Exemption for older multi-family project sites
- Identify MF properties with ability to source separate
- A direct mail (letter) will be sent to Property Owners/Home Owners Associations
- Presentation
- Distribute posters, door hangers, decals, and bill inserts
- Making follow up calls to businesses

k. **Monitoring and Reporting.**

- Track diversion rates.
- Track recovery rate at Mt. Diablo Recycling.
- Document Education and Outreach.
- Update on education/outreach/monitoring activities, e.g., made two
presentations to Chamber and Apt Assoc. organizations, send letters, conducted XX amount of recycling audits.

- How many complexes with 5 or more units total and how many total businesses that subscribe to 4 or more cubic yards of garbage service?

- How many complexes with 5 or more units are not recycling and how many businesses that subscribe to 4 or more cubic yards of garbage service are not recycling?

- Describe follow-up efforts to those businesses/multifamily complexes that aren’t recycling, e.g., hauler met with them, hauler sent a letter, code enforcement followed up, etc.


m. MDRR will provide space in MDRR public outreach materials, such as mailers, flyers and newsletters, for the City to include announcements, community information, articles, and photographs.

n. MDRR shall provide program information on a City-specific web page, and appropriate outreach through other web means, including social media.

14. CHANGES IN LAW OR WORK.

a. If a Material Change in Law occurs that necessitates any additions or deletions to the work described herein, or materially impacts the costs incurred by MDRR of performing the scope of work described herein, including the type of items included as Recyclables, then City and MDRR shall negotiate in good faith a reasonable and appropriate adjustment to customer Rates sufficient to offset MDRR’s increased allowable costs of operation or reduced Gross Revenue resulting from the Material Change in Law. If an adjustment due to Material Change in Law is to be conducted, MDRR shall make an advance payment to City to compensate City for the cost of its rate consultant.

i. The Parties may review and agree on the amount of any customer rate adjustment pursuant to this Section. MDRR shall bear the burden of justifying to City any adjustment due to a Material Change in Law and shall bear the cost to prepare supporting documents and its request for an adjustment. City may request from MDRR such further information as it reasonably deems necessary to fully evaluate MDRR’s request and to make its determination whether MDRR has satisfied its burden.

ii. City shall notify MDRR of its determination within ninety (90) days of receipt of the written request and all other additional information reasonably requested by City. Any such change will be implemented on the following January 1, or within any other time frame agreed upon by City and MDRR, following written amendment to this Agreement and approval of the amendment by the City Council.
b. The City may direct MDRR to perform additional services (including new
diversion programs, additional public education activities, etc.), to eliminate programs, or modify
the manner in which it performs existing services.

i. Implementation of a minimum diversion requirement, direction of SFD, MFD, Commercial or City Waste to a Disposal Facility other than that originally approved by the City, direction of Recyclable Material or Organics to a processing facility other than that used by MDRR, pilot programs and innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of collection vehicles, and/or new requirements for customers are included among the kinds of changes which City may direct.

ii. MDRR shall be entitled to an adjustment in its rates for providing such additional or modified services but not for the preparation of its proposal to perform such services.

iii. Service Proposal. Within thirty (30) days of receipt of a request for a service change from the City, MDRR shall submit a proposal to provide such service.

15. RATE SETTING.

a. Rate Setting Manual. City and MDRR adopted the Rate Setting Manual (Attachment A) for the purposes of determining collection rates which are fair to City of Concord residents while at the same time providing a fair return to the franchise hauler. Requests for residential rate adjustments shall conform to and be evaluated pursuant to the rate setting processes and methodology set forth in the Rate Setting Manual. The Rate Setting Manual shall be periodically updated as approved rates change. Prior versions of the Rate Setting Manual (i.e. 1997, 2006, 2007, 2009, 2010, 2014) are kept on file with the City Clerk, 1950 Parkside Drive, MS/03, Concord, California, 925-671-3430 and may be viewed upon request.

b. Residential Rates. The approved rates per month for each level of service including weekly pick-up of a 64-gallon cart for Recyclables and a 96-gallon cart for Organic Materials is as set forth in the City’s Master Fee Schedule as periodically updated. MDRR shall utilize a monthly billing cycle for residential customers.

i. 32 Gallon Senior Citizen Customers (With Age and Low-Income Qualification). MDRR provides a 32-gallon garbage cart rate, to qualifying low income senior citizen customers. MDRR shall charge these low income senior citizen customers a monthly senior citizen rate. The low income senior citizen rate will be subject to future rate changes determined through the City’s rate setting process. To qualify for the low income senior citizen rate, for the year in question, the customer must verify to MDRR that the customer (1) is 65 years, or older, and (2) has a total gross annual household income that qualifies for the Pacific Gas & Electric Company CARE “low income” qualification. For example, for 2018, this limit was $32,920 for one to two persons, $41,560 for three persons, and $50,200 for four persons. For verification purposes, the senior citizen customer must provide MDRR with (1) a copy of his/her current driver’s license or birth certificate, and (2) either a copy of a federal or state tax return (Social Security number blocked) showing net income for the year prior to the verification year,
or a copy of a Pacific Gas & Electric bill noting the customer has a CARE program low-income qualification.

ii. MRR shall report annually to the City on the number of Senior Citizen low income accounts and provide an education program to make qualifying customers aware of this option.

iii. Treatment of Former 32-Gallon Senior Citizen Customers (With Age Only Qualification). MRR no longer offers any City residential customers a 32-gallon senior citizen rate (with an age 65 and over qualification only. However, on or before September 30, 2008, MRR was required to provide each existing customer with a 32-gallon senior citizen discount rate (age 65 and over qualification) with a 32-gallon refuse cart, 64-gallon curbside recycling cart, and 96-gallon yard waste cart. Upon delivery of the three carts, MRR was required to begin to charge these former 32-gallon can senior citizen customers (age 65 and over qualification) a monthly senior citizen rate. For each former 32-gallon senior citizen customer (age 65 and over qualification), MRR shall continue to charge this rate, subject to future rate changes determined through the City’s rate setting process, until such time as the customer either discontinues service or changes to a refuse cart service level other than 32-gallon.

iv. Treatment of Former 20-Gallon Refuse (Mini) Can Non-Senior Citizen Customers. MRR no longer offers any City residential customers a 20-gallon refuse can service. However, on or before September 30, 2008, MRR was required to provide each existing 20-gallon refuse can customer with a 32-gallon refuse cart, 64-gallon curbside recycling cart, and 96-gallon yard waste cart. Upon delivery of the three carts, MRR was required to begin to charge these former 20-gallon refuse can customers a grandfathered non-senior citizen monthly rate of $18.00 per month. MRR is required to continue to charge these former 20-gallon refuse can customers the $18.00 per month rate, subject to future rate changes determined through the City’s rate setting process, until such time as the customer either discontinues service or changes to a refuse cart service level other than 32-gallon.

c. Commercial Rates. Commercial rates will be set between the franchise hauler and merchants, and will not be regulated by the City. The franchise hauler will provide the City with a current schedule of commercial rates (15 days prior to initiating new commercial rates) for all services provided by the company.

d. No Retroactive Increases. Rates shall not be increased retroactively, provided, however, that in instances where bills are issued in advance of City approving new residential rates, MRR shall be allowed to recover the difference.

16. ANNUAL RATE ADJUSTMENT.

a. Base Year Rate Adjustments. MRR may submit detailed Base Year rate applications to the City no more frequently than every six (6) years, with the next Base Year rate application being due by September 1, 2021 for the rate year starting July 1, 2022. Review of the Base Year rate application shall be in accordance with the Rate Setting Manual (Attachment A). The City shall have 180 calendar days to review and approve or deny the Base Year rate application. Nothing contained herein shall prevent the City, in its sole discretion, from
reviewing and considering adjustments to rates based on a Base Year rate application submitted by MDRR prior to the schedule described herein.

b. **Interim Year Rate Adjustments.** Beginning in July 1, 2019, and annually thereafter during the term of this Agreement, the Residential rates set forth in Section 1 of this Agreement shall be adjusted during Interim Years by the Refuse Rate Index (RRI) adjustment as follows:

i. The RRI adjustment shall be the sum of the weighted percentage change in the annual average of each RRI index number between the base year, which shall be the prior preceding year ending October 31 and the preceding year ending October 31 as contained in the most recent release of the source documents listed in Attachment B, ("RRI Calculation Summary") which is attached to and included in this Agreement. Therefore, the first Interim Year rate adjustment will be based on the percentage changes between the annual average of the RRI indices for the fiscal year ended October 31, 2017 and the annual average of the RRI indices for the fiscal year ended October 31, 2018. The RRI adjustment shall be calculated using the RRI methodology included in Attachment B. The RRI shall be capped at 7% per year and have a 0% floor, such that if a negative number, no cost adjustment would occur. However, the reduction would be used in calculating the next year's adjustment.

ii. On or before January 31, 2019, and annually thereafter during the term of this Agreement, MDRR shall deliver to CITY financial information for the specific services performed under this Agreement for the preceding fiscal year ended December 31. Such financial information shall be in the format as set forth in Attachment B, or as may be further revised by CITY from time to time. If MDRR fails to submit the financial information in the required format by January 31, it is agreed that MDRR shall be deemed to have waived the RRI adjustment for that year. MDRR's failure to provide the financial information shall not preclude CITY from applying the RRI using the prior year's financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative RRI. CITY shall calculate RRI and City Manager or her designee shall certify the RRI as complying with the RRI Calculation Summary (Attachment B), prior to being implemented by MDRR. CITY would notify MDRR of RRI by April 15th for incorporation in billing notifications for June with increases reflected in the July statements. Interim year increases would be included with the annual fiscal budget process and revised through the annual Master Fees and Charges Update.

c. **Special Extraordinary Adjustments.** Special extraordinary adjustments may be allowed outside of the annual schedules of the Base Year and Interim Year adjustments. Both the City and MDRR shall be able to initiate the extraordinary rate adjustment process. The extraordinary adjustment shall only be considered in a case where the City or MDRR can demonstrate that the change in one or more of the cost line items specified in the Base Year Rate Change Application (i.e., Direct Labor, Tipping Fees, Corporate Overhead, Office Salaries, Other General and Administrative Costs, Trucking Charges, Regulatory Fees, or Residential and Commercial Franchise Fees) will exceed two (2) times the most recent annual change in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Items) at the time the request is made. For these adjustments, MDRR shall provide necessary information and documentation so the City can make a judgment as to the reasonableness of such a rate adjustment. An extraordinary adjustment shall only be made with City Council approval.
17. **ANNUAL FRANCHISE FEES.**

a. MDRR currently pays to the City a franchise fee calculated based on a percentage of Gross Revenues. “Gross Revenues” means any and all revenue or compensation in any form derived directly or indirectly by MDRR, its affiliates, subsidiaries, parents or any other person or entity in which MDRR has a direct or indirect financial interest, in connection with the collecting, transporting, arranging, handling and/or disposing of Solid Waste, Recyclables, and Organic Materials pursuant to this Agreement, including monthly customer fees, special pickup fees, container rental, collection, and redelivery fees, and revenue from sale of Recyclables, without subtracting franchise fees or any other cost of doing business. Gross Revenues shall be calculated in accordance with Generally Accepted Accounting Principles (GAAP).

b. For FY 2017/18 through FY 2021/22, the franchise fee shall be 13.5%. Any increase in the franchise fee paid to the City shall result in a proportional increase in the allowable rates to be charged by MDRR, which shall take effect on the same date as any increase in the franchise fee paid to the City as provided in Section 16.b, above. The franchise fee will be re-examined during each Base-Year Rate Review, with the next Base-Year scheduled for implementation in 2020, to confirm that the City’s franchise fee is competitive yet reasonable in terms of the residential rate structure.

c. Franchise fees for the prior quarter shall be paid quarterly on the thirtieth (30th) day of January, April, July and October respectively. This franchise fee is in lieu of the business license tax.

d. Within six (6) months after the end of each calendar year, MDRR shall file with the City Clerk a certified statement prepared by a certified public accountant showing in detail the gross annual receipts during the preceding calendar year.

18. **REPORTING.** MDRR shall furnish the City with such reports in format and content as requested by City.

19. **FINANCIAL INFORMATION AND RECORDS.**

a. On or before April 30th during each year of the term of this Agreement, and in connection with any rate review, performance review, or audit, MDRR shall deliver to City financial information for the specific services performed under this Agreement for the preceding fiscal year ended December 31. Such financial information shall be in the format as set forth in Attachment B, RRI Calculation Summary, or as may be further revised by City from time to time. If MDRR fails to submit the financial information in the required format by any April 30th, it is agreed that MDRR shall be deemed to have waived the RRI adjustment for that year. MDRR’s failure to provide the financial information shall not preclude City from applying the RRI using the prior year’s financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative RRI. City shall calculate RRI and City Manager or her designee shall certify the RRI as complying with the RRI Calculation Summary, prior to being implemented by MDRR. City would notify MDRR of the RRI by May 15th for incorporation in billing notifications for June with increases reflected in the July statements. Interim year increases (to the extent approved) would be included with the annual fiscal budget process and revised through periodic Fees and Charges Resolution.
b. Changes in this Agreement may be desirable. So that such changes may be
effected on a sound, economical basis, MDRR hereby agrees to maintain at all times a proper,
separate set of books of account which will reflect accurately the business done by MDRR
within City Limits. In addition, records of MDRR’s direct labor costs, payroll costs, and
reimbursable expenses pertaining to this Agreement will be kept on a generally recognized
accounting basis and made available to City if and when required. MDRR’s accounting records
shall be made available for review by City during normal business hours at MDRR’s office
within City Limits. City shall provide MDRR with no less than twenty-four (24) hours written
or verbal notice of the information it wishes to review and the time and date that it shall be made
available to City. City and MDRR shall cooperate with each other in order to enable the City
Council to pass upon any rate adjustment request prior to the desired effective date as set forth in
the request. Nothing herein shall require City to act by or before the desired rate adjustment date
or to control the City’s discretion in approving, denying or modifying any rate adjustment
request.

20. AMENDMENT TO AGREEMENT. This Agreement may be amended or modified only
by a writing duly executed by authorized representatives of both parties, and made and approved
in compliance with the City of Concord Municipal Code.

21. INDEPENDENT CONTRACTOR.

a. Both parties understand and acknowledge that MDRR, its agents, employees,
consultants, subconsultants, experts, contractors, and subcontractors are and shall at all times
remain as to the City wholly independent contractors. Neither the City nor any of its officers or
employees shall have any control over the manner by which the MDRR performs this Agreement
and shall only dictate the results of the performance. MDRR shall not represent that MDRR or
its agents, employees, consultants, subconsultants, experts, contractors, or subcontractors are
agents or employees of the City, and MDRR shall have no authority, express or implied, to act
on behalf of the City in any capacity whatsoever as an agent, and shall have no authority, express
or implied, to bind the City to any obligation whatsoever, unless otherwise provided in this
Agreement.

b. As an independent contractor, MDRR shall not be eligible for any benefits, which
the City may provide to its employees and all persons, if any, hired by MDRR shall be
employees or subcontractors of MDRR and shall not be construed as employees or agents of the
City in any respect. MDRR shall receive no premium or enhanced pay for work normally
understood as overtime, e.g., hours that exceed forty (40) hours per work week, or work
performed during non-standard business hours, such as in the evenings or on weekends. MDRR
shall not receive a premium or enhanced pay for work performed on a recognized holiday.
MDRR shall not receive paid time off for days not worked, whether it be in the form of sick
leave, administrative leave, or for any other form of absence. MDRR shall pay all taxes,
assessments and premiums under the federal Social Security Act, any applicable unemployment
insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes,
personal property taxes, or other taxes or assessments now or hereafter in effect and payable by
reason of or in connection with the services to be performed by MDRR.

22. STANDARD OF PERFORMANCE. MDRR represents and warrants to City that MDRR
is skilled and able to provide such services described in this Agreement and that such services
shall be performed in an expeditious manner, and with the degree of skill and care that is
required by current, good, and sound procedures and practices. MDRR further agrees that the services shall be in conformance with generally accepted professional standards prevailing at the time work is performed. MDRR hereby further represents and warrants to City that it is has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the City for Solid Waste, Recyclables, and Organic Materials Handling.

a. MDRR shall perform all Collection Services under this Agreement in a thorough and professional manner. Collection Services described in this Agreement shall be performed regardless of weather conditions or difficulty of collection.

b. MDRR shall provide Collection Services with as little disturbance as possible and shall return all Carts and Bins in an upright position to the original collection location, with lid on, and without obstruction of alleys, roadways, driveways, sidewalks, or mailboxes.

c. Any damage caused by MDRR to customer property shall be repaired or replaced promptly.

d. Notification of Accidents. MDRR shall notify City Representative of any accidents occurring within the Service Area that involve MDRR’s vehicles, employees or equipment that result in any material personal injury or property damage. Such notification shall be made within twenty-four (24) hours of occurrence to City Representative either in-person or via telephone call.

e. Spillage and Litter. MDRR shall not litter or spill while providing Collection Services or while its collection vehicle(s) are on the road. MDRR shall transport all materials collected under this Agreement in such a manner as to prevent the spilling or blowing of such materials from MDRR’S collection vehicle(s). MDRR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping Solid Waste and shall immediately, at the time of occurrence, clean up such spilled or dropped materials. MDRR shall not be responsible for cleaning up unsanitary conditions such as litter caused by the carelessness of the customer. However, MDRR shall clean up any material or residue that was spilled or scattered by MDRR or its employees. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from MDRR’s operations, collection vehicles or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, MDRR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such clean-up, MDRR’S collection vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

f. Labor and Equipment. MDRR shall provide all labor, equipment, tools, facilities, and personnel supervision required for the performance of MDRR’s obligations under this Agreement. MDRR shall at all times have sufficient backup equipment and labor to fulfill MDRR’s obligations under this Agreement.

g. Safety Training. MDRR shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection of Solid Waste, Recyclable Materials, or Organic Materials or who are otherwise directly involved in such Collection. MDRR shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste.
h. Uniforms. At all times while engaged in the work, all employees of the MDRR performing field service under this Agreement shall be dressed in clean uniforms with MDRR's name, as approved by the City. No portion of this uniform may be removed while working.

i. Cleaning and Maintenance.

   i. General. MDRR shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

   ii. Cleaning. Vehicles used in the Collection of Solid Waste, Recyclable Materials and Organic Materials shall be thoroughly washed and thoroughly steam cleaned on a minimum of one (1) time per week or more frequently if necessary so as to present a clean appearance of the exterior and interior compartment of the vehicle. City may inspect vehicles at any time to determine compliance with sanitation requirements. MDRR shall make vehicles available to the Contra Costa County Health Department for inspection, at any frequency it requests.

   iii. Maintenance. MDRR shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. MDRR shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards whichever are more stringent. All vehicles shall be painted in a uniform manner that does not create a resemblance between MDRR's vehicles and City utility vehicles. MDRR shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in this Agreement.

   iv. Repairs. MDRR shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, MDRR shall obtain warranty performance. MDRR shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

   v. Storage. MDRR shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.

j. Vehicles.

   i. MDRR shall furnish the City a written inventory of all vehicles, including Collection vehicles, used in providing service, upon request. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type, capacity and decibel rating.

   ii. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. MDRR shall not load vehicles in
excess of the manufacturer's recommendations or limitations imposed by State, local, or private property weight restrictions for vehicles and roads. MDRR shall work cooperatively with Designated Disposal Location MDRR to have each Collection vehicle, which delivers Solid Waste to the Designated Disposal Location, weighed at the Designated Disposal Location to determine the unloaded weight ("tare weight") of the vehicle.

iii. MDRR's name, local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all vehicles, in letters and numbers approximately two and one-half (2 1/2) inches high. MDRR shall not place the City's logo on its vehicles. MDRR shall not use vehicles identified for use in the City in any other jurisdiction without prior approval from the City.

k. Containers.

i. Cleaning, Painting, Maintenance. All Containers shall be maintained in a functional condition. MDRR shall steam clean and repaint all Containers, except Carts, as needed so as to present a clean appearance. At the City's request, MDRR shall provide City with a list of Containers and the date each Container was painted and maintained. Customers using Carts shall be responsible for cleaning such Carts.

ii. Repair and Replacement. MDRR shall repair or replace all Containers damaged by Collection operations within a one (1) week period. If the repair or replacement cannot be completed within a week the MDRR shall notify Customer and a Container of the same size shall be made available until the proper Container can be replaced.

l. No compensation for MDRR’s services or for MDRR’s supply of labor, equipment, tools, facilities or supervision shall be provided or paid to MDRR by City or by any customer except as expressly provided by this Agreement.

m. The City shall have the right to inspect MDRR’s facilities and Containers and their contents at any time.

