

SEP 11 2003

## AMENDMENT NUMBER ONE

TO THE AGREEMENT BETWEEN THE CITY OF ROHNERT PARK  
AND ROHNERT PARK DISPOSAL, INCORPORATED  
FOR REFUSE, RECYCLABLE MATERIALS, COMPOSTABLE MATERIALS, AND STREET  
SWEEPING SERVICES.

CITY OF  
ROHNERT PARK

THIS AMENDMENT is made and entered into as of the 24<sup>th</sup> date of June, 2003, by and between the City of Rohnert Park (hereinafter referred to as the "City") and Rohnert Park Disposal, Incorporated (hereinafter referred to as the "Contractor").

RECITALS

**Whereas;** the City of Rohnert Park (City) and Rohnert Park Disposal, Incorporated (Contractor) entered into an agreement dated June 19, 2001 for refuse, recyclable materials, compostable materials, and street sweeping services, and

**Whereas;** the City and Contractor want to amend how the Contractor's Maximum Payment for Services is calculated.

**Now, THEREFORE,** in consideration of the mutual promises, covenants, and conditions contained in this Amendment and for other good and valuable consideration, the parties agree as follows:

**Section 1, Articles 8.3.1, 8.3.2, and 8.3.3** are hereby deleted and replaced by the following Articles.

**8.3.1 Contractor's Application**

On or before March 15, 2003, and each March 15<sup>th</sup> annually thereafter during the term of this Agreement, Contractor may submit an Application for adjustment of Contractor's Maximum Allowable Payment for Services for the following Rate Year (July 1, to June 30). The City shall evaluate the application based on the audited financial statements submitted pursuant to Section 6.5.2 for the preceding fiscal year.

The Application shall be in a format established by the City. Contractor shall assemble, provide, and submit such information that is necessary to support the Application. Contractor shall provide all information requested by the City as part of its review of the Application including, but not limited to, all information from Related Parties requested by the City regarding any transactions between Contractor and any Related Party relating to Contractor's performance under this Agreement.

If Contractor fails to submit the Application in the required format by March 15<sup>th</sup>, Contractor shall be deemed to have waived any adjustment to its Maximum Payment for Services for the following fiscal year. Contractor's failure to submit an Application shall not preclude City from applying Section 8.3.2 using the prior year's financial data, or proforma data if no prior year financial data is available, if that data requires a decrease in the Maximum Allowable Payment for Services. If

Contractor's failure to timely submit the Application required under this section is the result of extraordinary or unusual circumstances as demonstrated by Contractor to the satisfaction of the City; the City, at its sole discretion, may consider the Application if the Application is submitted no later than April 30th.

The City shall not make any retroactive adjustments to compensate for any delay in calculating Contractor's Maximum Allowable Payment for Services resulting from (i) the failure of Contractor to submit its Application;(ii) the failure of Contractor to respond promptly and completely to requests of the City for information related to the Application; or (iii) any appeals of City determination that extend Application processing.

### **8.3.2 Determination of Contractor's Maximum Allowable Payment for Services**

Beginning on July 1, 2003, and annually thereafter, Contractor shall, subject to compliance with all provisions of this Article, receive an annual adjustment in the Contractor's Maximum Allowable Payment for Services in accordance with the following:

- A. Units. Annual adjustments shall be made only in units of one dollar (\$1.00). Fractions of less than one dollar (\$1.00) shall not be considered in making adjustments. The indices shall be rounded to two (2) decimal places for the adjustment calculations.
- B. Notification. As of July 15 in 2003, and as of June 30<sup>th</sup> annually thereafter during the term of this Agreement, City shall notify Contractor of the Contractor's Maximum Allowable Payment for Services for the next fiscal year.
- C. Maximum Allowable Payment for Services. The Contractor's Maximum Allowable Payment for Services for a given Rate Year shall be determined by (i) adjusting the Annual Cost of Operations by the Refuse Rate Index (RRI), (ii) then the Forecasted Annual Cost of Disposal will be added to the adjusted Annual Cost of Operations, and (iii) then the Forecasted Gross Revenue from Recyclables will be subtracted from the sum of the adjusted Annual Cost of Operations and the Forecasted Gross Revenue from Recyclables
  
- D. RRI Adjustment. The Annual Cost of Operations shall be increased or decreased by the Refuse Rate Index (RRI). The RRI adjustment shall be the percentage change in the RRI based on changes in the annual average of the base fiscal year ending September 30, which shall be the prior preceding fiscal year, to the preceding fiscal year as contained in the most recent release of the source documents listed in paragraph D(2) below multiplied by the Annual Cost of Operations. The RRI adjustment shall be calculated in the following manner:
  - 1. The Annual Cost of Operations shall be comprised of the following five cost categories: Labor, Fuel, Vehicle Replacement, Maintenance, and All Other.

