

03-02-01  
Richmond

**AGREEMENT**

THIS AGREEMENT, made and entered into this 15<sup>th</sup> day of May, 2001, by and between the CITY OF PINOLE, a municipal corporation in Contra Costa County, California, ("City,") and RICHMOND SANITARY SERVICE, a California Corporation ("RSS, Inc.");

**RECITALS:**

The City and RSS, Inc. entered into a Franchise Agreement dated August 18, 1986 (the "Franchise Agreement"), amended January 20, 1994 (the "First Amendment") and March 20, 2000 (the "Second Amendment").

By the Second Amendment, the City and RSS, Inc. expressed their desire and intent to amend the existing Franchise Agreement, including the First Amendment and the Second Amendment and to enter into a revised Franchise Agreement containing terms and provisions meeting current industry standards and better meeting the needs of the City's rate payers and the goals and requirements of the California Integrated Waste Management Act of 1989 (AB 939) California Public Resources Code Sec. 4000, et seq.).

This Franchise Agreement hereby replaces the 1986 Franchise Agreement, the First Amendment, and the Second Amendment in their entirety, and said agreements shall be of no further force or effect.

In consideration of the mutual benefits contained herein, the parties hereto agree as follows:

City hereby grants to RSS, Inc. the exclusive right and privilege to collect and dispose of all solid waste in said City from the date hereinabove written through June 30, 2025. As used herein, "solid waste" means putrescible and non-putrescible solid and semi-solid material. The term "solid waste" includes garbage; refuse; trash; rubbish; kitchen or table food wastes, animal or vegetable wastes; tree, shrub or bush trimmings; newspapers or magazines; ashes; paper or cardboard; tin or aluminum cans; yard clippings; wood; glass; bedding; crockery; plastics or rubber by-products; litter; animal excrement; vegetable or animal sewage; industrial wastes; demolition and construction

wastes; recyclable materials; green waste; and discarded home and industrial appliances.

## **ARTICLE I**

### **SERVICES TO BE PERFORMED BY RSS, INC.**

**I.1. Rescission** The existing Franchise Agreement, First Amendment and Second Amendment between City and RSS, Inc. shall be deemed rescinded as of the date hereinabove written.

**I.2. Services** RSS, Inc. shall collect and dispose of all solid waste in said City in accordance with and at the rates fixed as provided by ordinances, codes and resolutions of said City, and by amendments thereto or by any other ordinances and codes of said City, and such rates shall be subject to change, from time to time, by mutual consent of the parties pursuant to applicable amendments to said ordinance or ordinances based on business conditions in general, including the cost of equipment, labor and materials, and rates which may, from time to time, be established for similar services by other municipalities, particularly neighboring cities and municipalities.

**I.3. Compliance with Federal, State and Local Laws** RSS, Inc. shall fully and faithfully comply with the provisions of Chapter 8.08, titled "solid Waste," of the Pinole Municipal Code, and all applicable local, state and federal laws, ordinances, resolutions and regulations relating to the collection and disposal of solid waste, and RSS, Inc. shall at all times during the term of this agreement provide and maintain at its own cost and expense a sanitary collection service and disposal system sufficient in capacity to systematically and in a sanitary manner collect and dispose of all solid waste from said City as set forth in such codes, ordinances, laws, resolutions and regulations. RSS, Inc. shall keep and maintain its solid waste disposal premises in a sanitary condition.

**I.4. Collections of Solid Waste** RSS, Inc. shall make regular collections of solid waste on the same day of each week and 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 24 hours after notice to do so from the City Manager.

**1.5 Disposal of Solid Wastes** Parties agree that the methods for disposal of solid wastes, including (but not by way of limitation) resource recovery, recycling, composting, or waste to energy are developing technologies that are bound to change during the term of this franchise. In the event the City determines that it is in the best public interest of City that a different method should be used by RSS, Inc. for the disposal and/or use of the solid waste described herein, such different method for disposal and/or use shall be undertaken or implemented by RSS, Inc., subject to the condition that RSS, Inc. shall be reimbursed by a reasonable rate adjustment to offset any increased expenditure imposed upon RSS, Inc.

**1.6. On Call Clean-Ups** In addition to its regular collections, RSS, Inc. shall provide two on-call clean ups per year, one in the first half of the year and one in the second half of the year, to each residential customer, at no additional cost to the customer. An on-call cleanup shall be the collection by RSS, Inc. of up to one cubic yard of non-hazardous waste. RSS, Inc. and the City shall, from time to time, jointly establish rules regulating on-call clean-ups.

**1.7. Solid Waste Disposal Premises** The solid waste disposal premises operated by RSS, Inc. may be used by the residents, businesses, and industrial plants of the City, at such times and on such days as are established from time to time by RSS, Inc.

**1.8. Green Waste Collection Program** In accordance with the Franchise Agreement and the City's applicable ordinances, effective April 1, 2000, RSS, Inc. shall implement its Green Waste Collection program as heretofore approved by the West Contra Costa Integrated Waste Management Authority by which RSS, Inc. shall provide each residential unit with a green waste cart and collect such cart at curbside every other week.

Notwithstanding the above, RSS, Inc. shall not be in breach or default under the terms of this Agreement in the event that such breach or default is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of God, acts of the public enemy, epidemics, quarantine restrictions, or any other causes beyond the control or not the fault of RSS, Inc.

**I.9. Privilege** The privilege hereby granted to RSS, Inc. to make said collection and disposal within said City and to make and retain certain charges for the use of its solid waste disposal premises 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 agreement on its part to be kept and performed, subject, however, to the aforesaid right of cancellation.

**I.10. Machinery and Equipment.** RSS, Inc. agrees to furnish all machinery and equipment necessary to properly perform this agreement and to maintain and keep the same in such condition, particularly with reference to paint and appearance, as required by City during the entire term of this agreement; and 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.

