



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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August 11, 2010

IN REPLY PLEASE
REFER TO FILE: **AS-0**

**REQUEST FOR PROPOSALS – ADDENDUM 1
EXCLUSIVE FRANCHISE AGREEMENT FOR THE AREAS OF
CHATSWORTH/WESTHILLS,
EL CAMINO VILLAGE/DEL AIRE/WISEBURN/ALONDRA PARK,
PIONEER/CARSON PARK, AND
RANCHO DOMINGUEZ/WEST RANCHO DOMINGUEZ/ROSEWOOD (2010-FA004);
OCEANVIEW/LA RAMBLA/WEST CARSON (2010-FA005);
ALTADENA AND KINNELOA MESA (2010-FA006)**

Thank you for attending our mandatory Proposers' Conference for Exclusive Franchise Agreement for the Areas of Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, and Rancho Dominguez/West Rancho Dominguez/Rosewood (2010-FA004); Oceanview/La Rambla/West Carson (2010-FA005), Altadena and Kinneloa Mesa (2010-FA006) held on Monday, July 12, 2010. Please take note of the following revisions that have been addressed regarding the Request for Proposals (RFP).

Please note that **bold underlined** text has been added, and any text that has a ~~strikethrough~~ has been deleted from the RFP.

QUESTIONS

1. Please refer to Enclosure A (Questions) of this Addendum, which addresses questions submitted by proposers. Please note that questions presented in Enclosure A of this Addendum represent the questions asked by Proposers in the form and context as submitted.

REVISIONS

2. Part I, Section 3.11, Financial Resources, the second paragraph on page 1.26, for all of the RFP's has been revised as follows:

" Submit copies of proposing entity's (or proposing entity's parent company guarantor) audited financial statements prepared and certified by an independent Certified Public Accountant (CPA) for the most current three full fiscal years..."

3. Attachment 6 of RFP, Sample Bond for Faithful Performance, for all of the RFP's has been replaced with Attachment 6.1, Sample Bond for Faithful Performance (Enclosure B)
4. Attachment 7 of the RFP, Parent/Franchise Guaranty, for all of the RFP's has been replaced with Attachment 7 1, Parent/Franchise Guaranty (Enclosure C)
5. Part II, Sample Franchise Agreement, Section 16.B, Emergency Service, on page 36, for all of the RFP's has been revised as follows.

"...None of these rates can be greater than the limits provided in Section D11, of Exhibit 3A2, unless the Director, at her sole discretion, provides authorization based on information provided by FRANCHISEE substantiating the need for an increase..."

6. Part II, Sample Franchise Agreement, Section 1.A.1, on page 4, for all of the RFP's has been revised as follows.

1. Grant of Exclusive Franchise for Collection in Carts. COUNTY grants to FRANCHISEE the exclusive right and privilege together with the obligation to make and enter into independent arrangements with Customers for the provision of Franchise Services to Residential, Commercial, and Multi-Family Premises, subject to the exclusions in subsection B Multi-family customers are defined in Section 23 to include dwellings that are triplex or larger, condominiums, and townhouses.

7. Part II, Sample Franchise Agreement, Section 1.A.2.a., on page 4, for all of the RFP's has been revised to delete the following language:

a. ~~Recyclables.~~ COUNTY grants to FRANCHISEE the nonexclusive right and privilege together with the obligation to arrange to provide Franchise Services with respect to Recyclables discarded by Customers if prescribed in Exhibit 3A. Notwithstanding the foregoing, however, Customers may donate or sell any or all of their Recyclables to Persons other than FRANCHISEE.

8. Part II, Sample Franchise Agreement, Section 1.A.2.b, on page 4, for all of the RFP's has been revised as follows:

b. Collection in ~~Carts~~ **Bins** at **Residential**, Commercial Premises and Multifamily Premises. COUNTY grants to FRANCHISEE the nonexclusive right and privilege to arrange to provide ~~Franchise Services or MSW Services to Residential, Commercial Premises or Multifamily Premises for any Person who requests either of those services~~ **MSW Services**. ~~FRANCHISEE is obligated to provide Franchise Services for any person who requests Franchise services at those premises. However~~ FRANCHISEE **may, but** is not obligated to, provide MSW services for any person who requests MSW services at those premises. ~~Multi-family customers are defined in Section 23 to include dwellings that are triplex or larger, condominiums, and townhouses.~~

9. Part II, Sample Franchise Agreement, Section 1.B, on page 5, for all of the RFP's has been revised to include the following language:

6. This Franchise excludes the right and privilege to Collect Recyclables that Customers donate or sell to Persons other than FRANCHISEE.

10. Part II, Sample Franchise Agreement, Attachment 1, Rate Adjustment Examples, Table 1 – Adjustment Due to Change in CPI (Section A2a of Exhibit 10) on page 108 for all of the RFP's has been revised as follows.

Calculate percent change in CPI (12-month average, not month-to-month)	April 1, 2006-March 31, 2007	221.64
	April 1, 2007-March 31, 2008	228.59
	Percent Change	3.04% 3.14% (not more than 5%)
Adjustment to Service Fee Component	75% of percent change in CPI	2.28%

Please be reminded that the due date to submit proposals has been extended to **Thursday, September 2, 2010, at 5:30 p.m.**

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If you have questions concerning the above information, please contact Mr Benjamin Sandoval at (626) 458-7334 or Ms. Jeanette Arismendez at (626) 458-4050, Monday through Thursday, 7 a.m. to 5:45 p.m.

Very truly yours,

GAIL FARBER
Director of Public Works



GHAYANE ZAKARIAN, Chief
Administrative Services Division

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Enc.

QUESTIONS

- 1 **Question:** Without reviewing all of the RFP's, is temporary roll-off service excluded? As has been the case currently?

Response: Yes, temporary roll-off service is excluded

- 2 **Question:** Proposal Due Date. We are concerned about a proposal due date that is only six (6) weeks from the date of the pre-proposal conference, particularly given the number of RFPs and Franchise Areas associated with this RFP release. We would strongly encourage the County to extend the due date at least two additional weeks, or at a minimum to Thursday, September 2, 2010. In addition, the County is allowing proposers to submit questions up to 14 days after the date of the pre-proposal conference, which would be July 26, 2010. We realize that it would be difficult for the County to provide an estimate of when questions received by this cut-off date would be answered, but we want to make sure we have ample time to process any changes that could impact our proposals and financial models, given that much of this work may have to be completed by the time responses are received. Lastly, we would respectfully request that the County issue an early addendum, answering questions that are received prior to or as of the date of the pre-proposal conference.

Response: The proposal submission deadline has been extended to Thursday, September 2, 2010, at 5:30 p.m.

3. **Question:** Estimated Board Approval Date. Can the County provide an estimated date in which County Board approval will be sought for the above contracts? Please note that the estimated turnaround time for new refuse vehicles (including Alternative Fuel Vehicles) is upwards of 6 to 8 months from the date of order placement, the latter of which will occur right after the approval/execution of the Agreement. Part 1, Section 1 of the RFP indicates that *"Services may commence as early as January 1, 2011, or thereafter as directed by the Director..."*. In view of equipment procurement timelines, a 1/1/11 start date may not be feasible for all of the areas. We assume the County is flexible as to the exact service commencement date given the language in Exhibit 3A, Section B.1, which states *"Franchisee may commence Collection as early as [INSERT DATE]"*, however, please confirm.

Response: Please refer to Question 54 of the Frequently Asked Questions (FAQ), which can be accessed at <http://dpw.lacounty.gov/asd/Contracts/>

- 4 **Question:** Enforcement of Exclusive Rights After the contract award and prior to service commencement, will the County be issuing a letter to residents informing them of the change in service providers, including a reference to the fact that residential service recipients will be required to utilize the services of the exclusive contractor? We trust that the County agrees that this as an important

step in enforcing the contractor's exclusive rights to service Residential Premises, and ensuring that residents are aware of these requirements.

Response: Please refer to Question 11 of the FAQ

5. **Question:** Service Addresses. Does the County have access to the current customer list information of the current service providers? If not, does the County have a list of names and service addresses for the Residential Customers in the Service Area, and will this list be provided to the successful contractor well in advance of the start date of the contract?

Response: Please refer to Question 56 of the FAQ.

- 6 **Question:** Current Service Providers. Similar to previous procurements issued by the County, can the County provide a listing of the current service providers providing residential service in each of the Service Areas as well as a description of the type of curbside service currently provided (i.e., automated, manual, semi-automated, and material types collected) and the current average rates per household per month?