23. PERFORMANCE BY MDRR. MDRR shall not delegate its duties to, or employ, others (including consultants, subconsultants, experts, contractors, or subcontractors) without the prior written approval of the City, provided, however, that MDRR may subcontract with any affiliated entity that shares a common ownership structure with MDRR for the provision of services hereunder. Notwithstanding the foregoing, City shall not be obligated or liable for payment hereunder to any party other than the MDRR. MDRR hereby designates MDRR’s Chief Operating Officer as the person primarily responsible for the day-to-day performance of MDRR’s work under this Agreement. MDRR shall not change its representative without the prior written consent of the City. Unless otherwise expressly agreed by the City, MDRR’s representative shall remain responsible for the quality and timeliness of performance of the services, notwithstanding any permitted or approved delegation hereunder.
24. CITY OPTION TO CONDUCT PERIODIC PERFORMANCE REVIEW.

a. City recognizes that MDRR has performed to City expectations during the term of the existing Agreement and Amendments. Such performance review would be designed to demonstrate compliance with Agreement terms.

b. In good faith with this Agreement, MDRR acknowledges that the City has the right to conduct periodic performance reviews of MDRR’s operations related to services and facilities used by MDRR to fulfill its obligations pursuant to this Agreement.

c. Prior to beginning such a review, City and MDRR agree to meet and confer to set goals and agree upon the bounds of such review, including discussing the following activities, which may be involved in such performance review.

i. Verify that customer billing rates have been properly calculated and they correspond to the level of service received by the customer.

ii. Verify that franchise fees, and other fees required under this agreement have been properly calculated and paid to the City.

iii. Verify MDRR’s compliance with the reporting requirements and performance standards of the Agreement.

iv. Verify the diversion percentages reported by MDRR.

d. MDRR’s Cooperation. MDRR shall cooperate fully with the review and provide all requested data in connection with the Solid Waste and Recoverable Material Handling and other services under this Agreement, including operational data, financial data and other data requested by the City within thirty (30) work days.

25. INDEMNIFICATION.

a. General. The following obligations are in addition to those imposed by applicable provisions of the Concord Municipal Code. MDRR agrees to and shall defend, indemnify and hold harmless the City, its officers, officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all environmental remediation costs, attorney’s fees and other litigation expenses) arising directly or indirectly out of (a) MDRR’s performance, non-performance, breach, or default under the terms of this Agreement or the Original Franchise Agreement (including 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 the California Integrated Waste Management Act of 1989, its amendments, any successor legislation, and/or all rules and regulations promulgated thereunder), (b) all past and future disposal sites used and/or disposal practices employed by MDRR in the transportation and disposal of waste generated within the City (including any CERCLA liability), (c) the City’s setting of maximum rates for service under this Agreement or in connection with the application of California Constitution Article XIIIC and XIIIID to the imposition, payment or collection of rates and fees for services provided by MDRR under this Agreement (provided that nothing herein is intended to imply that the California Constitution Articles XIIIC or XIIIID apply to the setting of rates provided under this Agreement; rather this section is provided merely
to allocate risk of loss as between the parties; and (d) the adoption of this Agreement, the
provision or lack of adequate notice or opportunity for public protest. This indemnification
obligation on MDRR's part shall not apply to demands, actions, losses, damages, injuries, and
liability arising out of sole negligence or willful misconduct on the part of City. With respect to
subclause (b) only, City shall look to any insurance proceeds it actually receives to cover such
costs prior to looking to MDRR under this indemnification. Any costs associated with the
indemnification provisions herein by MDRR shall be considered an allowable expense for rate
setting purposes.

b. Environmental Indemnification and Compliance. MDRR shall indemnify,
defend, protect and hold harmless City, its elected officials, officers, employees, volunteers,
agents, assigns and any successor or successors to City's interest from and against all claims,
actual damages (including but not limited to special and consequential damages), natural
resources damages, punitive damages, injuries, costs, response, remediation and removal costs,
losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative
proceedings, interest, fines, charges, penalties and expenses (including but not limited to
attorneys' and expert witness fees and costs incurred in connection with defending against any of
the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered
by, or asserted against, City or its elected officials, officers, employees, volunteers or agents
arising from or attributable to any repair, cleanup or detoxification, or preparation and
implementation of any removal, remedial, response, closure or other plan (regardless of whether
undertaken due to governmental action) concerning any Hazardous Waste (including Household
Hazardous Waste and Universal Waste) in any Solid Waste, Recyclables, or Organic Materials
collected by MDRR pursuant to this Agreement, which is or has been transported, transferred,
processed, stored, disposed of or which has otherwise come to be located by Contractor, or its
activities pursuant to this Agreement result in a release of a Hazardous Waste (including
Household Hazardous Waste and Universal Waste) into the environment. Indemnification of
City and guarantee of compliance with State law. MDRR shall guarantee compliance with and
indemnify the City for noncompliance with AB 939, AB 341, SB 1016, AB 1594, and AB 1826,
pursuant to the following:

c. Warranties and Representations. MDRR warrants and represents that it is aware
of and familiar with City's waste stream, and that it has the ability to and will provide sufficient
programs and services to ensure City will meet or exceed the diversion requirements as set forth
in MDRR'S Diversion Guarantee, as well as the diversion requirements of the Applicable Laws
(including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion,
and any other requirements) governing this Agreement (including AB 341, AB 939 AB 1594,
and AB 1826, and all amendments and related subsequent legislation), and that it shall do so
without imposing any costs or fees other than those set forth (including if new programs are
implemented which are not called out herein).

i. Mutual Cooperation. City and MDRR shall reasonably cooperate in good
faith with all efforts by each other to meet City's diversion and other compliance
requirements imposed by AB 939 and other Applicable Laws, and to meet MDRR's
obligations under MDRR's Diversion Guarantee. In this regard, City's obligations shall
include, without limitation, making such petitions and applications as may be reasonably
requested by MDRR for time extensions in meeting diversion goals, or other exceptions
from the terms of Applicable Laws, and to agree to authorize such changes to MDRR's
Recycling or Solid Waste programs as may be reasonably requested by MDRR in order to achieve MDRR's Diversion Guarantee.

ii. Waste Reduction and Program Implementation. MDRR shall implement the programs identified in the Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) of the City's General Plan immediately upon the Effective Date hereof, and will implement any additional diversion programs required to meet MDRR's diversion requirements as specified in Article 6 and the other terms of this Agreement. MDRR shall be responsible for providing data and information, cooperating, and assisting City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939 and other Applicable Laws.

iii. Guarantee and Indemnification. MDRR warrants and guarantees that it will carry out its obligations under this Agreement in a manner consistent with Applicable Laws including specifically AB 939, AB 341 AB 1594, and AB 1826, and MDRR's actions will provide for the City to meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in MDRR's Diversion Guarantee and the Applicable Laws including AB 939 AB 341, AB 1594, and AB 1826, and all amendments thereto. In this regard MDRR agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

1. To the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) MDRR fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or the Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by the Applicable Laws including AB 939, AB 341, AB 1594, and AB 1826 in a timely manner; or (2) the source reduction and Recycling goals, diversion goals, program implementation requirements, or any other requirements of the Applicable Laws, including AB 939, AB 341, AB 1594, and AB 1826, are not met with respect to the waste stream Collected under this Agreement;

2. Assist City in responding to inquiries from CalRecycle or any other regulatory agency;

3. Assist City in preparing for, and participating in, the CalRecycle's biannual review of City's SRRE pursuant to Public Resources Code Section 41825;

4. Assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;

5. Assist City in any hearing conducted by CalRecycle, or any other regulatory agency, relating to City's compliance with the Applicable Laws including AB 939, AB 341, AB 1594, and AB 1826;
(6) Assist City with the development of and implement a public
awareness and education program that is consistent with the City's SRRE and
Household Hazardous Waste Element, as well as any related requirements of the
Applicable Laws;

(7) Provide City with Recycling, source reduction, and other technical
assistance as may be needed to comply with the Applicable Laws including AB
939, AB 341, AB, 1594, and AB 1826;

(8) Defend, with counsel acceptable to City, City and City's officials,
employees, and agents against the imposition of fines and/or penalties, or any
other liabilities, issued by CalRecycle relating to MDRR’s performance hereunder
pursuant to the Applicable Laws including AB 939, AB 341, AB 1594 and AB
1826; and

(9) Be responsible for and pay, any fees, penalties or other costs
imposed against the City by CalRecycle relating to MDRR's performance
hereunder, and indemnify and hold harmless City from and against any fines,
penalties, or other liabilities, levied against it for violation of the diversion
requirements, set forth in the Applicable Laws for services provided by MDRR
under the terms of this Agreement, including AB 939, AB 341, AB 1594 and AB
1826, or for violation of any other provision of the Applicable Laws, including
AB 939, AB 341, AB 1594 and AB 1826, arising from or in any way related to
MDRR's performance of its obligations under this Agreement. Such fees,
penalties or other costs shall not be allowed to be recovered by MDRR as an
“allowable cost” in the rates.

26. INSURANCE. MDRR shall, at its own expense, procure and maintain in full force at all
times during the term of this Agreement the following insurance:

a. Commercial General Liability Coverage. MDRR shall maintain commercial
general liability insurance with limits of no less than five million dollars ($5,000,000) combined
single limit per occurrence or ten million dollars ($10,000,000) aggregate limit for bodily injury,
personal injury, and property damage.

b. Automobile Liability Coverage. MDRR shall maintain automobile liability
insurance covering all vehicles used in the performance of this Agreement providing a five
million dollar ($5,000,000) combined single limit per occurrence for bodily injury, personal
injury, and property damage.

c. Compliance with State Workers’ Compensation Requirements. MDRR covenants
that it will insure itself against liability for Workers’ Compensation pursuant to the provisions of
California Labor Code §3700, et seq. MDRR shall, at all times, upon demand of the City,
furnish proof that Workers’ Compensation Insurance is being maintained by it in force and effect
in accordance with the California Labor Code. The insurer shall also agree to waive all rights of
subrogation against the City, its officers, officials, employees and volunteers for losses arising
from work performed by MDRR for City. This provision shall not apply upon written
verification by MDRR that MDRR has no employees.
d. Compliance with Employers Liability. MDRR shall maintain Employers Liability insurance with limits of no less than three million dollars ($3,000,000) per accident.

e. Environmental Impairment Liability. MDRR shall maintain combined single limit of not less than a ten million dollar ($10,000,000) limit per occurrence.

f. Other Insurance Provisions. The policies are to contain, or be endorsed to contain the following provisions:

i. Additional Insured. City, its officers, agents, employees, and volunteers are to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf of MDRR and operations of MDRR, premises owned, occupied, or used by MDRR. The coverage shall contain no special limitations on the scope or protection afforded to City, its officers, officials, employees, or volunteers. Except for worker’s compensation and professional liability insurance, the policies mentioned in Section Z(1), Section Z(2), and Section Z(3) shall name City as an additional insured and provide for notice of cancellation to City. MDRR shall also provide timely and prompt notice to City if MDRR receives any notice of cancellation or nonrenewal from its insurer.

ii. Primary Coverage. MDRR’s insurance coverage shall be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance, risk pooling arrangement, or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of MDRR’s insurance and shall not contribute with it.

iii. Reporting Provisions. Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, employees, or volunteers.

iv. Verification of Coverage. MDRR shall furnish City with certificates of insurance and the original endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to City at the time of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form approved by the City Attorney. City reserves the right to require complete certified copies of all required insurance policies at any time.

27. COMPLIANCE WITH CIVIL RIGHTS. During the performance of this Agreement, MDRR agrees as follows:

a. Equal Employment Opportunity. MDRR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.
b. Nondiscrimination Civil Rights Act of 1964. MDRR will comply with all federal
regulations relative to nondiscrimination in federally assisted programs.

c. Solicitations for Subcontractors including Procurement of Materials and
Equipment. In all solicitation, either by competitive bidding or negotiations, made by MDRR for
work to be performed under a subcontract including procurement of materials or leases of
equipment, each potential subcontractor, supplier or lessor shall be notified by MDRR of
MDRR’s obligation under this Agreement and the regulations relative to nondiscrimination on
the grounds of race, religion, color, sex, or national origin.

28. CONFLICT OF INTEREST.

a. MDRR covenants and represents that neither it, nor any officer or principal of its
firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner
with the interests of City or which would in any way hinder MDRR’s performance of services
under this Agreement. MDRR further covenants that in the performance of this Agreement, no
person having any such interest shall be employed by it as an officer, employee, agent or
subcontractor without the express written consent of the City. MDRR agrees to at all times
avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the
City in the performance of this Agreement.

b. MDRR is not a designated employee within the meaning of the Political Reform
Act because MDRR:

i. Will conduct research and arrive at conclusions with respect to its
rendition of information, advice, recommendation or counsel independent of the control
and direction of the City or of any City official, other than normal contract monitoring;
and

ii. Possesses no authority with respect to any City decision beyond the
rendition of information, advice, recommendation or counsel. (2 Cal. Code Regs.
§ 18700(a)(2).)

29. COMPLIANCE WITH LAWS. MDRR shall comply with all applicable Federal, State of
California, and local laws, rules, and regulations in effect during the term of this Agreement
(including implementing regulations, as they may, from time to time, be amended, specifically
including CERCLA, RCRA, SWMRRA, CIWMA, 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 under this
Agreement), as they may, from time to time, be amended. MDRR shall also obtain all applicable
licenses, including a business license with the City of Concord, and permits for the conduct of its
business and the performance of the services under this Agreement.

30. CHOICE OF LAW. This Agreement shall be construed and interpreted in accordance
with the laws of the State of California, excluding any choice of law rules which may direct the
application of the laws of another jurisdiction. In the event that suit shall be brought by either
party hereunder, the parties agree that trial of such action shall be held exclusively in a state
court in the County of Contra Costa, California.

31. NON-WAIVER. The waiver by either party of any breach of any term, covenant, or
condition contained in this Agreement, or any default in their performance of any obligations
under this Agreement shall not be deemed to be a waiver of any other breach or default of the
same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident
of breach of default constitute a continuing waiver of same.

32. ENFORCEABILITY; INTERPRETATION. In the event that any of the provisions or
portions of application of any of the provisions of this Agreement are held to be illegal or invalid
by a court of competent jurisdiction, City and MDRR shall negotiate an equitable adjustment in
the provisions of this Agreement with a view toward effecting the purpose of this Agreement.
The illegality or invalidity of any of the provisions or portions of application of any of the
provisions of this Agreement shall not affect the legality or enforceability of the remaining
provisions or portions of application of any of the provisions of this Agreement. This Agreement
shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be
interpreted against a party on the ground that said party was solely or primarily responsible for
drafting the language to be interpreted. The words "include" and "including" shall be interpreted
as though followed by the words "without limitation."

33. INTEGRATION. The recitals, Rate Setting Manual, and any exhibits attached to this
Agreement are incorporated by reference as though fully restated herein. This Agreement
contains the entire agreement and understanding between the parties as to the subject matter of
this Agreement. It merges and supersedes all prior or contemporaneous agreements,
commitments, representation, writings, and discussions between MDRR and City, whether oral
or written. In the event of any conflict or other inconsistency between the provisions of this
Agreement (disregarding any exhibits) on the one hand, and any exhibits hereto (including the
Rate Setting Manual), on the other hand, the provisions of this Agreement (disregarding any
exhibits) shall control.

34. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
VENTURE.

a. City and MDRR respectively, bind themselves, their successors, assigns, and legal
representatives to the terms and obligations of this Agreement. This Agreement is an agreement
for personal service, and MDRR shall not assign or transfer any interest in this Agreement
without the City's prior written consent, which consent shall be in the City's sole discretion.
Any attempted assignment or transfer in breach of this provision shall be void. In the event of
any proposed assignment, sale, subcontract, or transfer of this Agreement by MDRR, the City
may approve the assignment and impose conditions thereon, including without limitation,
relating to the term (Section 3) and the automatic renewal provision (Section 4) of this
Agreement.

b. Notwithstanding Section 3 (Term) or Section 4 (Termination) of this Agreement,
if any assignment of this Agreement by Collector occurs, the provision in Section 3 (Term) of
this Agreement, setting forth the automatic extension of the term of the Agreement shall be
immediately terminated and the term of this Agreement shall expire ten (10) years from the date
of any such assignment.
i. MDRR shall promptly notify the City in writing in advance of any proposed assignment, sale, subcontract or transfer. In the event that the MDRR Board of Directors approves of any assignment, sale, subcontract or transfer, said approval shall not relieve MDRR of any of its obligations or duties arising under this Agreement prior to such any assignment, sale, subcontract or transfer unless this Agreement is modified in writing to that effect.

ii. MDRR shall also notify the City of any change in control and/or ownership of MDRR. For purposes of this Agreement, change of ownership or control is presumed to include, without limitation, the sale or transfer of at least 25 percent of MDRR’s assets or at least 25 percent of MDRR's voting stock. As of the date of this Agreement, MDRR shall provide City with proprietary information as to the ownership of MDRR.

iii. Neither party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The City may, however, assign its rights and subrogate its obligations under this Agreement to a joint powers authority authorized by Govt. Code §6500 et seq. without the prior written consent of MDRR.

iv. For purposes of this Section 34, "assignment" shall include, but not be limited to:

1. A sale, exchange or other transfer to a third party of at least twenty-five percent (25%) of MDRR's assets dedicated to service under this Agreement (but excluding any transfers between Family Members); and

2. A sale, exchange or other transfer to a third party, including other shareholders (but excluding any transfers between Family Members), of outstanding common stock of MDRR which may result in a change of control of MDRR; and

3. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction (but excluding any transfers between Family Members) to which MDRR or any of its shareholders is a party which results in a change of ownership or control of MDRR; and

4. Any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of MDRR's property, or transfer occurring in the probate proceeding, and

5. Any combination of the foregoing (whether or not related or contemporaneous transactions), which has the effect of any such transfer or change of ownership or change of control of MDRR,
Family Member(s) means blood relatives or related family members of the Garaventa family, or between such family member(s) and a trust whose trustees, trustees, and beneficiaries are limited to members of the Garaventa family and any blood relatives or related family members thereof.

v. MDRR acknowledges that this agreement involves rendering a vital service to City residents and businesses, and that City has selected MDRR to perform the services specified herein based on:

i. MDRR’s experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable local, state and federal environmental laws, regulations and best waste management practices;

ii. MDRR’s commitment to: (i) sustainability including, but not limited to, recycling and diversion of materials from landfill disposal; and, (ii) the communities in which it serves.

iii. MDRR’s financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City will rely on each of these factors, among others, in choosing MDRR to perform the services to be rendered by MDRR under this Agreement.

vi. The City is concerned about the possibility that assignment could result in significant rate increases, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that assignment will result in continued quality of service. In addition, City reserves the right to solicit competitive bids for these services if the assignment results in a request by the assignee for rate increases made at the time of assignment that are higher than the Consumer Price Index (CPI) for the San Francisco/Oakland Bay Area and do not reflect value changes in service standards. At a minimum, no request by MDRR for consent to an assignment need be considered by City unless and until MDRR has met the following requirements:

i. MDRR shall undertake to pay City its reasonable expenses for attorney's fees and to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

ii. MDRR shall furnish City with audited financial statements of the proposed assignee’s operations for the immediately preceding three (3) operating years;

iii. MDRR shall furnish City with satisfactory proof:

(1) That the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by MDRR under this Agreement;
(2) That in the last five (5) years, the proposed assignee or affiliates have not suffered significant major citations or other charges from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local environmental laws and that the assignee has provided City with a complete list of such citations and charges;

(3) That the proposed assignee has conducted its operations in a reasonably environmentally safe and conscientious fashion;

(4) That the proposed assignee has conducted its Solid Waste management practices in good faith and substantial compliance with sound waste management practices and in good faith and substantial compliance with all federal, state and local laws regulating the collection and disposal of Solid Waste, including Hazardous Wastes; and

(5) Provide any other available information reasonably required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

vii. Under no circumstances shall the City be obliged to consider any proposed assignment by MDRR if MDRR is in material breach of any Agreement provision at any time during the period of consideration. City will provide MDRR with a reasonable opportunity to be heard before the Board of Directors and the opportunity to correct any such claimed failure of performance or material breach.

viii. Assignment of Agreement; Requests for Rate Adjustments. In the case of any assignment, sale, lease, subcontract, or transfer of all or any part of MDRR’s assets or stock, the acquiring party shall not be entitled to request any adjustment in rates based on the purchase price or any other consideration associated with said assignment, purchase, lease, subcontract or transfer. In addition, any such acquiring party shall not be entitled to request any adjustment in rates under this Agreement for any cost which said acquiring party incurs prior to the assignment, sale, lease, subcontract or transfer of MDRR’s assets or stocks.

This Agreement is not intended and shall not be construed to create any third party benefit. Further, this Agreement is not intended and shall not be construed to create a joint venture or partnership between the parties. MDRR, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

d. Confidential Information.

i. Proprietary information as to the ownership of MDRR information (including insert, number of shares, type of shares, and their owners) provided by MDRR to the City (whether in written, graphic, electronic or any other form) that is clearly marked as “CONFIDENTIAL/PROPRIETARY INFORMATION” (collectively, “Confidential Information”) shall be subject to the provisions of this Section 9; provided, however, that if MDRR inadvertently fails to so mark the information but subsequently notifies the City of the information’s confidential
nature, then thereafter the City shall treat such information as Confidential Information for purposes of this Agreement. Subject to the terms of this Section 9, the City shall use good faith and diligent effort to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 et seq.) or other applicable local, state, or federal disclosure laws (collectively, “Public Disclosure Laws”). Notwithstanding the preceding sentence, the City may disclose Confidential Information to its officials, employees, agents, attorneys, and advisors, but only if and to the extent necessary to carry out the purpose for which the Confidential Information was disclosed consistent with the rights and obligations provided for hereunder. The City agrees to maintain the confidentiality of any business or financial records of MDRR disclosed to the City, including any pro formas, to the maximum extent allowed by law, disclosing information only to those individuals and representatives as designated by the other Party, provided that such individuals acknowledge and agree to maintain the confidentiality of such information. Alternatively, MDRR may request that Confidential Information relating to financial data be delivered by MDRR directly to the City’s third party consultant, which consultant shall also agree to maintain the confidentiality of any such Confidential Information as at least feasible while still providing the City with sufficient information for City’s purposes. Such consultant shall be permitted to provide to the City a summary of the financial data provided by MDRR. Notwithstanding the foregoing, MDRR acknowledges that the City has not made any representations or warranties that any Confidential Information the City receives from MDRR will be exempt from disclosure under any Public Disclosure Laws. In the event the City Attorney determines that the release of any Confidential Information is required by Public Disclosure Laws, or by order of a court of competent jurisdiction, the City shall promptly notify MDRR in writing of the City’s intention to release the Confidential Information so that MDRR has the opportunity to evaluate whether to object to said disclosure and/or to otherwise take whatever steps it deems necessary or desirable to prevent disclosure. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, the City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

ii. If any litigation is filed seeking to make public any Confidential Information, the City and MDRR shall cooperate in defending the litigation, and MDRR shall pay the City’s reasonable costs of defending such litigation and shall indemnify the City against all costs and attorneys’ fees awarded to the plaintiff in any such litigation. Alternatively, MDRR may elect to disclose the Confidential Information rather than defend the litigation. MDRR’s indemnity obligation under this Section 9 shall survive the expiration or termination of this Agreement.

iii. The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (1) is now, or hereafter becomes, through no act or failure on the part of the City, generally known or
available; (2) is known by the City at the time of receiving such information as evidenced by the City's public records; (3) is hereafter furnished to the City by a third party, as a matter of right and without restriction on disclosure; (4) is independently developed by the City without any breach of this Agreement and without any use of or access to MDRR's Confidential Information as evidenced by the City's records; (5) is not clearly marked "CONFIDENTIAL/PROPRIETARY INFORMATION" as provided above (except where MDRR notifies the City in writing, prior to the disclosure of the Confidential Information, that omission of the "CONFIDENTIAL/PROPRIETARY INFORMATION" mark was inadvertent); or (6) is the subject of a written permission to disclose provided by MDRR to the City.

35. **NOTICES.** All notices required hereunder shall be in writing and mailed postage prepaid by certified or registered first class United States mail, postage prepaid, return receipt requested, or by personal delivery to the City's address as shown below, or such other places as City or MDRR may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed effectively served upon deposit in the United States Mail, or upon personal delivery.

To City:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Manager</td>
<td>City of Concord</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1950 Parkside Drive, MS/01A</td>
<td>(925) 671-3150</td>
</tr>
<tr>
<td></td>
<td>Concord, CA 94519-2578</td>
<td></td>
</tr>
</tbody>
</table>

With copy to:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Telephone</th>
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</thead>
<tbody>
<tr>
<td>City Attorney</td>
<td>City of Concord</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1950 Parkside Drive, MS/08</td>
<td>(925) 671-3160</td>
</tr>
<tr>
<td></td>
<td>Concord, CA 94519-2578</td>
<td></td>
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</tbody>
</table>

To MDRR:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mount Diablo Resource Recovery-Concord</td>
<td>Attn: Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4080 Mallard Drive</td>
<td>(925) 682-9113</td>
</tr>
<tr>
<td></td>
<td>Concord, CA 94520</td>
<td></td>
</tr>
</tbody>
</table>

With copy to:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mike Bonnifield, Esq.</td>
<td>4080 Mallard Drive.</td>
<td>(925) 682-9113</td>
</tr>
<tr>
<td></td>
<td>Concord, CA 94520</td>
<td></td>
</tr>
</tbody>
</table>

36. **NON-LIABILITY.** No member of the City and no other officer, official, employee or agent of the City shall be personally liable to MDRR or otherwise in the event of any default or breach of the City, or for any amount which may become due to MDRR and/or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.
37. **EXECUTION: COUNTERPARTS.** Each individual or entity executing this Agreement on behalf of MDRR represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of MDRR and that such execution is binding upon MDRR. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

38. **GOOD FAITH.** In the event that any dispute or alleged breach arises hereunder, the City and MDRR agree to promptly meet and confer in a good faith effort to informally reach a mutually agreeable resolution prior to either Party exercising any available rights or remedies relating thereto.

39. **TIME OF ESSENCE.** Time is of the essence in the performance of this Agreement.

[Signatures follow on next page]
IN WITNESS WHEREOF, the parties have executed this Agreement in one (1) or more copies as of the Date of Agreement.

**MDRR:**

Concord Disposal Service, Inc., a California corporation dba Mount Diablo Resource Recovery-Concord

By: [Signature]

Name: Ronald J. Proto

Its: CEO

By: [Signature]

Name: Kathy Hajin

Its: CEO

**CITY:**

City of Concord, a California municipal corporation

By: [Signature]

Valerie J. Barone, City Manager

**ATTEST:**

By: [Signature]

Joelle Fockler, MMC, City Clerk

**APPROVED AS TO FORM:**

By: [Signature]

City Attorney

**Attachments**

1603 Attachment A – Rate Setting Manual
1604 Attachment B – RRI Calculation

**FINANCE DIRECTOR’S CERTIFICATION:**

1606 Concord, California
1607 Date: April 11, 2019
1609 I hereby certify that adequate funds exist or will be received during the current fiscal year 20__ to pay the anticipated expenses to be incurred pursuant to this contract.
1611 The sum of: $ N/A

Account Code: N/A PS 10/19

1614 Finance Director
Attachment A

Rate Setting Manual

Copy on file with and may be obtained from:

City Clerk
City of Concord
1950 Parkside Drive, MS/03
Concord, California 94519
Rate Setting Process and Methodology Manual for Residential Solid Waste Fees

Versions
Original Manual, February 1993 (v. 1.0)
Updated Manual, July 1997 (v. 2.0)
Updated Manual, July 2006 (v. 3.0)
Updated Manual, October 2007 (v. 4.0)
Updated Manual, January 2010 (v. 5.0)
Updated Manual, September 2014 (v. 6.0)
Updated Manual, March 2019 (v. 7.0)

Prepared for
City of Concord
Mount Diablo Resource Recovery, Inc.

March 8, 2019
# Rate Setting Process and Methodology Manual for Residential Solid Waste Fees

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Section I. Rate Setting Overview

This section of the manual provides an overview of the rate setting process. The section includes four sub-sections:

A. Introduction
B. Policies
C. Using the Manual
D. Future Enhancements

A. Introduction

This manual is a step-by-step guide for the City of Concord (City) and its franchise hauler to prepare and approve changes in residential solid waste collection fees. The manual establishes rate change policies, provides application forms, specifies reporting formats, identifies required supporting documentation, and describes the procedure for requesting, reviewing, and adopting residential rate changes. Cost and revenue information is required for residential and commercial services; however, only residential rates are established through this rate setting process. Commercial solid waste collection is not covered by this manual.

This manual provides a formal structure to establishing residential solid waste fees. Prior to adoption of this manual, there was no formal rate setting process or methodology. The manual has been developed with input and direction from both the City and its current franchise hauler. It is based on the current franchise agreement (and all its subsequent amendments) and existing operating conditions in the City.

As the City and franchise hauler use the rate setting methodology described in the manual, the process should be periodically updated, revised, and improved. This is the sixth version of the manual after nearly two decades of use.

This manual is organized into four sections:

- Section I. Rate Setting Overview  This section provides an introduction to the manual and discusses the policies followed in establishing the rate setting processes.
- Section II. Rate Setting Process  This section provides a detailed discussion of the rate setting process. The discussion focuses on responsibilities of participants in the process, activities to be performed, and the timing of these activities.
- Section III. Base Year Rate Setting Methodology  This section provides detailed instructions on how to complete the forms used to establish new rates for each base year.
- Section IV. Interim Year Rate Setting Methodology  This section provides detailed instructions for completing the forms used to establish new rates for each interim year.

B. Policies

The primary goal of the rate setting process and methodology is to determine residential solid waste collection rates which are fair to Concord residents and which provide a reasonable rate of return to the franchise hauler. Three criteria were considered in developing this rate setting approach:

- The rates requested by the franchise hauler must be justifiable. A formal request to change residential rates submitted by the franchise hauler should provide the basis for all rate changes, include only allowable and necessary costs, and provide accountability for expenditures.
- The estimated costs of service and resulting solid waste collection fees should be reasonable. Charges by affiliated companies (e.g., truck-related costs) should be the same as, or lower than, those charged by other companies for comparable
equipment and supplies. The resulting monthly fees for solid waste collection service should be comparable to those charged in other cities for providing similar services.

- The process should be kept as simple as possible, while 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.

The following policies have been considered in developing the processes and methodologies described in this manual:

- **Regulation of residential solid waste collection fees** Residential solid waste collection fees are regulated by the City, and will represent recovery of allowable costs incurred by the franchise hauler. These allowable costs include (1) collection/disposal of residential solid waste, (2) curbside collection of recyclable materials, and (3) green waste recycling. Costs incurred by the franchise hauler must be adequately documented in a formal request for a rate change, and the rate request must be supported by company audited financial statements.

- **Regulation of commercial rates** Commercial rates will be set between the franchise hauler and merchants, and will not be regulated by the City. The franchise hauler will provide the City with a current schedule of commercial rates (15 days prior to initiating new commercial rates) for all services provided by the company.

1 Revenues received by the franchise hauler from commercial customers currently subsidize to some degree residential service. The City and its current hauler have decided to continue this practice; however, specific subsidy levels have not been established. During each base year rate change review, changes in commercial rates shall be carefully considered, as they directly impact the subsidy level and, therefore, changes in residential rates.

- **Regulation of affiliated companies**
  - If the franchise hauler leases trucks and other equipment from an affiliated or parent company, then all trucking charges are considered a pass-through cost and no additional profit is allowed. City staff will be responsible for determining if the truck charges are reasonable.
  - If the franchise hauler rents office and/or warehouse space from a parent or affiliated company, then rent charged by its parent company will be compared with rent charged by property managers for comparable office and warehouse space.
  - At the time a base year rate change application is submitted, the franchise hauler shall provide the City with at least three comparable rates for trucking charges, office space, and warehouse space (i.e., a minimum nine comparable rates).

- **Senior citizen rate** The franchise hauler will administer a senior citizen program that includes (1) a legacy, grandfathered (32-gallon) senior citizen program based on prior customers in the program, age 65 and over, and (2) a new (32-gallon) senior citizen low income program based on both age criteria (age 65 and over) and income criteria (HUD low income criteria). Administration of this senior citizen program includes education of perspective customers and joint handling of complaints with the City. The franchise hauler shall, upon request from the City on an annual basis provide the City with the quantity of senior citizen accounts. Reasonable costs associated with this senior citizen program shall be considered allowable for rate setting purposes.

- **Mini can rate** The franchise hauler will administer a legacy, grandfathered (20-
Section I. Rate Setting Overview

gallon) mini can service level program based on prior customers in the program. Administration of this mini can program includes education of perspective customers and joint handling of complaints with the City. The franchise hauler shall, upon request from the City on an annual basis provide the City with the quantity of mini can accounts. Reasonable costs associated with this mini can program shall be considered allowable for rate setting purposes.

- **Franchise fee** Franchise fees paid to the City by the franchise hauler are 13.5% of total gross revenues (per Thirteenth Amendment to Franchise Agreement). Franchise fees paid to the City shall be allowed to be recovered by the franchise hauler as pass through costs with no allowable operating profit.

- **City drop boxes and bins** The franchise hauler shall collect 540 20-cubic yard debris boxes annually for the City at no cost. In addition, the franchise hauler shall collect 225 20-cubic yard debris boxes annually for use in the City’s Neighborhood Preservation Program at no cost to the City. The franchise hauler also shall provide bin services to the City at no cost. Costs associated with the franchise hauler providing debris box and bin services to the City are considered allowable costs with profit for rate setting purposes.

Beginning July 1, 2010, the franchise hauler shall collect **250 20-cubic yard** debris boxes annually for use in the City’s Neighborhood Preservation Program at no cost to the City. Beginning July 1, 2015, the franchise hauler shall collect **275 20-cubic yard** debris boxes annually for use in the City’s Neighborhood Preservation Program at no cost to the City. Finally, beginning July 1, 2020, the franchise hauler shall collect **300 20-cubic yard** debris boxes annually for use in the City’s Neighborhood Preservation Program at no cost to the City.

Significant fluctuations in the quantity of City debris boxes and bins provided by the franchise hauler between base years shall be addressed in base year rate reviews.

