

**FIRST AMENDMENT TO FRANCHISE AGREEMENT  
FOR COLLECTION SERVICES**

This First Amendment to Agreement for Collection Services ("First Amendment") is entered into and is effective September / 0 , 2013 by and between the City of Oakley, a municipal corporation of the State of California ("City") and Oakley Disposal Service, Inc., a California corporation ("Contractor"). The City and Contractor are collectively designated herein as "the Parties" and each is a "Party."

**RECITALS**

- A. WHEREAS, Contractor and the Ironhouse Sanitary District ("District"), a California special district, originally were parties to a Franchise Agreement for the collection, transportation and disposal of solid waste and recyclable materials, dated June 1, 1993, as amended;
- B. WHEREAS, since the initial consummation of the Franchise Agreement, the City became incorporated and assumed a number of the governmental powers and duties previously exercised in its territory by the County of Contra Costa.
- C. WHEREAS, in order for the City to assume the power and duties associated with the regulation of solid waste and recyclable materials, City and District entered into a Franchise Transfer Agreement on December 8, 2009, whereby District transferred and assigned its Franchise Agreement with Contractor to City.
- D. WHEREAS, thereafter, City and Contractor entered into a new Agreement for Collection Services ("Agreement") for the collection, transportation and disposal of solid waste and recyclable materials, which was effective May 25, 2010.
- E. WHEREAS, pursuant to the Franchise Transfer Agreement, City and District executed an Assignment of Franchise Agreement thereby assigning and transferring the Franchise Agreement from District to City.
- F. WHEREAS, City and Contractor wish to amend the Agreement to require Contractor to provide collection, transportation and disposal of solid waste and recyclable materials to District upon the terms and conditions as specified in this First Amendment.

**WHEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

1. City and Contractor hereby agree to amend and modify the Agreement by adding Section 4.15, entitled "Service to Ironhouse Sanitary District Facilities," which shall read as follows:

"Contractor shall provide collection and recycling services to all Ironhouse Sanitary District Facilities at no cost to District. The cost for providing such services shall be considered an allowable cost in determination of rates under Article 5 of the Agreement. The collection and recycling services provided to District at no cost to District shall not include any District facilities that are run and/or managed by private independent third parties. The service level for collection and recycling services to District will be agreed upon by City and Contractor, but will not be less than the service required by Section 10 of the Franchise Transfer Agreement dated December 8, 2009 between City and District."

2. City and Contractor hereby agree to amend and modify the Agreement by deleting the current language in Section 5.01(c), entitled "Rate Adjustment," in its entirety and adding the following language:

"c. Rate Adjustment. Beginning on January 1, 2014, and annually thereafter during the term of this Agreement, the residential Refuse rates set forth in Exhibit B of this Agreement, or the residential Refuse rates as amended and then currently in effect, shall be adjusted annually by the Refuse Rate Index ("RRI") adjustment, as is defined in the 'Definitions' section in Article 1 herein, as follows: The RRI adjustment shall be the sum of the weighted percentage change in the annual average of each RRI index number between the base year, which shall be the prior preceding fiscal year ending April 30<sup>th</sup> and the preceding fiscal year ending April 30<sup>th</sup> as contained in the most recent release of the source documents listed in Exhibit E, (the "RRI Calculation Summary") which is attached to and hereby fully incorporated into this Agreement. Therefore, the first rate adjustment will be based on the percentage changes between the annual average of the RRI indices for the year ending April 30, 2012 and the annual average of the RRI indices for the year ending April 30, 2013. The RRI adjustment shall be calculated using the RRI methodology as outlined in Exhibit E. The RRI shall be capped at five percent (5%) per year and if the calculation results in a negative number, a negative cost adjustment would occur. Any RRI adjustment shall apply only to the residential Refuse rate then in effect and shall not be applied to any fees paid to the City by Contractor under Section 6.

On or before June 30<sup>th</sup>, and annually thereafter during the term of this Agreement, except as provided below in paragraph (i) of this Section, Contractor shall deliver to the City Manager or his or her designee the financial information for the specific services performed under this Agreement for the preceding fiscal year ending on December 31<sup>st</sup>. Such financial information shall be in the format as set forth in Exhibit E, or as may be further revised by a mutually executed amendment by the Parties. If Contractor fails to submit the financial information

