

1 SECOND AMENDMENT TO NON-EXCLUSIVE FRANCHISE AGREEMENT NO. 32129

2 **32129**

3 THIS SECOND AMENDMENT TO NON-EXCLUSIVE FRANCHISE  
4 AGREEMENT NO. 32129 is made and entered, in duplicate, as of September 17, 2019,  
5 for reference purposes only, pursuant to a minute order adopted by the City Council of the  
6 City of Long Beach at its meeting on August 13, 2019, by and between HAUL-AWAY  
7 RUBBISH SERVICE CO., a California corporation ("Franchisee"), with a place of business  
8 at 1205 Date Street, Montebello, California 90640, and the CITY OF LONG BEACH, a  
9 municipal corporation ("City").

10 WHEREAS, City and Franchisee (the "Parties") entered into Agreement No.  
11 32129 (the "Agreement") whereby Franchisee agreed to provide integrated waste  
12 management services for commercial and multi-family establishments in the City of Long  
13 Beach; and

14 WHEREAS, the Parties desire extend the term and update the required  
15 operational standards;

16 NOW, THEREFORE, in consideration of the mutual terms, covenants, and  
17 conditions herein contained, the Parties agree as follows:

18 1. Section 3.1.1 of the Agreement is hereby amended to read as follows:

19 "3.1.1 Option to extend Agreement. If Franchisee is not in default of  
20 any provision of this Agreement, including payment of any moneys due City, and  
21 provides proof satisfactory to City in its sole discretion by October 1, 2012 that one  
22 hundred percent (100%) of the vehicles used by Franchisee to haul refuse in Long  
23 Beach are Alternative Fuel Vehicles, the term of this Agreement will be extended by  
24 three (3) years, until September 30, 2019. If Franchisee is not in default of any  
25 provision of this Agreement, including payment of any moneys due City, and  
26 provides proof satisfactory to City in its sole discretion by October 1, 2013 that one  
27 hundred percent (100%) of the vehicles used by Franchisee to haul refuse in Long  
28 Beach are Alternative Fuel Vehicles, the term of this Agreement will be extended by

1 two (2) years, until September 30, 2018.”

2 2. Section 3.1.2 of the Agreement is hereby amended to read as follows:

3 “3.1.2 Additional options to extend Agreement. After the initial term  
4 and options to extend have been exhausted, effective October 1, 2019, the  
5 Agreement may be extended for one (1) additional three-year period, with further  
6 options to extend for two (2) additional one-year periods, at the discretion of the City  
7 Manager.”

8 3. Section 3.1.3 of the Agreement is hereby amended to read as follows:

9 “3.1.3 The City has the right to terminate if Franchisee fails to be in  
10 compliance with State Law(s), including but not limited to SB 1383, AB 939 and AB  
11 1826.”

12 4. Section 4.1.3.a.(ii) of the Agreement is hereby amended to read as

13 follows:

14 “(ii) Recycling Services. Franchisee will provide each account they  
15 service with Recycling Services. If a Customer requests an additional container(s)  
16 or Service(s), Franchisee agrees to provide it within one (1) week of request. The  
17 Franchisee shall develop a written plan to ensure this Service is provided to all their  
18 accounts. The Franchisee will have the plan available to review with the City. The  
19 City will provide a standard template for this plan.

20 Recycling Services Commodity Collection. The City may choose to  
21 specify the commodities to be included in the Franchisee’s recycling collection  
22 program and may require the Franchisee to utilize this list. The City shall  
23 communicate with the Franchisee prior to implementation.”

24 5. Section 4.1.3.a.(iii) of the Agreement is hereby renumbered to be  
25 4.1.3.a.(iv) and amended to read as follows:

26 “(iv) Solid Waste Handling Services for Special Events may only be  
27 provided by Permitted Haulers. If Franchisee provides Solid Waste Handling  
28 Services for a Special Event, that has received a Special Event Permit, Franchisee

1 shall provide source-separated public and back-of-house collection containers for  
2 refuse, recycling and, when appropriate, organics. Additionally, Franchisee shall  
3 provide signage on all containers and review the signage with the City for its prior  
4 approval.

