

1991

MEMORANDUM

OFFICE OF THE CITY MANAGER



October 13, 2005

To: ✓ Bill Lindsay, City Manager
Willie Haywood, Assistant Public Services Director
Jim Goins, Finance Director

From: Linda A. Harris, Project Manager I *LAH*

Re: **Franchise Agreement with Richmond Sanitary Service/ Republic Services Amendment of September 6, 1991**

Enclosed is the amendment of September 6, 1991 to the Franchise Agreement with Richmond Sanitary Service/ Republic Services. Please add this amendment to the packet sent to you on October 7, 2005.

The pages with pink tabs outline services to be provided to the City for neighborhood and city-wide collections and clean-ups.

I would strongly recommend chatting with Everett Jenkins, Assistant City Attorney, to learn more about the long history between the City and RSS/ Republic as he has long been Richmond's primary liaison in this relationship.

I would also suggest looking at the terms and conditions not only for garbage collection, but for use of the transfer station. I believe the terms and conditions will change for use of the transfer station (as of January 1, 2006?) which may increase costs to the City.

I hope there is room to negotiate (renegotiate?) fair terms for the City, given the long history of the relationship and how much RSS/ Republic stands to benefit from a long term franchise agreement.

Please let me know how else I may assist you with this project.

Enclosure

cc: Rochelle Monk, Project Manager I

FRANCHISE AGREEMENT BETWEEN
THE CITY OF RICHMOND AND RICHMOND SANITARY SERVICE, INC.

WITNESSETH:

For and in consideration of the covenants and conditions herein contained, the City of Richmond, a municipal corporation (the "City") hereby gives and grants to Richmond Sanitary Service, Inc., a California corporation ("RSS, Inc.") for a term of years beginning July 1, 1986, and ending June 30, 2011, the exclusive right and privilege to collect and deliver to a Solid Waste Management Facility all Solid Wastes in said City. This Agreement, made and entered into this sixth day of September, 1991, by and between the City and RSS, Inc. amends and supersedes the Franchise Agreement effective July 1, 1986.

RECEIVED
CITY ATTORNEY'S OFFICE
CITY OF RICHMOND
2005
SEP 11
10:45

R E C I T A L S

A. The City and Richmond Sanitary Service, a California general partnership (the "Partnership"), entered into an agreement dated August 25, 1989 regarding, among other things, closure of the West Contra Costa Sanitary Landfill (the "WCCSL"), disclosure of certain financial information, construction and operation of an Integrated Resource Recovery Facility in West Contra Costa County and the regulation of the Partnership's collection rates by the City (the "Phase One Agreement").

B. The Phase One Agreement allows the Partnership to reorganize its business, provided that the reorganization is completed with City approval, does not jeopardize the performance of the Phase One Agreement or the goals stated in that agreement, and is expressly subject to rescission and reversion to the

status quo as of June 1, 1989 if the City does not approve the reorganization.

C. The City, the Partnership, RSS, Inc. and the Affiliates entered into an Agreement dated November 13, 1990, regarding, among other things, a rate regulation model, financial disclosures, closure of the WCCSL and related topics (the "Phase Two Agreement"). The City's rights and obligations regarding RSS, Inc. and the Affiliates, as that term is defined in this Franchise Agreement, and the rights and liabilities of RSS, Inc. and the Affiliates regarding the City, with respect to closure and post-closure of the WCCSL, are governed by the Phase Two Agreement.

D. The City hereby approves the establishment of RSS, Inc. and enters into this Franchise Agreement with RSS, Inc., reserving its approval of the reorganization of the Partnership subject to Section 5.4 of the Phase II Agreement.

ARTICLE I

DEFINITIONS

1.1 Defined Terms. When used in this Franchise Agreement the following terms have the following meanings:

1.1.1 "Affiliate" means any of the entities, other than the City and Richmond Sanitary Service, Inc., identified on the signature pages to the Phase Two Agreement; including, namely, Richmond Sanitary Service, a General Partnership; Bay Leasing Company, Inc.; Bay Environmental Management, Inc.; Nove Investments; West Contra Costa Sanitary Landfill, Inc.; West County Landfill, Inc.; West Contra Costa Resource Recovery, Inc.;

West County Resource Recovery, Inc.; and Berkeley Sanitary Service, Inc.

1.1.2 "Allowable Expense" has the meaning set forth in Section VI of the Barakat & Chamberlin Report, attached hereto as Exhibit 1, unless and until the City and RSS, Inc. agree to adopt some other Rate Regulation Methodology. Should the City and RSS, Inc. adopt such another Rate Regulation Methodology, "Allowable Expense" shall have the meaning accorded it in the new methodology.

1.1.3 "Allowable Revenue" has the meaning set forth in Section VI of the Barakat & Chamberlin Report unless and until the City and RSS, Inc. agree to adopt some other Rate Regulation Methodology. Should the City and RSS, Inc. adopt such another Rate Regulation methodology, "Allowable Revenue" shall have the meaning accorded it in the new methodology.

1.1.4 "California Integrated Waste Management Act" means Sections 40000 et seq. of the California Public Resources Code and all rules and regulations adopted under any of those sections, as such sections, rules and regulations may be amended from time to time in the future.

1.1.5 "CERCLA" means the federal Comprehensive Environmental Response, Compensation and Liability Act and the rules and regulations adopted under that legislation by the EPA, as that legislation and those rules and regulations have been and in the future may be amended from time to time.

1.1.6 "City" means the City of Richmond.

1.1.7 "Claim" has the meaning set forth in Section 5.1 of the Phase Two Agreement.

1.1.8 "Class I Site" means that portion of the West Contra Costa Sanitary Landfill that is subject to any requirements of a closure/post closure permit under Chapter 6.5 of Division 20 of the California Health and Safety Code and/or the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921, et seq. and, for purposes of this Agreement, the Plume.

1.1.9 "Class II/III Site" means that portion of the West Contra Costa Sanitary Landfill that is subject to a solid waste facility permit pursuant to California Government Code Section 40000 et seq.

1.1.10 "Closure Surcharge" means the surcharge established for closure, post-closure and additional regulatory costs for the Class II/III Site, as approved and as may be amended from time to time, by the West Contra Costa County Solid Waste Management Authority and any successor, and subsequently adopted by the City.

1.1.11 "Franchise Agreement" means this franchise agreement between RSS, Inc. and the City.

1.1.12 "IRRF" means an Integrated Resource Recovery Facility, meeting the requirements of a "material recovery facility" under section 50000(a)(4) of the California Public Resources Code, which is a solid waste transfer, processing and materials recovery station, designed and operated to, among other things, reduce, recycle, compost, recover materials from, and transfer municipal solid waste pursuant to California Public Resources Code Sections 40000 et seq. or successor provisions.

1.1.13 "Landfill" means the WCCSL and encompasses the Class I and Class II/III sites collectively.

1.1.14 "Partnership" means Richmond Sanitary Service, a California general partnership.

1.1.15 "Phase One Agreement" has the meaning set forth in Paragraph A of the Recitals to this Franchise Agreement.

1.1.16 "Phase Two Agreement" means the agreement among the City of Richmond, Richmond Sanitary Service, RSS, Inc. and the Affiliates, dated November 13, 1990.

1.1.17 "Plume" means the plume of allegedly contaminated leachate emanating in whole or in part from the Class I Site, as it may extend under the Class II/III Site or elsewhere and as it may migrate, expand or otherwise change from time to time in the future.

1.1.18 "Prospective Funding Mechanism" means a mechanism for funding costs of closure or post-closure of the Class II/III Site out of surcharges which may be assessed for solid waste disposal at the Landfill, or at an IRRF or other solid waste disposal facility.