Response: No, the County does not have this information. Proposers are responsible for independently investigating service conditions in the service areas prior to proposal submission.

- 7 **Question:** RFP Attachment 4, Tonnage. Attachment 4 includes collected tonnage estimates for 2008 based on information provided by waste haulers and reported on the County of Los Angeles SWIM System website. Can the County provide more detail (and possibly more current data) including a breakdown by material type (refuse, recyclables, green waste, manure, bulky items, etc.) for each Service Area?

Response: The attached table reflects the revised tonnage estimates for each Franchise area based on the information contained in the County of Los Angeles SWIM System website.

Franchise Area	2008	2009*
Oceanview/La Rambla/West Carson	9,241	6,585
Rancho Dominguez/West Rancho Dominguez/Rosewood	2,482	1,254
Pioneer/Carson Park	1,144	777
El Camino Village/Del Aire/Wisburn/Alondra Park	9,153	4,037
Chatsworth/West Hills	1,607	142
Altadena	27,610	25,878
Kinneloa Mesa	958	898
Altadena/Kinneloa Mesa	28,571	26,776

*Please note information contained herein is influenced by the incumbent haulers submission of timely and accurate information and may be a reflection of the economic downturn and inconsistent reporting practices by haulers claiming to provide services in these areas. Proposers should investigate the service conditions in the service area prior to proposal submission

No, the County cannot provide a breakdown by material type for each service area. Proposers are responsible for independently investigating service conditions in the service areas prior to proposal submission.

8. **Question:** RFP Part 1, Section 3.A.6.b and c, Experience and Key Personnel. We trust that it would be acceptable to combine the information requested in Section 3.A.6.b and c with the Staffing portion of the Work Plan (Section 3.A.7.a), or, alternatively, include a cross reference from 3.A.6.b and c, to Section 3.A.7, if we include information that is responsive to Section 3.A.6.b and c in Section 3.A.7. Please confirm.

Response: No. Proposers may not combine or cross reference Experience and Key Personnel with the Staffing portion of the Work Plan. Proposers are instructed to submit stand alone narratives for each item (1 – 17), which must be submitted under separate heading, outlined in Section 3.A, Proposal Format and Content Requirements. Therefore, Section 3.A.6.b and c, and Section 3.A.7.a, must be submitted as stand alone narratives each under separate headings.

9. **Question:** RFP Part 1, Section 3.A.7, Work Plan. RFPs 2010-FA004 and FA-006 enable the Proposer to submit one proposal package for multiple Franchise Areas, but require that the Work Plan be customized for each Franchise area. We understand this requirement given that some of the Work Plan components will differ from one Franchise area to the next (i.e., staffing, Location (Operating Yard), Solid Waste Facilities, Equipment, etc.). However, please confirm that Proposers need not have a separate stand-alone Work Plan write up for each Franchise area and that it would be acceptable to have a single Work Plan section, with subsections for each Franchise area only for those items of the Work Plan that differ between Franchise areas. By example, if Customer Service and Communications Protocols, or Billing Procedures, are the same for each Franchise area, we assume that we need not re-iterate these portions of the Work Plan for each Franchise area, however, please confirm.

Response: No. Proposers may not submit a single Work Plan section, with subsections for each Franchise area only for those items of the Work Plan that differ between Franchise areas. Proposers are instructed to submit stand alone Work Plan narratives for each area that they intend to submit a bid on. Each Work Plan must address each item (a – p), which must be submitted under separate heading, outlined in Section 3.A.7, Work Plan, for each area the Proposer intends to submit a bid for.

10. **Question:** Litigation History, RFP Part 1, Section 3.A.9. The County's definition of "affiliates" in the 1st paragraph of Section 3.A.9.a would, in effect, encompass not only the Proposer¹ but would also extend to every operating

¹ This proposer has its principal place of business and home office in the County of Los Angeles.

subsidiary of our parent company across the nation. Please note that the majority of privately-held companies that would normally respond to this procurement operate only in Southern California, and in some cases in LA County only, which is also the case with Proposer, except that because it is part of a larger public company it has affiliates (as defined by County) throughout the U.S. that are entirely independent of Proposer. The larger public companies that would normally respond to this procurement have a multitude of affiliates that operate across the United States, that are completely independent of the proposing entity from the standpoint of operations and management oversight. We strongly urge the County to either limit the disclosures under Sections 9.a.iv, 9.a.vi, and, *particularly* 9.b, to the Proposer only, or limit the definition of "affiliates" under those same sections, to only those affiliates of proposer operating in Los Angeles County, as the County's request will require an abundance of work for the larger publicly owned companies, the results of which may not be deemed useful to the County in its evaluation process on this broad of a scale. For instance, a parent company's operating subsidiaries in a state 3,000 miles away that received an NOV or AOC notice for blowing litter 4 years ago would arguably require disclosure under 9.b given the current definition of Affiliates, but would likely not impact the County's evaluation of the Proposer. We trust that the County would be sensitive to our points and amenable to the above suggested modifications, however, please confirm or clarify.

Response: Regarding Part I, Section 3.9.a.iv Public Procurement Contests. Disclosure applies to all Affiliates because such contests are likely undertaken at direction of upper levels of corporate management (probably the parent company). Large numbers of contests may reveal the corporate family's predisposition to contentiousness. In the County's experience, in the prior 14 franchise procurements contests are infrequent, and therefore less burdensome to disclose than more common occurrences (such as employment or auto liability suits). Disclosure is limited to the past 5 years.

Regarding Part I, Section 3.9.a.vi, Labor Disputes, disclosure with respect to Affiliates is limited to California.

Regarding Part I, Section 3.9.b Environmental History, disclosure will be limited to California.

- 11 **Question:** Proposer's Financial Statements, RFP Part 1, Section 3.A.11. The first paragraph of this section makes it clear that Proposers may submit audited financial statements of its parent company in order to meet the requirements of Section 3.A.11, as long as a Parent/Franchise Guaranty is submitted with the parent company's financial statements. Please also confirm that if the Proposer provides *audited* financial statements of its parent company (with the aforementioned accompanying guaranty), that the Proposer need not submit Forms PW-15 or PW-16 (or the statements requested in

Parts a and b of Section 3.A.11). Lastly, in order to avoid any ambiguity, we would recommend modifying the first sentence of the 2nd paragraph of this section to read "Submit copies of the proposing entity's (or parent company guarantor's) audited financial statements " (emphasis added). We trust that our interpretation of the above requirements is correct, but would appreciate confirmation

Response: Yes. Proposers do not need to submit Form PW-15 or Form PW-16 if a Proposer submits audited financial statements of its parent company and completes and submits Attachment 7 (Parent/Franchise Guaranty), with their proposal at the time of proposal submission, in order to meet the requirements of Section 3.A.11, Financial Statements.

- 12 **Question:** RFP Part 1, Section 3.A.16, Bid Guaranty We understand that we must submit separate Bid Guaranty's for each of the Service Areas the Proposer may respond to under RFP 2010-FA004 and that each of the Bid Guaranty documents can indicate "In an amount equal to 10% of the Proposer's proposed annual rate". However, in terms of RFP 2010-FA006, is the County also seeking three separate Bid Guaranty's for each of the three "Conditions".

Response: Yes. In accordance with Section 3.A.16, Bid Guaranty, Proposers bidding on RFP 2010-FA006, must submit a separate Bid Guaranty for each condition (Condition A - Altadena, Condition B – Kinneloa Mesa, and Condition C – Altadena/Kinneloa Mesa).

- 13 **Question:** Draft Agreement Section 1.A.2.b, Collection of Carts at Commercial Premises and Multifamily Premises. We understand that Franchisee has the exclusive right under Section 1.A.1 to provide Franchise Services to Residential Customers (single family units and duplexes), insofar as such Residential Customers may not use a 3rd party collector (other than Contractor) to provide curbside collection services, with the only exception being for Residential Customers that self-haul or that request bin collection pursuant to the exclusions set forth in Section 1.B. Section 1.A.1 also grants to Franchisee an exclusive franchise for Franchise Services to Commercial and Multi-family Premises (3 units or more), subject to the exclusions in Section 1.B. Section 1.2 b, however, appears to conflict with 1.A.1 by making Franchise Services non-exclusive with respect to collection using carts for Commercial and Multi-family Premises. Are we correct in assuming that a Commercial or Multifamily Premises may request the Franchisee to provide Franchise Services (in which case the Franchisee must do so), but that such Commercial or Multifamily Premises is not obligated to use the Franchisee for solid waste collection services, and can seek the services of another contractor whether it be for curbside cart or bin collection? This is how we are interpreting Section 1.A.2.b, however, please confirm or clarify. If this is the County's intent, it appears to be inconsistent with the provisions of Section 1.A.1 which grants an

exclusive franchise for the provision of Franchise Services for Residential, Commercial and Multi-family Premises.

