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4 **ARTICLE 6.**  
5 **RECORD KEEPING AND REPORTING**

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7  
8  
9 **6.1 GENERAL**

10 Contractor shall maintain accounting, statistical and other records related to its performance  
11 under this Agreement as shall be necessary to develop the financial statements and other reports  
12 required by this Agreement. Also, Contractor agrees to conduct data collection, information and  
13 record keeping, and reporting activities needed to comply with and to meet the reporting and  
14 Solid Waste program management needs of Contractor, the Act, and other federal, State and  
15 local laws and regulations, and the requirements of this Agreement. To the extent, such  
16 requirements are set out in this and other Articles of this Agreement, they shall not be considered  
17 limiting or necessarily complete. In particular, this Article is intended to only highlight the  
18 general nature of records and reports and their minimum content and is not meant to  
19 comprehensively define what the records and reports are to be and their content. Further, with  
20 the written direction by or approval of City, the records and reports to be maintained and  
21 provided by Contractor in accordance with this and other Articles of the Agreement shall be  
22 adjusted in number, format, or frequency. Records and reporting may be revised to reflect  
23 current record keeping and reporting requirements.

24  
25 **6.2 RECORDS**

26  
27 **6.2.1 General**

28 Contractor shall maintain records required to conduct its operations, to support requests it may  
29 make to City, and to respond to requests from City. Adequate record security shall be  
30 maintained to preserve records from events that can be reasonably anticipated such as a fire, theft  
31 and earthquake. Electronically maintained data and records shall be protected and backed-up.

32 Contractor agrees that the records of any and all companies conducting operations addressed in  
33 the Agreement shall be provided or made available to City and its agents and representatives  
34 during normal business hours.

35  
36 **6.2.2 Maintenance of Financial and Operational Records**

37 **A. General.** In order to effectuate the periodic rate review process contemplated by Article  
38 8, it is necessary for Contractor to maintain accurate, detailed financial and operational  
39 information in a consistent format and to make such information available to the City in a  
40 timely fashion.

41 **B. Contractor's Accounting Records.** Contractor shall maintain accurate and complete  
42 accounting records containing the underlying financial and operating data relating to and  
43 showing the basis for computation of all costs associated with providing services under  
44 this Agreement. The accounting records shall be prepared in accordance with Generally  
45 Accepted Accounting Principles (GAAP) consistently applied.

46 **C. Inspection of Records.** The City, its auditors and other agents, shall have the right,  
during regular business hours, to conduct unannounced on-site inspections of the records

1 and accounting systems of Contractor and to make copies of any documents it deems  
2 relevant to this Agreement.  
3

4 **D. Retention of Records.** Unless otherwise herein required, Contractor shall retain all  
5 records and data required to be maintained by this Agreement for at least five (5) years  
6 after the expiration or earlier termination of this Agreement.  
7

8 Records and data required to be maintained that are specifically directed to be retained  
9 shall be retrieved by Contractor and made available to the City.  
10

11 Records and data required to be maintained that are not specifically directed to be  
12 retained that are, in the sole opinion of the City, material to the rate review or to a  
13 determination of the Contractor's performance under this Agreement, shall be retrieved  
14 by Contractor and made available to the City.  
15

16 Records and data required to be maintained that are not specifically directed to be  
17 retained and that are not material to a rate review and/or not required for the  
18 determination of the Contractor's performance do not need to be retrieved by Contractor.  
19 In such a case, however, the City may make reasonable assumptions regarding what  
20 information is contained in such records and data, and such assumption(s) shall be  
21 conclusive in whatever action the City takes.  
22

### 23 **6.2.3 Collection Service Records**

24 Records shall be maintained by Contractor for City relating to:  
25

- 26 **A.** Customer services and Billing including service exemption information;
- 27
- 28 **B.** Weight and volume of material Collected by type (e.g., Solid Waste, Recyclable  
29 Materials and Organic Materials). Where possible, information is to be separated among  
30 Single-Family, Multi-Plex, Multi-Family, Commercial Business Bin service and Debris  
31 Box service;
- 32
- 33 **C.** Routes;
- 34
- 35 **D.** Facilities, equipment and personnel used;
- 36
- 37 **E.** Facilities and equipment operations, maintenance and repair;
- 38
- 39 **F.** Disposal and Processing of Solid Waste, Recyclable Materials and Organic Materials.  
40

41 Contractor shall maintain records of all Solid Waste, Recyclable Materials and Organic Materials  
42 Collected in the City for the period of this Agreement plus five (5) years after its expiration or  
43 earlier termination. Records shall be in chronological and organized form and readily and easily  
44 interpreted. In the event City requests, Contractor shall provide all records of all Solid Waste,  
45 Recyclable Materials and Organic Materials requested to City within thirty (30) calendar days of  
46 discontinuing service.  
47

1 **6.2.4 Recyclable Materials and Organic Materials Collection Service Records**

2 Records shall be maintained for Contractor that relate to:

- 3
- 4 A. Recyclable Materials and Organic Materials Collection participation especially as related  
5 to determining participation and set-out rates and implementing programs to increase  
6 existing participation and to expand diversion (names, addresses, contacts made, etc.);  
7
- 8 B. Recyclable Materials and Organic Materials sales value and sales revenue;  
9
- 10 C. Weight of material recovered by type; and  
11
- 12 D. End use and markets for recovered materials.  
13

14 **6.2.5 Transfer and Disposal Records**

15 Contractor shall maintain records of transfer, Disposal and Processing of all Solid Waste,  
16 Recyclable Materials and Organic Materials Collected by Contractor for the period of this  
17 Agreement plus five (5) years after its expiration or earlier termination. Records shall be in  
18 chronological and organized form and readily and easily interpreted. In the event City requests,  
19 Contractor shall provide all records of transfer and Disposal or Processing of all Solid Waste,  
20 Recyclable Materials and Organic Materials Collected by Contractor in the City within thirty  
21 (30) calendar days of discontinuing service.  
22

23 **6.2.6 Other Programs Records.**

24 Records for other programs shall be tailored to specific needs. In general, the records shall  
25 include:  
26

- 27 A. Plans, tasks, and milestones; and  
28
- 29 B. Accomplishments in terms such as dates, activities conducted, quantities of products  
30 used, produced or distributed, and numbers of participants and responses.  
31

32 **6.2.7 CERCLA Defense Records**

33 City views the ability to defend against Comprehensive Environmental Response, Compensation  
34 and Liability Act (CERCLA) and related litigation as a matter of great importance. For this  
35 reason, the City regards the ability to prove where Solid Waste Collected in the City was taken  
36 for transfer or Disposal, as well as where it was not taken, to be matters of concern. Contractor  
37 shall maintain, retain and preserve records which can establish where Solid Waste Collected in  
38 the City was Disposed (and therefore establish where it was not). This provision shall survive the  
39 expiration or earlier termination of this Agreement. Contractor shall maintain these records for a  
40 minimum of ten (10) years beyond expiration or earlier termination of the Agreement.  
41 Contractor shall provide these records to City in an organized and indexed manner rather than  
42 destroying or disposing of them.  
43

44 **6.2.8 Customer Service Records**

45 Records shall be maintained by Contractor for City related to:  
46

- 47 A. Number of calls;  
48

- 1 B. Categories (missed pickups, Complaints, damage, etc.) of calls;
- 2
- 3 C. Training materials and records;
- 4
- 5 D. Individual call and resolution log (including initial call date and resolution date);
- 6
- 7 E. New Customer log.
- 8

9 **6.3 GENERAL REPORTING REQUIREMENTS**

10 Records shall be maintained in forms and by methods that facilitate flexible use of data  
11 contained in them to structure reports, as needed. Reports are intended to compile recorded data  
12 into useful forms of information that can be used to, among other things:

- 13
- 14 A. Determine and set rate ceilings and evaluate the financial efficacy of operations;
- 15
- 16 B. Evaluate past and expected progress towards achieving the Contractor's diversion goals  
17 and objectives;
- 18
- 19 C. Determine needs for adjustment to programs; and, evaluate service recipient service and  
20 Complaints.
- 21

22 Contractor may propose report formats that are responsive to the objectives and audiences for  
23 each report. The format of each report shall be approved by City. Contractor agrees to mail a  
24 copy of all reports and submit all reports on computer discs, by e-mail or by modem in a format  
25 compatible with City's software and computers at no additional charge. Contractor will provide  
26 a certification statement, under penalty or perjury, by the responsible Contractor official, that the  
27 report being submitted is true and correct to the best knowledge of such official after their  
28 reasonable inquiry.