**I.II. Salvage Rights** Subject to the priority of the conditions set forth in Section 5, RSS, Inc. shall have, and is hereby given, the exclusive right to all salvage from said collections and said disposal premises and it may grant a permit to any third person, firm or corporation to collect and keep said salvage upon such terms and conditions as RSS, Inc. may desire.

## ARTICLE II

### CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT

#### II.1 Definitions

**"Agreement"** means this Franchise Agreement.

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

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

**"Closing Date of the IRRF Financing"** means the date of initial delivery of the IRRF Bonds to the original purchasers of the IRRF Bonds.

**“Designated Facility”** means a Solid Waste Management Facility or Facilities designated from time to time by Authority to receive some or all Directed Wastes and materials and shall have the same meaning as defined in the Joint Powers Agreement.

**“Designated Rates”** means (i) the rates as authorized by Authority from time to time to be paid for Directed Waste and Materials received at the Designated Facility or Facilities and/or (ii) any additional amounts determined by the Authority as necessary to provide for the planning and implementation activities of the Authority, to pay other costs and obligations of the Authority, or to implement the Authority – County Contract to the extent such additional amounts are not included by the Authority in the rates authorized to be charged at the Designated Facility or Facilities and shall have the same meaning as defined in the Joint Powers Agreement;

**“Directed Waste and Materials”** means Solid Waste and Separated Materials, or portions or types of such waste or materials (including recyclables) collected pursuant to this Agreement and directed by the Authority to be delivered to the Designated Facility or Facilities and shall have the same meaning as defined in the Joint Powers Agreement.

**“In Lieu Surcharge”** means a surcharge as determined from time to time by Authority in the event of shutdown or abandonment of an IRRF as this term is defined in the Joint Powers Agreement.

**“Interim Recycling Center”** means the existing facility generally located northwesterly of the intersection of an extension of Garden Tract Road and Parr Boulevard and established for the processing of source separated Solid Waste.

**“IRRF” or “Integrated Resource Recovery Facility”** means an integrated resource recovery facility, including land on which such facility is located, for receiving, processing, recycling and transportation or transfer of Acceptable Waste and Material, or the 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.

**“IRRF Bonds”** means the Authority-approved debt securities issued to finance and 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.

**“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.

**“Solid Waste”** shall mean all materials subject to collection pursuant to the Agreement more particularly as set forth on Page One of the Agreement.

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

## **II.2 Direction of Solid Waste**

**II.2.01** Notwithstanding any other provision of the Agreement, City has control and authority to direct RSS, Inc. to deliver Solid Wastes, or portions or types of such Wastes, to the Designated Facility. The City hereby directs RSS, Inc. to deliver all Directed Waste and Materials, including without limitation all Directed Waste and Materials collected by the Contractor hereunder to the Designated Facility or Facilities commencing upon receipt of notice from Authority.

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

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

**II.2.04** RSS, Inc. shall comply with all of the rules and regulations of the Designated Facility or Facilities, including without limitation, rules governing the types and

characteristics of Solid Waste that may or may not be acceptable for delivery to the Designated Facility or Facilities, the manner of delivery of Solid Wastes, the payment of Designated Facility or Facilities due to failure of RSS, Inc. to comply with rules and regulations of the Designated Facility or Facilities.

**II.2.05** Nothing in this Agreement 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 Agreement 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.

**II.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 of 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.

### **II.3 Designated Rates**

**II.3.01** RSS, Inc. shall, without regard to the amount collected pursuant to Section 3.03 of this Article, 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 manner specified by the Authority.

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

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

**II.3.04** Collection of the amount authorized by Section 3.03 of this Article is hereby authorized to begin upon the date that RSS, Inc. commences delivery of Directed Wastes to the Designated Facility.

#### **II.4 In Lieu Surcharge**

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

**II.4.02** RSS, Inc. agrees to pay over to the Authority or another party designated by Authority, without reduction, limitation, offset or adjustment of any kind, all amounts collected pursuant to Section 4.01 of this Article at the times and in the manner required by the Authority.

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

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

**II.4.05** The date of collection of the amount authorized by Section 4.01 of this Article shall begin upon the date specified from time to time by Authority as the effective date of an In Lieu Surcharge and continue for the period specified in Authority's notification to City and Contractor of the Authority's authorization of an In Lieu Surcharge.



## **II.5 Security Interest**

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

**II.5.02** RSS, Inc. warrants and represents that it has not granted a security interest in, or otherwise encumbered, the In Lieu Surcharge Account or funds required to be deposited therein and covenants not to grant any other security interest in said amounts.

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

## **II.6 Authority As Third Party Beneficiary**

**II.6.01** The provisions of this Article are expressly declared to be intended for the benefit of the Authority, in addition to City and RSS, Inc.

**II.6.02** The Authority is an intended third party beneficiary of this Article and shall have the right to pursue all available legal and equitable remedies to enforce the provisions of this Amendment.

## **II.7 Salvage Rights**

**II.7.01** All salvage rights granted to RSS, Inc. by the Franchise Agreement are hereby deleted from the Agreement during any period where the Authority directs City and RSS, Inc. to deliver Directed Waste to the Designated Facility or Facilities.

## **II.8 Interim Recycling Center**

**II.8.01** The parties acknowledge that a portion of the rates being collected under the Franchise Agreement for the establishment and operation of the Interim Recycling Center will be included in Designated Rates beginning on the date specified by Authority for commencement of delivery of Directed Waste to the Designated Facility.

