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OAKLAND

2014 NOV -6 AM 10:42

AGENDA REPORT

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Amendment of Ordinances Awarding
Zero Waste Contracts

DATE: October 13, 2014

City Administrator
Approval

Date

11/5/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

It is recommended that the City Council adopt following legislation:

- 1) An Ordinance Amending Ordinance No. 13254 C.M.S, Which, Among Other Things, Granted A Franchise For Residential Recycling Collection Services To California Waste Solutions, Inc., For A Term of Ten (10) Years From July 1, 2015 Through June 30, 2025, With Two Five-year Extension Options in 2022 and 2027, To Change The Term Of The Contract To Twenty (20) Years: July 1, 2015 Through June 30, 2035, And Make Appropriate Findings Required By The California Environmental Quality Act.
- 2) Ordinance Amending Ordinance No. 13258 C.M.S., Which Amended Ordinance No. 13253 C.M.S. To Among Other Things, Grant A Franchise For Mixed Materials And Organics Collection Services To Waste Management Of Alameda County And Approve Maximum Service Rates For Mixed Materials And Organics Collection, Residential Recycling And Disposal Services, To: (1) Add Two (2) Contamination Rates Of \$25 And \$50 To The Maximum Service Rates For Customer Placement Of Items Other Than Those Allowed In Recycling And Organic Materials Containers And (2) Make Appropriate Findings Required By The California Environmental Quality Act

EXECUTIVE SUMMARY

In September 2014, the City Council took action to resolve a dispute regarding the Zero Waste Collection Services contracts, which had the potential to develop into a public health and safety crisis had the conflict continued. City Council took quick action at the behest of Waste Management of Alameda County (WMAC) and California Waste Solutions (CWS), to award the Mixed Materials and Organics (MM&O) Contract and the Landfill Contract previously awarded to CWS instead to WMAC. At the time of Council's decision, CWS brought two issues to the

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attention of the City Council and the City Administration; (1) a request that the term of the Residential Recycling (RR) contract be 20-years instead of 10-years plus two 5-year extensions at the City's discretion and (2) remedies for recycling contamination. The City Administration pledged that these matters would be addressed at a later date, through amendments of the contracts. Negotiations have taken place with CWS and WMAC regarding remedies for contamination of recycling containers and organic material containers at single-family and multi-family buildings, and the parties agree on the amounts of contamination rates to include in the rate tables, through an amendment of Ordinance No. 13258 which set the maximum service rates.

OUTCOME

Approval of the two ordinances would:

- Amend Ordinance 13254 to change the term of the RR contract to 20 years
- Amend Ordinance 13258 to add two "contamination rates" of \$25 for the first incident in which a Contamination Rate is charged, and \$50 for subsequent incidents that occur within 6-months of a prior incident for which a Contamination Rate was charged, to the established rate tables

BACKGROUND/LEGISLATIVE HISTORY

At a Special Meeting on August 13, 2014, the City Council approved Ordinance No.13254 C.M.S. that authorized the City Administrator to finalize and implement a contract with CWS for Residential Recycling Collection Services (RR). At a Special Meeting on September 29, 2014, the City Council approved Ordinance No. 13258 C.M.S. that authorized the City Administrator to finalize and implement a contract with WMAC for Mixed Materials and Organics (MM&O) Collection Services, which regulate maximum service rates for mixed MM&O and RR Collection Services. Through approval of Ordinance No. 13258 C.M.S., Council adopted rate tables that establish maximum rates.

ANALYSIS

A 20-year term for the Residential Recycling contract was a condition of the understanding between CWS and WMAC that facilitated Council's action to resolve the dispute regarding the Zero Waste Collection Services contracts. The City Council's actions on September 22 and 29, 2014 to award the MM&O Contract and the Landfill Contract previously awarded to CWS instead to WMAC, required the amendment of the ordinances awarding the MM&O and the Disposal contracts, but not the ordinance awarding the RR contract to CWS. This report and Ordinance amendment fulfills Council's intention to award CWS a 20-year RR agreement as stated in the letter dated September 29, 2014 from City Administrator Henry Gardner to CWS. Adopting the attached Ordinance would allow for amendment of the RR contract term from 10-

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years with two 5-year extension to 20 years, to complete the package agreed to by CWS and WMAC.