- Each cost category is assigned a weighted percentage factor based upon that cost category's proportionate share of the total Annual Cost of Operations.
2. The following indices shall be used to calculate the adjustment for each cost category. The change in each index shall be calculated from the February Index of the previous year to February Index of the current year.

<u>Cost Category</u>	<u>Index</u>
Labor	Series ID: ECS 12102 Services Producing Sanitary Services
Fuel	Series ID:WPU057303; Commodity Code 0573-03 #2 Diesel Fuel
Vehicle Replacement	Series ID:PCU37130 #139 Refuse and Garbage Bodies (Packer Type); Commodity Code 3713-139 Trucks over 10,000 GVW
Vehicle Maintenance	Series ID:PCU3537#3 Truck and Tractors – Parts Commodity Code 3753-3; Parts and Accessories for Industrial Trucks & Tractors
All Other	¾ Consumer Price Index, Series ID: CUURA422SAO CPI-All Urban Consumers, All Items, San Francisco, Oakland, San Jose, Not Seasonally Adjusted.

3. The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the RRI.
4. The categories of costs that shall be listed in each RRI cost category are as follows:

<u>Cost of Operations</u>	<u>Description</u>
Labor	List all administrative, officer, operation and maintenance salary accounts. List payroll tax accounts directly related to the above salary accounts.
Fuel	List all fuel and oil accounts
Vehicle Replacement	List all Collection and Collection related vehicle depreciation accounts. List all vehicle lease or rental accounts related to Collection or Collection related vehicles.
Vehicle Maintenance	List all Collection or Collection related vehicle parts accounts.
All Other	List all other expense accounts related to the services

provided under this Agreement. This category includes all insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property; truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; office supplies; postage; trade association dues and subscription; advertising; employee retirement or profit sharing contributions; and miscellaneous other expenses.

[I'd like to suggest that an exhibit be included that provides an example of how the calculations will be done.]

- E. Forecasted Annual Cost of Disposal.** Disposal fee increases, if any, for the Sonoma County Landfill are determined and approved by the Sonoma County Board of Supervisors each June and implemented mid-fiscal year at the landfill on each January 1<sup>st</sup>. The Forecasted Annual Cost of Disposal for a fiscal year shall be the sum of fifty percent (50%) of the Forecasted Disposal fiscal year tonnage multiplied by the disposal rate approved by the Sonoma County Board of Supervisors for the first half of the fiscal year and fifty percent (50%) of the Disposal tonnage multiplied by the disposal rate approved by the Sonoma County Board of Supervisors for the second half of the fiscal year. Disposal rates for an alternate Disposal Site approved and designated by the City in writing may be substituted for disposal rates at the Sonoma County Landfill.
- F. Forecasted Revenue from the Sale of Recyclable Material.** The Forecasted Revenue from the Sale of Recyclable Materials shall equal the actual revenue received from the sale of Recyclable Materials during the previous fiscal year.
- G. Costs Not Included.** The following costs shall not be utilized in determining the Contractor's Maximum Allowable Payment for Services:
- a. Franchise fees;
  - b. AB 939 Compliance and Diversion Fee;
  - c. Payments to directors and/or Owners of Contractor, unless paid as reasonable compensation for services actually rendered;
  - d. Promotional advertising, entertainment and travel expenses (above \$10,000 annually in total), unless authorized in advance by the City;
  - e. Payments to repair damage to property of third parties or the City for which Contractor is legally liable;
  - f. Fines or penalties of any nature;
  - g. Liquidated damages assessed under Section 11.5 of this Agreement;
  - h. Federal or state income taxes;
  - i. Charitable or political donations;
  - j. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse parties, unless Contractor is the prevailing party in such proceeding;