Response: The first understanding and the second assumption of this question are correct.

With respect to Commercial or Multifamily Premises, Commercial or Multifamily Premises *must* request the Franchisee to provide Franchise Services (carts). They are obligated to use the Franchisee for cart service, but can seek the services of *either* Franchisee *or* another contractor for bin collection.

The exclusive grant in 1.A.1 Franchisee for Franchise Services (in carts) to Residential, Commercial and Multi-family Premises is *not* subject to any exclusion for carts at Commercial and Multi-family premises.

The language has been revised to resolve the conflict. Please refer to Items 6 and 8 of Addendum 1 to review the revised language.

- 14 **Question:** Draft Agreement Section 1.B.4, Rights under Calif PRC Section 49520 The Draft Agreement at Section 1.B.4 excludes the provision of Franchise Services to any person currently being served by a provider who is operating pursuant to section 49520 rights. Are there any existing haulers that may have continuation rights under PRC 49520 in the subject Service Area (or that have asserted such rights), as it relates to exclusive rights being granted to the contractor hereunder (i.e., residential service to single-family residences and duplexes)? In addition, current law would limit such a provider to its existing customers if enforced in that manner by the County. We understand that the County previously issued 5-year notices to all permitted haulers operating in the subject Service Area, however, can the County confirm this, as well as the date in which the notices were given?

Response: Please refer to Question 12 of the FAQ.

- 15 **Question:** Draft Agreement Section 2.A, Term Section 2.A of the Agreement indicates that the Agreement commences on the date both parties have executed the Agreement and terminates on the Termination Date set forth in Exhibit 3A (to be determined). Part 1, Section 1 C of the RFP indicates that the term of the Agreement is 7-years, which we interpret to mean the period from which Collection services will commence and the Contactor begins generating/accruing revenue (as opposed to the Execution Date). Since the Execution Date of the Agreement will precede the date of commencement of services, we trust that the Termination Date will be based on a period that is 7 years from the effective date of service commencement as opposed to the date both parties have executed the Agreement. Please clarify, so it is clear to respondents that their financial models should be based on a full 7-year term (84 months).

Response: Please refer to Question 14 of the FAQ

16 **Question:** Draft Agreement Exhibit 3A, Section B.6, Routing and Street Sweeping Schedule. Exhibit 3A, Section B.6 of the Draft Agreement indicates that the Franchisee shall schedule collection one to two Service Days before streets are swept. Moreover, this section allows the County to amend the street sweeping schedule after the Execution Date.

- a. Are we correct in assuming that in the El Camino, et al, Rancho Dominguez, et al, and Oceanview, et al service areas, that wherever the legend references multiple days for single color-coded area (i.e., Mon/Tue) that such area's streets have alternate side street sweeping (i.e., Monday sweeping on one side of the street and Tuesday sweeping on the opposite side)?

Response: Yes.

- b. The above requirement will create routing inefficiencies due to disproportionate manpower and equipment utilization--- and potentially higher costs to County residents---unless the language in Exhibit 3A.B.6 was amended to simply require Franchisee to design routes so as to not conflict with days that street sweeping occurs. We trust that this is the most important issue to the County and that the proximity of collection to street sweeping days is of less significance. This is of the greatest significance in the El Camino, et al, Rancho Dominguez, et al, and Oceanview, et al, where sweeping appears to be conducted on alternate sides of the street (i.e., Monday on one side and Tuesday on the other side, etc.) Is the County willing to make the above changes to the language in Section B.6?

Response: No.

- c. How does the County expect the Franchisee to meet the aforementioned collection schedule requirement where Sweeping occurs on Wed/Fri. In the El Camino, et al Service Area, and on Mon./Wed. in the Rancho Dominguez, et al service area
- d. Also, please note that proposers will be determining their collection schedules, manpower allocations, equipment requirements, and routing, in view of the street sweeping schedule included in the RFP (and the aforementioned requirement), therefore, a subsequent change in this schedule could have a material impact on these assumptions and the contractor's costs. This section of the contract should be clarified such that the Franchisee will not be held to the requirement to collect one to two Service Days before streets are swept if (a) the County changes the street sweeping schedule subsequent to the Execution Date, and (b) Franchisee

cannot accommodate the change without an increase in costs. Would this be acceptable to the County?

Response: This is in response to sub-questions c and d. The Franchisee needs to adhere to the street sweeping schedule as described in Exhibit 3A, Section B6, which states that collection services will be provided one to two service days before streets are swept, unless otherwise approved by the Director. The County does not anticipate changes to the street sweeping schedule prior to the execution date of the agreement. In the event the County wishes to change the street sweeping schedule, it will do so at its discretion. However, the County may maintain some flexibility with the collection schedule and will work with the Franchisee as needed to address this issue.

17. **Question:** Draft Agreement Exhibit 10, Attachment 1 Rate Adjustment Examples. The example calculation for EIA LNG (Last row in Table 1A) does not appear to be correct.

Response: The error has been corrected. Please refer to the revised language to Attachment 1, Rate Adjustment Examples, Table 1–Adjustment Due to Change in CPI (Section A2a of Exhibit 10), outlined in Item 10 of Addendum 1.

18. **Question:** Draft Agreement Exhibit 3A2.D 1 (Task 2), County Service Charges and Billing. Compensation of \$60/ton for on-call pick up of abandoned items will not suffice if the County, for instance, makes a request for only a few items in a single request. By example, if the County makes a request that the Contractor collect some items weighing only 100 LB, this would equate to only \$3 for collection and disposal. The County should revise the compensation mechanism to contemplate an hourly rate for a two person crew, plus disposal, or, alternatively, include a minimum charge for each on call pick-up request, in addition to the per ton rate. In addition, we are unclear as to the "Maximum Contract Sum" amounts included in this section. Does this mean that when the Franchisee billings reach these amounts in a single Contract year that the Franchisee's obligation to provide this service cease until such time as the County obtains Board approval for additional sums?

Response: The County will not revise the compensation component for on-call pickup of abandoned waste. The compensation of \$60 per ton is sufficient for performing this task given that the on-call services may be sporadic and can be combined with other collection activities as indicated in Exhibit 3A2, D 1.a, which increases efficiency and reduces the aggregate cost for collection of these materials.

Yes, but only with respect to the Maximum Contract Sum for Task 2. When the Franchisee's billings reach the Maximum Contract Sum amount in a single contract year the Franchisee's obligation to provide the Task 2 Service must cease until such time as the County request additional funding. However, in

accordance with Exhibit 3A2.D.6, when the Franchisee billings for Task 2 reaches 75 percent of the Maximum Contract Sum, the Franchisee shall immediately notify the County in writing and the County will request additional funding from the Board if needed.

- 19 **Question:** Draft Agreement Exhibit 3A, Section B.4, Collection Vehicles. It appears that the County is requiring the use of alternative fuel vehicles for fully automated collection, with the only exception to the AFV requirement being for any vehicles used pursuant to provide alternative collection approaches to automated service pursuant to Section B.3.h. Please note that there will be other ancillary collection services that will not involve the use of automated collection vehicles and that, by definition, involve the use of vehicles that will require only partial or periodic use in the County (i.e., those services listed in Exhibit 3A, Section F "Special Services"), and therefore, it is important to also exclude vehicles used for the services listed in Exhibit 3A, Section F, from the alternative fuel requirement. Instead, the Contractor should have the option of using either alternative fuel vehicles or vehicles that run on ultra low sulfur diesel to provide such services. We trust that the County understands and agrees with this necessary additional exclusion, however, please confirm.

Response: Please refer to Question 35 of the FAQ.

- 20 **Question:** Draft Agreement Exhibit 3A, Section F.2.e, Semi-Annual E-Waste and Clothing Drop-off Events. We trust that the intent of this language is to provide two drop-off events each year wherein the Contractor provides containers and employee supervision at a single collection location for a full day for the first event, and then duplicates this effort at a different time of the year for the 2nd event (possibly at a different location than the first event), however, please confirm or clarify.