Additionally, CWS brought to the attention of the City Council and the City Administration a request for remedies for improper placement of non-recyclable materials in recycling containers. Contamination of recyclable and organic materials set out by Oakland residents for recycling has a number of negative impacts, including reduced waste diversion due to the contamination of otherwise recyclable material, additional costs to collect and process non-recyclable materials in the recycling and organics collection and processing infrastructure. Contamination has multiple causes including misunderstanding of how to participate, untrained visitors to a home, or subscribing to inadequate garbage service.

A Contamination Reduction Plan to address contamination of recycling containers and organic material containers at single-family and multi-family buildings is in development. This plan which the contractors will follow includes a progressive, corrective approach to changing customers' behaviors which cause contamination of materials for diversion. The plan will include collection route truck waste audits to identify geographic, demographic and other contamination patterns, on-going community outreach focused on contamination reduction, and a progressive notification process to individual customers to correct observed contamination.

The final steps of the progressive, corrective process would be charging customers a Contamination Rate, which would occur only after multiple notifications fail to change contamination behaviors. The recommended Contamination Rates are \$25 for the first incident in which a Contamination Rate is charged, and \$50 for subsequent incidents that occur within 6-months of a prior incident for which a Contamination Rate was charged. The City Administrator will negotiate with CWS and WMAC the number of contamination incidents for which CWS and WMAC must provide notification before a customer is charged the Contamination Rate for the first time, and terms that will require CWS and WMAC to follow a robust notification process to ensure that customers are provided sufficient opportunity to correct contamination behaviors to avoid being charged Contamination Rates. Details of these procedures will be included in a future informational update to the City Council. The Contamination Rates are intended as an additional tool in the Contamination Reduction Plan, not as a sole remedy, or as a means of revenue enhancement or cost recovery.

Contamination Rates of \$25 and \$50 are intended to be fixed numbers, to be distinguishable from other charges on customers' bills for collection services. These Contamination Rates may be used in community outreach strategies targeting contamination reduction. To be effective in this way the Contamination Rates of \$25 and \$50 shall stay fixed, subject to the City's evaluation of their effect on reducing contamination. Contamination Rates are essential to a successful process to reduce contamination and ensure proper placement of recyclable materials, organic materials and non-recyclable materials in the correct containers.

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PUBLIC OUTREACH/INTEREST

This item did not legally require any additional public outreach other than that required by the State Brown Act and City's Sunshine Ordinance, but the City did provide email notice to interested parties.

COORDINATION

Public Works Department staff has coordinated closely with the Office of the City Attorney for this report and amendment of the two ordinances.

COST SUMMARY/IMPLICATIONS

No impact.

SUSTAINABLE OPPORTUNITIES

Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

Social Equity: Increased jobs through additional diversion of materials from the landfill.

CEQA

For the amendments of the Franchise Agreements to WMAC (MM&O) and CWS (RR), City staff (Public Works and Planning & Building) determined that the City Council's actions are exempt from the California Environmental Quality Act (CEQA), because award of these franchise agreements would be a continuation of existing programs, but with greater environmental benefits. These added environmental benefits are created by shifting from a diesel-fueled fleet to a compressed natural gas fleet, and diverting greater amounts of recyclables and organics from landfill disposal.

The City has independently reviewed, considered and confirmed the environmental analyses conducted for Ordinance No. 13254 C.M.S (see July 30, 2014 Agenda Report Attachment C), and for Ordinance No. 13258 C.M.S. (see September 22, 2014 Agenda Report Attachment D); these analyses conclude that there would not be the potential for significant environmental impacts under any of the options, therefore no further environmental review is required. Specifically, the projects are exempt from CEQA pursuant to the following CEQA Guidelines,

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each of which provides a separate and independent basis for CEQA compliance and when viewed collectively provide an overall basis for CEQA compliance:

- Section 15301: Ongoing operation of existing facilities;
- Section 15307: Action for the protection of natural resources;
- Section 15308: Action for the protection of the environment;
- Section 15183: Approvals consistent with Community Plans
- Section 15273: City approval to change the rates; and/or
- Section 15061(b)(3): Common sense exemption because project does not have potential to cause significant effect on the environment

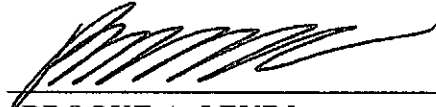
For the MM&O amendments, as a further, separate and independent basis, to the extent it is a project under CEQA, the City is also relying on EBMUD's 2011 certified EIR for its Main Waste Water Treatment Plant Master Plan, including the adopted 2013 addendum for the food waste preprocessing facility, and no further environmental review is required.

