City of Los Angeles: Solid Waste Franchise Assessment

FINAL REPORT

January 23, 2012

Prepared by:
HF&H Consultants, LLC
under Subcontract to
Parsons Water and Infrastructure

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EXECUTIVE SUMMARY

The study objective and findings are described below. Each finding is discussed in more detail in Section III: Findings, of this report.

STUDY OBJECTIVE
Identify and evaluate multi-family and commercial franchising options in order to assist the City in reaching its environmental and financial goals, while maintaining regulatory and legislative compliance.
STUDY FINDINGS
1. Approximately two-thirds of Los Angeles County cities have an exclusive commercial solid waste franchise system. However, the larger cities within the County tend to have non-exclusive systems (permit system, business license, or non-exclusive franchise). (Page 12)
2. Five of the ten largest cities in California have or are transitioning to exclusive commercial franchise systems. (Page 15)
3. Most exclusive franchises are for a term of five to ten years, and contain a variety of performance standards, diversion requirements, rate adjustment methods, and other requirements. (Page 15)
4. Cities with non-exclusive franchises have a broad array of contract terms, number of haulers, diversion requirements, fee assessments, and rate regulation procedures. (Page 17)
5. The County of Los Angeles' (County) is planning to transition multi-family and commercial bin customers in the unincorporated areas (excluding the Garbage Disposal Districts) from an open market system to a non-exclusive franchise system. (Page 19)
6. The City of San Jose's commercial sector is currently serviced by approximately 20 haulers under a non-exclusive system. After a competitive RFP process, managed by HF&H Consultants, City Council approved one hauler to provide exclusive citywide refuse, recycling and green waste collection, and recyclables processing service, and another contractor to provide exclusive organics processing service. Both franchises are anticipated to begin in July 2012. (page 20)
7. Exclusive and non-exclusive franchise systems offer different advantages. (Page 23)
8. An exclusive franchise system may reduce commercial customer solid waste rates for some customers and increase rates for other customers. (Page 24)
9. An exclusive franchise system would result in the fewest number of commercial refuse vehicles, and minimize the environmental footprint of solid waste operations by decreasing truck traffic, vehicle emissions, pavement impacts, and noise. (Page 25)
10. The City could require early implementation of clean fuel vehicles under either an exclusive or non-exclusive franchise. (Page 26)
11. City fees to achieve the City's financial goals may be contractually established using a non-exclusive or exclusive franchise system. Establishment of franchise fees will need to be reviewed by the City Attorney's office. (Page 27)
12. The City's ability to reach zero waste goals may be increased through a non-exclusive or exclusive franchise system, and will depend on the specific franchise requirements. An exclusive franchise with one or more exclusive areas each serviced by one hauler, with rates approved by the City, may allow the most aggressive overall diversion goal due to routing and processing efficiencies. (Page 28)
13. According to CalRecycle, recycling activities create more jobs than landfilling. (Page 29)

14.	Current State policies will need to be supported by the City's multi-family and commercial service arrangements. (Page 29)
15.	Certain large businesses and large multi-family communities could be exempted from an exclusive service franchise. (Page 30)
16.	There are five main franchise timing options for the City to consider (Page 30): 1) Move forward with franchising process for multi-family services; delay implementation of commercial franchising process; 2) Delay franchising process of both multi-family and commercial services subsequent to submittal and completion of minimum 5-year notice period for commercial haulers; 3) Move forward with RFP for both multi-family and commercial franchising process; implement multi-family first, and implement commercial franchise after submittal and completion of minimum 5-year notice period; 4) Develop voluntary franchising process for multi-family and commercial haulers without limiting the number of haulers (this option would allow for the earliest implementation); and, 5) Move forward with both multi-family and commercial franchising processes; implement multi-family first, and phase-in commercial.
17.	The City's Rent Stabilization Ordinance (RSO) allows landlords and property managers to submit an application to pass-through solid waste collection cost increases to tenants for buildings built before 1979. There would be no restriction on landlords passing on increased solid waste costs for all buildings built after 1978. (Page 35)

SECTION I: BACKGROUND

Existing Commercial and Multi-Family Solid Waste Collection Services

The City of Los Angeles' (City) commercial and multi-family (five or more dwelling units) sectors currently receive solid waste collection services from permitted haulers that compete for customers based on price and service. Multi-family residences with fewer than five dwelling units are serviced by the City's Bureau of Sanitation (Bureau). While over 120 haulers have permits to provide services, based on data provided by the City for 2009 (the most recent year available), 68 of the permitted haulers reported gross receipts. Haulers that collect less than 1,000 tons of waste per year are not subject to AB 939 fees, and do not report gross receipts. Of the haulers that reported gross receipts, 17 haulers reported providing refuse bin service only, 24 haulers reported providing rolloff services only, and 27 reported providing refuse bin and rolloff services. To ensure compliance, Bureau of Sanitation staff perform periodic audits of all haulers, including those reporting less than 1,000 tons per year. Many haulers that report less than 1,000 tons per year collect construction and demolition debris. As shown in Exhibit 1, based on 2009 gross receipts reported to the Bureau by the 68 permitted haulers reporting gross receipts, four haulers account for approximately 85% of the commercial and multi-family market share, and ten haulers account for approximately 94% of the commercial and multi-family market share. A breakdown of market share by hauler is shown in Exhibit 2.

Exhibit 1
City of Los Angeles' Multi-Family/Commercial Market Share (2009 data)
(including bin and rolloff services)

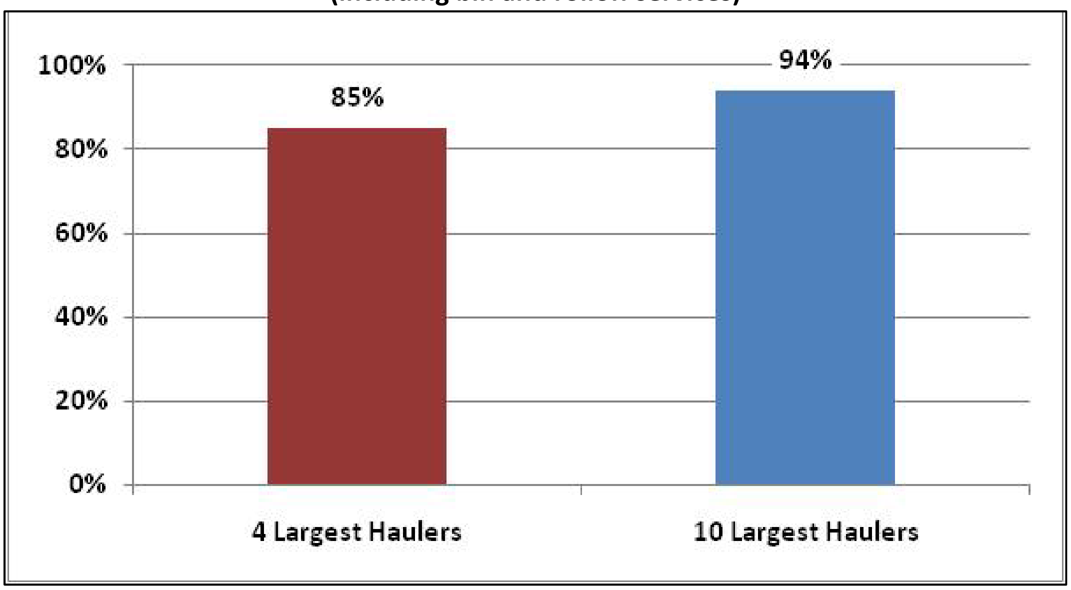
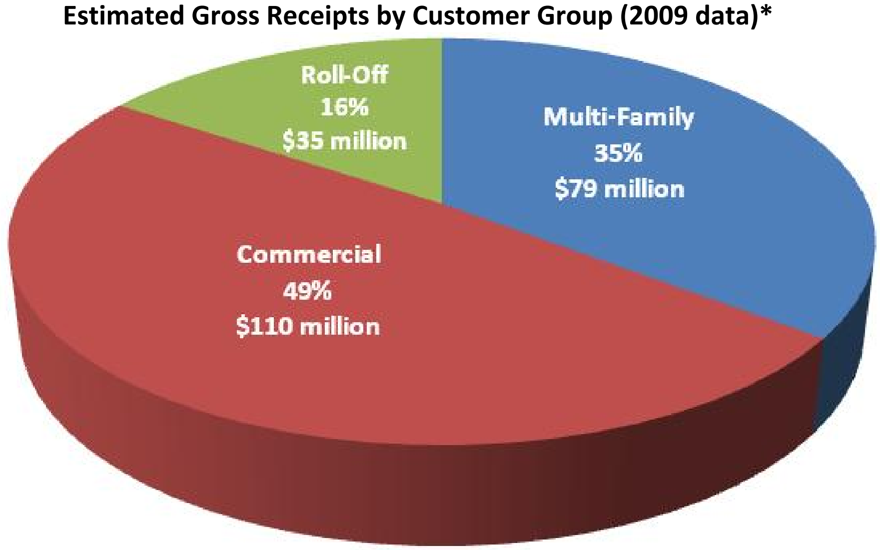


Exhibit 2
10 Haulers Account for 94% of City of Los Angeles' Multi-Family/Commercial Market Share (2009 data)
(including bin and rolloff services)

Hauler		2009 Reported Gross Receipts	Percent of Market Share
1.	CDS (Republic)	$ 76,838,062	34.4%
2.	USA (Waste Management)	$ 45,120,200	20.2%
3.	Arakalian (Athens)	$ 44,674,952	20.0%
4.	Crown	$ 23,648,743	10.6%
5.	Universal Waste Systems	$ 5,294,259	2.4%
6.	NASA Services, Inc.	$ 3,137,981	1.4%
7.	American Reclamation, Inc.	$ 3,060,867	1.4%
8.	AAA Rubbish, Inc	$ 2,716,200	1.2%
9.	BMAKK Corporation	$ 2,579,299	1.2%
10.	California Waste Services	$ 2,341,977	1.0%
Subtotal: Top 10 Haulers		$ 209,412,541	93.6%
Other Haulers Serving City of Los Angeles		$ 14,237,906	6.4%
Total 2009 Reported Gross Receipts		$ 223,650,447	N/A

As shown in Exhibit 3, approximately 49% of permitted hauler reported receipts are from commercial customers, 35% from multi-family customers, and 16% from roll-off customers based on total gross receipts of $224 million reported for 2009.