29

30 Monthly reports shall be submitted within thirty (30) calendar days after the end of the reporting  
31 month. Quarterly reports shall be submitted within forty-five (45) calendar days after the end of  
32 the report quarter. Annual reports shall be submitted no later than forty-five (day) calendar days  
33 after the end of the each Rate Period.

34

35 All reports shall be submitted to:

36

37 City Public Works Director or his/her designee  
38 City of Alameda  
39 City Hall  
40 2263 Santa Clara Avenue  
41 Alameda, CA 94501

42

43 **6.4 MONTHLY REPORTS**

44 Reports shall be presented to show the following information. Exhibit I includes sample data  
45 reporting forms. The City reserves the right to review and approve Contractor's report formats  
46 and content.

- 47
- 48 A. **Solid Waste Services.** Provide total Tonnage Collected and Disposed by Service Type.

1  
2 **B. Recyclable Materials Services.** Provide Tonnage Collected and Recycled by Service  
3 Type and Tonnage of Residue Disposed by Service Type. If the Processing Site handles  
4 Recyclable Materials Collected under this Agreement and from other parties, provide a  
5 description of how the quantities of Recyclable Materials are tracked and allocated to the  
6 City.

7  
8 **C. Organic Materials Service.** Provide Tonnage Collected and composted or mulched by  
9 Service Type and Tonnage of Residue Disposed by Service Type. If the Processing Site  
10 handles Organic Materials Collected under this Agreement and from other parties,  
11 provide a description of how the quantities of Organic Materials are tracked and allocated  
12 to the City.

13  
14 **D. Customer Service.** Provide the following:

- 15
- 16 1. Provide number of Customer, Generator, or other Person calls by category (e.g.,  
17 missed pickups, scheduled clean-ups, Billing concerns, damage claims, etc.)
- 18 2. Provide number of resolved calls and number of unresolved calls (over five (5)  
19 Business Days). Provide explanations on unresolved calls.
- 20 3. Provide number of new Commercial Business Recyclable Materials Customers for  
21 Cart, Bin and Debris Box services.
- 22

23 **E. Account Information.** Provide, in table format, the number of Customers and service  
24 levels for all Service Types and the number of service exemptions granted in accordance  
25 with the City's Municipal Code and type of such exemption.  
26

## 27 **6.5 QUARTERLY REPORTS**

28 Reports shall be presented to show the following information by each month's data in the  
29 reported quarter and include a quarterly average. In addition, each quarterly report shall show  
30 the past four (4) quarters average for data comparison (the first three quarters of the Agreement  
31 shall only include the available quarterly information.) Refer to Exhibit I for sample reporting  
32 forms.  
33

### 34 **A. Solid Waste Services**

- 35
- 36 1. Quarterly summary of monthly report required in Section 6.4.A.
- 37 2. Accounts collected by Service Type. Include number of accounts, as well as number  
38 of total yards for Bin service; and number of pulls, deliveries, and pickups for Debris  
39 Box and Compactor Service.
- 40 3. Solid Waste Tonnage Disposed by Disposal Site.
- 41

### 42 **B. Recyclable Materials Services**

- 43
- 44 1. Quarterly summary of monthly report required in Section 6.4.B.
- 45 2. Accounts collected by Service Type. Include number of accounts, as well as number  
46 of total yards for Bin service; and number of pulls, deliveries, and pickups for Debris  
47 Box and Compactor Service.

3. Participation percentage by Service Type (number of accounts actually serviced / number of accounts scheduled for service).
4. Tonnage by Recyclable Materials commodities and Service Type.
5. List of Multi-Plex and Multi-Family Owners contacted to request authorization that Premises may participate in the used motor oil, used oil filter, empty paint can, aerosol, and small appliance Collection program; and list of participating and non-participating Multi-Plex and Multi-Family Premises including address of Premises and number of dwelling units.
6. Identification of severe market depressions for Recyclable Materials and contingency plans for such events.
7. A list of Recyclable Materials and E-Scrap Item brokers and buyers used by the Contractor.

**C. Organic Materials Service**

1. Quarterly summary of monthly report required in Section 6.4.C.
2. Accounts collected by Service Type. Include number of accounts, as well as number of total yards for Bin service; and number of pulls, deliveries, and pickups for Debris Box and Compactor Service.
3. Participation percentage by Service Type (number of accounts actually serviced / number of accounts scheduled for service).
4. Tonnage composted by Processing Site.
5. Identification of severe market depressions for Organic Materials and contingency plans being implemented for such events.

**D. Customer Service**

1. Quarterly summary of monthly report required in Section 6.4.D.
2. Customer Service overview sheet, training agenda, and other training supplements provided at the quarterly Customer service meeting.

**E. Clean-Up and Holiday Tree Services.** For each service (i.e., Clean-Up and holiday tree Collection Services) provide the following information:

1. Disposal Tonnage
2. Diversion Tonnage
3. Number of stops serviced by a third party Re-Use Vendor.
4. Number of Single-Family Premises and Multi-Plex dwelling units receiving clean-up Collection services; identified separately for on-call and scheduled events.
5. Number of Multi-Family Premises receiving clean-up Collection services
6. Name and address of Marinas provided with clean-up service.

**F. Education Activities**

1. Provide public education materials produced and total number of each distributed.
2. Provide dates, times, and group names of meetings attended.
3. Provide dates, times, and names of Commercial Business audited.
4. Provide dates, times, and names of school where presentations were performed.

1  
2 **G. Pilot and New Programs.** For each pilot and/or new program, provide activity related  
3 and narrative reports on goals and milestones and accomplishments. Describe problems  
4 encountered, actions taken and any recommendations to facilitate progress. Describe  
5 vehicles, personnel, and equipment utilized for each program.  
6

7 **H. Summary Assessment.** Provide a summary assessment of the overall Solid Waste,  
8 Recyclable Materials and Organic Materials program from Contractor's perspective  
9 relative to financial and physical status of program. The physical status is to relate to  
10 how well the program is operating for efficiency, economy and effectiveness relative to  
11 meeting all the goals and objectives of this Agreement including particularly the  
12 Contractor's diversion goals. Provide recommendations and plans to improve. Highlight  
13 significant accomplishments and problems.  
14

## 15 **6.6 ANNUAL REPORTS**

### 16 17 **6.6.1 Annual Report Requirements**

18 The annual report shall be in the form of the quarterly reports and shall provide the same type of  
19 information as required pursuant to Section 6.5 of this Agreement, summarized for the preceding  
20 four (4) quarters. In addition, Contractor's and Related-Party Entities' annual financial  
21 statements shall be included. The annual report shall also include a complete inventory of  
22 equipment used to provide all service, and a list of Contractor's officers and members of its  
23 board of directors.  
24

