
City Attorney

14 DEC -2 PM 3:40

OAKLAND CITY COUNCIL

ORDINANCE No. 13258 C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13253 C.M.S., WHICH GRANTED A FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO CALIFORNIA WASTE SOLUTIONS, INC., TO INSTEAD GRANT THE FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO WASTE MANAGEMENT OF ALAMEDA COUNTY, AND/OR SUCH OTHER AFFILIATE ENTITY APPROVED BY THE CITY ADMINISTRATOR, 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 WHICH MAY REGULATE 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, ON SUCH TERMS AND CONDITIONS AND RATES APPROVED BY THE CITY COUNCIL

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 approved 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 approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and,

WHEREAS, on March 18, 2014, the City Council of the City of Oakland approved Resolution 84898 C.M.S. establishing policies to provide good, family-supporting wages and benefits to all workers who provide recycling services to the City of Oakland, its residents or businesses, through any exclusive franchise agreement; to provide consideration of a local non-combustible biowaste-to-energy facility for handling of source separated organics collected through new organics franchise agreements; and to provide an organics 'third' bin for source-separated organics for all Oakland residents, including those in multifamily buildings, as the minimum preferred default outcome for franchised collection services; and

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13253 C.M.S., granting a franchise for mixed materials and organics collection services to California Waste Solutions, Inc.; and

WHEREAS, the City Council has expressed interest in supporting job training opportunities to Oakland youth through programs provided by Civicorps; and

WHEREAS, it is the intent of the City to grant instead an exclusive franchise to Waste Management of Alameda County 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 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, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is 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 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

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;; and directs the

City's Environmental Review Officer to file a Notice of 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 Waste Management of Alameda County Inc. (WMAC), 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 and with the City's sole option to extend the contract for two additional five (5) year terms through June 30, 2035.

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. The Council does hereby authorize the Franchisee to charge customers, beginning July 1, 2015, the maximum rates set forth in the Rate Tables contained in the City Administrator Agenda Report dated September 26, 2014 to the City Council, or such higher or lower rates as approved by City Council pursuant to request by the Franchisee, for the various Mixed Materials and Organics Collection Services outlined in the MM&O Contract attached to the same Agenda Report and as specified and further described in the Contract.

Section 5. 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 6. In consideration of the special franchise right granted by the City to Franchisee 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, Franchisee shall remit a monthly franchise fee payment to the City, as specified in the Contract. From July 1, 2015 through June 30, 2025, Franchisee 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.

Section 7. The Franchisee shall allow Civicorps to handle commercial organics collection and delivery to EBMUD and develop plans with Civicorps to provide training of interns without impact or displacement of permanent union jobs, through a contract subject to approval by the City Administrator.

Section 8. The Franchisee shall deliver, as determined by agreement through Civicorps, commercial organics to East Bay Municipal Utility District, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator.

Section 9. The Franchisee shall pay ILWU Local 6 recycling sorters \$20.94 per hour in 2019.

Section 10. The Franchisee shall provide ILWU Local 6 workers affordable family health care coverage beginning July 1, 2015.

Section 11. The franchise awarded hereunder shall be contingent on: 1) dismissal with prejudice of litigation in Waste Management of Alameda County, Inc. v. City of Oakland, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland City Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237, and 3) Waste Management not opposing CWS development or improvements to CWS' Gateway Facility, Wood Street Facility, 10th Street Facility, or other facilities in support thereof (collectively the "CWS Facilities") directly or indirectly; and Waste Management not supporting, directly or indirectly, any CEQA challenge regarding the CWS Facilities or the Zero Waste contracts, and 4) payment in an amount to make the City whole (i.e., reimburse the City) for costs of legal, staff and other services it incurred to address the aforementioned lawsuits and referenda. The award authorized hereunder shall be null and void if the lawsuits is not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed, or if Waste Management directly or indirectly opposes CWS Facilities or supports CEQA challenges against CWS Facilities or Zero Waste contracts, or if the City is not reimbursed for its costs as indicated above.