Exhibit 3
Estimated Gross Receipts by Customer Group (2009 data)*



* Based on gross receipts reported by permitted waste haulers on their annual report for calendar year 2009.

The City's permit system does not require haulers to offer recycling or green waste services to the commercial and multi-family sectors. However, permitted haulers are required to submit AB 939 Compliance Fees equal to 10% of their annual gross receipts. These receipts are deposited in the Citywide Recycling Trust Fund which funds recycling programs sponsored or contracted for by the City. Calendar Year 2009 AB 939 Compliance Fees equaled approximately $22.4 million based on reported gross receipts of $223,650,447 as shown in Exhibit 2.

In 2004, the City initiated a pilot multi-family recycling program, which provided recycling services to over 70,000 multi-family units. In 2007, the City executed service contracts with private haulers to offer recycling services to all multi-family units. Currently, the City contracts with three private haulers to provide these services at an annual budgeted cost to the City of approximately $12 million. Multi-family units participating in this program are offered the same "blue-barrel" recycling service as single-family residences. The City estimates that 65% (430,000 units) of the City's 660,000 multi-family dwelling units participate in this program.

Diversion Plans

The goal of zero waste as defined in the RENEW LA plan is to reduce, reuse, recycle, or convert the resources now going to disposal so as to achieve an overall diversion level of 90% or more by 2025, and to dispose of only inert residual.

RENEW LA Blue Print – 2005

The City of Los Angeles was one of the earliest adopters of high-diversion/zero waste goals. In 1994, the City Council adopted a 70% diversion goal to be achieved by 2020. In 2005 the City adopted the RENEW LA Blueprint and Zero Waste Policy; and in 2007 the City developed the Solid Waste Integrated Resources Plan (SWIRP). The SWIRP document is a twenty year master plan to guide the City toward its goal of being a zero waste city. Through a series of stakeholder workshops and public outreach, the City developed the following 12 guiding principles to help the City achieve zero waste by 2030:

- Protect Public Health and the Environment
- City Leadership as a Model for Zero Waste Practices
- Manufacturer Responsibility
- Incentives
- City Leadership to Increase Recycling
- Convenience
- Economic Efficiency
- Education and Outreach to Decrease Wasteful Consumption
- New, Safe Technology
- Equity
- Education and Outreach to Increase Recycling
- Consumer Responsibility

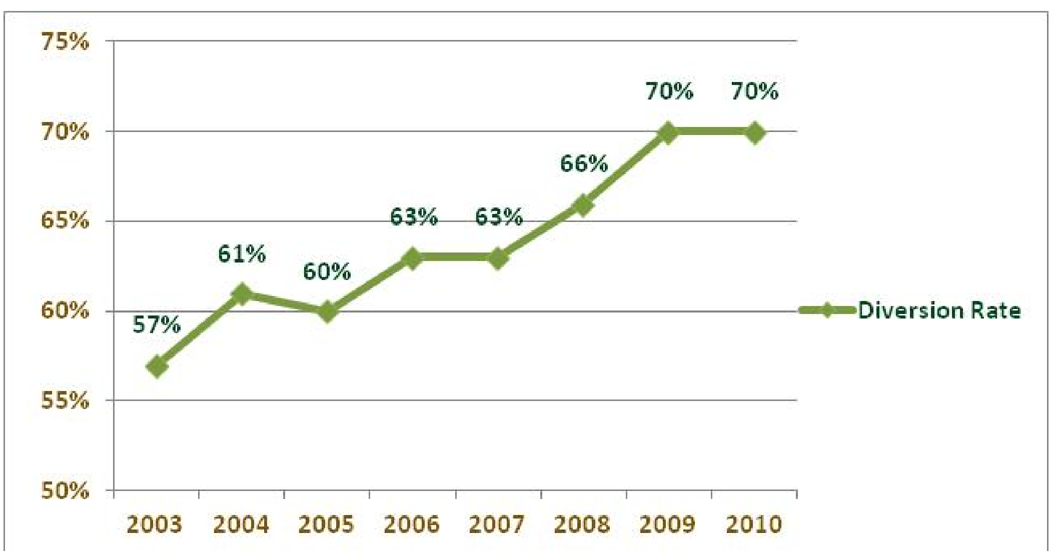
LARA Solid Waste Diversion

The Los Angeles Regional Agency (LARA) is comprised of 16 member cities (Exhibit 4) in Los Angeles County including the City of Los Angeles. LARA was formed in 2004 to encourage environmental stewardship and to assist its member cities in achieving individual and combined environmental goals. As illustrated in Exhibit 5, LARA has consistently exceeded the diversion goal of 50% set by the California Integrated Waste Management Act of 1989 (AB 939) since becoming recognized as the reporting agency for its member cities by CalRecycle (formerly the California Integrated Waste Management Board).

Exhibit 4
Los Angeles Regional Agency Member Cities

- Artesia
- Beverly Hills
- Duarte
- Hermosa Beach
- Hidden Hills
- Los Angeles
- Lynwood
- Manhattan Beach
- Palos Verdes Estates
- Pomona
- Rancho Palos Verdes
- Redondo Beach
- Rosemead
- Sierra Madre
- South Gate
- Torrance

Exhibit 5
LARA Diversion Rates*



* Subsequent to the passage of SB 1016, CalRecycle no longer reports a jurisdiction's diversion by percentage, and instead calculates a per capita disposal target represented by pounds per day. Therefore, diversion percentages represented in Exhibit 5 were calculated based on the reported per capita data.

Diversion by City of Los Angeles' Permitted Commercial Haulers

Based on calendar year 2010 tonnage reports compiled by the Bureau, permitted commercial haulers delivered 19% of total waste collected to diversion facilities. Exhibit 6 does not illustrate the other commercial diversion activities occurring in the City outside of the permitted collection services such as:

- Commercial recycling performed by businesses using their own employees to transport materials;
- Construction and demolition recycling performed by contractors;
- Source reduction; and,
- Other 3rd party diversion performed by parties other than the permitted haulers.

Those other diversion efforts would not likely be affected by an exclusive or non-exclusive franchise.

Exhibit 6
Tonnage Directed to Diversion Facilities by Permitted Haulers

Material Type	2010 Reported Tonnage	Percent of Total Waste
Municipal Solid Waste	1,604,242	80.7%
Recyclable Material		
Source-Separated Recyclables	1,572	0.1%
Commingled Recyclables	56,751	2.9%
Green Waste	17,828	0.9%
Mixed Construction and Demolition	206,210	10.4%
Inerts	100,816	5.1%
Subtotal: Recyclable Material	383,177	19.3%
Total Material Collected	**1,987,419**	100.0%

Multi-Family Franchising Process

On July 7, 2006, the Bureau issued a seven-year notice to the permitted haulers operating in the City stating the City's intent to consider the modification of the current multi-family waste hauling system (Appendix 1). Under the California Integrated Waste Management Act of 1989 (Public Resources Code,§ 40000, et seq.), local agencies are allowed to grant exclusive operating rights to solid waste disposal companies (Pub. Res. Code, § 40059, subd. (a)(1)). If other disposal companies have been authorized by the agency to operate within the municipality's boundaries for more than three years, the municipality must notify them that, as a result of the exclusive franchise, their operating rights will expire within five years (§ 49520.) For more information on PRC 49520 and related case law, see Appendix 2.

In the adopted fiscal year 2010-11 budget, the Bureau was directed to proceed with establishing a multi-family franchise system that would provide a franchise fee to the City and expand recycling to all multi-family residents.

The Bureau initiated planning for the multi-family sector franchising system by holding stakeholder meetings with interest groups, current recycling program contractors, permitted haulers, and apartment associations.

Based on the multi-family program findings and input from stakeholders, the Bureau began developing a draft Request for Proposals (RFP) to provide solid waste, recycling, and green waste diversion services to multi-family complexes (the RFP was not finalized and has not yet been released).

Work on the RFP is currently being held until a more thorough analysis of certain franchise issues is completed, such as:

- Whether to include both multi-family and commercial service in the scope of the franchise;
- Implementation timing;
- Franchise term; and,
- Whether exclusive or non-exclusive franchises are desired.

Commercial Franchise Assessment

In a Council Motion executed on November 16, 2010, the Chief Administrative Officer and Bureau were directed to report to the Council with an assessment of the Commercial Solid Waste System Redesign program developed by the City of San Jose and a review of the report developed by HF&H Consultants, LLC, "The City of San Jose: Commercial Redesign White Paper" (Appendix 9). Additionally, the motion requested the Bureau to "explore whether including the commercial sector in the proposed multi-family franchise would help the City reach their Zero Waste, environmental and financial goals more expediently and efficiently."

On December 29, 2010, the City of Los Angeles Bureau of Sanitation executed a contract for On-Call Consultant Services with Parsons Water and Infrastructure, Inc. (with HF&H Consultants, LLC acting as a subconsultant to Parsons), to determine if including the commercial sector in the proposed multifamily franchise would assist the City in reaching the goals outlined in the November 16, 2010 Council Motion.

On May 16, 2011 (and revised May 17, 2011), the Bureau of Sanitation issued a report to the Board of Public Works requesting permission from the Board of Public Works to issue a five-year notice to private waste haulers regarding solid waste handling services for commercial premises (see Appendix 3). The request was approved by the Board of Public Works and Council Motion 10-1797 was subsequently forwarded to the City Council. On December 6, 2011, the City Council approved the issuance of the five-year notice, and at the time of this report the notice is awaiting the Mayor's approval and signature.

