

**ORDINANCE NO. 92-O-402.B**

**AN ORDINANCE AMENDING ORDINANCE NO. 86-O-402, PROVIDING A METHOD FOR CALCULATING RATES, AND DECLARING AN EMERGENCY.**

**[See Ordinance No. 86-O-402 for amendments]**

**[See Ordinance No. 92-O-402.B in its entirety in original ordinance books or on following pages below]**

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**AN ORDINANCE AMENDING ORDINANCE NO. 86-0-402, PROVIDING A METHOD FOR CALCULATING RATES, AND DECLARING AN EMERGENCY.**

**Sections:**

- Section 1. Ordinance Identified**
- Section 2. Amendment to Section 11**
- Section 3. Amendment to Section 3**
- Section 4. Addition of Section 22**
- Section 5. Emergency**

**The City of Brookings ordains as follows:**

**Section 1. Ordinance Identified: This Ordinance amends Ordinance No. 86-0-402 enacted June 9, 1986, titled:**

**"An Ordinance granting to Brookings Sanitary Service a franchise to provide all solid waste management and resource recovery services within the City of Brookings; repealing Ordinance Nos. 68-0-199, 75-0-263 and 78-0-300; and, declaring an emergency."**

**Section 2. Amendment to Section 11: Section 11 of Ordinance No. 86-0-402 is hereby amended to read in full as follows:**

**Section 11. Rates. As compensation for its services hereunder, franchisee shall be allowed to charge and collect those rates currently in effect as amended each year in accordance with this Section.**

**Franchisee's rates shall be fixed in accordance with the following rate**

**adjustment formulas:**

$$(a) \frac{\text{Expenses (A)} + \text{Expenses (B)}}{\text{Operating Ratio (A)}} = \text{Revenue Requirement}$$

$$(b) \text{Revenue Requirement} - \text{Actual Reported Revenues} = \text{Revenue Variance}$$

$$(c) \frac{\text{Revenue Variance}}{\text{Actual Reported Revenues}} = \text{Percentage Rate Increase/Decrease}$$

where: "Operating Ratio (A)" equals .905

"Expenses (A)" are all Allowable Expenses associated with franchisee's provision of solid waste collection, recycling, transfer, and all long-haul transportation and disposal costs or charges (whether incurred by franchisee or a third party) which are otherwise Allowed Expenses, but excluding Expenses (B).

"Expenses (B)" are the closure and post-closure costs for Wridge Creek Landfill.

Operating Expenses shall be the sum of Expenses (A) and Expenses (B).

Actual reported revenues shall include but not be limited to all revenues received from the provision of franchised services in Curry County, including but not limited to the following: rates paid, proceeds received from the sale of recyclable materials, fees, enumeration, compensation, surcharges, special charges, self-hauler fees, proceeds from sales of scrap, capital assets and equipment used in providing franchised services (including any recapture of depreciation), gate fees, rental income, and interest revenue.

By resolution of the Brookings City Council, the rates set forth herein shall be adjusted annually as follows: Prior to March 1, 1992 and prior to March 1 of each year thereafter during the term of this Ordinance,

**franchisee shall submit to the Council an audited annual rate review report (the "Report") in the attached format (Exhibit A) showing franchisee's revenues from franchised services and the actual, prudently incurred Operating Expenses incurred by franchisee in the previous calendar year. The Report shall calculate franchisee's Revenue Requirement pursuant to the formula adopted herein and include a proposed rate structure for the then-existing calendar year in accordance with the rate adjustment formulas. If franchisee is unable to submit the Report by March 1, then the April 1 date (discussed below) will be delayed by the number of days after March 1 that the Report is submitted.**

**Prior to its submittal to Brookings, the rate review report must be audited, using generally accepted accounting principles, by an independent auditor chosen by Brookings with the concurrence of franchisee. The reasonable costs of such audit will be included in Expenses (A) for purposes of calculating rates.**

**A budget for the audit shall be proposed by franchisee and approved by Brookings prior to January 15 of each year. Costs in excess of the budget must be approved by Brookings as reasonable and not the result of poor record keeping by the franchisee.**