### 25 **6.6.2 Financial Information**

26 Within one hundred twenty (120) calendar days after the close of Contractor's fiscal year,  
27 Contractor shall deliver to the City four (4) copies of the audited consolidated financial  
28 statements and profit and loss statements of Contractor for the preceding fiscal year. Financial  
29 statements shall include a supplemental combining schedule showing Contractor's results of  
30 operations, including the specific revenues and expenses in connection with the operations  
31 provided for in this Agreement and others included in such financial statements. The financial  
32 statements and footnotes shall be prepared in accordance with Generally Accepted Accounting  
33 Principles (GAAP) consistently applied and fairly reflecting the results of operation and  
34 Contractor's financial condition. Annual financial statements shall be audited, in accordance  
35 with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA)  
36 licensed (in good standing) to practice public accounting in the State of California as determined  
37 by the State of California Department of Consumer Affairs Board of Accountancy, and that the  
38 CPA opinion on Contractor's annual financial statements shall be unqualified, and that the  
39 supplemental schedule be prepared on a compiled basis. The supplemental schedule may be  
40 reviewed by an independent CPA firm that is different from the firm that prepared the  
41 Contractor's overall audited financial statements.  
42

### 43 **6.6.3 Related-Party Entities**

44 As part of the annual reporting requirement, Contractor shall provide the City with a copy of  
45 each Related-Party Entity's (whose cost of services are not specified by this Agreement or  
46 regulated by other government contract that the Related-Party Entity is a party to) audited annual  
47 financial statements and management letter for that fiscal year, or within ninety (90) calendar  
48 days of each Related-Party Entity's fiscal year-end, if timing does not coincide with the annual

1 report date. Financial statements shall be prepared in accordance with GAAP and audited, in  
2 accordance with GAAS, by a CPA licensed in the State, and that the CPA's opinion on each  
3 Related-Party Entity's annual financial statements shall be unqualified, and that the CPA make  
4 available to the City (or the City's designated representative) such CPA's working papers related  
5 to the audit.

6  
7 Contractor agrees that all financial transactions with all Related-Party Entities shall be approved  
8 or disapproved in advance in writing and disclosed annually (coinciding with Contractor's annual  
9 audited financial statements referred to in Section 6.6.2) to the City in a separate disclosure letter  
10 to the City. This letter shall include, but not be limited to, the following information:

11  
12 A general description of the nature of each Related-Party Entity transaction, or type of (for many  
13 similar) transaction, as applicable. Such description shall include for each (or similar)  
14 transaction, amounts, specific Related-Party Entity, basis of amount (how amount was  
15 determined), description of the allocation methodology used to allocate any common costs, and  
16 profit amount. Amounts shall be reconciled to the Related-Party Entity disclosures made in  
17 Contractor's annual audited financial statements referred to in Section 6.6.2.

18  
19 At the City 's request, Contractor shall provide the City with copies of working papers or other  
20 documentation deemed relevant by the Contractor relating to information shown in the annual  
21 disclosure letter. The annual disclosure letter shall be provided to the City within one hundred  
22 twenty (120) calendar days after the end of the Contractor's fiscal year.

#### 23 24 **6.6.4 Operational Information**

25 In addition to requirements stated elsewhere in this Agreement, the annual report shall include  
26 the following information:

##### 27 28 **A. Routes by Service Type**

- 29 1. Number of routes per day
- 30 2. Types of vehicles
- 31 3. Crew size per route
- 32 4. Number of full time equivalent (FTE) routes
- 33 5. Number of accounts per route
- 34 6. Total hours per Service Type per day and per year
- 35 7. Average cost per route

##### 36 37 38 **B. Personnel**

- 39 1. Organizational chart
- 40 2. Job classifications and number of employees (e.g. administrative, Customer service  
41 representatives, drivers, supervisors, educational staff)
- 42 3. Annual wages by job classification including benefits
- 43 4. Number of full time equivalents (FTE) positions for each job classification
- 44 5. Number of hours per job classification per day and per year

##### 45 46 47 **C. Productivity Statistics**

- 1 1. Number of accounts per Service Type
- 2 2. Number of setouts per Service Type
- 3 3. Tons per route per day

4  
5 **D. Maintenance**

- 6
- 7 1. Average cost per vehicle type
- 8

9 **E. Operational Changes**

- 10
- 11 1. Number of routes
- 12 2. Staffing
- 13 3. Supervision
- 14 4. Collection services.
- 15

16 **6.6.5 Historical Data**

17 For the annual report information submitted in Rate Periods Two, Five, Eight, Eleven, and  
18 Fourteen, which shall provide historical data for the most recently completed twelve months,  
19 Contractor shall provide the following annual historical data for each Service Type:

- 20
- 21 **A.** Customer levels and subscription levels
- 22
- 23 **B.** Solid Waste Tonnage
- 24
- 25 **C.** Diversion Tonnage
- 26
- 27 **D.** Customer revenues
- 28
- 29 **E.** Revenues from the sale of Recyclable Materials and Organic Materials.
- 30

31 **6.6.6 Variance Analysis**

32 For the annual report information submitted in Rate Periods Two, Five, Eight, Eleven and  
33 Fourteen, Contractor shall provide the following variance analysis for each Service Type. For  
34 any variances greater than five percent (5%) annually, Contractor shall provide sufficient  
35 rationale to support variance.

- 36
- 37 **A.** Variance analysis comparing current year to each of the prior years of Agreement
- 38
- 39 **B.** Variance analysis comparing current year to each of the future projected years
- 40

41 **6.6.7 Allocations**

42 For the annual report information submitted in Rate Periods Two, Five, Eight, Eleven, and  
43 Fourteen, Contractor shall:

- 44
- 45 **A.** Provide a concise general explanation of the various allocation methodologies used for  
46 each rate application line item.
- 47

1 B. Provide specific examples of each type of allocation used showing how an entry is  
2 reported in the general ledger (GL) and ties to the rate application.

3  
4 C. Provide a statement indicating whether there have been any changes in allocation  
5 methods used since the last rate application. If any allocation methods have changed  
6 clearly identify those changes.

7  
8 **6.6.8 Projections**

9 For annual report information submitted in Rate Periods Two, Five, Eight, Eleven, and Fourteen,  
10 Contractor shall:

11  
12 A. Provide support for the basis for projected revenues and line items expenses, clearly  
13 indicate the supporting calculations and assumptions.

14  
15 B. Provide support for the basis for projected Tonnage; clearly indicate the supporting  
16 calculations and assumptions.

17  
18 **6.7 RIGHT TO INSPECT RECORDS**

19 The City shall have the right to inspect or review the income tax returns, payroll tax reports,  
20 specific documents or records required pursuant to this Agreement, or any other similar records  
21 or reports of the Contractor that it shall deem, at its sole discretion, necessary to evaluate annual  
22 reports, rate review applications provided for in this Agreement and the Contractor's  
23 performance provided for in this Agreement.

24  
25 **6.8 CUSTOMER DATABASE ACCESS**

26 Contractor shall provide City staff with read-only on-line computer access to the Contractor's  
27 Customer database during the Term of this Agreement at a computer terminal located in City  
28 offices. Information available to City staff shall include Customer name, address, service level  
29 (i.e., container size, frequency of collection, day(s) of collection, etc.), customer service notes  
30 related to account, fee for service, and other data mutually agreed upon. The City may request  
31 generation of mailing labels and other listings from Contractor's database at the City expense.  
32 The City's right and ability to access Customer account information is essential to coordinate  
33 Billing of Customers.

34  
35  
36  
37  
38 **ARTICLE 7.**  
39 **FRANCHISE FEE, AB 939 FEE, AND**  
40 **OTHER FEES**

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41  
42 **7.1 GENERAL**

43 Contractor shall remit amounts to City on a monthly basis as described in Section 7.9. for all fees  
44 established in this Section. Contractor may be required to separately identify each fee and other  
45 specific costs on Bills as determined and directed by City.

