

DATE ISSUED: REPORT NO.

ATTENTION: Natural Resources and Cultural Committee

SUBJECT: Non-Exclusive Solid Waste Collection Franchise Amendments

REFERENCE: Report to Council No. 03-067, April 24, 2003

REQUESTED ACTION:

Adopt the ordinance authorizing execution of the Second Amendments to the Class I Non-Exclusive Franchise Agreements for Solid Waste Management Services and the First Amendments to the Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services, effective July 1, 2009, for existing Class I and II franchisees. The existing Class I and Class II franchisees are listed in Exhibit "A" attached hereto. The forms of the proposed amendments are attached hereto as Exhibits "B" and "C" respectively.

STAFF RECOMMENDATIONS:

Approve the proposed franchise agreement amendments. The proposed amendments include (1) a change from a 10-year term agreement with a 5-year extension option every 5 years to a 7-year term agreement with an annual one year extension option; (2) a requirement to comply with the City of San Diego Recycling Ordinance; (3) language clarifying a franchisee's responsibilities regarding equipment, safety, and reporting; and (4) franchise fee definitions.

SUMMARY:

In accordance with San Diego City Charter Article VII, Section 103 (Franchises), the Council has power to grant to any person, firm or corporation, franchises, and all renewals, extensions and amendments thereof, for the use of any public property under the jurisdiction of the City. Such grants shall be made by ordinance adopted by a vote of two-thirds (2/3) of the members of the Council and only after recommendations by the Mayor. The proposed amendments address new term limits, recycling requirements, and clarification of terms and responsibilities. These amendments would be effective July 1, 2009.

BACKGROUND

In October 1996, a Non-Exclusive Solid Waste Collection Franchise system was established to regulate the collection, transfer, transportation, recycling, processing and disposal of solid waste originating in the city of San Diego by private solid waste collection firms. This system replaced a licensing system where haulers paid a license fee of \$100 per company plus \$100 per collection vehicle. The 17 solid waste haulers

licensed by the City, at the time the franchise system was established, were each granted a Non-Exclusive Solid Waste Collection Franchise. The franchise system's fees are based on the amount of solid waste collected in the city of San Diego, regardless of the final disposal site, rather than on the quantity of waste disposed of in the Miramar Landfill, to better reflect the value of the solid waste collection franchises.

In September 2000, a two-tier Non-Exclusive Solid Waste Collection Franchise system was established to reflect the difference in market share served by the franchised haulers. Three franchisees, EDCO Disposal Corporation, Pacific Waste Services, Waste Management, and their affiliates, collect approximately 89% of the city's commercial waste and the remaining franchisees collect about 11%. Under the two-tier system, Class I franchises are for smaller companies that collect up to 75,000 tons of waste per year. Class II franchises are for companies that collect more than 75,000 tons of waste per year with no upper limit. Currently, there are currently 13 companies with franchise agreements for providing solid waste collection services (10 Class I Franchisees and 3 Class II Franchisees).

#### DISCUSSION

Since the passage of the People's Ordinance in May 1919, the City has provided or managed the collection, transportation, transfer, recycling and/or disposal of solid waste generated in the City of San Diego to protect and enhance the health, safety, and quality of life of San Diego's residents. The franchise system is one component of the City's overall solid waste management system. The franchise agreements currently provide for a ten-year term with options to renew for a five-year term every five years, upon approval by Council. After significant consideration, ESD determined that recommending a 5-year extension would not be prudent given a number of uncertainties facing the City's solid waste management system at this time. The City is in the middle of conducting a long-term solid waste strategic planning effort, the results of which may impact the franchise system; the requirements that may be imposed on the City to comply with the AB 32 greenhouse gas reduction are not fully known at this time; waste diversion requirements are in flux; and managed competition may influence the way in which the City wishes to manage solid waste. So, the department's goal is to move forward with a franchise program that allows for flexibility in planning for and responding to significant changes in the solid waste environment expected in the next several years and is in alignment with a Long Term Resource Management Plan, Managed Competition, and unknown regulatory mandates, while at the same time preserving stability in the solid waste collection choices available to City residents and businesses. Some of the issues that impact specific future needs of the City's solid waste system and the role of the non-exclusive franchisees include (1) management of the City-generated waste stream in a manner that cost-effectively maximizes the life of the Miramar landfill; (2) maximization of the diversion of materials from the City-generated solid waste stream (particularly the commercial and multi-family sectors); (3) management of the franchise fee and other revenues to fund environmental programs as waste disposal volumes decline and the Miramar Landfill eventually closes. These proposed amendments will provide the City with the flexibility required to respond to the future solid waste collection needs of the

City of San Diego. Other amendments to the franchise agreements include changes to definitions, recycling requirements, eliminating the franchise fee on recyclable materials source-separated at the point of generation and incinerated to create clean energy, compliance with regulatory requirements, and reporting and notice obligations.

FISCAL CONSIDERATIONS:

There are no fiscal impacts associated with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

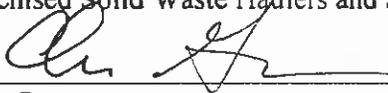
Last franchise amendments occurred in April 2003.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

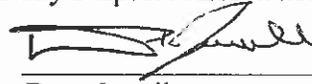
ESD held a number of meetings with the franchised haulers to negotiate the terms of the proposed franchise amendments. Amendments to franchise agreements will be distributed to all Franchisees and applicable stakeholders.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

The key stakeholders associated with this item include the City's Non-Exclusive Franchised Solid Waste Haulers and San Diego County Disposal Association.



Chris Gonaver  
Environmental Services Department  
Director



Dave Jarrell  
Deputy Chief of Public Works

GONAVER/SM

CITY OF SAN DIEGO  
NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISEES

CLASS I FRANCHISEES

Allan Company  
Daily Disposal Services, Inc.  
Debris Box  
Dependable Disposal & Recycling  
Diamond Solid Waste Services LLC  
Emerald Waste & Recovery, Inc.  
Express Waste & Recycling  
John Smith Earthworks, Inc.  
Tayman Industries  
Ware Disposal Co., Inc.

