

1 [Competitive Selection Process for Landfill Disposal Provider]

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3 **Ordinance making findings that the City’s competitive process for selecting a preferred**
 4 **contractor for landfill disposal was adequate, fair, and consistent with the request for**
 5 **proposals; ratifying the selection of Recology San Francisco (Recology) as the**
 6 **preferred contractor; ratifying the termination of the landfill disposal and facilitation**
 7 **agreements with Recology; endorsing the environmental review, under the California**
 8 **Environmental Quality Act (CEQA), of the Recology proposal as the City’s preferred**
 9 **project alternative; clarifying that, consistent with prior practice and existing law, the**
 10 **definition of “services” contained in Administrative Code, Chapter 21, excludes the**
 11 **agreements resulting from the competitive selection process; and making**
 12 **environmental findings under CEQA.**

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14 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 15 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 16 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 17 **Board amendment additions** are in double-underlined Arial font.
 18 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 19 **Asterisks (* * * *)** indicate the omission of unchanged Code
 20 subsections or parts of tables.

21 Be it ordained by the People of the City and County of San Francisco:

22 Section 1. The Planning Department has determined that the actions contemplated in
 23 this ordinance comply with the California Environmental Quality Act (California Public
 24 Resources Code Sections 21000 et seq.). That determination is on file with the Clerk of the
 25 Board of Supervisors in File No. ____ and is incorporated herein by reference.

1 Section 2. Project Findings. The Board of Supervisors makes the following findings:

2 (a) The California Department of Resources Recycling and Recovery requires that the
3 City have a plan for 15 years of landfill disposal capacity.

4 (b) In 1987, the City entered into long-term agreements concerning the disposal,
5 transfer and transportation of the City's refuse (collectively, "1987 Agreements") with Sanitary
6 Fill Company (now Recology San Francisco) and the Oakland Scavenger Company (now
7 Waste Management of Alameda County). The 1987 Agreements were not the subject of a
8 competitive selection process. They provided for disposal of up to 15 million tons of San
9 Francisco's refuse in the Altamont Landfill or 65 years of disposal, whichever comes first, and
10 for the transfer of the City's refuse at Recology's transfer station and transportation of the
11 refuse to the Altamont Landfill. The Department of the Environment estimates that the City
12 will reach the tonnage limit under that agreement by late 2015.

13 (c) In 2006, the Department of the Environment began an exhaustive search to
14 determine the best option for disposal of the City's refuse after the conclusion of the 1987
15 Agreements. In doing so, the Department of the Environment provided significant opportunity
16 for public input, and elected to use a competitive selection process ("Competitive Selection
17 Process") to select a proposed contractor. Specifically,

18 (1) The Department of the Environment held a series of noticed public hearings
19 in 2007 to assess the public's priority considerations for a new disposal agreement. Those
20 meetings gave the public numerous opportunities to participate in the selection process for a
21 new disposal contract.

22 (2) On May 30, 2008, with the guidance obtained from the public, the
23 Department of the Environment issued a Request for Qualifications ("RFQ"), and invited every
24 landfill operator in the State of California to submit a response.

1 (3) In February 2009, the Department of the Environment sent all landfill
2 operators that responded to the RFQ the Request for Proposals for Landfill Disposal Capacity
3 ("RFP"). The RFP required each proposer to provide detailed information regarding its
4 principal proposed landfill and any proposed back-up landfill. Only two companies – SF
5 Recycling & Disposal, Inc. (now Recology San Francisco and hereinafter referred to as
6 "Recology") and Waste Management of Alameda County, Inc. ("Waste Management") –
7 submitted responses to the RFP and satisfied all pre-submission requirements.

8 (4) A neutral and objective scoring panel reviewed and scored both Recology
9 and Waste Management's proposals using standardized criteria, considering both written
10 submissions and an oral interview with each company.

11 (5) The scoring panel selected Recology's proposal ("Recology Proposal") as
12 the preferred proposal. The Recology Proposal met the City's operational and environmental
13 requirements as set out in the RFP and offered adequate permitted capacity to meet the City's
14 needs, and among other advantages, included proposed disposal rates that were substantially
15 less than those of Waste Management, potentially resulting in considerable future savings for
16 the City's rate payers. The Recology Proposal provided for disposal of the City's refuse at
17 Recology's Ostrom Road Landfill in Yuba County, with transportation to the landfill by rail, or,
18 as a back-up site, Recology's Hay Road Landfill in Solano County, with transportation to the
19 landfill by truck.