1.1.19 "Rate Regulation Methodology" means the methodology agreed upon by the City and RSS, Inc. for calculating, setting and adjusting collection rates. Unless and until the City and RSS, Inc. agree to adopt some other methodology, Rate Regulation Methodology shall mean the methodology set forth in the report prepared by Barakat & Chamberlin, Inc. dated October 30, 1990, regarding financial disclosure requirements, including requirements for audited financial information and documentation of intercompany transactions, and rate regulation for solid waste collection

operations. A copy of the Barakat & Chamberlin Report is attached to this Franchise Agreement as Exhibit 1.

1.1.20 "RSS, Inc." means Richmond Sanitary Service, Incorporated, a California corporation.

1.1.21 "Solid Waste" has the meaning set forth in Section 40191 of the California Public Resources Code as of the date of execution of this Franchise Agreement, subject to the provisions of Section 7.1.

1.1.22 "Solid Waste Management Facility," as used herein, means an IRRF, transfer station or material recovery facility approved by the City; the WCCSL until its closure; and, if in any interim between the time of closure of the WCCSL and the opening of an IRRF serving West Contra Costa County it becomes necessary to deposit Solid Waste at a landfill facility, such other landfill facility that is approved by the City.

1.1.23 "WCCSL" means the West Contra Costa Sanitary Landfill.

1.1.24 "WCCSL, Inc." means West Contra Costa Sanitary Landfill, Inc., a California corporation.

1.2 Article, Section and Exhibit References. References to "Articles," "Sections" and "Exhibits" shall be to the Articles, Sections and Exhibits, respectively, of or to this Franchise Agreement, as the case may be, unless otherwise specifically provided.

1.3 Singular and Plurals. Any of the terms defined in Section 1.1 or elsewhere in this Franchise Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference.

ARTICLE II

AMENDMENT OF EXISTING FRANCHISE AGREEMENT

2.1 This Franchise Agreement is an amendment of the existing Franchise Agreement between City and the Partnership dated July 1, 1986. To the extent that the provisions of this Franchise Agreement conflict with the provisions of the July 1, 1986 Franchise Agreement, the provisions of this Franchise Agreement shall control and the July 1, 1986 Franchise Agreement shall be deemed to be amended accordingly.

ARTICLE III

RATE REGULATION

3.1 Rate Regulation In General. The City shall regulate rates for commercial and residential solid waste collection. Rate regulation includes three steps: financial disclosure, a rate regulation methodology and the setting of rates.

3.2 Financial Disclosure Regarding Collection Operations. RSS, Inc. has provided the City with audited financial statements for its collection operations for the calendar year 1990, which RSS, Inc. warrants to include any and all franchise operations within West Contra Costa County of predecessor entities for the year 1990. RSS, Inc. shall provide the City with audited financial statements for its collection operations prior to each June 1 annually for each previous calendar year. RSS, Inc. shall comply with the aforesaid requirements and all further and additional requirements of the Rate Regulation Methodology.

3.3 Financial Disclosure Regarding Landfill Operations. RSS, Inc. has obtained and provided to the City a detailed account of the costs incurred by WCCSL, Inc. or any predecessor

entity for the calendar year 1990 in the operation of the WCCSL. RSS, Inc. has further disclosed the total of all waste received at the WCCSL in the calendar year 1990 from the franchise collection operations within West Contra Costa County of the Partnership or any Affiliate and the revenues for that tonnage figure.

3.4 Rate Regulation Methodology. The method and operation of rate regulation shall be fixed in accordance with the information requirements, rate calculation formulae and definitions proposed in the Rate Regulation Methodology. The City shall select an operating ratio for collection operations after reviewing the information required to be provided by RSS, Inc. The operating ratio shall be no less than 86% and no more than 90%.

3.5 Rate Setting. Upon receipt of the required information from RSS, Inc. for 1990, final residential and commercial collection rates for 1990 shall be set based on the Rate Regulation Methodology. The rate set for 1990 may be higher or lower than the collection rate provisionally allowed pending disclosure of the required information. If the 1990 rate is set at a rate lower than the provisional rate, RSS, Inc. shall, through a subsequent rate decrease, refund to ratepayers amounts collected for the calendar year 1990 in excess of the approved 1990 rate. If the 1990 rate is set at a rate higher than the provisional rate, the City shall approve an appropriate adjustment in residential or commercial rates to recover and maintain the selected operating ratio, effective as of January 1, 1990. There shall be no adjustment for rates charged prior to

1990. The City shall also set residential and commercial collection rates for 1991 and subsequent years in accordance with the Rate Regulation Methodology. The rates established pursuant to the terms of this Paragraph 3.5 shall apply in any territory annexed by the City.

3.6 Disposal Rate. The collection rate shall include provision for a reasonable disposal cost to be paid for disposal at the Landfill until such time as Solid Wastes collected pursuant to this Franchise Agreement are disposed of at another facility, in which event the Rate Regulation Methodology shall govern the inclusion of disposal costs in the rate. The disposal cost at the Landfill is \$20 per ton for commercial and residential waste. The disposal cost shall be increased to reflect any tipping fee surcharges imposed by statute or by any federal, state or local agency, and charged to RSS, Inc., after the date of the Phase Two Agreement. Nothing in this Section 3.6 shall limit the operation of the closure, post-closure and additional regulatory cost surcharges now in place with regard to the Landfill.

3.7 Timing of Rate Setting. The City, in its sole discretion, may elect to perform rate reviews and rate settings every year or every other year, provided, however, that RSS, Inc. may request rate review and rate setting at such other times as business conditions may require.

3.8 Regulation of Industrial Rates. After the Class II/III Site no longer receives solid waste, the City may regulate industrial solid waste collection rates. Any such rate regulation shall take into consideration:

1) The interest of the City and RSS, Inc. in RSS, Inc. operating within the parameters of profitability set forth in the Barakat & Chamberlin Report; and

2) The interest of RSS, Inc. in maintaining its industrial collection customer base in a competitive business environment.

If the City imposes industrial rate regulation, the City shall consider whether to establish a mandatory payment for service requirement for industrial rates by which industrial rate payers would be obligated to pay to RSS, Inc. the regulated cost of service even in the event that the industrial rate payer performed collection and disposal services for itself.

3.9 Closure and Post-Closure of the WCCSL. The Phase Two Agreement governs the obligations of RSS, Inc. and the Affiliates to close the WCCSL. Nothing in this Franchise Agreement contracts or expands the rights and duties of the City, RSS, Inc. and the Affiliates, as that term is defined in this Franchise Agreement, under the Phase Two Agreement. Sections 3.9 through 3.13, inclusive, of this Franchise Agreement shall be construed to be consistent with Sections 4.1 through 4.3, inclusive, of the Phase Two Agreement. Nothing in Article III of this Franchise Agreement imposes any obligations upon RSS, Inc. and/or the Affiliates, nor upon the City, beyond the obligations contained in the Phase Two Agreement.

3.10 Inclusion of Closure Surcharge in Rate. The City has heretofore authorized and allowed the assessment and collection of the Closure Surcharge, as developed by the West Contra Costa Solid Waste Management Authority and adopted by City ordinance,

to pay a portion of costs for the closure and post-closure of the Class II/III Site. The City shall continue to authorize assessment and collection of this Closure Surcharge for the life of the Landfill. The City's allocable share (based on the agreed percentage of solid waste generated by the City's ratepayers and disposed of at the Class II/III Site) of unrecovered, but recoverable, response costs addressed in Section 3.11 of this Franchise Agreement may be included in any additional closure/post-closure surcharge to the extent provided in that Section.

