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AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Supplemental Award of
Zero Waste Franchise Agreements

DATE: September 26, 2014

City Administrator
Approval

Date

9/26/14

COUNCIL DISTRICT: City-Wide

REASON FOR SUPPLEMENTAL

This report supplements the September 22, 2014 Agenda Report presented to City Council. Staff was tasked with providing clarification of services that will be provided through franchise contracts with Waste Management of Alameda County (WMAC) and California Waste Solutions (CWS) as authorized by the City Council.

OUTCOME

Approval of the second reading of the Ordinances would allow the City Administrator to execute and implement franchise contracts with WMAC and CWS. These franchise contracts would replace the existing service agreements with WMAC and CWS, which expire on June 30, 2015.

BACKGROUND/LEGISLATIVE HISTORY

On August 13, 2014 City Council approved the second reading of ordinances that awarded three Zero Waste Services franchise contracts to CWS. The three ordinances are:

- Mixed Materials and Organics Collection Services (MM&O) through approval of Ordinance No. 13253;
- Residential Recycling Services (RR) through approval of Ordinance No. 13254; and
- Landfill Disposal Services through approval of Ordinance No. 13255.

At a Special Meeting on September 22, 2014, the City Council passed the first reading of ordinances that amended the two previously adopted ordinances granting the MM&O and Landfill Disposal Services contracts to CWS, to instead grant them to WMAC. In addition, a motion (Attachment A) was introduced by Councilmember McElhaney directing staff to make

revisions to contractual language within said contracts as referenced in Attachment B, and amendments to the draft ordinances.

ANALYSIS

The following information below is provided to clarify the outcomes of Council approval of ordinances granting MM&O, and Landfill Disposal Services contracts to WMAC

Adoption of Rates and Annual Rate Adjustment Methodology

Table 1 shows the rates and rate impacts of the Council-selected rate option approved on September 22, 2014 for representative service levels in the single family, multi-family and commercial sectors. A cost of living adjustment and an adjustment for changes in government fees will also be applied to these rates on July 1, 2015 as specified in the Request for Proposals (RFP) (Sections 3.1.19.2 and 4.1.15.2, and on MM&O Form 2, and RR Form 2 and contract language (MM&O contract section 7.16.1 and RR contract section 7.06.1), and are described further in the section that follows.

Table 1: Monthly Rate and Impact (Excluding CPI Increase)

Service	Monthly Rate*	Rate Impact
Single Family (32-gallon cart)	\$ 36.82	23.56%
Multi Family (20-unit building)	\$616.90	30.09%
Commercial (1 cu. yd. bin)	\$194.10	38.76%

* or such higher or lower rates as approved by the City Council pursuant to proposal by the franchisee. Per the Zero Waste Services RFP, and MM&O and RR contract terms, approved rates will receive a one-year cost of living adjustment on July 1, 2015 plus adjustment for changes in government fees since RFP proposals were received on January 9, 2013.

To implement the rates associated with the franchise contract services, City Council now needs to adopt the full rate tables (Attachment C), which are represented in Table 1 and were discussed in September 19, 2014 Agenda Report.

In addition, approvals of specific elements of the annual rate adjustment methodology that will be used to adjust rates are needed to implement:

- CWS cost proposal for RR presented in the Memorandum of Agreement between CWS and WMAC; and
- The ordinance provisions for providing ILWU Local 6 wages of \$20.97 per hour by 2019, and affordable family healthcare effective July 1, 2015.

These rate adjustments will be implemented on July 1 annually, as summarized in Table 2 below, and detailed in Attachment C, which projects rates with a 3% and 5% Refuse Rate Index (RRI)

through contract year six (July 1, 2019 rate adjustment). The 3-5% represents the expected range of the annual RRI adjustment.

Table 2: Annual Rate Adjustment for 32-gal SFD Cart Rate

	MM&O Collection + Disposal	Residential Recycling
Year 1 Base Rate*	\$ 27.65/ per month + CPI + change in government fees	\$ 9.17/ per month + CPI
Year 2 Adjustment	Prescribed RRI + \$ 0.17 ^b	Prescribed RRI + \$ 0.97 ^a + \$ 0.32 ^b
Year 3 Adjustment	Prescribed RRI + \$ 0.17 ^b	Prescribed RRI + \$ 0.97 + \$ 0.32 ^b
Year 4 Adjustment	Prescribed RRI + \$ 0.18 ^b	Prescribed RRI + \$ 0.97 + \$ 0.32
Year 5 Adjustment	Prescribed RRI + \$ 0.18 ^b	Prescribed RRI + \$ 0.32
Year 6 & beyond Adjustment	Prescribed RRI	Prescribed RRI

* or such higher or lower rates as approved by the City Council pursuant to proposal by the franchisee. Per the Zero Waste Services RFP, and MM&O and RR contract terms, approved rates will receive a one-year cost of living adjustment on July 1, 2015 plus adjustment for changes in government fees since RFP proposals were received on January 9, 2013.

