

ORIGINAL

EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF RICHMOND, a Municipal Corporation

AND

**GOLDEN BEAR TRANSFER SERVICES, INC.
A California Corporation**

EXCLUSIVE FRANCHISE AGREEMENT

1. **PARTIES.** This Agreement, effective on June 28, 2004, is by and between the City of Richmond, a Municipal Corporation ("City") and Golden Bear Transfer Services, Inc., a California Corporation ("Franchisee").

2. **DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below:

Agreement. "Agreement" means this exclusive Franchise Agreement by and between the City and Franchisee for the transfer of Solid Waste.

Franchisee. "Franchisee" means Golden Bear Transfer Services, Inc., a wholly-owned subsidiary of Republic Services, Inc., the entity which has been granted an exclusive franchise pursuant to the terms and conditions set forth in this Agreement.

City. "City" means the City of Richmond, a Municipal Corporation.

City Manager. "City Manager" means the City Manager of the City.

Disposal Fees. "Disposal Fees" means any form of disposal charge, tipping fee, disposal fee, including any taxes, fees or surcharges of any type whatsoever applicable to the disposal of Solid Waste in a Solid Waste landfill facility.

Franchise Area. "Franchise Area" means the corporate City limits of the City, as those limits may be amended from time to time.

Gross Revenues. "Gross Revenues" means revenues from Solid Waste Transfer services provided at the Solid Waste Facility by Franchisee, exclusive of governmental taxes, fees and surcharges applicable to said Gross Revenues. Gross Revenues does not include any other revenues of Franchisee, including without limitation any fees or other receipts related to Recyclable Materials or Disposal Fees.

Recycling. "Recycling" means the process of collecting, sorting, cleaning, treating and reconstituting materials and recovering them so that they may be used in the form of raw material for new, reused, or reconstituted products.

Recyclable Materials. "Recyclable Materials" means those materials subject to Recycling.

Solid Waste. "Solid Waste" has the meaning set forth in Richmond Municipal Code section 9.20.010.

Solid Waste Facility. "Solid Waste Facility" means a Solid Waste Transfer/Processing Station.

Solid Waste Transfer. "Solid Waste Transfer" means the services of handling Solid Waste at the Solid Waste Facility and preparing the Solid Waste for transport in hauling vehicles to a landfill disposal facility. Solid Waste Transfer includes the temporary storage of Solid Waste, separation of materials in the Solid Waste, or to transfer the Solid Wastes directly from smaller to larger vehicles for transport. Solid Waste Transfer does not include disposal fees and charges or transportation of, or transportation costs for transport of, Solid Waste from the Solid Waste Facility to a landfill for disposal.

Solid Waste Transfer/Processing Station. "Solid Waste Transfer/Processing Station" means a facility utilized to receive solid wastes for transfer to a landfill for disposal, to temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport. "Solid Waste Transport/Processing Station" does not include any of the following:

- (1) A facility, whose principal function is to receive, store, separate, convert, or otherwise process in accordance with state minimum standards, manure;
- (2) A facility, whose principal function is to receive, store, convert, or otherwise process recyclable materials and solid wastes not intended for disposal;
- (3) The operations premises of a duly licensed solid waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with land use approvals and health regulations.

3. **TERM.** The term of this Agreement and the exclusive franchise granted hereunder shall commence on June 28, 2004, and continue through December 31, 2025 ("Initial Term"). City and Franchisee shall have the right to extend the Initial Term of this Agreement for a period of ten (10) years through and including December 31, 2035, upon written notice to the City or Franchisee, as appropriate, no less than 180 days prior to the expiration of the Initial Term.

4. **INTENT TO PROVIDE FOR ALL SOLID WASTE TRANSFER AND PROCESSING.** The Parties hereto agree that City has the right pursuant to Public Resources Code section 40059 and Richmond Municipal Code Chapter 9.19 to grant to Franchisee the exclusive privilege to provide Solid Waste Transfer services in the Franchise Area. The intent of this Agreement is to provide for the Franchisee to be the exclusive provider of Solid Waste Transfer services in the Franchise Area, on the terms and conditions set forth herein.