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

**II.8.03** The provisions of Section 8 of this Article shall not be applicable to the City of El Cerrito.

## **II.9 Books and Records**

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

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

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

**II.9.04** RSS, Inc. shall either (a) keep adequate books and records showing disposition of all Solid Waste collected pursuant to the Agreement and allow Authority to inspect same during normal business hours upon reasonable notice, or (b) implement Solid Waste allocation methods and procedures approved from time to time by the Authority. RSS, Inc. shall cooperate with and assist the Authority in the Authority's development of Solid Waste allocation methods and procedures.

## **II.10 Miscellaneous Provisions**

**II.10.01** In furtherance of the representations, warranties and covenants contained in this Article, whenever and so often as required by Authority or any assignee thereof, City and RSS, Inc. agree to promptly execute and deliver or cause to be delivered all such other and further assurances, documents or instruments and promptly do so or cause to

be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Authority, or its assignee, all advantages, benefits, interest, powers, privileges and rights to be conferred upon Authority by this Article.

**II.10.02** Both parties and their respective legal counsel have independently reviewed this Article and agree that any rule that ambiguities are to be construed against the drafting party shall not apply.

**II.10.03** This written Article contains all of the representations and sets forth the complete agreement of the parties with respect to the subject matter hereof. Except as specified in this Article, any prior correspondence, drafts, memoranda, agreements, warranties or representations with respect to the subject matter of this Article are superseded in total by this Article.

**II.10.04** In the event of conflict between this Article and the other provisions of the Agreement, this Article shall control and if any term or provision of this 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 Article, the provisions of this Article shall control.

**II.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.

**II.10.06** Nothing in this Article 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.

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

## **II.11 Notices**

A copy of any notice required or permitted under the agreement which pertains directly or indirectly with the subject matter of this Article shall be provided to Authority

concurrently with the delivery of said notice to the other party and said notices shall be addressed to: West Contra Costa Integrated Waste Management Authority, One Alvarado Square, San Pablo, California 94806, Attention: Executive Director, Fax. No. (510) 236-1636, or other such address or Fax Number as the Authority may specify in writing to the parties.

#### **II.12 Effective Date**

The provisions of Section 2, 3 and 7 of this Article shall expire and cease to be of further force and effect at such time as the Authority ceases to have the right, whether by contract or otherwise, to require City to deliver Solid Waste to the Designated Facility or Facilities. Any expiration of such provision shall not affect any other provisions of the Agreement, which shall remain in full force and effect in accordance with their other applicable terms without given further effect to such expired provisions.

### **ARTICLE III**

#### **ADMINISTRATION**

##### **III.1 Year 2001 Rate**

In accordance with the prior Franchise Agreement and the City's applicable ordinances, effective April 1, 2001, the City established rates, which rates are exclusive of the Designated Rate and are, as adjusted, the maximum rates which RSS, Inc. shall be allowed to charge for Solid Waste collection services rendered hereunder. The adjusted rates, Year 2001 Rates in effect as of the Effective Date, exclusive of the City's AB 939 Surcharge, shall be \$12.50 per month for Senior Service, \$ 13.79 per month for 35 gallon residential service and Mini-Can Service, \$ 23.82 per month for 65 gallon residential service and \$ 33.84 per month for 95 gallon residential service. RSS, Inc.'s commercial rates are set forth on Exhibit A hereto. RSS, Inc.'s Rates include residential and commercial rates. City has collected certain AB 939 Fees from rate payers and has used said funds to reimburse RSS, Inc. for the cost of the purchase of the carts used in RSS, Inc.'s expanded Recycling Program in the City commencing in the year 2000, not to exceed a total of 5,600 carts. It is City's and RSS, Inc.'s specific intent that the cost of the Recycling Program in RSS, Inc.'s rates has been lowered as a

result of the City's payment for the purchase of the Recycling carts. RSS, Inc. shall pass through the use of the Carts to its customers without inclusion in RSS, Inc.'s rates. RSS, Inc. shall be responsible for the maintenance and repair of the carts and for replacement of the carts at the end of their useful life. RSS, Inc.'s costs incurred in maintaining and replacing such carts shall be included in RSS, Inc.'s rates as any other costs hereunder. A Mini-can is a twenty gallon insert in the thirty five gallon cart. The designated rate shall be discounted for the mini can service. The year 2001 discount for the mini can service is \$2.07.

**III.2 Annual Rate Adjustment** RSS, Inc.'s Rates (including residential and commercial rates as referenced in Section III.1, as adjusted) shall be adjusted annually, on January 1, by change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI) for each of the succeeding six years. The adjustment shall be based upon the annual CPI published on or before November 30 preceding the December 31 adjustment. The adjustment in January of 2001 shall be pro-rated at (2/3) two-thirds of the annual adjustment. Nothing in this Section 19 limits the adjustment of the Designated Rate in accordance with Article III of this Franchise Agreement.

**III.3 City Review of Rates** The City shall review RSS, Inc.'s Rates, as adjusted, in the year 2006 based upon the terms of the Franchise Agreement to establish the rate for the year 2007. RSS, Inc. shall submit a rate application no later than July 1, 2006 which application shall be supported by financial and operational information. Said application shall not include any acquisition or other costs related to the transfer/acquisition of stock from R.S.S., Inc. to Republic Services, Inc. The City, by its employees or by consultants employed by the City, shall have the right subject to an appropriate written confidentiality agreement to review the books and records of RSS, Inc. and to conduct such studies of RSS, Inc.'s operations and audits and reviews of its financial records as is reasonably necessary to consider RSS, Inc.'s application. In addition, and notwithstanding the foregoing, the City and RSS, Inc. agree to negotiate a rate settling mechanism in accordance with Section 26, below.

The City expressly reserves the sole authority in accordance with the Franchise Agreement, to review and approve or deny future rate adjustments.

