

Interested Parties, please see below for answers to the questions received prior to the submittal deadline of July 10, 2020.

Please note that *Proposers are allowed to take exception to proposed franchise terms as part of their proposal and the City welcomes changes to the terms that furthers the City's objectives or increases the performance standards of the agreement. Such exceptions shall be evaluated by the committee and the committee's recommendation for or against a proposer will be based, in-part, on the number and nature of exceptions taken.*

1. During the virtual meeting we learned that food waste would be collected in compostable bags. Are they truly compostable or might they end up being another contaminant for the food waste processor to deal with after the fact?

**Answer:** The City has included this requirement in order to provide a convenient program that the community can easily adopt. Use of compostable bags has proven acceptable in other jurisdictions and are proven to promote increased participation in terms of both frequency and total material collected. For this reason, the City strongly prefers making compostable bags available to customers. Proposers are welcome to suggest other alternatives that provide equal cost-effectiveness and customer convenience.

2. Or, can the food waste be collected in the appropriate sized pail / tote / trash bin, depending on the frequency of the client's collection service, without a compostable bag?

**Answer:** The City prefers compostable bags as described in the answer to question #1 above.

3. Since one vendor will be collecting the food waste and potentially providing all the billing while another vendor is responsible for the processing, who does the food waste processor bill...the vendor collecting the food waste or the City?

The processor will invoice the collector on a per ton basis for all food waste received (monthly).

4. Also, is the hauler responsible for providing all waste containers and educating all clients on food waste related contamination issues or is the processor responsible?

**Answer:** Yes, the collection contractor will be primarily responsible for education. However the City expects that the collector and processor would be collaborative in working on increasing good participation and reducing contamination. Organics processing only proposers are invited to suggest/offer supplemental education support.

5. Does the City expect the food waste processor to have a Call-In Center as well as the hauler?

**Answer:** No, that is specific to hauler requirements.

6. Should we also consider C&D waste and bulky items to be disposed at Palomar Transfer Station at \$43.01/ton fee?

**Answer:** Please note that the fee has increased to \$43.63 on July 1, 2020 due to CPI. The City assumes that the hauler will divert as much C&D material as possible. However, any material destined for disposal rather than processing should be delivered to PTS.

7. Diversion. Since it would be very difficult to obtain information regarding third party diversion, and because metrics using diversion by weight are not directly applicable to the state diversion mandate (per capita; and does not capture source reduction and reuse), would the City substitute a diversion requirement based on meeting the state diversion mandate using the per capita methodology?

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

8. Diversion. If the City wants to continue with a weight-based diversion metric, would it allow for periodic review of the required percentage, and a review prior to imposition of LD's? The review should consider factors such as new uses for materials, enhanced diversion technologies, availability of processing facilities and markets, and difficulties with data collection.

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP. Review periods are noted in the draft Franchise Agreement in the description of the Liquidated Damages, where such a review is appropriate.

9. Diversion. Would the City utilize an exhibit for the listing of acceptable Recyclable Materials and Organic Waste, which could be made current as of the start of service and would facilitate periodic updates without having to amend the franchise agreement?

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

10. Valet Service. Is the valet service for seniors at no additional cost, even if the residence has an able-bodied person?

**Answer:** No. If the residence has an able-bodied occupant, the ADA accommodation may not be required.

11. Overloaded Containers. There seems to be no provisions on addressing containers that are overloaded, and "overloads" are not included in the definitions. Containers that are overfilled can cause potential safety risks to drivers from falling debris and can cause storm water issues. Can Contractor refuse collection of overfull Containers, including material spilled or left on the ground not caused by the Contractor? Additionally, can the Contractor charge an overload fee to recover the associated costs of handling the additional material caused by the overloaded Container and/or clean the material on the ground?

12. **Answer:** No, the City doesn't want contractor to have adversarial interaction with customer and refuse collection. The City prefers an educational approach in order to change improper behavior. If significant noncompliance creates an ongoing operational issue, and the contractor has followed approved protocols to address the noncompliance issues, then approved fees/fines could be imposed as last resort. However, please note that all fees/fines must be approved beforehand and the City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP. MF Disabled Service. Please explain how disabled service would be provided to MF premises. Would Contractor have to enter the building or the apartment residence?

**Answer:** Please see Exhibit B-1, Section 7 which clarifies that this accommodation is only for SFD only (including townhomes).

13. Homeless Encampments. Please explain the discrepancy between residential and commercial service requirements. In residential, the requirement is to provide a container for City-performed cleanup events, but in commercial the requirement is to perform the cleanups.

**Answer:** The correct requirement is that contractor shall "Provide containers (bins/roll-off) for City performed clean-up events and for homeless encampments upon request from the City." This is a citywide service and not specific to a sector.

In Figure 11, the rows entitled "Illegal Dumping" and "Homeless Encampments" are hereby deleted.

In Figure 12, the row entitled "Illegal Dumping" is hereby deleted.

14. Labor Peace. Please reconcile the requirement that Contractor "remain neutral" with its free speech rights under the First Amendment of the U.S. Constitution. It is very unlikely that this contract requirement would be considered void for violation of public policy. The same would apply to the provision that labor unrest from a lock-down is not a force majeure event.

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP. Additionally, each proposer is expected to perform their own due diligence review, including legal analysis, of the proposed contract. The City can not perform or provide legal analysis for prospective proposers.

15. Subcontractor Insurance. The types of services performed by subcontractors are often limited and their presence in the City likewise limited. Would the City agree to negotiate appropriate rates for subcontractor insurance as part of the subcontractor approval process that would reflect the risk to the City. Requiring the high coverage limits applicable to Contractor may not be possible for smaller subcontractors.