CLASS II FRANCHISEES

EDCO Disposal Corporation (4)  
• EDCO Disposal Corporation  
• EDCO Waste & Recycling Services, Inc  
• Sani-Tainer, Inc.  
• Webco Sanitation

Allied (Pacific Waste Services) (1)

Waste Management of San Diego (6)  
• BDC Special Waste Services  
• Coast Waste Management, Inc.  
• Moor Refuse, Inc.  
• Reliable Waste  
• USA Waste of California, Inc.  
• Waste Management of San Diego

**CITY OF SAN DIEGO  
ENVIRONMENTAL SERVICES DEPARTMENT**

**SECOND AMENDMENT TO  
CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES**

This SECOND AMENDMENT TO THE CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Second Amendment] is entered into by and between the City of San Diego [City] and \_\_\_\_\_ [Franchisee] and is effective the 1st day of July 2009.

**RECITALS**

WHEREAS, on September 18, 2000, the City and Franchisee entered into the Class I Non-Exclusive Franchise Agreement For Solid Waste Management Services [Agreement], which is on file in the Office of the City Clerk as Document No. OO-18849-\_\_\_; and

WHEREAS, the Agreement provided for an initial term through and including February 28, 2007 and provided for one-year extensions to the Agreement beginning two years after the effective date of the Agreement upon approval of the City Council by ordinance; and

WHEREAS, a First Amendment to the Agreement was executed pursuant to Ordinance No. \_\_\_\_\_, duly adopted by the San Diego City Council on May 20, 2003; and

WHEREAS, among other things, the First Amendment modified the term of the Agreement to ten years beginning July 1, 2003 through an including June 30, 2013 and provided for five-year extensions to the Agreement beginning five years after the effective date of the Agreement and every five years thereafter all subject to approval of the City Council by ordinance; and

WHEREAS, the City and the Franchisees have renegotiated the term of the Agreement, as well as other terms and conditions therein, in order to accommodate the needs of the parties; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement as amended; and

WHEREAS, the execution and delivery of this Second Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2008:

NOW THEREFORE, the City and the Franchisee, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, do hereby agree to amend the Agreement as follows:

Section 1.5 – City and City Council:

From: “City” means City of San Diego, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement and its employees as described in Section 10.13. “City Council” mean the nine (9) elected council members, including the Mayor, of the City.

To: “City” means City of San Diego, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement and its elected Mayor and employees as described in Section 10.11. “City Council” means the eight (8) elected council members of the City.

Section 1.14.1 – Franchise Fee is added to read:

Add: “Franchise Fee” means the fee imposed on Franchisees for the value of the franchise granted by the City, pursuant to San Diego Municipal Code sections 66.0107 and 66.0118 as they currently exist and may be amended. The Franchise Fee shall be established from time to time by resolution of the City Council and is imposed solely on the Franchisee and not on any individual customer of Franchisee.

Section 1.18 – Materials Recovery Facility (MRF):

From: “Materials Recovery Facility” means a permitted facility where solid waste is sorted or separated for the purpose of recycling or reuse.

To: “Materials Recovery Facility” means a permitted facility where solid waste is sorted, separated or otherwise processed for the purpose of recycling or reuse.

Section 3.2 – Effective Date of Agreement and Term of Franchise:

From: The effective date of this Agreement shall be July 1, 2003 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for ten (10) years beginning with the Effective Date of July 1, 2003, through June 30, 2013, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

To: The effective date of this Agreement shall be July 1, 2009 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2009, through June 30, 2016, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

Section 3.3 – Extension Term:

From: Five (5) years after the effective date of this First Amendment and every five (5) years thereafter, a five (5) year extension shall be applied to the term of said Franchise, upon approval of the City Council by ordinance, so that the remaining term of the Franchise shall be ten (10) years, unless otherwise terminated in accordance with the Agreement or this First Amendment. The City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement and any amendments thereto on the annual anniversary of the effective date of this First Amendment and continuing every year thereafter. The extension, if any, shall be contingent upon, among other things, the Franchisee having satisfied all performance requirements of the Agreement and this First Amendment including, but not limited to, having provided the City with all required documents and having brought all franchise fee accounts and other accounts with the City current.

If Franchisee does not agree with the revised terms of the Agreement, then Franchisee will have the right to a public hearing by the City Council regarding the contractual dispute. (See Section 9.2 for procedural requirements to have matter heard by City Council.)

To: One (1) year after the Effective Date and annually thereafter, a one (1) year extension shall be applied to the term of said Franchise, upon approval of the City Council by ordinance, so that, if duly approved, the remaining term of the Franchise would be seven (7) years, unless otherwise terminated in accordance with the Agreement including any amendments thereto. The City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement and any amendments thereto on the annual anniversary of the Effective Date and continuing every year thereafter. The extension, if any, shall be contingent upon, among other things, the Franchisee having satisfied all performance requirements of the Agreement and all amendments thereto including, but not limited to, having provided the City with all required documents and having brought all franchise fee accounts and other accounts with the City current.

If Franchisee does not agree with the revised terms of the Agreement, then Franchisee will have the right to a public hearing by the City Council regarding the contractual dispute. (See Section 9.2 for procedural requirements to have matter heard by City Council.)

Section 4.1 – Grant of Agreement:

From: City hereby grants to Franchisee a non-exclusive Class I Solid Waste Collection Franchise authorizing Franchisee to engage in the business of collecting, and subsequently transporting, disposing and/or recycling of a maximum of 75,000 tons per year of solid waste accumulated or produced in the City and to use the

public streets and rights-of-way for such purpose. This grant is pursuant to Franchisee's application for the Franchise, which application is incorporated herein by this reference. Franchisee is subject to the terms and conditions specified in Sections 103 & 105 of the Charter of the City, the provisions of Article 66.0101 et seq. of the San Diego Municipal Code, the terms and conditions specified in all related resolutions, and the terms and conditions of this Agreement and the representations and assurance in Franchisee's application for the Franchise.

Under the terms of this Franchise, the Franchisee has the authority to collect multi-family residential, commercial and industrial solid waste. The Franchisee is also granted the authority to collect residential solid waste from residences which are exclusively on private streets. The grant of authority to collect certain refuse is limited by San Diego Municipal Code Section 66.0127 which requires the City to collect certain solid waste.

Any Franchisee providing residential or non-residential solid waste collection under the terms of this Agreement shall be required to either (1) ensure that recycling services are made available for all customers either directly or by arrangement with another recyclable materials collector or (2) at a minimum, provide customers with a current list of recyclable materials collectors providing service in the area.