3.11 Response Cost Recovery - Class II/III. If all or a portion of the Class II/III Site is required to be closed in compliance with a standard or standards applicable to Class I disposal facilities and not applicable to Class II/III disposal facilities, then the obligations of RSS, Inc. and the Affiliates for closure and post closure of the Class I site shall extend to closure and post closure of the entire Landfill; provided, however, that RSS, Inc. and the Affiliates shall not be obligated to pay for any costs associated with the Class II/III Site that are not recoverable response costs under CERCLA or the California Hazardous Substances Account Act, as determined by a court of law, and such costs may be added to the Closure Surcharge pursuant to Section 3.10 of this Franchise Agreement. As to those response costs associated with the Class II/III Site that are recoverable under CERCLA (or have not been determined by a court of law to be nonrecoverable under that Act) but are not in fact recovered by RSS, Inc. or any Affiliate after they have exercised their best efforts to recover them, the City shall,

subject to certain considerations, permit RSS, Inc. and the Affiliates to recoup such costs or such portion thereof as may be equitable by imposing a temporary surcharge on commercial rates (and industrial rates if such rates are regulated by the City). The City's determination of the portion of such unrecovered response costs that equitably may be recovered through a temporary surcharge shall take into account (1) the extent to which actions of RSS, Inc. or of any of the Affiliates caused the conditions for which such costs are incurred, provided that the mere act of operating the Class II/III Site shall not be deemed to be a cause of such conditions for this purpose; and (2) the ability of RSS, Inc. and the Affiliates to fund such costs prospectively by increasing fees to non-regulated users of the Landfill before it ceases to receive wastes. Such surcharge shall be limited to the recoupment of that portion of the costs allocable to the City based on the percentage of solid waste generated by the City's commercial and residential ratepayers (and industrial ratepayers, if industrial rates are regulated) and disposed of at the Class II/III Site.

3.12 Surcharge Design and Imposition. If RSS, Inc. or any Affiliate operates an IRRF subject to regulation by the West Contra Costa Solid Waste Management Authority or any successor, the Closure Surcharge and any additional closure/post-closure surcharge allowed pursuant to Sections 3.9 and 3.10 of this Franchise Agreement may be added to the tipping fee paid at that facility.

3.13 Recovery of Response Costs - Repayment. If, after a surcharge on commercial rates has been approved for the purpose

of allowing RSS, Inc. and the Affiliates to recoup recoverable but unrecovered response costs, RSS, Inc. or any Affiliate does recover additional response costs from any third parties that are attributable to the clean-up of all or a portion of the Class II/III Site (as opposed to the Class I Site or the Plume including its extension to the Class II/III Site or elsewhere), those response costs net of costs of recovery, shall be credited against funds to be raised by the Closure Surcharge and an adjustment in the surcharge shall be made so that the rate payers are credited with all sums actually collected from generators and apportioned to the remediation of the Class II/III site.

3.14 Additional Expenses Included in Rate. In addition to the Closure Surcharge, the reasonable costs paid by RSS, Inc. or any Affiliate for defending any Claim, as that term is defined in the Phase Two Agreement, shall be an allowable cost under the rate model, together with reasonable interest on that amount until such time as RSS, Inc. or the Affiliate is reimbursed through the collection of rates. Such costs shall not be subject to the operating ratio. In addition, the costs of Appraisal of encumbered assets, which are to be borne by RSS, Inc. and the Affiliates pursuant to Section 6.3 of the Phase Two Agreement, shall be included as an allowable expense under the Rate Regulation Methodology.

ARTICLE IV

COMPLIANCE WITH LAW

4.1 Compliance with Law. RSS, Inc. shall fully and faithfully comply with all local, state and federal laws, ordinances and regulations, as they may be amended, applicable to

its performance under this Agreement; including, but not limited to, laws, ordinances and regulations regarding licensing, employment and purchasing practices, wages, hours, conditions of employment, and the collection and disposal of solid wastes. RSS, Inc. shall also comply with all applicable local, state, and federal environmental laws, ordinances and regulations, as they may be amended; including, but not limited to, local, state and federal laws, ordinances and regulations relating to collection and disposal of solid and hazardous wastes; and laws, ordinances and regulations relating to contamination of air, water, and soil. RSS, Inc.'s expenses in complying as aforesaid shall be recoverable as allowable expenses under the Rate Regulation Methodology. It is expressly understood that RSS, Inc. is not responsible for the compliance of the WCCSL with laws, ordinances, or regulations, and that RSS, Inc.'s expenses of compliance under this Section do not include compliance costs imposed upon WCCSL, Inc., subject to the provisions of Section 3.6 hereof. RSS, Inc. shall furnish the City with copies of all reports and correspondence sent to and received from all regulatory agencies having jurisdiction regarding the WCCSL, and all correspondence and reports sent to and received from the California Integrated Waste Management Board with regard to RSS, Inc., within five working days of their generation or receipt.

4.2 Nondiscrimination - RSS, Inc. RSS, Inc. agrees to observe the provisions of Section 2.28.030 of the Municipal Code of the City of Richmond, obligating every contractor under a contract with the City for public work or for goods or for services to refrain from discriminatory employment or

subcontracting practices on the basis of race, color, sex, religious creed, national origin or ancestry of any employee, any applicant for employment, or any potential subcontractor. RSS, Inc. further agrees to make a good faith effort as required by law to comply with the "Affirmative Action Requirements," set forth in Exhibit 2 to this Franchise Agreement, with regard to all of its operations within the City of Richmond.

4.3 Maintenance of Equipment and Facilities. RSS, Inc. shall at all times during the term of this Franchise Agreement provide and maintain at its own cost and expense a sanitary collection service sufficient in capacity to systematically and in a sanitary manner collect and deliver to a Solid Waste Management Facility all Solid Wastes in the City as set forth in its ordinances, laws and regulations. RSS, Inc. shall keep and maintain its solid waste collection facilities, premises, and the approach areas to those premises in a sanitary condition.

4.4 Inspection. RSS, Inc.'s performance and place of business are subject to monitoring, inspection and review by authorized representatives of the City. RSS, Inc.'s records pertaining to this Agreement are subject to inspection, review, and audit by authorized, qualified representatives of the City upon reasonable advance notice from the City.

4.5 Records. RSS, Inc. shall keep, and make available for inspection and copying by authorized, qualified representatives of the City, RSS, Inc.'s regular business records and such additional records pertaining to this Agreement as may be reasonably required by the City. RSS, Inc. shall retain all documents pertaining to this Agreement for a period of ten years

after their creation (or for any further period that is required by law) and until all Federal or State audits are complete and exceptions resolved for this Agreement's funding period. Upon request, RSS, Inc. shall make these records available to authorized, qualified representatives of the City.

4.6 Conformance with Federal and State Regulations. Should Federal or State regulations touching upon the subject of this Agreement be adopted or revised during the term hereof, this Agreement shall be amended as may be necessary to assure conformance with such Federal or State requirements.

ARTICLE V

RSS, INC.'s OBLIGATIONS - SERVICE

5.1 Service to Residential and Commercial Customers. RSS, Inc. shall make regular, weekly collections of Solid Waste from each residential and commercial customer on the same day of each week. In the event of failure to make the required collection from any place of residence or other place on the regular collection day, RSS, Inc. shall make such collection within one business day after notice to do so from the customer or the City Manager. RSS, Inc. shall maintain an office or other facility through which the company may be contacted. The office or other facility shall be equipped with sufficient telephones and have a responsible person in charge from 9:00 a.m. to 5:00 p.m. on regular collection days.

5.2 Collection from City Parks. RSS, Inc. shall, without charge therefor, provide debris boxes for the deposit of Solid Waste collected in City parks by City employees. RSS, Inc. shall, without charge therefor, make regular collections of waste

generated within the parks and deposited in these debris boxes as may be appropriate to their capacity, and shall in any event make such collections no less frequently than once weekly. RSS, Inc.'s expenses in performing the services described in this Paragraph 5.2 shall be allowable expenses under the Rate Regulation Methodology.