- **City park waste disposal** The franchise hauler shall allow free use of a transfer station by the City’s compactor truck which serves City parks. Costs incurred by the franchise hauler to provide free use of the transfer station by the City’s compactor truck, which serves City parks, shall be allowed to be recovered with profit by the franchise hauler.

- **Funding of costs to implement State mandated recycling, 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 fees.

The franchise hauler will work closely with the City to meet diversion goals mandated by the California Department of Resources Recycling and Recovery (CalRecycle). The franchise hauler and City shall agree on specific programs and activities to show a good faith effort to meet CalRecycle diversion goals. Examples of these efforts may include 1) increasing materials collected via the current curbside recycling program, and 2) maximizing diversion activities at transfer stations/materials recovery facilities/other disposal facilities that the franchise hauler may use.

The franchise hauler shall implement additional recycling programs from time to time at the direction of the City to meet recycling and diversion goals and/or programs mandated by CalRecycle.
regulations. In any year that the City’s Annual Report to CalRecycle indicates an expected finding of non-compliance, then the franchise hauler, at the City’s sole direction shall implement recycling strategies to achieve compliance, including but not limited to:

- Expanded range of can sizes
- Increased apartment recycling
- Enhanced industrial, commercial, and retail recycling
- Strategies for diverting self-haul and construction and demolition waste from the landfill to the transfer station
- Other diversion programs as directed by the City.

Non-compliance with CalRecycle diversion requirements is defined as either (1) a City submitted Annual Report to CalRecycle containing a recycling rate of less than 45 percent, (2) issuance by CalRecycle of an extension under SB 1066, or (3) a finding of non-compliance issued by CalRecycle. This definition of non-compliance may be amended by the City if State-mandated diversion goals are increased or CalRecycle policies for determining compliance change.

All these recycling source reduction, household hazardous waste, and diversion programs will be considered regulatory costs for the purposes of this manual. Costs associated with these AB 939 diversion goals are considered allowable costs for setting rate purposes. The franchise hauler will be allowed a profit on these regulatory costs.

**Indemnification for legal and environmental remediation costs** The franchise hauler shall indemnify the City for any legal costs and environmental remediation costs resulting from all past and future disposal sites used and disposal practices employed by the franchise hauler in the transportation and disposal of waste generated within the City. If the City has insurance coverage available to pay for such proceedings, the City should use proceeds actually received from any such insurance before the franchise hauler bears any costs. Costs associated with indemnifying the City are considered allowable costs for rate setting purposes.

**Profit** A profit is allowed, based on a targeted operating ratio ranging between 88 and 92 percent. In the base year, if residential rates remain unchanged at an operating ratio within the range of 88 to 92 percent, and the franchise hauler actually realized an operating ratio within this range, then that same operating ratio resulting in no rate change is used, and no rate change occurs. Otherwise, a 90 percent operating ratio is used for the base year calculation.

The operating ratio method is used to establish revenue requirements for setting residential rates. The operating ratio establishes revenue requirements based on allowable expenses.

The operating ratio effectively determines the profit allowed to the franchise hauler on operating costs. Total revenue requirements then are determined as the sum of: (1) operating costs, (2) allowable profit, and (3) pass-through costs (for which the franchise hauler receives no profit).

In the first base year, the operating ratio was set at 90 percent. In each succeeding base year (once every four years), the operating ratio will range from 88 to 92 percent, which will help stabilize rate changes and afford the franchise hauler an incentive to reduce costs. In any succeeding base year, if the franchise hauler earns an operating ratio outside this range, then 90 percent is reestablished.

**Allowance for profit on recycling** A reasonable profit will be allowed on
curbside recycling services and green waste recycling provided to the City by the franchise hauler. Curbside recycling and green waste recycling are part of basic service for all residential customers.

- **Profit on trucking charges** Trucking charges from companies affiliated with the franchise hauler will be a pass-through cost, and no profit is allowed to the franchise hauler. This is based on the assumption that profits are already included in the trucking charges paid by the franchise hauler. Surcharges imposed for regulatory requirements, and which are collected by the franchise hauler directly, will be pass-through costs with no profit allowed. Three comparable lease rates are required to determine the reasonableness for trucking charges.

- **Profit on tipping fees** Limited 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. The actual limit is established by City policy. Currently, this limit is set at $51 per ton. 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, the actual fees paid are used to calculate total tipping costs.

This tipping fee limit allows the franchise hauler to make a reasonable profit on tipping fees, but removes excess profits caused by dramatically increasing tipping fees. The franchise hauler must conduct certain activities related to tipping fees such as keeping records and making payments to the disposal facility. For example, the franchise hauler will be responsible, in part, for increased reporting requirements under AB 2494 to satisfy state regulations regarding disposal-based reporting. As tipping fees increase, the franchise hauler’s workload does not change. To allow the full amount of the tipping fees to be included in the calculation of profit would give the franchise hauler excess and unreasonable profits.

If the franchise hauler utilizes a disposal facility owned by an affiliated company, the tipping fee limit still would apply. However, the tipping fee charged by the disposal facility to the franchise hauler must be the same as the rate charged to other non-affiliated franchise haulers for the same service. Tipping fees are defined to include both transfer station and landfill disposal costs.

- **Profit on regulatory charges** Regulatory charges assessed on refuse disposed of by the franchise hauler, which are collected by the disposal facility operator (not the franchise hauler) are normally incorporated in tipping fees. The franchise hauler will be allowed a profit on tipping fees and, therefore, on these regulatory costs. To do otherwise would create a significant bookkeeping burden on the franchise hauler to track such charges separately.

- **Profit on automated container or cart costs** Cart costs will be considered an allowable cost on which profit is allowed for rate setting purposes. The franchise hauler will be allowed an annual interest on cart purchases at a market rate. Interest expenses on cart purchases will be considered an allowable cost on which profit is allowed. Cart purchases will be allowed to be amortized over seven (7) years consistent with industry practice and the expected useful life of the carts.

- **Profit on customer education and outreach** Customer education and outreach is important every time the hauler improves and changes its service program. Customer service and outreach costs will be considered an allowable cost on which profit is allowed for
rate setting purposes. Customer education and outreach includes development and dissemination of handouts, brochures, and flyers; newspaper directives; direct mailer surveys; website development and maintenance; radio and television public service announcements; development and maintenance of telephone hot lines; and development and showcasing of public displays.

- **Allowable profit on other operating costs** Among the operating costs which the franchise hauler would be allowed profit on are: (1) corporate overhead, (2) interest expense, (3) office rent, and (4) legal fees. Corporate overhead is primarily salaries of officers of the parent company of the franchise hauler, if appropriate. The amount allowed will be three (3) percent of total allowable operating expenses. Interest expense is included as an allowable operating cost on which profit is allowed. Office space expense is allowed with profit regardless of whether the franchise hauler’s parent company owns the office space or the office space is leased from a third party. Three comparable lease rates are required to determine the reasonableness for office space. Finally, legal fees are allowed with profit up to a cap of $150,000 per year.

- **Rate change application process** A detailed rate change application from the franchise hauler is required once every six years. This process requires the franchise hauler to submit detailed financial and operating information which are carefully reviewed and analyzed by the City. These detailed reviews are referred to as “base” years in the methodology. In the base year, commercial, residential, curbside recycling, and green waste recycling costs are combined. However, commercial and residential revenues are reported separately.

In each of the “interim” five years, rate changes are based on the annual percentage change in the RRI (Refuse Rate Index). The City Council adopted a change for the interim year calculations, switching from a CPI adjustment to an RRI adjustment which is more tailored toward changes in the industry. A description of the RRI is attached as Attachment A. The RRI adjustment shall be the sum of the weighted percentage change in the annual average of each RRI index number between the base year, which shall be the prior preceding year ending October 31st and the preceding year ending October 31st as contained in the most recent release of the source documents listed in Attachment A, (“RRI Calculation Summary”) which is attached to and included in this Agreement. Therefore, the first Interim Year rate adjustment will be based on the percentage changes between the annual average of the RRI indices for the year ended October 31, 2012 and the annual average of the RRI indices for the year ended October 31, 2013. The RRI adjustment shall be calculated using the RRI methodology included in Attachment A. The RRI shall be capped at 7% per year and have 0% floor, such that if a negative number, no cost adjustment would occur. However, the reduction would be used in calculating the next years adjustment. The first year RRI adjustment will be...
calculated based on 75% of the adjustment, due to the 9 month timeframe since September 2012.

On or before January 31, 2018, and annually thereafter during the term of this Agreement, CDS shall deliver to CITY financial information for the specific services performed under this Agreement for the preceding fiscal year ended December 31. Such financial information shall be in the format as set forth in Attachment A, or as may be further revised by CITY from time to time. If CDS fails to submit the financial information in the required format by January 31st, it is agreed that CDS shall be deemed to have waived the RRI adjustment for that year. CDS’s failure to provide the financial information shall not preclude CITY from applying the RRI using the prior year’s financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative RRI. CITY shall calculate RRI and City Manager or her designee shall certify the RRI as complying with the RRI Calculation Summary (Att. A), prior to being implemented by CDS. CITY would notify CDS of RRI by May 15th for incorporation in billing notifications for June with increases reflected in the July statements. Interim year increases would be included with the annual fiscal budget process and revised through the annual Master Fees and Charges Update.

- **Special extraordinary adjustments**
  Special extraordinary adjustments may be allowed outside of the annual schedules of the base year and interim year adjustments. Both the City and franchise hauler shall be able to initiate the extraordinary rate adjustment process. The extraordinary adjustment shall only be considered in a case where the City or the franchise hauler can demonstrate that the change in one of the cost line items specified in the base year rate change application (i.e., Direct Labor, Tipping Fees [Profit Allowed], Corporate Overhead, Office Salaries, Other General and Administrative Costs, Trucking Charges, Regulatory Fees, Tipping Fees [Pass Through], or Residential and Commercial Franchise Fees) will exceed two (2) times the most recent annual change in the San Francisco-Oakland-Hayward (formally San Francisco-Oakland-San Jose) Metropolitan Area Consumer Price Index (All Items) at the time the request is made.

For these adjustments, the franchise hauler shall provide necessary information and documentation so the City can make a judgment as to the reasonableness of such a rate adjustment. An extraordinary adjustment shall only be made with City Council approval.

- **A potential framework for balancing actual revenues with projected requirements**
  The City and the franchise hauler may balance projected and actual financial results during each base year rate setting process. In a given base year, the City may measure differences between the previous base year’s projected revenue requirement (i.e., allowable costs plus pass through costs plus allowable profit) and actual revenues received in each year since the projection. The City shall utilize audited financial statements submitted by the franchise hauler as part of the base year rate review process as required by the Manual to measure differences in projected and actual results.

This framework does not require measuring annual differences (for the combined five interim years) between actual and projected costs alone, nor differences between actual and projected revenues alone. Instead this framework combines costs and revenues by measuring differences between projected revenue requirements (i.e., allowable costs plus
pass through costs plus allowable profit) and actual revenues received (for the combined five interim years).

If the City and franchise hauler determine that a difference between projected and actual results exists and this balance is material (e.g., falls significantly outside of the range of allowed 88 to 92 percent operating ratio), the procedure for treating this balance may be negotiated.

A possible result is that the balance will be incorporated prospectively as part of a residential refuse collection rate change. Factors the City should consider in treating this balance include the amortization period (i.e., how many years the surplus/shortfall should be spread across) and whether the balance may be reoccurring or non-reoccurring. Planned service level changes, new programs, or other changes in costs of service may also affect how the balance is treated. All balances should be expressed in real dollars (i.e., without interest).

- **Retroactive rate increase** There will be no allowance for a retroactive increase in rates. However, provisions will be included to accommodate billing cycles where bills are issued in advance of the City approving new residential rates.

**C. Using the Manual**

Each section of the manual has been divided into a number of sub-sections. A sub-section begins with a capital letter and includes a discussion related to a major topic. Many sub-sections of this manual include a series of “steps” which must be completed during a process. Each step begins at the top of a page and is prominently marked for easy reference. The organization of each step is shown in Exhibit 1-1, following this page.

The manual also contains one appendix. This appendix provides blank worksheets and forms which are used during the various processes.

**D. Future Enhancements**

As the City and franchise hauler continued to gain experience in working with the rate setting process, refinements and revisions should continue to be identified and incorporated in this document. One area which should be considered for inclusion is performance audits.

- **Performance Audits** While rates for residential services are evaluated in detail during each base year rate change process, the rate review focuses on actual costs and does not address opportunities for the franchise hauler to improve general operational efficiency. If actions can be taken to improve the franchise hauler’s efficiency, this could result in lower total costs, and correspondingly, lower rates for customers.

In order to address this issue, performance audits of the franchise hauler could be conducted at regular intervals, such as once every five years. The timing of these audits could be independent of the rate change process described in this manual. In order to maintain objectivity, these audits would be conducted by an independent organization which is selected jointly by the City and the franchise hauler.

A two-phase approach may be appropriate for these audits. An overall diagnostic review would be conducted in Phase I, and more detailed and focused work in selected areas would be conducted in Phase II, based on the Phase I findings.
EXHIBIT 1-1

Organization of Each Step

**STEP 1**

*Base Year*

**Preparation and Submission of Rate Change Application**

**Responsibility:** Franchise Hauler

**Timing:** Completed five months prior to the implementation of new rates

**Tasks:**

a. Prepare Cost Information
b. Prepare Revenue Information
c. Prepare Operating Information
d. Prepare and Submit Rate Change Application and Supporting Documents

**Description of Tasks**

**Overview**

During this step, the franchise hauler prepares the forms which are required to begin the rate change process. Instructions for preparing the application forms referred to in this step, are available in Section III of this manual.

In general, information provided by the franchise hauler is for three fiscal years:

- Most recently completed year
- Current year (year two)
- Base year (year three).

**a. Prepare Cost Information**

Cost information from the franchise hauler is provided on the *Base Year Rate Change Application*. Cost information is reported for the most recently completed fiscal year, the current year, and the new base year. Information reported in each line item is the total cost for commercial, residential, curbside recycling, and green waste collection services. A breakdown of costs by service type is not required.

The cost information which is reported includes:

- Direct Labor
- Tipping Fees
- Corporate Overhead
- Office Salaries
- Other General & Administrative Costs
- Trucking Charges
- Regulatory Fees
- Franchise Fees.

By aggregating costs into these line items, it is possible to 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 cause Other General and Administrative Costs to increase by...
Section II. Rate Setting Process

There are two rate change processes: the base year rate change and the interim year rate change. This section is organized into the following sub-sections:

A. Base Year Process

B. Timing of the Base Year Process

C. Interim Year Process

D. Timing of the Interim Year Process.

Topics covered in this section of the manual include:

- **Who** is responsible for the various steps in each process
- **What** tasks must be completed
- **When** each task should be conducted

Information about the methodology and how to complete the worksheets and forms for Base Year Rate Changes and Interim Year Rate Changes are provided in Sections III and IV of this manual, respectively.

A. Base Year Process

The base year is the most detailed of the two rate change processes. Base year rates were generally established every four years, beginning in 1993. However, in 2012 base year reviews were moved to every six (6) years such that the next review would occur in FY 2016/2017, with the application to be submitted by September 2016 and then every six years thereafter. Major operation changes or program changes may require special rebasing, not on the four-year schedule. An example here would be automation of refuse, recycling, and yard waste collection services.

Detailed financial information is utilized to determine rates which are fair to both the residents of the City and the franchise hauler. Fairness is demonstrated through a review of the franchise hauler’s actual revenues and expenses.

Information required in the rate setting process which is considered confidential by the franchise hauler will not be disclosed at any public meetings (i.e., City Council meetings). This would include operating statistics and employee compensation information. The City and/or its Consultant may sign a Confidentiality Agreement with its franchise hauler for a base year rate review.

The existing franchise agreement requires any request by the franchise hauler for a rate change be submitted by the company at least four months in advance of when the proposed rate change would take place. The City has up to 30 days to review the application for completeness before this four month period begins. Unless otherwise notified by the City within this 30-day period, the rate request will be deemed complete, and the four-month time frame would begin.

**Exhibit II-1**, following this page, provides an overview of the base year rate setting process. Following this exhibit is a description of each step in the process. The timing of the base year process is described in Section II-B of this manual.
### Base Year Rate Setting Process Overview

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<th>Responsibility</th>
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<td>a. Prepare Cost Information</td>
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<td>b. Prepare Revenue Information</td>
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<td>c. Prepare Operating Information</td>
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<tr>
<td>d. Prepare and Submit Rate Change Application and Supporting Documents</td>
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<td><strong>2. Verification of Completeness of Rate Change Application</strong></td>
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<td><strong>3. Review of Rate Change Application and Preparation of Responses</strong></td>
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<td>d. Determine Components of Requested Change in Residential Rates</td>
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<td>f. Balance Actual Revenues with Projected Revenue Requirements</td>
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### Base Year Rate Setting Process Overview (continued)

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<td>a. Prepare Draft Report and Recommendations</td>
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<td>10. Presentation of Final Report and Recommendations to City Council</td>
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</tbody>
</table>
**STEP 1**

**Base Year**

**Preparation and Submission of Rate Change Application**

**Responsibility:** Franchise Hauler

**Timing:** Completed five months prior to the implementation of new rates

**Tasks:**

a. Prepare Cost Information

b. Prepare Revenue Information

c. Prepare Operating Information

d. Prepare and Submit Rate Change Application and Supporting Documents

---

**Description of Tasks**

**Overview**

During this step, the franchise hauler prepares the forms which are required to begin the rate change process. Instructions for preparing the application forms referred to in this step, are available in Section III of this manual.

In general, information provided by the franchise hauler is for six fiscal years, including:

- Four most recently completed years
- Current year (year five)
- Base year (year six).

**a. Prepare Cost Information**

Cost information from the franchise hauler is provided on the *Base Year Rate Change Application*. Cost information is reported for the most recently completed fiscal year, the current year, and the new base year. Information reported in each line item is the total cost for commercial, residential, curbside recycling, and green waste collection services. A breakdown of costs by service type is not required.

The cost information which is reported includes:

- Direct Labor
- Tipping Fees
- Corporate Overhead
- Office Salaries
- Other General & Administrative Costs
- Trucking Charges
- Regulatory Fees
- Franchise Fees.

By aggregating costs into these line items, it is possible to 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 cause Other General
Section II. Rate Setting Process

and Administrative Costs to increase by about one percent. Minor components of Other 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 a detailed review of the components of that cost element should be conducted to determine whether the change is allowed.

