

**SECOND AMENDMENT TO
FRANCHISE AGREEMENT FOR REFUSE AND RECYCLING
COLLECTION AND DISPOSAL**

**BETWEEN
PITTSBURG DISPOSAL & DEBRIS BOX SERVICE, INC.
AND
THE CITY OF PITTSBURG**

**Second Amendment to
Franchise Agreement
Between
Pittsburg Disposal & Debris Box Service, Inc.
and
The City of Pittsburg**

This Second Amendment ("Second Amendment") to the Franchise Agreement for Refuse and Recycling Collection and Disposal is entered into as of January ~~20~~ 2009, between Pittsburg Disposal and Debris Box Service, Inc. ("Pittsburg Disposal") and the City of Pittsburg ("City").

RECITALS

- A. Effective July 1, 1999, Pittsburg Disposal and City entered into that certain Franchise Agreement for Refuse and Recycling Collection and Disposal ("Franchise Agreement"), pursuant to which City granted Pittsburg Disposal the exclusive right, privilege and franchise to provide Residential and Multi-family Dwelling Solid Waste Collection Service, Residential and Multi-family Recycling Collection Service and Commercial and Industrial Solid Waste Collection Service within the Service Area.
- B. The purpose of this Second Amendment is to amend the Franchise Agreement to provide for a modified solid waste, single-stream recycling and green waste curbside program for Residential Customers in the City ("Modified Services").
- C. The parties intend for the Modified Services to be provided by Pittsburg Disposal for a period of six (6) months, at which time the City will have an opportunity to evaluate the Modified Services and determine, in its sole discretion, whether or not to continue the Modified Services on a permanent basis.
- D. Consistent with Article XI of the Franchise Agreement, Pittsburg Disposal requested a rate adjustment to reflect the Modified Services referenced in this Second Amendment and the Pittsburg City Council considered the proposed rate adjustment at a regular City Council meeting on January 20, 2009.
- E. This Second Amendment has been negotiated between the parties and is consistent with Article XVII, Section 7 of the Franchise Agreement which requires any modification of, or amendment or addition to, the Franchise Agreement to be in writing and signed by both parties.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and hereby incorporated herein by reference.

2. **Defined Terms.** All capitalized terms not defined herein shall have the meanings ascribed to them in the Franchise Agreement. For the purposes of this Second Amendment, the term "Residential Customer" shall mean any Customer who receives services pursuant to the Franchise Agreement to a Single Family Dwelling.
3. **Article IV(A), Section 5.** Article IV, "Collection Services," Subdivision "A," "Residential," is amended to add Section 5 – "Service Levels and Containers" as follows:

Section 5 – Service Levels and Containers

"Franchise Holder shall provide Residential Customers with Solid Waste, Green Waste and Recyclable Material collection Containers, and replace the Containers as necessary, at no additional cost. Residential Customers shall have the option to select an appropriate service level for Solid Waste collection. Residential Customers may select to receive weekly Solid Waste collection services from Franchise Holder in a 32 gallon, 64 gallon or 96 gallon brown toter. Residential collection rates may vary according to the level of service selected by each Customer and as established pursuant to Article XI of this Agreement. The residential collection rates established for each service level shall include all costs associated with Solid Waste, Green Waste and Recyclable Material collection for each Residential Customer."

4. **Article IV(C), Section 1.** Article IV -Collection Services, Subdivision C-General Services, Section 1-Level of Service is amended to read as follows:

"The Franchise Holder shall provide a level of service at a minimum equal to that historically provided by the prior Franchise Holder under all prior refuse and collection agreements and as specifically provided in this Agreement. The level of service to be provided by the Franchise Holder shall be determined by the City Council, and may be amended from time to time consistent with this Agreement.

5. **Article VII, Section 2.** Article VII, Residential Recycling Collection, Section 2-Green Waste Program, is deleted in its entirety and the following new Article VII, Section 2 shall be substituted in its place as follows:

Section 2 – Green Waste Collection

"Franchise Holder shall provide curbside pickup of Green Waste materials for all Residential Customers. This service shall be included in the Residential collection rates established pursuant to Article XI of this Agreement.

The citywide curbside collection – Green Waste program shall be carried out as follows:

a) Containers

Franchise Holder shall purchase and provide all Residential Customers with one (1) ninety six (96) gallon green toter for the collection and disposal of Green Waste materials. Franchise Holder shall provide the Green Waste Container to each Residential Customer at no additional charge.

b) Collection

Franchise Holder shall collect, at a minimum, the following types of Green Waste materials from Residential Customers:

- (1) Yard/Garden trimmings (such as flowers, weeds, shrubbery, tree prunings, brush, cactus, etc.)
- (2) Grass clippings
- (3) Hay/Straw
- (4) Leaves
- (5) Wood Chips

c) Pickup Schedule

Franchise Holder shall provide a weekly collection of Green Waste materials on the same day as the Residential Customer's regularly scheduled Refuse/Solid Waste collection."