Collection routes shall be designed so as not to cross two or more jurisdictional boundaries and, for the purpose of the Franchise granted herewith, shall be located exclusively within the City's jurisdictional boundary to the extent practical by operations of Franchisee. In the event Franchisee demonstrates to the Director it is unable to meet this requirement, the Franchisee shall use an allocation method as determined by the Director to properly allocate the tonnage within each multi-jurisdictional load to the appropriate jurisdictions. Additionally, Franchisee shall provide to the Director with each quarterly tonnage report information deemed necessary by the Director in order to validate the tonnages reported by Franchisee including, but not limited to, for each multi-jurisdictional load: 1) number of collection points, bin size, and frequency of collection, by jurisdiction, and 2) total tonnage of each multi-jurisdictional load.

To: City hereby grants to Franchisee a non-exclusive Class I Solid Waste Collection Franchise authorizing Franchisee to engage in the business of collecting, and subsequently transporting, disposing and/or recycling of a maximum of 75,000 tons per year of solid waste accumulated or produced in the City and to use the public streets and rights-of-way for such purpose. This grant is pursuant to Franchisee's application for the Franchise, which application is incorporated herein by this reference. Franchisee is subject to the terms and conditions specified in Sections 103 & 105 of the Charter of the City, the provisions of Chapter 6, Article 6, sections 66.0101 et seq. of the San Diego Municipal Code as currently enacted and as may be amended from time-to-time, the terms and

conditions specified in all related resolutions, the terms and conditions of this Agreement and all amendments thereto, and the representations and assurances in Franchisee's application for the Franchise.

Under the terms of this Franchise, the Franchisee has the authority to collect multi-family residential, commercial and industrial solid waste. The Franchisee is also granted the authority to collect residential solid waste from residences which are exclusively on private streets. The grant of authority to collect certain refuse is limited by San Diego Municipal Code Section 66.0127 which requires the City to collect certain solid waste.

Franchisee shall comply with the City Recycling Ordinance [City Recycling Ordinance], codified as San Diego Municipal Code Sections 66.0701 – 66.0718, and the Construction and Demolition Debris Diversion Deposit Program Ordinance [C&D Ordinance], codified as San Diego Municipal Code Sections 66.0601 – 66.0610, as currently enacted and as may be amended from time-to-time.

Collection routes shall be designed so as not to cross two or more jurisdictional boundaries and for the purpose of the Franchise granted herewith, shall be located exclusively within the City's jurisdictional boundary to the extent practical by operations of Franchisee. In the event Franchisee demonstrates to the Director it is unable to meet this requirement, the Franchisee shall use an allocation method as determined by the Director to properly allocate the tonnage within each multi-jurisdictional load to the appropriate jurisdictions. Additionally, Franchisee shall provide to the Director with each quarterly tonnage report information deemed necessary by the Director in order to validate the tonnages reported by Franchisee including, but not limited to, for each multi-jurisdictional load: 1) number of collection points, bin size, and frequency of collection, by jurisdiction, and 2) total tonnage of each multi-jurisdictional load.

#### Section 4.2 – Franchise Fees:

From: Franchisee agrees to pay to the City a Class I Franchise Fee, equal to \$1.00 per ton less than the Council approved Franchise Fee payable by Class II Franchisees, on all solid waste collected in the City, regardless of the location of the disposal site. The Franchise Fee may be modified in the amount and manner of payment at anytime during the term of this Agreement by a resolution of the City Council. Notwithstanding the above, for purposes of calculating the Franchise Fee owed to the City, recyclable materials, as defined in this Agreement, will not be counted as solid waste so long as the material is source-separated at the point of generation and is diverted from disposal and/or incineration as solid waste in accordance with AB 939 guidelines even if the generator is charged a fee for the service. Material of potential economic value mixed with solid waste, collected, and transported to a materials recovery facility or any other facility where the material is subsequently sorted or separated for the purpose of recycling or reuse, shall be counted as solid waste and subject to the Franchise Fee.

To: Franchisee agrees to pay to the City a Class I Franchise Fee, equal to \$1.00 per ton less than the Council approved Franchise Fee payable by Class II Franchisees, on all solid waste collected in the City, regardless of the location of the disposal site. The Franchise Fee may be modified in the amount and manner of payment at anytime during the term of this Agreement by a resolution of the City Council. Notwithstanding the above, for purposes of calculating the Franchise Fee owed to the City, recyclable materials, as defined in this Agreement, will not be counted as solid waste so long as the material is source-separated at the point of generation and is diverted from disposal ~~and/or incineration~~ as solid waste in accordance with AB 939 guidelines even if the generator is charged a fee for the service. Material of potential economic value mixed with solid waste, collected, and transported to a materials recovery facility or any other facility where the material is subsequently sorted or separated for the purpose of recycling or reuse, shall be counted as solid waste and subject to the Franchise Fee.

Section 5.4 – Residential, Commercial and Industrial Recycling:

From: Franchisee agrees to either (1) provide or make available through separate arrangement, recycling programs to all accounts requesting service from Franchisee or (2) at a minimum, provide customers with a current list of recyclable materials collectors providing service in the area. Costs of the recycling program shall be paid by the waste generators.

In the event that Franchisee does not meet its obligations under this Section, it shall be considered a default under Article 9 of this Agreement.

To: Franchisee shall comply with the City Recycling Ordinance and shall provide or make available through separate arrangement, recycling collection services to all customers/accounts receiving solid waste collection services from Franchisee, except for specific customers/accounts that make other arrangements for the collection of designated recyclable materials in accordance with the City Recycling Ordinance. Specific requirements under the City Recycling Ordinance include, but are not limited to, San Diego Municipal Code Section 66.0709 – Delivery of Recyclable Materials to Recycling Facility, San Diego Municipal Code Section 66.0710 – Recycling Containers, and San Diego Municipal Code Section 66.0711 – Annual Reports from Franchisees and Recyclable Materials Collectors. Payment for recycling services is the responsibility of the waste generators. Franchisee shall designate a Point of Contact (POC) to provide “Recycling Technical Assistance” to its customers and provide such contact information to the City. The POC shall be knowledgeable about the requirements of the City Recycling Ordinance, C&D Ordinance, and all other City waste diversion programs and requirements, and shall provide technical assistance to customers of Franchisee in meeting recycling obligations. Franchisee shall notify all its customers twice per year, at a minimum, of their responsibilities under the City Recycling Ordinance.