5. **GRANT OF EXCLUSIVE PRIVILEGE.** City hereby grants to Franchisee the exclusive privilege to provide Solid Waste Transfer services within the Franchise Area pursuant to the terms of this Agreement.

6. **FRANCHISEE'S DUTY TO MAINTAIN RECORDS.** Franchisee shall maintain a proper set of books and records in accordance with generally accepted accounting principles, accurately reflecting the business operations subject to this Agreement.

7. **FRANCHISE FEE TO CITY.** Franchisee shall pay to the City a Franchise Fee pursuant to Richmond Municipal Code section 9.19.030(c) for the exclusive privilege of providing Solid Waste Transfer services within the Franchise Area. The Franchise Fee is set forth in the attached Exhibit "A".

8. **TRANSFER RATE FOR CITY SOLID WASTE.** In consideration of the City's grant of an exclusive franchise to Franchisee herein, Franchisee agrees to provide transfer and handling services for the City's Solid Waste at the rates set forth in Exhibit "B" to this Agreement.

9. **COMMITMENT OF CITY SOLID WASTE; CONFORMANCE WITH PLAN.** In consideration of Franchisee's performance of services pursuant to this Agreement, City agrees that:

- (a) subject to and immediately upon the expiration of its commitment of City's Solid Waste to a "Designated Facility" pursuant to the Exercise of Joint Powers Authority Agreement dated April, 1991, reflected in the amendment to the City's collection franchise agreement with RSS, Inc. dated January 20, 1994, the City agrees that it shall commit all of City's Solid Waste for Solid Waste Transfer to Franchisee's Solid Waste Facility for the Term of this Agreement; and
- (b) City has determined that in its judgment that the Franchisee's Solid Waste Facility to be located at the West Contra Costa Landfill Facility site should be considered to be in conformance with the requirements of the Integrated Waste Management Plan for West Contra Costa County, and further agrees to provide written notification to the West Contra Costa Integrated Waste Management Authority of City's determination in this regard upon execution of this Agreement.
- (c) City and Franchisee agree that the initial designated disposal facility for City Solid Waste shall be the Potrero Hills Landfill. The designation of the disposal facility may be changed by the mutual written agreement of the Parties to be reflected in an amendment to this Agreement.

10. **INSURANCE.** Franchisee shall procure and maintain in full force and effect at all times during the entire term of this Agreement the following insurance coverage:

- (a) **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.

- (b) Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.
- (c) 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.
- (d) Pollution and/or Environmental Impairment Liability: \$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. Collector shall ensure that such coverage shall, if commercially available, without involvement of 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 City will be called upon to contribute to a loss suffered by Franchisee hereunder and waive subrogation against City and other additional insureds.
- (e) Collector's deductibles, self-insured retentions or self-insurance programs are authorized pursuant to this Franchise Agreement.

Evidence of comprehensive general liability, automobile liability, employer's liability and workers' compensation insurance shall be provided by Franchisee by filing with City a certificate of insurance indicating that City is included as an additional named insured if commercially available under the liability policies. All policies shall include a provision that should a policy be cancelled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days' written notice to the City.

Such insurance shall be obtained from a company or companies licensed to do business in the State of California. Failure of Franchisee to maintain insurance in the manner and amount stated herein may constitute a material breach of this Agreement.

11. **INDEMNIFICATION.** Franchisee agrees to defend, indemnify and hold harmless the City, its officers, employees, agents against any and all liability, claims, judgments, or demands, including demands arising from injuries or deaths of persons and damage to property and claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1976, as amended, ("CERCLA"), arising out of the Franchisee's performance of services pursuant to this Agreement, save and except claims or litigation arising through the sole negligence or willful misconduct of City.

12. **ATTORNEY'S FEES.** In the event that any legal action or proceeding is necessary to enforce the terms and conditions of this Agreement, the prevailing party in any such

action shall be entitled to an award of reasonable attorneys fees and costs, including any consultant expenses and expert witness fees.

13. **ASSIGNABILITY.** Franchisee shall not assign, subcontract or transfer this Agreement or any part hereof, or any obligation hereunder, without the prior written consent of City, which consent shall not be unreasonably withheld..