**III.4 Interim Adjustment Provision** RSS, Inc. may request an adjustment in Rates at reasonable times other than required under this Agreement for unforeseen changes in the cost of providing service under this Agreement. Such changes may include, but are not limited to, changes in laws, ordinances or regulations. Such changes shall not include any acquisition or other costs directly or indirectly related to the transfer/acquisition of stock from R.S.S., Inc., to Republic Services, Inc., changes in the market value of Recyclable Materials or costs related to additional Refuse, Green Waste and Recyclable Materials vehicles, routes or personnel necessary to provide the services required under this Agreement absent the provisions of Section 5. However, when an extraordinary adjustment is requested, such adjustment shall consider changes in all costs and revenues associated with such request, (except for the aforementioned transfer/acquisition costs). For each such request, RSS, Inc. shall prepare a schedule comparing the proposed costs and revenues for such affected line item to the then current costs and revenues, including an estimate of the cost impact of the change. Such request shall be prepared in a form acceptable to City with support for assumptions made by RSS, Inc. in preparing the estimate. City and RSS, Inc. shall endeavor to negotiate a mutually acceptable adjustment amount. However, City's reasonable determination of the amount of the unusual change or costs shall be final. It is understood RSS, Inc. is the current service provide and it is not the City's intent to allow for future adjustments to Rates as of the date this Agreement is executed due to costs that should have reasonably been anticipated by RSS, Inc.

**III.5 Additional Services** In the event that the City determines that additional services are required to be performed by RSS, Inc. hereunder in order, in the discretion of the City, to assure the compliance of the City with its obligations under State and Federal law, including, without limitation, AB 939, the City may direct RSS, Inc. to perform such additional services hereunder provided that the City allow RSS, Inc. to recover its costs and a reasonable profit by adjusting the rates allowed hereunder to compensate RSS, Inc. for providing such services.

RSS, Inc. shall provide the City with documentation reasonably acceptable to the City setting forth the costs of such other or additional services and the City shall establish a rate for such additional or other service based on RSS, Inc. costs for providing such service from the commencement thereof. The City shall act with deliberate speed to establish rates for any services that are required to be provided by RSS, Inc. hereunder.

**III.6 Additional Obligations** In addition to all of the other services to be provided hereunder, RSS, Inc. shall provide the following services without charge to the City:

a. RSS, Inc. shall make a \$6,000 per year contribution for the first fourteen years of the term of this Agreement to the Pinole Youth Fund, beginning with the first contribution payable April 1, 2000

b. RSS, Inc. shall deliver, pick up and dispose of the contents of up to twelve forty yard containers for use by the City in community wide clean ups annually.

**III.7 Total Monthly Charge** The total monthly charge for 35 gallon residential garbage service, including recycling and green waste service, and including the Designated Rate and the AB 939 Surcharge, subject to adjustment as herein provided, shall be \$20.15 per month.

**III.8 Public Education Basic Requirements** RSS, Inc. shall provide subscriber information and public education throughout the Term. The public education services will include, but not be limited to providing information regarding:

- i. Program implementation
- ii. Change in service
- iii. Incorrect setout notices
- iv. Annual cleanup events
- v. Christmas tree collection services
- vi. Annual promotion to encourage source reduction, recycling, backyard composting, green waste programs
- vii. The availability of extra Green Waste containers for seasonally high periods of Green Waste productio

- viii. Providing recycling outreach to schools as Requested

### III.9 Public Access to the Contractor

A. Office Facilities. RSS, Inc. shall establish and maintain at all times during the Term thereof an office within Contra Costa County.

B. Office Hours. RSS, Inc.'s office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays.

C. Availability of Representatives. A responsible and qualified representative of RSS, Inc. shall be available at RSS, Inc.'s office during office hours for communications with the City of the public.

D. Telephone. RSS, Inc. shall maintain a toll-free telephone system in operation at its in-county office during office hours. RSS, Inc. shall install telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Subscribers must be able, with reasonable convenience, to reach RSS, Inc.'s office by phone during office hours. RSS, Inc. shall also maintain an after-hours toll-free telephone number for use during other than normal business hours. RSS, Inc. shall have a representative, answering service or voicemail system available at said after-hours toll-free telephone number during all hours other than normal office hours. Any recording shall provide an additional number to call in the event of an emergency. RSS, Inc. shall provide the City the means to contact RSS, Inc. directly by telephone on a 24-hour basis in the event of an emergency.

### III.10 Service Complaints and Response

A. Complaints. RSS, Inc. agrees to maintain a written log of all oral and written complaints registered with RSS, Inc. from Subscribers within Franchise Area ("Complaint Log"). Individual Subscriber calls for missed pick-ups shall not be considered complaints, but rather must be remedied within the time frame set forth in this agreement. Two or more missed pick-ups for a single Subscriber occurring within a 60 day timeframe shall be deemed a complaint and logged in the Complaint Log. RSS, Inc. shall be responsible for the prompt and courteous attention to, and prompt and



reasonable resolution of, all Subscriber complaints. Subscriber complaints that cannot be reasonably resolved may be appealed to the City for final resolution. RSS, Inc. shall record in the Complaint Log all written and oral complaints, noting the name and address of the complainant, date and time of complaint, nature of complaint, and nature and date of resolution. Such log shall be kept so that it may conveniently be inspected by representatives of the City upon request. RSS, Inc. shall deliver, upon request of the City, a summary of complaint by number and type, and a legible copy of the log by reflecting action to date.

B. Complaint Response. RSS, Inc. shall respond to all complaints from Subscribers, other than missed pickups, within twenty-four (24) hours if the complaint is received during a weekday or by the next business day if the complaint is received on a Saturday, Sunday or holiday.