5.3 Free Service for City. RSS, Inc. shall, without charge therefor, collect Solid Waste and dispose of the same from the City Hall and all City-owned buildings and libraries. RSS, Inc. shall collect non-hazardous Solid Waste and dispose of the same from fifty (50) containers provided by the City and located on MacDonald Avenue in the City. Upon prior approval of RSS, Inc., which approval shall not be unreasonably withheld, the City may relocate an agreed number of the containers on MacDonald Avenue to other locations for collection and disposal by RSS, Inc. The containers provided by the City shall comply with the provisions of the Municipal Code of the City of Richmond. RSS, Inc. may charge all public agencies other than City, including caterers who supply food at the Memorial Auditorium and other places, for services rendered at the same rates on the same basis as charged for similar services rendered by or to private firms or individuals. RSS, Inc.'s expenses in performing services for the City described in this Paragraph 5.3 shall be recoverable as allowable expenses under the Rate Regulation Methodology.

5.4 City-wide Collection. In addition to its regular collections, RSS, Inc. shall provide two annual City-wide collections. One collection shall be made in the Spring and the other collection shall be made in the Fall. Said collections

shall be made each year throughout the term of this Franchise Agreement in accordance with practices and procedures established by RSS, Inc. RSS, Inc.'s expenses in performing the City-wide collections shall be recoverable as allowable expenses under the Rate Regulation Methodology.

5.5 Sufficient Equipment for Task. RSS, Inc. agrees to furnish all machinery and equipment necessary to properly perform this Franchise Agreement and to maintain and keep its equipment in such condition, particularly with reference to paint and appearance, as required by City during the entire term of this Franchise Agreement. All trucks used for such collection and disposal shall be equipped with a suitable cover or otherwise meet the requirements of the Vehicle Code of the State of California. All trucks shall be clearly marked with the name and office phone number of RSS, Inc.

5.6 Use of WCCSL by City. The City shall have the privilege, without charge therefor, of depositing at the WCCSL non-hazardous Solid Wastes that require no special handling which are (i) produced by regular municipal operations and collected by municipal employees on municipally-owned property, and/or (ii) collected by municipal employees from vacant or abandoned property within the City. The provisions of this paragraph shall be effective until the commencement of operations of an IRRF or until the West Contra Sanitary Landfill is no longer operated by an Affiliate, whichever shall first occur. RSS, Inc.'s expenses incurred to WCCSL, Inc. hereunder shall be recoverable as allowable expenses under the Rate Regulation Methodology.

5.7 California Integrated Waste Management Act.

Notwithstanding any contrary provision in this, or any previous, Agreement, the City shall have the right to direct RSS, Inc. to manage collected Solid Waste for the purposes of meeting the source reduction, recycling and composting requirements of the California Integrated Waste Management Act, and any other applicable federal, state or local laws regarding Solid Waste collection, recycling and disposal. If RSS, Inc. fails or refuses to manage the collected Solid Waste as directed at a reasonable price, based on prevailing prices for similar services as reasonably determined by the City, the City shall have the right to direct RSS, Inc. to deliver the collected Solid Waste to another waste management facility of the City's choice. RSS, Inc. agrees to indemnify and hold the City harmless from and against any and all liability to the State of California for the City's non-compliance with the requirements of the California Integrated Waste Management Act, as set forth in Public Resources Code Section 41780, that arises as a result of the failure of RSS, Inc. to properly carry out the reasonable directives of the City to RSS, Inc. regarding collection and disposition of Solid Waste; provided, however, that RSS, Inc. shall not be obligated to carry out any such directive (and shall not indemnify nor hold the City harmless from any resulting liability) if the City fails to agree to include as an allowable expense of RSS, Inc. any reasonable costs associated with carrying out such directive.

ARTICLE VI

DEFAULT

6.1 Default by RSS, Inc. In the event of default in the performance of any of the terms or conditions hereof which involves a material breach of RSS, Inc.'s obligations hereunder, the City Manager shall give written notice to RSS, Inc. of such default or breach by RSS, Inc., specifying the nature of the default or breach and setting forth the performance requested by the City (hereinafter referred to as the "Notice of Default"). Within five business days of receipt of a Notice of Default, RSS, Inc. may communicate to the City a request for any information that it reasonably requires to evaluate and/or respond to the Notice of Default (hereinafter referred to as "Request for Specification"). The City shall respond promptly to a Request for Specification. Both parties shall use their good faith best efforts to communicate all necessary information to determine the appropriate response to the default or breach. If the default or breach is not cured within 30 days of RSS, Inc.'s receipt of a Notice of Default or, if applicable, within 30 days after the City has responded to a Request for Specification (or, if the default or breach cannot reasonably be cured within 30 days, if the City is not satisfied within 30 days that RSS, Inc. has taken appropriate steps toward curing the default or breach), the City Council, at a regular or special session of which RSS, Inc. has been given five days advance notice to attend, may terminate this agreement. If the breach or default is not cured within 30 days of receipt of a Notice of Default or, if applicable, the City's response to a Request for Specification, the City may, at its

option and at the expense of RSS, Inc., take or cause another to take whatever actions may be necessary to cure the breach or default. The foregoing notwithstanding, if the breach or default is one which interferes with the health or well-being of the City's residents, and/or disrupts the normal operations of the City or its residents, the City may, within five business days of issuance of a Notice of Default, at its option and at the expense of RSS, Inc., take or cause another to take whatever actions may be necessary to cure the breach or default.

Nothing in this Section 6.1 shall prejudice any substantive rights of the City to terminate this Franchise Agreement and/or to seek remedies under general principles of contract law.

6.2 City's Acquisition of Equipment. If RSS, Inc. does not cure (or commence to the City's satisfaction good faith best efforts to cure) the default or breach within 30 days after having received a Notice of Default or, where applicable, the City's response to a Request for Specification, the City may declare RSS, Inc. to be in default as provided in Section 6.1 and take over such equipment then owned by RSS, Inc. as may be convenient and necessary to enable the City to provide for the collection of solid waste within the City. If the City does take over equipment owned or leased by RSS, Inc. for the collection of solid waste, the City shall pay to RSS, Inc. or the owner thereof the reasonable value of all collection equipment that the City appropriates. If the parties hereto are unable to agree upon such reasonable value, then the parties shall, by mutual agreement, select an independent appraiser. The appraisal of the

independent appraiser shall be binding upon the parties hereto. The cost of appraisal shall be borne by RSS, Inc.

6.3 Force Majeure. Notwithstanding the above, RSS, Inc. shall not be in breach or default under the terms of this Franchise Agreement if such breach or default is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of God, acts of a public enemy, epidemics, quarantine restrictions, or any other causes beyond the control or not the fault of RSS, Inc., and such breach or default could not have been prevented by reasonable foresight on the part of RSS, Inc.

ARTICLE VII

EXCLUSIVE FRANCHISE

7.1 Exclusive Franchise. RSS, Inc. is hereby granted the privilege to collect within the City, and from the City subject to the provisions of Article V, Solid Waste and such other materials for which there is a net cost to the customer of collection and disposal, and to deliver such Solid Waste or other materials to a Solid Waste Management Facility. The parties understand that this privilege does not include the right to collect abandoned vehicles within the City. The privilege hereby granted to RSS, Inc., including the privilege to make and retain certain charges for the performance of said tasks, shall be deemed to be and is an exclusive privilege so long as RSS, Inc. shall, during the life of this agreement, fully and faithfully carry out and perform all of the conditions and covenants of this Franchise Agreement on its part to be kept and performed.

ARTICLE VIII

FRANCHISE FEE

8.1 Franchise Fee. Beginning January 1, 1990, RSS, Inc. shall pay to the City for said privilege hereby granted a percentage of the gross annual revenues derived from its collection operations under this Franchise Agreement, such percentage to be set by City ordinance.

