

2011 and other fees as described in this Article. If such remittance is not paid to the CITY on or
2012 before the twentieth (20th) day of any month, CONTRACTOR shall pay the fees due plus
2013 interest compounded daily, where interest shall be calculated using the annual yield rate for the
2014 California Local Agency Investment Fund (LAIF) most-recently published by the California State
2015 Treasurer's office.

2016 9.07.1 Each monthly remittance to CITY shall be accompanied by a statement
2017 itemizing each fee paid; detailing calculation of all fees; and stating actual gross revenues, by
2018 Service Type, for the monthly period collected from all operations conducted or permitted by this
2019 Agreement.

2020 9.08 Agreement Negotiations Fee. No later November 15, 2011, CONTRACTOR
2021 shall submit a one (1) time only agreement negotiation fee to the CITY in the amount of twenty
2022 thousand dollars (\$20,000).

2023 9.09 Sustainability Coordinator Fee. No later November 15, 2011, and annually
2024 thereafter during the term of this Agreement, CONTRACTOR shall submit an annual
2025 sustainability coordinator fee to the CITY in the amount of fifty four thousand dollars (\$54,000).

2026 **ARTICLE 10.**
2027 **CONTRACTOR'S Compensation And Rates**

2028 10.01 CONTRACTOR'S Compensation. The CONTRACTOR'S Compensation for
2029 performance of all its obligations under this Agreement shall be the actual gross Rate revenues
2030 remitted to CONTRACTOR by Customers less fees due to the CITY in accordance with Article
2031 9. CONTRACTOR'S compensation provided for in this Article shall be the full, entire, and
2032 complete compensation due to CONTRACTOR pursuant to this Agreement for all labor,
2033 equipment, materials and supplies, Processing and Disposal fees, taxes, insurance, bonds,
2034 overhead, operations, profit and all other things necessary to perform all the services in the
2035 manner required by this Agreement.

2036 10.01.1 If CONTRACTOR'S costs are more than actual gross revenues
2037 retained by CONTRACTOR, CONTRACTOR shall not be compensated for the difference in
2038 costs and revenues. If CONTRACTOR'S costs are less than the actual gross revenues retained
2039 by the CONTRACTOR, CONTRACTOR shall retain the difference. In addition, calculations of
2040 CONTRACTOR'S Compensation or Rates shall not be adjusted for past variances of actual
2041 costs or revenues.

2042 10.02 Rates. Under this Agreement, CONTRACTOR shall have the right and obligation
2043 to charge and collect from Customers Rates, which are established by the CITY.
2044 CONTRACTOR shall charge Customers Rates approved by the CITY. The CONTRACTOR
2045 shall collect payments from Customers in accordance with the CITY approved Rates.

2046 10.02.1 The Rates shall be fixed, as per Exhibit 1, for the period commencing
2047 November 1, 2011 and ending April 30, 2012, and shall not be adjusted to reflect increases in
2048 costs above those anticipated by CONTRACTOR, nor decreased to reflect decreases in costs
2049 below those anticipated by CONTRACTOR.

2050 10.02.2 Service Rate Elements. Collection service Rates shall consist of some
2051 combination of the following elements: a Collection service element, which shall be the funds
2052 collected by the CONTRACTOR from the Customer for the provision of Collection services and
2053 retained by CONTRACTOR, a Franchise Fee element, which shall be the funds collected by the
2054 CONTRACTOR from the Customer for the provision of Collection services and remitted to the



2055 CITY, an administrative fee element, which shall be the funds collected by the CONTRACTOR
2056 from the Customer on behalf of the CITY for CITY administrative services and remitted to the
2057 CITY, a street sweeping element, which shall be the funds collected by the CONTRACTOR
2058 from the Customer on behalf of the CITY for street sweeping services and remitted to the CITY
2059 and such other elements as may be added during the term of this Agreement.

2060 10.03 Adjustments to Service Rates. Beginning on May 1, 2012 and annually
2061 thereafter, Collection Service Rates may be adjusted using the Refuse Rate Index methodology
2062 as set forth in this Article and in Exhibit 1 to this Agreement.