In the event that Franchisee does not meet its obligations under this Section, it shall be considered a default under Article 9 of this Agreement.

Section 5.5 D – Delivery of Recyclable Materials to Recycling Facility is added to read:

Add: *Delivery of Recyclable Materials to Recycling Facility.* Franchisee shall comply with San Diego Municipal Code Section 66.0709.

Section 5.8 F – Equipment is added to read:

Add: *CARB Regulations.* All vehicles subject to CARB regulations that are used by Franchisee in providing solid waste management services under this Agreement shall be in compliance with California Air Resources Board regulations for Diesel Particulate Matter Control Measure for On-road Heavy-duty Diesel-fueled Residential and Commercial Solid Waste Collection Vehicles. Any new or replacement vehicles acquired after the date of this Agreement shall meet the then applicable engine emission requirements.

Section 5.9 C, D, E – Franchisee Provided Solid Waste Containers is added to read:

Add:

C. *Container Standards.* Franchisee shall comply with the standards in ESD's Recycling Container and Signage Guidelines for the City of San Diego Ordinance, which were promulgated for purposes of the implementation of the City Recycling Ordinance.

D. *Bin and Container Size Requirements.* Franchisees offering front load bin service and/or automatic lift container service shall provide recycling and refuse bins/containers in at least the sizes listed below upon request. Franchisee may also offer additional sizes to meet specific needs of its customers.

Front load bins: capacities of 2.0 cubic yard (cy), 3.0 cy, 4.0 cy, and 6.0 cy

Residential style automated collection carts: approximate capacities of 32 gallons, 64 gallons, and 96 gallons

E. *Containers for use Indoors, Outdoors in Public/Common Areas, and at Special Events.* Franchisees offering front load bin service and/or automatic lift container services are encouraged to provide refuse and recycling collection containers suitable for indoor uses (i.e. under desks, along-side desks, in common areas, etc.), outdoor public/common areas, and for special events upon request.

Section 5.10 B, C – Personnel:

From: B. *Safety Training.* Franchisee shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for

collection of solid waste, or who are otherwise directly involved in such collection.

*C. Employee Conduct.* Franchisee shall use its best efforts to ensure that all employees present have a neat appearance and conduct themselves in a courteous manner in their dealings with customers and the general public.

To: *B. Safety Training.* Franchisee shall provide suitable operational and safety training and safety equipment, including but not limited to gloves, hard hats, and safety clothing (i.e. safety vests, reflective material wear) for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, or who are otherwise directly involved in such collection.

*C. Employee Conduct.* Franchisee shall use its best efforts to ensure that all employees present have a neat appearance and conduct themselves in a courteous manner in their dealings with customers and the general public. Employee uniforms or apparel shall identify employees as employed by Franchisee.

Section 7.1 – General:

From: Franchisee agrees to maintain and report to the Director with such accounting, statistical and other records or documentation related to its performance under this Agreement and as necessary for the City to: 1) fulfill its obligations under AB 939, as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, and other applicable laws and regulations; 2) meet its solid waste program management needs and reporting requirements; and 3) reconcile the accuracy of Franchise Fee payments as described in Section 4.2.

By the twentieth (20<sup>th</sup>) of each month following a calendar year quarter, Franchisee shall submit to the Director a Quarterly Report using the report form(s) and/or format(s) approved by Director and provided to Franchisee in accordance with Section 10.10. Quarters end on March 31, June 30, September 30, and December 31 of each calendar year.

Each report shall include a certification executed by an authorized officer of the Franchisee, in substance, as follows: "I declare, under penalty of perjury, that this statement is made by me, and that I am authorized to make such statement on behalf of Franchisee, and to the best of my knowledge and belief, it is a true, correct and complete statement made in good faith for the quarter stated herein." Franchisee may propose report formats that are responsive to the needs of the City. The format of each report shall be approved by City. With the written direction or approval of City, and after Franchisee is given an opportunity to review and comment, the records and reports to be maintained and provided by Franchisee may be adjusted in number, format, or frequency.

Franchisee shall retain copies of all collection, recycling, and disposal records for

a minimum of three (3) years following the date of billing, for inspection and verification by the City or its agents, at any reasonable time upon request and shall cooperate with the City in any audits or investigations of such records. Records shall be in chronological order and organized in a form which is readily and easily interpreted.

All reports shall be submitted to: City of San Diego  
Environmental Services Department  
Attention: Franchise Administrator  
9601 Ridgehaven Court, Suite 210  
San Diego, CA 92123-1636

Failure of Franchisee to comply with the reporting requirements as set forth in this section shall result in a late penalty charge of \$100 (one hundred dollars) for each month or part thereof past the due date. Franchisee's repeated failure to submit reports, and/or failure to submit reports on time, may result in additional penalties and/or revocation of Franchise privileges at the discretion of City the Manager.

To: Franchisee agrees to maintain and report to the Director such accounting, statistical and other records or documentation related to its performance under this Agreement and as necessary for the City to: 1) fulfill its obligations under AB 939 as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, and other applicable laws and regulations; 2) meet its solid waste program management needs and reporting requirements; and 3) reconcile the accuracy of Franchise Fee payments as described in Section 4.2.

By the twentieth (20<sup>th</sup>) of each month following the end of a calendar year quarter, Franchisee shall submit to the Director a Quarterly Report of collection activities and tonnages disposed using the report form(s) and or format(s) approved by the Director and provided to Franchisee in accordance with Section 10.10 Notices. Quarters end on March 31, June 30, September 30, and December 31 of each calendar year. Annual reports shall also be submitted in compliance with San Diego Municipal Code Section 66.0711.

Each report shall include a certification executed by an authorized officer of the Franchisee, in substance, as follows: "I declare, under penalty of perjury, that this statement is made by me, and that I am authorized to make such statement on behalf of Franchisee and, to the best of my knowledge and belief it is a true, correct and complete statement made in good faith for the time period stated herein." Franchisee may propose report formats that are responsive to the needs of the City. The format of each report shall be approved by City. With the written direction or approval of City, and after Franchisee is given an opportunity to review and comment, the records and reports to be maintained and provided by Franchisee may be adjusted in number, format, or frequency.