**For purposes of the rate adjustment calculations, franchisee shall include in Operating Expenses the annualized cost of any new service or increased level of service that began during the prior calendar year at the direction of Brookings or other bodies having authority to require services.**

**Franchisee may include in the Operating Expenses, submitted in the Annual Report, a depreciation expense for the then current year for capital expenditures of \$150,000 per year or less. Franchisee may request advance approval, in the Report or a separate written request, from Brookings for capital expenditures in excess of \$150,000 for the**

**then current year. The depreciation expenses associated with all approved capital expenditures shall be included in franchisee's Operating Expenses for purposes of calculating the proposed rate structure. Brookings may require additional information in the Report if requested prior to July 1 of the preceding year.**

**In calculating the rate structure applicable to the customers within Brookings, franchisee shall include in the Report an allocation of Operating Expenses, Revenue Requirements, and Actual Reported Revenues among the County and the Cities and the basis for the allocation. The proposed rate structure shall contain "residential" and "commercial" rates.**

**Except as to any expenses disputed by Brookings, and except as provided above, new rates, designed in accordance with the formulas set forth above during the period that the rates will be in effect, shall be adopted by Brookings pursuant to resolution and become effective on April 1 of the year in which these new rates are proposed by franchisee. Any Operating Expenses disputed by Brookings shall be excluded from the Revenue Requirement calculation and this dispute, or any other dispute under this section, shall be subject to the arbitration provisions herein. Between March 1 and April 1 of each year, Brookings shall hold any hearings necessary for consideration of the proposed rates and for action on a resolution adopting new rates. New rates, excluding any disputed Operating Expenses, shall be incorporated into this Ordinance, superseding the previous year's rate structure.**

**In the event franchisee, at any time during a calendar year, becomes liable to pay any new, increased, or reduced legislated costs (including taxes, surcharges, or fees); closure or post closure costs; or any new, increased or reduced disposal and/or longhaul transportation and disposal costs, due to new longhaul transportation and disposal contracts or allowed increases under the existing contracts, then all such increased or reduced costs and/or fees shall, by resolution of the**

**Brookings City Council, be included in the then-existing rate structure within 30 days after franchisee has notified Brookings of such costs and/or fees and provided Brookings with adequate documentation of the amount of these costs and/or fees. Franchisee shall include the annualized costs of all such costs and/or fees in the succeeding year's Report as an actual Operating Expense of franchisee.**

**The method for setting rates established herein shall remain in effect through March 31, 1995, and shall continue in effect thereafter until one year after franchisee or Brookings gives the other party written notice of cancellation of this method of establishing rates or until this franchise is terminated, whichever occurs first. Such notice shall be given no earlier than April 1, 1994. Upon receipt of such notice, the parties will negotiate a successor method and, failing agreement, will submit the question of a successor method of establishing rates to arbitration pursuant to this Agreement.**

**Section 3. Amendment to Section 3: Section 3 of Ordinance No. 86-0-402 is hereby amended by the addition of Subsection L as follows:**

**L. For the purposes of Section 11 this Franchise Agreement, the following terms, phrases, and their derivations, shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.**

**1. "Allowable Expenses" shall include all reasonable costs incurred by franchisee associated with the provision of solid waste collection, recycling, transfer and disposal services and the cost of complying with all applicable laws, regulations or orders as now or hereafter amended. Allowable Expenses shall include, but not be limited to, the following costs associated with solid waste collection, recycling, transfer and disposal services:**

**a. Labor costs, including supervisory labor, directly associated with solid waste collection, recycling,**

**and transfer services, including workers' compensation and benefits.**

**b. Administrative costs including, but not limited to, officer salaries, administrative staff, data processing, billing, and supplies associated with provision of franchised collection, recycling and transfer services and billing and collection of closure and post closure surcharges.**

**c. Equipment costs including depreciation, vehicle registration fees, motor fuel, oil, tires and repairs and maintenance.**

