

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)
--	--

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Environmental Services	DATE: 9/15/2015
---------------------	--	--------------------

SUBJECT: Non-Exclusive Solid Waste Collection Franchise Amendments.

PRIMARY CONTACT (NAME, PHONE): Angela Colton, 858-573-1287 MS1103-B	SECONDARY CONTACT (NAME, PHONE): Sam Merrill, 858-573-1253 MS 1103-B
--	---

**COMPLETE FOR ACCOUNTING PURPOSES**

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):**

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Sierra, Mario	09/16/2015
Financial Management	CFO		
Liaison Office	DEPUTY CHIEF	Gomez, Paz	09/28/2015
Equal Opportunity Contracting	COO		
	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:     RESOLUTIONS     ORDINANCE(S)     AGREEMENT(S)     DEED(S)

The Mayor or his representative is authorized to execute the Eighth Amendment to the Class I Non-Exclusive Franchise Agreements for Solid Waste Management Services, the Seventh Amendment to the Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services, and the Sixth Amendment to the Class I Non-Exclusive Franchise Agreement for Solid Waste Management Services with Daily Disposal Services, Inc., effective July 1, 2015.

STAFF RECOMMENDATIONS: Approve the requested action.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	All
COMMUNITY AREA(S):	All
ENVIRONMENTAL IMPACT:	This activity is not a "project" and therefore is exempt from CEQA pursuant to State CEQA guidelines section 15060(c)(3).
CITY CLERK INSTRUCTIONS:	This item is subject to Charter Section 99 (10 day published notice, approval by Ordinance and 6 votes required)

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 9/15/2015

ORIGINATING DEPARTMENT: Environmental Services

SUBJECT: Non-Exclusive Solid Waste Collection Franchise Amendments.

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Angela Colton/858-573-1287 MS1103-B

**DESCRIPTIVE SUMMARY OF ITEM:**

Adopt an ordinance to authorize the execution of amendments to franchise agreements with private haulers that provide solid waste collection services within the City of San Diego. Amendments will address a one-year extension, recycling requirements and compliance, and additional language regarding definitions and reporting.

**STAFF RECOMMENDATION:**

Approve the requested action.

**EXECUTIVE SUMMARY OF ITEM 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.

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, Republic Services, and Waste Management, and their affiliates, collect approximately 79% of the commercial waste generated within the City, and the remaining franchisees collect about 21%. 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. Fees for Class I franchisees are lower than for Class II franchisees. Currently, there are 11 companies with franchise agreements for providing solid waste collection services (8 Class I Franchisees and 3 Class II Franchisees).

Since the passage of the People's Ordinance in April 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 seven-year term with options to extend for an additional year, on an annual basis, upon approval by Council. As stated in the franchise agreements, extensions are 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.

The proposed amendments extend the agreements by one year in accordance with the terms of the current franchise agreements and support the City of San Diego's recently adopted Zero Waste Plan and related diversion goals. The amendments include minimum diversion requirements for all franchisees, and correspond to the upcoming requirements set forth in Assembly Bill (AB) 1826, which requires that applicable businesses arrange for organic waste recycling services. The following are all of the proposed amendments: Exhibit B, Class I; Exhibit C, Class II; Exhibit D, Daily Disposal):

**Article 1. Definitions:**

The definition of "AB 1826" is added to Article 1, and means California Public Resources Code Section 42649.8 et seq., as it may be amended from time to time.

The definition of "AB 1826 Business" is added to Article 1, and means a business, as defined in Public Resources Code Section 42649.8(a), which is subject to the requirements of AB 1826.

The definition of "Organic Waste" is added to Article 1, and means organic waste as defined by Public Resources Code Section 42649.8(c).

**Article 3. Term of Agreement:**

Article 3, Section 3.2 is modified to extend the term of the franchise agreements by one year, through June 30, 2022.

**Article 4. Grant of Agreement:**

Article 4, Section 4.1 is modified to clarify that in addition to being subject to all relevant terms and conditions specified in the City Charter, San Diego Municipal Code, Council resolutions, related ordinances, all environmental laws, and subsequent franchise amendments, the grant of franchise also requires Franchisees to ensure that adequate Organic Waste Recycling services are available to all AB 1826 Businesses serviced by Franchisee.

**Article 5. Solid Waste Collection Services:**

Article 5, Section 5.4 is modified to require the City to provide assistance with education and outreach to any customer of Franchisee, upon Franchisee's request.

Article 5, Section 5.4.1 is added to describe AB 1826 requirements for AB 1826 Businesses, the implementation schedule of those requirements, and to describe requirements of Franchisees that correspond to AB 1826.

Article 5, Section 5.4.2 is added to establish minimum annual diversion requirements of Franchisees for calendar years 2016 through 2020, diversion rate calculation methodology, corrective actions and a schedule of liquidated damages for failure to comply with those requirements.

Article 5, Section 5.9 F is added to include container signage requirements.

Article 5, Section 5.10 D is added to make available City facilitated training for Franchisee staff that is related to relevant City waste management programs and requirements.

Article 7. Records and Reports:

Article 7, Section 7.4 “A” and “B” are added to update, clarify, and expand reporting requirements in support of the City’s recycling programs.

CITY STRATEGIC PLAN GOALS(S)/OBJECTIVES(S):

Goal #1: Provide high quality public service.

Objective 1: Promote a customer-focused culture that prizes accessible, consistent, and predictable delivery of services.

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective 1: Protect lives, property, and the environment through timely and effective response in all communities.

Objective 4: Foster services that improve quality of life.

Objective 5: Cultivate civic engagement and participation.

FISCAL CONSIDERATIONS:

This action does not have any impact on franchise fees.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

These agreements are subject to the City’s Equal Opportunity (San Diego Ordinance No. 18173, Section 22.2701) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

Ordinance adopting last franchise agreement amendments was effective on August 11, 2014.

This item will be heard at the meeting of the Environment Committee on October 7, 2015.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

ESD has conducted multiple group and individual meetings with each franchisee, to discuss and seek feedback on these proposed amendments.

Proposed amendments to franchise agreements will be distributed to all franchisees and applicable stakeholders.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders associated with this item include the City, the City’s Non-Exclusive Franchised Solid Waste Haulers, the San Diego County Disposal Association, and the City residents and businesses serviced by the franchised haulers.

Sierra, Mario

Originating Department

Gomez, Paz  
Deputy Chief/Chief Operating Officer

CITY OF SAN DIEGO  
NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISEES

CLASS I FRANCHISEES

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

CLASS II FRANCHISEES

EDCO Disposal Corporation (5)  
• EDCO Disposal Corporation  
• EDCO Waste & Recycling  
Services, Inc  
• Express Waste & Recycling  
• Sani-Tainer, Inc.  
• Webco Sanitation

Republic Services (Allied) (1)

Waste Management of San Diego (7)  
• BDC Special Waste Services  
• Coast Waste Management, Inc.  
• Moor Refuse, Inc.  
• Reliable Waste  
• USA Waste of California, Inc.  
• Waste Management of San Diego  
• Emerald Waste & Recovery, Inc.

**CITY OF SAN DIEGO**  
**ENVIRONMENTAL SERVICES DEPARTMENT**  
**EIGHTH AMENDMENT TO**  
**CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT**  
**FOR SOLID WASTE MANAGEMENT SERVICES**

This EIGHTH AMENDMENT TO THE CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Eighth Amendment] is entered into by and between the City of San Diego [City] and \_\_\_\_\_ [Franchisee] and is effective the 1st day of July 2015.

**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 parties entered into six subsequent amendments to the Agreement; and

WHEREAS, the Agreement, as amended, provides for a term of seven (7) years beginning July 1, 2014 through and including June 30, 2021, with annual one (1) year extensions to the Agreement subject to City Council approval by ordinance; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement, as amended, and the parties desire to extend the term of the Agreement for one year under the terms and conditions set forth in this Eighth Amendment; and

WHEREAS, the execution and delivery of this Eighth Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2015:

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 1.1.2– AB 1826 is added to Article 1 to read:**

Add: “AB 1826” means California Public Resources Code Section 42649.8 et seq., as it may be amended from time to time.



**Section 1.1.3– AB 1826 Business is added to Article 1 to read:**

Add: “AB 1826 Business” means a business, as defined in Public Resources Code Section 42649.8(a), which is subject to the requirements of AB 1826.

**Section 1.20.5– Organic Waste is added to Article 1 to read:**

Add: “Organic Waste” means organic waste as defined in Public Resources Code Section 42649.8(c).

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

From: The effective date of this Agreement shall be July 1, 2014 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2014, through June 30, 2021, 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, 2015 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2015, through June 30, 2022, 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 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 Chapter 6, Article 6, Sections 66.0101 et seq. of the San Diego Municipal Code as currently enacted and as may be amended, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, 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.

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, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, 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. Franchisee shall ensure that adequate Organic Waste Recycling services are available to all AB 1826 Businesses serviced by Franchisee.

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 5.4 - Residential, Commercial and Industrial Recycling**

From: 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 66.0711 – 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 was 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.

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 66.0711 – 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 was 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. Upon Franchisee’s request, the City will provide education and outreach to any Franchisee customer that has failed to comply with the City Recycling Ordinance to ensure the customer understands City’s Recycling requirements.

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 5.4.1– AB 1826 Organics Waste Recycling is added to Article 5 to read:**

Add: Franchisee shall ensure that adequate Organic Waste Recycling services, as required by AB 1826, are available to all AB 1826 Businesses serviced by Franchisee. AB 1826 Businesses must arrange for Organic Waste Recycling services, as required under AB 1826, according to the following timelines: (1) beginning April 1, 2016 for those that generate eight cubic yards or more of Organic Waste per week; (2) beginning January 1, 2017 for those that generate four cubic yards or more of Organic Waste per week; and (3) beginning January 1, 2019 for those that generate four cubic yards or more of Solid Waste per week. Once a year, at a minimum, Franchisee shall notify all customers/accounts receiving Solid Waste Collection services of their responsibilities under AB 1826. As required by Section 7.4 A of this Agreement, Franchisee shall provide documentation to the City annually to verify the notifications have been sent and identify which properties receive Organic Waste Recycling services from Franchisee. Containers provided by Franchisee for storage of Organic Waste by customers (front load dumpsters and rolling carts of all sizes) shall be equipped with attached plastic, lockable lids that are securely fitted and flush with the container opening.

**Section 5.4.2– Residential, Commercial and Industrial Recycling Minimum Diversion Requirements is added to Article 5 to read:**

Add: Annual Minimum Diversion Requirements. Except as otherwise provided in this Agreement, Franchisee shall meet the following minimum diversion requirements for each calendar year:

Minimum Diversion %	Calendar Year
25%	2016
29%	2017
35%	2018
43%	2019
50%	2020

The City shall annually review the annual minimum diversion requirements to determine whether the then applicable requirements remain adequate.

Calculation of Annual Minimum Diversion Requirements. The City shall calculate Franchisee’s diversion rate, as described below, using the tonnages disposed submitted by Franchisee in its Quarterly Reports. The City shall, upon Franchisee’s request, consider third party Recycling arranged by, or Recycling conducted by, Franchisee’s customers in calculating Franchisee’s diversion rate. Franchisee must submit the request annually to the City, and must identify each customer property under request and provide supporting documentation satisfactory to the City. Upon Franchisee’s request, the City shall provide a fillable request form and guidelines, both approved by the Director, that pertain to the annual request. Franchisee’s annual request is due at the same time as Franchisee’s Quarterly Report for the fourth quarter of the prior calendar year (January 20th). The City shall not unreasonably withhold diversion credit upon Franchisee’s submission of satisfactory documentation of third party Recycling arranged by, or Recycling conducted by, Franchisee’s customers.

The following formula shall be used to calculate Franchisee’s annual diversion rate:

“Disposed Tons Reported” means the total disposed tonnage reported by Franchisee for the calendar year

“Diverted Tons Reported” means the total tonnage diverted for Recycling reported by Franchisee for the calendar year

“Total Tons Reported” means Disposed Tons Reported + Diverted Tons Reported

“Initial Diversion Rate” means Recycled Tons Reported / Total Tons Reported

“Third Party Recycled Tonnage” means the total City-approved tonnage that is Recycled for Franchisee’s customers by anyone other than the Franchisee for the calendar year

“Adjusted Diverted Tonnage” means Diverted Tons Reported + Third Party Recycled Tonnage

“Adjusted Total Tonnage” means Total Tons Reported + Adjusted Diverted Tonnage

“Adjusted Diversion Rate” means Adjusted Diverted Tonnage / Adjusted Total Tonnage

The following is a hypothetical example of the application of the formula for calculating the Initial Diversion Rate and Adjusted Diversion Rate:

Disposed Tons Reported	7,000 tons
Diverted Tons Reported	3,000 tons
Total Tons Reported	10,000 tons
Initial Diversion Rate (3,000 tons / 10,000 tons)	30.00 %
Third Party Recycled Tonnage	500 tons
Adjusted Diverted Tonnage	3,500 tons
Adjusted Total Tonnage (10,000 tons + 500 tons)	10,500 tons
Adjusted Diversion Rate (3,500 tons / 10,500 tons)	33.33%

Corrective Actions and Liquidated Damages. Franchisee shall be in compliance with the annual minimum diversion requirements if either:

- a. Franchisee achieves the minimum diversion rate for the applicable calendar year;  
or

- b. Franchisee’s diversion rate is within 2% of the minimum diversion rate for the applicable calendar year, and: (i) within 30 calendar days of receiving the City’s notification thereof, Franchisee prepares and submits a corrective action plan to the City that documents Franchisee’s actions to achieve the next annual minimum diversion requirement; and (ii) the City approves Franchisee’s corrective action plan.

Beginning in calendar year 2017, Franchisee’s failure to achieve compliance with the annual minimum diversion requirements, as described in this Section, may result in the assessment of liquidated damages by the City. The assessment of any and all liquidated damages is at the City’s sole discretion.

Franchisee and the City acknowledge that Franchisee’s failure to perform as specified in this Section shall result in damages to the City. Franchisee and the City further acknowledge that it is, and will continue to be, impractical or extremely difficult to ascertain and determine the exact amount of those damages that the City will suffer. Therefore, Franchisee and the City agree that the liquidated damages amounts listed in the table below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of the Agreement including, but not limited to, the relationship that the sums have to the range of harm to the City that reasonably could be anticipated and anticipation that proof of actual damages would be impractical or extremely difficult to ascertain. Franchisee agrees to pay as liquidated damages and not as a penalty the amounts set forth in the table below:

Occurrences	Liquidated Damages
1 <sup>st</sup> ever occurrence	\$20/ton, for every ton under the full compliance requirement.
2 <sup>nd</sup> ever occurrence	\$25/ton, for every ton under the full compliance requirement.
3 <sup>rd</sup> and subsequent occurrences	\$30/ton, for every ton under the full compliance requirement.