5 Franchisee shall provide a Recycling Plan at least 30 days prior to the  
6 Permitted Special Event that includes at a minimum: documentation of service level,  
7 event map that documents paired placement of garbage and recycling containers  
8 and copies of education signs (with images as to material type allowed in each  
9 container), to be placed with the bins.

10 Franchisee shall include this information in their monthly report and  
11 document total tonnage of material collected from the Permitted Special Event.”

12 6. Section 4.1.3.a.(iii) of the Agreement is hereby amended to read as  
13 follows:

14 “(iii) Organics Services. The Franchisee will provide each account  
15 they service impacted by AB 1826, SB 1383, and/or any other state or local law with  
16 Organics Service. Franchisee must develop a written plan to ensure Organics  
17 Service is provided to accounts impacted by AB 1826, SB 1383 and any other local  
18 or state law. The Franchisee will have the plan available to review with the City upon  
19 request. The City will provide a standard template for this plan.

20 Franchisee shall monitor the organics containers for contamination in  
21 all manners that comply with state law.”

22 7. Section 4.1.3(v) is added to the Agreement to read as follows:

23 “(v) The City desires that all Franchises have uniform in bins colors  
24 compliance with the regulations delineated in SB 1383. At the time of this contract  
25 the colors are: Grey/Back for Refuse, blue for recycling, and green for organics. The  
26 City will develop a plan for compliance during the contract period. Effective  
27 immediately, the Franchisee shall ensure that all containers/bins for organics are  
28 green.”

1                   8.       Section 4.1.3(v) of the Agreement is renumbered to be 4.1.3(vi) and  
2 is hereby amended to read as follows:

3                   “(vi)   Display Franchisee’s name, telephone number in legible  
4 lettering no less than two inches (2”) in height as well as language warning against  
5 illegal dumping and Un-permitted Waste (include Hazardous Waste) or special  
6 waste disposal, as required by 14 Cal. Code Regs. 17317. Additionally, each  
7 container must be marked with each Customer’s service address (City and zip code  
8 not required) within ninety (90) days of this Amendment.”

9                   9.       Section 4.1.3(vi) of the Agreement is renumbered to be 4.1.3(vii).

10                  10.       Section 4.1.3(vii) of the Agreement is renumbered to be 4.1.3(viii).

11                  11.       Section 4.1.3(ix) is added to the Agreement to read as follows:

12                  “(ix)   All containers and bins in use in the City must be labeled. In the  
13 event the City implements a uniform labeling system, Franchisee must utilize this  
14 system. If the City does not implement such a system, Franchisee is responsible for  
15 ensuring that labels comply with all state laws, and must obtain approval from the  
16 City prior to use. All labels shall comply with all State laws and receive approval  
17 from the City prior to use. At a minimum, this includes, but is not limited to, all bins  
18 and containers used at commercial, multi-family, special events, and construction  
19 and demolition locations.”

20                  12.       Section 4.2.1 of the Agreement is hereby amended to read as follows:

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

28                  13.       Section 4.2.2 of the Agreement is hereby amended to read as follows:

1                   “4.2.2 Bulky Waste. Franchisee will provide at a minimum the same  
2 level of collections the City provides for Bulky Waste (as defined in Exhibit 1  
3 Definitions section) at no additional charge to the Customer. As of September 1,  
4 2019, the City provides four (4) pick-ups with a maximum of eight (8) bulky items or  
5 twenty-five (25) bags/bundles/boxes of garbage per pick up. The City may change  
6 service level expectations during term of agreement and will notify Franchisee if  
7 changes are made. Franchisee shall provide additional collections upon request, at  
8 a rate determined by Franchisee. Franchisee will collect Bulky Waste at the  
9 Commercial Set-out Site on the Customer's next regularly scheduled Collection Day  
10 or other date agreed to between the Customer and Franchisee, not later than seven  
11 (7) days of receipt of the request for collection from the Commercial Customer or  
12 from the City, unless otherwise directed by the City. Franchisee shall maintain a log  
13 of such requests for Bulky Waste Pick-ups and provide it in the monthly report.  
14 Annually, Franchisee will provide a breakdown of the number of requests and the  
15 total amount of pick-ups they received. Pick-ups of illegally dumped items do not  
16 count toward the included Bulky Waste pick-ups.

