

704-02

ORIGINAL

AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of September, 1986, by and between the CITY OF HERCULES, a municipal corporation in Contra Costa County, California, hereinafter called "City", and Pinole **Garbage Service**, a division of RICHMOND SANITARY SERVICE, a co-partnership, hereinafter called "Contractor";

WITNESSETH:

For and in consideration of the covenants and conditions herein contained, City hereby gives and grants to Contractor for a term of 15 years beginning July 1, 1986, and ending June 30, 2001, the exclusive right and privilege to collect and dispose of all solid wastes in said City. If at any time during the 15-year term of this Agreement, Contractor is required to refinance its operations for capital improvements or participate in a bond issue for capital improvements in which the total funds involved exceed Four Million Dollars (\$4,000,000), City agrees to extend the term of this Agreement for an additional ten years, but in no event shall any extension of this Agreement exceed twenty-five years from the

commencement date. As used herein "solid wastes" 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; and discarded home and industrial appliances. The words "recyclable materials" mean and include all waste materials which may be commercially reprocessed for beneficial use which are disposed of for recycling purposes. These may include, but are not limited to metals, paper-based materials, glass and oils.

1. The existing contract between City and Contractor dated May 27, 1980, shall be deemed rescinded as of July 1, 1986.

2. Subject to the City's rights to perform or cause to be performed recycling under the terms of Paragraph 5 herein, Contractor shall collect and dispose of all solid wastes in said city in accordance with and at the rates fixed by applicable resolution or ordinance of said City

or amendments, and said rates shall be subject to change, from time to time, by mutual consent of the parties, enacted by resolution or ordinance or by amendments to ordinances or by amendments hereto, 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, where similar disposal methods are utilized by the Contractors involved and the wage scales for their employees are the same or close to the same, particularly cities and municipalities in Contra Costa County and other cities and municipalities in other counties in close proximity to the City of Hercules. Contractor has the burden to demonstrate the reasonableness of rates to be charged during the term of this agreement. If Contractor proposes a rate increase that is higher by a factor of 1.2 than rates charged in neighboring cities and municipalities, City may require that an independent certified public accountant verify the costs of Contractor used to justify the rate increase proposal.

3. Contractor shall fully and faithfully comply with applicable local, state and federal laws, ordinances and regulations relating to the collection and disposal of

solid wastes and Contractor 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 wastes in said City as set forth in such ordinances, laws and regulations. Contractor shall keep and maintain its solid waste disposal premises in a sanitary condition.

4. Contractor shall make regular collections of solid wastes 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, Contractor shall make such collection with 24 hours after notice to do so from the City Manager.

5. In consideration of the exclusive franchise granted herein, the parties understand and agree that the City may require changes in collection and disposal methods, including but not limited to the collection and disposal of solid wastes and recyclable materials, and may further require implementation of changes in applicable technology to secure the most efficient and current methods of collection and disposal. In the event City chooses to implement programs for changed methods of collection or disposal, including but not limited to the

implementation of a recycling program, the Contractor shall have the right to present a proposal to the City to perform such a program. The City shall retain sole discretion in selecting the agency or entity to perform such a recycling program; however, selection shall be limited to the Contractor, the City, itself, or a nonprofit corporation organized under California law. Any action required or directed by City may only be undertaken or implemented by Contractor after the City and Contractor agree on the expenditures required of Contractor to comply with the directives of the City and the manner in which said expenditures are to be reimbursed to Contractor.

6. (a) The contractor 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 Agreement in accordance with practices and procedures established by the Contractor.

(b) The City shall have the privilege of depositing non-hazardous solid wastes that require no special handling produced by regular municipal operations and collected by municipal employees on municipally-owned property so long as contractor has the ability to accept such wastes in the West Contra Costa Sanitary landfill.

(c) The Contractor shall collect non-hazardous solid waste and dispose of same in the amounts and at the locations as described in Exhibit "A", attached hereto and made a part hereof.

7. The solid waste disposal premises operated by Contractor 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 Contractor.

8. In the event of default in the performance of any of the terms or conditions hereof which involve a substantial cessation of the Contractor's operations or a material breach of Contractor's obligations hereunder, the City Council, by a majority of its members, shall give written notice to Contractor of such default or breach by Contractor, specifying the nature of the default or the breach and that if the default or breach is not cured within 30 days after such notice is given, the City Council may terminate this Agreement. In the event the Contractor does not cure the default or breach within 30 days after having received such notice from the City Council, the City may take over such equipment then owned by Contractor and convenient for use in such collection and disposal to enable the City to provide for the collection and disposal of solid waste within the City

until satisfactory arrangements have been made by City with third parties to make such collection and disposal or until the City has itself determined that it will, as a public enterprise, collect and dispose of solid waste within the City. In the event that the City takes over the equipment owned by Contractor for the disposal of solid waste, the City shall pay to Contractor the reasonable value of all collection and/or disposal equipment which the City appropriates. If the parties thereto are unable to agree upon such reasonable value, then said value shall be fixed by appraisers, one of whom shall be appointed by the City and one by the Contractor; and in the event of their failure to agree, the two appraisers shall appoint a third appraiser to make said appraisal; and said appraisal when so made by a majority of said appraisers shall be binding upon the respective parties hereto.

Notwithstanding the above, Contractor 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 Contractor.

9. The privilege hereby granted to Contractor 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 Contractor 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. Notwithstanding the above, Contractor's exclusive rights and privileges are expressly subject to the City's rights for alternate collection and disposal methods of recyclable materials, specified in Paragraph 5, above.

10. Contractor 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.

11. (a) Beginning July 1, 1986, Contractor shall pay to City for said privilege hereby granted the sum of

ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200) on the first day of each and every month;

(b) Beginning on January 1, 1986, 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 Contractor shall be increased in the same proportion as the rate charged by Contractor for one can service, less any surcharge increase, and by the same proportion of any increase in the population of City over the preceding year based upon the population for City as certified by the State of California Department of Finance. For example, if the rates increased by 2% in January of 1987, and if the population increased by 1%, the franchise fee shall increase by 3%.) If the above described rate charged by Contractor takes effect on any date other than January 1st of any year, the franchise fee adjustment shall increase upon the effective date of any increase in said rate. 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.