^a Based on the MOU between CWS and WMAC, annual rate adjustments for the Residential Recycling (RR) component of the 32-gallon single-family residential rate includes an additional \$0.97 rate increase in each of contract years 2, 3, and 4, which becomes part of base rates and is compounded by each subsequent annual Refuse Rate Index (RRI) adjustment over the entire RR contract term.

^b The cost for WMAC (MM&O) to provide ILWU Local 6 wages of \$20.97 per hour by 2019 and affordable family healthcare on July 1, 2015, an additional 0.58% rate increase in each of contract years 2, 3, 4, and 5 as detailed in Table 2 above. These rate increases become part of base rates, and are compounded by each subsequent annual Refuse Rate Index (RRI) adjustment over the entire MM&O & RR contracts term.

July 1, 2015 Rate Adjustment

As specified in the RFP and contract languages, before customers are billed for rates effective July 1, 2015, all rates listed in this report and in Attachment C (Rate Tables) will receive:

- One-year cost of living adjustment, calculated in March 2015 and based on the change in the Consumer Price Index (CPI) for calendar year 2014, to account for changes in cost that occur between the time when proposers submit rates and the time when services and billing commence on July 1, 2015; and
- Adjustment for any changes in government fees that have occurred since RFP proposals were received on January 9, 2013.

These July 1, 2015 rate adjustments have not been explicitly called out in recent Council reports, rate tables, or staff slide presentations at City Council meetings. However, these adjustment provisions were described in the Zero Waste Services RFP, Sections 3.1.19.2 and 4.1.15.2, and on MM&O Form 2, and RR Form 2. These adjustments were also described in MM&O contract section 7.16.1 and RR contract section 7.06.1 (both titled "Annual Adjustment to Maximum Service Rates Prior to Start of Collection Services") issued with the Zero Waste Services RFP in 2012, and in the versions of the MM&O and RR contracts published for the July 30, 2014 City

Council Special Meeting. The franchise fee listed in the RFP will also receive the same cost of living adjustment. The reason for this rate adjustment is due to the time between rate development in 2012, to the effective date in 2015, and this is a standard industry practice.

Tables 3 and 3A show projected July 1, 2015 rates with a 2% and 3% one-year CPI increase for calendar year 2014 respectively. The 2-3% represents the expected range of the CPI cost of living adjustment described above. The CPI increase for calendar year 2014 will be available in early 2015.

Table 3: Monthly Rate and Impact, Including 2% July 1, 2015 Cost of Living Adjustment

Service	Monthly Rate**	Rate Impact
Single Family (32-gallon cart)	\$ 37.56	26.03%
Multi Family (20-unit building)	\$629.24	32.69%
Commercial (1 cu. yd. bin)	\$197.98	41.54%

Table 3A: Monthly Rate and Impact, Including 3% July 1, 2015 Cost of Living Adjustment

Service	Monthly Rate**	Rate Impact
Single Family (32-gallon cart)	\$ 37.92	27.26%
Multi Family (20-unit building)	\$635.41	34.00%
Commercial (1 cu. yd. bin)	\$199.92	42.92%

** or such higher or lower rates as approved by the City Council pursuant to proposal by the franchisee. Per the Zero Waste Services RFP, and MM&O and RR contract terms, approved rates may be adjusted on July 1, 2015 for changes in government fees as specified in the RFP and contract language.

WMAC In-County Call Center

WMAC will provide an in-county call center for the Oakland franchise customers that WMAC serves. WMAC also provides non-franchised services in Oakland, and these calls may be routed to a regional call center. In addition, depending on final City Administrator approval of an agreement between WMAC and Civicorps, it is possible that calls from commercial organics customers may be handled by Civicorps directly.