**d. Container costs including depreciation, repairs, maintenance, and replacement.**

**e. Interest costs such as interest charges on the purchase of equipment or facilities, or on loans for working capital, but not interest costs which are otherwise an unallowed expense under Section 3(L)2. of this Ordinance.**

**f. Equipment or facility rental or lease costs.**

**g. Long-haul transportation and disposal charges.**

**h. Closure and Post-Closure Costs for Wridge Creek Landfill.**

**i. Performance bonds and insurance in the amounts and coverages required by applicable ordinances, laws or regulations.**

**j. Utilities.**

**k. Training and worker safety.**

**l. Professional fees including legal fees and costs for financial reporting, accounting, and regulatory processes associated with or required by this franchise.**

**m. Franchise fees, Business License fees, or surcharges or taxes levied by state or local governments, but excluding income taxes.**

**n. Any expense incurred in the collection, processing, marketing, sale or disposition of recyclable materials that exceeds the revenues generated from the marketing and sale of the recyclable materials.**

**o. Transfer station construction and operation costs.**

**Allowable Expenses as defined above shall be reasonable if they are comparable with the costs incurred by a preponderance of similar solid waste collection companies that provide similar services, situated in similar rural areas on the West Coast of the United States, after adjustment for cost of living, and situated in similar regulatory environments.**

**2. "Unallowed Expenses" shall include but not be limited to the following:**

**a. Contributions;**

**b. Fines and penalties;**

**c. Affiliated party transaction costs to the extent they exceed the fair market rate for such goods or services;**

**d. Costs associated with future purchase of other companies including ESOP payments, goodwill, amortization of goodwill, premiums on key-person life**

**insurance policies.**

**e. Principal or interest payments on acquisitions of residential solid waste or recycling collection routes, or the purchase of equipment and facilities at a price, that would be construed to include goodwill or a premium in excess of fair market value at the time of acquisition;**

**f. State, federal and local income taxes; and**

**g. Accruals for future unknown regulatory changes.**

**Section 4. Addition of Section 22: Ordinance No. 86-0-402 is hereby amended by the addition of Section 22 to read as follows:**

**Section 22. LANDEILL CLOSURE - POST CLOSURE: Notwithstanding any other provision of this Ordinance, franchisee and Brookings agree:**

**A. Franchisee agrees that it will be responsible for completing the closure and post-closure of the Wridge Creek Landfill to the satisfaction of DEQ. Brookings agrees that franchisee shall be entitled to recover from franchise revenues under this Agreement all its actual costs incurred in accomplishing satisfactory closure and post-closure at Wridge Creek Landfill. However, franchisee shall not be entitled to recover any "profit" on those costs. The closure and post-closure costs shall be segregated from franchisee's other costs and are specifically excluded from Expenses "A".**

**B. Curry County is responsible for completing closure and post-closure of the Port Orford Landfill to the satisfaction of DEQ. Franchisee agrees to collect a surcharge for closure and post-closure of the Port Orford Landfill, in a manner and in an amount to be determined by Brookings, and to deposit those funds in a trust**

**account as directed by the County. Franchisee will have no other obligation with respect to the closure and post-closure of the Port Orford Landfill. Franchisee will not be entitled to recover any "profit" on those funds and they are specifically excluded from Expenses "A".**

**Section 5. EMERGENCY:** It is hereby determined that it is in the interest of the public welfare, peace and safety of the City of Brookings that this Ordinance be immediately adopted for purposes of adopting new rates, and therefore an emergency is declared to exist and this Ordinance shall be in full force and effect immediately upon its passage.

**First Reading:\_\_\_\_\_April 6, 1992**  
**Second Reading:\_\_\_\_\_April 6, 1992**  
**Passage:\_\_\_\_\_April 6, 1992**  
**Effective Date:\_\_\_\_\_April 6, 1992**

**Signed by me in authentication of its passage this 7th day of April, 1992.**

\_\_\_\_\_  
**Fred Hummel**  
**Mayor**

**Attest:**

**Beverly S. Shields**  
**City Recorder**