For the Residential Recycling amendments, as a further, separate and independent basis, the City is also relying upon the previously certified 2002 Army Base EIR and the adopted 2012 Army Base Addendum and no further environmental review is required,

Neither the MM&O nor Residential Recycling franchises, nor their amendments, authorize, approve or require construction and/or operation of **any** Transfer Station – interim or permanent – at either the North Gateway in the former Oakland Army base or at EBMUD's Main Wastewater Treatment Plant.

For questions regarding this report, please contact Becky Dowdakin, Environmental Services Manager, 510-238-6981.

Respectfully submitted,



BROOKE A. LEVIN
Director, Public Works Department

Prepared by:
Susan Kattchee, Assistant Director

Prepared by:
Peter Slote, Acting Solid Waste & Recycling
Programs Supervisor

Attachment A: September 29, 2014 Letter from City Administrator to CWS
Attachment B: New rate table for Contamination Rates

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator

(510) 238-3301
FAX (510) 238-2223
TDD (510) 238-2007

September 29, 2014

Mr. David Duong, CEO
California Waste Solutions
1820 10th St.,
Oakland, CA 94607

Re: Clarification of Commitment to 20-Year Term and Contamination Surcharge

Dear Mr. Duong:


Approximately ten days ago, California Waste Solutions (CWS) and Waste Management of Alameda County (WMAC) revealed that a compromise had been reached between the companies requiring modifications to the previous actions of City Council awarding all three elements of the solid waste franchise to CWS. As you are aware, there have been a number of discussions between CWS and Zero Waste Staff and myself during this intervening period. This letter intends to confirm in writing my intentions with regard to two issues CWS has raised concerning its undertaking the recycling franchise (RR).

The actions of the City Council to address the memorandum agreement between CWS and WMAC have to date only dealt with the modification of prior actions to award the MMO and Disposal Contracts to WMAC. Council has been informed and I understand that a core portion of the agreement required that CWS be granted a 20-year RR franchise. It is my intention to take the necessary actions within in my authority to address this modification.

Separately, CWS has made it clear that it is pivotal to their successful carrying out of the RR franchise that an adequate program is included which provides at minimum for CWS to have the option of imposing a contamination surcharge after reasonable notification to the customer and service recipient. It is also my intention to ensure that adequate contamination remedies are available to CWS including a contamination surcharge.

It is likely that both of these matters will require approval by Council to provide a binding commitment to these two provisions. Although I cannot commit to any action by Council, I do commit to implementing these measures administratively or putting them before Council with a favorable recommendation.

Sincerely,


Henry L. Gardner
Interim City Administrator

MM&O and RR Collection Rates**MAXIMUM SERVICE RATES**

City of Oakland, CA

Mixed Materials & Organics and Residential Recycling Collection Service**Contamination Rates**

Contamination Rate	\$ 25 00	First instance in which the Contamination Rate is billed
Contamination Rate	\$ 50 00	Subsequent instances that occur within 6-months of a prior bill for a Contamination Rate

*Contamination Rates not subject to annual adjustment



City Attorney

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OAKLAND CITY COUNCIL**ORDINANCE No. _____ C.M.S.**

AN ORDINANCE AMENDING ORDINANCE NO. 13254 C.M.S, WHICH, AMONG OTHER THINGS, GRANTED A FRANCHISE FOR RESIDENTIAL RECYCLING COLLECTION SERVICES TO CALIFORNIA WASTE SOLUTIONS, INC., FOR A TERM OF TEN (10) YEARS FROM JULY 1, 2015 THROUGH JUNE 30, 2025, WITH TWO FIVE-YEAR EXTENSION OPTIONS IN 2022 AND 2027, TO CHANGE THE TERM OF THE CONTRACT TO TWENTY (20) YEARS: JULY 1, 2015 THROUGH JUNE 30, 2035, AND MAKE APPROPRIATE FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13254 C.M.S., granting a franchise for residential recycling collection services to California Waste Solutions, Inc.; and

