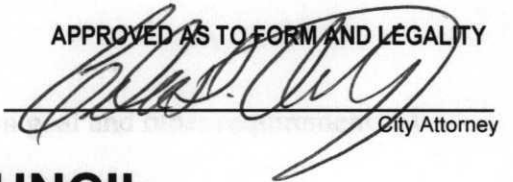


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APPROVED AS TO FORM AND LEGALITY



City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE No. 13258 - C.M.S.

ORDINANCE GRANTING A FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO CALIFORNIA WASTE SOLUTIONS, INC., CONTINGENT ON ITS EXECUTION OF A MIXED MATERIALS AND ORGANICS COLLECTION SERVICES CONTRACT WITH THE CITY AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE SUCH A CONTRACT, REGULATING MAXIMUM SERVICE RATES FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES, RESIDENTIAL RECYCLING SERVICES, AND DISPOSAL SERVICES, AND SETTING FORTH PROCEDURES TO ALLOW FOR ADJUSTMENT OF MAXIMUM SERVICE RATES

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 Mixed Waste and Organic Materials, except for Collection of materials excluded by the City's Municipal Code and the to-be-executed Mixed Materials and Organics Collection Services Contract ("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, Inc. (the "Franchisee"), contingent on its the execution of a Mixed Materials and Organics Collection Services Contract with the City, for the Collection and Processing of certain subsets of Solid Waste defined as Mixed Materials, Garbage, Organic Materials and Bulky Goods in the 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 Recycling Services and authorized the execution of an exclusive contract for Landfill Disposal Services associated with the Recycling Collection Services Contract and Mixed Materials and Organics Collection Contract; and

WHEREAS, the City further declares its intent to regulate the maximum rates Franchisee will charge Customers for the Collection, transportation, Processing, recycling, composting, and/or Disposal of Mixed Materials, Garbage, Organic Materials, and Bulky Goods, and for Recycling Services and Disposal Services, both of which rates are incorporated into the maximum rates for Mixed Materials and Organics Services; and

WHEREAS, the City Council has determined through a competitive procurement process for Mixed Materials and Organics (MM&O) Collection Services that Franchisee, by demonstrated experience, reputation and capacity, is qualified to provide for the Collection of Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of the City, the transportation of such material to appropriate places for Processing, Recycling, Composting and/or Disposal; and City Council desires that Franchisee be engaged to perform such services on the basis set forth in the 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 Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of the City; the transportation of such material to appropriate places for Processing, Recycling, Composting and/or Disposal; and the Processing of materials; 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 the Mixed Materials and Organics Collection 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, East Bay Municipal Utility District (EBMUD), as a Lead Agency under CEQA, previously prepared an Environmental Impact Report (EIR) that evaluated the environmental impacts of its Main Wastewater Treatment Plant Land Use Master Plan, including impacts similar to those that would be created by the proposed interim transfer facility; and

WHEREAS, EBMUD certified the EIR and approved the Project on June 28, 2011, as detailed in the June 28, 2011 EBMUD Staff Report and Resolution No. 33834-11; and

WHEREAS, on February 5, 2013, the City Council adopted Resolution No. 84205 C.M.S., which, in relevant part, (1) approved the Third Amendment to the City's Non-Disposal Facility Element (NDFE) which describes and identifies solid waste, recycling and processing facilities located in the City of Oakland; and (2) adopted as its own independent CEQA-related findings and conclusions, the CEQA-related findings adopted by EBMUD, including rejection of alternatives as being infeasible, the Statement of Overriding Considerations (finding that the benefits of the Project outweigh its environmental impacts), and the Mitigation Monitoring and Reporting Program; 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 July 21, 2014 environmental analysis prepared by CWS, attached to the July 21, 2014 City Council Agenda Report (Attachment C), incorporated herein by the reference as if fully set forth herein; and

WHEREAS, the City Council can rely upon the previously certified 2011 EBMUD EIR, the 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 21, 2014 attached to the July 21, 2014 City Administrator report to the City Council (Attachment C), incorporated herein by the reference as if fully set forth herein;

NOW, THEREFORE, 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 2011 EBMUD Mitigation Monitoring and Reporting Program and 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 for Mixed Materials and Organics Collection to Franchisee is for a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefit of the inhabitants of the city. The City hereby grants California Waste Solutions Inc., contingent on its execution of the Mixed Materials and Organics Collection Services Contract, an exclusive franchise for the provision of Mixed Materials and Organics 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 with the potential extension through June 30, 2035 as specified in the Contract.

