

**FOURTH AMENDMENT TO THE FRANCHISE AGREEMENT  
FOR REFUSE AND RECYCLING COLLECTION AND DISPOSAL**

This Fourth Amendment ("Fourth Amendment") to the Franchise for Refuse and Recycling Collection and Disposal is entered into as of May 2, 2011, 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"), as amended 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 Fourth Amendment is to amend the Franchise Agreement to enhance the Franchise Agreement by adding additional clarification, community benefit and support of City services.

**C.** This Fourth Amendment has been negotiated between Parties and is consistent with Article XVII, Section 7 of the Franchise Agreement which requires any modification of, or amendment or additions to, the Franchise Agreement to be in writing and signed by both Parties.

NOW THEREFORE, in consideration of the premises, 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 are 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 purposes of this Fourth Amendment, the phrase "Commercial/Industrial Customer" shall mean any Customer who receives services pursuant to the Franchise Agreement, as amended, to a Commercial and/or Industrial Property.

**3. ARTICLE II, SECTION 1.**

Article II, "Franchise Fee" – Section 1 – "Residential Solid Waste Franchise Fee", is amended to read as follows:

"The service charge and franchise fees are to be paid to the City by the Franchise Holder for the granting of this franchise and the services rendered. The Franchise Holder shall pay to the City a franchise fee of ten percent (10%) of the total gross fees collected, including special collections and mandatory recycling service charges as provided herein, billed to all Residential Customers within the City, effective February 1, 2011. The franchise fee shall increase to twelve percent (12%) effective February 1, 2012.

Every five (5) years from the Effective Date of this Amendment, Franchise Holder and City shall meet and compare other communities in Contra Costa County and average their franchise fees for residential solid waste. Should the county-wide average exceed the current franchise fee paid by Franchise Holder, the franchise fee will be increased to that average amount, effective July 1 of that year in which the comparison was completed. In no such event shall the franchise fee be reduced after the county-wide analysis is completed."

**4. ARTICLE II - SECTION 2.**

Article II "Franchise Fee" Section 2 – "Multi-Family Dwelling, Commercial and Industrial Solid Waste Franchise Fee", is amended to read as follows:

"A franchise fee shall be paid to the City by the Franchise Holder, for the exclusive right to furnish Multi-Family, Commercial and Industrial Customers Solid Waste Collection service, of ten percent (10%), effective February 1, 2011, of the total fees collected, including special collection fees as provided in the Franchise Agreement, as amended, charged to Multi-Family, Commercial and Industrial Customers. The franchise fee shall increase to twelve percent (12%) effective February 1, 2012.

Every five (5) years from the Effective Date of this Amendment, Franchise Holder and City shall meet and compare other communities in Contra Costa County and average their franchise fees for commercial and industrial solid waste. Should the county-wide average exceed the current franchise fee paid by Franchise Holder, the franchise fee will be increased to that average amount, effective July 1 of that year in which the comparison was completed. In no such event shall the franchise fee be reduced after the county-wide analysis is completed."

**5. ARTICLE IV (B) - SECTION 3.**

Article IV, "Collection Services" – Subdivision B "Commercial/Industrial" – Section 3 "City Facilities' Collection" is amended to read as follows:

"Franchise Holder shall provide collection and recycling services to all City facilities at no cost to City. The cost for providing such services shall be considered an allowable cost in the determination of rates under Article XI. The collection and recycling services provided to the City at no cost to City shall not include any City facilities that are run and/or managed by private independent third parties. The Solid Waste collection service shall be at least weekly at each location. Any changes to service levels must be agreed upon by Franchise Holder and the City prior to the start of service. Franchise Holder and the City will review the waste stream at each facility on an annual basis to evaluate diversion programs and make changes to service levels.

The Free City services provided for in this section shall not include free hauling and/or disposal of Construction Debris and/or Demolition Debris from the demolition or renovation of City buildings or structures. In the event the city wishes to have Franchise Holder provide these services, Franchise Holder shall negotiate a fee for such services with the City that will compensate Franchise Holder for the reasonable value of such services."