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

16. Litigation Disclosure. Does the disclosure requirement extend to minor personal injury/property damage claims and employee matters? Would the City limit the disclosures to matters brought by governmental entities related to franchise services?

**Answer:** No, proposers must disclose all litigation as described in the RFP.

17. Financial Information. Would the audited financial statements of Contractor's publicly traded parent satisfy this RFP submittal requirement?

**Answer:** Yes, the audited financial statements of Contractor's publicly traded parent satisfy this RFP submittal requirement. The City reserves the right to request additional information necessary to conduct financial stability due diligence on a local operating company's financials prior to concluding the evaluation of proposals and/or entering into a contract.

18. Organics Transfer Method. Is this information required, since PTS is the only known Organics Transfer Station at this time, and PTS already has a contract with the City?

**Answer:** This information is required. If PTS will be used, simply say so. If another facility or approach will be used, please describe it in detail.

19. Food Scraps. Is the exception to exclusivity for food scraps limited only to residential customers? The definition of Food Scraps in Exhibit A suggests that. If this exception is intended to implement the opinion of one law firm regarding the extent of AB 3036, which runs contrary to the expressed intent of its author that this legislation was to enable farm-to-farm transfers of agricultural byproducts from a grower to another farmer for use as animal feed, would the City remove this exception to exclusivity?

**Answer:** No, the definition of food scraps applies to all sectors and is included by reference any place where the term "organic materials" is used because food scraps are a subset of organic material. To be clear, these requirements are not intended to respond to AB 3036.

20. Materials That Contractor Does Not Divert. Please provide an explanation of the financial circumstances that make diversion “economically feasible”? Does that mean the that the commodity value is greater than the processing cost for the commodity?

**Answer:** In this case, "economically feasible" may mean that there is no additional cost due to the value of the material, or it could mean that the city believes the economics are acceptable even it requires a rate adjustment. For example, the city believes it is economically feasible to divert organics but understands that that will have some cost attached to it.

21. Term Extension. Would the City make this extension option by mutual agreement, or at a minimum allow for reconsideration and renegotiation of rates?

**Answer:** The City prefers to have a sole option to extend on the same terms and subject to the same rate adjustment provisions.

22. Approved Transfer Facility. Would Contractor be required to “keep all permits and approval’s necessary for use of the Approved Transfer Facility” for PTS, since PTS already has a contract with the City?

**Answer:** No, it is only required for “approved” facilities, it is not required for “designated” facilities such as PTS or the landfill.

23. MF Bulky Item and Electronic Waste. Would the City consider an alternative approach to bulky item and electronic waste collection, based on a complex-wide approach with requests for service by the owner or property manager?

**Answer:** The proposer is free to propose an alternate approach to the program. We request that proposers comply with the specified program requirements in the “base” proposal and offer any modified program as an “innovative/cost saving” proposal by showing the incremental cost savings compared to the base program.

24. SF Billing. Would the City allow for every other month or quarterly billing in advance for SF? This would help control costs.

**Answer:** This is an example of an innovative/cost saving option. We request that proposers comply with the specified program requirements in the “base” proposal and offer any modified program as an “innovative/cost saving” proposal by showing the incremental cost savings compared to the base program.

25. Cash Receipts. Would the City remove the requirement to accept cash payments, as this creates public safety issues at Contractor’s facility if large amounts of cash are present?

**Answer:** The city currently accepts cash payments from customers and intends to transition billing to the collection contractor. As such, the city would like an orderly transition that includes accepting cash payments for a period of time until customer education is effective in phasing it out.

26. Delinquencies. Where service is restored when “past delinquencies are paid in full”, would that include any late fees imposed? Also, will the Contractor be allowed to charge a reinstatement fee to cover Contractor’s costs for restoring service?

**Answer:** All past delinquencies, including late fees, should be paid, and then the contractor may require a deposit not to exceed one month’s billings at the customers service level.

27. Telephone. Would the City require that Contractor turn over control of a General “800” telephone number used to contract customer service from multiple jurisdictions?

**Answer:** No. The City requests that the contractor acquire a dedicated City of Carlsbad number for public education and outreach purposes. That phone number may be redirected to your 800 number or other call center number to allow portability of the Carlsbad-specific phone number. The contractor will be required to turn over control of that number at the end of the contract term.

28. Please reconcile the requirement that telephone hours extend to 7 pm, which is beyond the required office operating hours.

**Answer:** Offices are required to be open to the public until 5:00 p.m., for customers to come in in-person, however, telephone customer service is required to be available to the public until 7:00 p.m.

29. Email Responses. Please remove the requirement that all emails received by 5 pm be answered that same day, when required office hours end at 5 pm.

**Answer:** Customer service representatives should be available until 7:00 p.m. As such, the City expects that all emails received by 5:00 p.m. will be answered that day.

30. Missed Collections. Where Contractor cannot “question or contest” a claimed late pickup, would Contractor have to pay the missed collection rebate in these cases even if had evidence that the claim was incorrect?

**Answer:** The City Contract Manager would review the evidence presented by contractor and make a determination as to whether the rebate shall be provided. Regardless of whether the claim was correct, contractor should provide the courtesy service.

31. Contamination Courtesy Pickup and Contamination Processing Fee Notices. Can the notice be provided via email where the customer accepts email invoices, in lieu of placing a notice of the container?

**Answer:** No. The City’s interest is to have the person interacting with the container to see the notice, as opposed to the person who see/pays invoices.

