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OAKLAND

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APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 13259 - C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13255 C.M.S., WHICH AUTHORIZED THE CITY ADMINISTRATOR TO EXECUTE AN EXCLUSIVE CONTRACT FOR LANDFILL DISPOSAL SERVICES WITH CALIFORNIA WASTE SOLUTIONS, INC., TO INSTEAD AUTHORIZE THE CITY ADMINISTRATOR TO EXECUTE AN EXCLUSIVE CONTRACT FOR LANDFILL DISPOSAL SERVICES WITH WASTE MANAGEMENT OF ALAMEDA COUNTY, AND/OR SUCH OTHER AFFILIATE ENTITY APPROVED BY THE CITY ADMINISTRATOR, ON SUCH TERMS AND CONDITIONS AND RATES APPROVED BY THE CITY COUNCIL

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13255 C.M.S., granting a contract for landfill disposal services to California Waste Solutions, Inc.; and

WHEREAS, City of Oakland ("City") desires instead to enter into a Contract with Waste Management of Alameda County, Inc. ("Contractor"), under which Contractor receives Garbage and Bulky Goods generated within the City, and Residue from the Processing of Mixed Materials Collected by the Mixed Materials and Organics (MM&O) Collection Contractor within the City of Oakland at the Disposal Facility; and

WHEREAS, the City Council of the City determines, pursuant to its police powers, that obtaining a long-term commitment for Disposal of Garbage and Bulky Goods generated in the City, and Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the City is in the best interests of the health, safety and well-being of the citizens of the City; 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 well-being of its citizens (California Public Resources Code Section 40059); and

WHEREAS, the proposed Contract also advances the objectives of the federal government to encourage environmentally sound Garbage management (Resource Conservation and Recovery Act of 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.); and

WHEREAS, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion 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., adopting 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. adopting 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, the Disposal Facility is intended to be the principal facility for the Disposal of Mixed Materials, Garbage and Bulky Goods generated in the City, and Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the City; and

WHEREAS, the Contractor guarantees permitted capacity at the Disposal Facility for up to thirty (30) years for Disposal of all Mixed Materials, Garbage, and Bulky Goods generated in the City and Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the City; and

WHEREAS, the City Council of the City of Oakland determines that in order to provide adequate Disposal capacity, it is in the best interests of the City to secure a commitment from Contractor for the right to a portion of the Disposal Facility's current Disposal capacity on the terms and subject to the conditions set out in the proposed Contract. The intent of this provision is, in part, for the City to contribute to preventing the substantial environmental, aesthetic, health, and safety problems that may be created from increasing volumes of Garbage in this country; and

WHEREAS, the Contractor has represented that it has the experience and ability to provide for Disposal of Mixed Materials, Garbage, Bulky Goods and Residue, at the Disposal Tipping Fees provided for herein; and

WHEREAS, the City has entered into Collection Service Contracts to provide: i) Mixed Material and Organics Collection Services and ii) Residential Recycling Collection Services within the City; and

WHEREAS, the Contractor receives Disposal Tipping Fees from the City's MM&O Collection Contractor for the acceptance of Mixed Materials, Garbage, Bulky Goods and Residue at the Disposal Facility for final Disposal; and

WHEREAS, the City determined that the Contractor has proposed to provide Disposal Services at the Disposal Facility in a manner and on terms that are in the best interest of the City and its residents and businesses, taking into account the qualifications and experience of the Contractor, and the Disposal Tipping Fees for providing such services; and

WHEREAS, the City wishes to engage the Contractor to provide the services specified within the proposed Contract, in accordance with the terms and conditions of the proposed Contract; and

WHEREAS, the City Council of the City of Oakland declares its intention of maintaining reasonable Disposal Tipping Fees for the Disposal of Mixed Materials, Garbage, Bulky Goods and Residue; 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, considered, and confirmed 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 Contract for Disposal Services to Contractor is for the proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefits of the inhabitants of the city.

Section 3. Based on the form of the Disposal Services Contract circulated with the Requests for Proposals, City and Contractor have reached general, but not complete, agreement on the Disposal Services Contract, the current form of which is attached to the City Administrator's

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 negotiate and execute the Disposal Services 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 September 19, 2014 to the City Council.

Section 4. The City Administrator is authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of the Franchise Agreement, except for those rate adjustments that the Oakland Municipal Code requires to be approved by Council.

Section 5. 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.

IN COUNCIL, OAKLAND, CALIFORNIA, SEP 29 2014

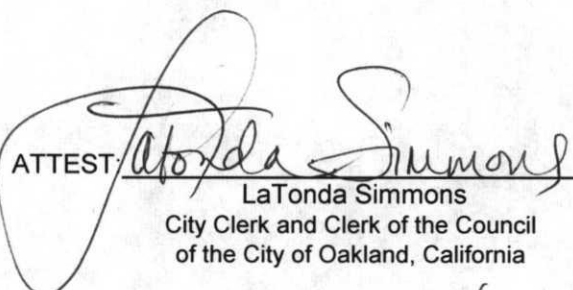
PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-

ABSTENTION- Brooks - 1

Excused- Reid, Schaaf - 2

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

introduction Date
SEP 22 2014

DATE OF ATTESTATION: 10-1-14