1 **7.2 FRANCHISE FEE**

2 In consideration of the exclusive rights provided Contractor herein, Contractor shall pay  
3 Franchise Fees to the City equal to ten (10) percent of actual gross revenues remitted by  
4 Customers for Collection services provided in City under this Agreement. The Franchise Fee  
5 may be adjusted by the City during the Term of this Agreement.  
6

7 Each month during the Term of this Agreement, Contractor shall remit to City the Franchise Fee  
8 equal to ten (10) percent of the actual gross revenues collected during the previous month by  
9 Contractor for Collection services provided under this Agreement.  
10

11 **7.3 WASTE MANAGEMENT RECYCLING AND PROGRAM FEE (AB 939 FEE)**

12 The City established a Waste Management Recycling and Program Fee (AB 939 Fee) that  
13 Contractor shall remit to the City. Except as expressly provided below, during the Term of this  
14 Agreement and any extension of it, Contractor shall remit to the City on a monthly basis one-  
15 twelfth (1/12th) of the annual amount of the Waste Management Recycling and Program Fee.  
16 The Waste Management Recycling and Program Fee may be adjusted by the City during the  
17 Term of this Agreement  
18

19 **7.4 INFRASTRUCTURE IMPACTS MITIGATION FEE**

20 The City established an Infrastructure Impacts Mitigation Fee that Contractor shall remit to the  
21 City. Except as expressly provided below, Contractor shall remit to the City on a monthly basis  
22 one-twelfth (1/12th) of the annual amount of the Infrastructure Impacts Mitigation Fee. The  
23 Infrastructure Impacts Mitigation Fee may be adjusted by the City during the Term of this  
24 Agreement.  
25

26 **7.5 DOOLITTLE LANDFILL MAINTENANCE FEE**

27 The City established a Doolittle Landfill Maintenance Fee that Contractor shall remit to the City.  
28 Except as expressly provided below, during the Term of this Agreement and any extension of it,  
29 Contractor shall remit to the City on a monthly basis one-twelfth (1/12th) of the annual amount  
30 of the Doolittle Landfill Maintenance Fee. The Doolittle Landfill Maintenance Fee may be  
31 adjusted by the City during the Term of this Agreement.  
32

33 **7.6 CITY PARKS FEE**

34 The City established a City Parks Fee that Contractor shall remit to the City. Except as expressly  
35 provided below, Contractor shall remit to the City on a monthly basis one-twelfth (1/12th) of the  
36 annual amount of the City Parks Fee. The City Parks Fee may be adjusted by the City during the  
37 Term of this Agreement.  
38

39 **7.7 OTHER FEES**

40 The City shall reserve the right to set "other" fees, as it deems necessary. The amount, time and  
41 method of payment and adjustment process will be set in a manner similar to that for other fees  
42 described in this Article.  
43

44 **7.8 ADJUSTMENT TO FEES**

45 Fees established pursuant to this Article shall adjust annually for CPI. City may further adjust  
46 fees established pursuant to this article annually.  
47

1 **7.9 PAYMENT SCHEDULE AND LATE FEES**

2 On or before the twentieth (20th) day of each month during the Term of this Agreement,  
3 Contractor shall remit to City Franchise Fees, Waste Management Recycling and Program Fees  
4 (AB 939 Fees), Infrastructure Impacts Mitigation Fees, Doolittle Landfill Maintenance Fees,  
5 City Parks Fees, and other fees as described in Sections 7.2 to 7.7. If such remittance is not paid  
6 to the City on or before the twentieth (20th) day of any month, Contractor shall pay in addition to  
7 the amount owed to City liquidated damages in an amount equal to two percent (2%) of the  
8 amount owing for that month. Contractor shall pay as further liquidated damages an additional  
9 two percent (2%) owing on any unpaid balance for each following thirty (30) calendar day  
10 period the fee remains unpaid. Liquidated damages paid under this Section or under Section  
11 11.5 of this Agreement shall not be reimbursed to Contractor.

12  
13 Each monthly remittance to City shall be accompanied by a statement itemizing each fee paid;  
14 detailing calculation of all fees; and stating actual revenues for the monthly period collected from  
15 all operations conducted or permitted pursuant to this Agreement.  
16  
17

18 **ARTICLE 8.**  
19 **CONTRACTOR'S COMPENSATION**

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20  
21 **8.1 GENERAL**

22 Contractor's Compensation provided for in this Article shall be the full, entire and complete  
23 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials  
24 and supplies, taxes, insurance, bonds, overhead, operations, profit and all other things necessary  
25 to perform all the services in the manner required by this Agreement.  
26

27 Contractor will perform the responsibilities and duties described in this Agreement in  
28 consideration of the sums paid to Contractor by Residents and Commercial Businesses that  
29 contract for Contractor's services pursuant to rates established by Contractor, which comply with  
30 City-established rate policies and rate ceilings in Exhibit C set by the City, and which are  
31 reviewed by City from time to time as provided herein. Contractor shall have the right to change  
32 its rates at any time provided that such rates do not exceed then-prevailing rate ceilings  
33 established by the City. Rate ceilings established by the City shall be reasonably expected to  
34 generate sufficient revenues to provide for Contractor's Compensation as calculated in  
35 accordance with this Article including fees described in Article 7.  
36

37 The Contractor's Compensation for Rate Periods One and Two are fixed based as described in  
38 Section 8.2. As described in Section 8.3 and 8.4, the compensation mechanism in this  
39 Agreement calls for comprehensive compensation adjustments every three (3) years (i.e., for  
40 Rate Periods Three, Six, Nine, Twelve and Fifteen) and indexed compensation adjustments for  
41 other Rate Periods.  
42

43 **8.2 CONTRACTOR'S COMPENSATION FOR RATE PERIODS ONE AND TWO**

44 Contractor's Compensation for Rate Period One, which is the period commencing October 6,  
45 2002 and expiring on June 30, 2003, shall be \$7,549,498 as detailed in Exhibit N.  
46

1 Contractor's Compensation for Rate Period Two, which is the twelve (12) month period  
2 following Rate Period One (i.e., from July 1, 2003 to June 30, 2004) shall be \$10,189,833 as  
3 detailed in Exhibit N.

4  
5 Subject to Section 8.9, these amounts shall be fixed for both years and shall not be adjusted to  
6 reflect increases in costs above those anticipated by Contractor, nor decreased to reflect  
7 decreases in costs below those anticipated by Contractor. Contractor's Compensation for Rate  
8 Period One and Rate Period Two shall include all operating costs, profit, and Pass-Through  
9 Costs, fees described in Article 7, and all costs and expenses of every kind necessary to perform  
10 all the services in the manner required by this Agreement, with the exception of direct costs for  
11 latex paint Processing, Recycling, or Disposal expenses that shall be reimbursed to Contractor by  
12 the City. Costs shall reflect depreciation of vehicles, Containers, and other equipment necessary  
13 to perform all the services in the manner required by this Agreement over a period of time less  
14 than or equal to the Term of this Agreement including possible extension periods.

### 15 16 **8.3 CONTRACTOR'S COMPENSATION FOR RATE PERIOD THREE**

#### 17 18 **8.3.1 Contractor's Application**

19 One hundred eighty (180) days prior to the first day of the Rate Period Three, Contractor shall  
20 submit an application requesting the amount of Contractor's Compensation for Rate Period  
21 Three. The application shall be based on the Contractor's Compensation for Rate Periods One  
22 and Two; its supplementary information contained in Contractor's cost proposal, which is  
23 contained in Contractor's Proposal; audited financial statements for Rate Period One; and  
24 Contractor's forecasted costs for Rate Period Two; and such application shall be prepared in  
25 accordance with this Section. Audited financial statements shall be submitted in accordance with  
26 requirements of Section 6.6.2 and shall include data requested in Sections 6.6.5, 6.6.6, 6.6.7, and  
27 6.6.8 presenting information for the previous twelve (12) months.

28  
29 The application shall be submitted in the format and shall calculate Contractor's Compensation in  
30 the manner described in Section 8.3.2 below. Contractor shall assemble, provide, and submit  
31 such information that is necessary to support the assumptions made by Contractor with regard to  
32 the assumptions underlying the forecasted Contractor's Compensation for Rate Period Three.

33  
34 Contractor shall provide all information requested by the City during its review of the  
35 application, including, but not limited to, all information from related parties requested by the  
36 City regarding any transactions between Contractor and any Related-Party Entity pertaining to  
37 Contractor's performance under this Agreement.

