

SECOND AMENDMENT TO NON-EXCLUSIVE FRANCHISE AGREEMENT NO. 32127

32127

THIS SECOND AMENDMENT TO NON-EXCLUSIVE FRANCHISE AGREEMENT NO. 32127 ("Second Amendment") is made and entered in duplicate on October 1, 2018 ("Effective Date"), by and between the CITY OF LONG BEACH, a municipal corporation, with its principal place of business located at 333 West Ocean Blvd., Long Beach, California 90802 ("City"), and CONSOLIDATED DISPOSAL SERVICE, L.L.C. DBA REPUBLIC SERVICES, a Delaware limited liability company, with its principal place of business located at 18500 N. Allied Way, Phoenix, Arizona 85054 ("Franchisee"). City and Franchisee may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

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

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

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

WHEREAS, pursuant to Section 3.1.2 of Agreement No. 32127 (the "Agreement"), the Parties entered into a First Amendment to the Agreement to extend the Term by two (2) years; and

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

NOW, THEREFORE, in consideration of the mutual promises, covenants,

1 guaranties and conditions contained in the Agreement and in this Amendment, the Parties
2 agree as follows:

3 1. Section 3.1 of Agreement No. 32127 is amended to read as follows:

4 "3.1. Term. Unless this paragraph is subsequently modified by a written
5 amendment to this Agreement, the term of this Agreement will begin on the Effective Date
6 and terminate at the end of day on September 30, 2019, unless sooner terminated as
7 provided elsewhere in the Agreement."

8 2. Section 4.1.3.a (ii) of Agreement No. 32127 is amended to read as
9 follows:

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

16 3. Section 4.1.3.a (iii) of Agreement No. 32127 is amended to read as
17 follows:

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

1 Dollars (\$1,000) in Liquidated Damages for first offense and the fee will increase 10% per
2 additional offense.”

3 4. Section 4.1.3.a (iv) is added to Agreement No. 32127 to read as
4 follows:

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

10 5. Section 4.1.3.d (v) of Agreement No. 32127 is amended to read as
11 follows:

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

18 6. Section 4.2.1 of Agreement No. 32127 is amended to read as follows:

19 “4.2.1 Franchisee will collect excess Solid Waste at the Commercial Set-out
20 Site on the Customers' regularly scheduled service day or any other date agreed to
21 between the Customer and Franchisee, but in no event later than forty-eight (48) hours of
22 receipt of the request for collection from the Commercial Customer or from the City, unless
23 otherwise directed by the City. Franchisee will collect all Excess Waste at the Site on
24 regular pick-up day(s) and not leave any waste or litter at the Site. The City may assess
25 Liquidated Damages for complaints that occur due to Excess Waste.”

26 7. Section 4.2.2 of Agreement No. 32127 is amended to read as follows:

27 “4.2.2 Franchisee will provide at a minimum the same level of collections the
28 City provides for Bulky Waste (as defined in Exhibit 1 Definitions section) at no additional

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

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

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

22 8. Section 4.3.2 of Agreement No. 32127 is amended to read as follows:

23 "4.3.2 Franchisee will clean up litter caused by Franchisee employees.
24 Franchisee will also clean up all liter within a ten foot (10') radius of the Set-Out Site and
25 from any area of the service account when collecting any Bulky Waste and excess Solid
26 Waste. Franchisee will ensure that each Collection Vehicle carries appropriate tools at all
27 times for this purpose."

28 9. Section 4.6 of Agreement No. 32127 is amended to read as follows:

1 “4.6 Franchisee Billing. Franchisee will provide the City with the copy of
2 the Customer bill within fifteen (15) days of signed contract renewal. Franchisee will bill
3 and collect Service Fees, however Franchisee is prohibited from itemizing the Franchise
4 Fee and any other City-imposed fee as part of the Customer's bill. Failure to do so will
5 result in the imposition of liquidated damages.”

6 10. Section 6.1 of Agreement No. 32127 is amended to read as follows:

7 “6.1 Franchisee to develop and implement a plan to increase their
8 diversion rate by 25%. Plan must be submitted to the City within 45 days of the contract
9 execution.”

