

2 AMENDMENT TO FRANCHISE AGREEMENT

3 BETWEEN

4 CITY OF RICHMOND

5 AND

6 RICHMOND SANITARY SERVICE, INC.

7  
8 This Amendment to the Franchise Agreement is entered into as  
9 of the 20<sup>th</sup> day of JANUARY 1997<sup>4</sup> by and between the  
10 CITY OF RICHMOND, a municipal corporation ("City") and RICHMOND  
11 SANITARY SERVICE, INC., a California corporation ("RSS, Inc.").

12 PREAMBLE

13 A. The City has certain obligations ("Obligations") with  
14 respect to the clean, safe and efficient management of Solid Wastes  
15 and the processing and diversion of Solid Wastes under the  
16 California Integrated Waste Management Act, as amended, and other  
17 relevant laws and regulations.

18 B. At present, the City has directed RSS, Inc. to dispose of  
19 Solid Wastes at the West Contra Costa Sanitary Landfill ("WCCSL")  
20 which is the closest, but which is expected to close within several  
21 years. To dispose of the Solid Wastes in an economical and  
22 efficient manner at a more distant landfill after the closure of  
23 WCCSL, it is necessary and appropriate to first process the Solid  
24 Wastes in a clean, safe and sanitary manner at a transfer station  
25 for subsequent disposal at such landfill.

26 C. City and RSS, Inc. desire to provide for the diversion of

1 Solid Wastes from landfills under the California Integrated Waste  
2 Management Act, as amended, and other relevant laws and regulations  
3 and to provide for the transfer and disposal of remaining Solid  
4 Wastes at a more distant landfill following closure of the WCCSL.

5 D. The West Contra Costa Integrated Waste Management  
6 Authority ("Authority") has been formed under the laws of the State  
7 of California to, among other things, provide for the  
8 implementation of an Integrated Resource Recovery Facility to be  
9 operated for the benefit of the Authority and the residents within  
10 the jurisdictional boundaries of the Authority, and pursuant to the  
11 Authority - County Contract, the residents within the area subject  
12 to said Contract.

13 E. The City is a signatory to the Joint Powers Agreement  
14 creating the Authority and the Second Amendment and Restatement of  
15 the Joint Exercise of Powers Agreement, and is thereby a member of  
16 the Authority and obligated to comply with the provisions of said  
17 Joint Powers Agreement.

18 Accordingly, the City has determined that in order (i) to  
19 provide for the clean, safe and efficient management of Solid  
20 Wastes, and (ii) to meet the Obligations, it is the best interest  
21 of the City to Enter into this Amendment

22 RSS Inc. and City desire to amend the Franchise Agreement.

23 THEREFORE, IN CONSIDERATION OF THE COVENANTS AND  
24 CONDITIONS CONTAINED HEREIN, THE CITY AND RSS INC. DO HEREBY AGREE  
25 AS FOLLOWS:  
26

## 1. DEFINITIONS

2 1.01 "Agreement" means the Franchise Agreement as amended by  
3 this Amendment.

4 1.02 "Amendment" means this Amendment.

5 1.03 "Authority" means the West Contra Costa Integrated Waste  
6 Management Authority, a joint exercise of powers authority  
7 established and existing pursuant to Government Code Section 6500  
8 et seq., or any successor entity and shall have the same meaning as  
9 defined in the Joint Power Agreement.

10 1.04 "Authority - County Contract" means that certain contract  
11 between the Authority and Contra Costa County dated May 25, 1993,  
12 as amended from time to time and shall have the same meaning as  
13 defined in the Joint Powers Agreement.

14 1.05 "Closing Date of the IRRF Financing" means the date of  
15 initial delivery of the IRRF Bonds to the original purchasers of  
16 the IRRF Bonds.

17 1.06 "Designated Facility" means a Solid Waste Management  
18 Facility or Facilities designated from time to time by Authority to  
19 receive some or all Directed Wastes and materials and shall have  
20 the same meaning as defined in the Joint Powers Agreement.