C. Missed Pickups. In the event of a missed pickup, RSS, Inc. shall complete the pickup the same day if the complaint is received by 3:00 p.m., or by 12:00 p.m., the following day if the complaint is received after 3:00 p.m.

D. Liquidated Damages for Failure to Respond. The City Representative may levy a charge in the amounts listed in Section III.16 for failure to timely pick up Solid Waste or respond to complaints pursuant to this Agreement.

**III.11 Change in Operations/Administration or Schedule** RSS, Inc. shall notify the City in writing of any material changes in, or to the operation to provide Franchise Services operation (e.g. vehicle routes, equipment type or number, crew size), administration (e.g., management and employees), and schedule at the time such material change is implemented. Any changes to the collection operation shall meet the service standards and RSS, Inc. must notify all affected Subscribers at least (14) days prior to any change in the collection day. RSS, Inc. shall not permit any Subscribers to go more than seven (7) days without service in connection with a collection schedule change.

**III.12 Report Accumulation of Solid Waste: Unauthorized Dumping** RSS, Inc. shall direct its drivers to note the addresses of any premises at which they observe significant and ongoing accumulation of Solid Waste that is not being delivered for

collection, and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. RSS, Inc. shall deliver the address or description to the City within three (3) working days of such observation.

### **III.13 Events of Breach**

A. General. The Parties acknowledge that provision of consistent, reliable Franchise Services is of utmost importance to the City and that the City has considered and relied on RSS, Inc.'s representations as to its ability and commitment to quality of service in awarding the Franchise. The Parties further recognize that some qualified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if RSS, Inc. fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and residents of the City will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City and residents will suffer. Therefore, without prejudice to the City's rights to treat uncorrected non-performance as an event of default under this Section III.14, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages.

B. Liquidated Damages. In the event that RSS, Inc. fails to perform RSS, Inc.'s obligation under this Agreement specifically set forth below the City may impose the following liquidated damages upon RSS, Inc. in addition to any other available remedies the City may have.

i. Reliability

- a. For each failure to commence service  
To a new Subscriber account within seven  
(7) days after order: \$25.00
- b. For each failure to collect Refuse, Recyclables,  
and Green Waste which has been properly  
delivered for collection, from an established  
Subscriber account on the scheduled

collection day, if the missed pick-up is not cured pursuant to this Agreement: \$25.00

ii. Quality

d. For each occurrence of failure to properly return empty Refuse, Recycling, or Green Waste Containers as placed by the Subscriber, to avoid pedestrian or vehicular traffic impediments or to place cans upright with lids secured: \$25.00

g. For each failure to immediately clean up material spilled from the Contractor's Vehicles, Refuse, Recycling or Green Waste Containers, or during street sweeping: \$50.00

h. For each occurrence of collecting Solid Waste, Recyclables or Green Waste, or conducting street sweeping during unauthorized hours: \$50.00

i. For each failure to respond to a Subscriber complaint within the relevant time period: \$25.00

j. For each failure to have collection workers dressed in accordance with RSS, Inc.'s standards. \$25.00

k. For each failure to remedy a complaint which is found to be justified by the City Representative within forty-eight (48) hours after notification by the City Representative (each day): \$50.00

l. For each failure to maintain any Solid Waste, Recycling, Green Waste collection vehicle in accordance with the specifications in this Agreement after twenty-four (24) hours upon notification the City Representative (per vehicle per day): \$50.00

- m. For each failure to notify the City Representative of changes pursuant to Section III.11 (each day) \$50.00
  - iii. Timeliness of Submissions to the City
    - n. Any report shall be considered late until such time as a correct and complete report is received by the City. For each calendar day a report is late, the daily assessment shall be: \$50.00

Above amounts may be adjusted by the City annually on January 1 to reflect changes in the Consumer Price Index for the preceding twelve (12) month period (in accordance with the process set forth in Section 19).

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative, or by investigation of Subscriber or resident complaints.

Prior to assessing Liquidated Damages, the City shall give RSS, Inc. notice of its intention to do so. The notice shall include a brief description of the incident of non-performance. RSS, Inc. may review (and copy at its own expense) all information in the possession of the City relating to incident or non-performance. RSS, Inc. may, within ten (10) days after receiving the notice, request a meeting with the City. If a meeting is requested, it shall be held by the City Representative or his/her designee. RSS, Inc. may present evidence in writing and through testimony of its employees and other relevant to the incident or non-performance. The City Representative or designee shall provide the Contractor with a written explanation of his or her determination on each incident or non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Representative or designee shall be final. Within seven (7) days of receiving authorized assessment of liquidated damages from the City RSS, Inc. shall remit to the City damages specified in said assessment.

C. Substitute Services. Separate from or in addition to exercising the liquidated damages above, the City may also at its sole expense, substitute services, satisfactory to the City for which RSS, Inc. is in breach, upon the same terms and conditions as provided in this Agreement.

**III.14 Events of Default** Each of the following shall constitute an event of Default ("event of Default") hereunder:

A. Failure to Correct Breach. Failure to correct a breach, (i) within seventy-two (72) hours of written notice from the City, provided that if the nature of the breach is such that it can be cured but will reasonably require more than seventy-two (72) hours to cure, RSS, Inc. shall not be in Default so long as RSS, Inc. promptly commences to cure such breach and diligently proceeds to complete same but no additional time to cure shall be allowed for failure to pay any amount due under this Agreement; or (ii) immediately, if the breach is such that the health, welfare, or safety of the public is endangered as determined by the City Representative.

B. Misrepresentation. Any intentional representation or disclosure made to the City by RSS, Inc. in connection with or as in inducement to entering into this Agreement or any future amendment to this Agreement which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

C. Seizure or Attachment of Equipment. There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of RSS, Inc., including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair RSS, Inc.'s ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and the City approved holidays.