An unusual change in cost is any increase which is greater than the change in the San Francisco-Bay Area Consumer Price Index. The Consumer Price Index used in the analysis should be based on the most current actual information for the San Francisco-Oakland-Hayward (formally 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.

The 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 collected. Actual increases in costs must also be included. For example, if labor costs are expected to increase in the base year due to current labor agreements, this additional cost must be included. If these costs are not included, a rate increase will not be sufficient to compensate the franchise hauler for actual costs and will result in a reduction of the franchise haulers actual profits.

The cost information provided in the application is used to calculate the franchise hauler’s revenue requirements. This amount is compared to anticipated revenues to calculate the rate change.

b. Prepare Revenue Information

Revenue information is provided in this task. Similar to cost information, revenues are reported for the most recently completed fiscal year, the current fiscal year, and the projected base year. Residential, commercial, and recycled material revenue must be reported separately. Actual revenue for each category is reported for the most recently completed fiscal year and estimated revenue is reported in the current year.

For the base year, the amount of commercial revenue which the franchise hauler anticipates receiving is reported. This includes changes in revenue from servicing more or fewer accounts and from any anticipated rate changes. Recycled material sales revenues also must represent the actual amount of revenue the franchise haulers anticipates receiving during the base year. Again, this would include any changes in scrap prices or quantities of recycled material sold.

Residential 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.

Allowances for uncollectible residential and commercial accounts are identified in the application. This provides for a more accurate determination of the franchise hauler’s revenue in the base year, as a small number of customers do not pay the franchise hauler for service rendered.

Once all revenues have been reported in the application, total revenue without a residential rate change is calculated. This amount is subtracted from the revenue requirement calculated in task a, to determine the net surplus/shortfall. Commercial revenues already include rate changes, which reduces the net shortfall.
Recycled material revenue in the base year reflects anticipated amounts and generally is not controlled by the franchise hauler. Therefore, a net shortfall determines the amount of a residential rate change.

If there is a net surplus, the franchise hauler should determine if the operating ratio can be reduced to eliminate the surplus (i.e., the franchise hauler retains the surplus as additional profit). If the operating ratio is calculated at 88 percent, which provides the franchise hauler with the maximum amount of profit allowable under current policy, and a surplus still exists, the City must determine if residential rates will be lowered, and over what period of time.

c. Prepare Operating Information

During this task, non-financial operating information is compiled by the franchise hauler. Information to be provided for both residential and commercial customers includes:

- Number of customers served
- Tons of solid waste collected.

This information allows both the City and the franchise hauler to monitor changes in the service characteristics and evaluate changes in total cost. Operating information also is provided on the Base Year Rate Change Application.

d. Prepare and Submit Rate Change Application and Supporting Documents

The completed rate change application is submitted to the City. The rate change application should include the following items:

- **Cover Letter**
  The cover letter transmits the rate change application to the City, and should provide a listing of documents included in the application package. The cover letter also should include a discussion of any specific issues which impact new rates (e.g., significant changes in tipping fees).

- **The Completed Base Year Rate Change Application**
  This document contains information which documents and supports the requested rate change.

- **Supplemental Financial Information**
  The most current financial audit for the franchise hauler should be included, as well as other documentation which support operating and financial data provided in the application.

  Once the application materials have been prepared, they are submitted to the City. The thirty (30) day review for completeness will begin upon receipt of the application.
**Verify of Completeness of Rate Change Application**

**Responsibility:** City

**Timing:** Completed within thirty (30) days after the rate change application is submitted

**Tasks:**
- a. Verify Financial Data and Format
- b. Verify Supporting Documents and Schedules
- c. Notify Franchise Hauler

---

**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.

**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 reviewer should determine the following:

- Has the applicant included all required forms?
- Are all forms complete?
- 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**

After the application is verified and determined to be either complete or incomplete, the City will send a letter to the franchise hauler noting the status of the application. If the application is complete, the City then begins to evaluate and analyze the proposed rate change. If the application is incomplete, the document is returned to the franchise hauler with application deficiencies clearly noted.
**Review of Rate Change Application and Preparation of Responses**

**Responsibility:** City

**Timing:** Completed within one month after determining that the application package is complete

**Tasks:**

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 Residential Rates
e. Review Performance Data
f. Balance Actual Revenues with Projected Revenue Requirements
g. Request Additional Data and Clarification, if Necessary
h. Document Staff Review and Prepare Written Response

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**Description of Tasks**

**Overview**

During this step, City staff evaluates the data included in the rate change application. This review includes examining any significant changes in costs or operating performance and evaluating explanations of these changes as provided by the franchise hauler.

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**a. Review Actual and Projected Revenue Requirements**

In this task, costs and operating profit are reviewed and analyzed. Absolute and percentage changes in costs for the years identified in the application should be calculated and reviewed. Any unusual increases or decreases should be explained by the franchise hauler. An unusual increase would be a change in cost which is greater than the change in the Consumer Price Index for the Bay Area, and which cannot be attributed to changes in the number of customers serviced or tons of waste collected. If these unusual changes are not adequately explained in the application, the City should request additional clarification from the franchise hauler.

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**b. Review Actual and Projected Revenues**

Projected revenues should be reviewed, in this task. Current residential 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 six years of commercial and residential revenues, including (1) the four most recently completed fiscal years, (2) current fiscal year, and (3) projected “base” year. The City should reconcile first, second, third, and fourth year revenues with audited financial statements. Revenues for the fifth year are compared with financial statements and documentation supplied by the franchise hauler. Finally, projected revenues for the sixth, or “base” year are evaluated by the City for reasonableness. All assumptions made by the franchise hauler in preparing these projections are reviewed.

Commercial revenues in the base year should include any anticipated rate changes. Residential revenue should not include any changes. Rate schedules submitted by the franchise hauler per the franchise agreement should be consulted to determine average rate changes. Account information included in the application is reviewed to determine changes in the number of accounts served.

The commercial and residential revenue figures provided in the base year should represent the prior year plus any changes in the number of customers served. If changes in commercial revenues during the years reported in the application appear to be inconsistent with known rate changes and customer changes, clarification should be requested from the franchise hauler.

Allowances for residential and commercial uncollectible accounts also are reviewed. These figures should be deducted from total commercial and residential revenue projections. These figures may be based on a straight percentage of total revenues or on actual experience. Assumptions related to allowances for uncollectible accounts should be provided by the franchise hauler.

Revenue from the sale of recycled materials also is provided in the application. Amounts identified in the first, second, third, and fourth years of the years provided should reconcile with the financial audits for those years. The amount identified in the other years should be documented by the franchise hauler.

c. Review and Verify Operating Ratio

The operating ratio must be between 88 percent and 92 percent. City staff verifies that the operating ratio used in the application is within this range. The allowable operating profit also is re-calculated utilizing the operating ratio stated in the application. If the operating ratio does not fall within the range stated above, or if there are any errors in calculating the allowable operating profit, these deficiencies are noted.

d. Determine Components of Requested Change in Residential Rates

The City evaluates all costs, revenues, and operating profits provided in the application to determine the components of the requested change in residential rates. This would include determining the proportion of the requested change in rates which is due to changes in each of the following:

- Costs
- Commercial revenues
- Residential revenues
- Recycled material revenues
- Operating profit (or loss).
e. Review Performance Data

City staff reviews and analyzes the performance data which are included in the application. Both actual and percentage increases are examined and any unusual changes in performance are investigated. An unusual change in operating statistics is any increase or decrease of more than two percent. As noted above, changes in accounts served and tons collected generally should correspond to changes in cost and revenue.

f. Balance Actual Revenues with Projected Revenue Requirements

The City may balance projected and actual financial results during each base year rate setting process. The City may measure differences between the previous base year’s projected revenue requirement (i.e., allowable costs plus pass through costs plus allowable profit) and actual revenues received in each year since the projection. The City shall utilize audited financial statements submitted by the franchise hauler as part of the base year rate review process as required by the Manual to measure differences in projected and actual results.

This framework does not require measuring annual differences between actual and projected costs alone, nor differences between actual and projected revenues alone. Instead, this framework combines costs and revenues by measuring differences between projected revenue requirements (i.e., allowable costs plus pass through costs plus allowable profit) and actual revenues received.

If the City and franchise hauler determine that a difference between projected and actual results exists and this balance is material (e.g., falls outside of the range of allowed 88 to 92 percent operating ratio), the procedure for treating this balance may be negotiated.

A possible result is that the balance could be incorporated prospectively as part of a residential refuse collection rate change. Factors the City should consider in treating this balance include the amortization period (i.e., how many years the surplus/shortfall should be spread across) and whether the balance may be reoccurring or non-reoccurring. Planned service level changes, new programs, or other changes in costs of service may also affect how the balance is treated. All balances should be expressed in real dollars (i.e., without interest).

g. Request Additional Data and Clarification, if Necessary

After analysis of the application is complete, City staff requests clarification and/or additional data from the franchise hauler to explain unusual changes in costs or operating performance. Any issues related to the operating ratio also are identified. This information is requested in a letter from the City to the franchise hauler.

h. Document Staff Review and Prepare Written Response

During this task, City staff documents the review process. A memorandum is prepared which lists the activities completed during the review process.
Response to Additional Information Requests from City

Responsibility: Franchise Hauler
Timing: Completed within two weeks of receiving a request for additional information from the City
Tasks:
   a. Provide Additional Information, if Requested
   b. Prepare and Submit Response

Description of Tasks

Overview
During this step the franchise hauler responds to requests for additional information from the City.

a. Provide Additional Information, if Requested
During Step 3, City staff reviewed the application and may have identified missing information, or changes in the financial or operating data between the fiscal years which require clarification or further explanation. The franchise hauler should respond to the City’s request for additional information. Responses will vary depending on the specific requirements of the City.

b. Prepare and Submit Response
The franchise hauler prepares written responses to the City’s request for additional information. These responses are prepared and forwarded to the City during this step.
STEP 5
Base Year

Survey of Rates in Similar Service Areas

Responsibility: City

Timing: Conducted concurrently with the application review (Steps 2 and 3)

Tasks:

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

Description of Tasks

Overview

The City conducts a survey of residential and commercial solid waste rates in communities similar in size and location to the City of Concord. The City also determines comparable charges for residential truck usage, as well as rental rates for buildings similar to those rented by the franchise hauler. The purpose of this survey is to benchmark the rates proposed by the franchise hauler to determine if the rates are reasonable. Sample survey forms and instructions are provided in Section III-B of this manual.

a. Survey Residential and Commercial Solid Waste Rates and Charges in Similar Service Areas

In this task, the survey of rates in other areas which are similar to the City of Concord is conducted. The survey covers the following topics:

- General Information

- Residential Service

- Commercial Service.

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 of Concord’s.

b. Summarize Survey Results

After the survey has been conducted, the results are tabulated and compared. The purpose of surveying commercial rates is to determine if there is an explanation for why residential rates might vary significantly among the surveyed communities.

Residential rates proposed in the rate change application should be compared to residential 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. If the differences cannot be explained, City staff may consider adjusting the rates in the application.

<table>
<thead>
<tr>
<th></th>
<th>Average monthly charge for one can service</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average change for once-a-week commercial service of a three cubic yard bin.</td>
</tr>
</tbody>
</table>

**c. Prepare and Submit Summary to the Franchise Hauler**

The City then prepares a summary report, which includes the following information:

- Number of agencies surveyed

A copy of the survey summary is provided to the franchise hauler. If the City requires an explanation and/or clarification from the franchise hauler about how the proposed rates compare to rates in the survey, the City includes this request in its transmittal memo.
Overview

A draft report with recommendations from City staff is prepared and submitted to the franchise hauler for review. The report will be reviewed by the franchise hauler in Step 7. Residents of the City will be able to comment on the rate change process through a public hearing (refer to Step 8).

a. Prepare Draft Report and Recommendations

In this step, City staff prepares a draft report including recommendations for a rate change. The draft report includes the following sections:

- Executive Summary
- Rate Change Review
- Analysis and Discussion of Rate Change Application
- Recommendation
- Attachments.

Results of the public hearing (Step 8) also should be included in the draft report. Each of these report topics is discussed below:

- Executive Summary
  This is a one or two-page summary of the review process and includes a chart showing current and proposed rates, and the recommended rate change.

- Rate Change Review
  This section of the report provides a brief overview of the rate change process and discussion of significant historical issues.

- 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 includes the following sub-sections:

  Review of Rate Changes, including a discussion of 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 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.

Recommendation

City staff would present its recommendation regarding specific changes in residential rates in this section of the document.

Attachments

Attachments 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.

After the draft report is complete, copies are provided to the franchise hauler. These copies must be provided two weeks prior to the public hearing date. Copies of the draft report also are prepared for public review prior to and during the public hearing.
Step 7: Review of Draft Report and Recommendations

Responsibility: Franchise Hauler
Timing: Completed within two weeks of receiving the City’s Draft Report and Recommendations
Tasks:

- Review Draft Report and Recommendations with City Staff
- Resolve Any Remaining Issues
- Prepare Response to Draft Report and Recommendations

Description of Tasks

Overview

The franchise hauler reviews the Draft Report and Recommendations. The franchise hauler also may provide additional information related to any issues identified during the City’s survey of other communities’ rates.

a. Review Draft Report and Recommendations with City Staff

During this task, the franchise hauler will review the draft report. Each section of the report should be reviewed to ensure the following:

- Correct data are included
- City staff analysis is accurate and fair
- Rate changes are acceptable

b. Resolve Any Remaining Issues

If any issues are identified during this step, the franchise hauler works with City staff to fully explore and resolve these outstanding issues.

c. Prepare Response to Draft Report and Recommendations

A written response to the draft report is 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’s or comments can be offered, this should be relayed to City staff.
**STEP 8**

*Base Year*

**Conduct Public Hearing**

<table>
<thead>
<tr>
<th>Responsibility:</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timing:</td>
<td>Completed approximately 12 weeks after determining the application package is complete</td>
</tr>
</tbody>
</table>
| Tasks:          | a. Post Notice of Public Hearing  
                 | b. Conduct Public Hearing |

**Description of Tasks**

a. **Post Notice of Public Hearing**
   
   City staff will arrange for a public hearing on the proposed change in residential rates. This includes:
   
   - Selecting a location for the hearing
   - Selecting a date for the hearing
   - Preparing a public notice
   - Submitting the notice to the local newspaper for a publication date 14 days prior to the hearing date
   - Preparing copies of the draft report for public review.

Exhibit II-2, on the following page is a sample public hearing notice for newspaper publication.

b. **Conduct Public Hearing**

   During this task the public hearing is conducted. Copies of the Draft Report and Recommendations should be made available at the meeting. Representatives from the City should be available to respond to citizens questions about the proposed changes. Representatives from the franchise hauler may choose to attend at their option. All citizen comments should be recorded for consideration and possible inclusion in the final report.
EXHIBIT II-2

Sample Public Hearing Announcement

PUBLIC HEARING

CITY OF CONCORD
PROPOSED AMENDMENT TO THE
MASTER FEES AND CHARGES RESOLUTION
RESIDENTIAL GARBAGE RATES

NOTICE IS HEREBY GIVEN that the City Council of the City of Concord will consider a
Base-Year Rate Application by Concord Disposal Service to increase/decrease residential
garbage rates by ___% effective ______________.

NOTICE IS HEREBY FURTHER GIVEN that the City Council of the City of Concord will
hold a PUBLIC HEARING on this matter in the Council Chamber, 1950 Parkside Drive, on
Tuesday, April 4, 2006 at 6:30 p.m. (or as soon thereafter as the matter can be heard), at which
time and place interested persons may appear and be heard.

For further information on the above matter, please contact _________________________________
at (____) ______. If you require this notice in an appropriate alternative format, or seek any
other disability accommodation, please contact the ADA Coordinator at (____) ______.

______________
City Clerk

DATED: March 24, 2006
March 29, 2006

1950 Parkside Drive • Concord, CA 94519-2578 • (925) 671-3000
**STEP 9**  
Base Year  

**Preparation of Final Report and Recommendations**

**Responsibility:** City

**Timing:** Completed within four weeks of conducting the public hearing and receiving comments from the franchise hauler

**Tasks:**

a. Incorporate Franchise Hauler's Changes in Final Report

b. Incorporate Comments from Public Hearing

c. Prepare Final Report and Recommendations

---

**Description of Tasks**

**Overview**

The City prepares the Final Report and Recommendations, incorporating relevant comments from the franchise hauler and public hearing during this task.

**a. Incorporate Franchise Hauler's Changes in Final Report**

Any 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.

**b. Incorporate Comments from Public Hearing**

Relevant comments received during the public hearing are considered during this task. If appropriate, modifications to the report should be made. If significant modifications are to be made, the franchise hauler is notified and allowed an opportunity to respond to these changes. The public contact portion of the report also is completed during this task including a summary of the results of the public hearing process.

**c. Prepare Final Report and Recommendations**

After final comments from the franchise hauler and the public have been considered, the Final Report and Recommendation package is prepared. A copy of the Final Report is submitted to the franchise hauler.
Step 10

Base Year

Presentation of Final Report and Recommendations to City Council

Responsibility: City
Timing: Completed two weeks prior to the expected implementation of new rates
Tasks:
   a. Distribute Report and Summary to Council Members
   b. Obtain Council Approval

Description of Tasks

Overview

During this step, the Final Report and Recommendations is presented to the City Council for review, comment, and approval.

a. Distribute Report and Summary to Council Members

In this task, the Final Report and Recommendations are provided to members of the City Council. The report is included as an agenda item for Council consideration at a regular Council meeting. The rate increase 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 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 Council Approval

Council members review the report and proposed rate changes. If the Council agrees with the recommendations of the City staff, the report and rates are approved. If the 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 Council should specifically identify deficiencies.
### Implementation of New Rates

<table>
<thead>
<tr>
<th>Responsibility:</th>
<th>Franchise Hauler</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timing:</td>
<td>Conducted following City Council approval of the new rates</td>
</tr>
</tbody>
</table>
| Tasks:          | a. Prepare Notification of Rate Change  
                  b. Implement Rate Change |

#### Description of Tasks

**Overview**

During this final step, the franchise hauler implements new residential rates.

**a. Prepare Notification of Rate Change**

Once the report is approved, a notification of a rate change is mailed to all customers. This notification may be included with a regular billing or may be mailed separately.