12. Except in the event city performs or causes to be performed recycling, according to the terms of Paragraph 5 herein, Contractor 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 Contractor may desire, provided that all collections of such salvage and all permits therefore granted by service shall conform to and be subject to the ordinances, regulations and directions of City.

13. Contractor 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 the 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 Contractor, 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 thereof, 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 the Contractor or subcontractors of liability under this Indemnification Clause.

14. Contractor, at its own cost and expense, shall carry and maintain full Workers' Compensation Insurance and Employers' Liability with an insurance carrier satisfactory to the City. Policy shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least ten (10) days after receipt of such notice by City. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by the Department of Industrial Relations Administration of Self Insurance in Sacramento, California.

15. Contractor at its own cost and expense shall maintain liability and property damage insurance for the period covered by this Agreement in the amount of One Million Dollars (\$1,000,000) per occurrence combined single limit coverage. If available, 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 Contractor hereunder.

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

Upon notification of receipt by the City of a notice of cancellation, major change in coverage or expiration, Contractor shall file with the City a certified copy of a new or renewal policy and certificates for such policies, satisfactory to the City Manager or, in lieu thereof, such other evidence of Contractor's financial ability to respond to damages that is satisfactory to the City Manager.

In recognition of the difficulty and the current, unreasonably high cost attendant to obtaining environmental impairment liability coverage (EIL) and higher limits for the liability and property damage coverage, herein, Contractor shall provide City with a report every two years, due on the anniversary of this Agreement, showing the availability and cost of EIL coverage and of liability and property damage coverage. Upon receipt of such information, the City may take

unilateral action to require Contractor to acquire EIL coverage or to increase the limits of its liability and property damage coverage. Such action shall only be undertaken if cost and availability are reasonable and do not create an undue economic hardship for Contractor and if City grants to Contractor a rate increase to cover the cost of such coverage or increase in limits.

If at any time during the term of the Agreement, or any extension thereto, the Contractor fails to comply with the provisions of this paragraph, the City Manager shall give written notice to Contractor of such default or breach, specifying the nature of the default or the breach and that if the default or breach is not cured within 30 days after such notice is given, the City Council, after a public hearing at which Contractor is invited to attend, may terminate this Agreement.

16. Any provision or provisions of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, 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. If, however, during the term of this Agreement, federal or state laws change such that any provision of this Agreement is rendered void or voidable or otherwise illegal, the parties shall renegotiate the unaffected provisions within six (6) months following notice to the other party of said change in 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 Contractor 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 Contractor, all on the day and year first above written.

Attest:

By *Ellen M. Zapata*
City Clerk

Approved as to form:

By *William T. Bauwyr Jr.*
City Attorney

CITY OF HERCULES, a
municipal corporation

By *Charles H. Bell*
Mayor

PINOLE GARBAGE SERVICE, a
division of Richmond Sanitary
Service, a co-partnership

By *Richard Gonzalez*
Title: Managing Partner

By *Henry Dai*
Title: CFO and Partner

ORIGINAL

AMENDMENT TO FRANCHISE AGREEMENT

BETWEEN

CITY OF HERCULES

AND

RICHMOND SANITARY SERVICE, A GENERAL PARTNERSHIP

This Amendment to the Franchise Agreement is entered into as of the 20th day of JANUARY 1993 by and between the CITY OF HERCULES, a municipal corporation ("City") and RICHMOND SANITARY SERVICE, a general partnership ("Contractor").

PREAMBLE

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

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

C. City and Contractor desire to provide for the diversion of Solid Wastes from landfills under the California Integrated

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

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

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

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

22 Contractor and City desire to amend the Franchise Agreement as
23 provided herein.

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

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1.03 "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 Power Agreement.

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

1.06 "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.

1.07 "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

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

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

12 1.9 "Franchise Agreement" means that certain agreement by and
13 between City and Contractor dated September 10, 1986, as existing
14 prior to this Amendment.

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

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

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

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

7 1.13 "IRRF Bonds" means the Authority-approved debt securities
8 issued to finance the planning, design, construction and
9 performance testing of an Integrated Resource Recovery Facility and
10 additional indebtedness, as approved by the Authority, to finance
11 the improvements or modifications to an Integrated Resource
12 Recovery Facility.

13 1.14 "Joint Powers Agreement" means the joint exercise of
14 powers agreement creating the Authority and that certain Second
15 Amendment and Restatement of the Joint Powers Agreement by and
16 among the Cities of El Cerrito, Hercules, Pinole, Richmond and San
17 Pablo, including any subsequent amendments thereto.

18 1.15 "Solid Waste" shall mean all materials subject to
19 collection pursuant to the Agreement more particularly as set forth
20 on page 1 of the Agreement.

21 1.16 "Solid Waste Management Facility" shall mean an
22 Integrated Resource Recovery Facility, or transfer station or
23 material recovery facility or landfill or combination thereof.

24 2. DIRECTION OF SOLID WASTE

25 2.01 Notwithstanding any other provision of the Agreement,
26 City has control and authority to direct Contractor to deliver

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

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

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

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

1 2.05 Nothing in this Amendment shall affect the rights of City
2 or Contractor with respect to the direction of Solid Waste until
3 such Waste is directed by Authority as contemplated herein.
4 Further, nothing in this Amendment shall be construed to affect the
5 rights of the City or Contractor with respect to the direction of
6 the waste stream in the event that the Authority at any time
7 thereafter permanently discontinues direction of the Directed Waste
8 to a Designated Facility or Facilities.

9 2.06 Contractor covenants and agrees that it will not
10 purchase, dispose or recycle, offer to purchase, dispose or recycle
11 or contract for the purchase, disposal or recycling of, directly
12 or indirectly, any Solid Waste (or portions or types of such Solid
13 Waste) which would otherwise be collected pursuant to the Agreement
14 and delivered to the Designated Facility or Facilities and that it
15 will not otherwise divert, or cause to be diverted or allow to be
16 diverted, in any way, Solid Waste to any use, any other Solid Waste
17 Management Facility or other party without the approval of the
18 Authority.

