

1 SECOND AMENDMENT TO NON-EXCLUSIVE FRANCHISE AGREEMENT NO. 32130

2 **32130**

3 THIS SECOND AMENDMENT TO NON-EXCLUSIVE FRANCHISE
4 AGREEMENT NO. 32130 ("Second Amendment") is made and entered in duplicate on
5 October 1, 2018 ("Effective Date"), by and between the CITY OF LONG
6 BEACH, a municipal corporation, with its principal place of business located at 333 West
7 Ocean Blvd., Long Beach, California 90802 ("City"), and UNITED PACIFIC WASTE, INC.
8 formerly known as SERV-WEST DISPOSAL COMPANY DBA OLYMPIC DISPOSAL
9 COMPANY, a California corporation, with its principal place of business located at ~~416 W.~~
10 ⁵¹⁰ ~~Maynard Road, Montebello, California 90640~~ Stanford Ave, LA 90001 ("Franchisee"). City and Franchisee may be
11 referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to
12 this Agreement".

13 RECITALS

14 WHEREAS, the City is responsible for the protection of public health and
15 safety of its citizens, including the collection and transportation of municipal solid waste,
16 the diversion of municipal solid waste from landfills and conservation of natural resources
17 and energy, and has therefore undertaken a nonexclusive franchise system of commercial
18 refuse hauling; and

19 WHEREAS, the Parties desire to amend the Franchise Agreement in
20 compliance with federal state and local law; and

21 WHEREAS, Franchisee is in compliance with the terms of their current
22 Refuse Transportation Permit, including the requirement of operating an all-alternative fuel
23 fleet of refuse collection vehicles; and

24 WHEREAS, pursuant to Section 3.1.2 of Agreement No. 32130 (the
25 "Agreement"), the Parties entered into a First Amendment to the Agreement to extend the
26 Term by two (2) years; and

27 WHEREAS, the Parties desire to a mend the Agreement to extend the term
28 one (1) additional one-year period and amend various provisions;

1 NOW, THEREFORE, in consideration of the mutual promises, covenants,
2 guaranties and conditions contained in the Agreement and in this Amendment, the Parties
3 agree as follows:

4 1. Section 3.1 of Agreement No. 32130 is amended to read as follows:

5 “3.1. Term. Unless this paragraph is subsequently modified by a written
6 amendment to this Agreement, the term of this Agreement will begin on the Effective Date
7 and terminate at the end of day on September 30, 2019, unless sooner terminated as
8 provided elsewhere in the Agreement.”

9 2. Section 4.1.3.a (ii) of Agreement No. 32130 is amended to read as
10 follows:

11 “(ii) Recycling Services. Franchisee will provide each account they service
12 with Recycling Services. If a customer requests an additional container(s) or Service(s),
13 Franchisee to provide it within one week of request. The Franchisee must develop a plan
14 to ensure this Service is provided to all their accounts. The Franchisee will review the plan
15 with the City within the first 45 days of the contract execution and implement it upon review
16 and approval by the City.”

17 3. Section 4.1.3.a (iii) of Agreement No. 32130 is amended to read as
18 follows:

19 (iii) Solid Waste Handling Services for Special Events may only be
20 provided by Permitted Haulers. If Franchisee provides Solid Waste Handling Services for
21 a Special Event in the Service Area, that has received a Special Event Permit, Franchisee
22 must provide Recycling Services, or identify a 3rd party to provide the service for the
23 Permitted Special Event. Franchisee must provide a Recycling Plan at least ten (10) days
24 prior to the Permitted Special Event that includes at a minimum: documentation of service
25 level, event map that documents paired placement of garbage and recycling containers,
26 copies of education signs (with images as to material type allowed in each container), to
27 be placed with/near bins. Franchisee must report this on their monthly report and document
28 total tonnage of material collected from the event. If Franchisee does not provide recycling

1 for the event and/or the above documentation, they may be assessed One Thousand
2 Dollars (\$1,000) in Liquidated Damages for first offense and the fee will increase 10% per
3 additional offense.”

4 4. Section 4.1.3.a (iv) is added to Agreement No. 32130 to read as
5 follows:

6 “(iv) Organics Services. The Franchisee must develop a plan to ensure
7 Organics Service is provided to accounts impacted by AB 1826 and any other local or state
8 law. Franchisee must provide the Service when requested to any other accounts. The
9 Franchisee will review the plan with the City within the first 45 days of the contract execution
10 and begin implementation January 1, 2019.”