D. Contractor Debt. RSS, Inc. files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as part of a transfer of equipment no longer useful to RSS, Inc. or necessary for this Agreement), trustee (other than as security for an

obligation under a deed of trust), custodian, sequestrator (or similar official) of RSS, Inc. for a part of RSS, Inc.'s operating assets or any substantial part of RSS, Inc.'s property, or shall make any general assignment for the benefit of RSS, Inc.'s creditors, or shall fail generally to pay RSS, Inc.'s debts as they become due.

E. Court Order or Decree. Any court having jurisdiction shall enter a decree or order of relief in respect of RSS, Inc., in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or RSS, Inc. shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of RSS, Inc. or for any part of RSS, Inc.'s operating equipment or assets, or order the winding up or liquidation of the affairs of RSS, Inc..

F. Failure to Notify City. RSS, Inc. fails to notify the City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, and Green Waste collection, transportation, processing or disposal activities, or street sweeping activities that might materially affect RSS, Inc.'s ability to perform all of the Franchise Services under this Agreement.

G. Lapse of Financial Requirement. Lapse of any insurance or bond required under this Agreement following notification and failure to maintain such insurance or bond.

H. Regulatory Violation. RSS, Inc. violates any orders or filings of any regulatory body having jurisdiction over RSS, Inc. relative to this Agreement which results in a breach of the terms and conditions of this Agreement, provided RSS, Inc. may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the franchise and this Agreement shall be deemed to have occurred.

I. Cessation of Services. RSS, Inc. ceases to provide collection, transportation, processing or recycling services as required under this Agreement for a period of two consecutive days or more, for any reason within the control of RSS, Inc. including labor disputes.

J. Failure to Meet Payment or Reporting Requirements. RSS, Inc. fails to make any payment required under this Agreement and/or refuses to provide the City with required information, reports, and/or records in a timely manner as provided for in the Agreement.

K. Unremedied Acts or Omissions. Any act or omission in the performance of this Agreement by RSS, Inc. which violates the terms, conditions, or requirements of this Agreement. The California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation, or, if RSS, Inc. cannot reasonably correct or remedy the breach within the time set forth in such notice, if Collector should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such direction or remedy thereafter.

The foregoing notwithstanding, in no event shall any of the foregoing Events of Default constitute a breach resulting in a right of the City to terminate this Agreement if any such events occur within the period of 180 days following the execution of this Agreement.

**III.15 Right to Terminate Upon Default** Upon a Default by RSS, Inc., after Notice and an opportunity to cure said default, the City shall have the right to terminate this Agreement without need for any hearing, suit or legal action. RSS, Inc. shall forfeit its performance bond to the City as liquidated damages upon such termination. In no event shall the City have the right to terminate this Agreement for any Event of Default occurring within 180 days of the Execution of this Agreement.

Notwithstanding the above, RSS, Inc. shall not be in breach or default under the terms of this Agreement in the event that such breach of default is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of God, acts of the public enemy, epidemics, quarantine restrictions, or any other causes beyond the control or not the fault of RSS, Inc.

**III.16 Possession of Property Upon Termination** In the event of termination for Default, the City shall have the right to utilize RSS, Inc.'s land, equipment, and other

property used or useful in the collection and transportation of Solid Waste, Recycles, or Green Waste in the provision of services under this Agreement, and the billing and collection of fees for these services and to use such property. The City shall pay reasonable compensation to RSS, Inc. for the temporary use of such land, equipment, and other property. RSS, Inc. shall furnish the City with immediate access to all of its business records related to its route maps, schedules, and billing of accounts for services.

**III.17 The City's Remedies Cumulative: Specific Performance** The City's right to terminate the Agreement under Section III.14 and to take possession of the Contractor's properties under Section III.15 are not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, all remedies provided for in this Agreement shall be in addition to any and all other legal and equitable rights and remedies which the City may have under law or as otherwise provided in this Agreement.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternate service, and the rights granted by the City to RSS, Inc., the remedy of damages for a breach of RSS, Inc. is inadequate and the City shall be entitled to injunctive relief.

#### **ARTICLE IV**

#### **FINANCIAL REQUIREMENTS**

**IV.1. Franchise Fee** Beginning May 1, 2001, RSS, Inc. shall pay to City for said privilege hereby granted the sum of three thousand, four hundred ninety-six dollars (\$3496) on the first day of each and every month;

(b) Beginning on January 1, 2002, and at each one year interval, or from time to time thereafter during the term of this agreement, the amount of payments to be made to the City by RSS, Inc. shall be increased in the same percentage as the charge for the basic one receptacle residential service as provided in Pinole Municipal Code Section 8.08.150, is increased and by the same percentage of any increase in the population of City over the preceding year based upon the population of City as certified by the State



of California Department of Finance. (For example, if the charges increased by 2% in January of 2002, and if the population increased by 1%, the franchise fee shall increase by 3%.) If the charges as provided in the Pinole Municipal Code Section 8.08.150 take effect on any other date other than January 1<sup>st</sup> of any year, the franchise fee adjustment shall increase upon the effective date of any increase in charges. The franchise fee, based upon a population increase shall increase once annually on the first of the month following the publication of the Census of City by the State of California Department of Finance.

**IV.2 Insurance Scope and Limits** RSS, Inc. shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. With respect to General Liability, Errors and Omissions and Pollution and/or Environmental Impairment Liability coverage should be maintained for a minimum of five (5) years after the termination hereof. The maintenance of claims made against any insurance required of the Contractor shall not be considered a waiver by City of any claim or liabilities it may have against the Contractor. The insurance to be provided by Contractor shall comply with the following provisions, and shall be provided within ten days of the execution of this Third Amendment.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- i. Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GO 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
- ii. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.