Response: Please refer to Question 38 of the FAQ.

- 21 **Question:** Draft Agreement Exhibit 3A.H, Senior Discount. Can the County provide an estimate as to what percentage of the Residential Customers in each Franchise Area could reasonably be expected to qualify for the Senior discount as outlined in Exhibit 3A.H of the Draft Agreement.

Response: The County does not have this information. Proposers are responsible for independently investigating service conditions in the service areas prior to proposal submission.

- 22 **Question:** RFP Attachment 4, Unit Counts and Attachment 9, Street Sweeping Maps. Attachment 9 includes color-coded areas for each street sweeping day(s) for each Franchise Area, and Attachment 4 includes a *total* unit count (single family units and units within duplexes) for each Franchise Area. Can the County provide an estimate as to the number of Residential Premises

(single family units and units within duplexes) there are in each of the color-coded street sweeping areas in Attachment 9 for each Franchise Area

Response: The County does not have this information. Proposers are responsible for independently investigating service conditions in the service areas prior to proposal submission

- 23 **Question:** Below is a follow-up question related to the County of Los Angeles Request for Proposals for the areas of Chatsworth/West Hills; El Camino Village/Del Aire/Wisburn/Alondra Park, Pioneer/Carson Park; Rancho Dominguez/West Rancho Dominguez/Rosewood (2010-FA004); Oceanview/La Rambla/West Carson (2010-FA005), Altadena - Condition A; Kinneloa Mesa- Condition B, Altadena/Kinneola Mesa (Combined) - Condition C (2010-FA006).

We noticed what appears to be a minor calculation error in Attachment 1- "Rate Adjustment Examples" in Exhibit 10 of the Franchise Agreements (Page 108).

Based on the sample indices used of 221.64 and 228.59, The Adjustment Due to Change in CPI should be 3.14% ($228.59-221.64=6.95/221.64=3.1357\%$), as opposed to 3.04%. We believe the error is resulting from 6.95 being divided by the "current year" index of 228.59, when it should be divided by the prior year index of 221.64 in order to arrive at the % increase in the index.

Response: The error has been corrected. Please refer to the revised language to Attachment 1, Rate Adjustment Examples, Table 1-Adjustment Due to Change in CPI (Section A2a of Exhibit 10), outlined in Item 10 of Addendum 1

- 24 **Question:** RFP, page 1.3. When the new franchises are initiated around January 1, but the first rate adjustment is not received until July 1 of the second Contract Year for changes during the prior year, how will the Contractor be compensated for changes in the six month "gap" with respect to the first annual adjustment?

Response: The Contractor will not be compensated. Proposers should examine variables such as contract start date, rate adjustment periods, fluctuations in economic markets, and other factors when determining proposed rates.

- 25 **Question:** RFP, page 1.4. Please define more specifically what activities are involved for a "special cleanup event"?

Response: As mentioned in the RFP, "FRANCHISEE shall provide Bins or portable containers in type, number, and capacity (such as up to 80 cubic yards) specified by the Director for discards of Solid Waste (including Bulky Items),

E-waste and CEDs at each of up to four community cleanup projects or public events located throughout the Service Area during any 12-month period " The County does not have information regarding the estimated volume or the size of each Clean-up event at this time, but does anticipate the service would require a handful of large roll-off bins or portable containers.

26. **Question:** RFP, page 1 7 Would the County agree to make any extensions of the term by mutual agreement with Contractor?

Response: The term of each exclusive franchise is seven years with three 1-year renewal options at the sole discretion of the County, not to exceed a total contract period of ten years.

27. **Question:** RFP, page 1 15 What is the anticipated cost of County security and background investigations?

Response: The County does not have information regarding the anticipated cost for security and background checks. However, please note that costs related to security and background investigations will be solely the responsibility of the Proposer and it is the Proposer's responsibility to identify and pay for those costs. The County shall not pay for the costs of security and background investigations.

28. **Question:** RFP, page 1.31 Would the County consider revisions to the Franchise Agreement proposed by Contractor during contract negotiations?

Response: The County will only entertain negotiations in accordance with Part I of the RFP, Section 5 F, Negotiations. However, it should be noted that negotiations are geared primarily toward cost reduction without reduction to services or other County requirements. It is not Public Works' common practice to use the negotiation process as a means to negotiate terms of the contract other than price.

29. **Question:** RFP, pages 1.34 and 1.37 Please provide objective and measurable criteria to define the terms "negatively reflects" and "lack of business integrity or business honesty "

Response: Sections 4D and 4K of the RFP are directly copied from County Code Sections 2.202.030 (Determination of Contractor Non-Responsibility) and 2.202.040 (Debarment of Contractors), respectively. The seriousness and extent of the contractor's acts, omissions, patterns, or practices as well as any relevant mitigating or aggravating factors that may be considered by the County in a non-responsibility or debarment proceeding, or acceptance or rejection of proposals, include those set forth in Subsection 2.202.040 (E) of the County Code as follows.

- (1) The actual or potential harm or impact that results or may result from the wrongdoing.
- (2) The frequency and/or number of incidents and/or duration of the wrongdoing.
- (3) Whether there is a pattern or prior history of wrongdoing.
- (4) A contractor's overall performance record. For example, the county may evaluate the contractor's activity cited as the basis for the debarment in the broader context of the contractor's overall performance history.
- (5) Whether a contractor is or has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more of the grounds for debarment specified in this Section.
- (6) Whether a contractor's wrongdoing was intentional or inadvertent. For example, the county may consider whether and to what extent a contractor planned, initiated, or carried out the wrongdoing.
- (7) Whether a contractor has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for debarment and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
- (8) Whether and to what extent a contractor has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the contractor made or agreed to make restitution.
- (9) Whether a contractor has cooperated fully with the county during the investigation, and any court or administrative action. In determining the extent of cooperation, the county may consider when the cooperation began and whether the contractor disclosed all pertinent information known to the contractor.
- (10) Whether the wrongdoing was pervasive within a contractor's organization.
- (11) The positions held by the individuals involved in the wrongdoing.
- (12) Whether a contractor's principals participated in, knew of, or tolerated the offense.
- (13) Whether a contractor brought the activity cited as a basis for the debarment to the attention of the county in a timely manner.

- (14) Whether a contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the county
- (15) Whether a contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred
- (16) Whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.
- (17) Other factors that are appropriate to the circumstances of a particular case.

The above factors may be used as the objective and measurable criteria to define the terms "negatively reflects" and "lack of business integrity or business honesty "

- 30 **Question:** RFP, page 1.45. The random selection of four references creates an unlevel playing field for larger haulers. Smaller hauler with few references in effect get to select which references should be considered, while larger hauler with tens or hundreds of references (a reference is every franchise agreement) do not. To rectify this unfair advantage, would the County allow proposers to select the four references that would be considered for purposes of evaluation?

Response: Please note that Part I, Section 5 E.3, References, of the RFP does not indicate that references will be selected at random. Therefore the answer is no, as the requested limitation on references would work against the selection of more responsible Proposers.

- 31 **Question:** RFP, page 1.48. Please specify the additional criteria that would be considered. Without that, the proposal process is inherently inequitable, since the proposer would fully be apprised of the criteria for selection.

Response: The "Additional Criteria" language outlined on page 1.48 of the RFP, is the County's standard language. However, it is not the intent of the County to impose additional criteria without the proposers' knowledge. Any changes to the evaluation criteria will be made in writing and will be made available to all proposers who attended the mandatory Proposers Conference.

- 32 **Question:** RFP, Attachment 7, p. 8, Section (7)2, last line. Please confirm that the County intended to state "assert against County that does not arise under the Franchise Agreement."

Response: Yes, confirmed. Please refer to Item 4 of Addendum 1.

- 33 **Question:** Franchise Agreement, Section 1A2a and b. These sections appear to be contradictory, since cart service to commercial premises and multi-family premises is both exclusive (subsection a) and non-exclusive (subsection b). Please clarify. Also, the collection of recyclables should be an exclusive service, subject only to the generators right to sell or donate recyclables.

Response: Yes, a conflict existed between 1.A.2.b and 1.A.1. However, the language has been revised to resolve the conflict. Please refer to Items 6 and 8 of Addendum 1 to review the revised language.

With respect to the recyclables, the answer is yes. Please refer to Items 7 and 9 of Addendum 1.