21 1.07 "Designated Rates" means (i) the rates as authorized by  
22 Authority from time to time to be paid for Directed Waste and  
23 Materials received at the Designated Facility or Facilities and/or  
24 (ii) any additional amounts determined by the Authority as  
25 necessary to provide for the planning and implementation activities  
26 of the Authority, to pay other costs and obligations of the

1 Authority, or to implement the Authority - County Contract to the  
2 extent such additional amounts are not included by the Authority  
3 in the rates authorized to be charged at the Designated Facility or  
4 Facilities and shall have the same meaning as defined in the Joint  
5 Powers Agreement.

6 1.08 "Directed Waste and Materials" means Solid Waste and  
7 Separated Materials, or portions or types of such waste or  
8 materials (including recyclables) collected pursuant to this  
9 Agreement and directed by the Authority to be delivered to the  
10 Designated Facility or Facilities and shall have the same meaning  
11 as defined in the Joint Powers Agreement.

12 1.09 "Franchise Agreement" means that certain agreement by and  
13 between City and RSS, Inc. dated September 6, 1991, as existing  
14 prior to this Amendment.

15 1.10 "In Lieu Surcharge" means a surcharge as determined from  
16 time to time by Authority in the event of shutdown or abandonment  
17 of an IRRF as this term is defined in the Joint Powers Agreement .

18 1.11 "Interim Recycling Center" means the existing facility  
19 generally located northwesterly of the intersection of an extension  
20 of Garden Tract Road and Parr Boulevard and established for the  
21 processing of source separated Solid Waste.

22 1.12 "IRRF" or "Integrated Resource Recovery Facility" means  
23 an integrated resource recovery facility, including land on which  
24 such facility is located, for receiving, processing, recycling and  
25 transportation or transfer of Acceptable Waste and Material, or the  
26 recovery of materials for diversion, or any combination thereof,

which facility is owned either wholly or in part by the Authority or by a private entity, but in all events is operated for the benefit of the Authority and the residents within the jurisdictional boundaries of the Authority, and within the area subject to said Authority - County Contract and shall have the same meaning as defined in the Joint Powers Agreement.

1.13 **"IRRF Bonds"** means the Authority-approved debt securities issued to finance the planning, design, construction and performance testing of an Integrated Resource Recovery Facility and additional indebtedness, as approved by the Authority, to finance the improvements or modifications to an Integrated Resource Recovery Facility.

1.14 **"Joint Powers Agreement"** means the joint exercise of powers agreement creating the Authority and that certain Second Amendment and Restatement of the Joint Powers Agreement by and among the Cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo, including any subsequent amendments thereto.

1.15 **"Solid Waste"** shall mean all materials subject to collection pursuant to the Agreement more particularly as set forth on page 6 of the Agreement.

1.16 **"Solid Waste Management Facility"** shall mean an Integrated Resource Recovery Facility, or transfer station or material recovery facility or landfill or combination thereof.

## **2. DIRECTION OF SOLID WASTE**

2.01 Notwithstanding any other provision of the Agreement, City has control and authority to direct RSS, Inc. to deliver

1 Solid Wastes, or portions or types of such Wastes, to the  
2 Designated Facility. The City hereby directs the RSS, Inc. to  
3 deliver all Directed Waste and Materials, including without  
4 limitation all Directed Waste and Materials collected by the RSS,  
5 Inc. hereunder to the Designated Facility or Facilities commencing  
6 upon receipt of notice from Authority.

7 2.02 RSS, Inc. agrees it shall deliver Directed Waste to the  
8 Designated Facility or Facilities as specified by the Authority  
9 upon City and RSS, Inc.'s receipt of direction from Authority, and  
10 said deliveries shall begin upon the date specified by Authority in  
11 its notification to City and RSS, Inc. and continue until City and  
12 RSS, Inc. receive notice from Authority to suspend delivery of  
13 Directed Waste to the Designated Facility.

14 2.03 Suspension of delivery of some or all Directed Wastes to  
15 the Designated Facility shall occur only upon receipt of notice  
16 from the Authority and shall be for no longer period than specified  
17 by Authority.

18 2.04 RSS, Inc. shall comply with all of the rules and  
19 regulations of the Designated Facility or Facilities, including  
20 without limitation, rules governing the types and characteristics  
21 of Solid Waste that may or may not be acceptable for delivery to  
22 the Designated Facility or Facilities, the manner of delivery of  
23 Solid Wastes, the payment of Designated Rates, and payment of any  
24 costs arising at the Designated Facility or Facilities due to  
25 failure of RSS, Inc. to comply with rules and regulations of the  
26 Designated Facility or Facilities.