Section 12. The contract shall include source-separated Organic materials collection by the franchisee at all multi-family buildings; and any challenges at multi-family buildings in separating Organics shall first be dealt with through public education and outreach and warnings, but in no event shall green cart services be discontinued.

IN COUNCIL, OAKLAND, CALIFORNIA, SEP 29 2014

PASSED BY THE FOLLOWING VOTE:

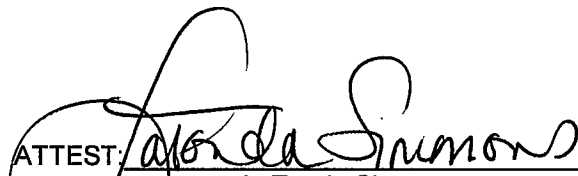
AYES- ~~Brooks~~, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, ~~REID, SCHAAF~~, and PRESIDENT KERNIGHAN - 5

NOES- 0

ABSENT- 0

ABSTENTION- Brooks - 1

Excused- Reid, Schaaf - 2

ATTEST: 

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

DATE OF ATTESTATION: 12-16-14

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Councilmember McElhaney – Motion [September 22, 2014]
2014 SEP 26 AM 11:07

I move that the Council introduce the Mixed Materials and Organics (“MMO”) and Disposal Ordinances noticed on this evening’s agenda with the following changes and clarifications:

1. In the MMO contract –

- Article 3 section 3.01 entitled “Term” is amended to read as follows:

3.01 Term. The term of this Contract shall be for a ten (10) year period beginning July 1, 2015, and terminating on June 30, 2025. City in its sole discretion shall have the option to extend the Contract for up to two (2) additional 5 year periods.

3.01.1 First Extension. On or about May 1, 2022 City in its sole discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intention to do so in writing.

3.02.2 Second Extension. On or about May 1, 2027, CITY in its sole discretion may extend this Contract five (5) years by notifying CONTACTOR of its intention to do so in writing.

- Article 9 – add the following new section 9.07

9.07 Organic Materials and Recycling

In the event the recycling contractor (“RR”) determines that the content of an RR container is contaminated, the RR contractor shall have the right to collect such contaminated material and to charge a contamination rate for the collection of such contaminated material.

- Article 16 entitled CUSTOMER SERVICE is amended to read as follows:

16.02 CONTRACTOR’S Customer Service Center and Telephone and Email Access.

CONTRACTOR shall maintain a Customer Service Center in Alameda County that provides toll-free telephone and email access to residents and businesses of CITY, and is staffed by trained and experienced Customer Service Representatives (CSRs). Such Customer service center shall have responsible

persons in charge during Collection hours, and shall be open 8:00 a.m. to 6:00 p.m. on regularly scheduled Work Day (Monday through Friday) and when SFD or MFD Collection Services are scheduled to be provided on Saturday; and be staffed with a sufficient number of CSRs and equipped with sufficient telephone and email capacity such that: (etc.)

2. In the MMO Ordinance and Disposal Ordinance

- Section 2 is amended to read as follows:

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, Waste Management of Alameda County Inc. (WMAC) 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 is from July 1, 2015 to June 30, 2025 and with the City's sole option, to extend the Contract for two additional five (5) year terms ~~the potential extension~~ through June 30, 2035 ~~as specified in the Contract.~~

- **Section 7** is amended to read as follows:

The Franchisee shall allow Civicorps to handle commercial organics collection and delivery to EBMUD and develop plans with Civicorps to provide training of interns without impact or displacement of permanent union jobs, through a contract subject to approval by the City Administrator.

- **Section 8** is amended to read as follows:

Section 8. The Franchisee shall deliver, as determined by agreement through Civicorps, commercial organics to East Bay Municipal Utility District, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator.