- 34 **Question:** Franchise Agreement, Section 1C. Does the obligation to cease providing MSW Management Services upon termination of the Franchise Agreement extend to services performed in the Service Area not covered by this Franchise Agreement, such as non-exclusive bin services?

Response: No. Non-exclusive bin service is not covered under this Agreement.

- 35 **Question:** Franchise Agreement, Section 11C. Please specifically define the records subject to inspection and audit. Is it limited to records required by the County to assess Contractors compliance with Performance Obligations?

Response: The records subject to inspection and audit include the following:

- The total number of Premises at which Franchisee provided for regularly scheduled Collection of Refuse
- Refuse (in Tons), Recyclables (in Tons), and any Green Waste (in Tons or, if not weighed at the Solid Waste Facility where it is delivered, in cubic yards) Collected by Franchisee,
- Materials recovered from those Recyclables and residual Refuse remaining after processing of Recyclables,
- The final destination of that Refuse, and where Franchisee delivered those Recyclables,
- The estimated **number of holiday trees**, bushes and biomass Collected by Franchisee and their final destination,
- The estimated number and **Tons of Bulky Items, E-waste, and CEDs** Collected by Franchisee (such as major appliances/white goods and metallic discards, used tires and other Solid Waste recovered by Franchisee during any annual cleanup campaigns), and final destination thereof;

- The **Collection route maps and schedule** for the entire Service Area,
- The **estimated number and Tons of Solid Waste associated with Task 2** (such as refuse, debris, furniture, major appliances/white goods and metallic discards, used tires and other Solid Waste) Collected by FRANCHISEE within public road rights-of-ways and final destination thereof
- Number of households and customers served and/or invoiced for payment
- And any other information requested by the County

36. **Question:** Franchise Agreement, Section 16B, last line on page 40 Please confirm that the County intended to say "Exhibit 3A2, unless the Director provides authorization. "

Response: Yes, confirmed. Please refer to Item 5 of Addendum 1 to review the revised language.

37. **Question:** Franchise Agreement, Exhibit 3A, Section F2A. Is there any limitation on the number of roll-off containers that must be provided? Also, 80 cu.yd roll-off containers are not utilized, 40 cu yd is the largest size in general usage.

Response: No

38. **Question:** Franchise Agreement, Exhibit 3A2, Section D11 Does the most favored nation provision only apply in jurisdictions where Contractor is compensated for this service? If it is provided as a free service to any governmental entity, which is common, must the Contractor provide it for free in the Service Area?

Response: Yes to the first question. No to the second question.

39. **Question:** Franchise Agreement, Exhibit 10 Would the County add a mechanism to obtain an extraordinary rate adjustment to address situations beyond a Change in Law of additional services?

Response: No.

40. **Question:** Do subcontractors need to be listed if the work they are going to perform will be under \$50,000?

Response: Yes. Proposers must list any and all subcontractors who will be retained to perform any of the services outlined in Tasks 1 and 2 on behalf of the primary Proposer, regardless of the amount, whether it is below or above \$50,000.

- 41 **Question:** RFP, Part I, Section 1, Item A.3.f, page 1.4. What distinguishes the (4) special clean ups from the (2) annual clean ups?

Response: Special Clean Up event – Franchisee is required to provide bins or portable containers in type, number, and capacity (such as up to 80 cubic yards) for discards of Solid Waste (including Bulky Items), E-waste and CEDs up to four times per 12-month period at a location designated by the County

Annual Clean-up event – Franchisee is required to notify and conduct an annual curbside collection of unlimited amounts of Solid Waste (including Bulky Items), E-waste and CEDs once each Calendar Year on a day approved by COUNTY

- 42 **Question:** RFP, Part I, Section 1, Item A.3.i, page 1 4. Can a customer combine h & I meaning that a senior using a 32g carts receive a 50% discount?

Response: No, seniors can use either h or I to qualify for the 25% discount.

- 43 **Question:** RFP, Part I, Section 1, Item A.3.i, page 1.4 Will a senior receive a discount if they have multiple 32g carts or only 1 of each?

Response: A senior could use one (1) 32 gal cart for refuse and two (2) green waste of any size, and two (2) recyclable carts of any size, and still receive the discount.

- 44 **Question:** RFP, Part I, Section 1, Item B, page 1 5. Will the County define "litter" in any amounts as abandoned waste in task 2?

Response: Pieces of trash that have been left on the ground, especially in a public place or outdoors.

- 45 **Question:** RFP, Part I, Section 1, Item B, page 1.6. If task 2 is not a "franchise" can the terms be changed by the County at anytime, independently of the terms in task 1?

Response: Yes. As stated in Exhibit 3A, Ab(i), "This Agreement may be suspended or terminated, in whole or in part, from time to time, when such action is deemed by County "

- 46 **Question:** RFP, Part I, Section 2, Item R, page 1 16. States that when scoring task 2 the County will give preference to business that are certified as Transitional Job Opportunity vendors. This statement is in conflict with page 1 1 "There is no separate evaluation criteria applicable to task 2 and specified in the RFP, the integrated contract covering Task 1 and Task 2 services will be awarded based on the determination of the highest rated proposer solely with respect to Task 1 proposal and services."

Response: The Transitional Job Opportunities Preference Program is a Board mandated policy and is required to be included in solicitations when the service is paid for by County funds. As Task 2 is a County funded service, the preference language was included. However, since Public Works has set a predetermined rate to be paid for Task 2 (\$60 per ton), price is not a factor; therefore it is not an evaluated component and although the preference was included, there is no scoring component to apply it to.

- 47 **Question:** Altadena and Kinneloa Mesa RFP, Part I, Section 1, Item A.1.d, page 1.2 What percentage of customers will require manure service, or how many parcels are zoned for horses?

Response: With respect to percentage of customers that will require manure service, please refer to Attachment 4 1 of the RFP

With respect to how many parcels are zoned for horses, the County does not have this information. Proposers are responsible for independently investigating service conditions in the service areas prior to proposal submission

- 48 **Question:** RFP, Part I, Section 1, Item A.1.d, page 1.2. How many industrial, commercial and multiple family (more than five units) are within the franchise?

Response: Proposers are responsible for independently investigating service conditions in the service areas prior to proposal submission. Please refer to Attachment 5 of the RFP for the breakdown of residential parcels.

- 49 **Question:** Is the County flexible with regards to changing the sweeping schedule?

Response: The Franchisee needs to adhere to the street sweeping schedule as described in Exhibit 3A, Section B6, which states that collection services will be provided one to two service days before streets are swept, unless otherwise approved by the Director. The County does not anticipate changes to the street sweeping schedule prior to the execution date of the agreement. In the event the County wishes to change the street sweeping schedule, it will do so at its discretion. However, the County may maintain some flexibility with the collection schedule and will work with the Franchisee as needed to address this issue

- 50 **Question:** If commercial and multi-unit customers request carts, do they still have to place them at the curb the day before their service?

Response: No, the placement of the carts by commercial and multi-unit customers the day before their service is not required. Based on existing County Ordinance (Ord 11886 Art 7 § 716, 1979), no person shall place any solid waste or any container containing solid waste, at any place of collection before 5 p.m. of the day preceding the scheduled collection of said solid waste, or leave any

such container at the place of collection after 8 p.m. on the day of actual collection, or more than two hours after actual collection, whichever is later

51 **Question:** Can we provide service 3 days before the sweeping day?

Response: No. As outlined in the RFP, the Franchisee is required to adhere to the street sweeping schedule as described in Exhibit 3A, Section B6, which states that collection services will be provided one to two service days before streets are swept, unless otherwise approved by the Director

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SAMPLE BOND FOR FAITHFUL PERFORMANCE
Renewable Performance and Payment Bond

KNOW ALL MEN BY THESE PRESENTS That _____

(Hereinafter called the Principal) and _____
(hereinafter called the Surety), are held and firmly bound unto the COUNTY OF LOS ANGELES,
State of California (Hereinafter called the Obligee), the full and just penal sum of _____

_____ (\$ _____) dollars for the payment of which sum, well and truly to be made,
the said Principal and Surety bind themselves, and each of their heirs, administrators, executors, successors and
assigns, jointly and severally, firmly by these presents

WHEREAS, the above bounden Principal has entered into a certain written contract with the above mentioned
Obligee entitled (Title) _____
(the "Franchise Agreement") for the performance of the terms, conditions, obligations and services set forth in the
Franchise Agreement, including, weekly automated curbside collection in carts, processing and disposal of
residential, (commercial and multi-family) refuse, green waste, and recyclables in carts paid by customers and
subject to a franchise fee ("Task 1"); and on-call collection, transportation of refuse, CEDs and Ewaste discarded
in public right-of-way paid by County from its Road Fund, not subject to a franchise fee ("Task 2")

The Franchise Agreement is hereby referred to and made a part hereof as fully and to the same extent as if
copied at length herein with annual renewal at Surety's discretion: and

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bounden
Principal shall well and truly keep, do and perform, each and every, all and singular, the matters and things in said
Franchise Agreement set forth and specified to be by the said Principal kept, done and performed, at the time and
in the manner in said Franchise Agreement specified during the term of this bond, any and all persons who have
furnished labor or material for use in and shall indemnify, and shall pay over, and make good and reimburse to
the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on
the part of Principal, then this obligation shall be void otherwise to be and remain in full force and effect.