19 **3. DESIGNATED RATES**

20 3.01 Contractor shall, without regard to the amount collected
21 pursuant to Section 3.03 of this Amendment, pay over to the
22 operator of the Designated Facility or Facilities, without
23 reduction, limitation, offset, or adjustment of any kind, all
24 amounts owing in accordance with Designated Rates for Directed
25 Waste and Materials delivered to said Designated Facility or
26 Facilities and said payments shall be made at the times and in the

1 manner specified by the Authority.

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

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

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

19 **4. IN LIEU SURCHARGE**

20 4.01 Notwithstanding any other provision of the Agreement, and
21 in addition to all rates and charges otherwise allowed under the
22 Agreement, Contractor shall collect from all residential and non-
23 residential customers an In Lieu Surcharge when and if such In Lieu
24 Surcharge is authorized by the Authority and such collection shall
25 be in such amounts and at such times as specified by the Authority.
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1 4.02 Contractor agrees to pay over to the Authority or another
2 party designated by Authority, without reduction, limitation,
3 offset or adjustment of any kind, all amounts collected pursuant to
4 Section 4.01 of this Amendment at the times and in the manner
5 required by the Authority.

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

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

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

19 **5. SECURITY INTEREST**

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

25 5.02 Contractor warrants and represents that it has not
26 granted a security interest in, or otherwise encumbered, the In

1 Lieu Surcharge Account or funds required to be deposited therein
2 and covenants not to grant any other security interest in said
3 amounts.

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

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

13 6.01 The provisions of this Amendment are expressly declared
14 to be intended for the benefit of the Authority, in addition to
15 City and Contractor.

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

20 **7. SALVAGE RIGHTS**

21 All salvage rights granted to Contractor by the Franchise
22 Agreement are hereby deleted from the Agreement during any period
23 where the Authority directs City and Contractor to deliver Directed
24 Waste to the Designated Facility or Facilities.

25 **8. INTERIM RECYCLING CENTER**

26 8.01 The parties acknowledge that a portion of the rates being

1 collected under the Franchise Agreement for the establishment and
2 operation of the Interim Recycling Center will be included in
3 Designated Rates beginning on the date specified by Authority for
4 commencement of delivery of Directed Waste to the Designated
5 Facility.

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

12 9. BOOKS AND RECORDS

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

19 9.02 Contractor shall make quarterly reports to the Authority
20 of its revenue and expenses set forth in Section 9.01.

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

1 9.04 Contractor shall either (a) keep adequate books and
2 records showing disposition of all Solid Waste collected pursuant
3 to the Agreement and allow Authority to inspect same during normal
4 business hours upon reasonable notice, or (b) implement Solid Waste
5 allocation methods and procedures approved from time to time by the
6 Authority. The Contractor shall cooperate with and assist the
7 Authority in the Authority's development of Solid Waste allocation
8 methods and procedures.

9 **10. MISCELLANEOUS PROVISIONS**

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

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

24 10.03 This written Amendment contains all of the
25 representations and sets forth the complete agreement of the
26 parties with respect to the subject matter hereof. Except as

1 specified in this Amendment, any prior correspondence, drafts,
2 memoranda, agreements, warranties or representations with respect
3 to the subject matter of this Amendment are superseded in total by
4 this Amendment.

5 10.04 In the event of conflict between this Amendment and the
6 other provisions of the Agreement, this Amendment shall control and
7 if any term or provision of the Agreement or other agreement
8 between the City and Contractor could be construed to in any way be
9 in conflict with the provisions of this Amendment, the provisions
10 of this Amendment shall control.

11 10.05 If for any reason, any Solid Waste that is subject to
12 collection pursuant to the Agreement is held not to be subject to
13 collection under the Agreement by the State or Federal Legislature,
14 or a court, agency or administrative authority (other than City,
15 Authority, or Contractor) with jurisdiction over the parties, the
16 parties intend that the Agreement shall remain in effect with
17 respect to any Solid Waste not so identified.

18 10.06 Nothing in this Amendment shall prevent the City from
19 directing Contractor to deliver Solid Wastes to the West Contra
20 Costa Sanitary Landfill prior to the Authority's direction to begin
21 delivery of Directed Waste to the Designated Facility or
22 Facilities.

23 10.07 Nothing in this Amendment is intended to alter the rights
24 of City and Contractor with respect to collection of Solid Waste,
25 rather, this Amendment is intended to address only those matters
26 specifically set forth herein.

1 10.08 Contractor and City agree that City may increase City's
2 franchise fee in an amount sufficient to cover the City's costs
3 associated with funding the operation of the Authority until
4 Designated Rates are set and collected in amounts sufficient to
5 properly finance the Authority's operations and that upon written
6 request by City, such additional franchise fees shall be added as
7 a surcharge to the collection rates without reduction, limitation,
8 offset or adjustment of any kind.

9 **11. NOTICES**

10 A copy of any notice required or permitted under the
11 Agreement which pertains directly or indirectly with the subject
12 matter of this Amendment shall be provided to Authority
13 concurrently with the delivery of said notice to the other party
14 and said notices shall be addressed to: West Contra Costa
15 Integrated Waste Management Authority, One Alvarado Square, San
16 Pablo, California 94806, Attention: Executive Director, Fax. No.
17 (510) 236-1636, or other such address or Fax Number as the
18 Authority may specify in writing to the parties.

19 **12. EFFECTIVE DATE**

20 This Amendment shall become effective upon the Closing
21 Date of the IRRF Financing, providing that said Closing Date occurs
22 before March 31, 1994. The provisions of Section 2, 3 and 7 of
23 this Amendment shall expire and cease to be of further force and
24 effect at such time as the Authority ceases to have the right,
25 whether by contract or otherwise, to require City to deliver Solid
26 Waste to the Designated Facility or Facilities. Any expiration of

1 such provision shall not affect any other provisions of the
2 Agreement, which shall remain in full force and effect in
3 accordance with their other applicable terms without giving further
4 effect to such expired provisions. The term of this Amendment
5 shall be coextensive with the remaining term of the Franchise
6 Agreement. Nothing in this Amendment shall be interpreted to
7 modify or expand the relative rights and responsibilities of City
8 or Contractor with respect to the term of the Franchise Agreement.