in the required format by June 30<sup>th</sup>, it is agreed that Contractor shall be deemed to have waived the RRI adjustment for that year. Contractor's failure to provide the financial information shall not preclude the City from applying the RRI using the prior year's financial data, or pro forma data if no prior year financial data is available. The City Manager or his or her designee shall calculate the RRI and certify the annual RRI adjustment as complying with the RRI Calculation Summary as summarized in Exhibit E prior to being implemented by Contractor. Certification by the City Manager shall be sufficient to approve the annual RRI adjustment and City Council approval shall not be needed unless the annual RRI adjustment exceeds the maximum allowable increase as detailed herein. The City Manager or his or her designee will notify Contractor annually of the RRI adjustment by October 15<sup>th</sup> for incorporation in billing notifications for December with increases reflected in the January statements. For fiscal year 2013 only, Contractor shall submit the required financial information relating to the proposed RRI adjustment to the City by September 30<sup>th</sup> and the City will notify Contractor of the RRI adjustment by November 15<sup>th</sup>.

Nothing herein shall prevent Contractor from submitting an application for an increase in the maximum Residential rates within the same calendar year as an RRI adjustment is applied if Contractor must make significant changes to its operation or experiences significant changes in costs or revenue not under its control, in which event the application shall explain and document the significant changes.

- i. Comprehensive Rate Reviews. Beginning in May 2017, and at the end of each four (4) year period thereafter, Contractor shall submit a full and comprehensive rate application for City review; so that the collection rates then in effect can be adjusted to accurately reflect the actual costs of Contractor, rather than the rates as adjusted solely by RRI. These Comprehensive Reviews shall be presented to the City Council for its consideration and the approval of new rates therefrom.
  - A. The required Comprehensive Review in this Section, as provided for above, may be deferred to the end of the subsequent 4-year period if a Comprehensive Review was already provided during the current period, and both the City and Contractor mutually agree that adjusting the existing rates by an RRI adjustment is sufficient to maintain collection rates that accurately reflect the actual costs incurred by Contractor.
- ii. City-Initiated Changes. City may initiate a change in the maximum rate at any time. If the rate change is initiated by the City, Contractor shall submit its completed rate application to City within 90 days of City's notice to Contractor.

iii. Contents of Applications. Rate applications shall be prepared in such form, with such information, and in such detail as City may require. Each application for a change in the maximum rate (other than the annual RRI rate adjustment as detailed above) shall include an audited financial statement of Contractor for the base year on which the application is based. Each rate application and its accompanying financial statements and information shall segregate the activities of Contractor within the City from those outside the City.”

3. City and Contractor hereby agree to amend and modify the Agreement by adding Section 4.16, entitled “Pilot Programs,” which shall read as follows:

“Contractor agrees to coordinate and implement with the City certain pilot programs upon receipt of written notification by the City Manager of a proposed pilot program and mutual agreement between City and Contractor as to the estimated cost and revenue projections relating to the proposed pilot program. If a pilot program is implemented under this section, the City and Contractor shall meet and confer in good faith no later than one (1) year after its implementation to determine how the current Refuse rates shall be adjusted. This adjustment to the Refuse rates shall be based on a review of the actual costs and actual revenue collected by Contractor relating to the pilot program. After a review of the actual costs and revenue collected in relation to the pilot program, the City and Contractor can elect to adjust the Refuse rate either through an RRI adjustment or by filing a rate increase application with the City if the actual cost of the pilot program exceeds one hundred and ten (110) percent of the previously estimated cost.”

4. City and Contractor hereby agree to amend and modify the Agreement by adding Section 6.03, entitled “Proposed Fee Increases,” which shall read as follows:

“Any proposed increase in the fees paid to the City by Contractor shall not be effective, and Contractor shall have no obligation to pay any increased fee to the City, until (i) the proposed fee increase, and (ii) the resultant increase to the residential Refuse rate Contractor is allowed to charge and collect from customers have both received final approval from the City and have actually taken effect.”

5. City and Contractor hereby agree to amend and modify the Agreement, amending the current language in Section 16.08, entitled “Assignment” by adding the following language at the end of its first paragraph:

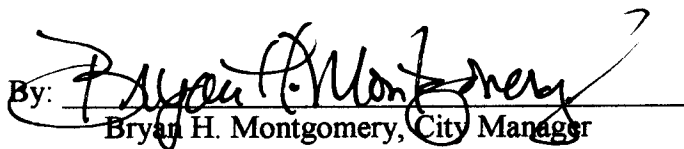
“Any proposed change in the majority of ownership of Contractor shall be considered a proposed assignment subject to this Section, and such assignment remains subject to the City’s right of full discretion to approve

or deny, with or without cause, any proposed or actual assignment of the Contractor.”