32. Recyclables Contamination. Please reconcile the inconsistent requirement that there be no more than 15% residual after processing, while setting a customer contamination threshold of 20% before Contractor has any real recourse by way of a Contamination Processing Fee?

**Answer:** The City does not anticipate that every customer will maximize the allowable contamination levels. In fact, contamination at that level is likely to be extremely rare. As such, the City believes that an actively engaged collection contractor with a robust education and outreach program will have little trouble keeping overall contamination levels low enough to meet the processing standard.

33. Push-Out Fee. Would the City provide that the fee is applicable any time the driver must leave the vehicle? The cost to Contractor arises more from the driver leaving having to leave the vehicle than the distance of the pull-out.

**Answer:** No, the City specifically requests a 25 ft push allowance without a charge to accommodate the fact that the majority of customers will require a dismount to provide service, especially after adjustments are made to implement SB 1383.

34. Improper Setouts. Is the only recourse to Contractor in the event of multiple violations by a customer simply to keep sending a Courtesy Notice? Would the City provide that after two instances Contractor could refuse collection?

**Answer:** No. The City doesn’t want contractor to have adversarial interaction with customer and prefers an educational approach. If significant noncompliance creates an ongoing operational issue, and the

contractor has followed approved protocols to address the noncompliance issues, then the city contract manager may get more involved to assist with resolving the noncompliance.

35. Vehicle Display. While there is a requirement to provide signage hardware, does the City provide the signage itself? This is the typical requirement in other franchise agreement.

**Answer:** No. The signage is to be provided by the collection contractor and should be a part of the contractor's annual education and outreach budget.

36. Vehicle Noise. Would the City include a provision that federal noise requirements supersede any state or local requirements, since collection vehicles are purchased in interstate commerce?

**Answer:** The city's expectation is that the contractor shall meet or exceed the (most stringent) requirements under all applicable law. Interstate commerce is irrelevant in this case, as service will not be provided under this agreement across state lines and the City anticipates engaging a California company as a collection contractor.

37. Container Inventory. Would Contractor be required to place an inventory or serial number on each container where it does not track inventory in this way?

**Answer:** The city would prefer a unique identifying number on each container to facilitate resolution of customer issues between the city, contractor, and customers. If contractor has an alternative approach to insuring clarity around this issue, contractor may propose such an alternative and the City may or may not accept the modified approach.

38. Container Colors. Would the requirement that both bodies and lids be the mandated color be revised if SB 1383 regulations, when and if adopted, only require that lids have the mandated color?

**Answer:** The base proposal should be based on the city's preference for full body color scheme.

~~Proposers are welcome to offer "innovative/cost-saving proposals" if the cost savings from another approach is significant.~~

39. References to Time. To avoid confusion, would the City change references in time from "hours" to "business days" (excluding requests to service an alleged missed collection)?

**Answer:** The City may consider reasonable clarifications without negative effect on evaluation, provided that they don't substantively change any requirement.

40. Key Personnel. Please identify the positions that would be staffed by "key personnel" subject to City approval?

**Answer:** Those positions are specified in Section 5.7.E of the Draft Franchise Agreement.

41. Customer Rebates. Since the missed collection and late container delivery rebate amounts represent estimated compensation for damages incurred, please explain the justification for also imposing LD's, since under case law LD's are intended solely to reflect an estimate of damages incurred.

**Answer:** The customer rebate is to compensate the customer for their inconvenience. The liquidated damage would be applied if there were a significant number of missed collections that resulted in the City's involvement, which has attendant staff time and cost.

42. Customer Records. If the City requires Contractor to maintain these records on a City-selected web-based software platform, would the City agree to defend and indemnify Contractor from any claims arising from the use of the City-selected platform such as security breaches?

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

43. Proprietary Information. Would the City modify these requirements? "All data regarding business operations" that is submitted to the City can still contain Proprietary Information or Trade Secrets (and would be designated as such). Simply submitting this information to the City, or having it being required under the agreement, does not by itself render the information non-confidential. Contractors cannot "agree" to this misstatement of the law.

**Answer:** The city specifically drafted these requirements based on recent case law surrounding this issue. Contractor would be entitled to defend the confidentiality of any truly proprietary information, however the City must comply with the requirements of the Public Records Act. The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

44. Disposal Records. Is Contractor required to maintain disposal records on behalf of PTS?

**Answer:** No, contractor is not required to maintain disposal records on behalf of PTS. Contractor will, however, be required to maintain and report to the City information related to the materials collected and delivered to PTS.

45. Reports. Would the City change the submittal times for reports from monthly to quarterly? The reporting requirements are very extensive, and this would allow sufficient time for preparation.

**Answer:** SB 1383 requires that all records related to an event be in the City's implementation record within 60 days of the underlying event. As such, all records from the Contractor need to be submitted monthly to ensure that no information is absent that may be within 60 days of the underlying event. The City may be willing to work with the successful contractor to convert any information not required by SB 1383 into a quarterly reporting cycle.

46. SB 1383 Fee Eligible Revenues. Please explain what this reference means, and how this information would be utilized or relevant.

**Answer:** This requirement is only relevant to fees paid on percentage basis, if the AB 939/ SB 1383 reimbursement remains as a fixed monthly amount, this requirement could be removed subject to negotiations with the selected contractor.

47. Rates Not on Schedule. As an alternative, would be City provide a process where Contractor and customer would agree on these one-off rates, with disputes decided by the City? Requiring advance City approval of every one-off rate could become resource intensive for City staff, and any delay in establishing the rate could impact the ability to promptly provide the service.