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 5.9 F– Container Signage Requirements is added to Article 5 to read:**

Add:

- F. *Container Signage Requirements*. Beginning December 31, 2016, Franchisee shall provide container signage for all containers currently serviced by Franchisee, and any containers that will be placed into service, in accordance with the following requirements:

Front Load Dumpster Signage – Commodities Recycling

- a. All front load dumpsters for commodities Recycling shall have affixed signage that is at least 12”x18”.
- b. Signage shall be affixed to the front and both sides of each bin.
- c. Signage shall clearly state “RECYCLING ONLY” in all caps.
- d. All proposed signage shall be approved by the City prior to use.

Front Load Dumpster Signage – Organic Waste Recycling

- a. All front load dumpsters for Organic Waste Recycling shall have affixed signage that is at least 12”x18”.
- b. Signage shall be affixed to the front and both sides of each bin.
- c. Signage shall clearly state “ORGANICS ONLY” in all caps.
- d. All proposed signage shall be approved by the City prior to use.

Front Load Dumpster Signage – Refuse

- a. All front load dumpsters for Refuse shall be marked “TRASH ONLY” in all caps
- b. “TRASH ONLY” shall appear on the front and both sides of each Refuse dumpster.

Cart Signage

- a. Carts of all sizes for commodities Recycling shall be clearly marked as such.
- b. Carts of all sizes for Organic Waste Recycling shall be clearly marked as such.
- c. Carts of all sizes for Refuse Disposal shall be clearly marked as such.

**Section 5.10 D– General Training is added to Article 5 to read:**

Add:

- D. *General Training.* Upon Franchisee’s request, the City will facilitate training for Franchisee staff on an as-needed basis related to relevant City waste management programs and requirements.

**Section 7.4 A, B – Annual Reporting is added to Article 7 to read:**

Add:

- A. *Narrative Annual Report.* Franchisee shall prepare and submit to the City, due at the same time as Franchisee’s Quarterly Report for the fourth quarter of the prior calendar year (January 20th), a narrative annual report that documents the following information:
  - a. Diversion programs, activities and efforts conducted by Franchisee during the prior calendar year to achieve the applicable annual minimum diversion requirement.



- b. Franchisee's planned diversion programs, activities and efforts in order to achieve the upcoming annual minimum diversion requirement.
- c. Verification that Franchisee provided notifications during the prior calendar year to all customers as required by the City Recycling Ordinance and Section 5.4.1 of this Agreement.
- d. Additional outreach provided by Franchisee to customers during the prior calendar year regarding the requirements of the City Recycling Ordinance and AB 1826, Recycling levels/performance improvements by customers, and Franchisee's waste reduction activities.
- e. Properties that received Organic Waste Recycling services from Franchisee during the prior calendar year.

B. *City Recycling Ordinance Annual Report.* As part of Franchisee's annual reporting requirements under San Diego Municipal Code Section 66.0711, Franchisee shall also document the following:

- a. Properties serviced by Franchisee that do not subscribe to Franchisee's Recycling services, and which do not either receive third party Recycling services or Recycle by self-hauling.
- b. AB 1826 Businesses serviced by Franchisee that have not requested Organic Waste Recycling services from Franchisee by an applicable AB 1826 compliance date.
- c. Properties serviced by Franchisee that, pursuant to the City Recycling Ordinance, do not subscribe to adequate Recycling Services or which fail to demonstrate adequate Recycling participation levels.

This Eighth Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement as amended shall remain in full force and effect. This Eighth Amendment to the Agreement shall be effective on the date executed by the last party to sign it and approved by the City Attorney.

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

CITY OF SAN DIEGO

FRANCHISEE

By: \_\_\_\_\_

By: \_\_\_\_\_

Scott Chadwick  
Chief Operating Officer

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

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

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

**I HEREBY APPROVE** the form of the foregoing Eighth Amendment to the Agreement this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_

Amanda L. Guy  
Deputy City Attorney

**CITY OF SAN DIEGO**  
**ENVIRONMENTAL SERVICES DEPARTMENT**  
**SEVENTH AMENDMENT TO**  
**CLASS II NON-EXCLUSIVE FRANCHISE AGREEMENT**  
**FOR SOLID WASTE MANAGEMENT SERVICES**

This SEVENTH AMENDMENT TO THE CLASS II NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Seventh Amendment] is entered into by and between the City of San Diego [City] and \_\_\_\_\_ [Franchisee] and is effective the 1st day of July 2015.

**RECITALS**

WHEREAS, on 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 parties entered into six subsequent amendments to the Agreement; and

WHEREAS, the Agreement, as amended, provides for a term of seven (7) years beginning July 1, 2014 through and including June 30, 2021, with annual one (1) year extensions to the Agreement subject to City Council approval by ordinance; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement, as amended, and the parties desire to extend the term of the Agreement for one year under the terms and conditions set forth in this Seventh Amendment; and

WHEREAS, the execution and delivery of this Seventh Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2015:

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 1.1.2– AB 1826 is added to Article 1 to read:**

Add: “AB 1826” means California Public Resources Code Section 42649.8 et seq., as it may be amended from time to time.

**Section 1.1.3– AB 1826 Business is added to Article 1 to read:**

Add: “AB 1826 Business” means a business, as defined in Public Resources Code Section 42649.8(a), which is subject to the requirements of AB 1826.

**Section 1.20.5– Organic Waste is added to Article 1 to read:**

Add: “Organic Waste” means organic waste as defined in Public Resources Code Section 42649.8(c).

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

From: The effective date of this Agreement shall be July 1, 2014 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2014, through June 30, 2021, 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, 2015 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2015, through June 30, 2022, 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 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 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, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, 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.

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, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, 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. Franchisee shall ensure that adequate Organic Waste Recycling services are available to all AB 1826 Businesses serviced by Franchisee.

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 5.4 - Residential, Commercial and Industrial Recycling**

From: 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 66.0711 – 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.

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 66.0711 – 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. Upon Franchisee’s request, the City will provide education and outreach to any Franchisee customer that has failed to comply with the City Recycling Ordinance to ensure the customer understands City’s Recycling requirements.

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 5.4.1– AB 1826 Organics Waste Recycling is added to Article 5 to read:**

Add: Franchisee shall ensure that adequate Organic Waste Recycling services, as required by AB 1826, are available to all AB 1826 Businesses serviced by Franchisee. AB 1826 Businesses must arrange for Organic Waste Recycling services, as required under AB 1826, according to the following timelines: (1) beginning April 1, 2016 for those that generate eight cubic yards or more of Organic Waste per week; (2) beginning January 1, 2017 for those that generate four cubic yards or more of Organic Waste per week; and (3) beginning January 1, 2019 for those that generate four cubic yards or more of Solid Waste per week. Once a year, at a minimum, Franchisee shall notify all customers/accounts receiving Solid Waste Collection services of their responsibilities under AB 1826. As required by Section 7.4 A of this Agreement, Franchisee shall provide documentation to the City annually to verify the notifications have been sent and identify which properties receive Organic Waste Recycling services from Franchisee. Containers provided by Franchisee for storage of Organic Waste by customers (front load dumpsters and rolling carts of all sizes) shall be equipped with attached plastic, lockable lids that are securely fitted and flush with the container opening.