**6. ARTICLE VI - SECTION 2.**

Article VI, "Operations" – Section 2 "Franchise Holder's Obligation to Provide Information" is amended to read as follows:

"The Franchise Holder shall at the request of the City, and at the expense of the Franchise Holder, supply the City with current maps and schedules of collection routes, and shall supply all occupants of premises with printed information cards containing information regarding refuse which will be collected, complaint procedures, rates, regulations and days of collection. Such cards shall be replaced every two (2) years, and in addition, upon request by occupants or owners of any premises, and in advance of any route, rate, or regulation changes. Copies of this information shall be provided at the request of the City by January 15<sup>th</sup> each year.

**7. ARTICLE XI – SECTION 10.**

Article XI, "Rates and Rate Adjustment", is amended to add Section 10 – "Community Benefit and City Services Fee" as follows:

"The Franchise Holder will pay to the City a fee to provide funds for general community benefit and the support of City services. The initial fee for community benefit is included in the table below:

Community Benefit Fee	Date	Percentage Payment
\$500,000	July 1, 2011	60%
\$500,000 plus CPI	July 1, 2012	70%
2012 Fee plus CPI	July 1, 2013	80%
2013 Fee plus CPI	July 1, 2014	90%
2014 Fee plus CPI	July 1, 2015	100%
20XX Fee plus CPI	July 1, 20XX	100%

Such fee will begin on July 1, 2011, continuing for the term of this Agreement, and will be subject to annual cost of living adjustments. The amount of the fee shall be adjusted annually by any increase in the San Francisco-Oakland All Consumers CPI. Such annual increases shall be calculated based on a percent change in the CPI from April of the previous year to April of the current year. Operator shall pay any annual increase in fees as a result on an increase in CPI in quarterly installments with the next four quarterly payments due from the Operator. For this Section 10, the first CPI will be calculated by using the percent change between April 2011 and April 2012. The first quarter to receive the increase will be the July 2012 quarterly payment. Under no circumstance shall this fee be reduced by the cost of living adjustment. The fee in this Section 10 shall be paid to the City on the fifteenth (15<sup>th</sup>) day after the end of each quarter of the year for the preceding three (3) month period. Each quarter shall end on March 31, June 30, September 30 and December 31 of each year."

**8. ARTICLE XVII – SECTION 15.**

Article XVII, "Miscellaneous", is amended to add Section 15 – "Third Party Mandates" as follows:

"The Franchise Holder and City agree that should any third party mandated cost, fee, and/or service be imposed upon the City and/or Franchise Holder, all costs to provide said mandated cost, fee, and/or service shall be a Pass-Through Cost included as part of this Franchise Agreement."

**9. BINDING AGREEMENT.**

This Fourth 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 Fourth 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 Fourth Amendment or under law.

**10. COUNTERPARTS.**

This Fourth 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.

**11. CALIFORNIA LAW.**

The Fourth Amendment shall be governed by and interpreted in accordance with the laws of the State of California.

**12. INVALIDITY.**

Any provision of this Fourth Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this Fourth 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.

**13. HEADINGS.**

The headings used in this Fourth Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this Fourth Amendment.

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

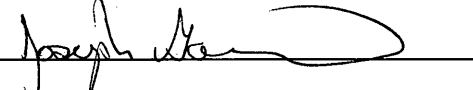
**CITY:**

**PITTSBURG DISPOSAL:**

**CITY OF PITTSBURG,**  
a California Municipal Corporation

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

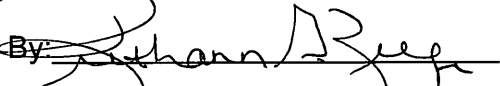
By: 

By: 

Name: Marc S. Grisham  
Title: City Manager

Name: Joseph Garaventa  
Title: Chief Executive Officer

**APPROVED AS TO FORM:**

By: 

By: 

Name: Ruthann Ziegler  
Title: City Attorney

Name: Clark Colvis  
Title: Chief Financial Officer