- iii. Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance.
- iv. Pollution and/or Environmental impairment Liability and/or Errors & Omissions.

B. Minimum Limits of Insurance. The Contractor shall maintain limits no less than:

- i. General liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.
- iii. Workers' Compensation and Employer's Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
- iv. Pollution and/or Environmental Impairment Liability and/or Errors and Omissions: \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the City will be called upon to contribute to a loss suffered by the Contractor hereunder and waive subrogation against the City and other additional insureds.

**C. Deductible and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. Approval would not be unreasonably withheld. At the option of the City, either the Insurer shall reduce or eliminate such deductibles or self insured retentions as respects the City, its officers, officials, employees and volunteers; or RSS, Inc. shall provide evidence satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses. Notwithstanding the foregoing, the City may elect not to accept any deductibles to self-insured retentions offered by the Contractor.

**D. Other Insurance Provisions.**

- i. The policies shall contain, or be endorsed to contain, the following provisions provided that such provisions are reasonably available in the insurance market:
  - a. The City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of RSS, Inc. and with respect to liability arising out of work or operations performed by or on behalf of RSS, Inc. including materials, parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.
  - b. RSS, Inc.'s insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of RSS, Inc.'s insurance and shall not contribute with it.
  - c. With the exception of environmental impairment liability policies, which are claims based, each

insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by the City and shall be endorsed to state that coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the City.

- d. RSS, Inc.'s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- ii. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by Federal by federal or state authorities.
- iii. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Grantee for the City.
- iv. All Coverages. Each insurance policy required by this clause shall be occurrence-based or an alternative form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. Insurance is to be placed with state compensation insurance fund, and/or insurers with a current A.M. Best's rating of not less than A:VII if admitted. If pollution and/or Environmental Impairment and/or errors

and omissions coverages are not available from "Admitted" insurer, the coverage may be written with the City's permission, by a Non-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or higher.

F. Verification of Coverage. The Contractor shall, within ten days of the execution of this Third Amendment, furnish the City with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf.

G. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificate and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Other Provisions.

- i. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers.
- ii. The City, its officers, officials, agents, employees and volunteers shall be named as additional insureds on all policies.

**IV.3 Faithful Performance Bond** Within ten days of the executions of this Third Amendment, RSS, Inc. shall file with the City a bond, payable to the City in a form acceptable to the City, securing RSS, Inc.'s faithful performance of each and every one of its obligations under this Agreement. The performance bond shall become an exhibit to this Agreement. The principal sum of the bond shall be \$500,000. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the City. The bond shall be in a form specified by the City Representative. Alternatively, RSS, Inc. may deposit a letter of credit or open a certificate of deposit in the name of the city to be held to secure this faithful performance. The performance bond shall remain in force for the duration of this Agreement. The premium for the bond shall be paid by RSS, Inc.

## ARTICLE V

### GENERAL REQUIREMENTS

**V.1 Indemnification** RSS, Inc. shall 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 caused by or arising out of the nature or effect of solid waste collected or disposed of by RSS, Inc., or of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes and from and against all costs, counsel fees and 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 Indemnification Clause.

**V.2 Hazardous Substance Indemnification** RSS, Inc. shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successors or successors to the City's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or its officers, officials, employees, agents, assigns, or contractors arising from the performance of services pursuant to this Franchise

Agreement including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where RSS, Inc. transports, stores or disposes of Solid Waste pursuant to this Agreement. The Foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability.

### **V.3 Assignment**

A. Definition. For purposes of this Article, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of RSS, Inc.'s assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of thirty (30) percent or more of the outstanding common stock of RSS, Inc.; (iii) any reorganization consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which RSS, Inc. or any of its shareholders is a party which in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of RSS Inc.; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If RSS, Inc. is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If RSS, Inc. is a subsidiary of another corporation or business entity, an "assignment," as defined above, by the parent company or corporation shall be considered an assignment by RSS, Inc.

B. City Consent. RSS, Inc. acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City relied upon RSS, Inc.'s representation of its experience and financial resources in qualifying RSS, Inc. to perform the services under this Agreement. Except as provided in this

Article, RSS, Inc. shall neither assign its rights nor delegate, subcontract, or otherwise transfer its obligation under this Agreement to any other person or entity without the prior written consent of the City. Any such assignment without the consent of the City shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall the City be required to consider any proposed assignment if RSS, Inc. is in Default at any time during the period of consideration.

C. Requirements of RSS, Inc. If RSS, Inc requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion. No request by RSS, Inc. for consent to an assignment need be considered by the City unless and until RSS, Inc. has met the following requirements:

- i. RSS, Inc. shall pay the City its reasonable expenses for attorney's fees and investigation costs to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- ii. RSS, Inc. shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years;
- iii. RSS, Inc. shall furnish the City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Franchise services, including; (i) that the proposed assignee has at least 10 years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by RSS, Inc. under this Agreement; (ii) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any State, federal or local environmental laws and the assignee has provided City with a complete list of such citations and censures; (iii) the proposed assignee has at all time conducted its operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste Management practices in accordance with sound Solid Waste



management practices in full compliance with all federal, State and local laws regulating the collection and Disposal of Solid Waste including hazardous substances; and (v) or any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

D. **Application and Transfer Fee.** Any application for a Franchise transfer shall be governed by the following conditions:

- i. Any application for a Franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by resolution of the Council to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse the City for all direct and indirect expenses. In addition, RSS, Inc. shall reimburse the City for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within (30) days of receipt.
- ii. The Franchise transfer fees are over and above any Franchise Fees specified in the Agreement.

E. **Transition.** If the City consents to an assignment at the point of transition, RSS, Inc. shall cooperate with the City and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which shall include RSS, Inc. providing route lists and billing information.