**Section 5.4.2– Residential, Commercial and Industrial Recycling Minimum Diversion Requirements is added to Article 5 to read:**

Add: Annual Minimum Diversion Requirements. Except as otherwise provided in this Agreement, Franchisee shall meet the following minimum diversion requirements for each calendar year:

Minimum Diversion %	Calendar Year
25%	2016
29%	2017
35%	2018
43%	2019
50%	2020

The City shall annually review the annual minimum diversion requirements to determine whether the then applicable requirements remain adequate.

Calculation of Annual Minimum Diversion Requirements. The City shall calculate Franchisee’s diversion rate, as described below, using the tonnages disposed submitted by Franchisee in its Quarterly Reports. The City shall, upon Franchisee’s request, consider third party Recycling arranged by, or Recycling conducted by, Franchisee’s customers in calculating Franchisee’s diversion rate. Franchisee must submit the request annually to the City , and must identify each customer property under request and provide supporting documentation satisfactory to the City. Upon Franchisee’s request, the City shall provide a fillable request form and guidelines, both approved by the Director, that pertain to the annual request. Franchisee’s annual request is due at the same time as Franchisee’s Quarterly Report for the fourth quarter of the prior calendar year (January 20th). The City shall not unreasonably withhold diversion credit upon Franchisee’s submission of satisfactory documentation of third party Recycling arranged by, or Recycling conducted by, Franchisee’s customers.

The following formula shall be used to calculate Franchisee’s annual diversion rate:

“Disposed Tons Reported” means the total disposed tonnage reported by Franchisee for the calendar year



“Diverted Tons Reported” means the total tonnage diverted for Recycling reported by Franchisee for the calendar year

“Total Tons Reported” means Disposed Tons Reported + Diverted Tons Reported

“Initial Diversion Rate” means Recycled Tons Reported / Total Tons Reported

“Third Party Recycled Tonnage” means the total City-approved tonnage that is Recycled for Franchisee’s customers by anyone other than the Franchisee for the calendar year

“Adjusted Diverted Tonnage” means Diverted Tons Reported + Third Party Recycled Tonnage

“Adjusted Total Tonnage” means Total Tons Reported + Adjusted Diverted Tonnage

“Adjusted Diversion Rate” means Adjusted Diverted Tonnage / Adjusted Total Tonnage

The following is a hypothetical example of the application of the formula for calculating the Initial Diversion Rate and Adjusted Diversion Rate:

Disposed Tons Reported	7,000 tons
Diverted Tons Reported	3,000 tons
Total Tons Reported	10,000 tons
Initial Diversion Rate (3,000 tons / 10,000 tons)	30.00 %
Third Party Recycled Tonnage	500 tons
Adjusted Diverted Tonnage	3,500 tons
Adjusted Total Tonnage (10,000 tons + 500 tons)	10,500 tons
Adjusted Diversion Rate (3,500 tons / 10,500 tons)	33.33%

Corrective Actions and Liquidated Damages. Franchisee shall be in compliance with the annual minimum diversion requirements if either:

- a. Franchisee achieves the minimum diversion rate for the applicable calendar year;  
or

- b. Franchisee’s diversion rate is within 2% of the minimum diversion rate for the applicable calendar year, and: (i) within 30 calendar days of receiving the City’s notification thereof, Franchisee prepares and submits a corrective action plan to the City that documents Franchisee’s actions to achieve the next annual minimum diversion requirement; and (ii) the City approves Franchisee’s corrective action plan.

Beginning in calendar year 2017, Franchisee’s failure to achieve compliance with the annual minimum diversion requirements, as described in this Section, may result in the assessment of liquidated damages by the City. The assessment of any and all liquidated damages is at the City’s sole discretion.

Franchisee and the City acknowledge that Franchisee’s failure to perform as specified in this Section shall result in damages to the City. Franchisee and the City further acknowledge that it is, and will continue to be, impractical or extremely difficult to ascertain and determine the exact amount of those damages that the City will suffer. Therefore, Franchisee and the City agree that the liquidated damages amounts listed in the table below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of the Agreement including, but not limited to, the relationship that the sums have to the range of harm to the City that reasonably could be anticipated and anticipation that proof of actual damages would be impractical or extremely difficult to ascertain. Franchisee agrees to pay as liquidated damages and not as a penalty the amounts set forth in the table below:

Occurrences	Liquidated Damages
1 <sup>st</sup> ever occurrence	\$20/ton, for every ton under the full compliance requirement.
2 <sup>nd</sup> ever occurrence	\$25/ton, for every ton under the full compliance requirement.
3 <sup>rd</sup> and subsequent occurrences	\$30/ton, for every ton under the full compliance requirement.

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 5.9 F– Container Signage Requirements is added to Article 5 to read:**

Add:

- F. *Container Signage Requirements.* Beginning December 31, 2016, Franchisee shall provide container signage for all containers currently serviced by Franchisee, and any containers that will be placed into service, in accordance with the following requirements:

Front Load Dumpster Signage – Commodities Recycling

- a. All front load dumpsters for commodities Recycling shall have affixed signage that is at least 12”x18”.
- b. Signage shall be affixed to the front and both sides of each bin.
- c. Signage shall clearly state “RECYCLING ONLY” in all caps.
- d. All proposed signage shall be approved by the City prior to use.

Front Load Dumpster Signage – Organic Waste Recycling

- a. All front load dumpsters for Organic Waste Recycling shall have affixed signage that is at least 12”x18”.
- b. Signage shall be affixed to the front and both sides of each bin.
- c. Signage shall clearly state “ORGANICS ONLY” in all caps.
- d. All proposed signage shall be approved by the City prior to use.

Front Load Dumpster Signage – Refuse

- a. All front load dumpsters for Refuse shall be marked “TRASH ONLY” in all caps
- b. “TRASH ONLY” shall appear on the front and both sides of each Refuse dumpster.

Cart Signage

- a. Carts of all sizes for commodities Recycling shall be clearly marked as such.
- b. Carts of all sizes for Organic Waste Recycling shall be clearly marked as such.
- c. Carts of all sizes for Refuse Disposal shall be clearly marked as such.

**Section 5.10 D– General Training is added to Article 5 to read:**

Add:

- D. *General Training.* Upon Franchisee’s request, the City will facilitate training for Franchisee staff on an as-needed basis related to relevant City waste management programs and requirements.