- k. Attorneys' fees and other expenses incurred by Contractor arising from any act of omission which occurs during the Term of the Agreement;
- l. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or rate payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement;
- m. Payments to Related Parties (including parent companies) for products or services (including corporate overhead) in excess of cost to the Related Party for those products or services, or overhead costs not related to or unnecessary to providing City services required in this Agreement;
- n. Goodwill;
- o. Unreasonable profit sharing distributions;
- p. Interest charged by parent company, if any, on principal in excess of actual costs advanced to Contractor, or for principal unnecessary to providing City services required by this Agreement, or at an interest rate in excess of the parent company's costs of capital per its audited financial statements;
- q. Labor, vehicle, equipment, overhead and administrative costs or cost allocations for providing services to other jurisdictions.
- r. Depreciation calculated over a period of time shorter than the actual expected useful life of the asset, or by using a rate, method or useful life, which is unreasonable or does not conform to Generally Accepted Accounting Principles (GAAP);
- s. Any costs or cost allocations for salaries, benefits, supplies, computer services, accounting or legal services, postage, telephone, office expense or other expenses related to customer billing, processing of payments, posting of billing service changes, and extra charges to customer accounts, maintaining accounts receivable records, collections or billing related customer service.;
- t. Unreasonable overhead charges by parent company;
- u. Unreasonable profits; and
- v. The charges from Related Parties not approved in writing in advance by the City.

### **8.3.3 Contractor's Payment for Services.**

Contractor's Payment for Services for Rate Year Three (from July 1, 2003 to June 30, 2004) and each subsequent fiscal year during the term of this Agreement, shall be the amount equal to the Gross Revenues received from customers by the City, at rates established pursuant to Section 8.12.260 of the Rohnert Park Municipal Code, less the sum of (i) the amount necessary to reimburse City for providing billing and some customer services under this Agreement, (ii) any amount necessary to maintain a rate stabilization fund, and (iii) any and all fees imposed pursuant to Article 7 of this Agreement, including but not limited to the Franchise Fee described in Section 7.1. Contractor's Payment for Services shall not exceed the Contractor's Maximum Allowable Payment

for Services (as determined in Article 8.3.2), which shall include any adjustments provided for in Article 8.1.2., per attached Exhibit "A" example entitled "Rohnert Park Disposal Rate Calculation".

**Section 2**, Article 8.4, Contractor's Payment for Services for Rate Years Four Through Eight; Article 8.5, Payment for Services for the Extension Period; and Article 8.6, Schedule are hereby deleted.

IN WITNESS WHEREOF, City and Contractor have executed this Amendment as of the day and year first above written.

ATTEST:

CITY CLERK

CITY OF ROHNERT PARK ("City")

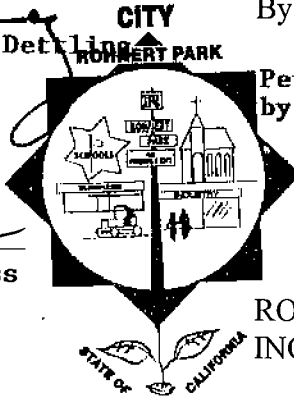
By *Troy C. Dettl*  
Deputy City Clerk Troy C. Dettl

By *Carl Eric Leivo*  
City Manager Carl Eric Leivo

APPROVED AS TO FORM:

Per Resolution No. 2003-151 adopted by the City Council on June 24, 2003

By *Betsy Strauss*  
City Attorney Betsy Strauss



APPROVED AS TO FORM:

ROHNERT PARK DISPOSAL, INCORPORATED

By *Albert Bianchi*  
Contractor's Attorney

By *Rick Powell*  
Rick Powell, President

By *Peggy Bronzini*  
Peggy Bronzini, Secretary

**EXHIBIT A**  
**- EXAMPLE -**

**ROHNERT PARK DISPOSAL RATE CALCULATION**

			<b>Rate Year 3 2003-2004 Expenses</b>
Total Labor	819,199	3.50%	847,871
Total Fuel	124,381	106.33%	256,635
Total Vehicle Replacement	310,002	0.26%	310,808
Total Vehicle Maintenance	143,658	0.83%	144,850
Total all Other	135,967	3.35%	140,522
 Total Expenses before Pass-through Costs			 1,700,686
 Operating Ratio			 <u>93%</u>
 Total allowed expenses and profit before pass-through costs			 <u>1,828,695</u>
 Pass-through costs			
Interest Expense			188,683
Dump fees - debris & refuse			1,130,734
Dump fees - yard waste			<u>135,373</u>
 Total pass-through costs			 <u>1,454,790</u>
 Total allowed expenses and profit			 \$ 3,283,485
 Less: Temporary debris box revenue (actual amount billed 2002-03)			 <u>(112,798)</u>
 <b>MAXIMUM PAYMENT REQUIRED</b>			 <u><u>\$ 3,170,687</u></u>