About HF&H Consultants

HF&H Consultants, LLC (HF&H) has served more than 350 municipal agencies in California since 1989. HF&H has assisted more than 100 jurisdictions with the development of RFPs and agreements, evaluation of proposals, and negotiation of solid waste services agreements for refuse, recycling and green waste collection, material processing services, and disposal.

SECTION II: STUDY OBJECTIVE, PROCESS, AND ACTIVITIES

Study Objective

The study objective was to identify and evaluate multi-family and commercial franchising options in order to assist the City in reaching its environmental and financial goals, while maintaining regulatory and legislative compliance.

Study Process/Activities

In order to achieve the study objectives, the Consultant performed the following tasks:

- Reviewed documents provided by the City;
- Researched and documented exclusive and non-exclusive commercial franchise systems in other jurisdictions;
- Reviewed the City of San Jose's Redesign of its commercial solid waste contracting arrangements;
- Documented franchise timing options for the City of Los Angeles;
- Evaluated commercial hauling system options;
- Developed a list of key franchising issues;
- Reviewed key terms included in the City's Draft Request for Proposals for Multi-Family Solid Waste Services dated December 29, 2010;
- Prepared for and conducted meetings with representatives from the Bureau on January 12, 2011, February 10, 2011 and March 22, 2011, and with representatives from the Mayor's office and the Bureau on April 7, 2011 to discuss franchising options;
- Attended eight stakeholder meetings with business, industry, environmental and community groups (see Appendix 4 for stakeholder meeting and participant comments); and,
- Prepared this report.

SECTION III: FINDINGS

Alternative Service Arrangements

There are five different commercial/multi-family solid waste service arrangements described in this report:

- Fully open non-regulated system
- Non-exclusive permit system
- Non-exclusive franchise system
- Single exclusive franchise system
- Multiple exclusive franchise system

Provided below are definitions of each of these systems as they are used in the context of this report.

A. Fully Open Non-Regulated System (City of Los Angeles system prior to 2002)

Private waste haulers obtain a city business license to provide solid waste handling services under an open market system. Customers arrange for solid waste services and negotiate rates with the hauler. Frequently, customers pay significantly different rates for the same level of service.

B. Non-Exclusive Permit System – Current System

In permit systems there is no contract or franchise agreement between the city and haulers; permits are established and regulated in accordance with the municipal code. In a non-exclusive permit system, customers arrange for solid waste services and negotiate rates with the hauler. Frequently, customers pay significantly different rates for the same level of service. Reporting requirements, remittance of city fees, and other performance standards are contained in the permit requirements.

C. Non-Exclusive Franchise System

A non-exclusive franchise system allows solid waste collection services to be provided by haulers competing for customers throughout the city. The municipal code provides general requirements related to the system but the details of franchisees' obligations are defined in a franchise agreement between the city and each hauler. Often the number of haulers is limited. Cities may require non-exclusive franchised haulers to pay a franchise fee. In a non-exclusive franchise system, customers arrange for solid waste services and negotiate rates with the hauler. Frequently, customers pay significantly different rates for the same level of service.

D. Single Exclusive Franchise System

An exclusive franchise system shares many of the characteristics of a non-exclusive franchise system. The key distinction is that under a single exclusive franchise system, there is only one hauler providing service citywide. Customer rates are approved by the city, and all customers pay the same rate for similar services.

E. Multiple Exclusive Franchise System

A multiple exclusive franchise system shares many of the characteristics of a single exclusive franchise system. The key distinction is that under a multiple exclusive franchises, there are multiple designated geographic areas or zones each served by a single contractor, so there may be more than one hauler operating in the city. Customer rates are approved by the city, and all customers pay the same rate for similar services.

Possible Exemptions to Franchise

Typically, all five of the solid waste system options described above would not include the collection of hazardous or medical waste as collection of these materials is regulated by the Department of Toxic Substances and the California Department of Health and Safety, and includes additional registration and licensing requirements. Additionally, the solid waste system options would not limit the ability of independent recyclers to continue to collect source-separated recyclables that are sold or donated by the waste generator. Discussion of these exemptions is included in Appendix 5.

Findings

1. Approximately two-thirds of Los Angeles County cities have an exclusive commercial solid waste franchise system. However, the larger cities within the County tend to have non-exclusive systems (permit system, business license, or non-exclusive franchise).

The City of Los Angeles, with a population of 3.8 million[1], is many times larger than the next largest city in Los Angeles County, Long Beach, with a population of just under 500,000. The largest city in Los Angeles County with exclusive commercial service is the City of Santa Clarita with a population of 178,000.

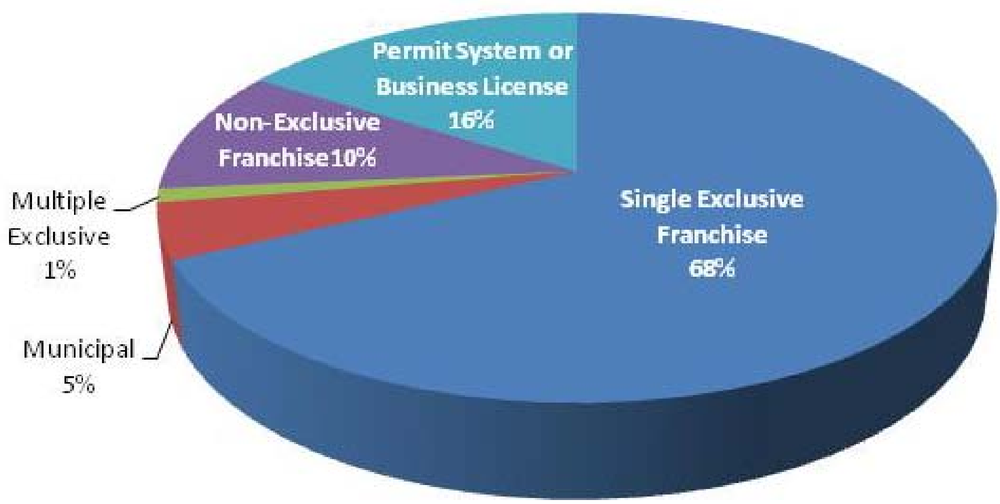
The majority of cities in Los Angeles County have exclusive franchise systems (Exhibit 7). There are approximately ten different hauling companies that provide services under exclusive franchise systems for cities in Los Angeles County. However, those cities with the largest populations are often served under non-exclusive systems (permit system, business license, or non-exclusive franchise), and the majority of the region's commercial customers are served under non-exclusive arrangements (Exhibit 8). A listing of the commercial service arrangements in each city in Los Angeles County is included in Appendix 6.

[1] According to the California Department of Finance Report E-1 Population Estimates for Cities, Counties and the State — January 1, 2010 and 2011.

Exhibit 7
Los Angeles County Cities with Exclusive Commercial Solid Waste Franchises[2]

City	Population	City	Population	City	Population
Santa Clarita	176,971	Huntington Park	58,280	Maywood	27,481
Lancaster	157,795	Diamond Bar	55,766	South Pasadena	25,692
Palmdale	153,334	Paramount	54,252	Cudahy	23,874
El Monte	113,785	Rosemead	54,034	San Fernando	23,712
Downey	112,103	Glendora	50,260	Duarte	21,380
Inglewood	110,028	Cerritos	49,181	Lomita	20,319
West Covina	106,400	La Mirada	48,659	South El Monte	20,174
Norwalk	105,808	Covina	47,931	Hermosa Beach	19,557
Compton	96,925	Azusa	46,399	Artesia	16,579
South Gate	94,666	La Puente	39,930	Hawaiian Gardens	14,290
Hawthorne	84,854	San Gabriel	39,839	San Marino	13,185
Alhambra	83,450	Temple City	35,673	Signal Hill	11,072
Lakewood	80,260	Bell	35,577	Sierra Madre	10,948
Bellflower	76,840	Manhattan Beach	35,248	Rolling Hills Estates	8,093
Baldwin Park	75,664	West Hollywood	34,636	Avalon	3,771
Lynwood	69,970	Beverly Hills	34,210	Hidden Hills	1,870
Redondo Beach	66,970	San Dimas	33,465	Bradbury	1,059
Pico Rivera	63,121	Lawndale	32,860	Industry	451
Monterey Park	60,435	La Verne	31,153		
Gardena	59,009	Walnut	29,439		

Exhibit 8
Los Angeles County Commercial Service Arrangements Based on Number of Cities



[2] [2] According to the California Department of Finance Report E-1 Population Estimates for Cities, Counties and the State — January 1, 2010 and 2011.