20 (6) On September 10, 2009, the Department of the Environment issued a
21 Notice of Intent to Award, notifying the public and all interested parties that the Department of
22 the Environment intended to award the contract for landfill disposal capacity to Recology.

23 (7) Waste Management then submitted two formal protests. The Department of
24 the Environment evaluated both protests, and found that the objections did not have merit.

1 (8) In 2010, the Department of the Environment negotiated with Recology a
2 proposed Landfill Disposal Agreement concerning the disposal of the City's refuse, and a
3 proposed Amended and Restated Facilitation Agreement ("Facilitation Agreement")
4 concerning transfer of the City's refuse at Recology's transfer station and the means of
5 transporting refuse to the landfill. Under the terms of those agreements (as under the terms
6 of the 1987 Agreements), the City itself would not procure or pay for disposal, transfer or
7 transportation services. Instead, the agreements established certain charges for disposal,
8 transfer and transportation of refuse that Recology would apply to include in the rates it
9 charges residential ratepayers in San Francisco for the collection and disposal of refuse.
10 Those rates are set by the Director of the Department of Public Works and the Rate Board in
11 accordance with the Refuse Collection and Disposal Ordinance, enacted by initiative and
12 codified at Appendix 1 to the Administrative Code.

13 (d) On September 23, 2010, the Department of the Environment asked the Board of
14 Supervisors to approve the Landfill Disposal Agreement and Facilitation Agreement with
15 Recology under Charter Section 9.118(b). Consistent with the Recology Proposal, the
16 proposed Landfill Disposal Agreement provided for disposal of the City's refuse at the Ostrom
17 Road Landfill or, as a back-up site, the Hay Road Landfill.

18 (e) Waste Management objected to the agreements on several grounds, including a
19 claim that the Department of the Environment failed to comply with the competitive selection
20 requirements of Chapter 21 of the Administrative Code.

21 (f) On July 26, 2011, after considering all of the objections to the agreements, and
22 after four committee hearings over nearly ten months, the Board of Supervisors adopted a
23 resolution approving the Landfill Disposal Agreement and Facilitation Agreement with
24 Recology under Charter Section 9.118(b). At that time, the Board of Supervisors approved
25 the Landfill Disposal Agreement and Facilitation Agreement for terms exceeding ten years;

1 and authorized the Director of the Department of the Environment to execute agreements in
2 substantially the form of the Landfill Disposal Agreement and Facilitation Agreement on file
3 with the Clerk of the Board of Supervisors. The Board of Supervisors also authorized the
4 Director of the Department of the Environment to enter into any additions, amendments, or
5 other modifications to the Landfill Disposal Agreement and Facilitation Agreement that
6 satisfied specified terms. Finally, the Board of Supervisors stated that it "approves and ratifies
7 all prior actions taken by officials, employees, and agents of the Department of the
8 Environment and the City with respect to the Landfill Disposal Agreement and Facilitation
9 Agreement."

10 (g) On August 10, 2011, Waste Management filed a lawsuit in San Francisco Superior
11 Court challenging the Landfill Disposal Agreement and Facilitation Agreement, alleging that
12 the Department of the Environment failed to comply with Chapter 21 of the Administrative
13 Code and should have conducted additional environmental review under Chapter 9 of the
14 Environment Code. On August 25, 2011, Yuba Group Against Garbage ("YuGAG") and the
15 Sustainability, Parks, Recycling and Wildlife Legal Defense Fund ("SPRAWLDEF") also filed
16 lawsuits in San Francisco Superior Court challenging the Landfill Disposal Agreement and
17 Facilitation Agreement, alleging, among other things, that the Department of the Environment
18 failed to comply with Chapter 21 of the Administrative Code. In their responsive pleadings,
19 the City and Recology denied these allegations and affirmatively contended, among other
20 things, that Chapter 21 of the Administrative Code did not apply to the agreements.