#### 38 39 **8.3.2 Determination of Contractor's Compensation**

40 The City, or its representative, will review Contractor's application for compliance with this  
41 Agreement, accuracy, and reasonableness. The application shall clearly document Contractor's  
42 calculation of Contractor's Compensation based on the methodology described in this Section.

43  
44 Contractor's Compensation shall equal the sum of forecasted annual cost of operations, profit,  
45 forecasted Pass-Through Costs, each of which shall be calculated in accordance with procedures  
46 set forth below.

1 **A. Forecasted Annual Cost of Operations.** The forecasted annual cost of operations  
2 consists of the sum of:

- 3
- 4 1. Forecasted labor-related costs
- 5 2. Forecasted vehicle-related costs
- 6 3. Forecasted Processing costs
- 7 4. Forecasted other costs
- 8 5. Forecasted depreciation or lease expense.
- 9

10 **B. Methodology for Forecasting Annual Cost of Operations**

- 11
- 12 1. **Determine Actual Costs.** Contractor's audited financial statement shall be reviewed  
13 to determine Contractor's actual costs necessary to perform all the services in the  
14 manner required by this Agreement for each of the forgoing categories during Rate  
15 Period One. The Contractor's auditor shall determine that costs have actually been  
16 incurred and have been assigned to the appropriate cost category.  
17
- 18 2. **Calculate Adjusted Costs.** Contractor shall adjust actual costs (determined in  
19 Section 8.3.2.B.1) above to ensure that non-allowable costs are not included in actual  
20 costs. Non-allowable costs include the following:  
21
  - 22 a. Labor and equipment costs for personnel and vehicles that are not specified in  
23 Exhibit J.
  - 24
  - 25 b. Payments to directors and/or owners of Contractor unless paid as reasonable  
26 compensation for services actually rendered.
  - 27
  - 28 c. Promotional advertising, entertainment and travel (above ten thousand dollars  
29 (\$10,000) annually in total) expenses, unless authorized in advance by the City.
  - 30
  - 31 d. Payments to repair damage to property of third parties or the City for which  
32 Contractor is legally liable.
  - 33
  - 34 e. Fines for penalties of any nature.
  - 35
  - 36 f. Liquidated Damages assessed under Section 11.5 of this Agreement.
  - 37
  - 38 g. Federal or state income taxes.
  - 39
  - 40 h. Charitable or political donations.
  - 41
  - 42 i. Depreciation or interest expense for Collection vehicles, Containers, other  
43 equipment, offices and other facilities if such items are leased as specified in  
44 Exhibit J.
  - 45
  - 46 j. Attorney's fees and other expenses incurred by Contractor in any court  
47 proceeding in which the City and Contractor are adverse Parties, unless  
48 Contractor is the prevailing Party in such proceeding.

- 1  
2 k. Attorney's fees and other expenses incurred by Contractor arising from any act  
3 or omission in violation of this Agreement.  
4  
5 l. Attorneys' fees and other expenses incurred by Contractor in any court  
6 proceeding in which Contractor's own negligence, violation of law or regulation,  
7 or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees  
8 and expenses claimed; and attorneys' fees and expenses incurred by Contractor  
9 in a court proceeding in which the legal theory or statute providing a basis of  
10 liability against Contractor also provides for separate potential liability for the  
11 City derived from the action of its citizens or rate payers (such as in a CERCLA  
12 lawsuit) unless the Contractor is found not liable in such claims and such claims  
13 arise from acts or occurrences within the Term of the Agreement.  
14  
15 m. Payments to Related-Party Entities for products or services, in excess of the cost  
16 to the Related-Party Entities for those products or services.  
17  
18 n. Goodwill.  
19  
20 o. Excess fuel costs for route hours greater than allowable route hours stated in  
21 Exhibit J where excess fuel costs shall be equal to annual fuel costs less  
22 allowable fuel costs, where allowable fuel costs are calculated to be equal to  
23 annual fuel costs divided by total annual gallons of fuel purchased multiplied by  
24 total annual allowable fuel usage stated in Exhibit J.  
25  
26 p. Processing costs for Recyclable Materials and Organic Materials in excess of  
27 Processing costs stated in Exhibit J based on Tonnage provided in Exhibit J.  
28  
29 q. Unreasonable profit sharing distributions.  
30  
31 r. Replacement costs for Carts, Bins, or Debris Boxes that need to be replaced  
32 because the useful life of such Container was less than the Term.  
33  
34 s. Administrative and billing costs greater than the administrative and billing costs  
35 proposed for Rate Year Two (as presented on Forms J and M of Exhibit N)  
36 adjusted using the consumer price index described in Section 8.3.2.B.4.c.  
37  
38 t. The cost of providing commercial Recyclables Materials and Organic Materials  
39 Collection services in excess of the basic level of service (i.e., 96-gallons Cart  
40 Collected once per week from each commercial Customer) required by this  
41 Agreement because provision of Recyclable Materials and Organic Materials  
42 Collection services in excess of basic service levels shall be provided on a non-  
43 exclusive basis (in which the Contractor competes with other companies and  
44 Contractor shall have ability to set fees for such collection). The Contractor's  
45 costs for Recyclable Materials and Organic Materials Collection Services (for  
46 provision of the basic level of service and services above the basic level) shall  
47 be allocated, if Collection equipment, personnel, vehicle maintenance facilities,  
48 and other services are shared, into two categories: (1) the costs attributable to the

1 basic level of service and (2) the costs attributable to service above the basic  
2 level. The costs allocated to providing the basic level of service shall be  
3 allowable costs and shall be equal to the total gallons of basic level of service  
4 required for commercial Customers (i.e., 96-gallons multiplied by the number of  
5 commercial Recyclable Materials and Organic Materials accounts) divided by  
6 the total gallons of service provided to all Contractor's commercial Recyclable  
7 Materials and Organic Materials Customers (including gallons of service  
8 provided in excess of 96-gallons) multiplied by the cost.  
9

10 u. All costs associated with Collection, handling, Processing, Recycling or  
11 Disposal of household batteries for the Rate Periods One and Two.  
12

13 3. **Adjust Costs to reflect Change to Customer Base and Program Changes.** The  
14 Contractor may propose adjustments to the actual costs for Rate Period One for the  
15 following reasons:  
16

- 17 a. To adjust costs that Contractor has demonstrated to the City to be necessary in  
18 order to provide service to Customers due to growth or decline in the Customer  
19 base (based on the number of Customers and subscription level).  
20 b. To adjust for changes in costs due to a City approved interim compensation  
21 adjustment as described in Section 8.9 that will carry forward into the following  
22 Rate Period.  
23

24 4. **Summarize Allowed Costs.** The adjusted costs for Rate Period One determined in  
25 accordance with Section 8.3.2.B.3 shall be considered "Allowed Costs" for the  
26 purposes of forecasting costs following procedures described in Section 8.3.2.B.5  
27 and shall be presented in cost categories which are consistent with Rate Period One  
28 and Rate Period Two cost categories as follows:  
29

- 30 a. Allowed labor-related costs  
31 b. Allowed vehicle-related costs  
32 c. Allowed other costs  
33

34 5. **Forecast Annual Cost of Operations.** Forecasted annual cost of operations for  
35 Rate Period Three shall include allowed costs of operations determined in Step 3  
36 above adjusted to reflect the impact of consumer price indices, forecasted  
37 Recyclables Materials Processing costs, forecasted Organic Materials Processing  
38 costs, and forecasted depreciation expenses. The forecasts shall be performed in the  
39 following manner:  
40

- 41 a. Forecasted labor-related costs shall be calculated for the Rate Period Three by  
42 multiplying (1) the Allowed labor-related costs for Rate Period One by one (1)  
43 plus the percentage change in the "San Francisco-Oakland-San Jose  
44 Metropolitan Area Consumer Price Index (Urban Wage Earners; 1982-  
45 84=100)," which is compiled and published by the U. S. Department of Labor,  
46 Bureau of Labor Statistics or its successor agency, between the most-recently-  
47 published monthly index at the time of the application and the corresponding