14. **INVOLUNTARY ASSIGNMENT.** No interest of Franchisee in this Agreement shall be assignable by operation of law. Each or any of the following acts shall be considered an involuntary assignment providing City with the right to elect to terminate the Agreement forthwith, without suit or other proceeding:

(1) If Franchisee is or becomes insolvent, or makes an assignment for the benefit of creditors;

(2) If Writ of Attachment or Execution is levied on this Agreement or other property of Franchisee such that would affect Franchisee's ability to perform its duties and obligations under this Agreement.

(3) If in any proceeding to which Franchisee is a party, a Receiver is appointed with authority to take possession of Franchisee's property such that would affect Franchisee's ability to perform its duties and obligations under this Agreement;

15. **NOTICE PROVISIONS.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or ten (10) days after posted by certified mail, return receipt requested, addressed as appropriate either to Franchisee:

Golden Bear Transfer Services, Inc.
Attention: President
P.O. Box 94804-0100
3260 Blume Drive, Suite 210
Richmond, California 94806

To City:

City of Richmond
Attention: City Manager
Richmond City Hall
1401 Marina Way South
Richmond, CA 94804

Each party shall also mail a courtesy copy to counsel for the other party.

16. **BREACH, CURE AND TERMINATION.** Upon recommendation by the City Manager, the City shall determine whether a breach of any provision of this Agreement by Franchisee has occurred. Any waiver of a breach shall not be deemed to be a waiver of any subsequent breach or to be construed as approval of a course of conduct. In the event that the City determines that a breach has occurred, City shall give Franchisee written notice of the

breach setting forth the alleged breach or default. Franchisee shall have a reasonable period of time to cure the alleged breach or default based on the nature of the asserted claim for breach or default. In the event the breach or default is cured to the satisfaction of the City within the period of time allotted, the breach shall not be deemed a material breach. In the event that the City determines that Franchisee has failed to satisfactorily cure the breach or default within the period of time allotted, the City may determine such breach or default to be material, subject to Franchisee's rights pursuant to the dispute resolution procedure set forth hereinbelow.

Any uncured material breach shall be cause for termination of this Agreement by the City. Upon the occurrence of an uncured material breach and the declaration of such and termination of this Agreement by the City, this Agreement and the franchise granted thereunder shall be of no further force and effect, including all provisions of Exhibits "A" and "B".

In the event of a dispute between Franchisee and the City of whether or not a material breach has occurred, or whether or not such a breach has been cured, or otherwise under this Agreement, then the parties shall engage in good faith negotiations to resolve their differences. The party seeking to commence the dispute resolution process provided by this paragraph shall send a written notice to the other party. The parties may elect to employ the services of a mediator to assist in the resolution of any such dispute. In the event that the parties are unable to resolve their dispute within thirty days of the date of the sending of the notice, then either party may commence an action in the Superior Court of the State of California in the County of Contra Costa seeking declaratory relief of the respective rights and obligations of the parties.

17. **FORCE MAJEURE.** Notwithstanding Franchisee's exclusive franchise rights set forth in Section 5 of this Agreement, upon an event of Force Majeure due to war, insurrection, riots, floods, earthquakes, fires, acts of God, acts of terrorism, a public enemy, epidemics, quarantine restrictions, labor disputes, or any other causes which may be beyond the control or not the fault of Franchisee, which interrupts the performance of services by Franchisee, the City Manager shall have the right to declare a temporary suspension of this Agreement for the reasonable duration of the event of Force Majeure and until such time as City determines that Franchisee is able to reassume all obligations under this Agreement. Should Franchisee fail to demonstrate to the reasonable satisfaction of the City Manager that required services can be resumed by Franchisee prior to the expiration of a six (6) month period, this Agreement may be terminated at the direction of the City.

Upon an event of Force Majeure beyond the control or not the fault of Franchisee, which does not interrupt the performance of services by Franchisee, but affects the costs incurred by Franchisee to perform the duties and obligations described herein, Franchisee may apply to City for changes to the rates set forth in Exhibit A to this Agreement.

Franchisee shall not be in breach or default under the terms of this Agreement if such breach or default is due to a Force Majeure event including without limitation war, insurrection, riots, floods, earthquakes, fires, acts of God, acts of terrorism, a public enemy, epidemics, quarantine restrictions, labor disputes or any other causes beyond the control or not the fault of Franchisee, and such breach or default could not have been prevented by reasonable foresight on the part of the Franchisee.

18. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

Franchisee shall comply with all applicable laws, rules and regulations governing the services to be performed herein regarding the transfer and processing of Solid Waste.

19. AMENDMENT OR MODIFICATION. This Agreement may be amended or

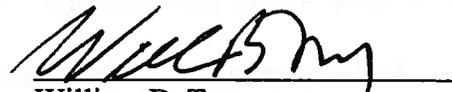
modified only upon the prior written agreement of the parties hereto. The parties agree to meet and confer in good faith if amendments or modifications are proposed.

CITY OF RICHMOND:

FRANCHISEE:



The Hon. Irma Anderson
Mayor, City of Richmond



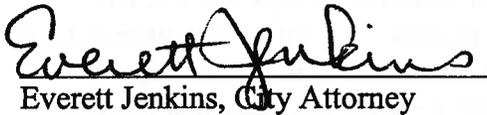
William B. Terry
President, Golden Bear Transfer
Services, Inc.

ATTEST:



Diane Holmes, City Clerk

Approved As To Form:



Everett Jenkins, City Attorney

EXHIBIT A

Franchise Fee

In consideration of the mutual covenants and promises of the Parties set forth in this Agreement, Franchisee shall pay to City a Franchise Fee which *shall be the greater of the following*:

(a) a fee of One Dollar and Fifty Cents (\$1.50) per ton of Solid Waste transferred for disposal through Franchisee's Solid Waste Facility. Said per ton fee shall not be applied to any tons comprising Recyclable Materials or other materials not transferred for disposal; or

(b) a fee equal to two and one-half percent (2.5%) of Franchisee's Gross Revenues generated from Solid Waste Transfer services under this Agreement, based upon audited revenue statements submitted annually to the City. The payment to the City shall be made on a monthly basis, with annual adjustments as necessary based on review of the audited revenue statement. "Gross Revenues" means revenues from Solid Waste Transfer services provided at the Solid Waste Facility by Franchisee, exclusive of governmental taxes, fees and surcharges applicable to said Gross Revenues. Gross Revenues does not include any other revenues of Franchisee, including without limitation any fees or other receipts related to Recyclable Materials or Disposal Fees.

Pursuant to the provisions of Richmond Municipal Code section 9.19.030, the Franchise Fee paid to City pursuant to this Franchise Agreement shall be the sole and only fees and charges that may be assessed by the City regarding the Solid Waste Facility. Except as specifically provided pursuant to Richmond Municipal Code section 9.19.030 (d), no other fees or charges or excises of any kind shall be assessed or levied, including without limitation any host fees or mitigation fees, however derived.

EXHIBIT B

CITY'S SOLID WASTE TRANSFER SERVICE RATES

Franchisee agrees that in consideration of the mutual covenants and promises set forth in this Agreement, City shall be entitled to a preferential rate for Solid Waste Transfer services for the City's Solid Waste ("Transfer Rate"), which Transfer Rate shall be as favorable as the rate charged to the West Contra Costa Integrated Waste Management Authority ("JPA") for Solid Waste Transfer services.

The foregoing notwithstanding, upon the earliest date of:

- (1) the expiration of the term of the Service Agreement between the JPA and West Contra Costa Resource Recovery ("WCRR") for the operation of the Integrated Resource Recovery Facility ("IRRF");
or
- (2) the expiration of the term of any agreement, other than the Service Agreement, between the JPA and any affiliated entity of Franchisee (including WCRR) for the transfer of Solid Waste which includes the City Solid Waste; or
- (3) the commencement date of operation of the Franchisee's Solid Waste Facility for transfer of Solid Waste;

Franchisee agrees to provide handling and transfer services for the City's Solid Waste at the rate of \$15.04 per ton, exclusive of any governmental or contractual taxes, fees and surcharges. Effective January 1, 2004, the Transfer Rate shall be adjusted annually for the remaining term of this Agreement on December 31 of each year, by the change, if any, in the San Francisco - Oakland - San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on or before the November 30 preceding the December 31 adjustment.