Exhibit 9
Los Angeles County Commercial Service Arrangements Weighted by Population
(Including the City of Los Angeles)

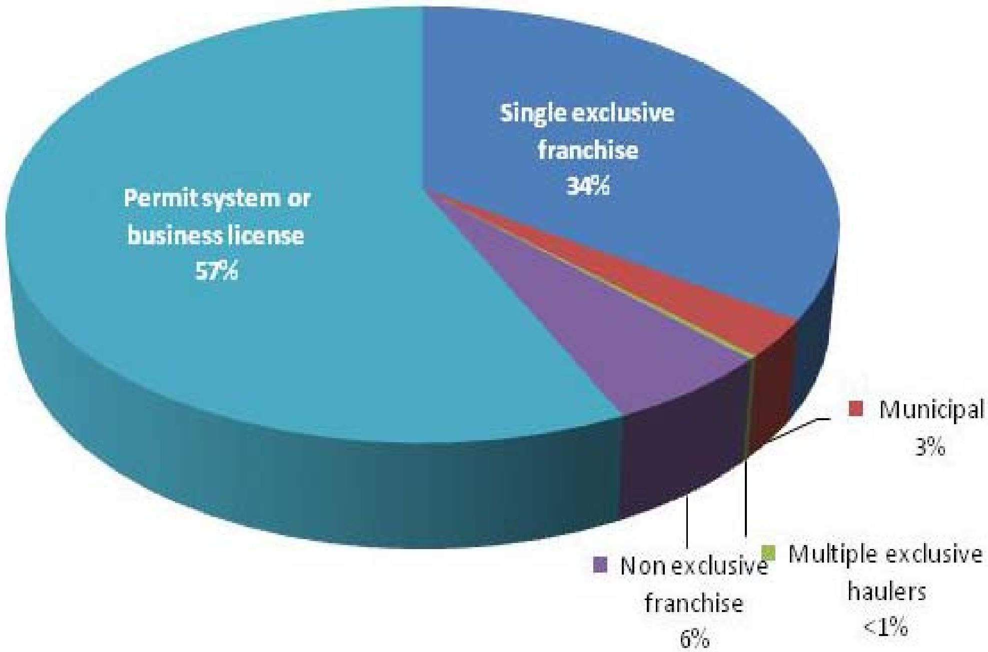
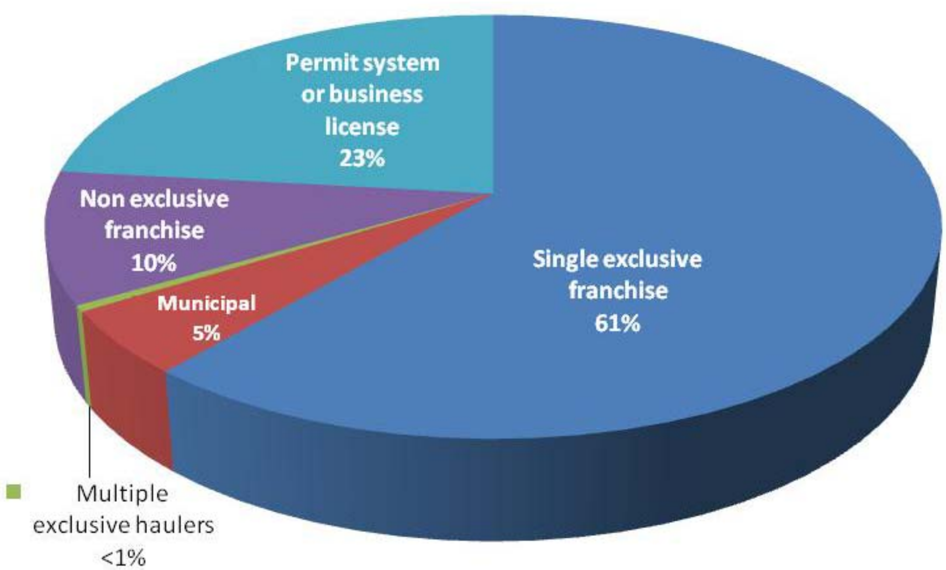


Exhibit 10
Los Angeles County Commercial Service Arrangements Weighted by Population
(Excluding the City of Los Angeles)



2. Five of the ten largest cities in California have or are transitioning to exclusive commercial franchise systems.

Exhibit 11 summarizes commercial service arrangements in the 10 largest cities in California based on population.

Exhibit 11
California's 10 Largest Cities (based on population) Commercial Service Arrangements

City	Population*	Commercial Service Arrangement
1. Los Angeles	3,810,000	Non-Exclusive
2. San Diego	1,312,000	Non-Exclusive
3. San Jose	959,000	Transitioning to Exclusive
4. San Francisco	813,000	Exclusive
5. Fresno	500,000	Exclusive
6. Sacramento	470,000	Non-Exclusive
7. Long Beach	464,000	Non-Exclusive
8. Oakland	393,000	Exclusive
9. Bakersfield	351,000	Municipal/Non-Exclusive
10. Anaheim	341,000	Exclusive

* As reported by the California Department of Finance

3. Most exclusive franchises are for a term of five to ten years, and contain a variety of performance standards, diversion requirements, rate adjustment methods, and other requirements.

A well written exclusive franchise agreement may be over 100 pages long and contain detailed descriptions of services provided, performance standards, and other contract requirements. The service descriptions and contract requirements are typically more comprehensive, and described in greater detail, in an exclusive franchise agreement compared to a non-exclusive franchise agreement because customers do not have a choice of service providers in an exclusive franchise and therefore must rely on the performance of the exclusive franchise holder.

Examples of some of the key terms included in exclusive franchise agreements are provided in Exhibit 12. (This is not meant to be an exhaustive list, but rather a summary of some of the key items for demonstration purposes).

Exhibit 12
Examples of Key Exclusive Franchise Agreement Terms

Key Exclusive Franchise Agreement Term	Description of Term
Contract Term	Typically five to ten years, although some agreements contain terms of up to 20 years.
Contract Renewal	Frequently a city option to extend the agreement, in its sole discretion, from one to three years at the end of the base term. Some agreements contain "evergreen" automatic renewal terms that renew annually unless the city takes specific action to terminate the evergreen provision.
Diversion Requirements	Some agreements contain specific quantifiable diversion requirements, such as recycling or diverting a specific percentage of the total solid waste collected. Other agreements require general compliance with State diversion goals (such as AB 939).
Performance Standards	Specific service standards with liquidated damages for failure to perform.
Vehicle Requirements	In addition to complying with applicable vehicle and emissions laws, some agreements require new trucks at the start of the agreement, and/or require that vehicles be replaced before a vehicle reaches a certain age, sometimes 10 years. Other agreements require implementation of alternative fuel vehicles, such as those powered by natural gas, in advance of regulatory requirements.
Container Specifications	Standards for container cleaning and maintenance, graffiti removal, and container size options offered to customers.
Rate Adjustment Method	Rates are adjusted using a variety of methods. Most common is an annual adjustment based on published price indices (such as the Consumer Price Index and others) for the service component, plus a pass through of disposal costs. Some agreements provide a maximum cap on annual increases. Less common in Southern California is an annual rate review where rate adjustments are based on the contractor's actual cost of operation plus an agreed upon profit level.
City Services	Many agreements provide for collection of abandoned items in the public right-of-way, and solid waste collection service at city facilities and/or city-sponsored events at no additional charge.
City Fees	Franchise fees, AB 939 fees, vehicle impact fees, contract administration fees, and audit fees are examples of fees remitted by the hauler to the city in some agreements.
Reporting	Monthly, quarterly, and annual reports are usually required documenting tonnage collected and diverted, fees remitted to the City, public outreach efforts, customer complaints, contaminated recycling containers, and other information.

Audits	Provisions to audit the contractor's reports and records, and contract compliance.
Billing	Frequency of customer billing, payment due dates, and provisions related to non-payment and suspension of service.
Public Education	Specific requirements for public education and outreach related to the provision of services, particularly recycling services.
Indemnifications	The public agency is indemnified by the contractor against liability for physical or financial injuries related to hauler misconduct or performance, fines or penalties related to compliance with State diversion requirements such as AB 939, and environmental fines or damages associated with contaminated landfills under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
Insurance and Bonds	Insurance limits in most agreements range from $3 million to $20 million, plus contractor provides a performance bond and/or letter of credit.
Assignment and Transitions	Requirements for approval of an assignment of the agreement to another hauler, or a transition at the end of the term to a new service provider.

4. Cities with non-exclusive franchises have a broad array of contract terms, number of haulers, diversion requirements, fee assessments, and rate regulation procedures.

HF&H surveyed ten cities which have implemented non-exclusive solid waste franchises (as opposed to non-exclusive permit systems or business license systems). Exhibit 13 includes seven Los Angeles County cities which have non-exclusive franchise systems. Exhibit 14 includes three large California cities outside Los Angeles County that have non-exclusive franchise systems. The information was gathered during telephone interviews performed by HF&H.

Included as Appendix 7 is an excerpt from the Commercial Redesign White Paper prepared by HF&H for the City of San Jose, which includes information on commercial collection strategies in other major cities.

Observations from the data included in Exhibits 13 and 14 are as follows:

- The cities surveyed do not regulate rates. All of the cities surveyed assessed city fees (franchise fee, AB 939 fee, etc.). AB 939 fees are used specifically to fund programs outlined in a jurisdiction's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE).
- The number of non-exclusive permitted haulers per city surveyed ranges from two in La Habra Heights to 20 and above for the larger cities. The number of haulers serving these cities may have been greater at the time the non-exclusive franchises were granted and may have decreased due to non-renewal of franchises, or company acquisitions and mergers.
- Four of the ten cities surveyed include numeric solid waste diversion requirements in their non-exclusive franchise agreements.
- The solid waste contract terms of the cities surveyed range from 1 year to 10 years.

Exhibit 13
Non-Exclusive Franchises in Other Los Angeles County Cities

Agency	# of Haulers	Numeric Diversion Rqmt?	City Fees	Open or Closed to New Haulers	Process to Award Franchises	Rates Regulated	Term
Los Angeles County Jurisdictions							
Bell Gardens	7	50%	Franchise Fee	Open	Open	No	5 yrs
Irwindale	3	50%	Franchise and AB 939 Fees	Closed	Unknown	No	7 yrs
La Habra Heights	2	50%	AB 939 Fee	Open	Open	No	2 yrs
Pasadena	27	60%	Franchise Fee	Closed	All existing haulers	No	1 yr
Pomona	5	No	Franchise and AB 939 Fees, plus a fixed annual fee of $5,000	Open	Open	No	2 yrs
Rancho Palos Verdes	10	No	5% Collector Fee	Closed	Unknown	No	1 yr
Vernon	19	No	Franchise Fee	Closed	Notice to apply	No	5-yr Evergreen

Exhibit 14
Non-Exclusive Franchises in California Jurisdictions Outside Los Angeles County

Agency	# of Haulers	Numeric Diversion Rqmt?	City Fees	Open or Closed to New Haulers	Process to Award Franchises	Rates Regulated	Term
Cities Outside Los Angeles County							
San Diego	21	No	Franchise and AB 939 Fees	Closed	Granted to existing haulers and other haulers that initially applied	No	10 Years
San Jose – Current (transitioning to exclusive 2012)	20	No	Franchise Fee	Was Open – transitioning to exclusive	Granted to all applicants that could provide proof of insurance	No	3 years
Irvine	22	No	Franchise Fee	Open – Annual application period for new haulers	Granted to existing haulers and other haulers that applied	No	10 years

As illustrated in Exhibits 13 and 14, eight of the ten cities surveyed either granted non-exclusive franchises to all existing permitted haulers, or to all existing permitted haulers and others that chose to apply, and did not originally limit the number of haulers to fewer than those existing at the time. Fifty percent of the cities surveyed subsequently closed the application process and do not currently allow additional haulers to apply.