11 5. Section 4.1.3.d (v) of Agreement No. 32130 is amended to read as
12 follows:

13 “(v) Display Franchisee’s name, telephone number in legible lettering no
14 less than two inches (2”) in height as well as language warning against illegal dumping and
15 Un-permitted Waste (include Hazardous Waste) or special waste disposal, as required by
16 14.Cal. Code Regs. 17317. Additionally, each container must be marked with each
17 Customer’s service address (City and zip code not required) within 60 days of contract
18 extension.”

19 6. Section 4.2.1 of Agreement No. 32130 is amended to read as follows:

20 “4.2.1 Franchisee will collect excess Solid Waste at the Commercial Set-out
21 Site on the Customers’ regularly scheduled service day or any other date agreed to
22 between the Customer and Franchisee, but in no event later than forty-eight (48) hours of
23 receipt of the request for collection from the Commercial Customer or from the City, unless
24 otherwise directed by the City. Franchisee will collect all Excess Waste at the Site on
25 regular pick-up day(s) and not leave any waste or litter at the Site. The City may assess
26 Liquidated Damages for complaints that occur due to Excess Waste.”

27 7. Section 4.2.2 of Agreement No. 32130 is amended to read as follows:

28 “4.2.2 Franchisee will provide at a minimum the same level of collections the

1 City provides for Bulky Waste (as defined in Exhibit 1 Definitions section) at no additional
2 charge to the customer, currently the City provides four (4) pick-ups with a maximum of
3 eight (8) bulky items or twenty-five (25) bags/bundles/boxes of garbage per pick up.
4 Franchisee will provide additional collections, upon request, at a rate determined by
5 Franchisee. Franchisee will collect bulky waste at the Commercial Set-out Site on the
6 Customer's next regularly scheduled Collection Day or other date agreed to between the
7 Customer and Franchisee, but in no event later than seven (7) days of receipt of the request
8 for collection from the Commercial Customer or from the City, unless otherwise directed
9 by the City. Pick-ups of illegally dumped items do not count toward the included bulky waste
10 pick-ups. Franchisee shall maintain a log of such requests for Bulky Waste Pick-ups and
11 provide it in the monthly report. Annually, Franchisee will provide a breakout of the amount
12 of customers that called for multiple request (ie the total amount of customers that
13 requested four (4) pick-ups, three (3) pick-ups, etc.).

14 (a) Franchisee will promote and educate customers of this new service at
15 least four (4) times during the year. Each promotion will occur every three (3) months and
16 the first one must occur within forty-five (45) days of the contract execution. Franchisee
17 will provide promotional material to the City for approval before promoting the service and
18 allow the City to promote this service.”

19 (b) Franchisee will clean up dumped bulky waste within a ten foot (10')
20 radius of the Set-out Site and from any area of the service account. Franchisee will ensure
21 that each Collection Vehicle carries appropriate tools at all times for this purpose or can
22 communicate the request with appropriate staff to get the material collected.”

23 8. Section 4.3.2 of Agreement No. 32130 is amended to read as follows:

24 “4.3.2 Franchisee will clean up litter caused by Franchisee employees.
25 Franchisee will also clean up all liter within a ten foot (10') radius of the Set-Out Site and
26 from any area of the service account when collecting any Bulky Waste and excess Solid
27 Waste. Franchisee will ensure that each Collection Vehicle carries appropriate tools at all
28 times for this purpose.”

1 9. Section 4.6 of Agreement No. 32130 is amended to read as follows:

2 “4.6 Franchisee Billing. Franchisee will provide the City with the copy of
3 the Customer bill within fifteen (15) days of signed contract renewal. Franchisee will bill
4 and collect Service Fees, however Franchisee is prohibited from itemizing the Franchise
5 Fee and any other City-imposed fee as part of the Customer's bill. Failure to do so will
6 result in the imposition of liquidated damages.”

7 10. Section 6.1 of Agreement No. 32130 is amended to read as follows:

8 “6.1 Franchisee to develop and implement a plan to increase their
9 diversion rate by 25%. Plan must be submitted to the City within 45 days of the contract
10 execution.”

11 11. Section 7.3 of Agreement No. 32130 is amended to read as follows:

12 “7.3 Compliance with Applicable Law. Franchisee is required to ensure all
13 accounts impacted by AB 341 and AB 1826 have required service. Franchisee must provide
14 detailed documentation on their efforts on a quarterly basis to the City.”