**Answer:** No. The City is responsible to regulate rates in the interest of the ratepayer, given the exclusive nature of the service.

48. Extraordinary Rate Adjustment. Would the City expand the allowable grounds to include unanticipated circumstances beyond Contractor's control? Only allowing an adjustment based on changes in law or a City-directed change in scope is unduly narrow. In addition, would the City use a reasonable judgment standard in deciding on requested adjustments? It would be wholly inappropriate, for instance, to ask for a change in service and then deny any adjustment "for any reason or no reason at all", which is the legal definition of a "sole judgment" standard of review.

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

49. AB 939, etc. Indemnification. Would this indemnification be applicable where the CalRecycle penalties arose from programs currently required by Applicable Law but not set forth in the agreement, programs Contractor is expressly instructed by City not to implement, services that a customer refuses to accept, or acts or omissions of the City?

**Answer:** This indemnity only applies to performance failures surrounding those things that are delegated to the contractor in this agreement.

50. Proposition 218. Who determines whether a rate adjustment is “appropriate”? Since that is inherently subjective, would the City provide that the negotiation/termination provision would apply upon any denial of a requested rate adjustment that meets the informational requirements of Section 8.3 for any reason?

**Answer:** The negotiation/termination provision is intended to resolve adverse judicial decisions or an adequate ratepayer protest under Proposition 218. The rate adjustment mechanisms provided for under this agreement are formulaic in nature and not generally subject to city council approval. City Council approval of rates is limited, under the Draft Agreement, to the approval of the initial agreement, changes in scope/law, or addition of new rate categories.

51. Cyber Liability. Please explain why and how this coverage is applicable to this agreement. Contractor’s risk management department does not believe it is applicable.

**Answer:** This agreement requires electronic billing and maintenance of detailed customer service databases which can be subject to cyber intrusion and compromised customer data

52. Events of Default. Please explain the difference between subsections 10.1 F. and K? Same with subsections H. and T. Can those be combined. Also, would subsection Q apply where the failure to provide processing capacity was at a processor contracted for directly by the City?

**Answer:** Section 10.1.F & K both deal with a significant performance failures and the City agrees that there is some redundant content. Section 10.1.K includes different limitations in the event of labor unrest. So long as the limitations of K are maintained, the City would entertain a merging of these subsections.

53. Termination. If the agreement is terminated but Contractor continues operating for some time, is it the City’s intent that Contractor “shall not be entitled to any further revenues”. Or in other words, not be paid for services?

**Answer:** Contractor shall continue operations and would be paid for such operations until such date that required performance under contract is terminated.

54. Injunctive Relief. Please provide an analysis as to why City “shall be entitled” to injunctive relief in the absence of any supporting facts specific to the circumstances.

**Answer:** Each proposer is expected to perform their own due diligence review, including legal analysis, of the proposed contract. The City cannot perform or provide legal analysis for prospective proposers.

55. Liquidated Damages. Please provide a detailed analysis as to why each item of proposed liquidated damages amounts represents “a reasonable amount of such damages for such specific breaches” to the City (see *Ridgley v. Topa Thrift & Loan Assn.* (1998) 17 Cal.4th 970).

**Answer:** Each proposer is expected to perform their own due diligence review, including legal analysis, of the proposed contract. The City cannot perform or provide legal analysis for prospective proposers.



56. Liquidated Damages. Would the LD for failure to resolve a complaint be applicable where Contractor took good faith efforts to resolve the complaint, but it could not be finally resolved where a customer would not accept Contractor's offer even where deemed reasonable by the City?

**Answer:** The city does not intend to micro-manage the contract with the use of liquidated damages and would be reasonable in their assessment, based on the facts surrounding a given event.

57. Liquidated Damages. Would the LD for disposal of targeted diversion materials be applicable where a container had to be handled as solid waste due to container contamination?

**Answer:** Provided that it follows the requirements outlined in Sections 5.3.B and 4.11, the city would not assess liquidated damages as the contractor is specifically authorized to dispose of the material in that case.

58. Excuse from Performance. Please provide a factual and legal analysis as to why Contractor would have "a higher standard than the general law understanding of Force Majeure" than any other business. How is Contractor distinguishable from, for instance, police and fire departments, hospitals, long-term care facilities, water treatment facilities, wastewater treatment facilities, and other "essential services"?

**Answer:** Each proposer is expected to perform their own due diligence review, including legal analysis, of the proposed contract. The City cannot perform or provide legal analysis for prospective proposers.

59. Dispute Resolution. If the City refused to allow the process for dispute resolution to proceed due to lack of materiality, please confirm that these added costs to Contractor in dispute would be allowable costs for purposes of annual rate adjustments.

**Answer:** The materiality provision is specifically intended to minimize the friction in the relationship between the City's and Contractor's contract managers. The City's intent is not to compensate contractor for things that are required under the agreement that the Contractor later disputes.

60. Assignment. Would the City exclude from this provision an assignment to an affiliate having the same parent, and where equipment, management and employees would not change?

**Answer:** The intent of the language is to permit certain administrative/non-substantive assignments and to subject others to a due diligence and consideration process. These transactions can vary widely in nature and the City would have to discuss the particulars of any given change that a proposer requested to the assignment provisions to determine if the City required a due diligence/consideration process in that particular case. For example, the City is not greatly concerned with limited transfers among existing owners and to family trusts and has permitted transfers with little notice in those events. By way of alternate example, the City would be concerned with a sale of substantially all of contractor's assets required to perform under this Agreement.