Agreement. Franchisee will permit the City Auditor or designee to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid by five percent (5%) or more of the total required fee, then Franchisee shall pay the City's cost of the audit. Failure to provide the City Auditor or designee with access to the records required to conduct audits under this Agreement is a breach of the Agreement subject to revocation of this Franchise.

#### Section 10.5 – Assignment:

From: Franchisee acknowledges that this Agreement involves rendering a vital service to City residents and businesses, and that the City has franchised Franchisee to perform the services specified herein based on (1) Franchisee's experience, skill and reputation for conducting its solid waste management and/or recycling operations in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing the Franchisee to perform the services to be rendered by Franchisee under this Agreement.

Any Franchise granted pursuant to this division is a privilege to be held in trust by the original Franchisee. A Franchise issued under this division shall not be transferred, sold, leased, assigned, relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes the transfer of ownership of the Franchise, or a majority of the ownership or control of the Franchisee, or the conveyance of a majority of the Franchisee's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by the Franchisee. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing City ordinance.

Notwithstanding the above, no Franchise shall be transferred or assigned unless all City accounts are current and no monies are due to City..

To: Franchisee acknowledges that this Agreement involves rendering a vital service to City residents and businesses, and that the City has franchised Franchisee to perform the services specified herein based on (1) Franchisee's experience, skill and reputation for conducting its solid waste management and/or recycling operations in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. City has relied on each of these factors, among others, in choosing the Franchisee to perform the services to be rendered by the Franchisee under this Agreement.

Any Franchise granted pursuant to this division is a privilege to be held in trust by the original Franchisee. A Franchise issued under this division shall not be transferred, sold, leased, assigned, relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes, but is not limited to, the transfer of ownership of the Franchise, or a majority of the ownership or control of the Franchisee, or the conveyance of a majority of the Franchisee's stock to a new controlling interest. Franchisee shall provide the City with ninety (90) days advance notice of its intent to transfer, sell, lease, assign, relinquish or delegate its franchise to another person. Franchises shall become void upon the abandonment of same by the Franchisee. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing City ordinance. Notwithstanding the above, no Franchise shall be approved to be transferred, assigned or otherwise conveyed to another party unless and until all City accounts are current and no monies are owed to the City by the existing Franchisee.

Section 10.6 – Franchise Fee Acknowledgement is added to read:

Add: Franchisee acknowledges that the Franchise Fee is an obligation imposed on Franchisee and is not an obligation imposed on any individual customer of Franchisee. Franchisee shall not represent to any customer that the City is imposing a Franchise Fee on individual customers of Franchisee.

This Second Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this Second Amendment to be executed by their duly authorized officers or representatives.

CITY OF SAN DIEGO

FRANCHISEE

By: \_\_\_\_\_  
Chris Gonaver  
Environmental Services Director  
CITY OF SAN DIEGO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**I HEREBY APPROVE** the form and legality of the foregoing Second Amendment to the Agreement this \_\_\_ day of \_\_\_ 2009.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_  
Grace C. Lowenberg  
Deputy City Attorney



**CITY OF SAN DIEGO  
ENVIRONMENTAL SERVICES DEPARTMENT**

**FIRST AMENDMENT TO  
CLASS II NON-EXCLUSIVE FRANCHISE AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES**

This FIRST AMENDMENT TO THE CLASS II NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [First Amendment] is entered into by and between the City of San Diego [City] and \_\_\_\_\_ [Franchisee] and is effective the 1st day of July 2009.

**RECITALS**

WHEREAS, effective July 1, 2003, the City and Franchisee entered into the Class II Non-Exclusive Franchise Agreement For Solid Waste Management Services [Agreement], which is on file in the Office of the City Clerk as Document No. OO-19180-\_\_; and

WHEREAS, the Agreement provided for a initial ten-year term, through and including June 30, 2013, and provided for five-year extensions to the Agreement beginning five years after the effective date of the Agreement and every five years thereafter all subject to approval of the City Council by ordinance; and

WHEREAS, the City and the Franchisees have renegotiated the term of the Agreement, as well as other terms and conditions therein, in order to accommodate the needs of the parties; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement as amended; and

WHEREAS, the execution and delivery of this First Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2009:

NOW THEREFORE, the City and the Franchisee, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, do hereby agree to amend the Agreement as follows:

Section 1.5 – City and City Council:

From: “City” means City of San Diego, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement and its employees as described in Section 10.13. “City Council” mean the nine (9) elected council members, including the Mayor, of the City.

To: "City" means City of San Diego, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement and its elected Mayor and employees as described in Section 10.11. "City Council" means the eight (8) elected council members of the City.

Section 1.14.1 – Franchise Fee is added to read:

Add: "Franchise Fee" means the fee imposed on Franchisees for the value of the franchise granted by the City, pursuant to San Diego Municipal Code sections 66.0107 and 66.0118 as they currently exist and may be amended. The Franchise Fee shall be established from time to time by resolution of the City Council and is imposed solely on the Franchisee and not on any individual customer of Franchisee.

Section 1.18 – Materials Recovery Facility (MRF):

From: "Materials Recovery Facility" means a permitted facility where solid waste is sorted or separated for the purpose of recycling or reuse.

To: "Materials Recovery Facility" means a permitted facility where solid waste is sorted, separated or otherwise processed for the purpose of recycling or reuse.

Section 3.2 – Effective Date of Agreement and Term of Franchise:

From: The effective date of this Agreement shall be July 1, 2003. The term of the Franchise granted to Franchisee shall be for ten (10) years beginning with the Effective Date of July 1, 2003, through June 30, 2013, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements for service between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

To: The effective date of this Agreement shall be July 1, 2009 [Effective Date]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2009, through June 30, 2016, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

Section 3.3 – Extension Term:

From: Five (5) years after the Effective Date of this Agreement and every five (5) years thereafter, a five (5) year extension shall be applied to the term of said Franchise upon approval of the City Council by ordinance so that the remaining term of the Franchise shall be ten (10) years, unless otherwise terminated in accordance with

this Agreement. The City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement on the annual anniversary date of this Agreement. The extended term shall be granted by an amendment to this agreement.

If Franchisee does not agree with the revised terms of Agreement, then the Franchisee will have the right to a public hearing by the City Council regarding the contractual dispute. (See Section 9.2 for procedural requirements to have matter heard by City Council.)