- **Section 11 MMO ordinance and Section 5 Disposal ordinance** are amended to read as follows:

The franchise awarded hereunder shall be contingent on: 1) dismissal with prejudice of litigation in *Waste Management of Alameda County v. City of Oakland*, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237, and 3) Waste Management not opposing CWS development or improvements to CWS' Gateway Facility, Wood Street Facility, 10th Street Facility, or other facilities in support thereof (collectively the "CWS Facilities") directly or indirectly; and, Waste Management not supporting, directly or indirectly, any CEQA challenge regarding the CWS Facilities or the Zero Waste contracts, and 4) payment in an amount to make the City whole (i.e., reimburse the City) for costs of legal, staff and other services it incurred to address the aforementioned lawsuits and referenda. The award authorized hereunder shall be null and void if the lawsuits are not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed, or if Waste Management directly or indirectly opposes CWS Facilities or supports CEQA challenges against CWS Facilities or Zero Waste contracts, or if the City is not reimbursed for its costs as indicated above.

- Add the following new Section 12
- **Section 12.** The contract shall include source-separated Organic materials collection by the franchisee at all multi-family buildings; and any challenges at multi-family buildings in separating Organics shall first be dealt with through public education and outreach and warnings, but in no event shall green cart service be discontinued.

3. Further, I move that Waste Management pay the City the amount of eight hundred thousand dollars (\$800,000) to make the City whole (i.e., reimburse the City) for costs of legal, staff and other services it incurred to address the aforementioned lawsuits and referenda.

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY

MEMORANDUM

2014 NOV 18 PM 12:39

FILED
OFFICE OF THE CITY CLERK
OAKLAND

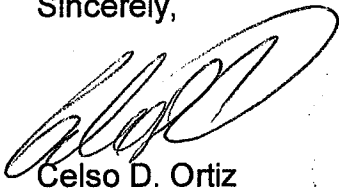
TO: LaTonda Simmons, City Clerk
FROM: Celso Ortiz, Deputy City Attorney
DATE: November 18, 2014
RE: **Correction for Ordinance No. 13258 C.M.S., passed September 29, 2014, which awarded the Collection of Mixed Materials and Organics Franchise to Waste Management of Alameda County**

Enclosed you will find a corrected ordinance for Ordinance No. 13258 C.M.S., the ordinance that awarded the franchise for collection of mixed materials and organics to Waste Management of Alameda County. Please file this corrected Ordinance as the final ordinance.

The error in Ordinance 13258 is an incorrect reference in Section 4, line 3 of the Ordinance, to the City Administrator Agenda Report dated "September 19, 2014." The date of the referenced City Administrator Report should be, and has been corrected to, "September 26, 2014." The correction is done pursuant to Oakland Charter Section 212 (Adoption and Amendment of Ordinances)¹.

Please call Doryanna Moreno (x3492) or Celso Ortiz (X6236) if you have any questions.

Sincerely,



Celso D. Ortiz

cc: Doryanna Moreno

¹ **Section 212. Adoption and Amendment of Ordinances.** Except for emergency ordinances, no ordinance shall be adopted by the Council on the day of its introduction, nor within five days thereafter, nor except at a regular or adjourned regular or special meeting. If an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall not be adopted except at a regular or adjourned regular or special meeting held not less than five days after the date of such alteration. Any section or subsection of an ordinance may be amended solely by the reenactment of such section or subsection at length as amended

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 SEP 26 AM 11:07

APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 13258 C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13253 C.M.S., WHICH GRANTED A FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO CALIFORNIA WASTE SOLUTIONS, INC., TO INSTEAD GRANT THE FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO WASTE MANAGEMENT OF ALAMEDA COUNTY, AND/OR SUCH OTHER AFFILIATE ENTITY APPROVED BY THE CITY ADMINISTRATOR, 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 WHICH MAY REGULATE 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, ON SUCH TERMS AND CONDITIONS AND RATES APPROVED BY THE CITY COUNCIL

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 approved 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 approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and,