15 12. Section 16 of Agreement No. 32130 entitled Execution of Agreement
16 is renumbered to Section 20.

17 13. Section 16 is added to Agreement No. 32130 to read as follows:

18 “Section 16. Litter Abatement. Franchisee will sponsor and host at least two
19 (2) clean-up events that include at a minimum: event staff, container(s) for refuse,
20 container(s) for recycling, non-profit organization(s) to collect items for donation/re-use.
21 The event will be held for at least four (4) hours OR the Franchisee can pay One Thousand
22 Five Hundred Dollars (\$1,500) per clean-up for the City to host the event. Franchisee will
23 notify the City of their intent within forty-five (45) days of the signed contract extension and
24 if appropriate provide the event plan. If Franchisee decides to host the events they must
25 also provide the City the tonnage numbers for the clean-up.”

26 14. Section 17 is added to Agreement No. 32130 to read as follows:

27 “Section 17. Zero Waste Plan.

28 17.1 If Franchisee services two hundred (200) or more accounts in the

1 City, they will provide the City Seven Thousand Five Hundred Dollars (\$7,500) to support
2 the development of the Zero Waste Plan. If Franchisee services One Hundred Ninety-Nine
3 (199) accounts or less they will provide Three Thousand Five Hundred Dollars (\$3,500) to
4 the City. These customer counts will be considered as of 06/01/2018.

5 17.2 Franchisee will research and identify up to five (5) barriers to reaching
6 zero waste for the accounts they service. Franchisee will develop a plan with solutions for
7 barriers. They will provide the plan to the City within ninety (90) days of the contract being
8 executed and implement a plan that addresses at least two (2) barriers identified.
9 Franchisee will meet with the City to review the plan and provide updates on progress.”

10 15. Section 18 is added to Agreement No. 32130 to read as follows:

11 “Section 18. Adding New Commercial and Multi-Family Accounts. If
12 Franchisee is adding a new account, Franchisee must ensure customer is compliant with
13 AB 341 and AB 1826. Prior to taking on the account, the Franchisee must provide
14 documentation to the City (Customer Service Call Center Manager) that includes: current
15 service level, proposed service level, container type(s), and a recycling plan that includes
16 all commodities to be recycled. If customer will be impacted by AB 1826 Franchisee must
17 document that the service will be included as part of taking on the new account. The City
18 will provide a template to be used by the Franchisee to document this requirement. The
19 City must review and approve this prior to the Franchisee executing a new agreement with
20 the customer. The City may assess liquidated damages if these terms are not met.”

21 16. Section 19 is added to Agreement No. 32130 to read as follows:

22 “Section 19. Food Rescue and Food Donation. Franchisee will identify at
23 least one agency to partner with to promote that can collect food donations from their
24 customers that serve food. The Franchisee will identify the agency, develop outreach
25 material, and provide the City with a plan to promote and distribute the material. The City's
26 preference is for edible food to be captured for food donation and food rescue. The plan
27 will be submitted within forty-five (45) days of the contract execution for approval.
28 Franchisee will distribute information within thirty (30) days of approval of plan by the City.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

1 The Franchise will provide updates in their monthly report.”

2 17. Except as expressly amended in this Second Amendment, all terms
3 and conditions in Agreement No. 32130 are ratified and confirmed and shall remain in full
4 force and effect.

5 IN WITNESS WHEREOF, the parties have caused this document to be
6 executed with all formalities required by law as of the last date indicated below:

7 UNITED PACIFIC WASTE, INC. formerly
8 known as SERV-WEST DISPOSAL
9 COMPANY DBA OLYMPIC DISPOSAL
COMPANY, a California corporation

10 October 9, 2018

By [Signature]
Name Michael Kandilian
Title CEO

11 October 9, 2018

By [Signature]
Name Shana Micla
Title Secretary

12 **Tom Modica**
13 **Assistant City Manager**
14 **EXECUTED PURSUANT**
15 **TO SECTION 301 OF**
16 **THE CITY CHARTER**

“Franchisee”

CITY OF LONG BEACH, a municipal
corporation

17 Nov. 14, 2018

By [Signature]
City Manager

“City”

20 This Second Amendment to Non-Exclusive Franchise Agreement No. 32130
21 is approved as to form on Nov. 26, 2018.

23 CHARLES PARKIN, City Attorney

24 By [Signature]
25 Deputy

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