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

13 "CONTRACTOR"

14 Richmond Sanitary Service,
15 a General Partnership

16 *for* *Richard Granzella*
17 RICHARD GRANZELLA, President

18 *for* *Pina Barbieri*
19 PINA BARBIERI, Secretary

20 "CITY"

21 City of Hercules

22 *Beth Bartke*
23 BETH BARTKE, Mayor Pro Tem

24 ATTEST:

25 *Kay Woodson*
26 Kay Woodson, City Clerk

27 Approved as to form:
28 McDonough, Holland & Allen
29 City Attorney

30 BY: *Craig Labadie*
31 Craig Labadie

32 Approved as to form:
33 Norris & Norris

34 BY: *Richard Norris*
35 Richard Norris

ORIGINAL

**Second Amendment
to Franchise Agreement**

This Second Amendment to the Franchise Agreement is entered into as of the ____ day of January, 2000, by and between the City of Hercules, a Municipal Corporation ("City") and Richmond Sanitary Service, a California Corporation ("RSS, Inc.").

The City and Richmond Sanitary Service entered into a Franchise Agreement effective September 10, 1986, (the "Franchise Agreement") and amended January 20, 1994 (the "First Amendment"). This Second Amendment to the Franchise Agreement (hereinafter referred to as "Second Amendment") amends the Franchise Agreement and the First Amendment.

All of the terms, conditions, rights and obligations of the parties under the Franchise Agreement and the First Amendment shall remain in force and effect and shall not be changed in any manner except as expressly set forth in this Second Amendment. The parties expressly agree that their rights and duties under the Second Amendment derive from the execution of the original Franchise Agreement in 1986 and are modified only to the extent of subsequent amendments that expressly modify the Franchise Agreement.

The execution of this Second Amendment which includes the establishment of the Year 2000 Rate is undertaken in connection with the implementation of fully automated, curbside service by RSS, Inc. within the City. In addition, RSS, Inc. is expanding curbside recycling to include a 65 gallon wheeled cart to be picked up every other week and has added the materials to the materials which can be recycled in the residential recycling program for the City in accordance with the recycling program approved by the West Contra Costa Integrated Waste Management Authority.

The City and Richmond Sanitary Service hereby amend the Franchise Agreement between the City and RSS, Inc., as follows:

1. The first and second sentences of the Franchise Agreement following the title "WITNESSETH" on pages 1 and 2 are hereby deleted and replaced as follows:

For and in consideration of the covenants and conditions contained, City hereby grants to Richmond Sanitary Service, Inc. (hereinafter referred to as

"Contractor") the exclusive right and privilege to collect and dispose of all solid wastes in said City from this date through June 30, 2025.

2. Section 6(a) is hereby deleted and replaced as follows:

In addition to its regular collections, Contractor 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. An on-call clean-up shall be the collection by Contractor of up to one cubic yard of non-hazardous waste. Contractor and the City shall, from time to time, jointly establish rules regulating on-call clean-ups.

3. Sections 17, 18, 19, 20, 21, 22, 23 and 24 are hereby added to the Franchise Agreement:

17. In accordance with this Franchise Agreement and the City's applicable ordinances, effective March 1, 2000, the City shall establish the Year 2000 Rate, which rate shall be exclusive of the Designated Rate and shall be the maximum rate which RSS, Inc. shall be allowed to charge for solid waste collection services rendered hereunder. The Year 2000 Rate shall be \$11.97 per month for Senior Service, \$13.30 per month for 35 gallon residential service, \$23.41 per month for 65 gallon residential service, and \$33.52 per month for 95 gallon residential service.

18. In accordance with the Franchise Agreement and the City's applicable ordinances, effective April 1, 2000, Contractor shall implement its Green Waste Collection program as heretofore approved by the West Contra Costa Integrated Waste Management Authority by which Contractor shall provide each residential unit with a green waste cart and collect such cart at curbside every other week. The Year 2000 Rate shall be adjusted upwards effective March 1, 2000, to be \$12.88 per month for Senior Service, \$14.21 per month for 35 gallon residential service, \$24.32 per month for residential 65 gallon service, and \$34.43 per month for residential 95 gallon service.

19. Contractor's Rates (as adjusted) shall be adjusted annually, beginning on January 1, 2001, by the change, if any, in the San Francisco - Oakland -

San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI), and adjust each January first for the years 2002, 2003, 2004, 2005, and 2006. The adjustment shall be based upon the CPI published on or before the November 30 preceding the December 31 adjustment. Nothing in this Section 19 limits the adjustment of the Designated Rate in accordance with the First Amendment to the Franchise Agreement.

20. The City shall review the Contractor's Rates, as adjusted, in the year 2006 based upon the terms of the Franchise Agreement to establish the rate for the year 2007. Contractor shall submit a rate application no later than July 1, 2006 which application shall be supported by sufficient financial and operational information as determined by the City. The City, by its employees or by consultants employed by the City, shall have the right to review the books and records of Contractor and to conduct such studies of the Contractor's operations and audits and reviews of its financial records as the City deems reasonably necessary to consider Contractor's application. The review shall be in accordance with applicable ordinances of the City.

21. In the event of unforeseen economic conditions which materially effect the cost of providing service hereunder, either party may demand that the Year 2000 Rate (or a subsequently set rate), as adjusted hereunder, be revised prior to the next scheduled rate application. The party requesting such an interim rate adjustment shall bear the burden of proof with respect to the establishment of unforeseen economic conditions which materially effect the cost of providing service hereunder and the final discretion as to whether or not to proceed with a rate setting shall be in the party other than the party who requests such interim rate adjustment.

22. 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.'s costs for providing such service together with a reasonable profit thereon.

The City may direct RSS, Inc. to commence providing additional services prior to establishing the appropriate rate for such service provided that the City shall authorize rates to compensate RSS, Inc. 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.