**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 residential billings once every two or three months, and a rate change occurs during the middle of a billing cycle, unbilled amounts in the current billing cycle due to the rate change are calculated and included in the next billing cycle.
B. Timing of the Base Year Process

Generally, a base year rate change is implemented at the beginning of the franchise hauler’s fiscal year in which the new rates will be in effect; or, the date that the City publishes its Master Fee Schedule. The rate change process should begin seven months prior to the publication date of the City’s Master Fee schedule, or the beginning of the new fiscal year (whichever is sooner), and the rate change application should be submitted to the City a minimum of five and preferably six months prior to the implementation of the rates. If the franchise hauler’s fiscal year begins on January 1st, then the franchise hauler should begin preparing the application during the prior June, with the document submitted to the City in August. The total time required to complete this process will depend on the complexity of changes in operating conditions and the resulting application.

Exhibit II-3 on the next page shows the timeline for completion of the rate change process. Most of the time frames are recommended; however, certain key points are noted in the exhibit by circled letters.
## Timing of Base Year Rate Change Process

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Preparation and Submission of Rate Change Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 2</td>
<td>Verification of Completeness of Rate Change Application</td>
</tr>
<tr>
<td>Step 3</td>
<td>Review of Rate Change Application and Preparation of Responses</td>
</tr>
<tr>
<td>Step 4</td>
<td>Response to Additional Information Requests from City</td>
</tr>
<tr>
<td>Step 5</td>
<td>Survey of Rates in Similar Service Areas</td>
</tr>
<tr>
<td>Step 6</td>
<td>Preparation of Draft Report and Recommendations</td>
</tr>
<tr>
<td>Step 7</td>
<td>Review of Draft Report and Recommendations</td>
</tr>
<tr>
<td>Step 8</td>
<td>Conduct Public Hearings</td>
</tr>
<tr>
<td>Step 9</td>
<td>Preparation of Final Report and Recommendations</td>
</tr>
<tr>
<td>Step 10</td>
<td>Presentation of Final Report and Recommendations to City Council</td>
</tr>
<tr>
<td>Step 11</td>
<td>Implementation of New Rates</td>
</tr>
</tbody>
</table>

### Legend

- **A.** Rate Change Application
- **B.** Letter of Completeness
- **C.** Additional Information from Hauler
- **D.** Review of Draft Letter
- **E.** Notification of Public Hearing
- **F.** Public Hearing
- **G.** Final Report and Recommendations
- **H.** Application Approved
- **I.** New Rates Implemented

---

City of Concord
C. Interim Year Process

Each rate change request in the five years between base years follows a streamlined process. This process requires substantially less information and preparation time, while still allowing for rate changes which are fair and reasonable.

During the five interim years, residential rates can be adjusted annually through application of an index. The City Council adopted a change for the interim year calculations, switching from a CPI adjustment to an RRI adjustment which is more tailored toward changes in the industry. A description of the RRI is attached as Attachment A in Section I. In each interim year, the franchise hauler and City staff are responsible for determining the actual annual change in the RRI, once requested. The interim year rate increase in any given year shall not exceed seven (7) percent.

Even if the interim-year adjustment would justify a change in rates, the franchise hauler is not required to apply for the change. This will help stabilize rates even when small changes might be warranted.

Exhibit II-4, following this page, provides an overview of the Interim Year Rate Change Process. Following this exhibit is a description of each step in the process.
## Interim Year Rate Change Process

<table>
<thead>
<tr>
<th>Step/Task</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Preparation and Submission of Rate Change Application</td>
<td>Franchise Hauler</td>
</tr>
<tr>
<td>- Prepare an Interim Year Rate Change Application</td>
<td></td>
</tr>
<tr>
<td>- Submit Draft to City Staff</td>
<td></td>
</tr>
<tr>
<td>2. Review of Rate Change Application</td>
<td>City</td>
</tr>
<tr>
<td>- Identify Appropriate Consumer Price Index (CPI)</td>
<td></td>
</tr>
<tr>
<td>- Verify Percentage Change in CPI</td>
<td></td>
</tr>
<tr>
<td>- Verify Seventy Percent Change in CPI, but Not to Exceed Five Percent</td>
<td></td>
</tr>
<tr>
<td>- Prepare Draft Report and Recommendations</td>
<td></td>
</tr>
<tr>
<td>3. Review and Response to City Analysis and Calculations</td>
<td>Franchise Hauler</td>
</tr>
<tr>
<td>- Review City Staff Calculations and Analysis</td>
<td></td>
</tr>
<tr>
<td>- Prepare and Submit Response</td>
<td></td>
</tr>
<tr>
<td>4. Preparation of Final Report and Recommendations</td>
<td>City</td>
</tr>
<tr>
<td>- Incorporate the Franchise Hauler’s Comments in Final Report</td>
<td></td>
</tr>
<tr>
<td>- Prepare Final Report and Recommendations</td>
<td></td>
</tr>
<tr>
<td>5. Presentation of Final Report and Recommendations to City Council</td>
<td>City</td>
</tr>
<tr>
<td>- Distribute Report to Council Members</td>
<td></td>
</tr>
<tr>
<td>- Obtain Council Approval</td>
<td></td>
</tr>
<tr>
<td>6. Implementation of New Rates</td>
<td>Franchise Hauler</td>
</tr>
<tr>
<td>- Notify Residential Customers</td>
<td></td>
</tr>
<tr>
<td>- Implement Rate Change</td>
<td></td>
</tr>
</tbody>
</table>
**STEP 1**

*Interim Year*

**Preparation and Submission of Rate Change Application**

**Responsibility:** Franchise Hauler

**Timing:** Completed three months prior to the implementation of the new rates

**Tasks:**

a. Prepare an Interim Year Rate Change Application

b. Submit Draft to City Staff

---

**Description of Tasks**

**Overview**

During this first step, the franchise hauler prepares the *Interim Year Rate Change Application.*

**a. Prepare an Interim Year Rate Change Application**

The franchise hauler is responsible for submitting the initial interim year application for which new residential rates are being requested. Current and requested new residential rates, by category, are entered on the *Interim Year Rate Change Application.* The application is signed by an appropriate representative of the franchise hauler.

**b. Submit Draft to City Staff**

The completed application is sent to the City for review and calculation of new residential rates.
### Section II. Rate Setting Process

**STEP 2**  
**Interim Year**

<table>
<thead>
<tr>
<th>Responsibility:</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timing:</td>
<td>Completed within three weeks of receiving a completed Interim Year Rate Change Application</td>
</tr>
</tbody>
</table>
| Tasks:          | a. Identify Appropriate Refuse Rate Index (RRI)  
b. Verify Percentage Change in RRI  
c. Verify Not to Exceed Seven Percent  
d. Prepare Draft Report and Recommendations |

---

**Description of Tasks**

**Overview**  
City staff use the franchise hauler’s existing residential rates, by category; verify changes in the Refuse Rate 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 Refuse Rate Index (RRI)**  
In each interim year, the franchise hauler and City staff are responsible for determining the actual annual change in the RRI, once requested. The RRI adjustment shall be the sum of the weighted percentage change in the annual average of each RRI index number between the base year, which shall be the prior preceding year ending October 31st and the preceding year ending October 31st as contained in the most recent release of the source documents listed in **Attachment A**, shown in Section I (Rate Setting Overview) as “RRI Calculation Summary”. Therefore, the first Interim Year rate adjustment will be based on the percentage changes between the annual average of the RRI indices for the year ended October 31, 2012 and the annual average of the RRI indices for the year ended October 31, 2013, and annually thereafter.

The interim year rate increase in any given year shall not exceed seven (7) percent and will have a 0% floor such that if a negative number, no cost adjustment would occur.

On or before January 31, 2013, and annually thereafter during the term of this Agreement, CDS shall deliver to CITY financial information for the specific services performed under this Agreement for the preceding year ended December 31. Such financial information shall be in the format as set forth in **Attachment A**, or as may be further revised by CITY from time to time. If CDS fails to submit the financial information in the required format by January 31, it is agreed that CDS shall be deemed to have waived the RRI adjustment for that year. CDS’s failure to provide the financial information shall not preclude CITY from applying the RRI using the prior
year's financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative RRI. City shall calculate RRI and City Manager or her designee shall certify the RRI as complying with the RRI Calculation Summary (Att. A), prior to being implemented by CDS. City would notify CDS of RRI by April 15th for incorporation in billing notifications for June with increases reflected in the July statements. Interim year increases would be included with the annual fiscal budget process and revised through the annual Master Fees and Charges Update.

b. Verify Percentage Change in RRI

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 RRI 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 Section IV of this manual.

c. Verify Not to Exceed Seven 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 Section IV of this manual.

d. Prepare Draft Report and Recommendations

City staff prepares a 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 one page 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 any significant changes in costs and an identification of the RRI used by the City.

- **Recommendation**
  
  City staff presents its recommendation regarding any change in residential 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.
**STEP 3**

*Interim Year*

**Review and Response to City Analysis and Calculations**

**Responsibility:** Franchise Hauler

**Timing:** Completed within three weeks of receiving the completed interim year draft report from the City

**Tasks:**

a. Review City Staff Calculations and Analysis

b. Prepare and Submit Response

---

**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
**STEP 4**

**Interim Year**

**Preparation of Final Report and Recommendations**

**Responsibility:** City

**Timing:** Conducted within two weeks of receiving comments from the franchise hauler

**Tasks:**

a. Incorporate the Franchise Hauler’s Comments in Final Report

b. Prepare Final Report and Recommendations

---

**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**

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 is prepared. A copy of the Final Report should be submitted to the franchise hauler.
**STEP 5**

*Interim Year*

**Presentation of Final Report and Recommendations to City Council**

<table>
<thead>
<tr>
<th>Responsibility:</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timing:</td>
<td>Completed within ninety days of receiving a completed Interim Year Rate Change Application</td>
</tr>
</tbody>
</table>
| Tasks:          | a. Distribute Report to Council Members  
b. Obtain Council Approval |

---

**Description of Tasks**

**Overview**

The Final Report and Recommendations is submitted to City Council for review, comment, and approval, during this step.

**a. Distribute Report to Council Members**

The Final Report and Recommendations is included as an agenda item for 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 City Clerk 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 Council Approval**

Council members will review the report and proposed rate changes. If Council agrees with the recommendations of City staff, the report and rates should be approved. If 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, Council should be asked to specifically identify deficiencies.
**STEP 6**  
*Implementation of New Rates*

**Responsibility:** Franchise Hauler  
**Timing:** Conducted following the approval of the new rates by the City Council  
**Tasks:**  
- a. Notify Residential Customers  
- b. Implement Rate Change

---

**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 Residential 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, unbilled amounts are calculated and included in the next billing cycle.
D. Timing of the Interim Year Process

Generally, interim year rate changes are implemented at the beginning of the fiscal year in which the new rates will take effect; or, the date that the City publishes its Master Fee Schedule. The rate change process should begin three months prior to the publication date of the City’s Master Fee schedule, or the beginning of the new fiscal year (whichever is sooner), and the rate change application should be submitted to the City a minimum of two months prior to the implementation of the rates. If the franchise hauler’s fiscal year begins on January 1st, the application should be submitted to the City in October.

Exhibit II-5, on the following page, shows the timeline for completion of the rate change process. Most of the time frames are recommended; however, certain key products are noted in the exhibit by circled letters.
EXHIBIT II-5

Timing of Interim Year Rate Change Process

<table>
<thead>
<tr>
<th>Preparation</th>
<th>Formal Review</th>
<th>Implement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Month 1</td>
<td>Month 2</td>
<td>Month 3</td>
</tr>
<tr>
<td>1. Preparation and Submission of Rate Change Application</td>
<td></td>
<td>Month 4</td>
</tr>
<tr>
<td>2. Review of Rate Change Application</td>
<td></td>
<td>Month 5</td>
</tr>
<tr>
<td>3. Review and Response to City Analysis and Calculations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Preparation of Final Report and Recommendations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Presentation of Final Report and Recommendations to City Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Implementation of New Rates</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Legend
A. Application Submitted to City
B. Final Report and Recommendations
C. City Council Approval
D. New Rates Effective
Section III. Base Year Rate Setting Methodology

This section provides detailed instructions for completing the Base Year Rate Change Application and for conducting the Survey of Rates in Similar Areas. The application will be prepared by the franchise hauler and reviewed by the City. The survey will be prepared by the City.

This section of the manual includes the following sub-sections:

A. Preparation of the Base Year Rate Change Application

B. Survey of Rates in Similar Areas.

Forms provided in this section identify all areas to be completed with double outlined boxes. If data are to be entered on the forms, the box has no shading. If a calculation is required, the box has light shading.

A. Preparation of the Base Year Rate Change Application

The franchise hauler is responsible for preparing the Base Year Rate Change Application. This three page form includes detailed financial and operating information and is used to determine the actual costs and revenues of the franchise hauler.

Exhibit III-1, following this page, provides an overview of the steps and related tasks which must be completed to prepare the application form. Exhibit III-2, following Exhibit III-1, is a sample application form as it might be completed by the franchise hauler. Following this exhibit are detailed descriptions of each step and related tasks.

Several lines in the application contain three columns. This includes lines 8-21, 31, 34-36, and 40-52. These columns are intended to show the relationship between the most recently completed fiscal year (year 4), the current year (year 5), and projections for the new “base” year (year 6). These columns are organized as follows:

• Columns One through Four include information for the franchise hauler’s prior fiscal years. These are the most recent years that audited financial information is available and that actual costs can be verified. These columns are represented in Exhibit III-2 as one column, labeled “Actual Audited Prior Year.”

• Column Five 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. This column is represented in Exhibit III-2 as “Estimated Current Year.”

• Column Six is used to report projected performance during the new base year. This information is utilized to determine any rate changes. This column is represented in Exhibit III-2 as “Projected Base Year.”

The relationship between these six columns for any given line item should be consistent. Any substantial difference between each of the years should be explained by the franchise hauler and considered by the City during the review process.
EXHIBIT III-1

Preparation of Base Year Rate Change Application

**Step/Task**

1. **Entry of Operating Costs and Profit**
   a. Enter Prior Year Audited Information
   b. Enter Current Year Estimated Information
   c. Enter Base Year Projected Information
   d. Enter Operating Data

2. **Determination of Residential and Commercial Revenues**
   a. Determine Residential Revenue
   b. Determine Commercial Revenue
   c. Determine Allowance for Uncollectible Accounts
   d. Determine Revenue from Recycled Material Sales
   e. Calculate Total Revenue

3. **Calculation of Allowable Operating Profit and Revenue Requirement**
   a. Calculate Allowable Operating Profit
   b. Determine Franchise Fee
   c. Calculate Revenue Requirement

4. **Calculation of Percent Change In Rates**
   a. Calculate Net Surplus/Shortfall
   b. Calculate Percent Change In Rates

5. **Preparation of Summary Form**
   a. Calculate New Rates
   b. Sign and Submit the Application
**City of Concord**

**Base Year Rate Change Application**

**Summary**

<table>
<thead>
<tr>
<th>Rate Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Percent Residential Rate Change Requested</td>
<td>%</td>
</tr>
</tbody>
</table>

**Rate Schedule**

<table>
<thead>
<tr>
<th>Rate Schedule</th>
<th>Current Rate</th>
<th>Adjusted Rate</th>
<th>Adjustment</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. 20-gallon min can (legacy)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. 32-gallon senior citizen (legacy)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>4. 32-gallon senior citizen (new name)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>5. 32-gallon</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>6. 64-gallon</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>7. 96-gallon</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

**SAMPLE**

**Certification**

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by the City of Concord.

Name: John Brown  
Title: Chief Financial Officer

Signature: [Signature]  
Date: 2/1/2010

**Fiscal Year: 2010**
### Sample Base Year Rate Change Application (continued)

#### City of Concord

**Base Year Rate Change Application**

**Financial Information**

<table>
<thead>
<tr>
<th>Section I--Operating Costs</th>
<th>Actual Audited</th>
<th>Estimated</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Direct Labor</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>9. Tipping Fees (Profit Allowed)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>10. Corporate Overhead</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>11. Office Salaries</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12. Other General &amp; Administrative Costs</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>13. Total Operating Costs</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

#### Section II-Allowable Operating Profit

<table>
<thead>
<tr>
<th>14. Operating Ratio</th>
<th>%</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. Allowable Operating Profit</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

#### Section III--Pass Through Costs

| 16. Trucking Charges | $ | $ | $ |
| 17. Regulatory Fees   | $ | $ | $ |
| 18. Tipping Fees (Pass Through) | $ | $ | $ |
| 19. Residential and Commercial Franchise Fee | $ | $ | $ |
| 20. Total Pass Through Costs | $ | $ | $ |

#### Section IV--Revenue Requirement

| 21. Total Operating Costs (Line 11) plus Operating Profit (Line 13) plus Total Pass Through Costs (Line 18) | $ | $ | $ |

#### Section V--Revenue without Rate Change in Base Year

<table>
<thead>
<tr>
<th>Current Rate/Month</th>
<th>Months</th>
<th>Projected Accounts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Revenue</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Residential Legacy Mini Can</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Residential Legacy Senior Citizen</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Residential Low Income Senior Citizen</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Residential 32-Gallon</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Residential 64-Gallon</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Residential 96-Gallon</td>
<td>$</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>29. Sub-total</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>30. Less: Allowance for Uncollectible Residential Accounts</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>31. Total Residential Revenue (without Rate Change in Base Year)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

#### Section VI--Net Shortfall (Surplus)

<table>
<thead>
<tr>
<th>Section VII--Percent Change in Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Residential Revenue Prior to Rate Change (Line 31)</td>
</tr>
<tr>
<td>Percent Change in Existing Residential Rates (Line 37 + 38)</td>
</tr>
</tbody>
</table>

**Fiscal Year: 2010**
## City of Concord

### Base Year Rate Change Application

<table>
<thead>
<tr>
<th>Operating Information</th>
<th>Prior Year Audited Information</th>
<th>Current Year Estimated Information</th>
<th>Percent Change</th>
<th>Base Year Projected Information</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>40. Residential Accounts</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>41. Commercial Accounts</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>42. Total Accounts</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>43. Residential Collected Tons</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>44. Residential Recycled Tons</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>45. Residential Yard Tons</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>46. Commercial Collected Tons</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>47. Commercial Recycled Tons</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>48. City Drop Boxes Provided (Monthly)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>49. City Bins Provided</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
</tbody>
</table>

### Section VIII-Operating Data

### Section IX-Change in Commercial Rates

| 50. 3 Yard Bin—Once per Week | % | % | % |
| 51. 2 Yard Bin—Once per Week | % | % | % |
| 52. Debris Box—Once per Week | % | % | % |

**SAMPLE**

**Fiscal Year: 2010**
**STEP 1 Application**

**Entry of Operating Costs and Profit**

**Responsibility:** Franchise Hauler

**Timing:** Prepared during Step 1 of the Base Year Rate Change Process (Refer to Section II-A)

**Tasks:**

a. Enter Prior Year Audited Information

b. Enter Current Year Estimated Information

c. Enter Base Year Projected Information

d. Enter Operating Data

---

**Description of Tasks**

**a. Enter Prior Year Audited Information**

A copy of the prior year financial audit should be obtained. Financial information from the audit is consolidated into specific categories identified in the application. These categories include:

- **Line 8** Direct Labor
- **Line 9** Tipping Fees (Profit Allowed)
- **Line 10** Corporate Overhead
- **Line 11** Office Salaries
- **Line 12** Other General & Administrative Costs
- **Line 16** Trucking Charges
- **Line 17** Regulatory Fees
- **Line 18** Tipping Fees (Pass Through)
- **Line 19** Residential and Commercial Franchise Fee.