**Section 7.4 A, B – Annual Reporting is added to Article 7 read:**

Add:

- A. *Narrative Annual Report.* Franchisee shall prepare and submit to the City, due at the same time as Franchisee's Quarterly Report for the fourth quarter of the prior calendar year (January 20th), a narrative annual report that documents the following information:
- a. Diversion programs, activities and efforts conducted by Franchisee during the prior calendar year to achieve the applicable annual minimum diversion requirement.
  - b. Franchisee's planned diversion programs, activities and efforts in order to achieve the upcoming annual minimum diversion requirement.
  - c. Verification that Franchisee provided notifications during the prior calendar year to all customers as required by the City Recycling Ordinance and Section 5.4.1 of this Agreement.
  - d. Additional outreach provided by Franchisee to customers during the prior calendar year regarding the requirements of the City Recycling Ordinance and AB 1826, Recycling levels/performance improvements by customers, and Franchisee's waste reduction activities.
  - e. Identification of the properties that received Organic Waste Recycling services from Franchisee during the prior calendar year.
- B. *City Recycling Ordinance Annual Report.* As part of Franchisee's annual reporting requirements under San Diego Municipal Code Section 66.0711, Franchisee shall also document the following:
- a. Properties serviced by Franchisee that do not subscribe to Franchisee's Recycling services, and which do not either receive third party Recycling services or Recycle by self-hauling.
  - b. AB 1826 Businesses serviced by Franchisee that have not requested Organic Waste Recycling services from Franchisee by an applicable AB 1826 compliance date.
  - c. Properties serviced by Franchisee that, pursuant to the City Recycling Ordinance, do not subscribe to adequate Recycling Services or which fail to demonstrate adequate Recycling participation levels.

This Seventh Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement as amended shall remain in full force and effect. This Seventh Amendment to the Agreement shall be effective on the date executed by the last party to sign it and approved by the City Attorney.

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

CITY OF SAN DIEGO

FRANCHISEE

By: \_\_\_\_\_

By: \_\_\_\_\_

Scott Chadwick  
Chief Operating Officer

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

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

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

**I HEREBY APPROVE** the form of the foregoing Seventh Amendment to the Agreement this \_\_\_ day of \_\_\_\_\_ 2015.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_

Amanda L. Guy  
Deputy City Attorney

**CITY OF SAN DIEGO  
ENVIRONMENTAL SERVICES DEPARTMENT**

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

This SIXTH AMENDMENT TO THE CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Sixth Amendment] is entered into by and between the City of San Diego [City] and Daily Disposal Services, Inc. [Franchisee] and is effective the 1st day of July 2015.

**RECITALS**

WHEREAS, on September 18, 2000, the City and the 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-18849-2; and

WHEREAS, the City and the Franchisee subsequently entered into five amendments to the Agreement which were approved by the City Council by ordinance; and

WHEREAS, the Agreement, as amended, provides for a term of seven (7) years beginning July 1, 2014 through and including June 30, 2021, with annual one (1) year extensions to the Agreement subject to City Council approval by ordinance; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement, as amended, and the parties desire to extend the term of the Agreement for one year under the terms and conditions set forth in this Sixth Amendment; and

WHEREAS, the execution and delivery of this Sixth Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2015:

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 1.1.2– AB 1826 is added to Article 1 to read:**

Add: “AB 1826” means California Public Resources Code Section 42649.8 et seq., as it may be amended from time to time.

**Section 1.1.3– AB 1826 Business is added to Article 1 to read:**

Add: “AB 1826 Business” means a business, as defined in Public Resources Code Section 42649.8(a), which is subject to the requirements of AB 1826.

**Section 1.20.5– Organic Waste is added to Article 1 to read:**

Add: “Organic Waste” means organic waste as defined in Public Resources Code Section 42649.8(c).

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

From: The effective date of this Agreement shall be July 1, 2014 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2014, through June 30, 2021, 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, 2015 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2015, through June 30, 2022, 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 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 Chapter 6, Article 6, Sections 66.0101 et seq. of the San Diego Municipal Code as currently enacted and as may be amended, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, 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.

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, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, 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. Franchisee shall ensure that adequate Organic Waste Recycling services are available to all AB 1826 Businesses serviced by Franchisee.

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 5.4 - Residential, Commercial and Industrial Recycling**

From: 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 66.0711 – 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 was 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.

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 66.0711 – 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 was 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. Upon Franchisee’s request, the City will provide education and outreach to any Franchisee

customer that has failed to comply with the City Recycling Ordinance to ensure the customer understands City’s Recycling requirements.

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 5.4.1– AB 1826 Organics Waste Recycling is added to Article 5 to read:**

Add: Franchisee shall ensure that adequate Organic Waste Recycling services, as required by AB 1826, are available to all AB 1826 Businesses serviced by Franchisee. AB 1826 Businesses must arrange for Organic Waste Recycling services, as required under AB 1826, according to the following timelines: (1) beginning April 1, 2016 for those that generate eight cubic yards or more of Organic Waste per week; (2) beginning January 1, 2017 for those that generate four cubic yards or more of Organic Waste per week; and (3) beginning January 1, 2019 for those that generate four cubic yards or more of Solid Waste per week. Once a year, at a minimum, Franchisee shall notify all customers/accounts receiving Solid Waste Collection services of their responsibilities under AB 1826. As required by Section 7.4 A of this Agreement, Franchisee shall provide documentation to the City annually to verify the notifications have been sent and identify which properties receive Organic Waste Recycling services from Franchisee. Containers provided by Franchisee for storage of Organic Waste by customers (front load dumpsters and rolling carts of all sizes) shall be equipped with attached plastic, lockable lids that are securely fitted and flush with the container opening.

**Section 5.4.2– Residential, Commercial and Industrial Recycling Minimum Diversion Requirements is added to Article 5 to read:**

Add: Annual Minimum Diversion Requirements. Except as otherwise provided in this Agreement, Franchisee shall meet the following minimum diversion requirements for each calendar year:

Minimum Diversion %	Calendar Year
25%	2016
29%	2017
35%	2018
43%	2019
50%	2020

The City shall annually review the annual minimum diversion requirements to determine whether the then applicable requirements remain adequate.

Calculation of Annual Minimum Diversion Requirements. The City shall calculate Franchisee’s diversion rate, as described below, using the tonnages disposed submitted by Franchisee in its Quarterly Reports. The City shall, upon Franchisee’s request, consider third party Recycling arranged by, or Recycling conducted by, Franchisee’s customers in calculating Franchisee’s diversion rate. Franchisee must submit the request annually to the City, and must identify each customer property under request and provide supporting documentation satisfactory to the City. Upon Franchisee’s request, the City shall provide a fillable request form and guidelines, both approved by the Director, that pertain to the annual request. Franchisee’s annual request is due at the same time as Franchisee’s Quarterly Report for the fourth quarter of the prior calendar year (January 20th). The City shall not unreasonably withhold diversion credit upon Franchisee’s submission of satisfactory documentation of third party Recycling arranged by, or Recycling conducted by, Franchisee’s customers.

The following formula shall be used to calculate Franchisee’s annual diversion rate:

“Disposed Tons Reported” means the total disposed tonnage reported by Franchisee for the calendar year

“Diverted Tons Reported” means the total tonnage diverted for Recycling reported by Franchisee for the calendar year

“Total Tons Reported” means Disposed Tons Reported + Diverted Tons Reported

“Initial Diversion Rate” means Recycled Tons Reported / Total Tons Reported

“Third Party Recycled Tonnage” means the total City-approved tonnage that is Recycled for Franchisee’s customers by anyone other than the Franchisee for the calendar year

“Adjusted Diverted Tonnage” means Diverted Tons Reported + Third Party Recycled Tonnage

“Adjusted Total Tonnage” means Total Tons Reported + Adjusted Diverted Tonnage

“Adjusted Diversion Rate” means Adjusted Diverted Tonnage / Adjusted Total Tonnage

The following is a hypothetical example of the application of the formula for calculating the Initial Diversion Rate and Adjusted Diversion Rate:

Disposed Tons Reported	7,000 tons
Diverted Tons Reported	3,000 tons
Total Tons Reported	10,000 tons

Initial Diversion Rate (3,000 tons / 10,000 tons) 30.00 %

Third Party Recycled Tonnage 500 tons

Adjusted Diverted Tonnage 3,500 tons

Adjusted Total Tonnage (10,000 tons + 500 tons) 10,500 tons

Adjusted Diversion Rate (3,500 tons / 10,500 tons) 33.33%

Corrective Actions and Liquidated Damages. Franchisee shall be in compliance with the annual minimum diversion requirements if either:

- a. Franchisee achieves the minimum diversion rate for the applicable calendar year; or
- b. Franchisee's diversion rate is within 2% of the minimum diversion rate for the applicable calendar year, and: (i) within 30 calendar days of receiving the City's notification thereof, Franchisee prepares and submits a corrective action plan to the City that documents Franchisee's actions to achieve the next annual minimum diversion requirement; and (ii) the City approves Franchisee's corrective action plan.

Beginning in calendar year 2017, Franchisee's failure to achieve compliance with the annual minimum diversion requirements, as described in this Section, may result in the assessment of liquidated damages by the City. The assessment of any and all liquidated damages is at the City's sole discretion.

Franchisee and the City acknowledge that Franchisee's failure to perform as specified in this Section shall result in damages to the City. Franchisee and the City further acknowledge that it is, and will continue to be, impractical or extremely difficult to ascertain and determine the exact amount of those damages that the City will suffer. Therefore, Franchisee and the City agree that the liquidated damages amounts listed in the table below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of the Agreement including, but not limited to, the relationship that the sums have to the range of harm to the City that reasonably could be anticipated and anticipation that proof of actual damages would be impractical or extremely difficult to ascertain. Franchisee agrees to pay as liquidated damages and not as a penalty the amounts set forth in the table below:

Occurrences	Liquidated Damages
1 <sup>st</sup> ever occurrence	\$20/ton, for every ton under the full compliance requirement.

2 <sup>nd</sup> ever occurrence	\$25/ton, for every ton under the full compliance requirement.
3 <sup>rd</sup> and subsequent occurrences	\$30/ton, for every ton under the full compliance requirement.

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 5.9 F– Container Signage Requirements is added to Article 5 to read:**

Add:

- F. *Container Signage Requirements.* Beginning December 31, 2016, Franchisee shall provide container signage for all containers currently serviced by Franchisee, and any containers that will be placed into service, in accordance with the following requirements:

Front Load Dumpster Signage – Commodities Recycling

- a. All front load dumpsters for commodities Recycling shall have affixed signage that is at least 12”x18”.
- b. Signage shall be affixed to the front and both sides of each bin.
- c. Signage shall clearly state “RECYCLING ONLY” in all caps.
- d. All proposed signage shall be approved by the City prior to use.

Front Load Dumpster Signage – Organic Waste Recycling

- a. All front load dumpsters for Organic Waste Recycling shall have affixed signage that is at least 12”x18”.
- b. Signage shall be affixed to the front and both sides of each bin.
- c. Signage shall clearly state “ORGANICS ONLY” in all caps.
- d. All proposed signage shall be approved by the City prior to use.

Front Load Dumpster Signage – Refuse

- a. All front load dumpsters for Refuse shall be marked “TRASH ONLY” in all caps
- b. “TRASH ONLY” shall appear on the front and both sides of each Refuse dumpster.

Cart Signage

- a. Carts of all sizes for commodities Recycling shall be clearly marked as such.
- b. Carts of all sizes for Organic Waste Recycling shall be clearly marked as such.
- c. Carts of all sizes for Refuse Disposal shall be clearly marked as such.

**Section 5.10 D– General Training is added to Article 5 to read:**

Add:

- D. *General Training.* Upon Franchisee’s request, the City will facilitate training for Franchisee staff on an as-needed basis related to relevant City waste management programs and requirements.

**Section 7.4 A, B – Annual Reporting is added to Article 7 to read:**

Add:

- A. *Narrative Annual Report.* Franchisee shall prepare and submit to the City, due at the same time as Franchisee’s Quarterly Report for the fourth quarter of the prior calendar year (January 20th), a narrative annual report that documents the following information:
- a. Diversion programs, activities and efforts conducted by Franchisee during the prior calendar year to achieve the applicable annual minimum diversion requirement.
  - b. Franchisee’s planned diversion programs, activities and efforts in order to achieve the upcoming annual minimum diversion requirement.
  - c. Verification that Franchisee provided notifications during the prior calendar year to all customers as required by the City Recycling Ordinance and Section 5.4.1 of this Agreement.
  - d. Additional outreach provided by Franchisee to customers during the prior calendar year regarding the requirements of the City Recycling Ordinance and AB 1826, Recycling levels/performance improvements by customers, and Franchisee’s waste reduction activities.
  - e. Properties that received Organic Waste Recycling services from Franchisee during the prior calendar year.
- B. *City Recycling Ordinance Annual Report.* As part of Franchisee’s annual reporting requirements under San Diego Municipal Code Section 66.0711, Franchisee shall also document the following:
- a. Properties serviced by Franchisee that do not subscribe to Franchisee’s Recycling services, and which do not either receive third party Recycling services or Recycle by self-hauling.
  - b. AB 1826 Businesses serviced by Franchisee that have not subscribed to adequate Organic Waste Recycling services from Franchisee by an applicable AB 1826 compliance date.
  - c. Properties serviced by Franchisee that, pursuant to the City Recycling Ordinance, do not subscribe to adequate Recycling Services or which fail to demonstrate adequate Recycling participation levels.

This Sixth Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement as amended shall remain in full force and effect. This Sixth Amendment to the Agreement shall be effective on the date executed by the last party to sign it and approved by the City Attorney.

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

CITY OF SAN DIEGO

DAILY DISPOSAL SERVICES, INC.

By: \_\_\_\_\_  
Scott Chadwick  
Chief Operating Officer  
CITY OF SAN DIEGO

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

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

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

**I HEREBY APPROVE** the form of the foregoing Sixth Amendment to the Agreement this \_\_\_\_ day of \_\_\_\_\_ 2015.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_

Amanda L. Guy  
Deputy City Attorney



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed Work Force Report (WFR).

NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION

Type of Contractor: [ ] Construction [ ] Vendor/Supplier [ ] Financial Institution [ ] Lessee/Lessor
[ ] Consultant [ ] Grant Recipient [ ] Insurance Company [x] Other

Name of Company: Daily Disposal Services, Inc.

ADA/DBA:

Address (Corporate Headquarters, where applicable): PO Box 940

City: Lakeside County: San Diego State: CA Zip: 92040

Telephone Number: (619) 702-3300 Fax Number: (619) 938-1081

Name of Company CEO: Todd Ottonello

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: 12637 Vigilante RD

City: Lakeside County: San Diego State: CA Zip: 92040

Telephone Number: (619)702-3300 Fax Number: (619) 938-1081 Email:

Type of Business: Solid Waste and Recycling Collection Type of License:

The Company has appointed: Kelly Berstler Berstler

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: Same

Telephone Number: ( ) Fax Number: ( ) Email:

- [x] One San Diego County (or Most Local County) Work Force - Mandatory
[ ] Branch Work Force \*
[ ] Managing Office Work Force

Check the box above that applies to this WFR.

\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of Daily Disposal Services, Inc.

(Firm Name)

San Diego, CA hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 23rd day of September, 2015.