17                   (a) Bulky Waste Collection Promotion. Franchisee will promote  
18 and educate Customers about this new service at least four (4) times during the  
19 year. Each promotion will occur every three months and the first one must occur  
20 within forty-five (45) days of the contract execution. Franchisee will provide  
21 promotional material to the City for approval before promoting the service and allow  
22 the City to promote this service on behalf of the Franchisee.

23                   (b) Dumped Bulky Waste. Franchisee will clean up dumped Bulky  
24 Waste within a 10-foot (10') radius of the Set-out Site and from any area of the  
25 service account. Franchisee will ensure that each Collection Vehicle carries  
26 appropriate tools at all times for this purpose or can communicate the request with  
27 appropriate staff to get the material collected.”

28                   14. Section 4.3.2 of the Agreement is hereby amended to read as follows:

1                   “4.3.2 Litter. Franchisee will clean up litter caused by Franchisee  
2 employees. Franchisee will also clean up all litter within a 10-foot (10’) radius of the  
3 Set-Out Site and from any area of the service account when collecting any Bulky  
4 Waste and excess Solid Waste. Franchisee will ensure that each Collection Vehicle  
5 carries appropriate tools at all times for this purpose.”

6                   15. Section 4.6 of the Agreement is hereby amended to read as follows:

7                   “4.6 Franchisee Billing. Franchisee will provide the City with the copy of  
8 the Customer bill within fifteen (15) days of signed Customer contract renewal, and submit  
9 it annually as part of the Transportation Permit Renewal Process (“TPRP”). The TPRP  
10 requires Franchisees to submit a permit renewal application, including a copy of their  
11 insurance, business license, transportation permit renewal fee, DMV registration for  
12 vehicles used in Long Beach and information on each vehicle, and updated contact  
13 information. Franchisee will bill and collect Service Fees, however Franchisee is prohibited  
14 from itemizing the Franchise Fee and any other City-imposed fee as part of the Customer's  
15 bill. Failure to observe this provision shall result in the imposition of liquidated damages.”

16                  16. Section 6.1 of the Agreement is hereby amended to read as follows:

17                  “6.1 Diversion. Franchisee must reach a minimum diversion rate of twenty-  
18 five percent (25%) by September 30, 2020, thirty-five percent (35%) diversion rate by  
19 September 30, 2021, and forty percent (40%) diversion rate by September 30, 2022. The  
20 Director of Public Works, or designee, may revise minimum diversion rates based on  
21 market conditions and industry considerations.”

22                  17. Section 7.3 of the Agreement is hereby amended to read as follows:

23                  “7.3 Compliance with Applicable Law. Franchisee shall ensure all  
24 accounts impacted by AB 341, AB 1826, SB 1383 are in compliance. Franchisee is  
25 required to ensure compliance with any and all State laws. The City Manager, or designee,  
26 has the authority to develop additional contract amendments to further define requirements  
27 and expectations of haulers to ensure state law compliance.”

28                  18. Section 8.2.1 of the Agreement is hereby amended to read as follows:

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“8.2.1 Monthly. Monthly. Franchisee will submit Monthly Reports to the City no later than thirty (30) days from the end of the month for which collection service was provided. The City shall develop an online Monthly Reporting system, which Franchisee must use. The City may add or subtract questions to this report as needed.”

19. Section 8.2.2 of the Agreement is hereby amended to read as follows:

“8.2.2 Annual. Franchisee will submit Annual Reports to the City as directed or approved by the City. Online reporting may be required.”

20. Section 10.2.2 of the Agreement is hereby amended to read as follows:

“10.2.2 Franchise Fee. In consideration for City’s granting Franchisee the franchise described in Section 4, Franchisee will pay the City a Franchise Fee as established by resolution of the Long Beach City Council, and amended from time to time. The Franchise Fee was established at eight percent (8%) of the Gross Revenues received from providing the Franchise Services received after December 1, 2009 through 2011. As of October 1, 2011, the Franchise Fee increased to ten percent (10%).”