The specific components of these cost categories are described in Exhibit III-3, on the following page. This exhibit also identifies cost categories which may not be included in establishing rates. Supplemental documentation should be prepared which reconciles the financial audit to information provided in the application (e.g., a trial balance report). This documentation, along with a copy of the audit, should be included in the application package.

Total cost information for both residential refuse collection/curbside recycling and commercial refuse collection should be reported in this initial task, and in tasks b and c, below. A breakdown of costs for commercial, residential, curbside recycling, and green waste services is not required at any point in the rate setting process.

**b. Enter Current Year Estimated Information**

Current year costs are determined by adding actual costs to-date to estimated costs that will be incurred during the rest of the fiscal year. Total costs for the current year should be similar to the prior audited year,
### Definition of Financial Terms

<table>
<thead>
<tr>
<th>Line Number/Item</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowable Costs</strong></td>
<td>Each of the following expense categories, as recorded on the financial hauler’s audited financial statements and approved by the City, are allowed to be recovered through the rates:</td>
</tr>
<tr>
<td>8. Direct Labor</td>
<td>All costs associated with the refuse collectors, including wages, overtime, payroll taxes, health and welfare benefits, workers compensation, and pension benefits</td>
</tr>
<tr>
<td>9. Tipping Fees (Profit Allowed)</td>
<td>Costs to dispose of solid waste at transfer stations, transformation facilities, or landfills. These fees are capped at a set amount per ton. The per ton limit is established by the City</td>
</tr>
<tr>
<td>10. Corporate Overhead</td>
<td>Salaries paid to the franchise hauler’s corporate officers. The amount of this item cannot exceed <strong>three</strong> percent of total operating costs (line 10)</td>
</tr>
<tr>
<td>11. Office Salaries</td>
<td>Wages and related benefits paid to office and administrative staff, including wages, overtime, payroll taxes, health and welfare benefits, workers compensation, and pension benefits</td>
</tr>
<tr>
<td>12. Other General and Administrative (G&amp;A) Costs</td>
<td>All general and administrative costs with the exception of corporate overhead and office salaries. This item includes the following costs:</td>
</tr>
<tr>
<td>• Accounting</td>
<td>• Interest expense</td>
</tr>
<tr>
<td>• Collection fees</td>
<td>• Licenses</td>
</tr>
<tr>
<td>• Computer equipment</td>
<td>• Medical expenses</td>
</tr>
<tr>
<td>• Dues and subscriptions</td>
<td>• Office rent</td>
</tr>
<tr>
<td>• Indemnification to City for legal and environmental remediation costs</td>
<td>• Office supplies</td>
</tr>
<tr>
<td>• Insurance</td>
<td>• Postage</td>
</tr>
<tr>
<td>• Janitorial</td>
<td>• Office repair and maintenance</td>
</tr>
<tr>
<td>• Laundry and uniform</td>
<td>• Telephone</td>
</tr>
<tr>
<td>• Legal fees</td>
<td>• Travel</td>
</tr>
<tr>
<td>13. Total Operating Costs</td>
<td>Sum of direct labor, tipping fees (profit allowed), corporate overhead, office salaries, and other G&amp;A costs</td>
</tr>
<tr>
<td>14. Operating Ratio</td>
<td>Determines allowable operating profit, and is the ratio of total operating costs to total operating revenue. The operating ratio must be between 88 and 92 percent. If the franchise hauler’s actual operating ratio is outside this range, the operating ratio is to be set at 90 percent</td>
</tr>
<tr>
<td>15. Allowable Operating Profit</td>
<td>Established by the allowable operating ratio</td>
</tr>
<tr>
<td>16. Trucking Charges</td>
<td>Costs for the lease of trucks and equipment not directly owned by the franchise hauler</td>
</tr>
<tr>
<td>17. Regulatory Fees</td>
<td>All costs imposed by government which are paid directly by the franchise hauler</td>
</tr>
</tbody>
</table>
### Definition of Financial Terms (continued)

<table>
<thead>
<tr>
<th>Line Number/Item</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowable Costs (continued)</strong></td>
<td></td>
</tr>
<tr>
<td>18. Tipping Fees (Pass Through)</td>
<td>Costs to dispose of solid waste at transfer stations, transformation facilities, or landfills. These fees are that portion of total company tipping fees charged at greater than the per ton limit established by the City</td>
</tr>
<tr>
<td>19. Residential and Commercial Franchise Fee</td>
<td>Franchise fees paid to the City</td>
</tr>
</tbody>
</table>

### Non-Allowable Costs

Each of the following expense categories are not allowed to be recovered through the rates:

<table>
<thead>
<tr>
<th>Item</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising</td>
<td>Any costs related to promoting the franchise hauler’s services. Because the franchise hauler has exclusive rights to providing solid waste removal and curbside recycling services in the City of Concord, advertising of services should be unnecessary</td>
</tr>
<tr>
<td>Contributions</td>
<td>Donations made to charitable organizations or to support political causes</td>
</tr>
<tr>
<td>Entertainment</td>
<td>Business meals and other business related entertainment</td>
</tr>
<tr>
<td>Income Taxes</td>
<td>State, federal, and local income taxes</td>
</tr>
</tbody>
</table>
after taking into account increases due to inflation and change in the number of residential, curbside recycling, and commercial customers served. Any significant changes should be explained and documented. A significant change includes any increase in cost which is greater than the CPI, or any decrease in a cost item.

c. Enter Base Year Projected Information

Base year costs are projected by the franchise hauler. These projected costs then are used to calculate the net surplus/shortfall in revenues and, subsequently, the percent change in residential rates. These projected costs should be developed by estimating anticipated service levels during the base year, and determining the 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 cost projections for the base year.

Actual and estimated franchise fees for the five years prior to the base year (years one, two, three, four, and five of the application) should be included in the application in tasks a and b. The franchise fee for the base year (year six of the application) is not estimated in this task, but is determined in Step 3.

In addition to the cost information requested in the application, three supplemental financial measures must be provided as an attachment to the application: (1) the total square feet of office space used by the franchise hauler, and the rental or lease rate per square foot per month during the new base year, (2) the fully-loaded lease cost per residential truck during the new base year, and (3) the total square feet of warehouse space and the rate per square foot during the new base year. The franchise hauler must provide three comparable rates for each of these financial measures (i.e., three for trucking charges, three for office space per square foot, and three for warehouse space per square foot). The source of these comparable rates must be identified and documented.

d. Enter Operating Data

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). Two operating characteristics are required in the application for both residential/curbside recycling and commercial customers:

- Residential and commercial customer accounts served
- Residential and commercial tons collected.

Additionally, the franchise hauler should report the quantity of drop boxes and bins provided to the City.

Similar to cost data, six years of operating data are required in the application. The first, second, third, and fourth years are the “prior” years, the fifth year is the “current” year and the sixth year is the “base” year. Prior year data are based on actual annual operating statistics during complete fiscal years. This is the same fiscal 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 are the franchise hauler's best estimate of service levels during the new base year.

Year-to-year percentage changes then are determined for accounts served, tons collected, and drop boxes/bins provided to the City. Any significant changes should be documented and explained by the franchise hauler. A significant change in an operating characteristic is an increase or decrease of more than two percent.

Note that line 40 of the application contains the total number of residential accounts serviced by the franchise hauler in the new base year. This total should agree with the account information used to calculate residential revenue (lines 23 to 28).
**STEP 2**

**Application**

**Determination of Residential and Commercial Revenues**

**Responsibility:** Franchise Hauler

**Timing:** Prepared during Step 1 of the Base Year Rate Change Process (Refer to Section II-A)

**Tasks:**

a. Determine Residential Revenue

b. Determine Commercial Revenue

c. Determine Allowance for Uncollectible Accounts

d. Determine Revenue from Recycled Material Sales

e. Calculate Total Revenue

---

**Description of Tasks**

**a. Determine Residential Revenue**

Residential and commercial revenue comprise the majority of revenues to the franchise hauler. Of the two, residential revenue is much easier to estimate than commercial revenue because of the simplified rate structure and limited types of service provided. Customers generally use one can service, but a rate for each additional can also is provided. Pick-up is provided one time per week and a standard monthly fee is charged.

Because of the relative simplicity of the residential rate structure, determining the amount of residential revenue in the base year without a rate change is a straight forward process. To calculate residential revenue, enter the current monthly rates by service type in the first column of cells on lines 23-28. Then enter the projected number of accounts by service type in the second column of cells on lines 23-28.

Total revenue for each service type is calculated based on the following:

<table>
<thead>
<tr>
<th>Multiplied by</th>
<th>Rate per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twelve months</td>
<td>Rate per year</td>
</tr>
</tbody>
</table>

Revenue by service type then is entered in the third column of cells in lines 23-28. These values then are added together and entered on line 29.

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 is to be used in these calculations. In addition, the number of accounts identified for these calculations must agree with operating data provided in Section VIII (page 3) of the application.

b. Determine Commercial Revenue

Because of the wide variety of commercial services provided, it is not practical to use the process described in task a to estimate commercial revenue. Instead, the approach to be used is similar to estimating costs for the new base year.

Commercial revenue information is entered on line 34 of the application. In the first column of this line, the actual revenue generated by commercial accounts during the prior year is reported. This amount must reconcile with the financial audit of that year. Commercial 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 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 revenue for the new base year is entered in the third column of line 34. This amount is based on the estimated annual revenue received during the current fiscal year plus any additional revenue generated from expected rate changes and additional accounts. The commercial rate changes assumed should be documented separately by the franchise hauler, and provided to the City. Operating data provided in Section VIII (page 3) of the application should support any service level changes.

In order to analyze changes in commercial rates, information must be provided for the three specific commercial services. These services are:

- 3 Yard Bin -- once per week
- 2 Yard Bin -- once per week
- Debris Box -- once per week.

In the columns one, two and four of lines 50-52, the franchise hauler enters the rate for these services for the prior year, the current year, and the base year, respectively. Percentage changes then are entered in columns three and five. This information provides an indication of the overall changes in commercial rates which can be compared to the requested change in residential rates.

c. 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 on line 30, allowance for uncollectible residential accounts, and line 33, allowance for uncollectible commercial 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.

d. Determine Revenue from Recycled Material Sales

In addition to revenue generated through commercial and residential services, some additional revenue is generated by selling recyclable materials.
collected through the curbside recycling program. The amount of 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.

In the first column of line 35, actual revenues received during the most recently completed fiscal year are reported. In the second column of line 35, 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 third column of line 35 of the application.

e. Calculate Total Revenue

Total revenue is determined as follows:

<table>
<thead>
<tr>
<th>Line 31</th>
<th>Total residential revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plus Line 34</td>
<td>Total commercial revenue</td>
</tr>
<tr>
<td>Plus Line 35</td>
<td>Recycled material sales</td>
</tr>
<tr>
<td>Equals</td>
<td>Total revenue</td>
</tr>
</tbody>
</table>

Total revenue is entered on line 36.
**STEP 3 Application**

**Calculation of Allowable Operating Profit and Revenue Requirement**

Responsibility: Franchise Hauler

Timing: Prepared during Step 1 of the Base Year Rate Change Process (Refer to Section II-A)

Tasks:

a. Calculate Allowable Operating Profit
b. Determine Franchise Fee
c. Calculate Revenue Requirement

---

**Description of Tasks**

**a. Calculate Allowable Operating Profit**

The operating ratio method will be used to establish the total revenue requirement. The operating ratio establishes revenue requirements based on allowable expenses. The equation for the operating ratio is:

\[
\text{Operating ratio} = \frac{\text{Operating costs}}{\text{Total operating revenues}}
\]

The operating ratio effectively determines the profit allowed to the franchise hauler on its operating costs.

In the first base year, the operating ratio will be 90 percent. In each succeeding base year, the operating ratio will range from 88 to 92 percent, which will help stabilize rate changes and afford the franchise hauler an incentive to reduce costs. In any succeeding base year, if the franchise hauler earned an operating ratio outside this range, then 90 percent would be reestablished.

Trucking charges from companies affiliated with the franchise hauler are considered pass-through costs, and no profit is allowed to the franchise hauler. The profit on these charges already is included in affiliated company lease costs. Surcharges imposed for regulatory requirements, and which are collected by the franchise hauler directly, are pass-through costs, and no profit is allowed.

Regulatory charges assessed on refuse disposed of by the franchise hauler, which are collected by the disposal facility operator (not the franchise hauler) are normally incorporated in tipping fees. The franchise hauler is allowed a profit on tipping fees and, therefore, on these regulatory costs. To do otherwise would create a significant bookkeeping burden on the franchise hauler to track such charges separately.

The following operating costs are included as operating costs in the allowable operating profit calculation:

- Direct labor
- Tipping fees
- Corporate overhead
Office salaries
- Other general and administrative costs.

A definition of the components of these cost categories is provided in Exhibit III-3.

The actual operating profit received by the franchise hauler in the most recently completed fiscal year is entered on line 15, column 1. The estimated operating profit for the current fiscal year is entered on line 15, column 2. The actual operating ratio for these two years then is calculated using the operating ratio equation shown on the prior page. For purposes of calculating the operating ratios, total operating revenue equals total operating cost plus allowable operating profit.

To calculate the allowable operating profit in the base year, the following equation is utilized:

<table>
<thead>
<tr>
<th>Divided by</th>
<th>Operating costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal</td>
<td>Operating ratio</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minus</th>
<th>Allowable operating revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal</td>
<td>Operating costs</td>
</tr>
<tr>
<td></td>
<td>Allowable operating profit</td>
</tr>
</tbody>
</table>

The allowable operating profit is entered on line 15, column 3 of the application.

b. Determine Franchise Fee

Franchise fees paid to the City are equal to a percent of gross revenues after June 30, 2010. The franchise fee shown in line 19, for the projected base year, should be calculated such that the amount is equal to the City’s required franchise fee percentage of gross revenues (e.g., 12 percent for FY 2014/15) multiplied by the total projected base year revenue (including the projected base year rate change). Franchise fees should be entered on line 19 of the application.

After base year franchise fees are entered, total base year pass-through costs can be calculated. Lines 16 through 19 should be added and the result entered on line 20, total pass through costs. Any significant changes in total pass through costs should be explained and documented.

c. Calculate Revenue Requirement

The revenue requirement establishes the level of revenue needed to meet all allowable costs and operating profit. This includes commercial, residential, and curbside recycling costs and assumes a reasonable profit margin based on the operating ratio calculation.

Total revenue requirements are determined as the sum of:
- Operating costs
- Allowable profit
- Pass-through costs.

The revenue requirement is entered on line 21 of the application.
**Step 4 Application**

**Calculation of Percent Change in Rates**

**Responsibility:** Franchise Hauler

**Timing:** Prepared during Step 1 of the Base Year Rate Change Process (Refer to Section II-A)

**Tasks:**

a. Calculate Net Surplus/Shortfall

b. Calculate Percent Change in Rates

---

### Description of Tasks

**a. Calculate Net Surplus/Shortfall**

The net surplus/shortfall is determined based on the following calculation:

<table>
<thead>
<tr>
<th>Line 21</th>
<th>Revenue requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less</td>
<td>Line 36 Total revenue</td>
</tr>
<tr>
<td>Equals</td>
<td>Net residential surplus/shortfall. <em>(Line 37)</em></td>
</tr>
</tbody>
</table>

The net residential surplus/shortfall is entered on line 37. This number is used to calculate the percent change in existing rates.

**b. Calculate Percent Change in Rates**

The percent change in residential rates is the amount that residential rates must be either raised to generate revenues sufficient to eliminate any net shortfall or lowered so that no net surplus occurs. The projected amount of revenue generated during the base year from commercial services and the sale of recycled materials was calculated in Step 3; therefore, any change in revenue required must come from an increase or decrease in residential rates.

The percent change in existing residential rates is calculated as follows:

<table>
<thead>
<tr>
<th>Line 37</th>
<th>Net surplus/shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divided by</td>
<td>Line 38 Total residential revenue prior to rate change</td>
</tr>
<tr>
<td>Equals</td>
<td>Percent change in residential rates.</td>
</tr>
</tbody>
</table>

The percent change in residential rates is entered on line 39 of the application.
**STEP 5**

*Application*

**Preparation of Summary Form**

**Responsibility:** Franchise Hauler

**Timing:** Prepared during Step 1 of the Base Year Rate Change Process (Refer to Section II-A)

**Tasks:**

a. Calculate New Rates

b. Sign and Submit the Application

---

**Description of Tasks**

**a. Calculate New Rates**

The rate change identified on page 2, line 39 should be entered on page 1, line 1 of the *Base Year Rate Change Application*. Current rates for residential solid waste collection should be entered in the first column of lines 2-7. The adjusted rates then are calculated by multiplying the current rate by one plus the rate increase identified in line 1. These adjusted rates are entered in the second column of lines 2-7.

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 of lines 2-7.

To determine new residential rates, column two on lines 2-7 should be added to column three and the result should be entered in column four. This column provides the new rate schedule.

**b. Sign and Submit the Application**

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.
Section III. Base Year Rate Setting Methodology

B. Survey of Rates in Similar Areas

As a check of the reasonableness of existing and new refuse collection fees, a survey of rates in similar communities should be conducted during each base year (once every six years). This survey covers a variety of topics including:

- Residential service
- Commercial service.

The survey is conducted by City staff during base year process Step 5. Exhibit III-4, following this page, is a sample survey form. The survey should be conducted by telephone instead of by mail. A minimum of eight cities should be contacted. These cities should be located in the East San Francisco Bay Area, and should be similar in size and demographic make-up to the City of Concord.