Section 3. Based on the form of the Mixed Materials and Organics Services Contract circulated with the Requests for Proposals, City and Franchisee have reached general, but not complete, agreement on the Mixed Materials and Organics Collections Services Contract, the current form of which is attached to the City Administrator Revised Agenda Report dated July 28, 2014 to the City Council. The City Administrator is authorized, subject to the review and approval of the City Attorney, to further negotiate and execute a Mixed Materials and Organics Collections Service Contract on behalf of the City, consistent with this Ordinance and with the general form of the Contract attached to the City Administrator Revised Agenda Report dated July 28, 2014 to the City Council.

Section 4. Franchisee's proposal to provide collection services for Mixed Materials and Organics indicates that it must obtain regulatory approval for and construct one or more new facilities for processing and transfer of Mixed Materials and Organics and must enter into final agreements with entities not party to the Contract for processing and transfer of Mixed Materials and Organics. Franchisee has not received final regulatory approval for or completed construction of those facilities and has not entered into final agreements with the non-party entities at the time that this Ordinance was adopted. In addition, Franchisee's ability to procure the necessary vehicles and containers within the time frames required under the Contract is uncertain. The City Administrator shall ensure that the final Contract contains provisions that ensure (a) that Franchisee shall obtain all necessary regulatory approvals for and shall construct the necessary new facilities, (b) that Franchisee enters into final agreements with all non-party entities necessary for transfer and processing of Mixed Materials and Organics, (c) that Franchisee provides adequate assurances that it can procure the necessary vehicles and containers within the timeframes necessary to ensure satisfactory performance on July 1, 2015; and (d) that

neither the City nor City rate payers are at risk in the event that Franchisee fails to obtain necessary regulatory approvals for or to construct the new facilities or that Franchisee fails to enter into agreements with non-party entities for processing and transfer of Mixed Materials and Organics.

Section 5. The Council does hereby authorize the Franchisee to charge customers, beginning July 1, 2015, the maximum rates set forth as 3C – Rate Tables REV ISED attached to the City Administrator Revised Agenda Report dated July 28, 2014 to the City Council for the various Mixed Materials and Organics Collection Services outlined in the MM&O Contract attached to the City Administrator Revised Agenda Report dated July 28, 2014 to the City Council and as specified and further described in the Contract.

Section 6. 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 Mixed Materials and Organics Collection Services Contract, except for those rate adjustments that the Oakland Municipal Code requires be approved by the City Council.

Section 7. 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 Mixed Materials and Organics collection services, Contractor shall remit a monthly franchise fee payment to the City, as specified in the Contract. From July 1, 2015 through June 30, 2025, Contractor shall pay the City a monthly franchise fee of Twenty Five Million Thirty Four Thousand Dollars (\$25,034,000) per annum, subject to annual adjustment on July 1 each year, as specified in the Contract.

AUG 13 2014

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, ~~CHEN~~, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 7

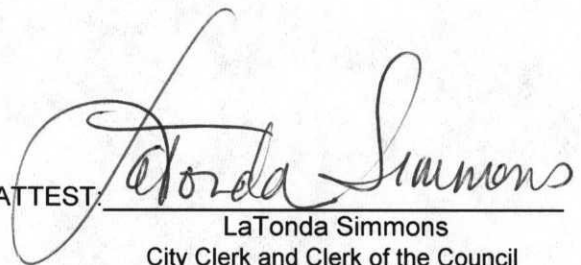
NOES- ~~Galio~~

ABSENT- 0

ABSTENTION- 0

Introduction Date

JUL 30 2014

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

DATE OF ATTESTATION: 8/28/14