61. Severability. If every provision of the agreement is material (see Section 10.1), how would this provision allowing only "non-material" provisions to be severed have any applicability

**Answer:** Each proposer is expected to perform their own due diligence review, including legal analysis, of the proposed contract. The City cannot perform or provide legal analysis for prospective proposers.

62. Change in Law Definition. Would the City add a reference to foreign laws in subsection a? The experience of the past few years has clearly demonstrated the extent that changes in foreign governmental laws, such as China's National Sword, can affect local operations.

**Answer:** The City is not interested in negotiating the terms of the Franchise Agreement during the pendency of the RFP.

63. Extra Service Tags Definition. What does this definition refer to? There do not appear to be any other references to this service.

**Answer:** The definition of "Extra Service Tags" is hereby deleted from Exhibit A of the Draft Franchise Agreement.

64. Paper Garden Bags Definition. What does this definition refer to? There do not appear to be any other references to this service.

**Answer:** The definition of "Paper Garden Bags" is hereby deleted from Exhibit A of the Draft Franchise Agreement .

65. Designated Disposal Facility. There are several references in Exhibits B1, B2 and B3 that Contractor must transport all solid waste to the Designated Disposal Facility. Are those references correct, since solid waste is to be transported to PTS, which is a Designated Transfer Facility?

**Answer:** The City intends delivery to PTS. Section 3 of Exhibits B1, B2, and B3 will replace the use of "Designated Disposal Facility" with "Designated Transfer Facility" as follows:

In Exhibit B1, Section 3, the introductory paragraph is hereby removed and replaced with the following: "Contractor shall Collect Solid Waste placed in Contractor-provided Carts one (1) time per week from Single-Family Customers (including Townhouse) and Transport all Solid Waste to the Designated Transfer Facility."

In Exhibit B2, Section 3, the introductory paragraph is hereby removed and replaced with the following: "Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Solid Waste to the Designated Transfer Facility."

In Exhibit B3, Section 3, the introductory paragraph is hereby removed and replaced with the following: "Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the Designated Transfer Facility."

66. News Media Relations. Would the City revise the requirement for advance City approval of inquiry responses to made it applicable where reasonably practicable? There may be situations where an immediate response is required but City staff is not available, such as on weekends.

**Answer:** The City has a strong interest in participating in any public relations. The City recognizes that there may be very rare times when the Contractor is unable to get a hold of the City in an emergency. In such cases, if the contractor was acting in good faith and not contrary to prior direction/input received from the City, and immediately notified the City of the information provided, the City would be unlikely to take enforcement actions under the agreement.

67. Public Education Materials. There are inconsistent provisions as to whether City or Contractor is responsible for preparation of public education materials. In one portion of Exhibit C the City reserves that right, while in other portions of Exhibit C Contractor has that obligation. Please clarify. Is the LD for failure to "produce" public education materials incorrect for this reason?

**Answer:** The specific obligations in each year will be defined by the public outreach plan, provided by the contractor and approved by the city, for that year. Contractor shall fulfil those obligations which will

be bounded by the annual budget so Contractor can reasonably predict their obligations. Liquidated damages would not be applied in the event that the contractor fulfilled their requirement as documented in the plan.

68. Timing of Rate Adjustments. In Exhibit E, Section 1, second paragraph, there appears to be an incorrect reference to "July 1" which should be "January 1". Please confirm this is correct.

**Answer:** In Exhibit E, Section 1, the second paragraph is hereby removed and replaced with the following:

"The City Council shall make a good faith effort to approve Rates by December 1 of each year, and such Rates shall be effective on each subsequent January 1. If Rates are not effective by January 1 due to a delay caused solely by City, City shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of said delay that is solely caused by City (subject to the City's approval of how the retroactive adjustment is billed) or the City may compensate the Contractor for lost Gross Receipts. In the case of a delayed Rate adjustment, the Contractor may bill the Customer during the next billing cycle to recoup the deferred Rate increase. If Rates are not effective by January 1 as a result of Contractor's delay in submitting the Rate application in a complete and accurate form, then prior Rates remain in effect until such adjustment is made and Contractor shall not be entitled to a retroactive adjustment for lost Gross Rate Revenues. "

69. Fuel Index. When and if RNG is utilized as vehicle fuel, would the City substitute another index that specifically tracks changes in cost of RNG? The CNG index may or may not be accurate to RNG.

**Answer:** Yes, the City would entertain a proposal for such an index, as noted in the Draft Franchise Agreement.

70. AB 939/SB 1383 Fees - If the amount of these fees were adjusted following submittal of proposals, as provided for in the RFP, would the rates be adjusted accordingly?

**Answer:** The City intends to negotiate the amount of these fees based on the final obligation of the city and contractor and expects that changes to the cost of providing service would have some impact on rates.

71. Annual Adjustment – Recyclable Materials Processing Costs. Would the City adjust this component by the actual change in costs, rather than through use of the CPI? Processing costs are volatile and could be higher or lower than the CPI percentage in any given year.

**Answer:** The City requests base proposals on the basis of processing costs increasing by CPI. If a proposer believes they can offer a cost saving proposal through some other rate adjustment mechanism, they are welcomed to submit a cost-saving proposal detailing the alternate approach and resultant cost savings.

72. Recyclable Materials Processing Rebate. Please provide an explanation, and preferably an example, of how this index would be calculated. Would the index be based on changes in the commodity value of Recyclable Materials including CRV at the Designated Processing Facility?