23. Contractor agrees to 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 provisions of the Second Amendment, the City's establishment by ordinance or resolution of the Year 2000 Rate, or in connection with the activities of Contractor, 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.

24. In addition to all of the other services to be provided hereunder, Contractor shall provide the following services without charge to the City:


a. Contractor shall make a \$6,000 per year contribution for the first ten years of the term of this Agreement to the Hercules Community Youth Program.

b. Contractor shall deliver up to ten twenty yard boxes of compost to the City annually for the first ten years of the term of this Agreement.

c. Contractor 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 for the first ten years of the term of this Agreement.

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 its Board of Directors, all on the day and year first above written.

"RSS, Inc."
Richmond Sanitary Service, Inc.

By: 
Richard Granzella, President

By: 
Pina Barbieri, Secretary

"City"

City of Hercules


Mayor

Attest:


City Clerk

Approved as to form:
City Attorney

By: 

**THIRD AMENDMENT
TO THE
FRANCHISE AGREEMENT**

This **Third Amendment to the Franchise Agreement** is entered into as of the 1st day of April 2007, by and between the **City of Hercules**, a Municipal Corporation ("City") and **Richmond Sanitary Service, Inc.**, a California Corporation and wholly-owned subsidiary of Republic Services, Inc. ("RSS").

City and RSS entered into a Franchise Agreement effective September 10, 1986 (the "Franchise Agreement"), amended January 20, 1994 (the "First Amendment"), and on February 8, 2000 (the "Second Amendment"). This Third Amendment (hereinafter referred to as "Third Amendment") amends the Franchise Agreement, the First Amendment and Second Amendment.

All of the terms, conditions, rights and obligations of the parties under the Franchise Agreement, First Amendment and Second Amendment shall remain in force and effect and shall not be changed in any manner except as expressly set forth in this Third Amendment. The parties expressly agree that their rights and duties under the Third Amendment derive from the execution of the original Franchise Agreement in 1986, and are modified only to the extent of subsequent amendments that expressly modify the Franchise Agreement.

The execution of this Third Amendment which includes the establishment of Base Year Rates for solid waste collection service in the Years 2007, 2012, 2017 and 2022, and Interim Rate Adjustments based on the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items ("CPI").

The City of Hercules and Richmond Sanitary Service, Inc., hereby amend paragraphs 17, 19, 20, 21 and 24.c., 24.d., 24.e. and 24.f., of the Franchise Agreement between the City and RSS, to read as follows:

17. In accordance with this Franchise Agreement and the City's applicable ordinances, in the Year 2007, and thereafter in the years 2012, 2017 and 2022, the City shall establish a Base Year Rate, which rate shall be exclusive of the Designated Rate and shall be the maximum rate which RSS shall be allowed to charge for solid waste collection services. The Year 2007 Base Rate shall be \$14.71 per month for Senior Service, \$ 16.71 per month for 20-gallon Residential Service, \$16.71 per month for 35-gallon Residential Service, \$28.60 per month for 65-gallon Residential Service and \$ 40.46 per month for 95-gallon Residential Service.

19. Beginning on January 1, 2008, and each Interim Year between Base Year Adjustments, Contractor's Rates shall be adjusted annually on January 1, by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). Said Adjustment shall be based upon the CPI published on or before the November 30 preceding the January 1 Adjustment. Nothing in this paragraph 19 limits the adjustment of the Designated Rate in accordance with the First Amendment to the Franchise Agreement.

20. In the Base Years defined in paragraph 19., above, and based upon the terms of the Franchise Agreement, the City shall review Contractor's Rates, as adjusted, to establish the new Base Year Rate. Contractor shall submit a rate application no later than July 1, of the Base Years for rate adjustment to be effective on January 1, of the next following Interim Year.

The Contractor's Rate Application shall be supported by sufficient financial operational information as determined by the City. The City, by its employees or by consultants employed by the City, shall have the right to review the books and records of Contractor and to conduct such studies of Contractor's operations and audits and reviews of its financial records as the City deems reasonably necessary to consider Contractor's application. City acknowledges and agrees that all such information is proprietary to Contractor and disclosure of any said proprietary information would cause irreparable harm to Contractor. Therefore, all information in Contractor's books, records, audits and reviews of financial records and studies of Contractor's operations shall be used only for purposes related to the rate application then under review, and shall be held in confidence by City, its officers, directors, employees and consultants.

The review shall be in accordance with applicable ordinances of the City.

21. In the event of unforeseen conditions or circumstances which materially affect Contractor's cost of providing service hereunder, either party may request that the Base Year Rate (or subsequently set rate) as adjusted hereunder, be revised prior to the next scheduled Base Year Rate Review. The party requesting such an interim rate adjustment shall bear the burden of proof with respect to the establishment of unforeseen conditions or circumstances, which materially affect the cost of providing service hereunder. If an interim rate adjustments is requested by Contractor, Contractor shall incur the reasonable costs of any third-party consultant review of the interim rate adjustment application., and will deposit the anticipated fee for said services prior to the engagement of the consultant. Any such consultant fees shall be a "pass through" expense included in the Base Year Rate (or subsequently set rate), as adjusted, effective upon the first date requested in the application for adjustment. In the event the Contractor's requested adjustment is not approved, the consulting fees paid by Contractor shall be an eligible expense for inclusion in the Base Year Rate established in the next periodic adjustment of the Base Year Rate pursuant to paragraph 17, above.

24. In addition to all of the other services to be provided hereunder, Contractor shall provide the following services without charge to the City:

- a. (No change)
- b. (No change)
- c. Contractor shall deliver, pick-up and dispose of the contents of twenty-seven (27) forty-yard (40-yard) containers, or their equivalent in smaller containers as requested by the City, for use by the City in community-wide or special project clean-ups annually.

- d. Contractor shall place and pay for a full-page ad in the City of Hercules Herculean to advise the community of regular and special services provided, service rates, holiday collection schedules and/or other information of general interest.
- e. For the years 2007 through 2012, service Rates for account holders 62 years and older, living in single-family dwellings or owner-occupied units of multi-family dwellings shall be set at \$2.00 per month less than the current rate of 35-gallon Residential Service.
- f. Upon medical certification of disability, Carry-out Service shall be made available without additional cost to account holders where no one in the household is physically able to move carts to the curb for collection. The required medical certification of disability shall be renewed annually.