1 monthly index published twelve (12) months earlier, and (2) multiplying the  
2 result of step one by the same percentage change used in step one.  
3

4 b. Forecasted vehicle-related costs shall be calculated for the Rate Period Three by  
5 (1) multiplying the Allowed vehicle-related costs for Rate Period One by one (1)  
6 plus the percentage change in the "Motor Vehicle Repair Index, All Urban  
7 Consumers, U.S. City Average (PI-U) 1982-1984 = 100," which is compiled and  
8 published by the U. S. Department of Labor, Bureau of Labor Statistics or its  
9 successor agency, between the most-recently-published monthly index at the  
10 time of the application and the corresponding monthly index published twelve  
11 (12) months earlier, and (2) multiplying the result of step one by the same  
12 percentage change used in step one.  
13

14 c. Forecasted Recyclable Materials Processing costs shall be calculated for Rate  
15 Period Three in the following manner:  
16

17 Forecasted Recyclable Materials Processing cost = (Recyclable Materials  
18 Processing cost per Ton in accordance with Exhibit J) x (total Tons of  
19 Recyclable Materials Collected for the most-recently reported twelve month  
20 period).  
21

22 d. Forecasted Organic Materials Processing costs shall be calculated for Rate  
23 Period Three in the following manner:  
24

25 Forecasted Organic Materials Processing cost = (Organic Materials Processing  
26 cost per Ton in accordance with Exhibit J) x (total Tons of Organic Materials  
27 Collected for the most-recently reported twelve month period).  
28

29 e. Forecasted other costs shall be calculated for the Rate Period Three by (1)  
30 multiplying the allowed other-related costs for Rate Period One by one (1) plus  
31 the percentage change in the "San Francisco-Oakland-San Jose Metropolitan  
32 Area Consumer Price Index (All Urban Consumers; 1982-84=100)," which is  
33 compiled and published by the U. S. Department of Labor, Bureau of Labor  
34 Statistics or its successor agency, between the most-recently-published monthly  
35 index at the time of application and the corresponding monthly index published  
36 twelve (12) months earlier, and (2) multiplying the result of step one by the  
37 same percentage change used in step one.  
38

39 f. Forecasted depreciation expense shall be the amount specified in Exhibit J for  
40 vehicles, Containers, and facilities.  
41

42 g. Forecasted annual cost of operations for Rate Period Three shall equal the sum  
43 of the following costs, which shall have been calculated in accordance with  
44 procedures in this Section:  
45

- 46 (1) Forecasted labor-related costs
- 47 (2) Forecasted vehicle-related costs
- 48 (3) Forecasted Recyclable Materials Processing costs

- (4) Forecasted Organic Materials Processing costs
- (5) Forecasted other costs
- (6) Forecasted depreciation expense

6. **Calculate profit.** Contractor shall be entitled to profit on forecasted annual costs of operations. Profit shall be calculated by dividing the forecasted annual cost of operations, which shall be determined in accordance with procedures described in Section 8.3.2.B.5.h above, by 0.90 and subtracting the forecasted annual costs of operations from the dividend.

7. **Forecast Pass-Through Costs.** Contractor's Compensation shall include Pass-Through Costs as calculated below:

- a. **Forecasted Disposal cost.** Annual forecasted Disposal cost = (Disposal fee at Designated Landfill) x (total Tons of Solid Waste Collected for the most-recently reported twelve month period).
- b. **Forecasted interest expense.** Forecasted interest expense shall be in accordance with Exhibit J.
- c. **Forecasted lease cost.** Forecasted lease cost shall be the amount specified in Exhibit J for vehicles, equipment, containers, and facilities.
- d. **Forecasted regulatory fees.** The forecasted regulatory fees shall be calculated in accordance with the appropriate methodology for the relevant fees using forecasted Rate Period Three values.

8. **Determine Contractor's Compensation for Rate Period Three.** Contractor's Compensation necessary to perform all the services in the manner required by this Agreement for Rate Period Three shall be equal to the sum of the following:

- a. Forecasted annual cost of operations (determined in accordance with Step 4 above)
- b. Profit (determined in accordance with Step 5 above)
- c. Forecasted Pass-Through Costs (determined in accordance with Step 6 above).

The Contractor's Compensation for Rate Period Three shall be the only compensation due to Contractor for such Rate Period. No adjustments for actual costs shall be made at the conclusion of Rate Period Three or at any other time during the Agreement.

#### 8.4 CONTRACTOR'S COMPENSATION FOR RATE PERIODS FOUR THROUGH TEN

##### 8.4.1 Contractor's Compensation for Rate Period Four

Ninety (90) calendar days prior to the first day of Rate Period Four, Contractor shall submit an application requesting the amount of Contractor's Compensation for Rate Period Four. The application shall be based on Contractor's Compensation for Rate Period Three.

1  
2 The application shall be submitted in the format, and shall calculate Contractor's Compensation  
3 in the manner described in this Section. Contractor shall assemble, provide, and submit such  
4 information that is necessary to support the calculations made by Contractor to forecast  
5 Contractor's Compensation for Rate Period Four.  
6

7 Contractor shall provide all information requested by the City during its review of the  
8 application, including, but not limited to, all information from related parties requested by the  
9 City regarding any transactions between Contractor and any Related-Party Entity pertaining to  
10 Contractor's performance under this Agreement.  
11

12 Contractor's Compensation for Rate Period Four, shall equal the sum of the forecasted annual  
13 cost of operations, profit, and forecasted Pass-Through Costs as calculated in accordance with  
14 this Section.  
15

16 **A. Forecast Annual Cost of Operations.** Forecasted annual cost of operations for the Rate  
17 Period Four shall be calculated as follows:  
18

- 19 1. Forecasted labor-related costs for Rate Period Four shall be forecasted by  
20 multiplying the forecasted labor-related costs for Rate Period Three by one (1) plus  
21 the percentage change in the "San Francisco-Oakland-San Jose Metropolitan Area  
22 Consumer Price Index (Urban Wage Earners; 1982-84=100)" between the most-  
23 recently-published monthly index at the time of the application and the  
24 corresponding monthly index published twelve (12) months earlier.  
25
- 26 2. Forecasted vehicle-related costs for Rate Period Four shall be forecasted by  
27 multiplying the forecasted vehicle-related costs for Rate Period Three by one (1) plus  
28 the percentage change in the "Motor Vehicle Related Index, All Urban Consumers,  
29 U.S. City Average (PI-U) 1982-1984 = 100," between the most-recently-published  
30 monthly index at the time of the application and the corresponding monthly index  
31 published twelve (12) months earlier.  
32
- 33 3. Forecasted Recyclable Materials Processing costs shall be forecasted for Rate Period  
34 Four in an equivalent manner to the method described in Section 8.3.2.B.5.c.  
35
- 36 4. Forecasted Organic Materials Processing costs shall be forecasted for Rate Period  
37 Four in an equivalent manner to the method described in Section 8.3.2.B.5.d.  
38
- 39 5. Forecasted other costs for the Rate Period Four shall be forecasted by multiplying the  
40 forecasted other-related costs for Rate Period Three by one (1) plus the percentage  
41 change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price  
42 Index (All Urban Consumers; 1982-84=100)" between the most-recently-published  
43 monthly index at the time of application and the corresponding monthly index  
44 published twelve (12) months earlier.  
45
- 46 6. Forecasted depreciation expense shall be the amount specified in Exhibit J for  
47 vehicles, Containers, and facilities.  
48

1           7. Forecasted annual cost of operations for Rate Period Three shall equal the sum of the  
2 following costs, which shall have been calculated in accordance with procedures in  
3 this Section:  
4

- 5           a. Forecasted labor-related costs
- 6           b. Forecasted vehicle-related costs
- 7           c. Forecasted Recyclable Materials Processing costs
- 8           d. Forecasted Organic Materials Processing costs
- 9           e. Forecasted other costs
- 10          f. Forecasted depreciation expense

11  
12 **B. Calculate Profit.** Profit shall be calculated by dividing the forecasted annual costs of  
13 operations for Rate Period Four by 0.90 and subtracting the forecasted annual costs of  
14 operations from the dividend.  
15

16 **C. Forecast Pass-Through Costs.** The forecasted Pass-Through Costs shall consist of  
17 forecasted Disposal costs, forecasted interest expense, and forecasted regulatory fees  
18 calculated in accordance with the following procedures:  
19

- 20           1. Forecasted Disposal costs shall be the same as in Section 8.3.2.B.7.a.
- 21           2. Forecasted interest expense shall be based on interest expense in Exhibit J.
- 22           3. Forecasted lease cost shall be the amount specified in Exhibit J for vehicles,  
23           equipment, containers, and facilities.
- 24           4. Forecasted regulatory fees shall be calculated in the same manner as Section  
25           8.3.2.B.7.c using current information and data.