**V.4 Continuation of Existing Services to City** For the term of this Franchise Agreement RSS, Inc. shall continue providing to the City, free of charge the following services:

- A. **Solid Waste (including refuse, recyclables and green waste) collection** on a weekly basis from all City "public purpose" facilities, including, but not limited to: City Hall, Public Safety Building, Corporation Yard, City Parks and Recreation Facilities, Waste Water Treatment Plant.

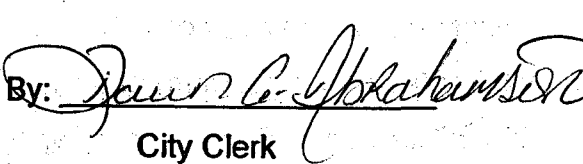
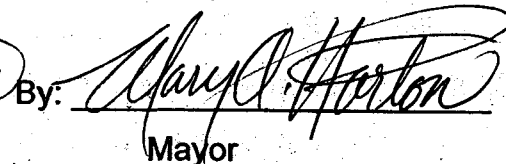
B. Allowing City personnel to deposit solid waste from City facilities at the solid waste disposal premises maintained by RSS, Inc., on an unlimited basis.

**V.5 Severability** Any provision or provisions of this agreement which shall prove to be invalid, void, or illegal shall in no way effect, impair, or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect as though said invalid, void or illegal provision or provisions had not been inserted in this agreement, it being the intent of the parties hereto that all of the remaining provisions of this agreement shall continue to be fully effective to the fullest extent permitted by law.

IN WITNESS WHEREOF, 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 Managing Partner and Secretary, being two of its co-partners, thereunto duly authorized by all the co-partners of RSS, Inc., effective all on the day and year first above written.

Attest:

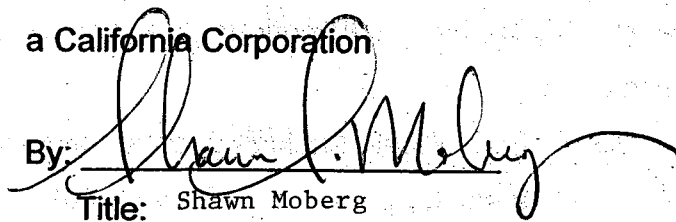
CITY OF PINOLE, a  
municipal corporation

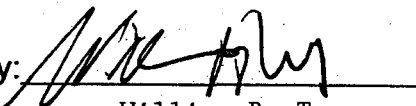
By:  City Clerk  
By:  Mayor

Approved as to form:

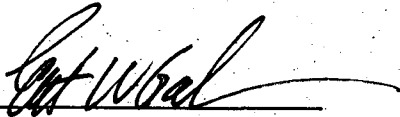
RICHMOND SANITARY SERVICE  
a California Corporation

By:   
City Attorney

By:   
Title: Shawn Moberg  
General Manager

By:   
Title: William B. Terry  
Area President

Approved as to Form:

By:   
Scott Gordon

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**EXHIBIT A  
COMMERCIAL RATES**

**2001 Commercial Rates (without surcharge)**

<u>SIZE</u>	<u>Times Week</u>	1X	2X	3X	4X	5X	6X**
1 YD		128.70	318.90	309.10	399.30	489.50	664.70
2 YD		204.10	363.80	523.60	683.30	843.10	664.70
3 YD		273.20	496.70	720.30	943.80	1,167.40	1,475.90
4 YD		339.00	623.50	908.10	1,192.70	1,477.20	1,846.80
5 YD		402.90	747.30	1,091.60	1,436.00	1,780.30	2,209.70
6 YD		465.90	869.60	1,273.30	1,677.10	2,080.80	2,569.50
7 YD		528.30	991.40	1,454.60	1,917.70	2,380.80	2,928.90
8 YD		590.50	1,113.20	1,635.90	2,158.60	2,681.30	3,289.00

**Rates are without surcharge set forth below**

**NOTE:**

Saturday service will have an extra monthly charge of ..... \$85.00

\*\* Saturday charge is included in 6x rate \*\*

**2001 Surcharge Amounts**

<u>SIZE</u>	<u>Times Week</u>	1	2	3	4	5	6
1 YD	1	29.20	58.41	87.61	116.82	146.02	175.23
2 YD	2	58.41	116.82	175.23	233.64	292.04	350.45
3 YD	3	87.61	175.23	262.84	350.45	438.07	525.68
4 YD	4	116.82	233.64	350.45	467.27	584.09	700.91
5 YD	5	146.02	292.04	438.07	584.09	730.11	876.13
6 YD	6	175.23	350.45	525.68	700.91	876.13	1,081.36
7 YD	7	204.43	408.86	613.29	817.72	1,022.15	1,226.59
8 YD	8	233.64	467.27	700.91	934.54	1,168.18	1,401.81
Surcharge per yard:					29.20		

**Exhibit B  
Current Residential Rates**

	<b>20 Gallon Mini-Can</b>	<b>35 Gallon</b>	<b>35 Gallon Senior</b>	<b>65 Gallon</b>	<b>95 Gallon</b>
Collection	\$ 13.79	\$ 13.79	\$ 12.50	\$ 23.82	\$ 33.84
IRRF Surcharge	\$ 5.53	\$ 5.53	\$ 5.53	\$ 11.06	\$ 16.59
City - AB 939	\$ 0.83	\$ 0.83	\$ 0.83	\$ 1.51	\$ 2.19
IRRF Discount	\$ (2.07)				
<b>Total Rate</b>	<b>\$ 18.08</b>	<b>\$ 20.15</b>	<b>\$ 18.86</b>	<b>\$ 36.39</b>	<b>\$ 52.62</b>

Carry out service charge: \$4.13