To: One (1) year after the Effective Date and **annually** thereafter, a **one (1) year** extension shall be applied to the term of said Franchise, upon approval of the City Council by ordinance, so that, **if duly approved**, the remaining term of the Franchise would be **seven (7) years**, unless otherwise terminated in accordance with the Agreement **including any amendments thereto**. The City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement and any amendments thereto on the annual anniversary of the Effective Date and continuing every year thereafter. The extension, if any, shall be contingent upon, among other things, the Franchisee having satisfied all performance requirements of the Agreement and **all amendments thereto** including, but not limited to, having provided the City with all required documents and having brought all franchise fee accounts and other accounts with the City current.

If Franchisee does not agree with the revised terms of the Agreement, then Franchisee will have the right to a public hearing by the City Council regarding the contractual dispute. (See Section 9.2 for procedural requirements to have matter heard by City Council.)

#### Section 4.1 – Grant of Agreement:

From: City hereby grants to Franchisee a non-exclusive Class II Solid Waste Collection Franchise authorizing Franchisee to engage in the business of collecting, and subsequently transporting, disposing and/or recycling solid waste accumulated or produced in the City and to use the public streets and rights-of-way for such purpose. This grant is pursuant to Franchisee's application for the Franchise, which application is incorporated herein by this reference. Franchisee is subject to the terms and conditions specified in Sections 103 & 105 of the Charter of the City, the provisions of Article 66.0101 et seq. of the San Diego Municipal Code, the terms and conditions specified in all related resolutions, and the terms and conditions of this Agreement and the representations and assurance in Franchisee's application for the Franchise.

Under the terms of this Franchise, the Franchisee has the authority to collect multi-family residential, commercial and industrial solid waste. The Franchisee is also granted the authority to collect residential solid waste from residences which are exclusively on private streets. The grant of authority to collect certain refuse

is limited by San Diego Municipal Code Section 66.0127 which requires the City to collect certain solid waste.

Any Franchisee providing residential or non-residential solid waste collection under the terms of this Agreement shall be required to either (1) ensure that recycling services are made available for all customers either directly or by arrangement with another recyclable materials collector or (2) at a minimum, provide customers with a current list of recyclable materials collectors providing service in the area.

Collection routes shall be designed so as not to cross two or more jurisdictional boundaries and for the purpose of the Franchise granted herewith, shall be located exclusively within the City's jurisdictional boundary to the extent practical by operations of Franchisee. In the event Franchisee demonstrates to the Director it is unable to meet this requirement, the Franchisee shall use an allocation method as determined by the Director to properly allocate the tonnage within each multi-jurisdictional load to the appropriate jurisdictions. Additionally, Franchisee shall provide to the Director with each quarterly tonnage report information deemed necessary by the Director in order to validate the tonnages reported by Franchisee including, but not limited to, for each multi-jurisdictional load: 1) number of collection points, bin size, and frequency of collection, by jurisdiction, and 2) total tonnage of each multi-jurisdictional load.

To: City hereby grants to Franchisee a non-exclusive Class II Solid Waste Collection Franchise authorizing Franchisee to engage in the business of collecting, and subsequently transporting, disposing and/or recycling of solid waste accumulated or produced in the City and to use the public streets and rights-of-way for such purpose. This grant is pursuant to Franchisee's application for the Franchise, which application is incorporated herein by this reference. Franchisee is subject to the terms and conditions specified in Sections 103 & 105 of the Charter of the City, the provisions of Chapter 6, Article 6, sections 66.0101 et seq. of the San Diego Municipal Code as currently enacted and as ~~may be amended from time-to-time~~, the terms and conditions specified in all related resolutions, the terms and conditions of this Agreement ~~and all amendments thereto~~, and the representations and assurances in Franchisee's application for the Franchise.

Under the terms of this Franchise, the Franchisee has the authority to collect multi-family residential, commercial and industrial solid waste. The Franchisee is also granted the authority to collect residential solid waste from residences which are exclusively on private streets. The grant of authority to collect certain refuse is limited by San Diego Municipal Code Section 66.0127 which requires the City to collect certain solid waste.

Franchisee shall comply with the City Recycling Ordinance [City Recycling Ordinance], codified as San Diego Municipal Code Sections 66.0701 – 66.0718, and the Construction and Demolition Debris Diversion Deposit Program

Ordinance [C&D Ordinance], codified as San Diego Municipal Code Sections 66.0601 – 66.0610, as currently enacted and as may be amended from time-to-time.

Collection routes shall be designed so as not to cross two or more jurisdictional boundaries and for the purpose of the Franchise granted herewith, shall be located exclusively within the City's jurisdictional boundary to the extent practical by operations of Franchisee. In the event Franchisee demonstrates to the Director it is unable to meet this requirement, the Franchisee shall use an allocation method as determined by the Director to properly allocate the tonnage within each multi-jurisdictional load to the appropriate jurisdictions. Additionally, Franchisee shall provide to the Director with each quarterly tonnage report information deemed necessary by the Director in order to validate the tonnages reported by Franchisee including, but not limited to, for each multi-jurisdictional load: 1) number of collection points, bin size, and frequency of collection, by jurisdiction, and 2) total tonnage of each multi-jurisdictional load.

#### Section 4.2 – Franchise Fees:

From: Franchisee agrees to pay to the City a Franchise Fee in the amount Council approved for Class II Franchisees, on all solid waste collected in the City, regardless of the location of the disposal site. The Franchise Fee may be modified in the amount and manner of payment at anytime during the term of this Agreement by a resolution of the City Council. Notwithstanding the above, for purposes of calculating the Franchise Fee owed to the City, recyclable materials, as defined in this Agreement, will not be counted as solid waste so long as the material is source-separated at the point of generation and is diverted from disposal and/or incineration as solid waste in accordance with AB 939 guidelines even if the generator is charged a fee for the service. Material of potential economic value mixed with solid waste, collected, and transported to a materials recovery facility or any other facility where the material is subsequently sorted or separated for the purpose of recycling or reuse, shall be counted as solid waste and subject to the Franchise Fee.