**Answer:** As stated in Exhibit E, in definition of Recyclables Rebate Index:

*"the City requests your proposal for a calculation methodology that uses publicly-available or third-party indices (OBM, RecyclingMarkets.net, etc) and recycling characterization data, specific to the City, to develop an index to track the value of Recyclable Materials during the Term of the Agreement."*

The intent of this provision is to provide equitable adjustments in the rates to reflect changes in the cumulative value of the recyclables collected in the City. Ideally, this is tracked as a function of both material mix and value of each material. It is also the City's desire to have accurate information, throughout the term of the Agreement, related to the mix of recyclables collected in the City and the amount of inbound contamination compared with post-processing residue. The studies used to determine this information should be useful in the annual recycling rebate calculation.

73. Related Parties. In Exhibit E2, Section 2.A.2.m, please explain the phrase "in excess of the cost to the Related-Party Entities"? Does this mean that these entities are not allowed to make any profit for their services to the City, and that any profit at those facilities would be a Non-Allowable Cost? Or, does it mean that the Allowable Cost would be limited to the tipping fees at these facilities?

**Answer:** It is limited to tipping fees at these facilities to the extent that these reflect the actual cost of providing those services. The City assumes the profit is included in the tipping fee in form 7, and other than in the event of a change in law/scope specifically impacting that tipping fee, contractor's proposed tipping fee (subject to adjustment formulas) will be relied upon. In the event of a change in scope/law review that required the review of contractor's actual processing/facility-related costs, the City would permit an operating ratio equal to that which is allowed for collection operating costs.

74. Cost Forms - Attach\_3A\_Carlsbad\_Cost\_Forms\_Base. It appears that the Commercial pricing that is being requested is being based off of a residential "max rate". Can you please confirm this methodology and the logic behind it? Costing for these two lines of business are completely different.

**Answer:** The City wants all customers, regardless of customer class, to experience the same percentage of rate adjustment. This prevents "apples-to-oranges" proposals where different proposers take materially different approaches to rate structuring, creating wide ranging customer rate impacts and a sense of "winners and losers". The rate relationships have been fixed in the form to accomplish this goal. The City is open to discussing rate structure as part of the negotiation of the SB 1383 proposal and has suggested some restructuring in those rate forms.

75. Cost Forms – Forms 9 – 13. Can you explain the logic and methodologies of the "rate factor" calculations in column E?

**Answer:** The rate factors are the multiplier of that particular rate compared to the base 32 gal residential rate. The City's intent is to have a uniform rate adjustment (see above).

76. Can you share the attendance sheet (including names and companies) of the individuals participating in the mandatory pre-proposal conference?

**Answer:** Yes, the City will produce a list of companies that are eligible.

77. What is the address/location of the Agromin site that currently processes the City's organic material?

**Answer:** 1200 Wilshire Road, Fallbrook CA

78. §1.4 RFP Schedule: Since there are two months between the deadline for proposer questions and proposal submission, we recommend the City conduct an additional Q&A round. Proposers may have additional questions that arise after the July Q&A period. For example, the deadline for the second Q&A round could be August 7, with responses posted August 21.

**Answer:** The City's intent is to ensure all proposers have time to process and respond to the information provided in the addenda and to have no delay in the final submittal date. If substantial new information were provided on August 21, the City would be obliged to delay submittal by 1-2 weeks to ensure all parties had adequate time to consider the new information.

79. §3.2 Scope of Services for Alternative Proposals: Are any of the alternatives listed on Page 25 required for organics process-only proposals? The majority of the required alternatives listed here seem like they would only apply to collections proposals. Please clarify.

**Answer:** The proposal outline is included below with the "Organics Processing Only" proposal requirements bolded. Organics Processing proposers need not submit other sections.

- i. **Title Page**
- ii. **Cover Letter**
- iii. **Table of Contents**
- ES **Executive Summary**
- 1. **Company Description**
  - A. **Business Structure**
  - B. Collection Experience
  - C. Service Initiation Experience
  - D. Key Personnel
  - E. Labor Agreements and Wages
  - F. **Past Performance Record**
  - G. **Financial Information**
- 2. **Technical Proposal for Base Proposal**
  - A. Collection
  - B. Recyclable Materials Processing
  - C. **Organic Materials Processing**
  - D. Solid Waste Transfer (if proposed)
  - E. Bulky Item Collection
  - F. Multi-Family/Commercial Recycling Technical Assistance
  - G. Customer Service
  - H. Billing
  - I. Public Education and Outreach Plan
  - J. Implementation Plan
  - K. Other Required Plans
  - L. **Subcontractors**
  - M. Existing Management and Customer Service Systems
  - N. Corporation Yard and Maintenance Facilities
- 3. **Technical Proposal for Alternative Services**
  - A. Mandatory 3-Stream Collection for All Sections (Required)

- B. **Processing Only (Optional)**
- C. Other Service Enhancements and Innovations (Optional)
  
- 4. **Environmental Considerations**
  
- 5. **Acceptance of RFP and Franchise Agreement**
  
- 6. **Cost Proposal**
  - A. Base Cost Proposal
  - B. Cost Proposal for Alternative Services
  
- 7. **Other Proposal Forms**
  - A. **Secretary's Certificate**
  - B. **Anti-Collusion Affidavit**
  - C. **Iran Contracting Act Certification**
  - D. **Statement of Compliance with the City of Carlsbad's Insurance Requirements**

**Attach. Additional material may be included at proposer's discretion (Optional)**

80. Buy-Back Center. The RFP indicates in multiple places that the hauler is to operate a CRV buy-back center at Palomar Transfer Station, that the center is open to the public and that more than just CRV materials are accepted...

- a. Question: Please confirm our reading is correct that the CRV buy-back center is not limited to buying back CRV materials (i.e. the hauler is required to accept "oversize eWaste per RFP page. If this is correct, can additional information on the buy-back center operation be provided including:
  - i. What material types are accepted?
  - ii. Is data on tonnages by material type available?
  - iii. Is data available on how many customers visit the buy-back center over a duration (weekly, monthly, etc)?
  - iv. Question: Please confirm whether the operational costs are to be part of this proposal or whether the buy-back center is intended to be economically self-sufficient and that the hauler has the autonomy to set rates for non-CRV materials.

**Answer:** All drop-off programs including CRV and HHW are intended to be transitioned to the PTS agreement through the City's separate negotiation of the extension of the PTS term. These programs will not be the responsibility of the collection or organics processing contractor(s). Additionally, an Addenda will shortly follow reiterating what will be removed from this Draft agreement (e.g. Buy Back Center requirements).

81. RFP Figure 10, Page 18 and 3.2.12 on Page 28: Source Separated Organics. The RFP indicates a 4-stream system available for SFD in Figure 10 and then later indicates this is a required alternative option.

- a. Question: Can the City clarify whether this is limited to the Alternative Proposal that is required pursuant to Section 3.2.12 of the RFP or whether it must be part of the base service proposal as well?!

**Answer:** It is part of the alternative proposal, not the base proposal.

82. RFP Figures 10, 11 on Pages 19, 22. Other, eWaste collection. The RFP indicates both SFD and MFD are to receive "On-call e-waste collection; three (3) pick-ups per year at no charge. Up to five (5) items per pickup, within three (3) feet of curb (additional pick-ups or oversize items accepted at buy-back center at no charge)"

- a. Question: If most eWaste is accepted inside the Recyclables container (aside from that containing lead or mercury) would the City be agreeable to reduce this number of pick-ups annually?

**Answer:** If the proposer would like to accept certain of these materials in a more convenient manner, the City would be open to removing the requirement for the less convenient option, subject to the City's agreement that the alternative is, in fact, more convenient or otherwise preferred.

- b. Question: For MFD, are these eWaste events per unit and if so, how is the hauler expected to track these "no-charge" services if the units are not the billed customers and this information is not in the hauler's database?

**Answer:** Yes, the e-waste events are per unit for MFD, and in the event of a MFD, the contractor is to coordinate with the property manager to determine the location which may include: garage, storage unit, or otherwise. Tracking is the responsibility of contractor to ensure accurate recordkeeping/reporting around this for regulatory compliance.

- c. Question: As written, the inclusion of "additional pick-ups" in the sentence "additional pick-ups or oversize items accepted at buy-back center at no charge" indicates there really is not a limit of three (3) on-call e-Waste pick-ups annually. Can the City please confirm whether this was a typo or if additional pick-ups of eWaste are actually unlimited?

**Answer:** All drop-off programs including CRV and HHW are intended to be transitioned to the PTS agreement through the City's separate negotiation of the extension of the PTS term. These programs will not be the responsibility of the collection or organics processing contractor(s).

- d. Question: Does the hauler establish rates for additional on-call collections or are these rates established by the City?

**Answer:** This will be established through negotiations and will be added to the approved rate sheet with the franchise agreement.

83. RFP Figures 10, 11 on Pages 20, 22: Bulky Item Collection. The RFP indicates that MFD receives "three (3) pick-ups per year at no charge; additional pick-ups at rate set forth in agreement"

- a. Question: Is this per complex or per unit? If per unit, how is the hauler expected to track these "no-charge" services if the units are not the billed customers and this information is not in the hauler's database?

**Answer:** Per unit. Contractor is expected to develop and maintain accurate tracking systems for customer utilization of various services.

84. RFP Figure 10, Page 18. Recyclable Materials. The RFP indicates SFD customers may request up to two (2) additional Recycling carts only in the same size.

- a. Does the hauler have flexibility to maximize the gallons in the fewest number of carts (e.g. one (1) 96-gallon instead of three (3) 32-gallon or one (1) 64-gallon instead of two (2) 32-gallon?

**Answer:** Flexibility is appreciated, however the Customers' preference should define how the service is provided, not the contractor's.

85. RFP Figures 10, 11 and 12 on Pages 18, 20 and 23. The RFP indicates Recyclable Materials and Yard Trimmings carts are available for SFD, MFD and Commercial customers in 32-gallon size (also, there may be a typo for Commercial as it says 35-gallon).

- a. Question: Are proposers required to offer 32-gallon carts for Recyclable Materials and Yard Trimmings or can larger carts be offered to maximize opportunity for diversion? Alternatively, could smaller 32-gallon Recycling carts only be made available upon request to SFD customers when the larger cart is too unwieldy for the customer?

**Answer:** The city specified that smaller (30-/32-/35-gallon) carts be made available in the standard list of offerings in order to accommodate space constrained customers or those who have trouble moving larger carts.

86. RFP Figures 10, 11 on Pages 18, 22. Bulky Item Collection. The RFP indicates Bulky Item Collection must be provided within one (1) day of the customer's requested service date.

- a. Question: Is the hauler required to provide this service within one (1) day if the SFD or MFD customer request service the next day? Or, is there some flexibility to provide this service within 48-hours of the customer's request or within one (1) day of the customer's requested service day if their requested service day is more than 48-hours from the day they contact Customer Service in order to maximize routing efficiencies and minimize the overall carbon footprint of the operation?