8.1.1 Calculation of Monthly Franchise Payment. Total gross revenues for the current year will be estimated as the sum of total gross revenues received in, or receivable from, the previous franchise year ("year 1") plus the product of total gross revenues multiplied by the percentage increase in customer rates, if any, in the current year ("year 2") over the previous year; that is

$$\left(\frac{\text{gross revenue}}{\text{year 1}} \right) + \left[\frac{(\text{customer rate year 2} - \text{customer rate year 1})}{\text{customer rate year 1}} * \left(\frac{\text{gross revenue}}{\text{year 1}} \right) \right]$$

The annual franchise fee shall be payable in twelve payments to be paid on or before the last day of every month. The monthly franchise payment shall be in an amount equal to one twelfth (1/12) of statutory percentage of the estimated annual gross revenues; that is

$$\frac{\text{revenue percentage} * \left\{ \left(\frac{\text{gross revenue}}{\text{year 1}} \right) + \left[\frac{(\text{customer rate year 2} - \text{customer rate year 1})}{\text{customer rate year 1}} * \left(\frac{\text{gross revenue}}{\text{year 1}} \right) \right] \right\}}{12}$$

8.1.2 Adjustment of Franchise Payments. RSS, Inc. shall disclose to the City quarterly its gross revenues for the preceding quarter. If RSS, Inc's reported gross revenues for the

preceding quarter were less than the estimated gross revenues for that quarter, the City shall refund to RSS, Inc. the difference between the franchise fees paid to the City for that quarter and the statutory percentage of RSS, Inc.'s actual gross revenues for the quarter. If RSS, Inc.'s reported gross revenues for the preceding quarter exceeded the estimated gross revenues for that quarter, then RSS, Inc. shall pay over to the City the difference between the statutory percentage of its actual gross quarterly revenues and the amount of franchise fees paid to the City for that quarter.

8.2 Additional Franchise Fee. Payment of an additional franchise fee shall be governed by the following provisions:

8.2.1 Collection of Additional Fee. Beginning July 1, 1986, until December 31, 1992, in addition to the amounts provided for in Section 8.1 hereof, RSS, Inc. shall exercise its best efforts to collect and shall, to the extent actually collected, pay to City as an additional franchise fee the sum of seven dollars (\$7.00) per ton for all materials deposited at the WCCSL that are not collected by RSS, Inc. or by Mill Valley Refuse Service, Bay Cities Refuse, Inc., East Bay Sanitary Service, and Crockett Garbage Company, provided said materials are residential solid wastes collected from households under contract to a municipality or other governmental entity. RSS, Inc. represents and warrants that it has been authorized by WCCSL, Inc. to collect said additional franchise fee.

8.2.2 Certain Uses of Additional Fee. The City agrees that:

(a) One seventh (1/7th) of the sum received as an additional franchise fee shall be used to promote the construction of the North Richmond Parkway;

(b) One seventh (1/7th) of the sum received as an additional franchise fee shall be paid to the West Contra Costa Solid Waste Management Authority (WCCSWMA) or its successor for solid waste management planning and projects;

(c) One-seventh (1/7) of the sum received as an additional franchise fee shall be paid to RSS, Inc. to use (or to pay over to an Affiliate to use) in a composting and recycling operation as mutually agreed upon by RSS, Inc. and WCCSWMA or its successor; and

(d) Four-sevenths (4/7) of the sum received as an additional franchise fee shall be paid to RSS, Inc. to use (or to pay to an Affiliate to use) to offset total closure and post-closure costs of West Contra Costa Sanitary Landfill, to the benefit of all customers of the landfill excluding self-haul customers.

(e) Nothing contained herein shall limit the obligations of the parties hereto to the West Contra Costa Solid Waste Management Authority or to one another arising in connection therewith except upon the approval and consent of all parties thereto.

8.2.3 Adjustment of Additional Fee. Beginning January 1, 1987, the additional franchise fee provided for in paragraph 8.2.1. above shall increase in the same proportion as the "tipping fee" at the WCCSL, less any surcharge portion of the "tipping fee," is increased during the year.

8.2.4 Calculation of Additional Fee; Dispute. The calculation of additional franchise fee shall be determined by using the scales at the WCCSL. If the scales are at any time inoperable, the weight shall be estimated by the operator of the WCCSL. Upon reasonable notice to WCCSL, Inc., the City shall have the right to audit the weight records of the operator of the WCCSL to determine for itself the additional franchise fee provided for herein. Any dispute between the City and RSS, Inc. concerning the amount of any additional franchise fee shall be resolved by binding arbitration in accordance with Section 15.1 hereof.

8.2.5 Termination of Certain Contractual Obligations of WCCSL, Inc. Upon termination of the present agreements between the operator of the WCCSL and Mill Valley Garbage Company, Bay Cities Refuse, Inc., East Bay Sanitary Service, Bayview Refuse Service, Inc., and Crockett Garbage Company, said agreements will not be renewed or modified without the prior consent of the City, except as may be required by law. Any new contract that WCCSL, Inc. proposes to enter into that is subject to the provisions of this Paragraph shall be submitted to the City Manager for his or her approval, which approval shall not be unreasonably withheld.

8.2.6 Liability for Tonnage Charge. If the tonnage charge payable to the City as provided herein shall prove to be void or illegal, RSS, Inc. shall have no liability for payment of said charge to the City. "Solid waste" as used in this Section 8.2 does not include sewage sludge.

ARTICLE IX

DISPOSAL CAPACITY

9.1 Discussions Regarding WCCSL Capacity. RSS, Inc. represents and warrants that it shall provide the City, until the opening of an IRRF, with copies of WCCSL, Inc.'s reports to the County of Contra Costa and the Bay Area Regional Water Quality Control Board of tonnages of materials deposited at its disposal premises and of any material change in the operation of the disposal premises. RSS, Inc. shall also furnish the City with copies of all reports and correspondence to or from WCCSL, Inc. that are sent to and received from all regulatory agencies having jurisdiction within five (5) working days of their generation or receipt. RSS, Inc. and City representatives shall meet and confer at such times and at such frequencies as may be reasonably necessary to further the interests of all parties in preserving and/or expanding the useful life and capacity of the WCCSL. RSS, Inc. warrants and represents that WCCSL, Inc. shall cooperate in all such activities as are described in this Article IX.

ARTICLE X

RSS, INC.'s RIGHT TO SALVAGE

10.1 RSS, Inc.'s Right to Salvage. RSS, Inc. shall have, and is hereby given, the exclusive right to all salvage and recycling from Solid Waste and all other waste collected under this Franchise Agreement until, and only until, the City directs RSS, Inc. to deliver all collected solid waste to an IRRF or to any other person or facility that the City may designate. After the City has so directed RSS, Inc., RSS, Inc. shall have no right to salvage or recycling. Proceeds from the sale and costs of

disposition of recycled materials shall be treated as an allowable revenue in accordance with the Rate Regulation Methodology.

ARTICLE XI

INDEMNIFICATION

11.1 RSS, Inc.'s Indemnification of the City. RSS, Inc. shall and does hereby indemnify and save the City, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising during the term of this agreement out of any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of RSS, Inc., its subcontractors, agents and employees under this agreement or on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered therein unless arising out of the sole negligence or willful misconduct of the City. Approval of the insurance coverage does not relieve RSS, Inc. or subcontractors of liability under this Section 11.1. This indemnity provision, and the indemnities provided for in Sections 5.7 and 6.1 of this Franchise Agreement, are the obligations solely of RSS, Inc. to the City, and do not constitute

indemnities or obligations of the Affiliates. This indemnification provision does not limit the indemnification obligation of RSS, Inc. and the Affiliates except as set forth in Section 11.2 of this Franchise Agreement.

11.2 Limitation of Liability of RSS, Inc. In accordance with and subject to Section 5.4 of the Phase II Agreement, the City shall, upon application from RSS, Inc. within six months of the date of this Agreement, consider an agreement to limit the liability of RSS, Inc. for closure and post-closure costs to an amount not to exceed the net worth of RSS, Inc.

ARTICLE XII

INSURANCE

12.1 Worker Compensation Insurance. RSS, Inc., at its own cost and expense, shall carry and maintain full Worker Compensation Insurance and Employers' Liability with limits not less than One Million Dollars (\$1,000,000.00) with an insurance carrier satisfactory to the City. The policy shall provide that no cancellation shall become effective or occur until at least thirty (30) days (ten (10) days for non-payment of premium) after receipt of such notice by the City. RSS, Inc. shall notify the City within 10 days of its knowledge of any material change in coverage. In the event RSS, Inc. is self-insured, it shall furnish a Certificate of Permission to Self-Insure signed by the Department of Industrial Relations Administration of Self Insurance in Sacramento, California.