MM&O Contract Term

The term of the MM&O Collection Agreement with WMAC shall be from July 1, 2015 to June 30, 2025 (10 Years), and that at its sole option the City may extend the Agreement for two additional five (5) year terms, through June 30, 2035.

Civicorps Schools, EBMUD, Commercial Organics

WMAC will enter into an agreement with Civicorps that allows Civicorps to handle commercial organics collection, with delivery to East Bay Municipal Utility District (EBMUD) for processing. The agreement will provide driver training to Civicorps interns without impact on or

displacement of permanent union jobs. The agreement between Civicorps and WMAC is subject to approval by the City Administrator. WMAC will enter into a separate agreement with EBMUD for processing of commercial organics, subject to approval of the City Administrator.

WMAC Reimbursement of City Legal Costs

WMAC will pay the City \$800,000 to reimbursement the City for the costs it incurred related to WMAC's lawsuit and referendum campaign.

Multi-Family Organics Collection

WMAC will provide containers for the collection of source-separated organics at all multi-family buildings. WMAC shall address contamination issues that arise at multi-family buildings in through public education, outreach, warnings, and surcharges, but not through discontinuation of organics collection service.

Addition of MM&O Contract Section Addressing RR Contamination

Section 9.07 Organic Material and Recycling will be added to the MM&O contract to allow the RR contractor to collect contaminated recyclables (applies to residential services only). This provision is consistent with the MOU between CWS and WMAC item 11, which was intended to ensure that CWS could collect contaminated material, and charge for the collection of that material. Implicitly, this is an exception to the MM&O contractor's exclusive right to collect Mixed Material. The City Council authorized the City Administrator to negotiate with CWS a "progressive and corrective" process by which CWS could correct repeat contamination or charge a rate in addition to the monthly RR charge, for the collection of contaminated material. The rate will be subject to approval by the City Council.

Litigation and Referenda

Award of the MM&O and Landfill disposal contracts are contingent on:

1. Dismissal with prejudice of following litigation in Waste Management of Alameda County, Inc. v. City of Oakland, Alameda County Superior Court Case No. RG14737204;
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;
3. Waste Management not supporting 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

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Management not supporting, directly or indirectly and CEQA challenge regarding the CWS Facilities or the Zero Waste contracts; and

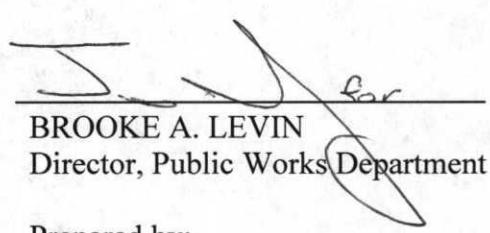
4. Payment to the City in an amount to make the City whole (i.e., reimburse the City) for costs of legal and other services it incurred to address the aforementioned lawsuit and referenda.

These awards shall be null and void if the following conditions is not met:

- Lawsuits are not dismissed with prejudice and the referenda are not withdrawn.
- Petition for a referendum is filed.
- Waste Management directly or indirectly opposes CWS Facilities.
- Supports CEQA challenges against CWS Facilities or Zero Waste contracts.
- If the City is not reimbursed for its costs as indicated above.

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

Respectfully submitted,


BROOKE A. LEVIN
Director, Public Works Department

Prepared by:
Becky Dowdakin, Acting Environmental Svcs. Mgr.

Prepared by:
Mark Gagliardi, Senior Recycling Specialist

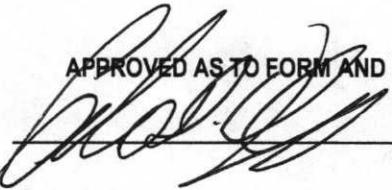
Attachment A: Motion approved by City Council in Special Meeting on September 22, 2014
Attachment B: 2014 Draft MM&O Contract Revised September 25, 2014
Attachment C: Rate Tables

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September 29, 2014

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APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. 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, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-
ABSTENTION-

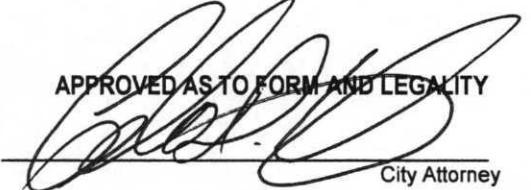
ATTEST: _____

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

DATE OF ATTESTATION: _____

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2014 SEP 26 AM 11:07

APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ 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 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.

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 service be discontinued.

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: _____