2063 10.03.1 Refuse Rate Index (RRI) Adjustment. The RRI adjustment shall be as
2064 set forth in Exhibit 2 the lower of seven and one half (7.5) percent or the sum of the weighted
2065 percentage change in the annual average of each RRI index number between the base
2066 calendar year, which shall be the prior preceding calendar year and the preceding calendar year
2067 exclusive of changes in governmental or regulatory fees or assessments which shall be a pass-
2068 through. However, in any year that the RRI, including any prior year adjustment is more than
2069 seven and one half (7.5) percent, the amount above seven and one half (7.5) percent, up to ten
2070 (10) percent shall be carried over to the next adjustment period and added to the calculated RRI
2071 for that period. However, the RRI adjustment for the last rate period of this Agreement shall
2072 include any unused RRI carry forward without limitation. In the event the RRI adjustment is less
2073 than zero (0) percent, the RRI adjustment for that year shall be zero (0) percent and the
2074 negative amount shall not be carried forward to the next adjustment period. Therefore, the first
2075 rate adjustment will be based on the percentage changes between the annual average of the
2076 RRI indices for the calendar year ending December 31, 2010 and the annual average of the RRI
2077 indices for the calendar year ending December 31, 2011.

2078 10.03.1.1 Annual adjustments shall be made only in units of one cent
2079 (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making adjustments.
2080 The indices shall be truncated at four (4) decimal places for the adjustment calculations.

2081 10.03.1.2 If the any of the RRI indices are discontinued or revised
2082 during the Term by the United States Department of Labor, such other government index or
2083 computation with which it is replaced shall be used in order to obtain substantially the same
2084 result as would be obtained if the index had not been discontinued or revised.

2085 10.04 Annual Rate Application Process.

2086 10.04.1 On or before February 1, 2012 and annually thereafter,
2087 CONTRACTOR shall submit an application requesting the Rate adjustment for the following
2088 Rate Period. The application shall present each Rate for the current Rate Period and
2089 calculation of each adjusted Rate for the following Rate Period. The application shall include all
2090 supporting documentation for calculation of the adjusted Rates including RRI data along with
2091 financial information for the specific services performed under this Agreement for the preceding
2092 full or partial calendar year. Such financial information shall be in the format as set forth in
2093 Exhibit 2, or as may be further revised by CITY from time to time. If CONTRACTOR fails to
2094 submit the rate application and the financial information in the required format by February 1st, it
2095 is agreed that CONTRACTOR shall be deemed to have waived the annual rate adjustment for
2096 that year unless such failure is due to Force Majeure. In such case, all Rates shall be adjusted
2097 to be effective the first of the month of the next Residential billing cycle following authorization
2098 by the CITY. In addition, no retroactive adjustment will be made to allow the CONTRACTOR to
2099 recover revenues that it would have collected had the Rate adjustment been implemented in
2100 accordance with the prescribed schedule.

2101 10.04.2 The CONTRACTOR'S Rate application shall be reviewed by the CITY.
2102 The CITY may elect to have the adjusted Rates reviewed and authorized by the City Council or
2103 to approve them administratively. The CITY shall act in good faith to authorize such Rate
2104 adjustments by March 1st of each year so that approved Rates take effect on May 1st of each
2105 year. Notwithstanding the provisions of Section 10.03, the adjusted Rates will not take effect
2106 until the CITY has authorized such Rates.

2107 10.04.3 If the CITY does not authorize Rates to be effective on or before May
2108 31st of a Rate Period, the CITY shall include a Rate surcharge on the Rates that shall be
2109 effective for the remainder of the Rate Period to recover revenues lost by the CONTRACTOR, if
2110 any. If the effective date of the Rates is July 1st or later, the CITY shall adjust the Rates to
2111 recoup lost revenues, if any, as well as interest due the CONTRACTOR on lost revenues,
2112 where interest shall be calculated using the annual yield rate for the California Local Agency
2113 Investment Fund (LAIF) most-recently published by the California State Treasurer's office. To
2114 determine the amount of lost revenues, if any, the CITY and CONTRACTOR shall meet and
2115 confer to determine the effect the delay in adopting Rates has on the CONTRACTOR'S
2116 revenue. The assessment of the revenue impact shall consider the CONTRACTOR'S billing
2117 cycle (e.g., impact to Customers billed in advance and to Customers billed in arrears), the ability
2118 of CONTRACTOR to delay issuance of bills, the payment cycle of Customers, and other
2119 variables.