PROVIDED, however that this bond is subject to the following conditions and provisions

1. This bond is for the term beginning _____ and ending _____
2. In the event of default by the Principal in the performance of the Franchise Agreement during the terms of
this bond, the Surety shall be liable only for the loss to the Obligee due to damages as described in
Section 15 of the Franchise Agreement. The Surety, after investigation, shall with reasonable promptness
determine the amount for which it may be liable to the Obligee as soon as practicable after the amount is
determined, and tender payments therefore to the Obligee to secure substitute services, remedy
damages incurred, and ensure satisfaction of all performance obligations as set forth in Section 15 of the
Franchise Agreement and only for the purpose of enforcing such Franchise Agreement obligations as
they pertain to this bond.
3. Except for a claim for compensatory damages as defined in Section 18, D 1 a of the Franchise
Agreement, no claim, action, suit or proceeding, except as hereinafter set forth, shall be had or
maintained against the Surety on this instrument unless same be brought or instituted and process
served upon the Surety within two years after the expiration of the stated terms of this bond
4. Neither non-renewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond
shall constitute loss by the Obligee recoverable under this bond, notwithstanding any language in the
Franchise Agreement to the contrary
5. The bond may be extended for an additional year at the option of the Surety, by Continuation Certificate
executed by the Surety
6. This shall not be cumulative Under no circumstances shall the Surety's liability exceed the penal sum
stated herein.

ENCLOSURE B
ATTACHMENT 6.1

- 7 No right of action shall accrue on this bond to or for the use of any person, entity or corporation other than the Obligee named herein and this bond cannot be assigned to any other party without the written consent of the Surety
- 8 Other than the Surety's right to renew this bond to extend its termination date, the Surety stipulates and agrees that any change, extension of time, alteration or addition to the terms of the Contract, including alterations in the work to be done, or increase or decrease of the material to be furnished, shall not in any way release either the Principal or Surety hereunder, and Surety hereby waives notice of any such change, extension of time, alteration or addition
- 9 We, as Surety, in the event that suit is brought against this bond, will pay, in addition to the penal sum herein, costs and reasonable expenses and fees, including reasonable attorney's fees, as awarded and fixed by the court.
10. No premature payment by County to said principal with respect to Task 2 shall exonerate any surety unless the Board of Supervisors shall have actual notice that such payment is premature at the time and it is ordered by said Board, and then only to the extent such payment shall result in loss to such surety, but in no event more than the amount of such premature payment

Signed and sealed this _____ day of _____, _____

SURETY

Principal

BY _____ (Seal) BY _____ (Seal)

Name and Title

Attorney-in-fact

PARENT/FRANCHISE GUARANTY

Insert Name of Signatory Guarantor and Description of its organization, such as "corporation duly organized and existing in good standing under the laws of the State of CA"

(Guarantor),
executes this Guaranty to and for the benefit of County of Los Angeles (County),
a political subdivision of the State of California, on the date written below

RECITALS

Guarantor and County refer to the following facts

WHEREAS, _____
Insert Contractor Name

(Contractor), a _____
Insert Relation to Guarantor, such as "a corporation wholly owned by Guarantor"

intends to submit a proposal (**Proposal**) in response to a Request for Proposals issued
by County on _____ for an **EXCLUSIVE FRANCHISE**
Insert date of submission of RFP

AGREEMENT FOR THE AREA OF _____
Insert Area Name

(the **Franchise Agreement**), which will be incorporated in this Guaranty by reference
and made part of this Guaranty upon execution by County and Contractor together with
the Proposal;

WHEREAS, it is in the interest of Guarantor that Contractor submits its proposal and
enter into the Franchise Agreement with County;

WHEREAS, County is willing to accept the Contractor's proposal and/or enter into the
Franchise Agreement only upon the condition that Guarantor executes this Guaranty;

WHEREAS, if Contractor fails to timely and fully perform its obligations under the
Franchise Agreement, including the payment of monetary amounts or claims for those
amounts (such as any Franchise Fees, payment of Transfer Deposits and Transfer
Costs defined Section 19.C of the Franchise Agreement, and damages under
Section 18.D of the Franchise Agreement), Guarantor is willing to guarantee the
Contractor's timely and full performance of those obligations, and

NOW, THEREFORE, as an inducement to County to accept the Proposal and enter into
the Franchise Agreement, Guarantor agrees as follows.

Capitalized terms used in this Guaranty and not otherwise defined in this Guaranty have
the meaning defined in the Franchise Agreement.

(1) **GUARANTY OF THE CONTRACTOR'S OBLIGATIONS UNDER THE FRANCHISE AGREEMENT**

- 1 **Public Health and Safety.** Guarantor acknowledges public health and safety may be threatened if Contractor does not Collect Solid Waste under the Franchise Agreement.
- 2 **Obligations.** Guarantor directly, unconditionally, irrevocably, and absolutely guarantees the timely and full performance of each of the Contractor's obligations under the Franchise Agreement, subject only to the defenses that Guarantor may assert under Section 7. Within 5 days of County's demand, Guarantor will perform or cause to be performed each of Contractor's obligations under the Franchise Agreement that Contractor has failed to perform.
- 3 **Obligors – No Personal Liability.** This Guaranty is binding upon and enforceable against the Guarantor, its successors, assigns, and lawful representatives. This Guaranty does *not* create any obligation on the part of any director, officer, employee or stockholder of Guarantor (or any affiliate thereof) to satisfy any obligation under this Guaranty. This Guaranty does *not* give County the right to look to those individuals to satisfy any obligation under this Guaranty. County may *not* make a judgment, order, or execution with respect to or in connection with this Guaranty against any of those individuals.
4. **Benefit.** This Guaranty is for the benefit of County, its successors and assigns

(2) **CHANGES IN CONTRACTOR'S OBLIGATIONS**

- 1 **Changes in Franchise Agreement or Contractor's Obligations Without Guarantor Consent.** The following events do not in any way modify any of Guarantor's obligations under this Guaranty or affect Guarantor's liability to County for those obligations. They do not require Guarantor's consent, and County may exercise its rights with respect to those actions in County's sole discretion.
 - Amendments, extensions or renewals of the Franchise Agreement or modification of Contractor's obligations under the Franchise Agreement.
 - Waiver of any right of County or obligation, Breach or Default of Contractor under the Franchise Agreement

- Renewal, modification or compromise of any liability of the Contractor for Contractor's obligations to County under the Franchise Agreement.
 - Release, compromise or settlement of any dispute arising with Contactor under the Franchise Agreement.
 - Acceptance, release or surrender of any Performance Assurance defined in Section 15
2. **No Release or Discharge of Guaranty.** In any of the events listed in the preceding subsection 1, County is not obligated to reserve its rights against Guarantor under this Guaranty
3. **No Guarantor Endorsement.** In any of the events listed in the preceding subsection 1, Guarantor does not need to additionally endorse this Guaranty

(3) TERM OF GUARANTY; CONTINUING

- 1 **Term.** This Guaranty will remain in full force and effect until the later of the following events.
- All obligations of the Contractor under the Franchise Agreement including Contractor's payment obligations to County (such as damages, Franchise Fees, and reimbursements) are fully performed and satisfied in accordance with the Franchise Agreement, or
 - Contractor's obligations under the terms of the Franchise Agreement are discharged, released or otherwise excused.
- 2 **Continuing.** This Guaranty is a continuing guaranty and will continue to be effective or be reinstated, as applicable, if at any time any payment by Contractor under the Franchise Agreement or by Guarantor under this Guaranty is rescinded or County is otherwise required to return that payment, including upon reorganization, insolvency or bankruptcy of the Contractor or Guarantor.