2.05 Nothing in this Amendment shall affect the rights of City  
or RSS, Inc. with respect to the direction of Solid Waste until  
such Waste is directed by Authority as contemplated herein.  
Further, nothing in this Amendment shall be construed to affect the  
rights of the City or RSS, Inc. with respect to the direction of  
the waste stream in the event that the Authority at any time  
thereafter permanently discontinues direction of the Directed Waste  
to a Designated Facility or Facilities.

2.06 RSS, Inc. covenants and agrees that it will not purchase,  
dispose or recycle, offer to purchase, dispose or recycle or  
contract for the purchase, disposal or recycling of, directly or  
indirectly, any Solid Waste (or portions or types of such Solid  
Waste) which would otherwise be collected pursuant to the Agreement  
and delivered to the Designated Facility or Facilities and that it  
will not otherwise divert, or cause to be diverted or allow to be  
diverted, in any way, Solid Waste to any use, any other Solid Waste  
Management Facility or other party without the approval of the  
Authority.

### 3. DESIGNATED RATES

3.01 RSS, Inc. shall, without regard to the amount collected  
pursuant to Section 3.03 of this Amendment, pay over to the  
operator of the Designated Facility or Facilities, without  
reduction, limitation, offset, or adjustment of any kind, all  
amounts owing in accordance with Designated Rates for Directed  
Waste and Materials delivered to said Designated Facility or  
Facilities and said payments shall be made at the times and in the

1 manner specified by the Authority.

2 3.02 RSS, Inc. shall, without regard to the amount collected  
3 pursuant to Section 3.03 of this Amendment, pay over to Authority,  
4 without reduction, limitation, offset or adjustment of any kind,  
5 all amounts authorized by Authority in accordance with Designated  
6 Rates which are in addition to the rates authorized to be charged  
7 at the Designated Facility or Facilities and said payment shall be  
8 made at the times and in the manner specified by the Authority.

9 3.03 Notwithstanding any other provision of the Agreement, and  
10 in addition to all rates and charges otherwise allowed under the  
11 Agreement, RSS, Inc. shall collect from all residential and non-  
12 residential customers whose Solid Waste is delivered to the  
13 Designated Facility or Facilities the collection rate amounts  
14 specified by the Authority for such services and no more.

15 3.04 Collection of the amount authorized by Section 3.03 of  
16 this Amendment is hereby authorized to begin upon the date that  
17 RSS, Inc. commences delivery of Directed Wastes to the Designated  
18 Facility.

19 **4. IN LIEU SURCHARGE**

20 4.01 Notwithstanding any other provision of the Agreement, and  
21 in addition to all rates and charges otherwise allowed under the  
22 Agreement, RSS, Inc. shall collect from all residential and non-  
23 residential customers an In Lieu Surcharge when and if such In Lieu  
24 Surcharge is authorized by the Authority and such collection shall  
25 be in such amounts and at such times as specified by the Authority.

26 4.02 RSS, Inc. agrees to pay over to the Authority or another

1 party designated by Authority, without reduction, limitation,  
2 offset or adjustment of any kind, all amounts collected pursuant to  
3 Section 4.01 of this Amendment at the times and in the manner  
4 required by the Authority.

5 4.03 All amounts collected by RSS, Inc. pursuant to Section  
6 4.01 of this Amendment, including interest earnings on said  
7 amounts, shall be held in trust by RSS, Inc. for benefit of the  
8 Authority or other party designated by Authority.

9 4.04 All amounts collected by RSS, Inc. as an In Lieu  
10 Surcharge shall be deposited in a segregated account ("In Lieu  
11 Surcharge Account").

12 4.05 The date of collection of the amount authorized by  
13 Section 4.01 of this Amendment shall begin upon the date specified  
14 from time to time by Authority as the effective date of an In Lieu  
15 Surcharge and continue for the period specified in Authority's  
16 notification to City and RSS, Inc. of the Authority's authorization  
17 of an In Lieu Surcharge.