2120 10.05 Special Rate Review.

2121 10.05.1 Eligible Items. The CONTRACTOR is entitled to apply to the CITY for
2122 consideration of a special Rate review, or the CITY may initiate such a review, should one (1) or
2123 more of the following occur:

2124 10.05.1.1 Documented significant changes in the cost to provide
2125 services required in this Agreement as a result of an agreed-upon CITY-directed change in
2126 scope as provided for under Section 4.08.

2127 10.05.1.2 Flood, earthquake, other acts of nature, war, civil
2128 insurrection, riots, or other similar catastrophic events beyond the control of CONTRACTOR.

2129 10.05.1.3 Change in Law after the Effective Date that: (1) was not
2130 reasonably known to the CONTRACTOR before the Effective Date, (2) the CONTRACTOR
2131 substantiates, and (3) results in an increase of more than \$0.05 per month for the Rate
2132 Residential Customers pay for 32-gallon Solid Waste Collection, Recyclable Materials
2133 Collection, and Yard Trimming Collection services ("32-gallon Rate"), provided that the increase
2134 was calculated assuming the increase is apportioned equally to all Customers. Should the
2135 Change in Law result in a Rate increase of less than \$0.05 per month for the 32-gallon Rate, but
2136 otherwise qualify for an adjustment, then Rates shall be adjusted for this Change in Law during
2137 the next regularly scheduled Rate adjustment provided in accordance with Section 10.02.

2138 10.05.1.4 CITY-initiated changes to the amount of Franchise Fees,
2139 street sweeping fees, administration fees, or other fees in accordance with Article 9.

2140 10.05.2 Ineligible Items. The CONTRACTOR will not be compensated over the
2141 term of this Agreement for:

2142 10.05.2.1 Increases in the cost of Solid Waste, Recyclable Materials,
2143 or Organic Materials Collection, transportation, Processing, or Disposal costs that may be
2144 impacted by change in the Disposal Facility, Processing Sites, or Transfer Station operating
2145 conditions unless such change is initiated by or at the direction of the CITY.



2146 10.05.2.2 Decreases in revenues from the sale of Recyclable Materials
2147 or Organic Materials.

2148 10.05.2.3 Growth or decline in the number of Customers or their
2149 subscription levels; however, the CONTRACTOR shall be entitled to bill all Customers at the
2150 Rates set forth herein and retain all Rate revenues net fees due to CITY collected from its
2151 Customers for Collection services provided under this Agreement.

2152 10.05.2.4 Changes in accounts related to Container sizes or frequency
2153 of Collection; however, the CONTRACTOR shall be entitled to bill all Customers at the Rates
2154 set forth herein and retain all Rate revenues net fees due to CITY collected from its Customers
2155 for Collection services provided under this Agreement.

2156 10.05.2.5 Change in the composition of Solid Waste, Recyclable
2157 Materials, or Organic Materials.

2158 10.05.3 Review of Costs. If the CONTRACTOR or the CITY requests a special
2159 Rate review, the CITY shall have the right to review any or all financial and operating records of
2160 CONTRACTOR and its Affiliates associated with the CONTRACTOR'S services under this
2161 Agreement in accordance with Article 8. CONTRACTOR shall pay the CITY for costs
2162 associated with the review incurred by the CITY and its agents unless said review is initiated by
2163 the CITY.

2164 10.05.4 Submittal of Request. The CONTRACTOR must submit its request for
2165 a special review of Rates, and reasonable cost and operational data, in a form and manner
2166 specified by the CITY at least six (6) months before the proposed effective date of any Rate
2167 adjustment.

2168 10.05.5 Burden of Justification. CONTRACTOR shall bear the burden of
2169 justifying to the CITY by substantial evidence any entitlement to a Rate increase under this
2170 Section. If the CITY determines that the CONTRACTOR has not met its burden, the
2171 CONTRACTOR may request one hearing to produce additional evidence. Upon request, the
2172 CITY shall permit said additional hearing. In the event the CITY denies CONTRACTOR'S
2173 request, CONTRACTOR shall have the right to present its claim in a court of competent
2174 jurisdiction.