12.2 Liability Insurance. RSS, Inc. at its own cost and expense shall maintain liability and property damage insurance for the period covered by this Franchise Agreement in the amount

of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit coverage. Such coverage shall include, but shall not be limited to, protection against claims arising from: bodily and personal injury, including death resulting therefrom; damage to property resulting from activities contemplated under this Agreement; use of owned and non-owned automobiles; products; and completed operations. If available, the City, its officers and employees, shall be named as an additional insured, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance carried by the City will be called upon to contribute to a loss suffered by RSS, Inc. hereunder. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that notice must be given to the City at least thirty (30) days (ten (10) days for non-payment of premium) prior to cancellation. RSS, Inc. shall notify the City within 10 days of its knowledge of any material change in coverage. The policy shall cover personal injuries as well as bodily injuries.

12.3 Coverage Verification. A coverage verification shall be completed and signed by RSS, Inc.'s insurance representative, and returned to the City within 45 days after the effective date of this Franchise Agreement.

12.4 Non-renewal or Cancellation. Upon notification of receipt by the City of a notice of cancellation, material change in coverage, or expiration, RSS, Inc. shall file with the City a certified copy of a new or renewal policy and certificates for such policies, satisfactory to the City Manager and City Attorney or, in lieu thereof, such other evidence of RSS, Inc.'s financial

ability to respond to damages that is satisfactory to the City Manager and City Attorney.

12.5 Failure to Comply. If at any time during the term of this Franchise Agreement, or any extension hereof RSS, Inc. fails to comply with the provisions of this Article XII, the City Manager shall give written notice to RSS, Inc. of such default or breach, specifying the nature of the default or the breach. If the default or breach is not cured within 30 days after such notice is given, the City Council, at a regular or special session at which RSS, Inc. is invited to attend, may terminate this Franchise Agreement.

ARTICLE XIII

OTHER LOCAL AGENCIES

13.1 Financial Disclosures to Other Local Agencies. Notwithstanding the provisions of Paragraphs 9 and 10 of this Agreement, if RSS, Inc. and/or the Affiliates provide greater or earlier financial disclosure of any kind to any other public agency, its agents, or consultants, other than in the normal course of doing business (e.g. tax payments), RSS, Inc. shall simultaneously provide such information to the City.

ARTICLE XIV

REPRESENTATIONS AND WARRANTIES

14.1 RSS, Inc.'s Warranties to City. RSS, Inc. makes the following representations and warranties to the City.

14.1.1 Organization. RSS, Inc. is a duly organized and validly existing corporation and is in good standing under the laws of the State of California. RSS, Inc. is a corporation engaged solely in the business of collecting and hauling solid

waste, and the assets of RSS, Inc. are solely devoted to the collection and hauling of solid waste. RSS, Inc. does not own or control an equity interest in any other corporation or entity.

14.1.2 Corporate Authority. RSS, Inc. has full corporate power and authority to enter into and perform this Franchise Agreement.

14.1.3 Due Authorization. This Franchise Agreement has been duly authorized and approved by all requisite action on behalf of the board of directors and shareholders of RSS, Inc. in accordance with its charter documents and applicable law.

14.1.4 Due Execution and Delivery; Enforceability. RSS, Inc. has duly executed and delivered this Franchise Agreement. This Franchise Agreement constitutes the legal, valid and binding agreement of RSS, Inc. and is enforceable against RSS, Inc. in accordance with its terms.

14.1.5 No Conflict. Neither the execution and delivery of this Franchise Agreement nor the performance of this Franchise Agreement by RSS, Inc. will conflict with, result in the breach of any of the terms or conditions of, constitute a default under, or permit any party to accelerate any rights under, any charter document or any agreement or other instrument to which RSS, Inc. is a party or by which any of its assets or properties is bound.

14.2 The City's Representations to RSS, Inc. The City makes the following representations and warranties to RSS, Inc.

14.2.1 Organization. The City is a duly organized and validly existing municipal corporation.

14.2.2 Due Authorization. This Franchise Agreement has been duly authorized and approved by all requisite action on behalf of the City Council of the City in accordance with its charter and applicable law.

14.2.3 Due Execution and Delivery; Enforceability. The City has duly executed and delivered this Franchise Agreement. This Franchise Agreement constitutes the legal, valid and binding agreement of the City and is enforceable against the City in accordance with its terms.

14.2.4 Municipal Authority. The City has the power and authority to enter into and perform this Franchise Agreement.

14.2.5 No Conflict. Neither the execution and delivery of this Franchise Agreement nor the performance of this Franchise Agreement by the City will conflict with, result in the breach of any of the terms or conditions of, constitute a default under or permit any party to accelerate any rights under any charter document or any agreement or other instrument to which the City is a party or by which any of its properties is bound.

ARTICLE XV

MISCELLANEOUS

15.1 Dispute Resolution. In the event of a dispute between the City and RSS, Inc. concerning the meaning, requirements, or performance of this Franchise Agreement the parties shall continue performance of their respective obligations under this Franchise Agreement, and shall attempt to resolve such dispute in a cooperative manner without resort to arbitration.

15.1.1 Call for Arbitration of Matters not Involving Termination, Cancellation, Revocation or Rescission. If the

parties are unable to resolve a dispute arising under this Agreement in a cooperative manner, either party may call for binding arbitration so long as neither party seeks termination, rescission, revocation, cancellation or other permanent end or material change to the contractual relationship between the City and RSS, Inc. created hereby. The party calling for arbitration shall serve notice in writing upon the other party setting forth in detail the question or questions to be arbitrated and stating affirmatively that the party making such demand does not thereby and will not in the arbitration process seek rescission, cancellation, termination or other permanent end to this Franchise Agreement. The party calling for arbitration shall, as part of its notice, propose a neutral arbitrator who shall have no financial or other interest in either the City or RSS, Inc. The other party shall, within ten (10) days of receipt of such notice, either agree to the proposed arbitrator or reject the proposed arbitrator. If the proposed arbitrator is rejected, the party calling for arbitration shall petition for appointment of an arbitrator pursuant to Section 1281.6 of the California Code of Civil Procedure.

15.1.2 Arbitration Proceedings. Arbitration shall be conducted in Contra Costa County, California in accordance with Section 1280, et seq, of the California Code of Civil Procedure. The decision of the arbitrator in the matter shall be final and binding on the parties, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. No part of the record of any such arbitration and no decision reached or judgment entered in any such arbitration

shall be admissible in any proceeding to terminate, cancel, rescind or otherwise permanently end this Franchise Agreement. Any action to cancel, terminate, revoke, rescind, end, or otherwise materially change this Franchise Agreement shall be brought in the Superior Court of California, County of Contra Costa and such action is expressly not precluded by Sections 15.1.1 and 15.1.2 hereof.

15.1.3 Fees and Costs. The prevailing party in the arbitration proceedings shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrator or the court for good cause determines otherwise.

15.2 Construction with Other Agreements. This Franchise Agreement is the sole and only Franchise Agreement between the City and RSS, Inc. To the extent that this Franchise Agreement is not consistent with the Phase One Agreement and the Phase Two Agreement, this Franchise Agreement shall govern the relationship between RSS, Inc. and the City, except with regard to RSS, Inc.'s obligations respecting closure and post-closure of the WCCSL and indemnification for claims related thereto. RSS, Inc.'s obligations respecting closure and post-closure of the WCCSL and indemnification for claims related thereto shall be governed by the Phase Two Agreement, subject to the provisions of Section 11.2 of this Franchise Agreement. The relationship between the City and WCCSL, Inc. with regard to certain solid waste disposal issues shall be governed by the Disposal Phase Two Agreement and the Phase One Agreement shall otherwise govern the

relationship between the City and the Affiliates as those terms are defined in this Franchise Agreement.