#### 18 5. SECURITY INTEREST

19 5.01 RSS, Inc. and City agree to take all such action as may  
20 be required to grant and perfect a security interest in the In Lieu  
21 Surcharge Account established pursuant to Section 4.04 of this  
22 Amendment, including interest earnings thereon, to the Authority or  
23 the Authority's assignee.

24 5.02 RSS, Inc. warrants and represents that it has not granted  
25 a security interest in, or otherwise encumbered, the In Lieu  
26 Surcharge Account or funds required to be deposited therein and

1 covenants not to grant any other security interest in said amounts.

2 5.03 It is understood and agreed that RSS, Inc. shall have no  
3 title or other interest in the In Lieu Surcharge Account except as  
4 trustee; that RSS, Inc. has no right to retain, disburse, use,  
5 apply or encumber funds required to be collected as an In Lieu  
6 Surcharge and is expressly prohibited from doing so except as  
7 disbursement of funds is expressly provided for in Section 4.02 of  
8 this Amendment; and that RSS, Inc. shall not commingle its own  
9 funds or other funds with the In Lieu Surcharge Account.

10 **6. AUTHORITY AS THIRD PARTY BENEFICIARY**

11 6.01 The provisions of this Amendment are expressly declared  
12 to be intended for the benefit of the Authority, in addition to  
13 City and RSS, Inc..

14 6.02 The Authority is an intended third party beneficiary of  
15 this Amendment and shall have the right to pursue all available  
16 legal and equitable remedies to enforce the provisions of this  
17 Amendment.

18 **7. SALVAGE RIGHTS**

19 All salvage rights granted to RSS, Inc. by the Franchise  
20 Agreement are hereby deleted from the Agreement during any period  
21 where the Authority directs City and RSS, Inc. to deliver Directed  
22 Waste to the Designated Facility or Facilities.

23 **8. INTERIM RECYCLING CENTER**

24 8.01 The parties acknowledge that a portion of the rates being  
25 collected under the Franchise Agreement for the establishment and  
26 operation of the Interim Recycling Center will be included in

1 Designated Rates beginning on the date specified by Authority for  
2 commencement of delivery of Directed Waste to the Designated  
3 Facility.

4 8.02 City and RSS, Inc. agree that Authority shall determine  
5 the amounts being collected under the Franchise Agreement for the  
6 establishment and operation of the Interim Recycling Center and  
7 that, upon commencement of delivery Directed Wastes to a Designated  
8 Facility, all said amounts will be a part of Designated Rates and  
9 shall not otherwise be collected under the Agreement.

10 **9. BOOKS AND RECORDS**

11 9.01 RSS, Inc. shall keep adequate books and records of the  
12 revenue from rates and fees charged pursuant to Article 3 and  
13 Article 4 hereof and the RSS, Inc.'s expenses incurred in  
14 accordance with Article 3 and Article 4 hereof. RSS, Inc. shall  
15 make available its records respecting such revenue and expenses  
16 during business hours upon reasonable notice.

17 9.02 RSS, Inc. shall make quarterly reports to the Authority  
18 of its revenue and expenses set forth in Section 9.01.

19 9.03 RSS, Inc. shall make quarterly reports to the Authority  
20 on the amount of Solid Waste collected by the Company hereunder and  
21 the disposition of said Solid Waste. Such reports shall be in such  
22 form and detail as may be required for the City and/or the  
23 Authority to accurately report compliance with Solid Waste  
24 diversion requirements.

25 9.04 RSS, Inc. shall either (a) keep adequate books and  
26 records showing disposition of all Solid Waste collected pursuant

1 to the Agreement and allow Authority to inspect same during normal  
2 business hours upon reasonable notice, or (b) implement Solid Waste  
3 allocation methods and procedures approved from time to time by the  
4 Authority. The RSS, Inc. shall cooperate with and assist the  
5 Authority in the Authority's development of Solid Waste allocation  
6 methods and procedures.

7 **10. MISCELLANEOUS PROVISIONS**

8 10.01 In furtherance of the representations, warranties and  
9 covenants contained in this Amendment, whenever and so often as  
10 requested by Authority or any assignee thereof, City and RSS, Inc.  
11 agree to promptly execute and deliver or cause to be delivered all  
12 such other and further assurances, documents or instruments and  
13 promptly do so or cause to be done all such other and further  
14 things as may be necessary or reasonably required in order to  
15 further and more fully vest in the Authority, or its assignee, all  
16 advantages, benefits, interest, powers, privileges and rights to  
17 be conferred upon Authority by this Amendment.