5. The County of Los Angeles (County) is planning to transition multi-family and commercial bin customers in the unincorporated areas (excluding the Garbage Disposal Districts) from an open market system to a non-exclusive franchise system.

Based on the findings of the County's Solid Waste Collection System Option Analysis (Appendix 8), the County is in the process of developing a non-exclusive commercial franchise system that will replace the open market system. The proposed non-exclusive commercial franchise system would provide for refuse collection in bins and roll-off boxes, separate collection of recyclable materials and green waste, and establish minimum service levels and performance standards. It also will provide the County with oversight authority, and accountability and enforcement tools to ensure each customer receives quality trash collection service. The commercial franchise system is scheduled to be implemented by the Summer of 2012.

Background

The Los Angeles Department of Public Works is responsible for waste services in the unincorporated areas of the County. These areas are comprised of 80 non-contiguous communities. On June 23, 1998, the Los Angeles County Department of Public Works issued a 5-year notice to all permitted haulers that the County was considering whether to provide or authorize exclusive refuse collection services after June 23, 2003.

The County formed a working group to evaluate the impacts of the system change on the solid waste industry and to assist in evaluating, developing, and selecting alternatives for consideration for implementation. The working group consisted of representatives from the Department of Public Works, County Counsel, Department of Health Services, and members of the solid waste industry.

County Objectives

- Provide solid waste handling services through the private sector in an environment which fosters private enterprise to the greatest extent possible and provides for equitable competition between small and large solid waste enterprises/haulers.
- Protect the health, welfare, and safety of all citizens by addressing the solid waste management needs of all unincorporated communities in Los Angeles County through an environmentally safe and technically feasible solid waste handling and disposal system.
- Provide County residents and businesses with efficient, high quality solid waste handling services at reasonable costs.
- Comply with Federal and State laws and regulations governing solid waste management, including the mandates of the California Integrated Waste Management Act of 1989, as amended, including achievement of the State waste disposal reduction mandates.
- Provide the County with sufficient flexibility and adequate control over solid waste handling services to ensure compliance with established standards and codes.
- Update the current Los Angeles County Code to reflect the changing needs of the County and solid waste industry.

- If feasible, develop one or more alternatives which can be implemented on an interim basis, rather than at the termination of the five-year notice in 2003, and based on the results of the selected interim program(s) (pilot program(s)), formulate the new system's alternatives for implementation beyond the year 2003.
- Develop a funding mechanism to provide for the County's administrative costs and resource needs in achieving the objectives.

Key FindingAs described on page 6-2 of the Los Angeles County’s Solid Waste Collection System Option Analysis dated February 2001:

> “A non-exclusive, exclusive, or GDD (Garbage Disposal District) system will maintain the free enterprise system. However, while an exclusive franchise system or GDD will best accomplish the County’s objectives, it may have a significant impact on small waste haulers. It has a potential to favor large solid waste enterprises/haulers to the detriment of small haulers since it may impair small haulers’ ability to thrive in a dynamic, ever changing solid waste industry.”

<u>Next Steps</u>

The County is in the process of developing a draft non-exclusive solid waste franchise agreement. All permitted waste haulers that can comply with the requirements included in the franchise agreement may apply. The franchise agreement will include a franchise fee, requirements to comply with all State-mandated diversion programs, and a requirement to provide a plan for the diversion of manure and foodwaste. The franchise agreement will also require that multi-family and commercial customers that meet the threshold requirements of the Mandatory Commercial Recycling Regulations (AB 32) be offered 1 cubic yard of recycling service at no additional charge.

6. **The City of San Jose’s commercial sector is currently serviced by approximately 20 haulers under a non-exclusive system. After a competitive request for proposals (RFP) process, managed by HF&H Consultants, City Council approved one hauler to provide exclusive citywide refuse, recycling and organics collection, and recyclables processing service, and another contractor to provide exclusive organics processing service. Both franchises are anticipated to begin in July 2012.**

<u>Background</u>

The City of San Jose’s commercial solid waste sector is currently serviced by approximately 20 waste haulers, providing services under non-exclusive franchise agreements with San Jose to more than 8,000 commercial, industrial, and institutional waste generators. The multi-family sector is serviced under an exclusive franchise. Upon implementation of the non-exclusive franchise in 1995, franchises were granted to all applicants. Approximately 85% of the commercial solid waste collection in San Jose is provided by 4 of the 20 haulers. Services and prices are determined by the competitive market. Under this system, the commercial solid waste diversion rate is currently 22%.

According to San Jose city staff, the non-exclusive system presented the following challenges:

- Wide variations in service offerings and service quality;

- Inability to achieve San Jose's zero waste and green vision goals of diverting 100% of municipal waste from landfills;
- Declining city fee revenues due to fee calculations based on volume of solid waste disposed;
- Limited infrastructure investment by haulers for recycling; and,
- Limited controls available to San Jose to ensure hauler performance.

Commercial Redesign Process

In May of 2001, the non-exclusive franchisees received 5-year notices of San Jose's intent to award an exclusive franchise. The notice was reaffirmed in December 2007. In November of 2007, HF&H Consultants presented the Commercial Redesign Whitepaper to San Jose (Appendix 9), which analyzed and identified options for redesigning the commercial solid waste management system. In 2009, the City Council directed staff to conduct separate procurements for organics processing services and solid waste collection and diversion franchise services in order to achieve the increased diversion goal, stabilize revenues to San Jose's general fund, and provide expanded and more efficient collection service.

Through the RFP process, San Jose anticipated procuring one to two exclusive collection franchises to provide solid waste collection services. Solid waste collection and diversion RFP respondents were required to propose an annual revenue requirement to be generated from customer rates to fund solid waste collection, disposal, recyclables processing, organics processing, and city fees. Fees retained by San Jose would include a franchise fee and AB 939 fee.

Components of the solid waste collection RFP included:

- 75% diversion rate;
- Ten to fifteen year term;
- Options to award two franchises based on separate service districts or one citywide franchise;
- Exclusion of construction and demolition waste collection;
- Living wage and employee retention requirements;
- Consistent customer rates; and,
- Fixed annual franchise fee of $10 million per year, with no annual adjustment.

Results

San Jose developed two RFPs:

- Organics processing (composting and/or anaerobic digestion).
- Refuse, recycling and organics collection, and recycling processing services. May include wet/dry routing or a 3-container system. The wet/dry collection system involves organizing commercial collection routes by waste material; for example, dry loads of highly recyclable material (e.g., office paper) are collected separately from wet waste (e.g., restaurant waste). This separation is intended

to increase recycling rates by avoiding contamination. The 3-container system provides separate containers for trash, recyclables, and organics.

On April 5, 2011 the San Jose City Council unanimously approved staff's recommendations to negotiate a city-wide commercial collection franchise with Allied Waste Services and to negotiate an organics processing agreement with Zero Waste Energy Development. The term of the each agreement is 15 years, July 1, 2012 through June 30, 2027.

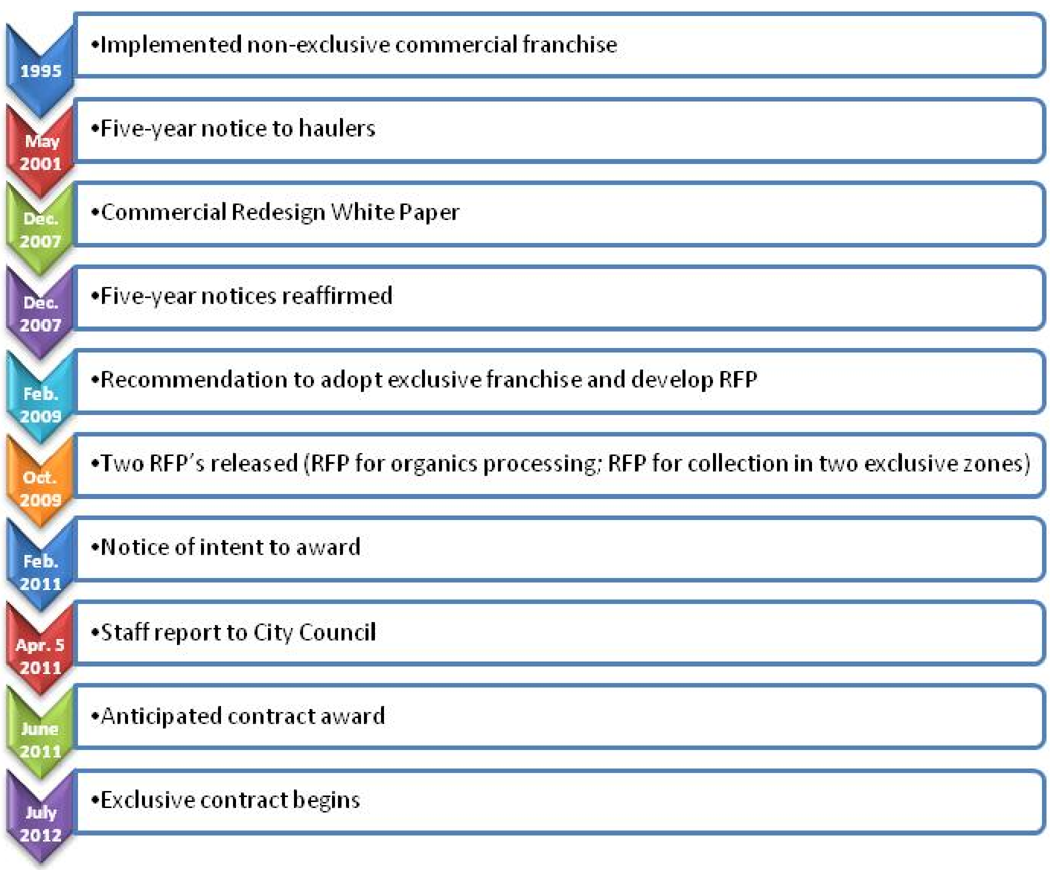
San Jose City Fees

The commercial solid waste and recyclables collection franchisee must remit annual fees to San Jose: $11 million in Commercial Solid Waste Franchise Fees, an estimated $4.2 million in AB 939 Fees, and approximately $6 million for organics processing costs. (Note: Total gross receipts are estimated at $55 million annually.)