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 has caused these presents to be signed on its behalf by its Area President and General Manager, thereunto duly authorized and empowered to enter into this Third Amendment to the Franchise Agreement, all on the day and year first above written.

City of Hercules

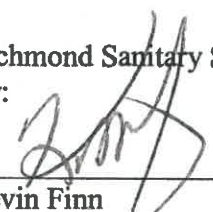
By:


Ed Balico
Mayor

7/31/07
Date


Richmond Sanitary Service, Inc.

By:

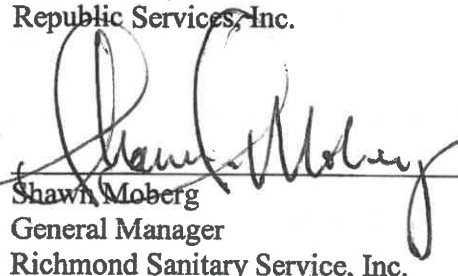

Kevin Finn
Area President
Republic Services, Inc.

8/21/07
Date

Attest:


Doreen Mathews
City Clerk

7/31/07
Date


Shawn Moberg
General Manager
Richmond Sanitary Service, Inc.

8/15/07
Date

Approved as to form:


Alfred A. Cabral, City Attorney

7/18/2007
Date

**FOURTH AMENDMENT
TO
FRANCHISE AGREEMENT**

This **Fourth Amendment to the Franchise Agreement** is entered into as of the 12th day of February, 2013, by and between the **City of Hercules**, a Municipal Corporation ("City") and **Richmond Sanitary Service, Inc.**, a California Corporation and wholly-owned subsidiary of Republic Services, Inc. ("RSS").

City and RSS entered into a Franchise Agreement effective September 10, 1986 (the "Franchise Agreement"), amended January 20, 1994 (the "First Amendment"), amended on February 8, 2000 (the "Second Amendment") and amended April 1, 2007 (the "Third Amendment"). This Fourth Amendment (hereinafter referred to as "Fourth Amendment") amends the Franchise Agreement, the First Amendment, Second Amendment and Third Amendment.

All of the terms, conditions, rights and obligations of the parties under the Franchise Agreement, First Amendment, Second Amendment and Third Amendment shall remain in force and effect and shall not be changed in any manner except as expressly set forth in this Fourth Amendment. The parties expressly agree that their rights and duties under this Fourth Amendment derive from the execution of the original Franchise Agreement in 1986, and are modified only to the extent of subsequent amendments that expressly modify the Franchise Agreement.

The execution of this Fourth Amendment which includes the establishment of Base Year Rates for solid waste collection service in the Years 2012, 2017 and 2022, and annual Interim Rate Adjustments based on the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items ("CPI").

The City of Hercules and Richmond Sanitary Service, Inc., hereby amend paragraphs 11, 17, 19, 20, 21 and 24.a, 24.c., 24.d., and 24.e. of the Franchise Agreement between the City and RSS, to read as follows:

11. This section is deleted in its entirety and changed to read:

In consideration of the exclusive rights provided Contractor herein, beginning January 1, 2013, and monthly thereafter, for said privilege hereby granted, Contractor shall pay Franchise Fees to the City, an amount equal to 10% of gross revenues.

17. In accordance with the Franchise Agreement and the City's applicable ordinances, in the Year 2012, and thereafter in the years 2017 and 2022, the City shall establish a Base Year Rate. For the 2012 Base Year, Service Rates for Residential and Commercial Service subscribers should have been increased by 5.52%, exclusive of the Designated Rate. The 5.54% rate increase is comprised of the agreed upon 5.52% Base Year Rate Adjustment, plus 0.02% to

account for the net additional 3.19% CPI Rate Adjustment due RSS for 2013 (3.17% Interim CPI applied in 2012 + 0.02% = 3.19%).

The following adjustments also will apply effective January 1, 2013:

a. A one-year only Make-up 2012 Base Year Rate Adjustment of 2.35% and Rate Review Cost Adjustment of 1.45% (total 3.8%).

b. A 5.8% Franchise Fee enhancement.

Maximum allowable rates for the 2013 Interim Year are shown in Exhibit A attached hereto and by this reference are made a part hereof..

19. Beginning on January 1, 2014, the Make-up 2012 Base Year Rate Adjustment and Rate Review Cost Adjustment of 3.8% will be removed from the Rates, and thereafter each Interim Year between Base Year Adjustments, Contractor's Rates shall be adjusted annually on January 1, by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, All Items (CPI). Said Adjustment shall be based upon the CPI published on or before the November 30 preceding the January 1 Adjustment. Nothing in this Paragraph 19 limits the adjustment of the Designated Rate in accordance with the First Amendment to the Franchise Agreement.

20. For the Base Years defined in paragraph 17., above, and based upon the terms of the Franchise Agreement, the City shall review Contractor's Rates, as adjusted, to establish the new Base Year Rate. Contractor shall submit a rate application no later than July 1, of the interim year immediately preceding the Base Year for rate adjustment to be effective on January 1, of the designated Base Year.

The Contractor's Rate Application shall be supported by sufficient financial operational information as determined by the City. The City, by its employees or by consultants employed by the City, shall have the right to review the books and records of Contractor and to conduct such studies of Contractor's operations and audits and reviews of its financial records as the City deems reasonably necessary to consider Contractor's application. City acknowledges and agrees that all such information is proprietary to Contractor and disclosure of any said proprietary information would cause irreparable harm to Contractor. Therefore, all information in Contractor's books, records, audits and reviews of financial records and studies of Contractor's operations shall be used only for purposes related to the rate application then under review, and shall be held in confidence by City, its officers, directors, employees and consultants.

The review shall be in accordance with applicable ordinances of the City.