(4) TRANSFER OF GUARANTY

- 1 **Transfer.** In this Guaranty Transfer, "Transfer Deposit" and "Transfer Cost" have the respective meanings provided in the Franchise Agreement, *except* that the word "Guarantor" replaces the word "Contractor "

- 2 **Notice to County of Proposed Transfer.** Guarantor will give County notice of proposed Transfer of this Guaranty within 10 days of the first to occur of the following.
 - A press release is issued regarding any proposed Transfer, or
 - A Form 8-K or other filing with respect to a memorandum of intent or an Franchise Agreement and plan for Transfer is filed with the Securities and Exchange Commission for that Transfer
- 3 **Director Consent.** Guarantor may not Transfer this Guaranty or any rights or duties under it, in whole or in part, and whether voluntarily or involuntarily, without the Director's prior written consent, the exercise of which is in the Director's sole discretion. Any Transfer or attempted Transfer of this Guaranty, made without the Director's consent, at County's option, will be null and void.
- 4 **Guarantor Demonstration.** Without obligating the Director to give consent, Guarantor must demonstrate to the Director's satisfaction that the proposed transferee has the operational and financial ability to satisfy Guarantor's obligations under this Guaranty
- 5 **Payment of County's Transfer Costs.**
 - a. **Transfer Deposit.** Contractor must make any request for the Director's consent to a Transfer in the manner prescribed by the Director. Before the Director considers Guarantor's request, Guarantor must pay County a Transfer Deposit to reimburse County for Transfer Costs that County incurs. County will return to Guarantor any amounts paid in excess of the Transfer Costs incurred.
 - b. **Additional Transfer Costs.** In the course of County's processing Guarantor's request for Transfer, Guarantor must further pay County its additional Transfer Costs in excess of the Transfer Deposit within 30 days of the Director's request therefor, whether or not the Director approves the Transfer. At Guarantor's request, County will provide Guarantor access to all records evidencing the Transfer Costs incurred
- 6 **County's Reimbursement Costs of Enforcement.** In addition, Guarantor must pay County's Reimbursement Costs for fees and investigation costs as County may deem necessary to enjoin the Transfer or to otherwise enforce this provision within 30 days of County's request therefor

(5) **DEMANDS UNDER GUARANTY**

- 1 **Proceeding First Against Guarantor – No Preconditions.** Regardless of any cause of action, statement of facts or any other event, County may enforce its rights under this Guaranty and proceed first and directly against Guarantor without proceeding against or exhausting any other remedies that County may have, including the following:
 - Enforcing any of County's rights or remedies, or seeking to compel the Contractor to perform Contractor's obligations, under the Franchise Agreement or proceeding or taking any action against Contractor;
 - Filing claims with a court in the event of bankruptcy, insolvency, reorganization of Contractor;
 - Promptly or diligently making any claim under, or pursuing or exhausting any remedy under, or otherwise enforcing the provisions of any Performance Assurance,
 - Seeking or obtaining recourse or any other action against anyone that may be liable for Contractor's obligations under the Franchise Agreement, in whole or in part
- 2 **Partial Performance.** County may enforce its rights under this Guaranty and proceed first and directly against Guarantor even if Contractor or Guarantor has partially, but not fully performed those obligations.
- 3 **Draw upon Performance Assurances.** County may enforce its rights under this Guaranty and proceed first and directly against Guarantor even if County has drawn upon a Performance Assurance.
- 4 **Separate Demands.** Each of Contractor's failure to perform its obligations under the Franchise Agreement gives rise to a separate obligation by Guarantor under this Guaranty. County may make separate demands under this Guaranty when each failure occurs.

(6) **GUARANTOR'S DEFENSES AND WAIVERS**

- 1 **Allowable defenses.** Guarantor's obligations under this Guaranty are not affected, limited, modified or impaired by any cause of action, statement of facts or any other event, *except* for the following:

ENCLOSURE C
ATTACHMENT 7.1

- discharge, release or excuse of any obligation of Contractor to County under the Franchise Agreement, to the extent of the discharge, release or excuse and with respect to each obligation, and
- any legal or equitable right, defense, counterclaim or affirmative defense that Contractor could assert under the Franchise Agreement or law

2 **Waiver of Other defenses.** Guarantor expressly waives each of the following listed items as a defense to Guarantor's liability under this Guaranty:

- The invalidity, irregularity, illegality or unenforceability, of or any defect in or objections to the Franchise Agreement.
- Any
 - modification or
 - amendment or
 - compromise of
 - or waiver of compliance with or
 - consent to variation from

any of the provisions of the Franchise Agreement by the Contractor

- Any release or discharge of any Performance Assurance, defined under Section 15 of the Franchise Agreement, or other collateral or security for Contractor's obligations under the Franchise Agreement.
- Any defense based upon the election of any remedies against Guarantor or the Contractor, or both of them, including any consequential loss by Guarantor of Guarantor's right to recover any deficiency, by way of subrogation or otherwise, from the Contractor or any other Person.
- The recovery of any judgment against the Contractor, including enforcement or draw upon any Performance Assurance.
- Taking or omitting to take any of the actions that County must take under the Franchise Agreement.
- Any failure, omission or delay on the part of County to enforce, assert or exercise any right, power or remedy conferred on County

ENCLOSURE C
ATTACHMENT 7.1

by the Franchise Agreement or under a Performance Assurance, *except* to the extent that the failure, omission or delay gives rise to an applicable statute of limitations defense by the Contractor with respect to a specific obligation

- The bankruptcy, insolvency, reorganization or similar proceeding involving or pertaining to the Contractor or County
- Any order or decree of a court, trustee or receiver in bankruptcy, insolvency, reorganization, or similar proceedings.
- Any circumstance that might constitute a legal or equitable discharge of a guarantor of Contractor's obligations under the Franchise Agreement or limit the recourse of County to Guarantor
- The existence or absence of any action to enforce the Franchise Agreement.
- Subject to the provisions of the Franchise Agreement relating to Uncontrollable Circumstances, any present or future Applicable Law purporting to reduce, amend or otherwise affect the Franchise Agreement or to vary any terms of payment or performance under the Franchise Agreement.
- County's obligation to give Guarantor any of the following notices:
 - County's acceptance of this Guaranty;
 - the creation, renewal, extension and accrual of Guarantor's obligations under this Guaranty;
 - any Person's reliance on this Guaranty;
 - breach of this Guaranty by Guarantor under this Guaranty following demand for payment and Guarantor's failure to make payment;
 - Breach or Default by Contractor under the Franchise Agreement;
 - required under this Guaranty; and
 - required under law, to the extent permitted by law
- Any defense of any kind which Guarantor may now or hereafter have with respect to this Guaranty or the obligations of the Contractor under the Franchise Agreement, *except* the following:

- any Notice to the Contractor required pursuant to the Franchise Agreement or law that preconditions the Contractor's obligation, or
- the allowable defenses listed in subsection 3 above.

(7) SET-OFFS ONLY WITH RESPECT TO GUARANTY OR FRANCHISE AGREEMENT

- 1 **By Guarantor under Guaranty.** This Guaranty does not prohibit Guarantor from bringing any action or asserting any claim against County that does not arise from the Franchise Agreement as permitted by law or equity. However, Guarantor may *not* subject any of its obligations under this Guaranty to set-off, deduction, counterclaim, recoupment, defense or other right that Guarantor may have against County on account of that action or claim.
- 2 **By the Contractor under Franchise Agreement.** This Guaranty does not prohibit Guarantor from subjecting any of Guarantor's obligations under this Guaranty to set-off, deduction, counterclaim, recoupment, defense or other right that the Contractor may assert against County under to the Franchise Agreement. However, Guarantor may *not* subject any of its obligations under this Guaranty to set-off, deduction, counterclaim, recoup, defense or other right that the Contractor may assert against County that does not arise under the Franchise Agreement.