6. **Article VII, Section 4.** Article VII, "Residential Recycling Collection," Section 4, "Recycling Material Collection and Separation," is deleted in its entirety and the following new Article VII, Section 4 shall be substituted in its place as follows:

Section 4 – Recyclable Material Collection

"Franchise Holder shall provide curbside pickup of Recyclable Materials for all Residential Customers. This service shall be included in the collection rates established pursuant to Article XI of this Agreement.

The citywide curbside collection – Recyclable Material program shall be carried out as follows:

a) Containers

Franchise Holder shall purchase and provide all Residential Customers with one (1) sixty four (64) gallon blue toter for the collection and disposal of Recyclable Materials.

Franchise Holder shall provide the Recyclable Material Container to each residential Customer at no additional charge.

Beginning January 1, 2010, Franchise Holder shall provide each Residential Customer with the option to replace his or her existing sixty four (64) gallon blue toter with a new ninety six (96) gallon blue toter for the collection and disposal of Recyclable Materials ("Upgraded Container"). Franchise Holder shall purchase and provide an Upgraded Container to each Residential Customer upon request and at no additional charge.

b) Collection

Franchise Holder shall collect, at a minimum, the following types of Recyclable Materials from Residential Customers:

- 1) Aluminum (in all forms including foil, pie plates, cans, etc.)
- 2) Tin/Steel Cans
- 3) Glass Bottles/Jars
- 4) California Redemption and Non-Redemption Plastics #1 - #7 (including PET #1 & #2, HDPE plastics including milk jugs, detergent bottles, shampoo bottles, yogurt containers, margarine containers, food containers, etc.)
- 5) Other Plastics (including toys, plant pots, laundry baskets, lawn chairs, etc.)
- 6) Paper Products, including newspaper, paper (white and colored), magazines, telephone books, junk mail, envelopes, chipboard (cereal boxes, egg cartons, paper towel tubes, etc.), cardboard, shredded paper in bags, etc.
- 7) Plastic bags

c) Pickup Schedule

Franchise Holder shall provide a weekly collection of Recyclable Materials on the same day as the Customer's regularly scheduled Refuse/Solid Waste collection.

d) Sale of Recyclable Materials

It is understood and agreed that, except as otherwise provided herein, all Recyclable Materials collected by the Franchise Holder shall become the property of the Franchise Holder. Any and all responsibility for the safe and proper delivery of the Recyclable Materials to the Materials Recycling Facility shall be with the Franchise Holder. Recyclable Materials delivered or collected which are not accepted due to excess contamination shall be transported and disposed of at the designated disposal facility by the Franchise Holder. Any and all disposal costs shall be the sole responsibility of the Franchise Holder and are included in the collection rates."

7. **Article IX, Section 4.** Article IX, "Education and Public Awareness," is amended to add Section 4 – "Recycling Program – The Challenge" as follows:

Section 4 – Recycling Program – The Challenge

"Franchise Holder shall market and otherwise increase public awareness of the Recycling and Green Waste services available to the community pursuant to this Agreement to residents, businesses and schools in City. Franchise Holder shall market Recycling and Green Waste collection services through the use of flyers, newsletters, and other forms of communication approved in advance by City.

In an effort to increase Recycling among residents and businesses in City, Franchise Holder agrees to work with City to develop a "Challenge" program to encourage additional recycling Citywide. As part of the "Challenge," Franchise Holder agrees to donate at least twenty five thousand dollars (\$25,000) each calendar year to schools within the Pittsburg Unified School District ("Challenge Funds"). Franchise Holder's first donation of Challenge Funds shall be made by December 31, 2009. The Parties intend to utilize Challenge Funds as an incentive to encourage Recycling education and participation. Challenge Funds shall be distributed by Franchise Holder in a form and manner satisfactory to City. The Parties agree to work cooperatively to create and implement an effective "Challenge" program throughout the term of this Agreement. Any and all

"Challenge" program materials and timelines shall be approved by City before they are distributed within the community."

8. **Article XI, Section 3.** Article XI, "Rates and Rate Adjustment," Section 3, "Recycling Service Rate," is deleted in its entirety and the following new Article XI, Section 3 shall be substituted in its place as follows:

Section 3 – Residential Collection Rates Inclusive

"The Parties agree that the residential collection rates established pursuant to this Article contemplate and reflect all costs associated with the provision of services under this Agreement including the collection and disposal of Solid Waste, Green Waste and Recyclable Materials."