2175 10.05.6 Grant of Request. Based on evidence the CONTRACTOR submits,
2176 the CITY Council may grant some, all or none of the requested increase.

2177 10.05.7 Rate Adjustment. The CITY shall adjust Rates, in good faith,
2178 coincident with any adjustment made pursuant to this Section.

2179 10.05.8 Compensation. The party requesting the special Rate review shall
2180 bear all costs of both parties for participating in such review and such costs shall not be
2181 reimbursed through Rates charged customers.

2182 10.06 Rates for Changes in Scope.

2183 10.06.1 In the event either the CITY or CONTRACTOR requests a change in
2184 scope in accordance with Section 4.08, the CONTRACTOR shall furnish the CITY with
2185 projected operational and cost data for the change in scope to support any adjustment to Rates.
2186 For the purposes of analyzing cost impacts of changes in scope, the CONTRACTOR'S profit
2187 shall be calculated using an operating ratio to be agreed upon between CITY and
2188 CONTRACTOR. The CITY reserves the right to require that the CONTRACTOR supply any
2189 additional cost data or other information it may reasonably need to ascertain the appropriate

2190 Rate Fee adjustment, if any, for the change in scope. The CITY shall review this operational
2191 and cost data, and the CITY Council shall establish Rates for the change in scope, if warranted.

2192 10.06.2 The granting of any change in scope shall be contingent upon CITY
2193 approval and establishment of new Rates. The CITY shall adjust Rates, in good faith,
2194 coincident with any adjustment made pursuant to this Section so that the change in scope and
2195 the corresponding Rates become effective on the same date.

2196 10.07 Notice of Rate.

2197 10.07.1 The CONTRACTOR shall provide all Customers with advance written
2198 notice of approved Rate changes, in the form of a bill insert at least thirty (30) days before the
2199 effective date of such changes.

2200 **ARTICLE 11.**

2201 **Indemnity, Insurance, and Performance Bond**

2202 11.01 General Indemnification.

2203 11.01.1 CONTRACTOR shall indemnify, defend with counsel acceptable to the
2204 CITY, protect and hold harmless CITY Council, the CITY, its officers, employees, volunteers,
2205 and agents (collectively, indemnitees) from and against all claims, damages (including but not
2206 limited to special, consequential, natural resources and punitive damages), injuries, costs,
2207 (including without limit any and all response, remediation and removal costs), losses, demands,
2208 debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest,
2209 fines, charges, penalties, and expenses (including without limit attorneys' expert witness fees
2210 and costs incurred in connection with defending against any of the foregoing or in enforcing this
2211 indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or
2212 asserted against, indemnitees arising from or attributable to the acts or omissions of
2213 CONTRACTOR whether or not negligent or otherwise culpable, in connection with or related to
2214 the performance of this Agreement, including without limit damages arising from or attributable
2215 to any operations, repair, clean-up or detoxification, or other plan (regardless of whether
2216 undertaken due to governmental action) concerning any Hazardous Substance or Hazardous
2217 Waste Collected in the CITY. Notwithstanding the foregoing, however, CONTRACTOR shall
2218 not be required to indemnify the CITY for the costs for any claims arising from the Disposal of
2219 Solid Waste at the Disposal Facility, from Processing of Recyclable Materials at the Recyclable
2220 Materials Processing Facility, and/or from Processing Organic Materials at the Organics
2221 Processing Facility including, but not limited to, claims arising under the Comprehensive
2222 Environmental Response, Comprehensive and Liability Act (CERCLA) unless claim is a direct
2223 result of CONTRACTOR'S actions or negligence. This indemnity afforded indemnitees, shall
2224 only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitees,
2225 and as provided below. The foregoing indemnity is intended to operate as an Agreement
2226 pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and
2227 Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to
2228 defend, protect, hold harmless, and indemnify CITY from liability.

2229 11.01.2 This provision is in addition to all other provisions in this Agreement
2230 and is intended to survive the expiration or earlier termination of this Agreement. Nothing in this
2231 paragraph shall prevent CITY from seeking indemnification or contribution from Persons or
2232 entities other than indemnitees, for any liabilities incurred by CITY or the indemnitees. As
2233 appropriate, CONTRACTOR'S Guaranty Agreement shall extend to the indemnification
2234 obligation hereunder.