Kelly Berstler
(Authorized Signature)

KELLY BERSTLER
(Print Authorized Signature Name)



**WORK FORCE REPORT – Page 2**

NAME OF FIRM: Daily Disposal Services, Inc. DATE: 9-23-15

OFFICE(S) or BRANCH(ES): Lakeside COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial			2									4	4		
Professional															
A&E, Science, Computer															
Technical															
Sales												1	2		
Administrative Support				3									5		
Services															
Crafts															
Operative Workers															
Transportation			58									5			
Laborers*			4												

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column			64	3								5	11		
--------------------	--	--	----	---	--	--	--	--	--	--	--	---	----	--	--

Grand Total All Employees 83

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled															
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO <b>EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION</b>	DATE: September 28 2015
SUBJECT: Non-Exclusive Solid Waste Collection Franchise Amendments	

**GENERAL CONTRACT INFORMATION**

Recommended Contractor: Daily Disposal Services, Inc (Not Certified, M Cauc)  
 Amount of this Action: \$ 0.00  
 Funding Source: N/A  
 Goal: N/A

**SUBCONTRACTOR PARTICIPATION**

There is no subcontractor participation associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Daily Disposal Services, Inc submitted a Work Force Report for their San Diego County employees dated, September 23, 2015 indicating 83 employees in their Administrative Work Force.

The Administrative Work Force Report Analysis reflects under representation in the following categories:

Transportation in Black, Asian, Filipino and Female

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

This action to execute the Seventh Amendment to the Class I Non-Exclusive Franchise Agreements for Solid Waste Management Services, the seventh Amendment to the Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services, and Sixth Amendment to the Class I Non-Exclusive Franchise Agreement for Solid Waste Management Services with Daily Disposal Services, Inc. effective July 1, 2015.

RW

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** September 28, 2015

**TO:** Honorable Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Five-Year Notice under California Public Resources Code Section 49520 and City's Non-Exclusive Franchise Hauler Agreements

---

**INTRODUCTION**

The City has granted non-exclusive solid waste management franchises through written agreements (Franchise Agreements) to a number of solid waste haulers (Franchisees). *See* City Charter §§ 103, 105; *see also* San Diego Municipal Code §§ 66.0107 - 66.0123. The Franchisees may engage in the business of collecting, transporting, disposing and/or recycling solid waste generated or accumulated in the City and to use public streets and rights-of-way for that purpose. Franchise Agreements § 4.1. In return, the Franchisees pay franchise fees, AB 939 fees<sup>1</sup>, and furnish other consideration to the City. *See, e.g., Id.* at §§ 4.1, 4.2; Art. 5, 8. The Franchise Agreements, which share the same start date of July 1, 2014, have a seven-year term that is subject to annual one-year extensions upon City Council approval, unless otherwise terminated.<sup>2</sup> Twenty-one Franchisees currently operate within the City, and are either Class I or Class II haulers. Class I haulers may collect up to 75,000 tons annually, and Class II haulers may collect more than 75,000 tons annually. San Diego Municipal Code § 66.0102.

---

<sup>1</sup> In 1998, the City established an AB 939 fee to defray the cost of preparing, adopting, and implementing the integrated waste management plan required by the California Integrated Waste Management Act of 1989.

<sup>2</sup> "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..." Franchise Agreements § 3.3.

In the fall of 2014, the Office of the City Auditor performed an audit of the Environmental Services Department's (ESD) Recycling Programs and identified several recommendations. One of these, which ESD agreed to implement, was to study whether an exclusive franchise system for solid waste management would provide greater benefits to the City than the current non-exclusive system.<sup>3</sup> Whereas all franchise haulers compete freely throughout the City under the current non-exclusive system, an exclusive system would restrict franchises to a limited number of haulers and may also restrict a franchisee's operations to certain areas within the City. *See* Cal. Pub. Res. Code § 49501.

The City is required to issue a five-year notice of its intent to transition to an exclusive system to qualifying solid waste haulers. Cal. Pub. Res. Code § 49520.<sup>4</sup> At the June 17, 2015 meeting of the Committee on the Environment to consider ESD's draft Zero Waste Plan, Councilmember Alvarez asked what effect the City's issuance of a five-year notice would have upon the seven-year term of the Franchise Agreements. As discussed in this memorandum, section 49520 does not operate to alter or terminate the seven-year term of the Franchise Agreements, or provide the City with authority to do so. This memorandum also addresses whether the City may, absent State law authority, terminate the Franchise Agreements after five years and the legal risks that accompany this approach.

### QUESTION PRESENTED

1. What effect does issuance of a five-year notice under section 49520 have upon the seven-year term of the Franchise Agreements?

### SHORT ANSWER

1. The five-year notice does not operate to alter or terminate the Franchise Agreements, or provide the City with the authority to do so. Section 49520 requires that the City provide qualifying non-exclusive franchise haulers with five years of continuation rights upon issuance of a five-year notice. The purpose of these rights, which must be provided irrespective of the franchisee's vested franchise rights, is to provide a guaranteed period for the franchisee to amortize their capital investments. Thus, section 49520 merely restricts the City from transitioning to an exclusive system earlier than five years after issuance of a five-year notice.

### BACKGROUND

In order to place this analysis in context, we must first consider the nature of a government franchise. A government franchise is a special privilege granted to a private party by a government duly authorized to grant it. *Copt-Air v. City of San Diego*, 15 Cal. App. 3d 984, 987 (1971). It is a right or privilege that is essential to the function of the grantee and which can only be granted by the government. *Id.* at 988. A franchise usually involves furnishing of a vital

---

<sup>3</sup> *See* Performance Audit of the Environmental Services Department's Waste Reduction and Recycling Programs; Opportunities Exist to Improve Recycling Rates and Reduce Adverse Impacts Generated by Waste Hauling, August 2014.

<sup>4</sup> All statutory references are to the California Public Resources Code unless otherwise specified.

public service that the government would traditionally perform and the use of the streets and ways to bring that service to the general public with some degree of permanence and stability. *Copt-Air*, 15 Cal. App. 3d at 988-89; *see also Saathoff v. City of San Diego*, 35 Cal. App. 4th 697, 702-07 (1995).

Franchise rights are granted under the police power and are subject to the superior interests of the public. *Saathoff*, 35 Cal. App. 4th at 702; *City of Oakland v. Hogan*, 41 Cal. App. 2d 333, 345, 354 (1940). Therefore, the grant is strictly construed in favor of the public interest. Cal. Civ. Code § 1069; *Southern California Gas Co. v. City of Los Angeles*, 50 Cal. 2d 713, 717 (1958). Moreover, “a franchisee may only accept a franchise on the terms dictated by the [legislative body].” *County of Sacramento v. Pacific Gas & Electric Co.*, 193 Cal. App. 3d 300, 305 (1987). Thus, its interpretation is subject to legislative intent, rather than ordinary rules of contract interpretation. *Id.*; 34A Cal Jur 3d p.145 (2008). Once voluntarily assumed, the terms and conditions become part of the contract with the franchisee. *Contra Costa County v. American Toll Bridge Co.*, 10 Cal. 2d 359, 363 (1937).