9. **Article XI, Section 7.** Article XI, "Rates and Rate Adjustment," Section 7 "Rate Application – Cost of Living Adjustment," is amended to read as follows:

"If the Franchise Holder elects to apply for a cost of living adjustment the rates for residential service may be adjusted without a public hearing in the following manner: the rate shall be adjusted not to exceed the change in the San Francisco/Oakland Consumer Price Index, Refuse Rate Index, or comparable index approved in advance by the City Manager ("Index"), since the last rate adjustment. In order to implement this adjustment, Franchise Holder shall provide a written list of the newly proposed rates based upon the change in the applicable Index, together with written calculations supporting the rate adjustment being proposed, to the City Manager, on or before November 1st preceding the year the rates will go into effect. Rates would go into effect the following January 1st and remain effective for a one (1) year period. Thereafter, the City Manager shall review the proposed rates. If he or she disagrees with them, the City Manager shall communicate the reason to the Franchise Holder and allow the Franchise Holder an opportunity to provide further justification for the proposed rates. Once the City Manager has reviewed the further justification, he or she shall make a determination concerning the appropriate rate amount, which determination shall be final."

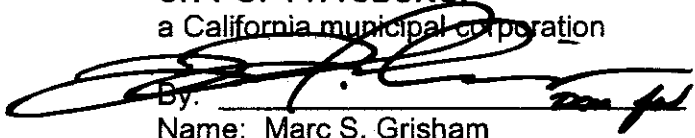
10. **Implementation of Modified Services.** Pittsburg Disposal shall fully implement, to City's satisfaction, the Modified Services contemplated in this Second Amendment no later than April 30, 2009, including the delivery of all residential Solid Waste, Green Waste and Recyclable Materials Containers. At least six (6) months after implementation of the Modified Services, but no later than December 31, 2009, Pittsburg Disposal shall complete and provide to the City a survey of Residential Customers related to the Modified Services at Pittsburg Disposal's sole expense ("Survey"). All Survey materials, methods and content shall be subject to City's advance written approval.

11. **City's Option to Terminate Second Amendment.** After an evaluation of the Modified Services and/or a review of the Survey results, City may, at its sole discretion, direct Pittsburg Disposal to continue providing the Modified Services consistent with this Second Amendment, negotiate with Pittsburg Disposal to revise the Modified Services, or terminate this Second Amendment upon written notice to Pittsburg Disposal. In the event that City terminates this Second Amendment pursuant to this Section 11, City agrees to negotiate with Pittsburg Disposal for the purchase and sale of the Recyclable Materials Containers utilized to provide the Modified Services contemplated by this Second Amendment. In the event that City is satisfied with Pittsburg Disposal's provision of Modified Services pursuant to this Second Amendment, this Second Amendment shall remain in full force and effect.
12. **Effect of this Second Amendment.** Except as expressly modified by this Second Amendment, the Franchise Agreement shall continue in full force and effect according to its terms, and Pittsburg Disposal and City hereby ratify and affirm all their respective rights and obligations under the Franchise Agreement, including but not limited to Pittsburg Disposal's indemnification obligations and insurance requirements set forth in Article X of the Franchise Agreement. In the event of any conflict between this Second Amendment and the Franchise Agreement, the provisions of this Second Amendment shall govern.
13. **Binding Agreement.** This Second Amendment shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto. Any reference in this Second Amendment to a specifically named party shall be deemed to apply to any successor, administrator, executor, or assign of such party who has acquired an interest in compliance with the terms of this Second Amendment or under law.
14. **Counterparts.** This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.
15. **California Law.** This Second Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
16. **Invalidity.** Any provision of this Second Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this Second Amendment, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.
17. **Headings.** The headings used in this Second Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment has been entered into by and between Pittsburg Disposal and City as of the date and year first above written.

CITY:

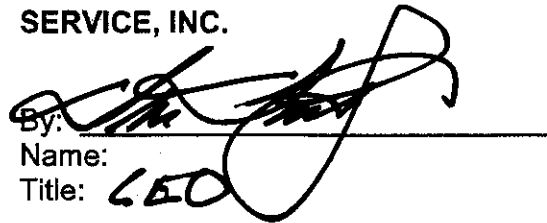
CITY OF PITTSBURG,
a California municipal corporation

By: 

Name: Marc S. Grisham
Title: City Manager

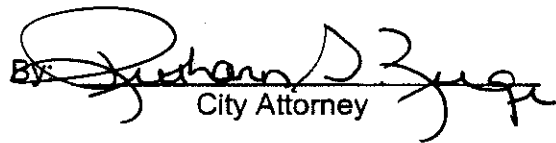
PITTSBURG DISPOSAL:

**PITTSBURG DISPOSAL & DEBRIS BOX
SERVICE, INC.**

By: 

Name:
Title: CEO

APPROVED AS TO FORM:

By: 
City Attorney

By: _____
Name:
Title:

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