

**FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT
BETWEEN THE CITY OF ROHNERT PARK AND ROHNERT PARK
DISPOSAL, INC. FOR REFUSE, RECYCLABLE MATERIALS,
COMPOSTABLE MATERIALS AND STREET SWEEPING SERVICES**

WHEREAS, on May 29, 2001 the City of Rohnert Park ("City") and Rohnert Park Disposal, Inc., ("Contractor") entered into an agreement for the Collection, Transportation, and Processing of Refuse, Recyclable Materials, and Compostable Materials, and for the provision of Street Sweeping Services ("Original Agreement");

WHEREAS, on July 1, 2008, the Original Agreement was Amended and Restated;

WHEREAS, City and Contractor desire to amend the July 1, 2008 Amended and Restated Agreement in order to include an adjustment to the current term, an option to extend the term, include portable toilet service, and require Contractor to make additional payments to the City; and

WHEREAS, this Amendment to Amended and Restated Agreement is made and entered into effective the 27th day of May, 2010, by and between the City of Rohnert Park and Rohnert Park Disposal, Inc., a California corporation;

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, CITY and CONTRACTOR hereby agree as follows:

Section 3.3 Term is amended by incorporating the following new text in **bold** format and deleting text in ~~strikeout~~ format:

3.3 Term

The **initial** Term of this Agreement shall begin July 1, 2008, and end at midnight June 30, 2020. ~~unless extended by City pursuant to Section 3.4.~~ **This Amendment extends the Term to June 30, 2020.**

Section 3.4 Option to Extend Term is replaced in its entirety with the following:

3.4 Option to Extend Term.

At Contractor's written request, on or about July 1, 2018, provided the City determines that the Contractor has met the minimum performance and diversion requirements, as set forth in Section 3.5, the City shall within twenty (20) Work Days offer the Contractor in writing a five (5) year extension of this Agreement. Contractor shall provide written notice to City as to whether Contractor accepts or rejects City's offer within twenty (20) Work Days of the date of the offer. If Contractor fails to provide such notice to City within said twenty (20) Work Days, City's offer shall be deemed withdrawn and City shall have no obligation to extend the term of this Agreement beyond June 30, 2020. If the term of this Agreement is extended, the compensation provisions of Article 8 shall not be subject to negotiation. However, the compensation payable to Contractor shall be adjusted annually throughout the extended term as provided in Article 8.

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Dated May 27, 2010

Article 3, Term of Agreement, is amended by adding **Subsection 3.4.1, Voiding of Extension**, with the following new text in bold format:

3.4.1 Voiding of Extension.

In the event City determines that Contractor fails to meet the minimum service and diversion requirements set forth in Section 3.5 or is in breach of any other provisions of this Agreement, Contractor understands and agrees that the service extension set forth in Section 3.4 above is voided and that this Agreement shall terminate on June 30, 2020.

Article 3, Term of Agreement, is amended by adding **Subsection 3.4.2, Conditions for Granting Extension(s)**, with following new text in bold format:

3.4.2 Conditions for Granting Extension(s)

In order to receive the Agreement term extension offers set forth in Article 3 of this Agreement, the Contractor must meet or exceed the following annual minimum performance and diversion standards in each Contract Year beginning January 1, 2010 as determined by City.

Article 3, Term of Agreement, is amended by adding **Subsection 3.4.3, Performance Standards**, with following new text in bold format:

3.4.3 Performance Standards.

Assessment of administrative charges, as set forth in Section 11.5 of this Agreement of less than \$50,000 in each Agreement Year beginning January 1, 2010.

Article 3, Term of Agreement, is amended by adding **Subsection 3.4.4, Minimum Diversion Standards**, with following new text in bold format:

3.4.4 Minimum Diversion Standards.

The City requires the Contractor to achieve a minimum annual diversion rate of forty-five percent (45%) for each Agreement Year. The annual diversion rate will be calculated as "the tons of materials collected by the Contractor under the terms of this Agreement that are sold or delivered to a recycler or reuser, as required by this Agreement, divided by the total tons of materials collected in the Agreement Year." The City may determine in its sole discretion that Contractor's failure to meet the minimum diversion requirements constitutes Contractor's default of this Agreement or the City may impose administrative charges on Contractor as set forth in Section 11.5 of this Agreement.