21. In the event of unforeseen conditions or circumstances which materially affect Contractor's cost of providing service hereunder, either party may request that the Base Year Rate (or subsequently set rate) as adjusted hereunder, be revised prior to the next scheduled Base Year Rate Review. The party requesting such revised rate adjustment shall bear the burden of proof with respect to the establishment of unforeseen conditions or circumstances,

which materially affect the cost of providing service hereunder. If a revised rate adjustment is requested by Contractor, Contractor shall incur the reasonable costs of any third-party consultant review of the revised rate adjustment application., and will deposit the anticipated fee for said services prior to the engagement of the consultant. Any such consultant fees shall be a "pass through" expense included in the Base Year Rate (or subsequently set rate), as adjusted, effective upon the first date requested in the application for adjustment. In the event the Contractor's requested adjustment is not approved, the consulting fees paid by Contractor shall be an eligible expense for inclusion in the Base Year Rate established in the next periodic adjustment of the Base Year Rate pursuant to paragraph 17, above.

24. In addition to all of the other services to be provided hereunder Contractor shall provide the following services, as an allowable pass through expense, without charge to the City:

- a. Beginning July 1, 2013 and annually thereafter, Contractor shall pay to City the sum of \$6,000 per year for anti-blight programs and activities.
- b. (No change)
- c. (No change)
- d. Deleted.
- e. Service Rates for account holders 62 years and older, living in single-family dwellings or owner-occupied units of multi-family dwellings shall be set at \$2.00 per month less than the current rate of 35-gallon Residential Service.
- f. (No. Change)

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 has caused these presents to be signed on its behalf by its Area President and General Manager, thereunto duly authorized and empowered to enter into this Third Amendment to the Franchise Agreement, all on the day and year first above written.

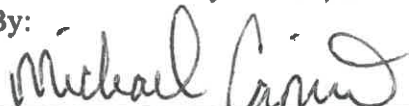
City of Hercules

By:

 02/20/13
Steven Duran, City Manager Date

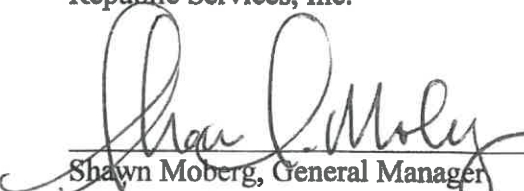
Richmond Sanitary Service, Inc.

By:

 3/11/13
Michael Caprio, Area President Date
Republic Services, Inc.

Attest:

 2/20/13
Doreen Mathews, City Clerk Date

 2/22/13
Shawn Moberg, General Manager Date
Richmond Sanitary Service, Inc.

Approved as to form:


Patrick Tang, City Attorney 2.20.13
Date

13-064

FIFTH AMENDMENT TO FRANCHISE AGREEMENT

BETWEEN

CITY OF HERCULES AND RICHMOND SANITARY SERVICE, INC.

This Amendment to the Franchise Agreement is entered into effective November 15, 2013 by and between the City of Hercules, a municipal corporation ("City"), and Richmond Sanitary Service, Inc., a California corporation ("RSS").

RECITALS

1. On September 10, 1986, the City and RSS entered into a Franchise Agreement for an exclusive right to provide collection and disposal services within the City of Hercules, and the Franchise Agreement has since been amended several times.
2. The Authority is a joint powers agency created by the Cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo (individually and collectively referred to herein as "Member Agencies" in a Joint Exercise of Powers Agreement dated April 2, 1991, and as amended.
3. On October 10, 2013, the West Contra Costa Integrated Waste Management Authority ("Authority") authorized execution of an Agreement for Enhanced Recycling Services, Post-Collection Recycling, and Disposal Services (hereinafter "Post-Collection Agreement") governing the handling of waste and recyclables collected in the franchise areas served by the RSS and its affiliates.
4. Pursuant to the Post-Collection Agreement, RSS has agreed to implement specific enhancements of its collection services within the West Contra Costa County area and Member Agencies for which it is the current franchisee collector ("Franchise Agencies"), by providing weekly recycling and organic materials collection to residential customers; weekly mixed residential organics services; weekly or source separated commercial recyclable and organic materials collection and processing; routing of commercial customers for dry load collection and processing; expansion of recyclable materials accepted curbside; and two full-time recycling coordinators to exclusively serve the Authority's service area with certain new services beginning on the start dates specified herein (hereinafter collectively referred to as "Enhanced Collection Services").
5. The City of Hercules, through the Authority Joint Powers Agreement, and the 1994 Exhibit to the City Franchise Agreement entitled "Requirements for Franchise Agreements and Covenants Made A Part of Franchise Agreements," authorize the Authority through December 31, 2013 to direct the waste stream for processing and disposal to designated facilities, and the Post-Collection Agreement exercises that authority on behalf of the City.

6. The initial Enhanced Collection Services rate adjustments being approved for residential and commercial customers shall be the sole means of compensation due to RSS for providing the Enhanced Collection Services, with the exception of any annual CPI-adjustments provided for herein to which the Enhanced Collection Services are subject to.

AMENDMENT TO FRANCHISE AGREEMENT

In consideration of the above and the promises and other provisions in this Amendment, the Parties agree to amend the Franchise Agreement as follows:

1. For the remaining term of the Franchise Agreement between City RSS, RSS shall provide the following Enhanced Collection Services at the agreed-upon compensation as set forth below:

a. Weekly Recycling and Organic Materials Collection. No later than October 31, 2014, RSS shall convert the every-other-week collection program for all residential recyclable materials and organic materials to a weekly collection program. Such weekly recycling and organic materials collection will apply to both single family and multi-family customers. For commercial customers, no later than October 31, 2014, RSS shall convert all commercial recyclable materials cart customers from every-other-week to weekly collection and shall service all cart and bin commercial recycling containers weekly, at a minimum.

b. Mixed Residential Organics. Beginning January 1, 2014, in addition to yard waste, all City residential customers will be allowed to place food scraps and food-soiled paper, into their green waste containers upon the City's request. RSS shall be responsible for distributing education and outreach collateral (e.g. stickers, mailers, food pails, etc.) purchased with Authority grant funding, at no additional charge to the City, or customers.