WHEREAS, on March 18, 2014, the City Council of the City of Oakland approved Resolution 84898 C.M.S. establishing policies to provide good, family-supporting wages and benefits to all workers who provide recycling services to the City of Oakland, its residents or businesses, through any exclusive franchise agreement; to provide consideration of a local non-combustible biowaste-to-energy facility for handling of source separated organics collected through new organics franchise agreements; and to provide an organics 'third' bin for source-separated organics for all Oakland residents, including those in multifamily buildings, as the minimum preferred default outcome for franchised collection services; and

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13253 C.M.S., granting a franchise for mixed materials and organics collection services to California Waste Solutions, Inc.; and

WHEREAS, the City Council has expressed interest in supporting job training opportunities to Oakland youth through programs provided by Civicorps ; and

WHEREAS, it is the intent of the City to grant instead an exclusive franchise to Waste Management of Alameda County 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 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, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is 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 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

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;; and directs the City's Environmental Review Officer to file a Notice of 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 Waste Management of Alameda County Inc. (WMAC), 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 is from July 1, 2015 to June 30, 2025 and with the City's sole option to extend the contract for two additional five (5) year terms through June 30, 2035.

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. The Council does hereby authorize the Franchisee to charge customers, beginning July 1, 2015, the maximum rates set forth in the Rate Tables contained in the City Administrator Agenda Report dated September ~~26~~¹⁹, 2014 to the City Council, or such higher or lower rates as approved by City Council pursuant to request by the Franchisee, for the various Mixed Materials and Organics Collection Services outlined in the MM&O Contract attached to the same Agenda Report and as specified and further described in the Contract.

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City Administrator.

Section 8. The Franchisee shall deliver, as determined by agreement through Civicorps, commercial organics to East Bay Municipal Utility District, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator.

Section 9. The Franchisee shall pay ILWU Local 6 recycling sorters \$20.94 per hour in 2019.

Section 10. The Franchisee shall provide ILWU Local 6 workers affordable family health care coverage beginning July 1, 2015.

Section 11. The franchise awarded hereunder shall be contingent on: 1) dismissal with prejudice of litigation in Waste Management of Alameda County, Inc. v. City of Oakland, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland City Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237, and 3) Waste Management not opposing CWS development or improvements to CWS' Gateway Facility, Wood Street Facility, 10th Street Facility, or other facilities in support thereof (collectively the "CWS Facilities") directly or indirectly; and, Waste Management not supporting, directly or indirectly, any CEQA challenge regarding the CWS Facilities or the Zero Waste contracts, and 4) payment in an amount to make the City whole (i.e., reimburse the City) for costs of legal, staff and other services it incurred to address the aforementioned lawsuits and referenda. The award authorized hereunder shall be null and void if the lawsuits is not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed, or if Waste Management directly or indirectly opposes CWS Facilities or supports CEQA challenges against CWS Facilities or Zero Waste contracts, or if the City is not reimbursed for its costs as indicated above.

Section 12. The contract shall include source-separated Organic materials collection by the franchisee at all multi-family buildings; and any challenges at multi-family buildings in separating Organics shall first be dealt with through public education and outreach and warnings, but in no event shall green cart service be discontinued.

SEP 29 2014

IN COUNCIL, OAKLAND, CALIFORNIA, _____

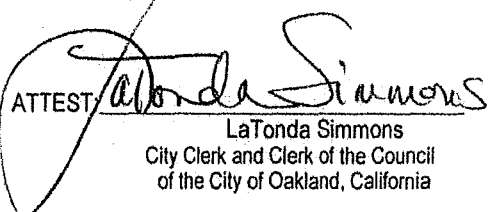
PASSED BY THE FOLLOWING VOTE:

AYES- ~~5~~, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, ~~5~~, and PRESIDENT KERNIGHAN - 5

NOES-
ABSENT-
ABSTENTION-

Brooks - 1

Excused - Reid, Schaaf - 2

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

DATE OF ATTESTATION: 10-1-14

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Councilmember McElhaney – Motion [September 22, 2014]
2014 SEP 26 AM 11:07

I move that the Council introduce the Mixed Materials and Organics (“MMO”) and Disposal Ordinances noticed on this evening’s agenda with the following changes and clarifications:

1. In the MMO contract –

- Article 3 section 3.01 entitled “Term” is amended to read as follows:

3.01 Term. The term of this Contract shall be for a ten (10) year period beginning July 1, 2015, and terminating on June 30, 2025. City in its sole discretion shall have the option to extend the Contract for up to two (2) additional 5 year periods.