WHEREAS, through Ordinance No. 13254, the City Council specified the term of the Residential Recycling franchise to be July 1, 2015 to June 30, 2025 with two 5-year extensions through June 30, 2035 as specified in the Contract; and

WHEREAS, California Waste Solution (CWS) has asked and the Council has agreed to change the term of the Contract to twenty (20) years, July 1, 2015 to June 30, 2035, with no extensions; 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 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 21, 2014 attached to the July 30, 2014 City Administrator report to the City Council (Attachment C), 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 these environmental determinations 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 Section 3.01 of the franchise agreement for Residential Recycling Collection Services shall read as follows:

Term. The term of this Contract shall be for twenty (20) year period beginning July 1, 2015, and terminating on June 30, 2035.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

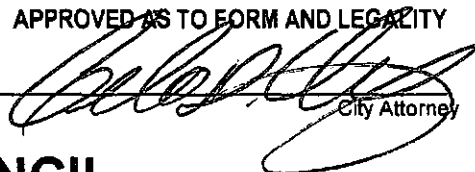
ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION. _____

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City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13258 C.M.S., WHICH AMENDED ORDINANCE NO. 13253 C.M.S. TO AMONG OTHER THINGS, GRANT A FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO WASTE MANAGEMENT OF ALAMEDA COUNTY AND APPROVE MAXIMUM SERVICE RATES FOR MIXED MATERIALS AND ORGANICS COLLECTION, RESIDENTIAL RECYCLING AND DISPOSAL SERVICES, TO: (1) ADD TWO (2) CONTAMINATION RATES OF \$25 AND \$50 TO THE MAXIMUM SERVICE RATES FOR CUSTOMER PLACEMENT OF ITEMS OTHER THAN THOSE ALLOWED IN RECYCLING AND ORGANIC MATERIALS CONTAINERS AND (2) MAKE APPROPRIATE FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13254 C.M.S., granting a Franchise For Residential Recycling Collection Services And Non-Exclusive Commercial Recycling Collection Services to California Waste Solutions, Inc. (CWS); and

WHEREAS, on September 29, 2014, the City Council of the City of Oakland approved Ordinance No. 13258 C.M.S., granting a Franchise for Mixed Materials and Organics Collection Services to Waste Management of Alameda County (WMAC); and

WHEREAS, through Ordinance No. 13258, the City Council authorized the mixed materials and organics 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; and

WHEREAS, the City wishes to allow the Mixed Materials and Organics Franchisee to bill customers Contamination Rates if they deposit material/substances that are not allowed in recycling and organic materials containers because this contaminates the material in the containers at a level that is detrimental to the recovery process; and

WHEREAS, contamination of recyclable and organic materials set out by Oakland residents for recycling has a negative impacts such as reducing waste diversion and increasing the costs of collecting and processing non-recyclable materials in the recycling and organics collection and

processing infrastructure; and

WHEREAS, a Contamination Reduction Plan to address contamination of the City Zero Waste Services is in development, and this plan which CWS and WMAC shall follow includes a progressive, corrective approach to changing customers' behaviors which cause contamination of materials for diversion; and

WHEREAS, the final steps of the progressive, corrective process would be the assessment of Contamination Rates, which would occur only after multiple notifications fail to change customers' contamination behaviors; and

WHEREAS, the City Council, pursuant to Charter Section 212, may amend franchise fees by ordinance; 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 22, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

WHEREAS, as a further, separate and independent basis, to the extent food waste preprocessing facility is a project under CEQA, the City is also relying on EBMUD's 2011 certified EIR for its Main Waste Water Treatment Plant Master Plan, including the adopted 2013 addendum for the food waste preprocessing facility, and no further environmental review is required

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council has independently reviewed and considered these environmental determinations and finds and determines that the action complies with the CEQA; readopts EBMUD's 2011 Mitigation Monitoring and Reporting Program, as revised by the 2013 addendum, 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 does hereby authorize amending Ordinance 13258 C.M.S., to include Contamination Rates

of \$25 and \$50 which can be imposed on customers by the franchisees for the placement or deposit of materials/substances that are not materials approved for deposit in recycling and organic materials containers to be added to the Maximum Service Rates.

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 _____