While all questions in the survey provide valuable comparative information, there are several key questions including:

- Monthly rates for one and two can residential service
- Monthly rates for a standard commercial service (e.g., once-a-week pick-up of a three yard bin).

After the survey has been conducted, the results are summarized for comparison with the franchise hauler’s rate application. This summary is included as an attachment to the Final Report and Recommendations package, as described in Section II-A, Step 6. This information also is used in the evaluation of the franchise hauler’s application.
## Sample Solid Waste Fee Survey

### Residential Refuse, Recycling, and Green Waste Collection Rates of Comparable Jurisdictions to the City of Concord

<table>
<thead>
<tr>
<th>Central Contra Costa Solid Waste Authority</th>
<th>1-20 gallon container</th>
<th>1-32 gallon container</th>
<th>1-40 gallon container</th>
<th>1-54 gallon container</th>
<th>1-86 gallon container</th>
<th>Senior Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Danville</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Lafayette</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moraga</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orinda</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unincorporated</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Walnut Creek</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antioch</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clayton</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Martinez</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pittsburg</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleasant Hill</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average without Concord</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed Concord</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% Difference from Average</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

**SAMPLE**

*Fiscal Year: 2010*
### Solid Waste Fee Survey

**Commercial Refuse, Recycling, and Green Waste Collection Rates of Comparable Jurisdictions to the City of Concord**

<table>
<thead>
<tr>
<th>Central Costa Costa Solid Waste Authority</th>
<th>1 pickup per week</th>
<th>2 pickups per week</th>
<th>Per pull-loose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Danville</td>
<td>$5</td>
<td>$5</td>
<td>$5</td>
</tr>
<tr>
<td>Lafayette</td>
<td>$5</td>
<td>$5</td>
<td>$5</td>
</tr>
<tr>
<td>Moraga</td>
<td>$5</td>
<td>$5</td>
<td>$5</td>
</tr>
<tr>
<td>Orinda</td>
<td>$5</td>
<td>$5</td>
<td>$5</td>
</tr>
<tr>
<td>Unincorporated</td>
<td></td>
<td></td>
<td>$5</td>
</tr>
<tr>
<td>Walnut Creek</td>
<td></td>
<td></td>
<td>$5</td>
</tr>
</tbody>
</table>

**Notes:**
- Commercial drop box rates for Antioch, Clayton, and Pleasant Hill are for boxes not to exceed 1 ton.
- The commercial drop box rate for Martinez and Pittsburg is for a box not to exceed 3 tons.

**SAMPLE**

---

**Fiscal Year: 2010**
**Section IV. Interim Year Rate Setting Methodology**

One form is required to complete the Interim Year Rate Setting Process:

- **Interim Year Rate Change Application**
  This form will be initially submitted by the franchise hauler to request changes in interim year rates. The City will review and approve the two-page application.
  Page 2 of the application contains refuse rate index information. Page 1 of the application applies the RRI information to the current rate schedule. This section provides detailed instructions for completing this document.

**Exhibit IV-1**, following this page, provides an overview of the steps and related tasks which must be completed to prepare the application form.

**Exhibit IV-2**, following Exhibit IV-1, is a sample application as it might be prepared by the franchise hauler. This exhibit includes references to the various steps which must be completed to prepare the application. Following this exhibit is a detailed description of these steps and related tasks.

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. *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.*
EXHIBIT IV-1

**Preparation of Interim Year Rate Change Application**

<table>
<thead>
<tr>
<th>Step/Task</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Residential Rate Change Percent Request</strong></td>
<td></td>
</tr>
<tr>
<td>a. Summarize Rate Change Requested</td>
<td></td>
</tr>
<tr>
<td>b. Apply Rate Change to Rate Schedule</td>
<td></td>
</tr>
<tr>
<td><strong>2. Consumer Price Index (CPI) Information</strong></td>
<td></td>
</tr>
<tr>
<td>a. Provide Most Recent Twelve Month CPI Data</td>
<td></td>
</tr>
<tr>
<td>b. Calculate Percentage Change in CPI</td>
<td></td>
</tr>
<tr>
<td>c. Calculate Seventy Percent Change in CPI, but Not to Exceed Five Percent</td>
<td></td>
</tr>
<tr>
<td><strong>3. Application Certification</strong></td>
<td></td>
</tr>
<tr>
<td>a. Sign Application</td>
<td></td>
</tr>
<tr>
<td>b. Submit Application to City</td>
<td></td>
</tr>
</tbody>
</table>
## Sample Interim Year Rate Change Application

**City of Concord**

### Interim Year Rate Change Application

**Summary**

<table>
<thead>
<tr>
<th>Rate Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent Residential Rate Change Requested</td>
<td>%</td>
</tr>
</tbody>
</table>

**Rate Schedule**

<table>
<thead>
<tr>
<th>Rate Schedule</th>
<th>Current Rate</th>
<th>Adjustment Factor</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-gallon mini can (legacy)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>32-gallon senior citizen (legacy)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>32-gallon senior citizen (low income)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>32-gallon</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>64-gallon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96-gallon</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Certification

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by the City of Concord.

Name: John Brown  
Title: Chief Financial Officer  
Signature:  
Date: 3/1/2010

**Fiscal Year: 2010**
City of Concord

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Year</th>
<th>CPI Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>February</td>
<td>2009</td>
</tr>
<tr>
<td>9</td>
<td>February</td>
<td>2010</td>
</tr>
</tbody>
</table>

Section II -- % Change in CPI

10. % Change in CPI

Section III -- 70% Change in CPI but Not to Exceed 5%

11. 70% Change in CPI

Fiscal Year: 2010
**Step 1: Application**

**Residential Rate Change Percent Request**

**Responsibility:** Franchise Hauler

**Timing:** Prepared during Step 1 of the Interim Year Rate Change Process (Refer to Section II-C)

**Tasks:**

a. Summarize Rate Change Requested

b. Apply Rate Change to Rate Schedule

---

**Description of Tasks**

a. **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.

b. **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 four 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, $2.05\% = 0.0205$, 
   $0.0205 + 1.00 = 1.0205$ 
   $1.0205 = \text{Adjustment Factor}$
Section IV. Interim Year Rate Setting Methodology

**STEP 2 Application**

**Residence:**
Franchise Hauler

**Timing:**
Prepared during Step 1 of the Interim Year Rate Change Process (Refer to Section II-C)

**Tasks:**
- a. Provide Most Recent Twelve Month RRI Data
- b. Calculate Percentage Change in RRI
- c. Calculate Not to Exceed Seven Percent

---

**Description of Tasks**

a. **Provide Most Recent Twelve Month RRI Data**

The franchise hauler identifies the most recent applicable twelve month RRI data. This data is obtained from the U.S. Department of Labor, Bureau of Labor Statistics, as indicated in Attachment A, shown in Section I of the Manual.

The franchise hauler is to use the most recently published RRI data available, as described in Attachment A (Section I) at the time the interim year rate change application is submitted. For example, if the interim year rate change application is submitted in March 2015, and the most recently available RRI data are for the previous twelve months, February 2014 to February 2015, then that previous February to February, 12-month period will be used.

b. **Calculate Percentage Change in RRI**

The franchise hauler calculates the percentage change in RRI for the most recent 12-month period. The percentage change is determined as follows:

---

**Calculate Not to Exceed Seven Percent**

The RRI is entered on Line 1, page 1, of the application, as long as it does not exceed seven (7) percent. If this calculation exceeds seven percent, then seven percent is entered on Line 1.

---

**RRI data in Line 9 – RRI data in Line 8**

The product of this equation, rounded to the nearest two decimal places, is entered on line 10.

---

**RRI data in Line 8**

---

IV-6
**STEP 3 Application Certification**

**Responsibility:** Franchise Hauler

**Timing:** Prepared during Step 1 of the Interim Year Rate Change Process (Refer to Section II-C)

**Tasks:**
- a. Sign Application
- b. Submit Application to City

---

**Description of Tasks**

**a. Sign 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.

**b. Submit Application to City**

At this point, the application should be complete. The application is submitted to the City for review.
Section IV. Interim Year Rate Setting Methodology

[This page intentionally left blank.]
Refuse Rate Index
Calculation Summary

The Refuse Rate Index adjustment shall be calculated in the following manner:

1) The expenses of the Collection and Processing Services of CDS for the designated fiscal year period shall be prepared in the format set forth in the Operating Cost Statement – Description on the following page.

2) The expenses of the disposal services shall be broken down into the following six cost categories: Labor; Diesel Fuel; CNG Fuel; Vehicle Replacement; Vehicle Maintenance, Disposal and All Other. Each cost category is assigned a weighted percentage factor on that cost category’s proportionate share of the total of the costs shown for all cost categories. Note – for those companies using CNG fuel, a seventh category is utilized.

3) The following indices published by the United States Department of Labor, Bureau of Labor Statistics (BLS), are used to calculate the adjustment for each cost category except CNG Fuel, and Disposal. The change in each index is calculated in accordance with the terms of the Contract. In the event any index is discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>Series ID: ceu60562100008 Service Producing Industries</td>
</tr>
<tr>
<td>Diesel Fuel</td>
<td>Series ID: wpu057303 #2 Diesel Fuel</td>
</tr>
<tr>
<td>Vehicle Replacement</td>
<td>Series ID wpu141301 Truck and bus bodies sold separately</td>
</tr>
<tr>
<td>Vehicle Maintenance</td>
<td>Series ID: pcu336211336211 Industrial truck and trailer mfg.</td>
</tr>
<tr>
<td>Disposal</td>
<td>Actual tip fee change at the landfill per the Disposal Contract</td>
</tr>
<tr>
<td>All Other</td>
<td>Series ID: cuurrs49bsa Consumer Price Index, All Urban Consumers,</td>
</tr>
<tr>
<td></td>
<td>All Items – Bay Area</td>
</tr>
<tr>
<td>CNG Fuel (If utilized)</td>
<td>Schedule G-NGV-1, compiled and published by the Pacific Gas and</td>
</tr>
<tr>
<td></td>
<td>Electric Co. Analysis and Rate Department and reported monthly in</td>
</tr>
<tr>
<td></td>
<td>the “Gas Rate Finder” publication (<a href="http://www.pge.com/tarriffs">http://www.pge.com/tarriffs</a>)</td>
</tr>
<tr>
<td></td>
<td>reflecting the sum of the Customer, procurement, transportation and</td>
</tr>
<tr>
<td></td>
<td>public purpose program charges.</td>
</tr>
</tbody>
</table>

4) The percentage weight for each cost category is multiplied by the change in each appropriate index, or labor agreement to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (See Example).

5) The percentage weight for each cost category is multiplied by the change in each appropriate index, or disposal rate to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (see Example).

Operating Cost Statement – Description

Labor: List all salary accounts.

List payroll tax accounts, health and welfare, payroll insurance and pension accounts directly related to the above salary accounts.

Diesel Fuel: List all diesel fuel accounts.
Vehicle Replacement: List all collection and collection-related vehicle depreciation accounts. List all vehicle lease or rental accounts related to collection or collection related vehicles.

Vehicle Maintenance: List all collection and collection-related vehicle parts accounts.

Disposal: List disposal costs

All Other: List all other expense accounts related to the services provided under this Contract. This category includes, insurance including general liability, fire, truck damage, and extended coverage; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; non-diesel or non-CNG fuel; office supplies; postage; trade association dues and subscription; advertising; and miscellaneous other expenses.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Category</th>
<th>Data Source</th>
<th>% Change (1)</th>
<th>Item Weight (2)</th>
<th>Weighted Percentage Change (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Labor</td>
<td>Series ID: ceu6056210008 Employment Cost Index (NAICS):</td>
<td>2.19%</td>
<td>45.69%</td>
<td>1.00%</td>
</tr>
<tr>
<td>2</td>
<td>Motor Fuel</td>
<td>Series ID: WPU057303 Commodity Code 0573-03 #2 Diesel Fuel or EIA CA #2 Diesel Fuel</td>
<td>4.74%</td>
<td>6.30%</td>
<td>0.30%</td>
</tr>
<tr>
<td>3</td>
<td>Vehicle Replacement</td>
<td>Series ID: wpu141301 Truck and bus bodies sold separately</td>
<td>6.79%</td>
<td>3.50%</td>
<td>0.24%</td>
</tr>
<tr>
<td>4</td>
<td>Vehicle Maintenance</td>
<td>Series ID: pcu336211336211 Industrial truck and trailer mfg.</td>
<td>.016%</td>
<td>13.96%</td>
<td>0.002%</td>
</tr>
<tr>
<td>5</td>
<td>CPI All Items</td>
<td>Series ID: CUURA422SA0 CPI-All Urban Consumers, All Items Bay Area</td>
<td>1.70%</td>
<td>9.40%</td>
<td>0.16%</td>
</tr>
<tr>
<td>6</td>
<td>Disposal</td>
<td>Annual Tip-Fee Increase at the Landfill</td>
<td>3.5%</td>
<td>21.15%</td>
<td>0.74%</td>
</tr>
</tbody>
</table>

**Total RRI Adjustment** 100.00%  2.44%

1. Assume these are the percentage changes in the indices from year to year.
2. Assume the categories represent these percentages as a total of CDS's operating costs.
3. Represents the product of Percentage Change x Item Weight.
4. Note that in accordance with the Agreement, the RRI shall never be more than 7%, nor less than 0%, during the term of the Agreement.
Attachment B

Refuse Rate Index Calculation

The Refuse Rate Index adjustment shall be calculated in the following manner:

1) The expenses of the Collection and Processing Services of MDRR for the designated fiscal year period shall be prepared in the format set forth in the Operating Cost Statement – Description on the following page.

2) The expenses of the disposal services shall be broken down into the following six cost categories: Labor; Diesel Fuel; CNG Fuel; Vehicle Replacement; Vehicle Maintenance, Disposal and All Other. Each cost category is assigned a weighted percentage factor on that cost category’s proportionate share of the total of the costs shown for all cost categories. Note – for those companies using CNG fuel, a seventh category is utilized.

3) The following indices published by the United States Department of Labor, Bureau of Labor Statistics (BLS), are used to calculate the adjustment for each cost category except CNG Fuel, and Disposal. The change in each index is calculated in accordance with the terms of the Contract. In the event any index is discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.

Cost Category Index

<table>
<thead>
<tr>
<th>Category</th>
<th>Series ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>ceu6056210008 Service Producing Industries</td>
</tr>
<tr>
<td>Diesel Fuel</td>
<td>wpu057303 #2 Diesel Fuel</td>
</tr>
<tr>
<td>Vehicle Replacement</td>
<td>wpu141301 Truck and bus bodies sold separately</td>
</tr>
<tr>
<td>Vehicle Maintenance</td>
<td>pcu336211336211 Industrial truck and trailer mfg.</td>
</tr>
<tr>
<td>Disposal</td>
<td>Actual tip fee change at the landfill per the Disposal Contract</td>
</tr>
<tr>
<td>All Other</td>
<td>cuura422sa0 Consumer Price Index, All Urban Consumers, All Items – Bay Area</td>
</tr>
<tr>
<td>CNG Fuel (If utilized)</td>
<td>Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the “Gas Rate Finder” publication (<a href="http://www.pge.com/tarriffs">http://www.pge.com/tarriffs</a>) reflecting the sum of the Customer, procurement, transportation and public purpose program charges.</td>
</tr>
</tbody>
</table>

4) The percentage weight for each cost category is multiplied by the change in each appropriate index, or labor agreement to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (See Example).
5) The percentage weight for each cost category is multiplied by the change in each appropriate index, or disposal rate to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (See Example).

**Operating Cost Statement – Description**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>List all salary accounts.</td>
</tr>
<tr>
<td></td>
<td>List payroll tax accounts, health and welfare, payroll insurance and pension accounts directly related to the above salary accounts.</td>
</tr>
<tr>
<td>Vehicle Replacement</td>
<td>List all collection and collection-related vehicle depreciation accounts.</td>
</tr>
<tr>
<td></td>
<td>List all vehicle lease or rental accounts related to collection or collection related vehicles.</td>
</tr>
<tr>
<td>Vehicle Maintenance</td>
<td>List all collection and collection-related vehicle parts accounts.</td>
</tr>
<tr>
<td>Disposal</td>
<td>List disposal costs</td>
</tr>
<tr>
<td>All Other:</td>
<td>List all other expense accounts related to the services provided under this Contract.</td>
</tr>
<tr>
<td></td>
<td>This category includes, insurance including general liability, fire, truck damage, and extended coverage; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; non-diesel or non-CNG fuel; office supplies; postage; trade association dues and subscription; advertising; and miscellaneous other expenses.</td>
</tr>
</tbody>
</table>
## REFUSE RATE INDEX

### SAMPLE CALCULATION SHEET (Using basic six categories)

<table>
<thead>
<tr>
<th>Item #</th>
<th>Category</th>
<th>Data Source</th>
<th>% Change (1)</th>
<th>Item Weight (2)</th>
<th>Weighted Percentage Change (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Labor</td>
<td>Series ID: ceu6056210008 Service Producing Industries</td>
<td>2.19%</td>
<td>45.69%</td>
<td>1.00%</td>
</tr>
<tr>
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<td>Diesel Fuel</td>
<td>Series ID: wpu057303 #2 Diesel Fuel</td>
<td>4.74%</td>
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<td>0.24%</td>
</tr>
<tr>
<td>4</td>
<td>Vehicle Maintenance</td>
<td>Series ID: pcu336211336211 Industrial truck and trailer mfg.</td>
<td>0.016%</td>
<td>13.96%</td>
<td>0.002%</td>
</tr>
<tr>
<td>5</td>
<td>Disposal</td>
<td>Actual tip fee change at the landfill per the Disposal Contract</td>
<td>1.70%</td>
<td>9.40%</td>
<td>0.16%</td>
</tr>
<tr>
<td>6</td>
<td>All Other</td>
<td>Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items – Bay Area</td>
<td>3.50%</td>
<td>21.15%</td>
<td>0.74%</td>
</tr>
<tr>
<td></td>
<td>Total RRI Adjustment</td>
<td></td>
<td>100%</td>
<td>2.44%</td>
<td></td>
</tr>
</tbody>
</table>

1. Assume these are the percentage changes in the indices from year to year.
2. Assume the categories represent these percentages as a total of MDRR’s operating costs.
3. Represents the product of Percentage Change x Item Weight.
4. Note that in accordance with the Agreement, the RRI shall never be more than 7%, nor less than 0%, during the term of the Agreement.