18 10.02 Both parties and their respective legal counsel have  
19 independently reviewed this Amendment and agree that any rule that  
20 ambiguities are to be construed against the drafting party shall  
21 not apply.

22 10.03 This written Amendment contains all of the  
23 representations and sets forth the complete agreement of the  
24 parties with respect to the subject matter hereof. Except as  
25 specified in this Amendment, any prior correspondence, drafts,  
26 memoranda, agreements, warranties or representations with respect

to the subject matter of this Amendment are superseded in total by  
this Amendment.

10.04 In the event of conflict between this Amendment and the  
other provisions of the Agreement, this Amendment shall control and  
if any term or provision of the Agreement or other agreement  
between the City and RSS, Inc. could be construed to in any way be  
in conflict with the provisions of this Amendment, the provisions  
of this Amendment shall control.

10.05 If for any reason, any Solid Waste that is subject to  
collection pursuant to the Agreement is held not to be subject to  
collection under the Agreement by the State or Federal Legislature,  
or a court, agency or administrative authority (other than City,  
Authority, or RSS, Inc.) with jurisdiction over the parties, the  
parties intend that the Agreement shall remain in effect with  
respect to any Solid Waste not so identified.

10.06 Nothing in this Amendment shall prevent the City from  
directing RSS, Inc. to deliver Solid Wastes to the West Contra  
Costa Sanitary Landfill prior to the Authority's direction to begin  
delivery of Directed Waste to the Designated Facility or  
Facilities.

10.07 Nothing in this Amendment is intended to alter the rights  
of City and RSS, Inc. with respect to collection of Solid Waste,  
rather, this Amendment is intended to address only those matters  
specifically set forth herein.

10.08 Contractor and City agree that City increase City's  
franchise fee in an amount sufficient to cover the City's costs

1 associated with funding the operation of the Authority until  
2 Designated Rates are set and collected in amounts sufficient to  
3 properly finance the Authority's operations and that such  
4 additional franchise fees may be placed in the collection rates-  
5 without limitation.

6 **11. NOTICES**

7 A copy of any notice required or permitted under the  
8 Agreement which pertains directly or indirectly with the subject  
9 matter of this Amendment shall be provided to Authority  
10 concurrently with the delivery of said notice to the other party  
11 and said notices shall be addressed to: West Contra Costa  
12 Integrated Waste Management Authority, One Alvarado Square, San  
13 Pablo, California 94806, Attention: Executive Director, Fax. No.  
14 (510) 236-1636, or other such address or Fax Number as the  
15 Authority may specify in writing to the parties.

16 **12. EFFECTIVE DATE**

17 This Amendment shall become effective upon the Closing  
18 Date of the IRRF Financing, provided that said Closing Date occurs  
19 before March 31, 1994. The provisions of Sections 2, 3 and 7 of  
20 this Amendment shall expire and cease to be of further force and  
21 effect at such time as the Authority ceases to have the right,  
22 whether by contract or otherwise, to require City to deliver Solid  
23 Waste to the Designated Facility or Facilities. Any expiration of  
24 such provision shall not affect any other provisions of the  
25 Agreement, which shall remain in full force and effect in  
26 accordance with their other applicable terms without giving further

effect to such expired provisions.

IN WITNESS WHEREOF, and in consideration of the mutual promises set forth above, the City and RSS Inc. have duly authorized execution of this Amendment and have executed this Amendment as of the date first hereinabove written.

"RSS INC."

Richmond Sanitary Service, Inc.

*for:* *Richard Granzella*  
RICHARD GRANZELLA, President  
*per:* *Pina Barbieri*  
PINA BARBIERI, Secretary

"CITY"

City of Richmond

*Rosemary M. Corbin*  
ROSEMARY M. CORBIN, Mayor

ATTEST:

*Eula M. Barnes*  
Eula Barnes, City Clerk

Approved as to form:  
Malcolm Hunter  
City Attorney

BY: *Malcolm Hunter*