26  
27 **D. Determine Contractor's Compensation for Rate Period Four.** Contractor's  
28 Compensation for Rate Period Four shall be equal to the sum of the following:  
29

- 30           a. Forecasted annual cost of operations (determined in accordance with Step A  
31           above)
- 32           b. Profit (determined in accordance with Step B above)
- 33           c. Forecasted Pass-Through Costs (determined in accordance with Step C above)

34  
35 The Contractor's Compensation for Rate Period Four as calculated in accordance with this  
36 Section shall be the only compensation due to Contractor for such Rate Period. No adjustments  
37 for actual costs shall be made at the conclusion of Rate Period Four or at any other time during  
38 the Agreement.  
39

#### 40 **8.4.2 Contractor's Compensation for Rate Period Five**

41 Contractor's Compensation for Rate Period Five, shall consist of the forecasted annual cost of  
42 operations, plus profit, plus forecasted Pass-Through Costs. Each of these amounts shall be  
43 calculated in the same manner as that described in Section 8.4.1 using current information and  
44 values and shall be based on forecasted costs for Rate Period Four rather than costs for Rate  
45 Period Three.  
46

1 **8.4.3 Contractor's Compensation for Rate Period Six**

2 Contractor's Compensation for Rate Period Six shall consist of the forecasted annual cost of  
3 operations, plus profit, plus forecasted Pass-Through Costs. Each of these amounts shall be  
4 calculated in the same manner as that described in Section 8.3 using current information and  
5 values and shall be based on actual costs for Rate Period Four rather than Rate Period One.  
6

7 **8.4.4 Contractor's Compensation for Rate Period Seven**

8 Contractor's Compensation for Rate Period Seven, shall consist of forecasted annual cost of  
9 operations, plus profit, plus forecasted Pass-Through Costs. Each of these amounts shall be  
10 calculated in the same manner as Section 8.4.1 using current information and values and shall be  
11 based on forecasted costs for Rate Period Six rather than costs for Rate Period Three.  
12

13 **8.4.5 Contractor's Compensation for Rate Period Eight**

14 Contractor's Compensation for Rate Period Eight, shall consist of forecasted annual cost of  
15 operations, plus profit, plus forecasted Pass-Through Costs. Each of these amounts shall be  
16 calculated in the same manner as Section 8.4.1 using current information and values and shall be  
17 based on forecasted costs for Rate Period Seven rather than costs for Rate Period Three.  
18

19 **8.4.6 Contractor's Compensation for Rate Period Nine**

20 Contractor's Compensation for Rate Period Nine shall consist of the forecasted annual cost of  
21 operations, plus profit, plus forecasted Pass-Through Costs. Each of these amounts shall be  
22 calculated in the same manner as that described in Section 8.3 using current information and  
23 values and shall be based on actual costs for Rate Period Seven rather than Rate Period One.  
24

25 **8.4.6 Contractor's Compensation for Rate Period Ten**

26 Contractor's Compensation for Rate Period Ten, shall consist of forecasted annual cost of  
27 operations, plus profit, plus forecasted Pass-Through Costs. Each of these amounts shall be  
28 calculated in the same manner as Section 8.4.1 using current information and values and shall be  
29 based on forecasted costs for Rate Period Nine rather than costs for Rate Period Three.  
30

31 **8.5 CONTRACTOR'S COMPENSATION FOR EXTENSION PERIODS**

32 Contractor's Compensation for each of the Rate Periods during the extension period, if any, shall  
33 consist of the forecasted annual cost of operations, plus profit, plus forecasted Pass-Through  
34 Costs. The First Rate Period of the extension period (i.e., Rate Period Eleven) shall be calculated  
35 in the same manner as that described in Section 8.4.1 using current information and values and  
36 shall be based on forecasted costs for Rate Period Ten rather than forecasted costs for Rate  
37 Period Three. The Second Rate Period of the extension period (i.e., Rate Period Twelve) shall be  
38 calculated in the same manner as that described in Section 8.3 using current information and  
39 values and shall be based on actual costs for Rate Period Ten rather than Rate Period One. The  
40 Third Rate Period of the extension period (i.e., Rate Period Thirteen) shall be calculated in the  
41 same manner as that described in Section 8.4.1 using current information and values and shall be  
42 based on forecasted costs for Rate Period Twelve rather than costs for Rate Period Three. The  
43 Fourth Rate Period of the extension period (i.e., Rate Period Fourteen) shall be calculated in the  
44 same manner as that described in Section 8.4.1 using current information and values and shall be  
45 based on forecasted costs for Rate Period Thirteen rather than costs for Rate Period Three. The  
46 Fifth Rate Period of the extension period (i.e., Rate Period Fifteen) shall be calculated in the  
47 same manner as that described in Section 8.3 using current information and values and shall be  
48 based on actual costs for Rate Period Thirteen rather than Rate Period One.

1  
2 **8.6 REVENUE REQUIREMENT**

3 The City shall from time to time establish one or more ceilings on the rates that Contractor may  
4 charge Customers for Collection services. The City shall use its best efforts to set rates ceilings  
5 so as to generate sufficient revenues to cover Contractor's Compensation, Franchise Fees, Waste  
6 Management Recycling and Program Fee, Infrastructure Impacts Mitigation Fee, Doolittle  
7 Landfill Maintenance Fee, City Parks Fee, other fees, and other costs for integrated waste  
8 management and public education programs pursuant to this Agreement.  
9

10 **8.7 VARIANCES FROM PROJECTIONS**

11  
12 **A. Contractor's Cost.** Contractor shall retain any income from actual costs being less than  
13 projected but shall not be entitled to an increase in Contractor's Compensation or in rate  
14 ceilings to account for actual costs being more than projected.  
15

16 **B. Revenue Reconciliation.** In the event actual rate revenues as reported at the end of a  
17 Rate Period are greater than or less than those rate revenues anticipated for such Rate  
18 Period at the time the rates were set, then Contractor's Compensation shall be adjusted by  
19 the difference between the actual Rate Period revenues and the anticipated Rate Period  
20 revenues in the year following the year in which the difference is known, adjusted by the  
21 amount, if any, of any difference resulting from Contractor's failure to perform under  
22 Section 5.2.E of this Agreement. For example, if Contractor receives actual rate revenues  
23 for the Rate Period One (as reported on the audited financial statements for the twelve  
24 (12) month period ending June 30, 2003) that are one hundred thousand dollars  
25 (\$100,000) higher than the rate revenue anticipated for Rate Period One, then  
26 Contractor's Compensation for the Rate Period Three shall be decreased by one hundred  
27 thousand dollars (\$100,000). On the other hand, if Contractor receives actual rate  
28 revenue for the Rate Period One (as reported on the audited financial statements for Rate  
29 Period One) that are one hundred thousand dollars (\$100,000) less than revenue  
30 requirement for Rate Period One then Contractor's Compensation for the Rate Period  
31 Three shall be increased by one hundred thousand dollars (\$100,000). The revenue  
32 reconciliation process described in this Section shall occur for each Rate Period with the  
33 exception that no revenue reconciliation shall occur for the second to the last and the last  
34 Rate Period of the Term.  
35

