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INTRODUCED BY COUNCILMEMBER _____

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City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE GRANTING A FRANCHISE FOR RESIDENTIAL RECYCLING COLLECTION SERVICES TO CALIFORNIA WASTE SOLUTIONS, INC., CONTINGENT ON ITS EXECUTION OF A RESIDENTIAL RECYCLING COLLECTION SERVICES AND NON-EXCLUSIVE COMMERCIAL RECYCLING COLLECTION SERVICES CONTRACT WITH THE CITY, AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE SUCH CONTRACT

WHEREAS; the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and

WHEREAS; the State of California, through enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et. seq.) also recognizes the important health and safety consideration to long-term planning for local government's adequate Disposal needs. The California Integrated Waste Management Act of 1989 declares that the responsibility for management of Solid Waste is a shared responsibility between the State and local governments. The State requires local governments to make adequate provision for at least fifteen (15) years of Garbage Disposal capacity to preserve the health, safety and well-being of the public. The California Integrated Waste Management Act of 1989 and Oakland City Charter Article X and Oakland Municipal Code Chapter 8.28 also authorize local governments to enter into exclusive franchise contracts to provide Garbage handling services for the health, safety and wellbeing of its citizens (California Public Resources Code Section 40059); and

WHEREAS; pursuant to California Public Resources Code Section 40059(a) as well as Oakland City Charter Article X and Oakland Municipal Code Chapter 8.28, the City has determined that the public health, safety, and well-being require that an exclusive right be awarded to a qualified contractor to provide for the Collection of Residential and Commercial Recyclable Materials and , except for Collection of materials excluded by the City's Municipal Code and the to-be-executed Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract, and other services related to meeting the Act's fifty (50) percent Diversion goal and other requirements of the Act; and

WHEREAS; in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion rate goal of seventy five (75) percent by 2010; and

WHEREAS, in 2002 the City Council of the City of Oakland passed Resolution No. 77500 C.M.S., to adopt a goal of 75% reduction of waste going to landfills by 2010 in support of the Measure D goal, and the implementation date established by the Alameda County Source Reduction and Recycling Board; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. which adopted a Zero Waste Goal by 2020; and

WHEREAS, in 2006 the City Council of the City of Oakland passed Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and

WHEREAS; it is the intent of the City to grant an exclusive franchise to California Waste Solutions (the "Franchise"), contingent on its execution of a Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract with the City to provide for the Collection and Processing of Recyclable Materials as defined in Article 1 of this to-be-executed Contract; and

WHEREAS, the City has simultaneously herewith granted an exclusive franchise, subject to execution of an associated contract, for the provision of Mixed Materials, Organics, and Bulky Goods Collection Services and authorized the execution an exclusive contract for Landfill Disposal services associated with the Residential Recycling and Mixed Materials and Organics Collection Contracts; and

WHEREAS; City further declares its intent to regulate and establish the maximum rates Franchisee will charge Customers for the Collection, transportation, and Processing of Recyclable Materials, both of which rates are incorporated into the maximum rates for Mixed Materials and Organics Services

WHEREAS; the City Council has determined through a competitive procurement process for Residential and Commercial Recycling Collection Services and that Franchisee, by demonstrated experience, reputation and capacity, is qualified to provide for the Collection of Residential and Commercial Recyclable Materials within the corporate limits of the City, the transportation of such material to appropriate places for Processing, and Recycling and the City Council desires that Franchisee be engaged to perform such services on the basis set forth in this to-be-executed Contract; and

WHEREAS; Franchisee, through its proposal to the City, has proposed and represented that it has the ability and capacity to provide for the Collection of Recyclable Materials within the corporate limits of the City; the transportation of such material to appropriate places for Processing and Recycling; and

WHEREAS, based on Franchisee's proposal to the City and subsequent negotiations with Franchisee, City desires to grant an exclusive franchise to Franchisee to provide Residential and Commercial Recycling Services as specified in the City's Request for Proposals, in accordance with the terms and conditions of the to-be-executed Contract; and