To: Franchisee agrees to pay to the City a Franchise Fee in the amount Council approved for Class II Franchisees, on all solid waste collected in the City, regardless of the location of the disposal site. The Franchise Fee may be modified in the amount and manner of payment at anytime during the term of this Agreement by a resolution of the City Council. Notwithstanding the above, for purposes of calculating the Franchise Fee owed to the City, recyclable materials, as defined in this Agreement, will not be counted as solid waste so long as the material is source-separated at the point of generation and is diverted from disposal ~~and/or incineration~~ as solid waste in accordance with AB 939 guidelines even if the generator is charged a fee for the service. Material of potential economic value mixed with solid waste, collected, and transported to a materials recovery facility or any other facility where the material is subsequently sorted or

separated for the purpose of recycling or reuse, shall be counted as solid waste and subject to the Franchise Fee.

Section 5.4 – Residential, Commercial and Industrial Recycling:

From: Franchisee agrees to either (1) provide or make available through separate arrangement, recycling programs to all accounts requesting service from Franchisee or (2) at a minimum, provide customers with a current list of recyclable materials collectors providing service in the area. Costs of the recycling program shall be paid by the waste generators.

In the event that Franchisee does not meet its obligations under this Section, it shall be considered a default under Article 9 of this Agreement.

To: Franchisee shall comply with the City Recycling Ordinance and shall provide or make available through separate arrangement, recycling collection services to all customers/accounts receiving solid waste collection services from Franchisee, except for specific customers/accounts that make other arrangements for the collection of designated recyclable materials in accordance with the City Recycling Ordinance. Specific requirements under the City Recycling Ordinance include, but are not limited to, San Diego Municipal Code Section 66.0709 – Delivery of Recyclable Materials to Recycling Facility, San Diego Municipal Code Section 66.0710 – Recycling Containers, and San Diego Municipal Code Section 66.0711 – Annual Reports from Franchisees and Recyclable Materials Collectors. Payment for recycling services is the responsibility of the waste generators. Franchisee shall designate a Point of Contact (POC) to provide “Recycling Technical Assistance” to its customers and provide such contact information to the City. The POC shall be knowledgeable about the requirements of the City Recycling Ordinance, C&D Ordinance, and all other City waste diversion programs and requirements, and shall provide technical assistance to customers of Franchisee in meeting recycling obligations. Franchisee shall notify all its customers twice per year, at a minimum, of their responsibilities under the City Recycling Ordinance.

In the event that Franchisee does not meet its obligations under this Section, it shall be considered a default under Article 9 of this Agreement.

Section 5.5 D – Delivery of Recyclable Materials to Recycling Facility is added to read:

Add: *Delivery of Recyclable Materials to Recycling Facility.* Franchisee shall comply with San Diego Municipal Code Section 66.0709:

Section 5.8 F – Equipment is added to read:

Add: *CARB Regulations*. All vehicles subject to CARB regulations that are used by Franchisee in providing solid waste management services under this Agreement shall be in compliance with California Air Resources Board regulations for Diesel Particulate Matter Control Measure for On-road Heavy-duty Diesel-fueled Residential and Commercial Solid Waste Collection Vehicles. Any new or replacement vehicles acquired after the date of this Agreement shall meet the then applicable engine emission requirements.

Section 5.9 C, D, E – Franchisee Provided Solid Waste Containers is added to read:

Add:

C. *Container Standards*. Franchisee shall comply with the standards in ESD's Guidelines for Recycling Containers and Signage for Recyclable Materials Collection Services, which were promulgated for purposes of the implementation of the City Recycling Ordinance.

D. *Bin and Container Size Requirements*. Franchisees offering front load bin service and/or automatic lift container service shall provide recycling and refuse bins/containers in at least the sizes listed below upon request. Franchisee may also offer additional sizes to meet specific needs of its customers.

Front load bins: capacities of 2.0 cubic yard (cy), 3.0 cy, 4.0 cy, and 6.0 cy

Residential style automated collection carts: approximate capacities of 32 gallons, 64 gallons, and 96 gallons

E. *Containers for use Indoors, Outdoors in Public/Common Areas, and at Special Events*. Franchisees offering front load bin service and/or automatic lift container services are encouraged to provide refuse and recycling collection containers suitable for indoor uses (i.e. under desks, along-side desks, in common areas, etc.), outdoor public/common areas, and for special events upon request.

Section 5.10 B, C – Personnel:

From: B. *Safety Training*. Franchisee shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, or who are otherwise directly involved in such collection.

C. *Employee Conduct*. Franchisee shall use its best efforts to ensure that all employees present have a neat appearance and conduct themselves in a courteous manner in their dealings with customers and the general public.

To: B. *Safety Training*. Franchisee shall provide suitable operational and safety training and safety equipment, including but not limited to gloves, hard hats, and

safety clothing (i.e. safety vests, reflective material wear) for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, or who are otherwise directly involved in such collection.

*C. Employee Conduct.* Franchisee shall use its best efforts to ensure that all employees present have a neat appearance and conduct themselves in a courteous manner in their dealings with customers and the general public. Employee uniforms or apparel shall identify employees as employed by Franchisee.

#### Section 7.1 – General:

From: Franchisee agrees to maintain and report to the Director such accounting, statistical and other records or documentation related to its performance under this Agreement and as necessary for the City to: 1) fulfill its obligations under AB 939 as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, and other applicable laws and regulations, 2) meet its solid waste program management needs and reporting requirements; and 3) reconcile the accuracy of Franchise Fee payments as described in Section 4.2.

By the twentieth (20<sup>th</sup>) of each month following a calendar year quarter, Franchisee shall submit to the Director a Quarterly Report within 20 days following the end of a calendar year quarter. Using the report form(s) and/or format(s) approved by the Director and provided to Franchisee in accordance with Section 10.10 Notices. Quarters end on March 31, June 30, September 30, and December 31.

Each report shall include a certification executed by an authorized officer of the Franchisee, in substance, as follows: “I declare, under penalty of perjury, that this statement is made by me, and that I am authorized to make such statement, and to the best of my knowledge and belief it is a true; correct and complete statement made in good faith for the month stated herein.” Franchisee may propose report formats that are responsive to the needs of the City. The format of each report shall be approved by City. With the written direction or approval of City, and after Franchisee is given an opportunity to review and comment, the records and reports to be maintained and provided by Franchisee may be adjusted in number, format, or frequency.

Franchisee shall retain copies of all collection, recycling, and disposal records for a minimum of three (3) years, following the date of billing, for inspection and verification by the City or its agents, at any reasonable time upon request and will cooperate with the City in any audits or investigations of such information. In the event Franchisee discontinues providing solid waste services within the City, Franchisee shall provide all records of disposal or processing of all solid waste collected in the city within thirty (30) days of discontinuing service. Records shall be in chronological order and organized in a form which is readily and easily interpreted.

