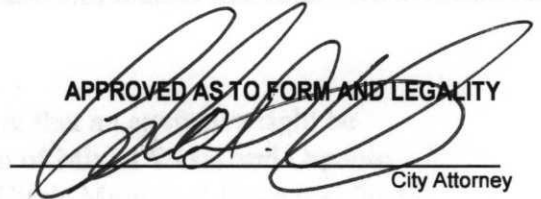


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OFFICE OF THE CITY CLERK  
OAKLAND

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APPROVED AS TO FORM AND LEGALITY

  
City Attorney

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

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**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

**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, 10<sup>th</sup> 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

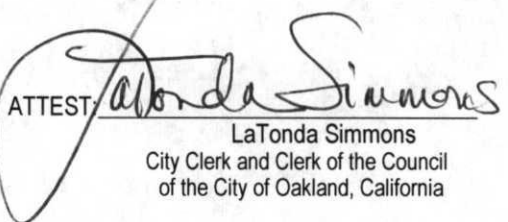
IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES- ~~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

DATE OF ATTESTATION: 10-1-14