c. Source Separated Commercial Recyclable Materials Collection and Processing. Beginning January 1, 2014, RSS shall offer commercial customers (including multi-family customers receiving service in carts and bins) recyclable materials collection from carts and bins ranging from one to six cubic yards in capacity, and shall offer such service up to three times per week, at the customer's request.

d. Source Separated Commercial Organic Materials Collection and Processing. Prior to April 1, 2014, RSS shall identify, educate, and sign up restaurants, institutional kitchens, and food processors for source separated organic materials collection service. Beginning April 1, 2014, RSS shall commence collection service for commercial source separated organics accounts that have signed up for such service. Commercial organic materials accepted under this program shall include all compostable food waste and food soiled paper. Prohibited materials under this program shall include hazardous materials, metals, glass, ceramics, and plastics (except certain compostable bio-plastic bags and food service ware specified by RSS). RSS shall provide such customers the option of using sixty-five (65) gallon carts and one or two cubic yard bins, at the customer's request. Collection of source separated commercial organic materials shall be provided up to three times per week, at the customer's request. This service shall be provided at no additional charge to customers who subscribe to garbage service.

e. Routing of Commercial Customers for Dry Load Collection and Processing.

Beginning February 1, 2014, RSS shall commence a review of commercial customer accounts and waste characterization with the purpose of identifying customers where the primary constituents of their garbage containers are dry and recyclable. The goal for this program is to identify a sufficient volume of material for one full-time equivalent route. No later than April 1, 2014, RSS shall have completed this review and shall submit a report to the Authority identifying the customers who have been selected for the dry routing program. No later than May 1, 2014, RSS shall have implemented the dry material collections from customers. All material collected under this program shall be processed in a manner that maximizes the recovery of materials, and no material collected under this program shall be disposed of prior to processing without written approval from the Authority as may be required in Section 4.4 of the Post-Collection Agreement.

f. Expansion of Recyclable Materials Accepted Curbside. Beginning January 1, 2014, RSS shall accept the following new or additional recyclable materials curbside:

- i. #1-#7 plastic beverage and food containers;
- ii. Mixed rigid plastic packaging and other food containers;
- iii. Scrap metal;
- iv. Plastic film and wrapping (properly bagged);
- v. All mixed plastics;
- vi. Milk and juice cartons.

g. Recycling Coordinators. By December 1, 2013, RSS shall hire two full-time recycling coordinators dedicated to work exclusively within the Authority service area. Responsibilities of the recycling coordinators include, but are not limited to, supervising, coordinating, and implementing all approved public education and outreach activities and recycling and diversion programs; serving as liaisons between the Authority, [City/County], and RSS; interacting with residents, businesses, community groups, and public agencies. The full scope of the recycling coordinators' duties are set forth in Exhibit 4.1.9 of the Post-Collection Agreement. Public education and outreach materials prepared by RSS shall be subject to the review and approval of the Authority.

2. Implementation dates specified in Sections 1.a and 1.c through 1.e. will remain unchanged as long as all Franchise Agreement amendments are approved no later than November 15, 2013. If one or more Franchise Agreement Amendments are not approved on or before November 15, 2013, the following shall apply:

a. Franchise Agencies approving franchise amendments by November 15, 2013, containing provisions substantially in the form included as Exhibit 2.4.6 of the Post-Collection Agreement will be able to implement the new reduced post-collection rates established in the Post-Collection Agreement on January 1, 2014.

b. Franchise Agencies not approving franchise amendments by November 15, 2013, containing provisions substantially in the form included as Exhibit 2.4.6 of the Post-Collection Agreement will not be allowed to implement the new post-collection rates established in the

Post-Collection Agreement on January 1, 2014. In this circumstance, the current (2013) post-collection rates will continue to apply in 2014 until thirty (30) days after the franchise amendment is approved by that Franchise Agency.

c. With the exception of the specific services outlined in section 2.d below, implementation dates for the other Enhanced Collection Services in sections 1.a and 1.c through 1.e will be delayed one month for each successive month past November 15, 2013. For example, if all of the Member Agencies approve their respective franchise amendments between November 16 and December 15, the implementation dates will be delayed one month.

d. Regardless of whether all of the Member Agencies have approved their franchise amendments by November 15, 2013, RSS will begin implementing the following Enhanced Collection Service by December 1, 2013: 1.g (recycling coordinators). In addition, RSS will begin implementing the following Enhanced Collection Services by January 1, 2014: 1.b (food scraps in the mixed residential organics containers in jurisdictions that do not already have this in place); and 1.f (acceptance of the expanded list of recyclables in the curbside recycling carts placed out for collection).

3. The RSS's sole compensation for any costs associated with providing Enhanced Collection Services shall be the revenue derived from the initial collection rate adjustment(s) approved by the City which would go into effect at the same time as the new post-collection rates discussed in Sections 2.a – 2.b, plus subsequent CPI-adjustments to this initial collection rate adjustment as authorized pursuant to the City's Franchise Agreement and rate setting methodology and process.

4. The years 2019 and 2023 shall be the base years for City's rate review process pursuant to the Franchise Agreement, unless otherwise agreed to in writing by the Parties hereto.

5. The Franchise Agreement as amended by this and any prior Amendment executed by both Parties shall be construed together as one and the same agreement, and is the entire agreement between the Parties.

6. The term of this Amendment shall be coterminous with the remaining term of the Franchise Agreement.

7. All other remaining terms of the Franchise Agreement shall remain in full force and effect.

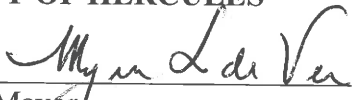
8. There are no other or further Franchise Agreement amendments or other RSS or City agreements or conditions as a pre-requisite to approval of this Amendment.

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IN WITNESS WHEREOF, the City of Hercules and RSS have duly authorized execution of this Amendment and have executed this Amendment as of the date last set forth in the signatures below.

CITY OF HERCULES

By: 
Mayor

ATTEST:

By: 
Margaret S. Roberts, City Clerk

2186761.1

RICHMOND SANITARY SERVICE, INC.,
a California Corporation

By: 

Name: Michael Caprio

Title: Area President

Date: 1/9/14