All reports shall be submitted to: City of San Diego  
Environmental Services Department  
Attention: Franchise Administrator  
9601 Ridgehaven Court, Suite 210  
San Diego, CA 92123-1636

Failure of Franchisee to comply with the reporting requirements as set forth in this section shall result in a late penalty charge of \$100 (one hundred dollars) for each month or part thereof past the due date. Franchisee's repeated failure to submit reports, and/or failure to submit reports on time, may result in additional penalties and/or the revocation of Franchise privileges at the discretion of the Manager.

To: Franchisee agrees to maintain and report to the Director such accounting, statistical and other records or documentation related to its performance under this Agreement and as necessary for the City to: 1) fulfill its obligations under AB 939 as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, and other applicable laws and regulations; 2) meet its solid waste program management needs and reporting requirements; and 3) reconcile the accuracy of Franchise Fee payments as described in Section 4.2.

By the twentieth (20<sup>th</sup>) of each month following the end of a calendar year quarter, Franchisee shall submit to the Director a Quarterly Report of collection activities and tonnages disposed using the report form(s) and or format(s) approved by the Director and provided to Franchisee in accordance with Section 10.10 Notices. Quarters end on March 31, June 30, September 30, and December 31 of each calendar year. Annual reports shall also be submitted in compliance with San Diego Municipal Code Section 66.0711.

Each report shall include a certification executed by an authorized officer of the Franchisee, in substance, as follows: "I declare, under penalty of perjury, that this statement is made by me, and that I am authorized to make such statement on behalf of Franchisee and, to the best of my knowledge and belief it is a true, correct and complete statement made in good faith for the time period stated herein." Franchisee may propose report formats that are responsive to the needs of the City. The format of each report shall be approved by City. With the written direction or approval of City, and after Franchisee is given an opportunity to review and comment, the records and reports to be maintained and provided by Franchisee may be adjusted in number, format, or frequency.

Franchisee shall retain copies of all collection, recycling, and disposal records for a minimum of three (3) years, following the date of billing, for inspection and verification by the City or its agents, at any reasonable time upon request, and shall cooperate with the City in any audits or investigations of such information. In the event Franchisee discontinues providing solid waste services within the

City, Franchisee shall provide all records of disposal or processing of all solid waste collected in the City within thirty (30) days of discontinuing service. Records shall be in chronological order and organized in a form which is readily and easily interpreted.

All reports shall be submitted to: City of San Diego  
Environmental Services Department  
Attention: Franchise Administrator  
9601 Ridgehaven Court, Suite 210  
San Diego, CA 92123-1636

Failure of Franchisee to comply with the reporting requirements as set forth in this section shall result in a late penalty charge of Two Hundred Fifty (\$250) dollars for each month or part thereof past the due date. Franchisee's repeated failure to submit reports, and/or failure to submit reports on time, may result in additional penalties and/or revocation of Franchise privileges at the discretion of the Manager.

Section 7.2 – Audit and Inspection by City:

From: At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Auditor to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee, then Franchisee shall pay the City the cost of the audit. Failure to permit the City Auditor with access to the records required to conduct audits under this agreement are a breach subject to revocation of this franchise.

To: At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Auditor or designee to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment

under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid by five percent (5%) or more of the total required fee, then Franchisee shall pay the City's cost of the audit. Failure to provide the City Auditor or designee with access to the records required to conduct audits under this Agreement is a breach of the Agreement subject to revocation of this Franchise.

Section 10.5 – Assignment:

From: Franchisee acknowledges that this Agreement involves rendering a vital service to the City residents and businesses, and that the City has franchised Franchisee to perform the services specified herein based on (1) Franchisee's experience, skill and reputation for conducting its solid waste management and/or recycling operations in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. City has relied on each of these factors, among others, in choosing the Franchisee to perform the services to be rendered by the Franchisee under this Agreement.

Any Franchise granted pursuant to this division is a privilege to be held in trust by the original Franchisee. A Franchise issued under this division shall not be transferred, sold, leased, assigned, relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes the transfer of ownership of the Franchise, or a majority of the ownership or control of the Franchisee, or the conveyance of a majority of the Franchisee's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by the Franchisee. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing City ordinance.

Notwithstanding the above, no Franchise shall be approved to be transferred or assigned to another party unless and until all City accounts are current and no monies are owed to the City by the existing Franchisee.

To: Franchisee acknowledges that this Agreement involves rendering a vital service to City residents and businesses, and that the City has franchised Franchisee to perform the services specified herein based on (1) Franchisee's experience, skill and reputation for conducting its solid waste management and/or recycling

operations in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. City has relied on each of these factors, among others, in choosing the Franchisee to perform the services to be rendered by the Franchisee under this Agreement.

Any Franchise granted pursuant to this division is a privilege to be held in trust by the original Franchisee. A Franchise issued under this division shall not be transferred, sold, leased, assigned, relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes, but is not limited to, the transfer of ownership of the Franchise, or a majority of the ownership or control of the Franchisee, or the conveyance of a majority of the Franchisee's stock to a new controlling interest. Franchisee shall provide the City with ninety (90) days advance notice of its intent to transfer, sell, lease, assign, relinquish or delegate its franchise to another person. Franchises shall become void upon the abandonment of same by the Franchisee. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing City ordinance. Notwithstanding the above, no Franchise shall be approved to be transferred, assigned or otherwise conveyed to another party unless and until all City accounts are current and no monies are owed to the City by the existing Franchisee.

Section 10.6 – Franchise Fee Acknowledgement is added to read:

Add: Franchisee acknowledges that the Franchise Fee is an obligation imposed on Franchisee and is not an obligation imposed on any individual customer of Franchisee. Franchisee shall not represent to any customer that the City is imposing a Franchise Fee on individual customers of Franchisee.

This First Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this First Amendment to be executed by their duly authorized officers or representatives.

CITY OF SAN DIEGO

FRANCHISEE

By: \_\_\_\_\_  
Chris Gonaver  
Environmental Services Director  
CITY OF SAN DIEGO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**I HEREBY APPROVE** the form and legality of the foregoing First Amendment to the Agreement this \_\_\_ day of \_\_\_ 2009.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_  
Grace C. Lowenberg  
Deputy City Attorney

