

## **RESOLUTION 18-046**

### **A RESOLUTION OF THE COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AUTHORIZING AND DIRECTING THE ISSUANCE OF SUBPOENAS COMPELLING THE PRODUCTION OF DOCUMENTS AND OTHER INFORMATION FROM USA WASTE OF CALIFORNIA, INC. AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME**

**WHEREAS**, Government Code §§ 37104 *et seq.* authorize the City Council to issue legislative subpoenas "requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it"; and

**WHEREAS**, the City issued a "Request for Proposals for Integrated Solid Waste Management Services (RFP P171-19)" on July 20, 2017 ("RFP"); and

**WHEREAS**, on July 18, 2017, the City issued a notice that the City of Carson would receive proposals in response of the City's RFP; and

**WHEREAS**, the City received multiple proposals from competing waste haulers in response to the RFP; and

**WHEREAS**, on December 5, 2017, the City Council awarded an exclusive franchise to Waste Resources, Inc. ("WRI") to provide integrated solid waste management services to the City; and

**WHEREAS**, the City and USA Waste of California, Inc. ("Waste") entered into a (1) Waste Management Commercial-Industrial Franchise Agreement, and (2) Waste Management Residential Franchise Agreement (collectively, the "Agreements"). The Agreements and their terms were reviewed, agreed upon, and executed by Waste's Vice President on July 17, 2003; and

**WHEREAS**, in accordance with the July 15, 2003 Franchise Agreement between the City and Waste for Integrated Residential Waste Management Services, Article 12, Section 12.8, Waste must cooperate with the City in the event of a "Transition to the Next Company":

If the transition of services to another company occurs by reason of the expiration of the term, default, termination, or otherwise, [Waste] shall cooperate with the City and any subsequent solid waste enterprise to assist in the orderly transition that will include, but not limited to, [Waste] providing route lists and billing information

**WHEREAS**, in accordance with the July 15, 2003 Franchise Agreement between the City and Waste for Integrated Residential Waste Management Services, Article 12, Section 12.16, Waste must cooperate with the City in the event of a "Compliance with Municipal Code":

[Waste] must comply with all applicable provisions of the Municipal Code of the City, and with all amendments to those provisions during the term of this Agreement

**WHEREAS**, in accordance with the July 15, 2003 Franchise Agreement between the City and Waste for Integrated Commercial and Industrial Waste Management Services, Article 12, Section 12.15, Waste must cooperate with the City in the event of a “Compliance with Municipal Code”:

[Waste] must comply with all applicable provisions of the Municipal Code of the City, and with all amendments to those provisions during the term of this Agreement

**WHEREAS**, Carson Municipal Code § 5229.2 sets forth “Seamless Service Requirements” for any change in control of the City’s collection of solid waste and recyclable materials; and

**WHEREAS**, on March 26, 2018, the City facilitated a meeting (the “Meeting”) between City Staff, WRI, and Waste to transfer documents, records, and information required for the pending change in control from Waste to WRI for collection of commercial and residential solid waste and recyclable materials in the City; and

**WHEREAS**, at the Meeting, and in violation of the Agreements, Waste refused to provide documents, records, and information required for the pending change in control from Waste to WRI for collection of commercial and residential solid waste and recyclable materials in the City; and

**WHEREAS**, the issuance of a legislative subpoena pursuant to Government Code § 37104 is proper where (i) it is authorized by ordinance, resolution, or similar enactment, (ii) it serves a valid legislative purpose, and (iii) the witness or material subpoenaed is pertinent to the subject matter pending before the City ; and

**WHEREAS**, pursuant to Government Code § 37105, legislative subpoenas must be signed by the Mayor and attested to by the City Clerk; and

**WHEREAS**, the materials subpoenaed under the authority of this Resolution are pertinent to facilitate the seamless transition of franchisees because the documents, records, and other information being subpoenaed from Waste to WRI for collection of commercial and residential solid waste and recyclable materials in the City are necessary to enable WRI, the new franchisee, to commence services to the City.

**NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES HEREBY:**

**SECTION 1.** Find and determine that the foregoing recitals are true and correct and adopt the recitals as findings in support of the actions taken herein.

**SECTION 2.** Issue legislative subpoenas to USA Waste of California, Inc. and their officers, agents and employees compelling the subpoenaed parties to produce documents and evidence to aid the City Council in its ongoing investigation and enforcement of the Agreement to facilitate the pending change in control from USA Waste of California, Inc. to Waste Resources, Inc. for collection of commercial and residential solid waste and recyclable materials in the City.

**SECTION 3.** Order that the legislative subpoenas issued by this Resolution shall be in a form provided by the City Attorney that is substantially similar to the proposed form that is

attached to this Resolution as Exhibit A. The legislative subpoenas shall be signed by the Mayor and certified by the City Clerk. A copy of this Resolution shall be attached to the subpoenas and shall be incorporated by reference into the subpoenas. The subpoenas shall be served upon the subpoenaed parties in the same manner as subpoenas are served in a civil action.

**SECTION 4.** Declare that failure to comply with the subpoenas issued pursuant to this Resolution shall subject the subpoenaed parties to the remedies set forth in Government Code §§ 37104 *et seq.* or such other remedies as is provided by law.

**SECTION 5.** Authorize the Mayor, City Manager, City Clerk and the City Attorney to take all actions necessary to issue, serve and enforce subpoenas authorized pursuant to this Resolution. Said authority includes the issuance of further subpoenas to the subpoenaed parties and their officers, employees and agents in furtherance of obtaining documents, testimony and/or information that will assist the City, its staff, and attorneys in their efforts to investigate and enforce the Agreements. Should a witness fail to produce the subpoenaed documents and/or evidence, the Mayor is authorized to report the witnesses' failure to abide by the subpoena to the Superior Court and seek any and all lawful remedies including a ruling holding the subpoenaed witness in contempt.

**SECTION 6.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Carson, California, at a regular meeting held on the 3<sup>rd</sup> day of APRIL 2018.

ATTEST:

\_\_\_\_\_  
Mayor Albert Robles

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City Clerk Donesia Gause

APPROVED AS TO FORM:

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City Attorney Sunny K. Soltani