21. Section 15.1.3 of the Agreement is hereby amended to read as follows:

“15.1.3 Address:  
To City: Craig Beck, Director of Public Works  
City of Long Beach  
411 West Ocean Blvd., 5th Floor  
Long Beach, California 90802  
Telephone: (562) 570-6771  
Email: Craig.Beck@longbeach.gov

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1 With a copy to: Erin Rowland  
2 Environmental Services Bureau  
3 2929 East Willow Street  
4 Long Beach, California 90808

5 If to Franchisee: HAUL-AWAY RUBBISH SERVICE CO.  
6 1205 Date Street  
7 Montebello, California 90640

8 Parties may change their contact information above upon Notice to the  
9 other Party.”

10 22. Section 16 of the Agreement is hereby renumbered to be Section 22.

11 23. Section 16 is hereby added to the Agreement to read as follows:

12 “16. ZERO WASTE PLAN. If Franchisee services two hundred (200) or  
13 more accounts in the City, Franchisee shall pay the City the sum of Seven Thousand Five  
14 Hundred Dollars (\$7,500) to support the development of the Zero Waste Plan. If Franchisee  
15 services one hundred ninety-nine (199) accounts or fewer, Franchisee shall pay to the City  
16 the sum of Three Thousand Five Hundred Dollars (\$3,500). These Customer counts will  
17 be considered as of July 31, 2019.”

18 24. Section 17 is hereby added to the Agreement to read as follows:

19 “17. ADDING NEW COMMERCIAL AND MULTI-FAMILY ACCOUNTS. If  
20 Franchisee adds a new account, Franchisee must ensure Customer complies with AB 341  
21 and AB 1826. Prior to taking on the account, the Franchisee must provide documentation  
22 to the City (Customer Service Call Center Manager) that includes: current service level,  
23 proposed service level, container type(s), and a recycling plan that includes all  
24 commodities to be recycled. If Customer will be impacted by AB 1826 Franchisee must  
25 document that the service will be included as part of taking on the new account. The City  
26 will provide a template to be used by the Franchisee to document this requirement. The  
27 City must review and approve this information prior to the Franchisee executing a new  
28 agreement with the Customer. The City may assess liquidated damages if these terms are



1 not met.”

2 25. Section 18 is hereby added to the Agreement to read as follows:

3 “18. FOOD RESCUE AND FOOD DONATION. The City is requiring the  
4 Franchisee to develop a food rescue and food donation plan that complies with rules and  
5 regulations set forth in SB 1383 and any other applicable state law. At a minimum,  
6 Franchisee shall identify at least one (1) entity meeting the requirements in SB 1383 to  
7 partner with to promote food donation from their food service Customers. This must be  
8 completed and approved by the City prior to January 1, 2021.”

9 26. Section 19 is hereby added to the Agreement to read as follows:

10 “19. ORGANIC WASTE RECOVERY EDUCATION AND OUTREACH.  
11 Franchisee shall annually provide organic waste recovery education and outreach in a  
12 manner that complies with SB 1383 and any other state law. The Franchisee will review  
13 with the City all material and outreach strategies prior to implementation of this provision.”

14 27. Section 20 is hereby added to the Agreement to read as follows:

15 “20. BRANDING. City shall establish consistent branding for all waste,  
16 recycling, organics collection containers/bins, and education and outreach material within  
17 the City of Long Beach.”

18 28. Section 21 is hereby added to the Agreement to read as follows:

19 “21. PROCUREMENT. Franchisee shall annually report the amount of  
20 Renewable CNG it uses to run its fleet in the City of Long Beach.”

21 29. Except as expressly modified herein, all of the terms and conditions  
22 contained in Agreement No. 32129 are ratified and confirmed and shall remain in full force  
23 and effect.

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OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802

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IN WITNESS WHEREOF, the Parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

HAUL-AWAY RUBBISH SERVICE CO., a California corporation

NOVEMBER 8<sup>th</sup>, 2019

By [Signature]  
Name MONALIE BELIAHOFF  
Title PRESIDENT

NOVEMBER 8<sup>th</sup>, 2019

By [Signature]  
Name DAVID BELIAHOFF  
Title VICE PRESIDENT

"Franchisee"

CITY OF LONG BEACH, a municipal corporation

Nov. 27, 2019

By [Signature]  
City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

"City"

This Second Amendment to Non-Exclusive Franchise Agreement No. 32129 is approved as to form on 11-25, 2019.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy