

## **PUBLIC HEARING NOTICE**

### **RESOLUTION NO. 2018-12**

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DECLARING ITS INTENTION TO CONDUCT A PUBLIC HEARING TO CONSIDER GRANTING A NON-EXCLUSIVE SOLID WASTE FRANCHISE**

**WHEREAS**, the City Council of the City of Newport Beach ("City") finds and determines that the collection of municipal solid waste, recyclable materials, food scraps, green waste and construction and demolition debris (collectively, "Commercial Solid Waste") generated within the City is a vital public service;

**WHEREAS**, the City Council further finds and determines that the collection, transportation, storage, transfer, processing and disposal of Commercial Solid Waste ("Commercial Solid Waste Handling Services") is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

**WHEREAS**, the non-exclusive franchises for the use of public streets to provide Commercial Solid Waste Handling Services promotes the public health, safety and welfare by promoting permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

**WHEREAS**, pursuant to Article XIII of the City Charter and Public Resources Code Sections 40059, 49300, and 49500 through 49523, the City is authorized to enter into non-exclusive franchise agreements for solid waste handling services with private solid waste haulers;

**WHEREAS**, pursuant to City Charter Section 1301, the City Council, prior to granting any franchise, shall pass a resolution declaring its intention to grant same, stating the name of the proposed grantee(s), the character of the franchise, and the terms and conditions upon which it is proposed to be granted; and

**WHEREAS**, such resolution shall fix and set forth the day, hour and place when and where any persons having any interest therein or any objection to the granting thereof may appear before the City Council and be heard thereon.

**NOW, THEREFORE**, be it resolved by the City Council of the City of Newport Beach that:

**Section 1:** The City Council hereby declares its intention to grant a non-exclusive franchise, subject to the following general terms and conditions ("Non-exclusive Franchise"):

- a. **Effective date.** May 11, 2018.

b. **Franchise fees.** Sixteen percent (16%) of gross monthly receipts. A portion of the franchise fee, five and half percent (5.5%), shall be earmarked for the purposes of indemnifying and holding the City harmless from environmental liability associated with the franchisee's operations in the City. This portion of the franchise fee shall be paid into the City's Environmental Liability Fund.

c. **Term.** May 11, 2018 to November 8, 2024.

d. **Rates.** The City shall not set franchisee's bin rates.

e. **Indemnification.** Franchisee shall indemnify and hold City harmless from penalties and damages for failure to meet state recycling requirements with respect to the portion of the Commercial Solid Waste stream collected by franchisee.

f. **Diversion requirements.** Franchisee shall divert a minimum of fifty-five percent (55%) of all municipal solid waste, recyclable materials, food scraps and green waste collected by franchisee. Franchisee shall divert a minimum of sixty-five percent (65%) of all construction and demolition debris collected by franchisee.

g. **Disposal requirements.** Franchisee shall dispose of Commercial Solid Waste, not otherwise diverted, in Orange County landfills pursuant to the City's waste disposal agreement with Orange County. City maintains the right to designate disposal facilities to be used by franchisee.

h. **Billing.** Franchisee shall be responsible for all billing and collection for its accounts.

i. **Termination.** Franchise shall not be revoked unless there is default under the agreement, ordinance, or applicable law.

j. **Application requirements.** Prior to obtaining a non-exclusive solid waste franchise, franchisee shall designate the specific Commercial Solid Waste Handling Services for which it desires to apply and shall demonstrate competence in and compliance with the City's insurance, equipment, and diversion requirements with respect to those Commercial Solid Waste Handling Services.

k. **Public education.** Franchisee shall meet City's requirements to implement recycling, diversion and source reduction public education activities.

l. **Recycling/diversion programs.** Franchisee shall implement and provide recycling and diversion programs for all customers subject to California State Assembly Bills 939, 341, and 1826, and the California Green Building Standards Code.

m. **Hauler representative.** Franchisee shall designate a representative to assist in implementing State-imposed recycling and diversion programs.

n. **Compliance.** Franchisee shall comply with all State, Federal laws and regulations, terms and conditions of the franchise agreement, City Charter and the Newport Beach Municipal Code.

**Section 2:** The City proposes to grant the Non-exclusive Franchise to the following entity ("Proposed Grantee"), which is presently licensed and permitted to conduct business in the City:

- a. Al's Engineering, Inc.

**Section 3:** The City Council shall conduct a public hearing on March 27, 2018 at 7:00 p.m., or as soon thereafter as is practical, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to consider granting the Proposed Grantee a Non-exclusive Franchise. Persons who have an interest in or objection to the granting of a Non-exclusive Franchise to the Proposed Grantee may appear before the City Council and be heard at that date and time.

**Section 4:** The City Council of the City of Newport Beach finds that this resolution is categorically exempt from the California Environmental Quality Act ("CEQA") under California Code of Regulations Section 15301 and 15308, which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Use of this CEQA exemption is appropriate because the resolution does not change nor expand existing solid waste operations and facilities within the City. This resolution is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, *The California Solid Waste Management Act* as well as the objectives of the City's Source Reduction and Recycling Element.

**Section 5:** The recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

**Section 6:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**Section 7:** Pursuant to City Charter Section 1301, this resolution shall be published in the City's official newspaper within fifteen (15) days of its adoption and at least ten (10) days prior to March 27, 2018.

**ADOPTED** this 13<sup>th</sup> day of March, 2018.

/s/ Marshall "Duffy" Duffield, Mayor

**ATTEST:**

/s/ Leilani I. Brown, City Clerk

**APPROVED AS TO FORM:**

CITY ATTORNEY'S OFFICE

/s/ Aaron C. Harp

City Attorney