Commercial Redesign Timeline

As described above, and illustrated in Exhibit 15, the City of San Jose's Commercial Redesign spanned a 10-year period from the 5-year notice to haulers in 2001, through contract award in 2011.

Exhibit 15
City of San Jose Commercial Redesign Timeline



7. Exclusive and non-exclusive franchise systems offer different advantages.

There are unique advantages to an exclusive franchise system and a non-exclusive franchise system. In an exclusive system, one or more exclusive service areas are each served by one contractor, and the city approves the rates, service offerings, and other conditions through an exclusive franchise. In a non-exclusive system, haulers usually compete for customers based on price and service, typically with less control by the city than in an exclusive franchise. Key attributes are described in Exhibit 16.

Exhibit 16
Exclusive vs. Non-Exclusive Service Arrangements

Impact Category	Attributes of an Exclusive Franchise	Attributes of a Non-Exclusive Franchise
Diversion	• Potential for higher waste diversion as a result of increased recycling requirements in the franchise agreement that may not be cost effective or accessible to all haulers in a non-exclusive system.	• Ability to offer specialized diversion programs tailored to specific customers with unique recycling requirements.
Environmental	• Increased routing efficiency reduces operations costs and minimizes adverse environmental impacts of solid waste vehicles from overlapping truck routes (such as traffic, noise, pavement damage and vehicle emissions). • Improved aesthetics (control of graffiti and litter; container specifications, quality and placement).	
Enforcement/ Administration	• Fewer haulers to monitor (performance and reports), resulting in a lower cost to the City to administer the franchise. • Ability to set and monitor higher minimum performance standards and reduce the risk of rogue operators.	• Avoids RFP process, which can be contentious and time consuming. • Typically fewer contract requirements to monitor • City may be able to implement non-exclusive commercial franchise without an RFP or phase-in requirements prior to expiration of a 5-year notice period.
Business	• Competition occurs through the RFP process every five to ten years. • All customers pay the same price for the same service (city approves or regulates rates). • Favorable for haulers to invest in new or existing infrastructure. • Routing efficiencies could result in an overall reduction in the contractor's cost of providing service.	• Promotes competition for individual customers based on price and service (City does not set rates). • Customers have choice of service providers and may change haulers if not satisfied. • Avoids temporary transition issues to an exclusive system (and recurring periodic transition issues when contractors are changed). • Smaller haulers (and new companies)

Impact Category	Attributes of an Exclusive Franchise	Attributes of a Non-Exclusive Franchise
		have the ability to enter the market and grow into significant competitors.[3] • Ability to offer unique services tailored to specific customers. • Other service providers may be available to customers during a work stoppage.

See Appendix 10 for a discussion of the impacts of open market, non-exclusive franchise, and exclusive franchise systems on city fees, diversion, rates, number of trucks, and system administration.

8. An exclusive franchise system may reduce commercial customer solid waste rates for some customers and increase rates for other customers.

Most cities in Los Angeles County have combined residential and commercial franchises, and there could be different allocations of costs between residential and commercial customers in those cities. Only four cities in Los Angeles County reported having separate commercial franchises (Beverly Hills, Diamond Bar, Huntington Park, and Santa Clarita), and three of those cities provided cost data to compare to the City of Los Angeles. The calculated Net Receipts Per Ton Collected (gross receipts, less city fees, divided by total tons collected) ranged from $84 per ton to $136 per ton, with a median of $98 per ton. Based on gross receipts data reported by haulers in the City of Los Angeles to the Bureau, the City of Los Angeles' Net Receipts Per Ton Collected is $108[4], which falls within the middle of the range of the other cities surveyed. Of course, the geographic conditions, distance to solid waste facilities, solid waste characterization and service requirements, vary in each city and these factors affect the cost of service. City fees can vary significantly by jurisdiction and would be added to the above range of hauler costs.

Under an exclusive franchise, all customers pay the same rate for similar services. The results of a rate survey conducted for the City of San Jose by the San Jose State University Research Foundation's Survey and Policy Research Institute, and a rate survey conducted by city staff, concluded that under the city's non-exclusive franchise system where customers negotiated rates with haulers, there was a large range of rates charged for the same services and larger businesses could leverage their size to negotiate lower rates[5].

[3] Many of the cities surrounding the City of Los Angeles have exclusive solid waste collection systems that preclude smaller haulers from competing or providing services, and discourage the establishment of new hauling companies. Some of the non-exclusive systems have frozen the number of haulers, and therefore limit new market entrants. The City of Los Angeles' current open competitive solid waste collection system has provided smaller haulers an environment to establish and grow their services, and thereby enhance their ability to become competitive in the region. Locally-grown hauling companies may also invest their profits locally.

[4] Based on 10 largest permitted haulers' gross receipts and tonnage reported to the City.

[5] Memorandum to City Council dated 3/17/11

The cost effectiveness of the franchise system would depend, in part, on the competitiveness of the franchise process used to award the franchises, and the effectiveness of rate adjustment provisions to limit subsequent rate adjustments.

9. An exclusive franchise system would result in the fewest number of commercial refuse vehicles, and minimize the environmental footprint of solid waste operations by decreasing truck traffic, vehicle emissions, pavement impacts, and noise.

Vehicle Impact Issues

In a report developed by the Metropolitan Transportation Commission (MTC) (which plans, finances and coordinates transportation for the nine-county San Francisco Bay Area), the MTC states that "Heavy vehicles such as trucks and buses put far more stress on pavement than does a passenger car. A bus exerts more than 7,000 times the stress on pavement than does a typical sports utility vehicle. And a garbage truck exerts more than 9,000 times as much stress as an SUV."[6]

City streets are designed to handle a certain amount of vehicle traffic (loading) over their design life. That loading is a function of both the number and weight of vehicles. The lifetime "vehicle loading" that a street can accommodate can be expressed as the total number of Equivalent Single Axle Loadings (ESALs). Each vehicle type (e.g., cars, Refuse Vehicles, Construction Vehicles, and other trucks) can also be converted into an associated ESAL, based on the vehicle weight, and its distribution among the vehicle's axles.

Most of the deterioration of streets is caused by vehicle size and weight. A single, large truck can cause as much damage as thousands of automobiles. Solid waste, recycling, and yard waste vehicles (Refuse Vehicles) are the heaviest vehicles regularly operating on residential streets.

The multi-family sector of the City would gain the greatest benefit from reduced street maintenance impacts associated with the reduction of refuse and recycling vehicles under a non-exclusive or exclusive franchise system, because residential streets are not designed to the same standards as commercial streets where heavier vehicle traffic is anticipated. During the City's stakeholder meetings, multi-family dwelling unit residents voiced concerns regarding the negative impacts caused by the number of trucks currently collecting refuse and recyclables in their neighborhoods. Under the current competitive system, different multi-family complexes on one street are served by different collection companies resulting in multiple refuse trucks accessing the neighborhoods per day. The resultant impacts include:

- Increased street deterioration;
- Increased traffic;
- Solid waste vehicles blocking resident vehicle street access;
- Additional truck traffic and collection noise; and,
- Decreased air quality.

[6] The Pothole Report: Can the Bay Area Have Better Roads? – Metropolitan Transportation Commission, June 2011

Number of Trucks

The City would realize a reduction in the number of solid waste trucks under both the exclusive and non-exclusive franchise systems (assuming a reduced number of service providers in the non-exclusive system), with the largest reduction in trucks and associated impacts under an exclusive franchise system.

10. The City could require early implementation of clean fuel vehicles under either an exclusive or non-exclusive franchise.

All haulers need to comply with vehicle requirements established by the California Air Resources Board and the South Coast Air Quality Management District (SCAQMD). However, the City, by contract, can establish additional vehicle requirements under the terms of an exclusive or non-exclusive franchise agreement. The City of Los Angeles requirements could include early implementation of clean fuel requirements established by the regulatory agencies, or other requirements that exceed the minimum standards of the regulating agencies.

Rule 1193

SCAQMD, Rule 1193 (Appendix 11) regulates the types of solid waste collection vehicles haulers are able to use under municipal collection agreements. The impact will depend on the contracting format used by the City, and the number of vehicles included in the hauler's fleet. To meet air quality vehicle requirements, the City may include permit or franchise requirements to ensure all hauler vehicles used to service City customers are fully compliant with SCAQMD Rule 1193 and all other SCAQMD and Air Resource Board regulations in effect, or that may go into effect during the term of the permit or franchise.