(8) NO ASSERTION OF DELAYING ACTIONS

To the extent that it may lawfully do so, Guarantor waives, relinquishes the benefit and advantage of, and will not assert any of the following actions that might delay, prevent or otherwise impede the enforcement of the provisions of this Guaranty or the Franchise Agreement:

- appraisalment,
- valuation,
- stay,
- extension,
- redemption or
- similar laws in force now or at any time after the execution of this Guaranty

(9) GUARANTOR'S EVENTS OF DEFAULT AND COUNTY'S REMEDIES

- 1 Each of the following constitutes an event of default under this Guaranty:

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- (i) **Breach of Payment Obligation.** Guarantor fails to timely pay County any amount that Guarantor is obligated to pay under this Guaranty, including payments within 5 days of County's demand under Section (1).
- (ii) **Threat to Public Health and Safety.** Guarantor does not Collect or cause to be Collected Solid Waste that Contractor has failed to Collect, including Collection within 5 days of County's demand under Section (1).
- (iii) **Breach of Other Obligations.** Guarantor breaches any non-payment obligation of this Guaranty other than the other events of default listed in the preceding subsection (ii) and following subsections (iv) through (vi), whether by act or omission, and does not cure that breach to the satisfaction of County within 30 days after County gives Notice.
- (iv) **Failure to Give Notice of Proposed Transfer.** Guarantor fails to timely give County required notice of proposed Transfer, or fails to secure required County consent under Section 4.
- (v) **Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Guarantor for any substantial part of Guarantor's operating assets or any substantial part of Guarantor's property, or will make any general assignment for the benefit of Guarantor's creditors, or will fail generally to pay Guarantor's debts as they become due or will take any action in furtherance of any of the foregoing.

A court having jurisdiction enters a decree or order for relief in respect of this Guaranty in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Guarantor consents to or fails to oppose any said proceeding, or any said court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Guarantor or for any substantial part of Guarantor's operating equipment or assets, or any said court orders the winding up or liquidation of the affairs of Guarantor

- (vi) **Breach of Representations or Warranties.** Any representation or warranty of Guarantor is untrue as of the date thereof, or Guarantor knowingly makes, causes to be made or condones the making of

any false entry in its books, accounts, records and reports under this Guaranty

Guarantor acknowledges that any event of default under this Guaranty comprises a Default under the Franchise Agreement.

- 2 **Enforcement of One or More Breaches** County may enforce one or more breaches or events of default under this Guaranty either separately or cumulatively, at law or in equity
- 3 **Remedies Cumulative.** No remedy of County under this Guaranty is exclusive of any other available remedy or remedies. Each and every remedy is cumulative and is in addition to every other remedy or remedies allowed under this Guaranty, the Franchise Agreement or law and in equity (including specific performance).
- 4 **Payment of Costs of Enforcing Guaranty.** Guarantor must pay all costs, expenses and fees (including, without limitation, all reasonable attorneys' fees) that County incurs in enforcing this Guaranty by suit or otherwise.

(10) SUITS, ACTIONS, OR OTHER PROCEEDINGS

1. Guarantor agrees to the following with respect to any suit, action or other proceeding respecting this Guaranty, including enforcement of Guarantor's obligations under this Guaranty
 - **Service of Process in CA.** Service of process for Guarantor is in the State of California by prepaid registered mail, return receipt requested to the authorized representative of the Franchisee named under Franchisee Documentation under the Franchise Agreement
 - **Jurisdiction in CA.** The courts of the State of California, and to the extent permitted by law, the United States District Court for the Central District of California or other federal district chosen by County, have exclusive jurisdiction.
- 2 **Venue in CA.** Guarantor waives any objections that Guarantor might otherwise have to the venue of any of the courts described in the preceding subsection, for any trial.

(11) AMENDMENT

No amendment, change, modification or termination of this Guaranty may be made except upon the written consent of Guarantor and County

(12) **SEVERABILITY**

If a court of competent jurisdiction rules any provision (**Guaranty Provision**) of this Guaranty unconstitutional, invalid, illegal, nonbinding or unenforceable, County and Guarantor will do the following:

- Promptly meet and negotiate a substitute for the Guaranty Provision and any related amendments, deletions, or additions to other provisions of this Guaranty, which together effect County's and Guarantor's original intent to the greatest extent allowable under law; and
- If necessary or desirable to accomplish preceding item, apply to the court that declared the invalidity for a judicial construction of the substituted Guaranty Provision and any amendments, deletions, or additions to this Guaranty. Within ten days of County's request, Guarantor must pay County an amount equal to the Direct Costs of the application.

The illegality, invalidity, nonbinding nature or unenforceability of any Guaranty Provision will not affect any of the remaining provisions of this Guaranty, and this Guaranty will be construed and enforced as if the Guaranty Provision did not exist.

(13) **CONSTRUCTION AND INTERPRETATION OF GUARANTY**

- 1 **Gender and Plurality.** Words of the masculine gender include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number include the plural number and vice versa unless the context demands otherwise.
- 2 **Headings; Font.** Any captions or headings in this Guaranty are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of this Guaranty. Any underlined, italicized, bold-faced, upper captioned, or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this Guaranty.
- 3 **References to Parts.** References to Sections refer to Sections of this Guaranty, unless specified otherwise. Reference to "subsections" refers to the subsection contained in the same Section in which the reference occurs, unless otherwise referenced.
- 4 **Specifics of No Limitation on Generalities.** The mention of any specific duty or liability imposed on Guarantor may not be construed as a limitation

or restriction of any general liability or duty imposed on Guarantor by this Guaranty or law

- 5 **Interpretation.** This Guaranty must be interpreted and construed neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. No provision in this Guaranty may be construed against the drafting Party. Guarantor acknowledges that it determined to allow Contractor to provide Franchise Services in the Service Area and to execute the Franchise Agreement on Contractor's and Guarantor's own choice and initiative. By signing this Guaranty, Guarantor represents and warrants that it and its counsel have reviewed the Franchise Agreement and this Guaranty. By signing the Franchise Agreement, County represents and warrants that its counsel has reviewed the Franchise Agreement and this Guaranty
- 6 **Meanings of Certain Words.** When used in this Guaranty, the following words have the ascribed meanings.
- **"including"** or **"include"** or variations thereof, means "including without limitation", "including, but not limited to," and "including, at a minimum."
 - **"under"** (e.g. this Guaranty, the Franchise Agreement, law) means "in accordance with the terms / provisions of" and "as required by the terms/provisions of."

(14) ENTIRE GUARANTY

This Guaranty constitutes the entire agreement between the parties to this Guaranty with respect to the rights and responsibilities of Guarantor contemplated by this Guaranty. This Guaranty completely and fully supersedes all prior oral and written understandings and agreements between the parties with respect to those rights and responsibilities.

(15) WARRANTIES AND REPRESENTATIONS

Guarantor warrants and represents the following as of date it signs this Guaranty:

- Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings under this Guaranty
- The execution, delivery and performance of this Guaranty by Guarantor:
 - have been duly authorized by all necessary corporate and shareholder action on the part of Guarantor;

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- have the requisite approval of all federal, state and local governing bodies having jurisdiction or authority with respect thereto;
 - do not violate any judgment, order, law or regulation applicable to Guarantor;
 - do not conflict with or constitute a default under any Franchise Agreement or instrument to which Guarantor is a party or by which Guarantor or its assets may be bound or affected, and
 - do not violate any provision of Guarantor's articles or certificate of incorporation or by-laws.
- This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- There are no pending or, to the knowledge of Guarantor, threatened actions or proceedings before any court or administrative agency that would have a material adverse effect on the financial condition of Guarantor, or the ability of Guarantor to perform its obligations or undertakings under this Guaranty

(16) NOTICES

All notices required to be given under this Guaranty must be made in writing and personally delivered, sent by telecopier (with receipt), or registered or certified mail, return receipt requested. All notices must be addressed to the following representatives of the parties.

COUNTY

Administrative Services Division
County of Los Angeles Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803-1331

GUARANTOR.

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Either party may change the address for notices by giving the other party at least 10 days written notice of the new address
Notice is deemed effective at the following times.

- On the date personally delivered or sent by telecopier, with evidence of receipt; or
- Three days after the date of mailing.

(17) COUNTERPARTS

Guarantor may sign this Guaranty in any number of counterparts, some of which may not bear the signatures Guarantor. When signed and delivered, each counterpart, is deemed to be an original and all of the counterparts, taken together, are deemed to constitute one and the same instrument; *provided, however*, that in pleading or proving this Guaranty, County need not produce more than one copy bearing the signature of Guarantor.

IN WITNESS WHEREOF, the Guarantor has executed this instrument the day and year below written.

By: _____ Date: _____
Name Title

Attest: _____ Date: _____
Name Title

[Notarize]