36 **C. Rate Revenue Reconciliation Procedure.** By September 10, of each year of the  
37 Agreement (except for Rate Period One), Contractor shall submit to the City its audited  
38 financial statement for Contractor's most recently completed fiscal year, which shall  
39 describe the actual rate revenues collected for services billed and performed in the City,  
40 and Contractor shall describe any difference in the audited actual rate revenues and the  
41 rate revenues anticipated to be due for the prior Rate Period, as determined by these  
42 procedures. The difference shall be reconciled as described in paragraph 8.7.B above.  
43

44 The City may request reconciliation of revenue with Customer account information. If  
45 such a request is made by the City, the City shall request, and Contractor shall provide,  
46 the actual number of accounts and type and frequency of service along with a copy of the  
47 most recent review of its Billings under Section 5.2.E of the Agreement which shall be  
48 reconciled to the audited actual rate revenues. In the event the variance between the

1 actual rate revenues determined through the audit process using Customer account  
2 information and the actual rate revenues reported in the audited financial statements is  
3 greater than one-half of one percent (0.5%), the amount of the variance between the  
4 actual rate revenues determined through the audit process using Customer account  
5 information and the actual rate revenues reported in the audited financial statements shall  
6 be deducted from (credited to) the Contractor's Compensation for the next Rate Period.  
7

## 8 **8.8 COMPENSATION ADJUSTMENT SCHEDULE**

9 The Contractor shall submit its application for Contractor's Compensation one hundred eighty  
10 (180) days or ninety (90) days prior to the beginning of each Rate Period as specified in Sections  
11 8.3.1 and 8.4 for each Rate Period of each year for subsequent Rate Periods including the first  
12 and second years of the extension of Term with the exception that no application shall be due  
13 one hundred eighty (180) days prior to the first day of the Rate Period Two. The application  
14 shall contain the detailed calculations of the Contractor's Compensation for the next Rate Period,  
15 supporting documentation for such calculations, and audited financial statements including  
16 supplemental schedules as described in 8.3.B.2 for the Contractor's most-recently completed  
17 fiscal year. The City shall use its best efforts to make the adjustment effective by the first day of  
18 the Rate Period, of the following year. However, the City shall not make any retroactive  
19 adjustments to compensate for any delay in determining Contractor's Compensation to the extent  
20 resulting from the failure of Contractor to submit its application in a timely manner and/or  
21 respond promptly and completely to requests of the City for information related to any of the  
22 calculations required by this Section or from appeals of the determination to the City which  
23 extends the process of determination.  
24

## 25 **8.9 INTERIM COMPENSATION ADJUSTMENT**

26 In the event the City directs the Contractor to change its operations in accordance with Sections  
27 4.5.1.C, 4.6, 4.7.A, 4.8, 5.8, and 5.10 of this Agreement or in the event of an extraordinary or  
28 unanticipated event including a Change in Law, an adjustment in the Disposal fee due to a new  
29 or increased/decreased governmental tax, surcharge or fee, and such event materially affects  
30 Contractor's Compensation, then the Contractor or the City may submit a request for an interim  
31 Compensation adjustment. In such case, Contractor shall prepare an application for an  
32 adjustment to Contractor's Compensation in accordance with Section 8.3, unless otherwise  
33 agreed to by the City. The adjustment application shall clearly document the reason for the  
34 proposed adjustment, calculation of the proposed cost adjustments, and supporting  
35 documentation.  
36

## 37 **8.10 PERFORMANCE INCENTIVE**

38  
39 **A. Customer Satisfaction Incentive.** The City shall evaluate the level of Customer  
40 satisfaction at least one (1) month prior to the Commencement Date to serve as a baseline  
41 for comparison of the Customer satisfaction level during the Term of the Agreement. A  
42 sample of the questionnaire is provided in Exhibit M. The final Customer satisfaction  
43 questionnaire will be prepared by the City and distributed to Customers via mail and the  
44 City's website. Customers' numerical rating responses to the questions of the survey will  
45 be averaged to calculate the customer satisfaction base line, which shall be rounded to the  
46 nearest hundredth place.  
47

1 No later than sixty (60) days prior to the beginning of each Rate Period during the Term,  
 2 the City shall measure customer satisfaction annually by surveying Customers using a  
 3 survey in substantially the same form as that used to determine the Customer satisfaction  
 4 baseline. Customers' numerical rating responses to the questions in the annual Customer  
 5 satisfaction survey will be averaged together to calculate the annual Customer  
 6 satisfaction level which shall be rounded to the nearest hundredth place. Customer  
 7 satisfaction level will not fall below a 95% satisfaction rate. If the annual customer  
 8 satisfaction level average falls below the Customer satisfaction baseline, the Contractor  
 9 shall receive no customer satisfaction incentive for that year. If the annual Customer  
 10 satisfaction level is equal to or greater than the Customer satisfaction base line, the  
 11 Contractor shall receive a Customer satisfaction incentive payment from the City in the  
 12 amount of \$50,000.

13  
 14 **B Diversion Incentive.** The Contractor developed Contractor's Proposal and estimated  
 15 Contractor's Compensation requirements based on numerous assumptions related to the  
 16 Collection of Solid Waste, Recyclable Materials and Organic Materials and quantity of  
 17 materials that shall be diverted from Disposal. The City's award of this Agreement to  
 18 Contractor was based on several factors including Contractor's estimated annual Tonnage  
 19 of Solid Waste, Recyclable Materials, and Organic Materials to be Collected and diverted  
 20 from Disposal as represented in Exhibit J, Section F. In order to ensure that the City  
 21 receives benefit from the Contractor's Proposal with regards to diversion of Discarded  
 22 Materials over the Term of the Agreement, the City agrees to provide Contractor an  
 23 economic incentive to assist the City in maintaining and moving beyond its compliance  
 24 with the Act and achieving and maintaining above the Alameda County Source  
 25 Reduction and Recycling Plan goal of seventy-five percent (75%) diversion. The  
 26 economic incentive shall be provided only if the annual Tonnage of Recyclable Materials  
 27 and Organic Materials Collected and diverted from Disposal by the Contractor divided by  
 28 the total annual Tonnage of Solid Waste, Recyclable Materials and Organic Materials  
 29 Collected by Contractor is greater than the annual diversion goal. The amount of the  
 30 economic incentive shall equal five dollars (\$5.00) for each Ton of Recyclable Materials  
 31 and Organic Materials Collected and diverted from Disposal in excess of the annual  
 32 diversion goal threshold level and shall be calculated as follows:

$$\text{Economic Incentive} = \$5.00 \times [(\text{Total annual Tonnage of Recyclable Materials and Organic Materials Collected and diverted from Disposal by Contractor}) - \text{annual diversion goal} \times (\text{Total annual Tonnage of Solid Waste, Recyclable Materials and Organic Materials Collected by Contractor})]$$

**ANNUAL DIVERSION GOAL**

45%	Feb. 1, 2003 – Jan. 31, 2004
47%	Feb. 1, 2004 – Jan. 31, 2005
49%	Feb. 1, 2005 – Jan. 31, 2006
51%	Feb. 1, 2006 – Jan. 31, 2007
53%	Feb. 1, 2007 – Jan. 31, 2008
55%	Feb. 1, 2008 – Jan. 31, 2009
57%	Feb. 1, 2009 – Jan. 31, 2010
59%	Feb. 1, 2010 – Jan. 31, 2011
61%	Feb. 1, 2011 – Jan. 31, 2012
63%	Feb. 1, 2012 and thereafter