The contracting method selected by the City may determine whether the City's haulers will need to replace vehicles used in the City. South Coast Air Quality Management District Rule 1193 provides for the reduction of refuse fleet vehicle emissions to reduce public exposure to vehicle pollution, including toxics, particulate, and ozone precursor emissions. If the City enters into franchise agreements that restrict the number of haulers eligible to provide service, the haulers operating under the new franchises will be required to use 100% alternative fuel (such as natural gas) solid waste collection vehicles, or ultra low sulfur diesel fuel for pilot ignition, to be phased-in within 5 years of the start of service under the franchise agreements, but no later than January 1, 2020. If a hauler operates fewer than 15 solid waste collection vehicles in its entire fleet, it may be permitted to wait to purchase alternative fuel vehicles until its existing vehicles need replacement, or January 1, 2020, whichever is first. If the City chooses to issue franchise agreements, but does not limit the number of haulers that may receive a franchise, then the SCAQMD may determine that the open non-exclusive franchise system is similar to a permit system, in which case the haulers may not need to purchase alternative fuel vehicles. Many larger haulers that hold exclusive franchises in other cities have already transitioned part of their fleets to alternative fuel vehicles.

Exhibit 17 summarizes the requirements of Rule 1193 on different solid waste systems.

Exhibit 17
Rule 1193 – Requirements by System Type

Solid Waste System	Rule 1193 Requirements
Open Permit System	• SCAQMD Rule 1193 does not apply.
Exclusive Franchise	• Alternative fuel vehicles required within five years of the start of service, but no later than January 1, 2020.
Non-Exclusive Franchise (City does not limit the number of haulers)	• SCAQMD may determine that Rule 1193 does not apply.
Non-Exclusive Franchise (City limits the number of haulers)	• Alternative fuel vehicles required within five years of the start of service, but no later than January 1, 2020.

11. City fees to achieve the City's financial goals may be contractually established using a non-exclusive or exclusive franchise system. Establishment of franchise fees will need to be reviewed by the City Attorney's office.

The City currently requires its permitted commercial haulers to pay a 10% AB 939 fee on gross receipts received for providing solid waste collection services in the City (excluding receipts for providing recycling services).

The City Attorney is in the process of determining the implications of Proposition 26 on the City's ability to charge a franchise fee under a future exclusive or non-exclusive commercial solid waste franchise system.

Franchise fee revenue could be generated for the City under an exclusive or non-exclusive franchise system (upon approval by City Attorney). Forty-four of the 88 Los Angeles County cities require commercial haulers to remit franchise fees ranging from 2% to 27% of receipts, and one city requires a monthly lump sum payment of a fixed amount. Of the 45 cities collecting commercial franchise fees, 37 have commercial solid waste collection services provided by one hauler, and 8 of the cities have multiple commercial haulers. Based on the $224 million in gross receipts reported to the City in 2009 from multi-family, commercial, and rolloff service providers, a 10% franchise fee is estimated to generate approximately $22 million annually. This amount could increase or decrease based on upturns or downturns in the economy and other factors. A breakdown by sector is shown below:

Estimated annual franchise fees based on 2009 receipts:

- Commercial $11.0 million
- Multi-Family $7.9 million
- Roll-Off $3.5 million
- Total $22.4 Million

Some cities have also implemented administrative fees to recover their costs of administering the franchise. Additionally, some cities have negotiated larger upfront contracting fee or franchise fee payments either as an advance against future franchise fees, or as a lump sum payment in addition to the on-going payments.

12. The City's ability to reach zero waste goals may be increased through a non-exclusive or exclusive franchise system, and will depend on the specific franchise requirements. An exclusive franchise with one or more exclusive areas each serviced by one hauler, with rates approved by the City, may allow the most aggressive overall diversion goal due to routing and processing efficiencies.

The City's current open permit system does not include a numeric solid waste diversion requirement for the haulers, and under the current system it may be difficult for some of the haulers, who have a smaller market share, to cost-effectively achieve aggressive diversion goals due to limited economies of scale and lack of access to processing facilities at reasonable costs.

An exclusive franchise, with one or more exclusive areas each served by one hauler with rates approved by the City, may allow for the most aggressive overall diversion goals due to routing and processing efficiencies. For example, in a non-exclusive system, individual haulers might not have sufficient customers in geographic proximity to efficiently perform a recycling collection route or a restaurant food waste route. Some haulers may own material recovery facilities that allow them to cost effectively process mixed waste, while others may not. The diversion goals can be set as a contractual requirement in the solid waste franchise agreement. For example, the City of Redondo Beach included a 75% diversion requirement of hauler collected solid waste in its recently executed exclusive franchise agreement, and the City of Manhattan Beach's exclusive franchise agreement includes a 57% diversion requirement of hauler collected solid waste for the first calendar year of the franchise agreement and 62% by the last year of the franchise agreement (June 30, 2018). Both of these franchise agreements impose liquidated damages of $25 for each ton below the tonnage level necessary to meet diversion goals.

There are certain challenges to verifying haulers' reported diversion rates. One approach is to confirm reported disposed tonnage using landfill records. Landfills are required to submit their reports to CalRecycle to be included in the Disposal Reporting System. However, if the hauler's tonnage is delivered to a transfer station prior to disposal at a landfill, tonnage would need to be confirmed at the transfer station, and these records are not as readily available. Some haulers will include "third-party" diversion in the reported diversion rates. Third-party diversion is diversion achieved by parties other than the hauler, and can include source reduction and recycling efforts performed by customers, as well as recycling performed by independent recycling companies not affiliated with the contracted hauler. Some haulers will also count recyclables scavenging as part of their overall reported diversion. Third-party diversion is very difficult to verify as this information may have been provided verbally to the hauler, estimated by the hauler, or the documentation is located at the customer's place of business and not readily available during an audit of a hauler's diversion records. This can be a significant issue for jurisdictions whose hauler fees are based on diversion percentages achieved by their hauler.

13. According to CalRecycle, recycling activities create more jobs than landfilling.

Increasing diversion in the multi-family and commercial sectors of the City will create more recycling-related jobs. According to CalRecycle, only 2.5 jobs are created per 1,000 tons landfilled, while almost five jobs (direct and indirect) are created per 1,000 tons recycled.[7]

In addition, the City's franchising process would provide several opportunities for proposers to partner with small, minority, and other business enterprises (SBE, MBE, and OBE). Some of the potential subcontracting opportunities could include recycling technical assistance; communications, marketing, and outreach to customers; garbage and recycling container delivery/distribution; and tire and equipment repair services.

14. Current State policies will need to be supported by the City's multi-family and commercial service arrangements.

Mandatory Commercial Recycling

An example of an existing regulation that can be supported by the City's service arrangements is the Mandatory Commercial Recycling Regulation described below.

In December 2008, the California Air Resources Board adopted the AB 32 Scoping Plan, which includes regulations for implementing the California Global Warming Solutions Act of 2006 (AB 32). The adopted AB 32 Scoping Plan includes mandatory commercial recycling at all businesses and multi-family complexes that generate four or more cubic yards of refuse per week ("covered businesses"). The Mandatory Commercial Recycling Regulation requires that jurisdictions offer a recycling program to all covered businesses in the city, monitor the program's progress, and enforce the program. The City can include a commercial recycling program in its exclusive or non-exclusive franchise and reporting requirements, that include the number of covered businesses (based on trash service), and the number of business/multi-family complexes receiving recycling services.

Assembly Bill 341

Assembly Bill 341 was signed into law on October 6, 2011. This bill makes a legislative declaration that it is the policy goal of the state that not less than 75% of solid waste generated be source reduced, recycled, or composted by the year 2020, and requires CalRecycle to provide a report by January 1, 2014 to the Legislature that provides strategies to achieve the policy goals. Section 41780.01 of the bill states:

"(a) The Legislature hereby declares that it is the policy goal of the state that not less than 75 percent of solid waste generated be source reduced, recycled, or composted by the year 2020, and annually thereafter.
(b) Notwithstanding subdivision (a), the department shall not establish or enforce a diversion rate on a city or county that is greater than the 50 percent diversion rate established pursuant to Section 41780."

[7] CalRecycle (formerly California Integrated Waste Management Board) publication #410-03-013: "Is Recycling Good for California's Economy?"

Note that although items "(a)" and "(b)" above may appear contrary to each other, it was the legislature's intent to encourage 75% diversion by 2020 at the State level without mandating penalties at this time on individual jurisdictions that do not exceed the existing 50% diversion requirement under AB 939.

Additionally, this bill requires a business, defined to include a commercial or public entity, that generates more than 4 cubic yards of commercial solid waste per week or is a multifamily residential dwelling of 5 units or more to arrange for recycling services, on and after July 1, 2012. Under this bill, agencies are authorized to charge and collect a fee from commercial waste generators to recover the agency's costs incurred in complying with the commercial solid waste recycling program. Jurisdictions are required to report the progress achieved in implementing its commercial recycling program, including education, outreach, identification, and monitoring, and if applicable, enforcement efforts, via the AB 939 Annual Reports submitted to CalRecycle.

This bill changes the due date of the AB 939 Annual Reports from September 1 of each year, to May 1 of each year.

15. Certain large businesses and large multi-family communities could be exempted from an exclusive service franchise arrangement.

Some large businesses develop competitive bid processes for the procurement of solid waste and recycling services. In some instances, these businesses may contract with several different companies to provide specialized services. The City could exempt certain large businesses from the exclusive franchise system. For example, the City of Redondo Beach provided such an exemption to a large aeronautic company located within the city.

During the stakeholder meetings, representatives from a local movie studio noted the unique requirements of their operations, including multiple daily solid waste pickups and irregular collection required by movie production schedules.

If certain businesses are exempted, the City may want to establish recycling requirements or other regulations for such special circumstances.