Section 5.6 City Facilities and Events Collection is amended by incorporating the following new text in bold format:

Contractor shall provide containers and collection of Refuse, Recyclable Materials and Compostable Materials to all City facilities identified in Exhibit A. Contractor shall also provide collection of Refuse disposed of in City-owned cans located throughout the City. Contractor shall provide Refuse, Recycling Materials and Compostable Materials services for special events as set forth in Exhibit C. The size of the bin or cart and the frequency of Collection shall be determined between the City and Contractor. Compostable Materials services are required only at the Department of Public Works, where all City Compostable Materials are deposited.

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The services required by this section shall be provided at no charge to the City, but the cost of providing such service shall be an allowable expense under Article 8.

Contractor shall also provide portable toilet service in City's parks and other City facilities on a schedule and frequency as agreed on between the City and Contractor. Contractor shall provide portable toilet service at no cost to the City and the cost of providing such service shall not be an allowable expense under Article 8.

Subsection 5.13.4. City's Supplemental Education "A" and "B" is amended by incorporating the following new text in **bold** format and deleting text in ~~strikeout~~ format:

5.13.4 City's Supplemental Education

A. The City will include an annual budget of \$25,000 in the Contractor's Payment for Services to fund supplemental education program(s). **The use of these funds shall not be restricted and may be used for solid waste related programs such as** an annual E-Waste event, and a variety of ads and/or concise articles that, upon request by City, are to be written and placed in the Community Voice by Contractor. This annual budget will be added on as a pass-through of diversion fees to the cost presented and will be funded from Refuse rates.

1. Annually, the City and Contractor will agree on one or more supplemental education programs that target large generators of waste. For example, supplemental programs may include, but not be limited to, augmenting source reduction and Recycling practices among those generators known to contribute significant levels of divertable materials to landfills or generators known to contaminate Garbage and/or Recycling. Contractor shall report progress, problems encountered, actions taken, and recommendations for future actions quarterly.

2. Contractor shall organize and manage an annual E-Waste event with a certified E-Waste recycler. Contractor's responsibilities shall include, but not be limited to: (a) initiating contact with a certified E-Waste recycler; (b) establishing a date and time for the event that is acceptable to both the City and certified E-Waste recycler; (c) working with City staff to secure a location for the event; (d) working with certified E-Waste recycler to secure adequate staffing and transportation of E-Waste; and (e) coordinating all activities through the event to ensure its success. Contractor shall be responsible for ensuring that the total number of pounds collected at the event is reported to the City within 60 days of the event.

3. Contractor shall place ads in the Community Voice for Christmas Tree Collection Services, Christmas Recycling Services, the Curbside Community Clean-up Events, the annual E-Waste Event and other events as requested by City. At the request of City staff, Contractor shall generate 2-3 brief educational articles for publication in the Community Voice (e.g., Composting leaves in the fall, proper disposal of medications). The content for these articles may be taken directly from Contractor's bi-annual newsletter if previously published and approved by the City.

B. Annually, the City shall set-aside \$25,000 for special projects that will enhance source reduction and recycling education. **The use of these funds shall not be restricted and may be used by the City for solid waste related programs such as** ~~The City may~~ to hire an educational contractor to conduct additional education and outreach to support multi-family and commercial Recycling programs. This annual budget will be added on as a pass-through of diversion fees to the cost presented and will be funded from Refuse rates.

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C. Annually, the City shall set-aside \$10,000 for enforcement activities. The City will utilize its Code Enforcement Officer to initiate and carry-out corrective measures to address non-compliance with the Rohnert Park Municipal Code; to enforce our contractual obligation to our Contractor that grants them exclusivity in the collection, hauling, and disposal of all refuse, recyclable materials and compostable materials; and to monitor the activities of Contractors granted a franchise for the provision of Temporary Debris Box services. This annual budget will be added on as a pass-through of diversion fees to the cost presented and will be funded from Refuse rates.

