10.8 PAYMENT SCHEDULE AND LATE FEES

On or before the 20th day of each month during the Term of this Agreement, Contractor shall remit to City Franchise Fees and other fees as described in this Article. If such remittance is not paid to the City on or before the 20th day of any month, Contractor shall pay the fees due plus interest compounded daily, where interest shall be calculated using the annual yield rate for the California Local Agency Investment Fund (LAIF) most-recently published by the California State Treasurer's office.

Each monthly remittance to City shall be accompanied by a statement itemizing each fee paid; detailing calculation of all fees; and stating actual gross revenues, by Service Type, for the monthly period collected from all operations conducted or permitted by this Agreement.

ARTICLE 11.
CONTRACTOR'S COMPENSATION AND RATES

11.1 CONTRACTOR'S COMPENSATION

The Contractor's Compensation for performance of all its obligations under this Agreement shall be the actual gross Rate revenues remitted to Contractor by Customers less fees due to the City in accordance with Article 10. Contractor's compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing and Disposal fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's costs are more than actual gross revenues retained by Contractor, Contractor shall not be compensated for the difference in costs and revenues. If Contractor's costs are less than the actual gross revenues retained by the Contractor, Contractor shall retain the difference. In addition, calculations of Contractor's Compensation or Rates shall not be adjusted for past variances of actual costs or revenues.

11.2 RATES

Under this Agreement, Contractor shall have the right and obligation to charge and collect from Customers Rates, which are established by the City. Contractor shall charge Customers Rates approved by the City. The Rates, which are contained in Exhibit F ("City-Approved Customer Rates"), are set by City Council resolution. The Contractor shall bill Customers rates established under prior franchise agreements from January 1, 2004 through April 30, 2004 and Rates set forth in Exhibit F and pursuant to Article 7.2 commencing May 1, 2004. The Contractor shall collect payments from Customers in accordance with the City-approved Rates.

The Rates shall be fixed, as per Exhibit F, for Rate Period One, commencing May 1, 2004 and ending April 30, 2005, and shall not be adjusted to reflect increases in costs above those anticipated by Contractor, nor decreased to reflect decreases in costs below those anticipated by Contractor. The Rates shall be adjusted annually, with prior approval of City, beginning in Rate

Period Two on May 1, 2005, and each May 1 thereafter, through the remaining Term of this Agreement including possible extension periods.

11.3 ANNUAL ADJUSTMENT OF SERVICE FESS

A. **Annual Adjustment.** Subject to the terms herein, the Contractor shall be entitled to one Rate adjustment annually. The adjustment is to be approved by the City Council with good faith effort by March 1 of each year, and will be effective on each subsequent May 1. The first adjustment is scheduled to take effect May 1, 2005 subject to City Council approval. Each Rate is annually adjusted as specified in this Section.

B. **Adjustment Methodology.** Each Rate shall be annually adjusted to reflect the change in the consumer price index (CPI) for the previous 12 months, or by 5%, whichever is less adjusted to reflect Contractor's compliance with customer service performance standards. The adjustment shall be made using 80% of the change in the November All Urban Consumers - Consumer Price Index (CPI-U) for the San Francisco - Oakland - San Jose, CA all items, Base Period 1982 – 1984 = 100, not seasonally adjusted. The adjustment shall equal:

Adjusted Rate = Current Rate + [1 + percent change in CPI x (0.80)]

For example, assuming:

Current Rate = $15.00

Most recently published November CPI index (November 2004) = 193.5

November CPI Index published 12 months prior to most recently published November CPI index (November 2003) = 191.0

Adjusted Rate = $15.00 + [1+ ((193.5-191.0)/191.0) x (0.80)]
= $15.16

C. **Change in the CPI Index.** If the CPI is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

11.4 ANNUAL RATE APPLICATION PROCESS

On or before February 1 of each Rate Period, Contractor shall submit an application requesting the Rate adjustment for the following Rate Period. The application shall present each Rate for the current Rate Period and calculation of each adjusted Rate for the following Rate Period. The application shall include all supporting documentation for calculation of the adjusted Rates including CPI data.

The Contractor's Rate application shall be reviewed by the City. The City Council shall adjust Rates to reflect the adjustments made in accordance with Section 11.3. The City Council shall

act in good faith to approve such Rate adjustments by March 1 of each year so that approved Rates take effect at the commencement of the Rate Period. Notwithstanding the provisions of Section 11.3, the adjusted Rates will not take effect until the City Council has approved such Rates.