10 11. Section 7.3 of Agreement No. 32127 is amended to read as follows:

11 “7.3 Compliance with Applicable Law. Franchisee is required to ensure all
12 accounts impacted by AB 341 and AB 1826 have required service. Franchise must provide
13 detailed documentation on their efforts on a quarterly basis to the City.”

14 12. Section 16 of Agreement No. 32127 entitled Execution of Agreement
15 is renumbered to Section 20.

16 13. Section 16 is added to Agreement No. 32127 to read as follows:

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

25 14. Section 17 is added to Agreement No. 32127 to read as follows:

26 “Section 17. Zero Waste Plan.

27 17.1 If Franchisee services two hundred (200) or more accounts in the
28 City, they will provide the City Seven Thousand Five Hundred Dollars (\$7,500) to support

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

4 17.2 Franchisee will research and identify up to five (5) barriers to reaching
5 zero waste for the accounts they service. Franchisee will develop a plan with solutions for
6 barriers. They will provide the plan to the City within ninety (90) days of the contract being
7 executed and implement a plan that addresses at least two (2) barriers identified.
8 Franchisee will meet with the City to review the plan and provide updates on progress."

9 15. Section 18 is added to Agreement No. 32127 to read as follows:

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

20 16. Section 19 is added to Agreement No. 32127 to read as follows:

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

17. Except as expressly amended in this Second Amendment, all terms and conditions in Agreement No. 32127 are ratified and confirmed and shall remain in full force and effect.

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

CONSOLIDATED DISPOSAL SERVICE,
L.L.C. DBA REPUBLIC SERVICES, a
Delaware limited liability company

October 16,, 2018

By [Signature]
Name MATTHEW ALICIAS
Title General Manager

_____, 2018

By _____
Name _____
Title _____

Tom Modica
Assistant City Manager

"Franchisee"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

CITY OF LONG BEACH, a municipal
corporation

Nov. 14, 2018

By [Signature]
City Manager

"City"

This Second Amendment to Non-Exclusive Franchise Agreement No. 32127 is approved as to form on Nov. 26, 2018.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

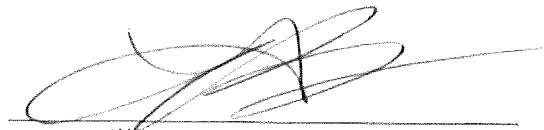
CERTIFICATE OF SECRETARY
RELATING TO THE SECOND AMENDMENT
TO NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
COLLECTION, RECYCLING AND DISPOSAL OF SOLID WASTE
FOR THE CITY OF LONG BEACH
IN THE STATE OF CALIFORNIA

The undersigned, Secretary of **CONSOLIDATED DISPOSAL SERVICE, L.L.C.**, a Delaware limited liability company (the "Company"), hereby certifies that the following is a true and correct copy of the resolution which was duly adopted by **REPUBLIC SERVICES, INC.**, a Delaware corporation, the sole member of the Company (the "Member") by written consent of the Member on February 24, 2016, that such resolution has not been rescinded, amended or modified in any respect, and is in full force and effect on the date hereof:

RESOLVED, that (i) any individual at the time holding the position of General Manager or Area Director, Finance be, and each of them hereby is, appointed as an Authorized Agent, to act in the name and on behalf of the Company and to include the execution of related documents, in connection with the day-to-day business activities of the Company, and further, that (ii) in addition to the General Manager or Area Director, Finance, any individual at the time holding the position of Area Director, Business Development; Area Director, Operations; or Market Vice President be, and each of them hereby is, appointed as an Authorized Agent to execute any bid and proposal, and if awarded, any related contract for services to be performed by the Company and any bond required by such bid, proposal or contract, all in accordance with the existing Levels of Authority and other relevant policies and procedures.

I further certify that **MATTHEW R. NIKLAS** holds the title of General Manager and in such capacity has full authority to act in the name and on behalf of the Company as set forth in the foregoing resolution.

WITNESS MY HAND, this 11th day of October, 2018.


Eileen B. Schuler, Secretary