Section 7.1 Franchise Fee, AB 939 and Other Fees is amended by incorporating the following new text in **bold** format:

7.1 Franchise Fee

In consideration of the rights provided Contractor herein, Contractor shall pay to City ten (10) percent of Gross Revenues derived by Contractor from services provide in City under this Agreement. This fee may be adjusted by City by resolution. **The City, in its sole discretion, may increase the Franchise Fee by up to one percent (1%) and Contract Administration Fee by up to one percent (1%).** Such adjustment shall be reflected in the rates that the City charges and collects from Generators.

The Franchise Fee shall be included in Refuse rates set by the City Council and shall be deducted by City monthly from revenues received from customers, prior to payment to Contractor for services from the remaining customer revenues. With each monthly remittance to Contractor for services, City shall provide a detailed statement showing Gross Revenues billed and the calculation of the Franchise Fee amount retained by City.

Article 7. Franchise Fee, AB 939 and Other Fees is amended by adding **Section 7.5 Franchise Extension Fee** with following new text in **bold** format:

7.5 Franchise Extension Fee

CONTRACTOR shall pay Three Hundred Thousand Dollars (\$300,000.00) to the CITY. Payment shall be due within thirty (30) days upon execution of the extension of the Agreement.

Article 7. Franchise Fee, AB 939 and Other Fees is amended by adding **Section 7.6 Additional Contractor Payments to the City** with following new text in **bold** format:

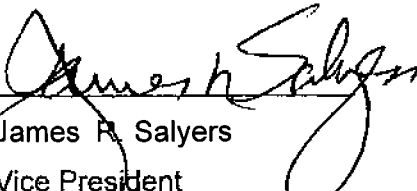
7.6 Additional Contractor Payments to City

The Contractor shall be responsible for all costs associated with preparing amendments to this Agreement. Contractor shall also be responsible for all costs associated with analysis of customer rates and contractor compensation as determined to be necessary by the City and the Contractor. The analysis will be performed under contract with the City by a qualified firm selected by the City.

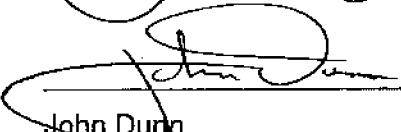
First Amendment Between the City of Rohnert Park and Rohnert Park Disposal, Inc.
Dated May 27, 2010

IN WITNESS WHEREOF, City and Contractor have executed this First Amendment to Agreement on the respective date(s) below each signature.

ROHNERT PARK DISPOSAL, INC


James R. Salyers
Vice President

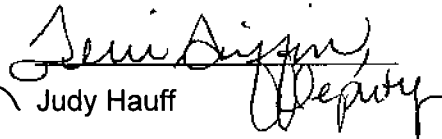
5/27/2010
Date


John Durin
Interim City Manager

May 27, 2010
Date

Attest:

CITY OF ROHNERT PARK


Judy Hauff
City Clerk

6/1/2010
Date



The foregoing Agreement has been reviewed and approval is recommended:

Resolution No. 2010 - _____

Approved by City Council

APPROVED AS TO FORM:

City Attorney

Date

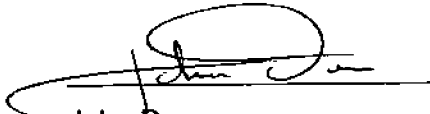
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ROHNERT PARK DISPOSAL, INC

James R. Salyers
Vice President

Date



John Dunn
Interim City Manager

5/27/10

Date

Attest:

CITY OF ROHNERT PARK

Judy Hauff
City Clerk


Date

The foregoing Agreement has been reviewed and approval is recommended:

Resolution No. 2010 - 58

Approved by City Council on May 25, 2010

APPROVED AS TO FORM:



City Attorney, ABST

5/25/10

Date