If the City does not adjust Rates to be effective on or before May 31 of a Rate Period, the City shall include a Rate surcharge on the Rates that shall be effective for the remainder of the Rate Period to recover revenues lost by the Contractor, if any. If the effective date of the Rates is July 1 or later, the City shall adjust the Rates to recoup lost revenues, if any, as well as interest due the Contractor on lost revenues, where interest shall be calculated using the annual yield rate for the California Local Agency Investment Fund (LAIF) most-recently published by the California State Treasurer's office. To determine the amount of lost revenues, if any, the City and Contractor shall meet and confer to determine the effect the delay in adopting Rates has on the Contractor's revenue. The assessment of the revenue impact shall consider the Contractor's billing cycle (e.g., impact to Customers billed in advance and to Customers billed in arrears), the ability of Contractor to delay issuance of bills, the payment cycle of Customers, and other variables.

If the Contractor does not submit the application by February 1, Rates may not be adjusted by May 1. In such case, all Rates shall be adjusted to be effective the first of the month of the next Residential billing cycle following approval by the City Council. If the Contractor does not submit the application by February 1, no retroactive adjustment will be made to allow the Contractor to recover revenues that it would have collected had the Rate adjustment been implemented in accordance with the prescribed schedule.

11.5 SPECIAL RATE REVIEW

A. Eligible Items. The Contractor is entitled to apply to the City for consideration of a special Rates review, or the City may initiate such a review, should one or more of the following occur:

1. Documented significant changes in the cost to provide services required in this Agreement as a result of an agreed-upon City-directed change in scope as provided for under Section 4.5.

2. Flood, earthquake, other acts of nature, war, civil insurrection, riots, or other similar catastrophic events beyond the control of Contractor.

3. Change in Law after the Effective Date that: (1) was not reasonably known to the Contractor before the Effective Date, (2) the Contractor substantiates, and (3) results in an increase of more than $0.05 per month for the Rate Residential Customers pay for 32-gallon Solid Waste Collection, Recyclable Materials Collection, and Yard Trimming Collection services ("32-gallon Rate"), provided that the increase was calculated assuming the increase is apportioned equally to all Customers. Should the Change in Law result in a Rate increase of less then $0.05 per month for the 32-gallon Rate, but otherwise qualify for an adjustment, then Rates shall be adjusted for this Change in Law during the next regularly scheduled Rate adjustment provided in accordance with Section 11.2.

4. City-initiated changes to the amount of Franchise Fees, street sweeping fees, administration fees, or other fees in accordance with Article 10.

B. Ineligible Items. The Contractor will not be compensated over the Term for:

1. Increases in the cost of Solid Waste, Recyclable Materials, or Organic Materials Collection, Transportation, Processing, or Disposal costs that may be impacted by change in Approved Disposal Site, Approved Processing Site, or Approved Transfer Station operating conditions unless such change is initiated by or at the direction of the City.

2. Decreases in Revenues from the sale of Recyclable Materials or Organic Materials.

3. Growth or decline in the number of Customers or their subscription levels; however, the Contractor shall be entitled to bill all Customers at the Rates set forth herein and retain all Rate Revenues net fees due to City collected from its Customers for Collection services provided under this Agreement.

4. Changes in accounts related to Container sizes or frequency of Collection; however, the Contractor shall be entitled to bill all Customers at the Rates set forth herein and retain all Rate Revenues net fees due to City collected from its Customers for Collection services provided under this Agreement.

5. Change in the composition of Solid Waste, Recyclable Materials, or Organic Materials.

C. Review of Costs. If the Contractor or the City requests a special Rate review, the City shall have the right to review any or all financial and operating records of Contractor and its affiliates associated with the Contractor's services under this Agreement in accordance with Article 9. Contractor shall pay the City for costs associated with the review incurred by the City and its agents unless said review is initiated by the City.

D. Submittal of Request. The Contractor must submit its request for a special review of Rates, and reasonable cost and operational data, in a form and manner specified by the City at least six months before the proposed effective date of any Rate adjustment.

E. Burden of Justification. Contractor shall bear the burden of justifying to the City by substantial evidence any entitlement to a Rate increase under this Section. If the City determines that the Contractor has not met its burden, the Contractor may request one hearing to produce additional evidence. Upon request, the City shall permit said additional hearing. In the event the City denies Contractor's request, Contractor shall have the right to present its claim in a court of competent jurisdiction.

F. Grant of Request. Based on evidence the Contractor submits, the City Council may grant some, all or none of the requested increase.

G. Rate Adjustment. The City shall adjust Rates, in good faith, coincident with any adjustment made pursuant to this Section.

H. Compensation. The party requesting the special Rate review shall bear all costs of both parties for participating in such review and such costs shall not be reimbursed through Rates charged customers.

11.6 RATES FOR CHANGES IN SCOPE

In the event either the City or Contractor requests a change in scope in accordance with Section 4.4, the Contractor shall furnish the City with projected operational and cost data for the change in scope to support any adjustment to Rates. For the purposes of analyzing cost impacts of changes in scope, the Contractor's profit shall be calculated using an operating ratio of 90.2%. The City reserves the right to require that the Contractor supply any additional cost data or other information it may reasonably need to ascertain the appropriate Rate Fee adjustment, if any, for the change in scope. The City shall review this operational and cost data, and the City Council shall establish Rates for the change in scope, if warranted.

The granting of any change in scope shall be contingent upon City approval and establishment of new Rates. The City shall adjust Rates, in good faith, coincident with any adjustment made pursuant to this Section so that the change in scope and the corresponding Rates become effective on the same date.

11.7 NOTICE OF RATE

The Contractor shall provide all Customers with advance written notice of approved Rate changes, in the form of a bill insert at least 30 days before the effective date of such changes.

11.8 COMPENSATION FOR E-WASTE DROP-OFF EVENT

The Contractor's Compensation described in Section 11.1 includes Contractor's Compensation for managing a one-day E-Waste drop-off event as described in Section 5.11 including acceptance, consolidation, packaging, and transportation of E-Waste. Contractor's Compensation under Section 11.1 does not include compensation for Processing E-Waste collected at the event, for which Contractor shall be compensated for on a per-Ton basis.

In addition to compensation in Section 11.1, the City shall compensate the Contractor $500 per Ton of E-Scrap Waste accepted during the E-Waste event for processing of such material regardless of the location of the processing site or processing costs actually paid by Contractor. Contractor shall submit an invoice to the City, no later than 30 business days after the E-Waste drop-off event, requesting reimbursement of processing costs for E-Waste collected at the event; and such invoice shall be accompanied by a report documenting the tonnage of materials accepted during the event listed by material type, the number of parties that delivered E-Waste, and documentation of the weight of the materials collected based on truck scale receipts. City shall review the invoice and provide payment to Contractor within 60 days of receipt of such invoice.

In the event Contractor participates in any State, Federal, or local agency program or manufacturer program that reduces Contractor's cost of handling, managing, Transporting, or processing E-Waste, Contractor shall notify the City of such benefit and City and Contractor shall negotiate an adjustment to Contractor's Compensation to reflect such benefit.

In the event the City designates a Processing Site or Disposal facility which is different than that used by Contractor for E-Waste, Contractor's Compensation related to the Transportation and Processing of E-Waste shall be modified in accordance with provisions of Section 11.6.

ARTICLE 12.
INDEMNITY, INSURANCE, AND PERFORMANCE BOND

12.1 GENERAL INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless City Council, the City, its officers, employees, volunteers, and agents (collectively, indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all 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 without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Waste Collected in the City. Notwithstanding the foregoing, however, Contractor shall be required to indemnify the City for the costs for any claims arising from the Disposal of Solid Waste at the Approved Disposal Location, from Processing of Recyclable Materials at an Approved Processing Location, and/or from Processing Organic Materials at an Approved Processing Location including, but not limited to, claims arising under the Comprehensive Environmental Response, Comprehensive and Liability Act (CERCLA) unless claim is a direct result of Contractor's actions or negligence. This indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitees, and as provided below. The foregoing indemnity is intended to operate as an Agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability.

This provision is in addition to all other provisions in this Agreement and is intended to survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall prevent City from seeking indemnification or contribution from Persons or entities other than indemnitees, for any liabilities incurred by City or the indemnitees. As appropriate, Contractor's Guaranty Agreement shall extend to the indemnification obligation hereunder.