6. City and Contractor hereby agree to amend and modify the Agreement by adding Exhibit B-1, entitled “Oakley Residential Services—Senior Citizen Discount Rate,” a copy of which is attached hereto and hereby fully incorporated by reference into this Agreement.
7. City and Contractor hereby agree to amend and modify the Agreement by inserting Exhibit E, entitled “RRI Calculation Summary,” a copy of which is attached hereto and hereby fully incorporated by reference into this Agreement.
8. Unless specifically defined in this First Amendment, the definitions set forth in the Agreement shall apply.
9. This First Amendment shall be governed by the laws of the State of California
10. Unless specifically amended by this First Amendment, all of the provisions, terms, and conditions of the original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Contractor have executed this First Amendment on the respective dates below each signature.

**CITY OF OAKLEY**

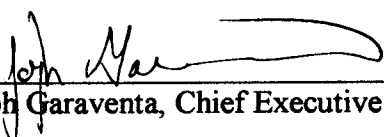
By:   
Bryan H. Montgomery, City Manager

07/20/13  
Date

Attest:   
Libby Vreonis, City Clerk

Approved as to form:   
for Derek P. Cole, City Attorney

**OAKLEY DISPOSAL SERVICE**

By:   
Joseph Garaventa, Chief Executive Officer

Sept 18, 2013  
Date

## **EXHIBIT B-1**

### **LOW INCOME SENIOR CITIZEN DISCOUNT RATE**

“Contractor has agreed to provide eligible customers residing within the City with a low income senior citizen discounted residential Refuse rate. The City shall be responsible for reviewing all applications and determining which residents are eligible for the discounted Refuse rate. To qualify, a customer must comply with each of the following requirements: (1) be at least sixty-five (65) years of age, (2) be approved as a low income household by the Pacific Gas & Electric Company and present satisfactory evidence thereof to the City, (3) complete the application required by the City, (4) present a California drivers license, military photo identification, or California identification card to the City along with the application, and (5) sign a statement under penalty of perjury that only low income senior citizens reside at the property. If the customer satisfies each of these requirements, the customer shall be eligible to obtain a thirty-two (32) gallon container from the Company and shall be charged a Refuse rate equal to eighty-five (85) percent of the current thirty-two (32) gallon container rate. Qualified senior citizens must use the 32 gallon containers provided by the Contractor in order to be eligible. Contractor, in its sole discretion, shall have the right to require that qualified eligible customers utilize a twenty (20) gallon container (instead of a thirty-two (32) gallon container), which shall be provided by the Contractor, at the then current low income senior citizen discounted Refuse rate pursuant to this Exhibit.”

## **EXHIBIT E**

### **Refuse Rate Index Calculation Summary**

#### **Definitions:**

**Refuse Rate Index (RRI)** shall mean the sum of the products of the weighted averages of the approved cost categories multiplied by increase in the index or contractual price for each cost category as established in Step 1 of the calculation.

**Current Rate** shall mean the current effective Maximum Rate as approved by the City.

**Franchise Fee** shall mean the residential franchise fee rate as established in the Agreement or any amendment thereafter to such section.

**Base Rate** shall mean the Current Rate excluding the Franchise Fee.

**Adjusted Base Rate** shall mean the Base Rate increased by the calculated RRI.

**New Rate** shall mean the calculated Maximum Rate effective for the next rate period.

#### **The Annual Maximum Rate Adjustment shall be calculated in the following manner:**

Step 1: Calculate the Refuse Rate Index (“RRI”).

Step 2: Calculate Maximum Base Rates (“Base Rates”) by removing the Franchise Fee from the current maximum rate (“Current Rate”).

Step 3: Adjust Base Rates by RRI calculated in Step 1 (“Adjusted Base Rates”).

Step 4: Add the Franchise Fee for the new rate year to Adjusted Base Rates calculated in Step 3 (“New Rates”).

#### **Step 1: Calculate the Refuse Rate Index (“RRI”).**

The Refuse Rate Index (RRI) adjustment shall be calculated in the following manner:

1. The expenses of the Collection and Processing Services of Contractor for the designated fiscal year period shall be prepared in the format set forth in Table 2 below.
2. The expenses of the disposal services shall be broken down into the following cost categories: Indirect Labor, Direct Labor, Diesel Fuel, Vehicle Replacement, Vehicle Maintenance, Disposal/Tipping Fees, All Other, and Franchise Fee. Each cost category is assigned a weighted percentage factor on that cost category's proportionate share of the total of the costs shown for all cost categories. Note -

additional categories may be utilized in the future for CNG fuel or additional governmental fees. Other indexed or contracted cost items may be added with mutual consent of both parties.

3. The indices, as designated in Table 1, published by the United States Department of Labor, Bureau of Labor Statistics (BLS), are used to calculate the adjustment for each cost category. For any category that rates are established through contractual terms negotiated by Contractor, including but not limited to Direct Labor, Diesel Fuel, and Disposal/Tipping Fees, the actual contractual percentage change should be used. The change in each cost category is calculated in accordance with the terms of the Agreement if the Agreement so designates. In the event any index is discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.
4. The percentage weight for each cost category is multiplied by the average annual change in each appropriate index or contractual price to calculate a weighted percentage change for each category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (See Example). The Franchise Fee cost shall be included to properly weight the other expenses, but the annual increase to this line item shall be zero (0) in the RRI calculation.

**Table 1:**

| <b>Cost Category</b>   | <b>Description</b>  |
|------------------------|---|
| Indirect Labor         | Series ID: ceu6056210008 Service Producing Industries   |
| Direct Labor           | Actual direct labor change as outlined in Collective Bargaining Agreement. Percentage change in total compensation for Residential Trash Driver.  |
| Diesel Fuel            | Long-term Fuel price contracted by Contractor or an affiliated entity (typically 18 mos.) or Series ID: WPU057303 Commodity Code 0573-03 #2 Diesel Fuel or EIA CA #2 Diesel Fuel; whichever applicable  |
| CNG Fuel (If utilized) | Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication ( <a href="http://www.pge.com/notes/rates/tariffs/rateinfo.shtml">http://www.pge.com/notes/rates/tariffs/rateinfo.shtml</a> ) reflecting the sum of the Customer, procurement, transportation and public purpose program charges. |
| Vehicle Replacement    | Series ID wpu141301 Truck and bus bodies sold separately  |
| Vehicle Maintenance    | Series ID: pcu336211336211 Industrial truck and trailer mfg.  |



|                       |  |
|-----------------------|--|
| Disposal/Tipping Fees | Actual tip fee price change per ton for disposal of municipal solid waste at the transfer station, as established by the local jurisdiction. |
| All Other             | Series ID: cuura422saO Consumer Price Index, All Urban Consumers, All Items - Bay Area   |
| Franchise Fee         | None   |

**Table 2:**

| <b><u>Cost Category</u></b> | <b><u>Description</u></b>  |
|-----------------------------|--|
| Indirect Labor              | List all indirect labor salary accounts.<br>List payroll tax accounts, health and welfare, worker's compensation insurance, and pension accounts directly related to the above salary accounts.  |
| Direct Labor                | List all direct labor salary accounts.<br>List payroll tax accounts, health and welfare, payroll worker's compensation insurance, and pension accounts directly related to the above salary accounts.  |
| Diesel Fuel                 | List all diesel fuel accounts.   |
| CNG Fuel (If utilized)      | List all CNG fuel accounts.  |
| Vehicle Replacement         | List all collection and collection-related vehicle depreciation accounts.<br>List all vehicle lease or rental accounts related to collection or collection related vehicles.   |
| Vehicle Maintenance         | List all collection and collection-related vehicle parts accounts.   |
| Disposal/Tipping Fees       | List disposal and transfer station costs.  |
| All Other                   | List all other expense accounts related to the services provided under this Agreement. This category includes, insurance including general liability, fire, truck damage, and extended coverage; rent on property; truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; non-diesel or non-CNG fuel; collection cart and bin depreciation; office supplies; postage; trade association dues and subscription; customer education; advertising; and miscellaneous other expenses. |

|               |                           |
|---------------|---------------------------|
| Franchise Fee | List franchise fee costs. |
|---------------|---------------------------|

**Example RRI Calculation:**

| <b>STEP 1: REFUSE RATE INDEX<br/>EXAMPLE CALCULATION SHEET</b> |                     |   |                              |                        |                                       |
|--|---------------------|---|------------------------------|------------------------|---------------------------------------|
| <b>Item #</b>  | <b>Category</b>     | <b>Data Source</b>  | <b>Percentage Change (1)</b> | <b>Item Weight (2)</b> | <b>Weighted Percentage Change (3)</b> |
| 1  | Indirect Labor      | Labor Series ID: ceu6056210008<br>Employment Cost Index (NAICS):                          | 2.19%                        | 8.50%                  | 0.186%                                |
| 2  | Direct Labor        | As Outlined in Collective Bargaining Agreement  | 3.50%                        | 32.00%                 | 1.120%                                |
| 3  | Motor Fuel          | Series ID: WPU057303<br>Commodity Code 0573-03 #2<br>Diesel Fuel or EIA CA #2 Diesel Fuel | 4.74%                        | 6.00%                  | 0.284%                                |
| 4  | Vehicle Replacement | Series ID: wpu141301 Truck and bus bodies sold separately                                 | 6.79%                        | 4.00%                  | 0.272%                                |
| 5  | Vehicle Maintenance | Series ID: pcu336211336211<br>Industrial truck and trailer mfg.                           | 0.016%                       | 12.00%                 | 0.002%                                |
| 6  | CPI All Items       | Series ID: CUURA422SA0 CPI-All Urban Consumers, All Items Bay Area                        | 1.70%                        | 8.00%                  | 0.136%                                |
| 7  | Disposal            | Annual Tip-Fee Increase   | 3.5%                         | 20.00%                 | 0.700%                                |
| 8  | Franchise Fees      | Enter zero percentage change – Only used to calculate weighted percentage change          | 0.0%                         | 9.50%                  | 0.00%                                 |
| <b>Total RRI Adjustment</b>                                    |                     |   |                              | <b>100%</b>            | <b>2.70%</b>                          |

1. Assume these are the percentage changes in the indices from year to year.
2. Assume the categories represent these percentages as a total of Contractor's total costs.
3. Represents the product of Percentage Change (1) multiplied by Item Weight (2).

**Step 2: Calculate Base Rates (“Base Rates”) by removing the Franchise Fee from the current rate (“Current Rate”).**

The franchise fee is removed from the current rate by multiplying the current rate by the inverse of the current franchise fee rate to get Base Rates.

$$\text{Base Rate} = [\text{Current Rate}] \times (1 - [\text{Current Franchise Fee Rate}])$$

For example, if the current monthly rate is \$32.00 with a current franchise fee rate of 10%, the Base Rate is calculated as follows:

$$\begin{aligned} \text{Base Rate} &= \$32.00 \times (1 - 0.10) \\ \text{Base Rate} &= \$28.80 \end{aligned}$$

**Step 3: Adjust Base Rates calculated in Step 2 by the RRI calculated in Step 1 (“Adjusted Base Rates”).**

The Base Rates calculated in Step 2 are increased by the RRI calculated in Step 1 by multiplying the Base Rate by 1 plus RRI to get Adjusted Base Rates.

$$\text{Adjusted Base Rate} = [\text{Base Rate}] \times (1 + [\text{RRI}])$$

For example, if the calculated RRI from Step 1 is 2.70% and the Base Rate from Step 2 is \$28.80 the Adjusted Base Rate is calculated as follows:

$$\begin{aligned} \text{Adjusted Base Rate} &= \$28.80 \times (1 + 2.70\%) \\ \text{Adjusted Base Rate} &= \$29.58 \end{aligned}$$

**Step 4: Add the Franchise Fee for the new rate year to Adjusted Base Rates calculated in Step 3 (“New Rates”).**

The Franchise Fee for the new rate year is added to the Adjusted Base Rates by dividing the Adjusted Base Rate by the inverse of the New Franchise Fee Rate. The New Franchise Fee Rate for the new rate year may be the same as the Current Franchise Fee Rate.

$$\text{New Rates} = [\text{Adjusted Base Rate}] \div (1 - [\text{New Franchise Fee Rate}])$$

For example, if the Adjusted Base Rate is \$29.58 and the New Franchise Fee Rate is 11%, the New Rate is calculated as follows:

$$\begin{aligned} \text{New Rate} &= \$29.58 \div (1 - 0.11) \\ \text{New Rate} &= \$33.24 \end{aligned}$$

| <b>Example Spreadsheet Layout of Step 2 through Step 5 to Calculate Maximum Rates</b> |                     |                           |                                    |                          |                   |
|---|---------------------|---------------------------|------------------------------------|--------------------------|-------------------|
| <b>Service Level</b>  | <b>Current Rate</b> | <b>Step 2: Base Rates</b> | <b>Step 3: Adjusted Base Rates</b> | <b>Step 4: New Rates</b> | <b>% Increase</b> |
| 32 Gallon   | \$28.00             | \$25.20                   | \$25.88                            | \$29.08                  | 3.857%            |
| 64 Gallon   | \$32.00             | \$28.80                   | \$29.58                            | \$33.24                  | 3.875%            |
| 96 Gallon   | \$35.00             | \$31.50                   | \$32.35                            | \$36.35                  | 3.857%            |

*All rates and figures are for illustrative purposes only and are not intended as the actual or anticipated rates charged by Contractor.*