15.3 Amendment or Rescission. This Franchise Agreement shall not be amended or rescinded except by a writing duly executed by the City and RSS, Inc.

15.4 Governing Law. This Franchise Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Any state court action relating to this Franchise Agreement shall be instituted and prosecuted in the courts of Contra Costa County, State of California.

15.5 Subcontract and Assignment. This Franchise Agreement binds the heirs, successors, assigns and representatives of RSS, Inc. RSS, Inc. shall not enter into subcontracts for any of the work contemplated under this Franchise Agreement except that RSS, Inc. may enter into subcontracts with related entities subject to the Rate Regulation Methodology and without relieving RSS, Inc. of its obligations hereunder, and RSS, Inc. shall not assign this Franchise Agreement, nor any portion hereof or monies due or to become due, without the prior written consent of the City Council or its designee, subject to any required State or Federal approval.

15.6 Independent Contractor Status. This Franchise Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

15.7 Copyrights and Rights in Data. RSS, Inc. shall not publish or transfer any materials produced or resulting from

activities supported by this Franchise Agreement without the express written consent of the City Manager. If any material is subject to copyright, the City reserves the right to copyright such, and RSS, Inc. agrees not to copyright such material without the prior written consent of the City Council or its designee. If the material is copyrighted, the City reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so.

15.8 Headings. The section headings used in this Franchise Agreement are intended principally for convenience and shall not, by themselves, determine the rights and obligations of the parties to this Franchise Agreement.

15.9 Severability. If any provision of this Franchise Agreement is to any extent invalid or unenforceable, it shall be adjusted, rather than voided, if possible, in order best to achieve the intent of the parties and, in all events, all other provisions of this Franchise Agreement shall remain in full force and effect.

15.10 Waiver. Waiver of any term or condition contained in this Franchise Agreement by any party to this Franchise Agreement shall be in writing and shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or a waiver of any other term or condition contained in this Franchise Agreement.

15.11 Notices. Any notice required or permitted under this Franchise Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered personally, 24 hours after transmission by telecopy, or three days after the date

of mailing, if mailed postage prepaid by certified first class mail,
return receipt requested, addressed as follows:

If to the City at: City of Richmond
2600 Barrett Avenue
Post Office Box 4046
Richmond, California 94804
Attn: Malcolm Hunter, Esq.
City Attorney
Telephone: 415-620-6509
Telecopy: 415-620-6518

If to RSS, Inc.
or any Affiliate: Richmond Sanitary Service
3260 Blume Drive, Suite 210
Richmond, California 94806
Attn: Dennis Varni,
Chief Financial Officer
Telephone: 415-262-1640
Telecopy: 415-223-1591

or to such other address (or to such other person's attention or
with a copy to such other person) as either party may specify in a
notice given in accordance with this Section. Any notice delivered
to RSS, Inc. shall be deemed to be delivered to each of the
Affiliates.

IN WITNESS WHEREOF, the City has caused these presents to be signed and its corporate seal affixed by its Mayor and Clerk thereunto duly authorized, and RSS, Inc. has caused these presents to be signed on its behalf by its President and Secretary, being two of its officers, thereunto duly authorized by the unanimous vote of its Board of Directors, all on the day and year first above written.

Attest:

CITY OF RICHMOND,
a municipal corporation

By Chas. M. Barnes

By [Signature]
Mayor

Approved as to form:

By [Signature]

RICHMOND SANITARY SERVICE, INC.
a California corporation

By [Signature]
President

By [Signature]
Acting - Secretary

50 Broad Avenue, Suite 100
Exeter, NH 03822
Tel: 603-730-1300
Fax: 603-730-1321

BARAKAT & CHAMBERLIN, INC.

EXHIBIT 1

Exeter
August 1990
Exeter

**SOLID WASTE COLLECTION
RATE APPLICATION AND REVIEW PROCEDURAL GUIDE**

Submitted to:
CITY OF RICHMOND

Submitted by:
Gary S. Fiske, Senior Consultant
Cindy E. Kline, Senior Consultant
BARAKAT & CHAMBERLIN, INC.

October 30, 1990

AFFIRMATIVE ACTION REQUIREMENTSA. Policy Statement

1. It is the policy of the City of Richmond to provide equal employment opportunity in all aspects of permanent employment by business enterprises; to assure there is no discrimination by contractors or franchisees against any person on the basis of race, color, religion, national origin, ancestry, sex, age, disability or marital status; and to maximize employment opportunities for minorities, women, Richmond residents and the disabled.

2. The City further states that it has a compelling interest in seeking diversity; in redressing the historical employment discrimination against minorities, women and disabled persons; and in promoting equal opportunity through affirmative action to increase the number of minorities, women, Richmond residents and disabled persons employed in business enterprises.

B. Goals

1. The ultimate long-range goal is to achieve an employment level of minorities and females equal to their distribution in the West Contra Costa County population at all occupational levels and to achieve an employment level of the disabled equal to their actual ability to participate in the labor force.

2. For purposes of this Franchise Agreement, the immediate goals for the Franchisee are:

a. Franchisee shall endeavor to maintain a workforce which reflects proportionately the current racial ethnic profile of the West Contra Costa County population, according to the latest United States census.

b. Franchisee shall endeavor to make every effort to attract and give opportunity to women and shall hire women at least at any federal or state mandated level.

c. Franchisee shall endeavor to hire and employ from among bonafide residents of the City of Richmond, at least fifty percent (50%) of that percentage of its workforce equal to that proportion of its residential collection activities performed in the City of Richmond, comparing the percentage of households units served in the City of Richmond with the sum total of

household units serviced by RSS, Inc., in West Contra Costa County (the Richmond Proportion).

d. If Franchisee's affirmative action plan shows an expected or existing minority, female or Richmond resident employment rate which is less than those set forth above, Franchisee shall adjust its hiring practices to increase the percentage of minority, female or Richmond resident employees and shall maintain the adjusted hiring practice until such time as Franchisee has met the overall goals set forth above.

e. Franchisee shall also endeavor to hire and employ disabled persons.

3. The above stated goals are not intended to be fixed quotas or mandated hiring procedures.

4. The above stated goals may be modified by the City of Richmond's Affirmative Action Compliance Officer in the following situations:

a. Where Franchisee can demonstrate that in a specific occupational classification there are an insufficient number of minorities, women or Richmond residents in the labor force possessing the requisite skills or training and that such persons cannot be trained to fill such positions in a reasonable period of time. In such cases the goals for minority and female employment shall be 125 percent of civilian labor force participation rate for minorities or females in that classification for the SMSA and the goal proportionate to the Richmond Proportion for Richmond residents shall be 125 percent of the civilian labor force rate for the City of Richmond (See Appendix A to this Exhibit 2).

b. Where Franchisee has (proportionate to the Richmond Proportion) less than five (5) employees in any one occupational category.

5. Positions held by the family members (including the children, sisters, brothers, nieces, nephews, aunts, uncles and first cousins) of persons holding an ownership interest in RSS, Inc., shall be exempt from the provisions of these Affirmative Action Requirements and shall be excluded from employment goal and workforce profile considerations.

c. Affirmative Action Requirements

1. Franchisee shall be responsible for making a good faith effort to achieve the employment goals outlined in Subsection B above. Franchisee shall also be responsible

for preventing or eliminating employment discrimination in their business based on race, color, religion, national origin, ancestry, sex, age, disability or marital status.

2. Within 30 days of the execution of this Franchise Agreement, Franchisee shall submit a workforce profile using the Employment Data Report (Appendix B to this Exhibit 2). The profile shall be based upon Franchisee's current workforce.