WHEREAS, in addition, Franchisee has agreed, pursuant to the RFP, to provide a commercial recycling service to all businesses on a non-exclusive basis during the term of and at the pricing specified in the Contract; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base (OARB) Redevelopment Plan Environmental Impact Report and Army Base Reuse Plan; and

WHEREAS, on June 12, 2012, the City Council adopted Resolution No. 83930 C.M.S., approving the amended Oakland Army Base (OARB) Reuse Plan, including adoption of the 2012 OARB Initial Study/Addendum, making related CEQA findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program; and

WHEREAS, the City Council has independently reviewed, considered and confirmed the environmental analysis prepared by CWS, attached to the July 21, 2014 City Council Agenda Report (Attachment ___), incorporated herein by the reference as if fully set forth herein; and

WHEREAS, the City Council can rely upon the previously certified 2002 Army Base EIR and the 2012 Army Base Addendum for this action and no further environmental review is required, as demonstrated in the July 21, 2014 City Council Agenda Report and attachments; and

WHEREAS, as a further, separate and independent basis, the City Council also finds and determines that the requirements of CEQA have been satisfied, and this action on the part of the City Council is also exempt from CEQA pursuant, CEQA Guidelines section 15301, CEQA Guidelines section 15307, CEQA Guidelines section 15308, CEQA Guidelines section 15273, CEQA Guidelines section 15183, and/or CEQA Guidelines section 15061 (b) (3); and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying environmental analysis dated July 16, 2014 attached to the July 21, 2014 City Administrator report to the City Council (Attachment A), incorporated herein by the reference as if fully set forth herein.

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council has independently reviewed and considered this environmental determination and finds and determines that the action complies with the CEQA; readopts the 2012 Army Base Addendum Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (as revised on July 26, 2013); and directs the City's Environmental Review Officer to file a Notice of Determination/Exemption.

Section 2. The Council does hereby find and declare that the above recitals are true and correct and that the award of a franchise agreement for Residential and Commercial Recycling Collection Services to Franchisee is for a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefits of the inhabitants of the City. The City hereby grants ~~Waste Management of Alameda County County~~ California Waste Solutions, Inc., contingent on its execution of a Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract, an exclusive franchise for the provision of Recycling Collection Services, as identified in the Request for Proposals for Zero Waste Services, originally released on September 5, 2012. The term of the franchise from July 1, 2015 to June 30, ~~2025~~2030 with the potential extension through June 30, 2035 as specified in the Contract.

Section 3. Based on the form of the Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract circulated with the Requests for Proposals, City and Franchisee have reached general, but not complete agreement on the Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract, the current form of which is attached hereto as Exhibit A. The City Administrator is authorized, subject to the review and approval of the City Attorney, to further negotiate and execute the a Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract on behalf of the City, consistent with this Ordinance and with the general form of the Contract attached hereto as Exhibit A.

Section 4. The City Administrator is authorized to conduct all negotiations and execute all documents including but not limited to amendments, modifications, notices, and related actions (including rate adjustments as specified in the Contract) which may be necessary and consistent with the basic intent and purpose of this Ordinance and the Residential Recycling Collection Services and Non-Exclusive Commercial Recycling Collection Services Contract, except for those rate adjustments that the Oakland Municipal Code requires to be approved by Council.

Section 5. In consideration of the special franchise right granted by the City to Contractor to transact business, provide services, use the public street and/or other public places, and to operate a public utility for Residential and Commercial Recycling Collection Services. Contractor shall remit a monthly franchise fee payment to the City. July 1, 2015 through June 30, 2030, Contractor shall pay the City a monthly franchise fee of Three Million Dollars (\$3,000,000) per annum, subject to annual adjustment on July 1 each year by the as specified in the Contract.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____