

RESOLUTION NO. 2011 - 88

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AWARDING A FRANCHISE AGREEMENT FOR EXCLUSIVE TEMPORARY DEBRIS BOX AND ROLL-OFF COLLECTION SERVICES TO ROHNERT PARK DISPOSAL, INC.

WHEREAS, under the Integrated Waste Management Act (Act), codified at Public Resources Code 40000 *et seq.*, the City of Rohnert Park has the authority to award a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license, or permit for solid waste collection services pursuant to Public Resources Code section 40059;

WHEREAS, the Act at section 49501 defines "exclusive solid waste handling services" to include circumstances when one or more solid waste enterprises has the exclusive right to provide solid waste handling services of any class or type within all or any part of the territory of the local agency;

WHEREAS, Rohnert Park Municipal Code sections 8.12.200 and 8.12.210 requires that waste collection services be provided by contract, excluding any other haulers from providing waste hauling services within city limits during the contract period, and thereby requiring all waste collection be provided pursuant to an exclusive right;

WHEREAS, pursuant to Resolution No. 2001-234 the City Council awarded exclusive debris box service franchises to Empire Waste Management, Industrial Carting, and Rohnert Park Disposal, Inc.,

WHEREAS, the agreements entered into pursuant to Resolution No. 2001-234 expressly provide that they are "exclusive agreements" and that the Council's intent in approving said resolution was to award "exclusive debris box franchises;"

WHEREAS, Empire Waste Management ceased doing business in Rohnert Park;

WHEREAS, the existing exclusive franchise agreements for temporary debris box services with Industrial Carting and Rohnert Park Disposal, Inc. have been extended several times and expire on October 31, 2011;

WHEREAS, the Act at section 49520 establishes two types of continuation rights. For a solid waste enterprise with an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of the contract or five years, whichever is less. For a solid waste enterprise with a nonexclusive right, they may continue to provide those services for up to five years after mailed notification that the agency will switch to exclusive solid waste handling services.

WHEREAS, applying Section 49520 here, each existing hauler, Industrial Carting and Rohnert Park Disposal, Inc., has an expressly exclusive franchise agreement with the City (as is required by RPMC sections 8.12.200 and 8.12. 210) allowing them to operate to the exclusion of all other haulers, therefore their continuation rights are limited to the unexpired term of the contract because this timeframe is less than five years;

WHEREAS, limiting the services of Industrial Carting and Rohnert Park Disposal, Inc. to the unexpired term of their contract is consistent with the purposes of the Act because these

companies have known the dates on which their contracts would terminate and have been able to plan for capital investments, financing and amortization;

WHEREAS, on June 28, 2011, the City Council directed the City Manager to solicit requests for proposals (RFP) for both single-provider and multiple-provider temporary debris box services;

WHEREAS, applications were timely received for single-provider temporary debris box and roll-off collection services from M&M Services, Inc. (*dba* Pacific Sanitation) and Rohnert Park Disposal, Inc.;

WHEREAS, applications were timely received for multiple-provider temporary debris box and roll-off collection services from Industrial Carting, M&M Services, Inc., and Ratto Group of Companies, Inc.;

WHEREAS, on August 24, 2011, the Waste and Recycling Committee recommended that the City Council award an exclusive single-provider franchise to Rohnert Park Disposal, Inc. after considering the RFP, its specifications, and Agreement and evaluating all applications, along with a staff report and a report from the City's RFP consultant, R3 Consulting, Inc.;

WHEREAS, the City Council considered the RFP, its specifications, and Agreement and evaluated all applications at its regular meeting of September 13, 2011 along with public testimony, the staff report, R3 Consulting's report, and the report and recommendation from the Waste & Recycling Committee;

WHEREAS, the City Council adopted Resolution 2011-87 rejecting certain applications as non-responsive and accepting other applications as responsive; and

WHEREAS, the City Council wishes to award an exclusive franchise agreement for temporary debris box and roll-off collection services that benefits the City and its residents.

NOW, THEREFORE, BE IT RESOLVED the above-referenced recitals are true and correct and material to this Resolution.

BE IT FURTHER RESOLVED, that in making its findings the City Council relied upon and hereby incorporates by reference all of the staff reports, consultants reports, RFP materials, including the Applications, specifications and Agreements, the Notice of Exemption, Resolution No. 2011-87 and other documentation presented to the City Council in their meeting.

BE IT FURTHER RESOLVED, that the City Council hereby finds that Rohnert Park Disposal, Inc. is qualified to provide the service and their proposal to be the single provider of temporary debris box collection services meets all requirements of the RFP process, for the reasons set forth in the staff report and its exhibits which are incorporated by this reference.

BE IT FURTHER RESOLVED, that pursuant to its police powers and the authority granted in Public Resources Code sections 40059 and 49300, a franchise agreement for exclusive temporary debris box and roll-off collection services is hereby awarded to Rohnert Park Disposal, Inc. upon the terms and conditions set forth in the RFP, specifications, Application and Agreement, attached to the staff report, provided that this award shall be conditioned upon Rohnert Park Disposal, Inc.'s written agreement to indemnify, defend and hold harmless the City against claims arising out of this award, the language of such written agreement must be approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute an agreement with Rohnert Park Disposal, Inc. in substantially similar form to the Agreement attached to the staff report for and on behalf of the City of Rohnert Park, provided that this Agreement be modified to include the above-referenced defense and indemnification clause.

BE IT FURTHER RESOLVED that the City Council hereby finds that the activity taken by the City Council is exempt from the California Environmental Quality Act (CEQA) for the reasons set forth in the staff report, and directs City staff to file a Notice of Exemption in substantially similar form to that attached to the staff report.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park this 13th day of September, 2011.

CITY OF ROHNERT PARK

ATTEST:


City Clerk



AHANOTU: <u>AYE</u>	CALLINAN: <u>ABSENT</u>	MACKENZIE: <u>AYE</u>	STAFFORD: <u>AYE</u>	BELFORTE: <u>AYE</u>
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)				