**Answer:** It is intended to be provided within one day of the day the customer requested. For example, if the customer calls on September 1 requesting service on September 10, contractor would provide the service within one working day of September 10 (i.e. September 9-11, unless a holiday/weekend).

87. RFP Figures 11, 12 on Pages 20, 23. Recyclable Materials. The RFP indicates 3 CY split bins are available to MFD and Commercial for Recyclable Materials.

- a. Question: Are proposers required to purchase trucks capable of handling split bins and offer split bins or with a single-stream MRF, can any existing split bins be replaced with normal bins?

**Answer:** The purpose of the split bin is to allow customers with space issues the opportunity to have both garbage and recycling. These split bins are not to segregate containers from fibers. They are to segregate recyclables from solid waste (or possibly some combination with organics and other commodities). The containers have special lock-bars installed that allow servicing of one side at a time using a standard front-end loader.

88. RFP Figure 12, Page 24. Other. The RFP indicates 3YD C&D bins are available for Commercial customers, however, this would require a dedicated front- or rear-load truck.

- a. Question: Could the City be agreeable to eliminate this option in order to keep overall costs down?



**Answer:** The city expects that the base proposal will include this service availability. Customers using this service usually do so as a “rent-a-bin” style service with the bin removed at the same time as the material. If proposers believe savings from eliminating this would be material, they are invited to provide a cost-saving alternative proposal.

89. RFP Figure 12, Page 24. City facilities. The RFP indicates that Commercial Solid Waste includes option for “Permanent roll-off/compactor of 10, 20, or 40 CY. Customer purchase or lease through Contractor or other vendor” and that, for City Facilities, “all container options available: carts, bins, compactors, or roll-offs.”

- a. Question: Is the hauler required to make compactor service available to City Facilities for no additional charge?

**Answer:** Yes, however the contractor is not expected to provide a compactor. The City would supply or lease the compactor in such a case, just like a commercial customer would supply or lease one.

90. RFP Figures 10, 11, 12 on Pages 20, 22, 24. Illegal dumping. The RFP indicates the hauler is to “Provide container for City-conducted illegal dumping clean-up. Provide container within 48 hours of notification from the City .”

- a. Question: Is the hauler compensated for this or is there limit on the number of boxes the hauler would be expected to provide annually?

**Answer:** The City does not anticipate a large utilization of this service, as it is designed for community clean-up and homeless encampment events. The City prefers that this service be flexibly stated in the agreement rather than limiting it to a certain number.

91. RFP Page 22. Homeless Encampments. The RFP indicates the hauler is to provide clean-up service for homeless encampments upon request from the City.

- a. Question: Is the expectation that the hauler would provide the labor or just the boxes?

**Answer:** The City anticipates that the contractor will provide the boxes and that the City or other agencies would provide the labor.

- b. Question: Is the hauler expected to handle human waste or other hazardous substances?

**Answer:** No, the city would separate any excluded/prohibited waste before placing in bins.

- c. Question: Is the hauler compensated on a per unit basis for this service (whether labor, boxes, tons, etc.)

**Answer:** No. This should be included in the contractor’s cost of providing service under this agreement.

92. FA Section 4.4, pg. 14 – Bulky Items and Reusable Materials: Is there an Approved Reusable Materials Processing Facility in North San Diego County? If so, where?

**Answer:** The City expects each proposer to provide this service or partner with a reuse vendor or non-profit.

93. FA Section 4.5, pg. 14 – Special Events: While the FA states that the contractor shall provide services to up to five special events per Rate Period at no cost to the City, there is no mention of size and scope of the events. Can you please provide a current list of events contemplated by the City?

**Answer:** The city’s intent in partnering with the contractor on special services is to significantly enhance those services relative to status quo. As such, information relative to prior events may not be indicative

of future events. With that cautionary note, the city offers the following information related to special events that have occurred recently:

- TGIF concerts in the park, which is the largest special event, includes 9 to 10 concerts offered in various city parks during the summer. The average concert attendance is approximately 3,000 attendees per concert. The services provided include extra recycling and trash services at each park and at least one outreach booth per concert for attendees to learn about waste reduction and recycling practices.
- The Household Hazardous Waste collection event consists of a Saturday event and requires extra recycling and trash services for the event. For the past 3 years, the extra services for this event included 2 recycling rolls offs and 2 trash roll offs for the event.
- The Earth Day event is usually a Saturday event during the month of April. For the past 3 years, the extra services for this event included 20 temporary recycling/trash boxes and an outreach booth for attendees to learn about waste reduction and recycling practices.

94. RFP Section 2.5, pg. 15 – Billing Process: What is the break down between the number of customers who are billed by the City vs. those who are billed by CWM?

**Answer:** There are approximately:

1,320 commercial accounts – WM Billed;  
553 MFD accounts – WM Billed;  
8,860 SFD accounts – WM Billed;  
21,773 residential accounts – City Billed

95. RFP Section 4.4.6, pg. 37 – Step Four – Proposer Interviews & Negotiations: Each proposer is required to submit a redline/strikeout version of the Draft Franchise Agreement. Please confirm that during the Mandatory Pre-Bid Meeting it was stated that the City does not want any language struck, just redlined.

**Answer:** The RFP states the following, “Time is of the essence in the procurement of these services; therefore, the negotiations will be limited to those items identified in the company’s proposal as exceptions to the Draft Franchise Agreement. Each proposer is **required to submit a redline/strikeout version of the Draft Franchise Agreement**, in Microsoft Word format, noting any deletions of franchise language or requirements as well as all proposed replacement or new language. The City will not discuss any changes to the Draft Franchise Agreement that are not clearly presented in the proposal.”