

ATTACHMENT A

RESOLUTION NO. 2020-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DECLARING ITS INTENTION TO CONDUCT A PUBLIC HEARING TO CONSIDER GRANTING NON-EXCLUSIVE COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING FRANCHISES

WHEREAS, the City Council of the City of Newport Beach ("City") finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris, and all other materials that can be diverted from landfill disposal (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, and disposal of municipal solid waste and the collection, transportation, processing, and diversion of processable municipal solid waste and divertible materials ("Commercial Franchise 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 Franchise Services promotes the public health, safety and welfare by providing 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, in 2017, the City Council adopted a model non-exclusive commercial solid waste franchise agreement for private solid waste haulers and, thereafter, entered into franchise agreements with a number of commercial solid waste franchise haulers ("2017 Franchise"), effective through November 8, 2024;

WHEREAS, although the 2017 Franchise does not expire until November 8, 2024, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with Assembly Bill 1826 and Assembly Bill 341 ("2020 Franchise"), that expires in the year 2027;

WHEREAS, the City has since received applications from 2017 Franchise holders and new applicants that wish to perform work under the 2020 Franchise;

WHEREAS, pursuant to Article XIII of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

WHEREAS, pursuant to City Charter Section 1301 (Granting of Franchise), 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 non-exclusive franchises, subject to the following general terms and conditions ("Non-exclusive Franchise"):

- a. Effective date. October 8, 2020;
- b. Franchise fees. Sixteen percent (16%) of gross monthly receipts. Five and one-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. One-half percent (0.5%) shall be attributable to the maintenance and implementation of the City's Source Reduction and Recycling Element;
- c. Term. October 8, 2020 to October 7, 2027;
- d. Rates. The City shall not set franchisees' bin rates;
- e. Indemnification. Franchisees 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 franchisees;

f. Diversion requirements. Franchisees shall divert a minimum of fifty-five percent (55%), subject to increase as required by state law, of all processable municipal solid waste, recyclable materials, food scraps and green waste collected by franchisee. Franchisees shall divert a minimum of sixty-five percent (65%), subject to increase as required by state law, of all construction and demolition debris collected by franchisees;

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

h. Billing. Franchisees shall be responsible for all billing and collection for its accounts;

i. Termination. Franchise shall not be revoked unless franchisee has defaulted in the performance of any obligation of the 2020 Franchise, and the Franchise may be terminated pursuant to Newport Beach Municipal Code Section 12.63.140;

j. Application requirements. Prior to obtaining the 2020 Franchise, franchisees shall designate the specific Commercial Franchise 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 Franchise Services;

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

l. Recycling/diversion programs. Franchisees 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, codified in the California Code of Regulations Title 24, Part 11, ("CALGreen");

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

n. Compliance. Franchisees shall comply with all state, federal laws and regulations, terms and conditions of the franchise agreement, the City Charter and the Newport Beach Municipal Code.

Section 2: The City intends to grant the 2020 Franchise to the following entities (collectively, "Proposed Grantees"), which currently hold a 2017 Franchise and are presently licensed and permitted to conduct business in the City:

- a. Arakelian Enterprises, Inc. dba Athens Services;
- b. CR&R Incorporated;
- c. Direct Disposal;
- d. Haul-Away Rubbish Service Co.;
- e. Interior Removal Specialist, Inc.;
- f. JD Demolition and Grading, Inc.;
- g. Rainbow Disposal Co., Inc.;
- h. Tight Quarters, Inc.
- i. Universal Waste Systems, Inc.
- j. Ware Disposal, Inc.; and
- k. Waste Management Collection and Recycling, Inc. dba Waste Management of Orange County.

Should any of the above entities be granted a 2020 Franchise, and accept such 2020 Franchise, the respective entity's 2017 Franchise shall be abandoned at such time the 2020 Franchise is granted pursuant to City Charter Section 1303.

Section 3: The City intends to grant the 2020 Franchise to the following entities (collectively, "Proposed Grantees"), which do not currently hold a franchise with the City:

- a. American Wrecking Inc.;
- b. Dallaco, Inc. dba Pacific Coast Environmental;
- c. Kevin Ray Demolition Inc.; and
- d. L.A.L. Services, Inc.

Section 4: The City Council shall conduct a public hearing on August 25, 2020 at 4:00 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 Grantees the 2020 Franchise. Persons who have an interest in or objection to the granting of the 2020 Franchise to the Proposed Grantees may appear before the City Council and be heard at that date and time.

Section 5: The City Council of the City of Newport Beach finds the adoption of this resolution is categorically exempt from the California Environmental Quality Act ("CEQA") under Sections 15301 and 15308 of the California Code of Regulations set forth in Title 14, Division 6, Chapter 3 which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Application of Sections 15301 and 15308 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*, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

Section 6: The recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 7: 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 8: 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 August 25, 2020.

ADOPTED this 28th day of July, 2020.

Will O'Neill
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney