

Attachment

**MEMORANDUM OF UNDERSTANDING
REGARDING SOLID WASTE PROCUREMENT SERVICES**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this 20 day of Sept, 2021 by and between the City of Laguna Hills (“Laguna Hills”) and the City of Lake Forest (“Lake Forest”) (each individually a “Party” and collectively the “Parties”).

RECITALS

A. Lake Forest and Laguna Hills arrange for solid waste, recycling, organic waste, and similar collection, processing, and disposal services (collectively “Services”) through a franchise granted to a private company (“a “Hauler”). The Parties’ current franchises for the Services will both expire on June 30, 2024.

B. In anticipation of these expirations, the Parties may determine at a later date to undertake a joint solid waste procurement process (“Procurement”) which may result in the award of a single franchise for both Parties to one Hauler, two franchises for each Party to one Hauler, separate franchises for each Party to different Haulers, or some other possible arrangement for the Services.

C. A Procurement will require the development of a draft franchise agreement(s) and request for proposal document(s) (“Procurement Documents”) and the Parties are interested in a joint work effort to prepare the Procurement Documents.

D. The production of the Procurement Documents will be managed by staff by each Party and a joint Consultant.

E. The Procurement will be managed by staff by each Party and a joint Consultant if it is determined that a joint Procurement is in the best interest of each Party.

F. Costs for a joint Consultant for the preparation of the Procurement Documents and for a joint Procurement work effort will be shared between the Parties.

G. The Parties desire to enter into this MOU to outline their respective participation in the development of the Procurement Documents and Procurement.

TERMS

NOW, THEREFORE, the Parties, in consideration of the mutual promises set forth in this MOU, agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are true, correct, and incorporated herein.

2. Purpose of Memorandum of Understanding. The purpose of this MOU is for the Parties to develop Procurement Documents for Services and to outline their respective interests and participation in a potential joint Procurement for Services.

3. Description of the Procurement Documents. The Parties will contract with Consultant with relevant experience to conduct and assist in the preparation of a request for proposal(s) and similar documents and a franchise agreement(s) for the Services.

4. Description of the Procurement. The Parties will contract with a Consultant with relevant experience to conduct and assist in the Procurement. The Procurement may include, but is not limited to, the following elements:

- 3.1 Assessment of current Haulers and Services provided to each Party;
- 3.2 Potential cost savings or obstacles to jointly contracting for Services or for other possible models for delivery of the Services;
- 3.3 The negotiation of franchise agreement(s) with the chosen proposer(s) for the Services.

5. Sharing of Costs. Costs for the Procurement Documents and Procurement shall be divided into three categories: (1) shared costs benefitting both Parties (“**Joint Costs**”), (2) costs solely attributable to Laguna Hills (“**LH Costs**”), and (3) costs solely attributable to Lake Forest (“**LF Costs**”). Laguna Hills shall be responsible for all LH Costs and one-half of the Joint Costs. Lake Forest shall be responsible for all LF Costs and one-half of the Joint Costs. The Consultant will indicate on each invoice costs attributable to Joint Costs, LF Costs, and LH Costs. Lake Forest shall verify the respective share of costs of the Procurement Documents and Procurement on a monthly basis using the invoices submitted to Lake Forest by the Consultant. Following this verification, Lake Forest shall submit on a monthly basis a reimbursement request to Laguna Hills for its share of the Procurement Documents and Procurement costs, including a copy of the original invoice submitted to Lake Forest by Consultant. Laguna Hills shall reimburse Lake Forest for such costs within 30 days of the date of the invoice.

6. Selection of Consultant.

- 6.1 Selection of Procurement Documents and Procurement Consultant. Subject to the provisions of Sections 3, 4, and 5, Lake Forest shall issue the request for proposals and award any agreement with a consultant or team of consultants for the Procurement Documents and Procurement (“**Consultant**”). Lake Forest shall follow and comply with applicable laws and regulations when doing so. City staff from both Parties will participate in the selection process of Consultant(s). Lake Forest shall provide Laguna Hills with a draft request for proposals and Consultant(s) agreement and reasonably endeavor to incorporate and address any comments or proposed edits. Lake Forest will include the City of Laguna Hills, its officers, employees, agents, and representatives as additional insured and in any indemnification protection language in Consultant’s agreement.
- 6.2 Procurement Documents Process. Subject to the provisions of Section 3, each Party shall be provided an opportunity to review and comment on all work product provided by the Consultant. Both Parties shall have a right to

receive and use all reports, documents, and records created as part of the Proposal Documents development pursuant to this MOU.

6.3 Procurement Process. Subject to the provisions of Section 4, each Party shall be provided an opportunity to review and comment on all work product provided by the Consultant. Both Parties shall have a right to receive and use all reports, documents, and records created as part of the Procurement pursuant to this MOU.

7. Not a Commitment to Proceed with Procurement. Nothing in this MOU shall be construed or interpreted to constitute a commitment by any Party beyond the completion of the Procurement Documents. The Parties may continue with the Procurement by providing mutual written notice of intent to continue with Procurement.

8. Future Coordination of Efforts. Upon completion of the Procurement as mutually agreed in Section 7, the Parties may wish to establish continuing shared duties with respect to the Services. The relationship of the Parties with respect to these future efforts will be documented as amendments to this MOU or in separate agreements, and the Parties anticipate continued collaboration and cost-sharing activities as appropriate depending on the nature of the endeavor as it progresses.

9. Term and Termination. This MOU shall become effective as of the date it is executed by the last of the Parties and shall continue in full force and effect until the Procurement Documents are completed or it is terminated as provided herein, unless extended pursuant to Section 7. Either Party may terminate this MOU by giving written notice of intent to terminate thirty (30) calendar days prior to the date of proposed termination. If either Party terminates before completion of the Procurement Documents, or before the completion of the Procurement pursuant to Section 7, the Parties shall each be responsible for their proportionate share of the consultant costs expended up to the date the notice of intent to terminate is received, including such future costs as cannot be reasonably canceled upon receipt of the notice of intent to terminate. Termination by either Party shall not terminate the Party's right to access any Consultant's work product or records as provided in Sections 6.2 and 6.3, or the defense and indemnification obligations set forth in Paragraph 10.

10. Mutual Indemnification. Each Party hereby agrees to indemnify, defend, assume all liability for, and hold harmless the other Party and their officers, employees, agents, and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs, and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses, and attorneys' fees), and/or personal injuries or death to any persons (collectively, "Claims"), arising out of or in any way connected to the willful misconduct or the proportionate share of negligence of that Party or its officers, agents, or employees in connection with or arising from any of the activities under this MOU. This section incorporates a comparative negligence standard.

11. No Waiver. The waiver by any Party of any breach or violation of any requirement of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

12. Notices. Any notice or other communication (“**Notice**”) which any Party may desire to give to the other Party under this MOU must be in writing and may be given by any commercially acceptable means, including via first class certified mail, personal delivery, or overnight courier, to the Party to whom the Notice is directed, at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. Any Notice shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, certified and postage prepaid, return receipt requested, and on the next business day if sent via nationally recognized overnight courier.

Lake Forest: City of Lake Forest
100 Civic Center Drive
Lake Forest, CA 92630
ATTN: City Clerk

Laguna Hills: City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653
ATTN: City Clerk

13. Interpretation: Venue.

13.1 Interpretation. The headings used herein are for reference only. The terms of the MOU are set out in the text under the headings. This MOU shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

13.2 Venue. This MOU is made in Orange County, California. The venue for any legal action in state court filed by any Party to this MOU for the purpose of interpreting or enforcing any provision of this MOU shall be in the Superior Court of California, County of Placer. The venue for any legal action in federal court filed by any Party to this MOU for the purpose of interpreting or enforcing any provision of this MOU lying within the jurisdiction of the federal courts shall be the Central District of California.

14. Third-Party Beneficiaries. Nothing contained in this MOU shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

15. Severability. If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

16. Amendment of MOU. This MOU may be amended at any time by mutual agreement of the Parties. Any amendment shall be in writing and signed by all Parties.

17. Entirety of Contract. This MOU constitutes the entire agreement between the Parties relating to the subject of this MOU and supersedes all previous agreements, promises,

representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this MOU was executed by the parties hereto as of the date first above written.

CITY OF LAGUNA HILLS

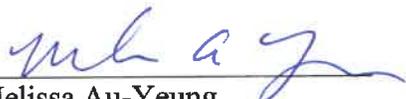
CITY OF LAKE FOREST

By: 
Kenneth H. Rosenfield
Interim City Manager

By: 
Debra Rose
City Manager

ATTEST:

ATTEST:

By: 
Melissa Au-Yeung
Deputy City Manager/City Clerk

By: 
Lisa Berglund
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Gregory E. Simonian
City Attorney


By: _____
Matthew Richardson
City Attorney