3. Within 30 days of the execution of this Franchise Agreement, Franchisee shall develop, adopt and implement a written Affirmative Action Plan which outlines the Franchisee's employment goals and describes how the Franchisee will meet the goals and satisfactorily comply with all the requirements and obligations of this section. The employer's written plan shall include all of the "good faith efforts" listed under Paragraph 5 below, as well as any additional steps the employer intends to use to meet the employment goals.

4. Within 30 days of execution of this Franchise Agreement, Franchisee shall appoint an Affirmative Action Officer to be responsible for the Franchisee's affirmative action program effort and to represent the Franchisee in all matters relating to equal employment opportunity and affirmative action.

5. Franchisee shall endeavor to make the following "good faith efforts" to meet or exceed affirmative action goals:

a. Franchisee shall make every effort to communicate available employment opportunity to minorities, women, Richmond residents and disable persons, and shall notify relevant Richmond area organizations, groups, media, the One-Stop Center and the Richmond Private Industry Council of such opportunities.

b. Franchisee shall communicate its affirmative action policy to all employees in each business enterprise.

c. Franchisee shall solicit assistance of the Richmond Private Industry Council and the City's One-Stop Center to aid in the recruitment and training of minorities, women and Richmond residents and shall participate in applicable programs where appropriate to meet its goals.

d. Franchisee shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, disability or marital

status, and shall post a statement to this effect in conspicuous places available to employees and applicants for employment.

e. Franchisee shall ensure that its employee selection procedures do not have a discriminatory impact and shall validate all personnel specifications, selection requirements and tests in accordance with Federal Uniform Guidelines on Employee Selection Procedures, a reference copy of which is available in the Richmond Human Relations Office.

f. Franchisee shall regularly evaluate and consider all minority, female, Richmond resident and disabled employees for promotional opportunities. Such employees shall be encouraged to seek promotional opportunities or encouraged to attain the skills, training or qualifications necessary to qualify for higher level positions.

g. Franchisee shall maintain a file on the names and addresses of each minority worker, Richmond resident, and female worker referred for employment consideration. A separate file shall be maintained for each of the categories: Minority persons, Richmond residents, and women. In cases where the same person belongs in two or more of these categories, the name and address of the person shall be listed in each file to which he/she belongs. The file shall indicate what action was taken with respect to each such referred worker and, if the worker was not employed, the reasons therefore. Where such person was rejected as "not qualified", the specific qualifications lacking shall be noted.

h. Franchisee shall continually monitor all personnel activities to ensure that the affirmative action requirements described herein are being carried out.

6. Achievement of the minority, female and Richmond resident employment goals set forth above shall be measured on the basis of the employer's combined goal attainment across all occupational categories. If Franchisee expects to be unable to achieve or does not achieve seventy percent (70%) of the goal for any two employment goals, Franchisee shall undertake two additional good faith efforts:

a. Refer the Richmond Proportion of job openings to the City of Richmond or agencies designated by the City of Richmond and give qualified applicants referred by the City or its agencies first opportunity for employment as to the Richmond Proportion.

b. Develop and implement a training program to qualify minorities, women and Richmond residents for employment with the firm in conjunction with the Richmond Private Industry Council, and other educational and vocational training institutions in the area. In lieu of such training program, Franchisee may make a voluntary contribution to the City Employment Training Fund for each employee for which there is or may be a shortfall in meeting the goal. A shortfall is based on the difference between the goal and actual performance by the employer.

7. Franchisee shall satisfy the following reporting requirements:

a. Franchisee shall submit to the City of Richmond Affirmative Action Compliance Officer on a semi-annual basis an Employment Data Report (Appendix B) listing all persons employed during the period and an Employment Data Report listing all new hires during the period.

b. Franchisee shall document fully all the specific affirmative action steps undertaken as "good faith efforts" to meet or exceed employment goals and shall make these documents available to the City of Richmond Affirmative Action Compliance Officer upon request.

8. Franchisee shall satisfy the following monitoring and compliance requirements:

a. If Franchisee's workforce meets and maintains each of the goals stated above, then Franchisee shall be considered to have met the requirements of this section and shall not be required to carry out any further affirmative action measures, except as necessary to maintain the goals achieved. Employment Data Reports need only be submitted annually to the Affirmative Action Compliance Officer once compliance is achieved.

b. Where a particular goal has not been met, Franchisee shall be required to document with specificity the reasons why any minority, Richmond resident, woman or disabled applicant was not hired. Where a rejection is based on lack of qualifications, the particular qualifications lacking must be specified.

c. If the Franchisee's workforce fails to meet the affirmative action goals, but the Franchisee can demonstrate to the satisfaction of the City that it has made a comprehensive "good faith effort" as defined above, the Franchisee shall not be found to be in non-compliance under this section.

d. If Franchisee consistently fails to meet the goals set forth above, and if the City determines that Franchisee has not made a "good faith effort" to achieve compliance with the provisions of these Affirmative Action Requirements, then Franchisee shall be deemed to be in non-compliance with the terms of the Franchise Agreement.

9. Any expense incurred hereunder by the Franchisee shall be an Allowable Expense under the Rate Regulation Methodology.

PERMANENT EMPLOYMENT GOALS
AND
SMSA CIVILIAN LABOR FORCE PARTICIPATION

	<u>Goals*</u>		<u>SMSA Civilian Labor Force Participation</u>	
	<u>Minority</u>	<u>Female</u>	<u>Minority</u>	<u>Female</u>
1. Managers and Officials	35%	45%	19.5%	36.2%
2. Professionals	35%	51.9%	19.9%	45.0%
3. Technicians	35%	50%	28.1%	40.1%
4. Sales Workers	35%	51.9%	21.1%	45.6%
5. Office & Clerical	42%	51.9%	33.7%	75.3%
6. Craft Workers (Skilled)	35%	12%	27.8%	9.7%
7. Operatives (Semi-skilled)	52.4%	34%	43.9%	27.3%
8. Laborers (Unskilled)	52.4%	23%	44.5%	18.1%
9. Service Workers	52.4%	51.9%	43.2%	48.1%

* Goals -- 1.25 X SMSA Civilian Labor Force Participation as determined by the 1980 U.S. Census with a minimum minority goal of 35% and maximum minority and female goals of parity with the minority and female distribution in the West Contra Costa County population (52.4% and 51.9%, respectively).

Employment Data Report

City of Richmond-Human Relations Office

SECTION A. Type of Report

- Check One: () I. Projected work force estimated as of _____, 19__.
- () II. Quarterly report as of _____, 19__.
- () III. New hires for the () year _____, 19__ to _____19__.
- () quarter
- () IV. Annual report as of _____, 19__.

SECTION B. Company Identification

1. Establishment for which this report is filed					Office Use Only
a. Name of establishment					a.
Address (Number and street)	City or Town	County	State	Zip/code	b.
b. Employer Identification No.		-			
2. Parent Company					
a. Name of parent company (owns or controls establishment in item 1)					c.
Name of receiving office					
Address (Number and street)	City or Town	County	State	Zip/code	d.
b. Employer Identification No.		-			

Section C.

- () Yes () No 1. Does the entire company have at least 50 employees in the payroll period for which you are reporting?
-
- () Yes () No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 50 or more?
-

Certified correct:

Signed _____ Date _____

Title _____

APPENDIX B-2

Employment on this project--Report all fulltime, permanent or temporary employees, including apprentices and on-the-job trainees. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered zeros.

Project: _____ Company name: _____

JOB CATEGORY	NUMBER OF EMPLOYEES											RICHMOND RESIDENTS	
	OVERALL TOTALS (sum of Columns B thru K)	MALE					FEMALE						
		A	B White (not Hispanic)	C Black (not Hispanic)	D Hispanic	E Asian or Pacific Island	F American Indian or Alaskan	G White (not Hispanic)	H Black (not Hispanic)	I Hispanic	J Asian or Pacific Island		K American Indian or Alaskan
Officials & Managers													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craft Workers (specify)													
Operatives (semi-skilled)													
Laborers (unskilled)													
Service Workers													
TOTALS													L