## ANALYSIS

### I. SECTION 49520 DOES NOT OPERATE TO TERMINATE OR ALTER THE FRANCHISE AGREEMENTS UPON CONCLUSION OF A FIVE-YEAR NOTICE

State law contains provisions that apply to a local agency’s transition from a non-exclusive solid waste franchise system to an exclusive one. Cal. Pub. Res. Code 49520, *et seq.* Foremost, the local agency must mail a notification to qualifying franchise haulers specifying that exclusive solid waste handling services are to be provided or authorized (five-year notice). Cal. Pub. Res. Code § 49520.<sup>5</sup> Qualifying franchise haulers include those that have lawfully provided solid waste handling services within the agency’s jurisdiction for more than three previous years under an agency-authorized franchise, contract, license, or permit. Cal. Pub. Res. Code § 49520.<sup>6,7</sup> Such haulers “may continue to provide those services up to five years after mailed notification...” *Id.* During the five-year period, such franchisees must perform in substantial compliance with the terms and conditions of their franchise. Cal. Pub. Res. Code § 49521(a).

The Legislature recognized that private solid waste enterprises provide a significant amount of the state’s solid waste handling services and, therefore, it is in the public interest to foster them so that they remain willing and financially able to furnish those services. Cal. Pub. Res. Code § 49510. It also recognized that the existence of non-exclusive haulers is more precarious than that of exclusive haulers, and that a five-year period was necessary for non-exclusive franchise haulers to amortize their capital investments prior to being replaced under an exclusive franchise system. *City of Alhambra v. P.J.B. Disposal Co.*, 61 Cal, App. 4th 146-47 (1998); *City of Santa*

---

<sup>5</sup> However, State law does not require a local jurisdiction to transition to an exclusive franchise system after the five-year continuation period concludes; it is merely a prerequisite to such a transition.

<sup>6</sup> “Lawfully provided” means the services of the solid waste enterprise are in substantial compliance with the terms and conditions of its franchise, contract, license, or permit. Cal. Pub. Res. Code § 49501.3.

<sup>7</sup> All twenty-one solid waste haulers currently franchised by the City have provided solid waste handling services for more than three previous years.

*Rosa v. Industrial Waste & Debris Box Rentals, Inc.*, 168 Cal. App. 3d 1132, 1136 (1985).<sup>8,9</sup> To ensure adequate participation levels by private solid waste enterprises so that sufficient solid waste services were provided for the public, the Legislature guaranteed five years of continuation rights to non-exclusive franchise haulers. This continuation period was thus intended to act as an additional level of protection to non-exclusive franchise haulers and not a restraint upon any franchise rights already secured by the hauler from a local agency.

Section 49520 should also be considered in light of the Integrated Waste Management Act of 1989 (WMA) as it was adopted and recodified in conjunction with the WMA's adoption. *See City of Alhambra*, 61 Cal. App. 4th at 146; *see also Valley Vista Services Inc. v. City of Monterey Park*, 118 Cal. App. 4th 881, 890 (2004). The WMA highly regulates the solid waste management industry in California. *See* Cal. Pub. Res. Code § 40000 et seq.<sup>10</sup> However, the WMA specifically authorizes local agencies to determine how local solid waste handling services are provided, including through exclusive or non-exclusive refuse collection and disposal franchises. Cal. Pub. Res. Code § 40059. It also expressly authorizes local agencies to set the terms and conditions under which those services will be provided. Cal. Pub. Res. Code §§ 40059, 49300.

In enacting the WMA, the Legislature expressly declared "the responsibility for solid waste management is a shared responsibility between the state and local governments." Cal. Pub. Res. Code § 40001(a). The Legislature recognized that not every aspect of solid waste regulation could be handled through the WMA and that local authorities with greater knowledge of local conditions should more appropriately specify program details. *See Waste Res. Technologies v. Department of Public Health* (1994) 23 Cal. App. 4th 299, 308-09. The WMA provides local agencies with the right to determine all "[a]spects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, levels of services, charges and fees, and nature, location, and extent of providing solid waste handling services." Cal. Pub. Res. Code § 40059(a)(1); *see also* Cal. Pub. Res. Code § 40059. Accordingly, the WMA provides the City with considerable discretion with respect to local solid waste management issues, including its grant of franchise rights.

Moreover, the WMA contains no provision supporting an interpretation that section 49520 operates to limit a local agency's prior franchise grant, or that it authorizes a local agency's unilateral termination of its franchises. To the contrary, a local agency's broad discretion under section 40059(a) to regulate local solid waste management is expressly curtailed by section 40059(b), which provides, "Nothing in [the WMA] modifies or abrogates in any manner either of

---

<sup>8</sup> *City of Santa Rosa v. Industrial Waste & Debris Box Rentals, Inc.* analyzed section 49520's nearly identical predecessor statute, California Health and Safety Code section 4272.

<sup>9</sup> This treatment contrasts with that of exclusive franchise haulers, whose continuation rights "...shall be limited to the unexpired term of the contract or franchise or five years, *whichever is less.*" Cal. Pub. Res. Code § 49520 (emphasis added).

<sup>10</sup> The WMA does not expressly or impliedly preempt the field of waste disposal due to State law provisions that allow for local waste disposal regulations and the fact that local agencies through their traditional police power have played a dominant role in local sanitation matters. *Valley Vista Services, Inc. v. City of Monterey Park*, 118 Cal.App.4th 881, 887-88 (2004).

the following: (1) *Any franchise previously granted or extended by any county or other local governmental agency...*" (emphasis added). And, as the Attorney General has recognized, section 40059 overrides or supersedes any other provision of statutory law that may be interpreted differently. 79 Op. Cal. Att'y Gen. 28, 33 (1996). Therefore, it is apparent that the Legislature did not intend the WMA to alter or terminate any solid waste franchise rights granted by a local agency, and section 49520 should be interpreted in a consistent manner.<sup>11</sup>

Accordingly, this Office concludes that section 49520 does not alter or terminate any franchise rights granted by the local agency prior to the issuance of a five-year notice, or provide local agencies with authority to do so. Section 49520 instead provides a minimum guaranteed amortization period of five years for non-exclusive franchise haulers upon issuance of a five-year notice. A local agency's early termination of solid waste franchise rights must be considered independently.

### CONCLUSION

The City must provide a five-year notice under section 49520 prior to transitioning to an exclusive solid waste franchise system. However, a five-year notice does not operate to alter or terminate existing franchise agreements, or provide local agencies with authority to do so. Upon issuance of a five-year notice, the City must provide qualifying non-exclusive franchise haulers with five years of continuation rights, irrespective of their vested franchise rights, in order to provide a guaranteed period for amortization of their capital investments. Thus, section 49520 merely restricts the City from transitioning to an exclusive system earlier than five years after issuance of a five-year notice.

JAN I. GOLDSMITH, CITY ATTORNEY

By  \_\_\_\_\_  
Amanda L. Guy  
Deputy City Attorney

ALG:js

cc: Mario Sierra, Director, Environmental Services Department  
Darren Greenhalgh, Assistant Director, Environmental Services Department

---

<sup>11</sup> Our Office considered one court's dicta that section 49520 may permit cancellation of existing waste hauling contracts on five-year notice. *See Rodeo Sanitary Dist. v. Bd. of Supervisors*, 71 Cal. App. 4th 1443, 1451 (1999). However, the case does not consider whether franchise rights greater than five years may be cancelled, and the dicta is qualified by the court's statements that the WMA prevents a local agency from abrogating existing waste hauling contracts and that section 49520 was intended to protect waste haulers. *Id.* at 1451-52.