3.01.1 First Extension. On or about May 1, 2022 City in its sole discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intention to do so in writing.

3.02.2 Second Extension. On or about May 1, 2027, CITY in its sole discretion may extend this Contract five (5) years by notifying CONTRACTOR of its intention to do so in writing.

- Article 9 – add the following new section 9.07

9.07 Organic Materials and Recycling

In the event the recycling contractor (“RR”) determines that the content of an RR container is contaminated, the RR contractor shall have the right to collect such contaminated material and to charge a contamination rate for the collection of such contaminated material.

- Article 16 entitled CUSTOMER SERVICE is amended to read as follows:

16.02 CONTRACTOR’S Customer Service Center and Telephone and Email Access.

CONTRACTOR shall maintain a Customer Service Center in Alameda County that provides toll-free telephone and email access to residents and businesses of CITY, and is staffed by trained and experienced Customer Service Representatives (CSRs). Such Customer service center shall have responsible

persons in charge during Collection hours, and shall be open 8:00 a.m. to 6:00 p.m. on regularly scheduled Work Day (Monday through Friday) and when SFD or MFD Collection Services are scheduled to be provided on Saturday; and be staffed with a sufficient number of CSRs and equipped with sufficient telephone and email capacity such that: (etc.)

2. In the MMO Ordinance and Disposal Ordinance

- Section 2 is amended to read as follows:

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, Waste Management of Alameda County Inc. (WMAC) 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 is from July 1, 2015 to June 30, 2025 and with the City's sole option, to extend the Contract for two additional five (5) year terms the potential extension through June 30, 2035 as specified in the Contract.

- **Section 7** is amended to read as follows:

The Franchisee shall allow Civicorps to handle commercial organics collection and delivery to EBMUD and develop plans with Civicorps to provide training of interns without impact or displacement of permanent union jobs, through a contract subject to approval by the City Administrator.

- **Section 8** is amended to read as follows:

Section 8. The Franchisee shall deliver, as determined by agreement through Civicorps, commercial organics to East Bay Municipal Utility District, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator.

- **Section 11 MMO ordinance and Section 5 Disposal ordinance** are amended to read as follows:

The franchise awarded hereunder shall be contingent on: 1) dismissal with prejudice of litigation in *Waste Management of Alameda County v. City of Oakland*, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237, and 3) Waste Management not opposing CWS development or improvements to CWS' Gateway Facility, Wood Street Facility, 10th Street Facility, or other facilities in support thereof (collectively the "CWS Facilities") directly or indirectly; and, Waste Management not supporting, directly or indirectly, any CEQA challenge regarding the CWS Facilities or the Zero Waste contracts, and 4) payment in an amount to make the City whole (i.e., reimburse the City) for costs of legal, staff and other services it incurred to address the aforementioned lawsuits and referenda. The award authorized hereunder shall be null and void if the lawsuits are not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed, or if Waste Management directly or indirectly opposes CWS Facilities or supports CEQA challenges against CWS Facilities or Zero Waste contracts, or if the City is not reimbursed for its costs as indicated above.

- Add the following new Section 12
- **Section 12.** The contract shall include source-separated Organic materials collection by the franchisee at all multi-family buildings; and any challenges at multi-family buildings in separating Organics shall first be dealt with through public education and outreach and warnings, but in no event shall green cart service be discontinued.

3. Further, I move that Waste Management pay the City the amount of eight hundred thousand dollars (\$800,000) to make the City whole (i.e., reimburse the City) for costs of legal, staff and other services it incurred to address the aforementioned lawsuits and referenda.