21 (h) On April 18, 2012, Yuba County announced its intention to complete an
22 Environmental Impact Report ("EIR") concerning the transportation of San Francisco's refuse
23 from Recology's San Francisco transfer station to the Ostrom Road Landfill in Yuba County.

24 (i) In light of this EIR process and because of its relevance to San Francisco, the
25 City's Department of the Environment and Planning Department elected to participate in the

1 EIR process and conduct CEQA review, and to review as its proposed project one or more
2 agreements with one or more Recology affiliates based upon the Recology Proposal (“CEQA
3 Process”). To facilitate the City’s full and complete participation in the CEQA Process and the
4 City’s CEQA review, the City asked Recology to agree to terminate the Landfill Disposal
5 Agreement and Facilitation Agreement, and Recology did so. While the Recology Proposal
6 remains the City’s preferred alternative as a result of the public review and Competitive
7 Selection Process that took place from 2006 to 2010, terminating the agreements under these
8 circumstances, to take into account the results of the CEQA process is in the best interest of
9 the City and the public. Accordingly, the City and Recology terminated the Landfill Disposal
10 Agreement and Facilitation Agreement on November 26, 2012.

11 (j) Following termination of the Landfill Disposal Agreement and Facilitation
12 Agreement, the lawsuits initiated by Waste Management and YuGAG were dismissed on
13 grounds of mootness and lack of ripeness. The SPRAWLDEF litigation was dismissed by
14 stipulation. YuGAG has filed an appeal from the dismissal of its lawsuit, arguing that a
15 justiciable controversy still exists as to whether the Competitive Selection Process complied
16 with Chapter 21. The YuGAG litigation remains expensive and burdensome for the City. Any
17 future lawsuits would also be expensive and burdensome, and could cause undue delay in the
18 implementation of a landfill disposal agreement. This Board therefore seeks to ratify the
19 actions taken and clarify the provisions set forth in Chapter 21 for contracts for services.

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21 Section 3. Chapter 21 Ratification; Clarification.

22 (a) The Board of Supervisors finds that the Competitive Selection Process that
23 resulted in the City’s selection of Recology and the Board of Supervisors’ approval of the now-
24 terminated Landfill Disposal Agreement and Facilitation Agreement complied with any

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1 requirements of Chapter 21 of the San Francisco Administrative Code and that the purposes
2 of competitive selection have already been satisfied by the Competitive Selection Process.

3 (b) The Board of Supervisors ratifies and confirms all actions taken by City officials in
4 carrying out the Competitive Selection Process and selecting Recology as the City’s preferred
5 contractor, and then terminating the Landfill Disposal Agreement and Facilitation Agreement.

6 (c) The Board of Supervisors endorses the current CEQA Process under which the
7 Department of the Environment, the Planning Department and other City agencies and staff
8 have undertaken environmental review of the proposed project, including the disposal and
9 transportation of refuse consistent with the Recology Proposal.

10 (d) To avoid litigation that could jeopardize the City’s ability to ensure continued landfill
11 capacity by needlessly delaying the project and to address any potential ambiguity in the
12 legislation, the Board clarifies that, consistent with prior practice in the approval of the 1987
13 Agreements, contracts for the disposal and transportation of refuse resulting from the
14 Competitive Selection Process are not now, and never have been, contracts for “services”
15 within the meaning of Sections 21.02(i), (m) and (s) of the Administrative Code or their
16 statutory predecessors. Except as expressly stated in this provision with regard to contracts
17 involving the disposal and transportation of refuse as contemplated in the Competitive
18 Selection Process, this clarification of the meaning and intent of Chapter 21 shall have no
19 effect on the meaning, scope or application to other contracts of Chapter 21 of the
20 Administrative Code. This clarification shall apply retroactively to actions taken by City
21 officials or City agencies or entities in connection with the Competitive Selection Process.

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1 (e) The provisions of this Ordinance are severable. If any provision of this Ordinance
2 or the application thereof to any person or circumstances is held invalid, that invalidity shall
3 not affect other provisions or applications of the ordinance which can be given effect without
4 the invalid portion or application.

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7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

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10 By: _____
11 THOMAS J. OWEN
12 Deputy City Attorney

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