16. There are five main franchise timing options for the City to consider:

1. Move forward with franchising process for multi-family services; delay implementation of commercial franchising process
2. Delay franchising process of both multi-family and commercial services subsequent to submittal and completion of minimum 5-year notice period for commercial haulers
3. Move forward with RFP for both multi-family and commercial franchising process; implement multi-family first, and implement commercial franchise after submittal and completion of minimum 5-year notice period
4. Develop voluntary franchising process for multi-family and commercial haulers without limiting the number of haulers (this option would allow for the earliest implementation)
5. Move forward with both multi-family and commercial franchising processes; implement multi-family first, and phase-in commercial.

Options 1, 2, 3 and 5 can be implemented with either exclusive or non-exclusive franchises, as shown in Exhibit 14. Option 4 requires non-exclusive franchises.

Exhibit 18 describes the advantages and disadvantages of each timing option, and Exhibit 19 illustrates the timing schedule for each option.

Exhibit 18
Franchise Options for the City of Los Angeles

Option	Advantages	Disadvantages
1. Move forward with franchising process for multi-family services; delay implementation of commercial franchising process	• Earlier implementation of multi-family franchise requirements (such as diversion requirements and clean fuel vehicles) • Earlier implementation of multi-family franchise fee • Transition of service providers and implementation of new programs may be more successful (fewer complaints) if focused on multi-family rather than trying to do both multi-family and commercial simultaneously	• Multi-family and commercial franchise terms may not end at the same time unless a shorter term is used for commercial • Different multi-family and commercial service providers may be selected, increasing contract administration costs, and reducing routing efficiencies • Procurement costs would increase because the procurement of multi-family and commercial would not occur at the same time
2. Delay franchising process of both multi-family and commercial services subsequent to submittal and completion of minimum 5-year notice period for commercial haulers	• One combined multi-family/ commercial franchise process instead of two separate processes would reduce procurement costs • Additional time to research key RFP requirements • Multi-family and commercial contract periods may be aligned making administrative tasks easier • Same hauler(s) for multi-family and commercial service will increase routing efficiency	• Delay in implementing new multi-family requirements • Franchise fee implementation deferred to 2016 • City would continue to incur cost of multi-family recycling programs ($12 million/year) until franchise is implemented • Best proposal (technical and cost) for one customer type may not be the best proposal for both

Option	Advantages	Disadvantages
3. Move forward with RFP for both multi-family and commercial franchising process; implement multi-family first, and implement commercial franchise after submittal and completion of minimum 5-year notice period	• One combined competitive process instead of separate multi-family and commercial processes • One group of service providers may be selected at the same time, allowing routing efficiencies for the same multi-family and commercial haulers • Transition and implementation challenges would be spread over two periods and not all at once, minimizing customer complaints	• Developing the additional commercial RFP requirements to add to the existing multi-family draft RFP requirements will delay the multi-family implementation • Rushing to develop the commercial portion of the RFP may result in less thoughtful decisions • Commercial stakeholders' concerns may slow down implementation • Long delay between selection of commercial haulers and start of service may create challenges with enforcement for haulers not selected • The same contractor may not submit the best proposal for both multi-family and commercial services
4. Develop voluntary franchising process for existing multi-family and commercial haulers. For example, offer all current haulers a 10-year franchise agreement (recycling requirements may be phased in)	• Implement multi-family and commercial franchise fee now without waiting for commercial 5-year notice period • Avoid potentially contentious RFP contractor selection process • All haulers that execute a franchise may continue to service their customers • Would achieve the City's revenue goals more quickly due to full implementation of franchise fee in multi-family and commercial sectors at earliest possible date	• No reduction in the number of trucks operating in the City and corresponding health, environmental, and truck impacts • Continued monitoring by City of a large number of haulers • Does not address current differences in rates customers pay for the same service • May be more challenging to increase diversion from current levels because some small haulers may be unable to finance or cost effectively operate diversion programs and facilities • May delay earlier implementation of clean-fuel trucks

Option	Advantages	Disadvantages
5. Move forward with both multi-family and commercial franchising processes; implement multi-family first, and phase-in commercial prior to completion of minimum 5-year noticing period	• One combined process for multi-family and commercial • One group of service providers may be selected at same time, ultimately allowing for routing efficiencies after the phase-in period is complete • If franchises are awarded to the existing haulers with largest market shares, commercial franchise requirements may be implemented for most customers prior to expiration of 5-year notice • Haulers not awarded franchises may choose to negotiate a sale of their operations to the franchisee prior to expiration of the 5-year notice	• May be difficult to monitor compliance by commercial haulers not awarded franchises prior to expiration of 5-year notice • Exclusive commercial option difficult to implement prior to expiration of 5-year notice • Customers served by haulers not awarded franchises would potentially receive different services with different rates and terms than franchise customers until expiration of 5-year notice (unless existing permit system requirements are revised to match franchise system requirements, although could not implement franchise fee for permit system)

Exhibit 19
Franchise Timing Options

		1. Proceed with multi-family RFP; delay commercial RFP*		2. Delay both sectors pending conclusion of commercial 5-year noticing period*		3. Proceed with RFP for both sectors: implement multi-family; delay comm'l pending conclusion of 5-year noticing period*		4. Voluntary non-exclusive franchise	5. Move forward with both franchising processes; implement multi-family first, and phase-in commercial	
Service Arrangements	**Sector**	**Non-Excl.**	**Exclusive**	**Non-Excl.**	**Exclusive**	**Non-Excl.**	**Exclusive**	**Non-Exclusive**	**Non-Exclusive**	**Exclusive**
1. Issue 5-year notice to commercial haulers	Commercial	2011	2011	2011	2011	2011	2011	2011	2011	2011
2. Develop exclusive service requirements and area boundaries (1)	Multi-Family and Commercial		2012		2012		2012			2012
3. Release RFP	Multi-Family	2012	2013	2013	2013	2012	2013	Develop Agreement 2012	2012	2013
	Commercial	2013	2014							
4. Award	Multi-Family	2012-13	2013-14	2015	2015	2013	2014	2012	2013	2014
	Commercial	2015	2015							
5. Start of service (2)	Multi-Family	2013	2014	2016	2016	2014	2014-15	2012-13	2014	2014-15
	Commercial	2016	2016			2016	2016		Phase-in beginning 2014	2016

* Assumes commercial franchise is not implemented prior to expiration date of a 5-year notice

(1) Time has been included in Task 2 to determine service area boundaries.
(2) Time has been included in Task 5 to allow for the procurement of equipment by the successful proposer(s) which is normally 6 to 12 months and could be longer for a city the size of Los Angeles. Implementation dates could be staggered to facilitate a smoother transition.

Options 1, 2 and 3 assume that commercial franchise services would not commence prior to expiration of a 5-year notice of intent to modify commercial service arrangements. Option 4 is a "voluntary" agreement to a franchise and therefore would not require waiting for expiration of a 5-year notice period. Option 5 assumes that the City proceeds with a commercial franchise prior to expiration of a 5-year notice period, and therefore existing haulers not awarded a franchise could continue serving their customers until expiration of the 5-year notice, resulting in franchise requirements only being implemented for those customers served by franchisees for a period of time.

The City can require the remittance of franchise fees under each of the franchising options described in this section (subject to any Proposition 26 limitations). If the City were to choose option #4, the voluntary non-exclusive franchising process, the City could start receiving franchise fees for the multi-family and commercial sectors via the franchise agreements in 2012 or 2013. All of the other options would take longer to implement, as shown in Exhibit 14, and therefore, would delay full implementation of the franchise fee.

To encourage haulers to participate in a voluntary non-exclusive system, the term of the franchise agreements offered should be longer than the 5-year notice period required by the Public Resources Code. A term of seven to ten years may be appropriate. While this option would best achieve the City's revenue goals in the short-run, it might delay the achievement of the highest diversion levels.

An exclusive franchising process would take longer to implement than a non-exclusive system for the following reasons:

1. The haulers in an exclusive system need to propose specific rates and the City approves the rates.

2. In order to reasonably propose rates, it would be helpful for the City to provide all proposers service level and operating data in the RFP for each exclusive zone, and the City does not currently have such data available (we understand the City plans to request hauler receipts by zip code). However, companies have proposed in cases where such data has not been available and, in any event, most companies do their own analysis to determine the reasonableness of the data provided in RFPs. Without providing a container matrix in the RFP for exclusive service, it will be more difficult to evaluate rates because of the many different service levels. In such case, we recommend defining the rate relationships so that all service rates are proportional to a basic level of service in order to be able to evaluate the relative rates on a consistent basis from multiple proposers.

3. To eliminate all but one service provider to award exclusive zones would require a more complex and time consuming evaluation process.

4. A longer transition period would be required to implement exclusive service, as more customers would be impacted and significant quantities of equipment would need to be ordered by the successful proposer.

5. Exclusive service franchises would likely require exclusive zones whose boundaries may be different than the waste districts, and determining reasonable boundaries will take time.

17. The City's Rent Stabilization Ordinance (RSO) allows landlords and property managers to submit an application to pass-through solid waste collection cost increases to tenants for buildings built before 1979. There would be no restriction on landlords passing on increased solid waste costs for all buildings built after 1978.

In 1979, the City of Los Angeles' City Council enacted the RSO (Appendix 12) to allow landlords a reasonable return on their investments while protecting tenants from excessive rent increases. The RSO applies to buildings built during or before 1978.

During the Apartment Owners and Associations stakeholder workshop on July 28, 2011, apartment owners voiced concerns regarding the potential of higher refuse rates under an exclusive franchise system and the corresponding effect on their rental income given the restrictions of the City's Rent Stabilization Ordinance.

According to the City's Housing Department, approximately 638,000 rental units are covered by the RSO. According to City staff, under the RSO, landlords can increase rents by at least 3% annually, and up to 8% depending on the change in the Consumer Price Index.

In addition, Section V. Allowable Rent Increases, subsection 4. Just and Reasonable, of the RSO, allows landlords the ability to apply for additional rent increases for operating expenses which include rubbish removal (RAC Regulations 241.13A) under certain conditions specified in the RSO.