

1 [Landfill Disposal Agreement - Recology San Francisco - Adoption of Negative Declaration]

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3 **Resolution approving a Landfill Disposal Agreement with Recology San Francisco**
4 **exceeding 10 years, pursuant to Charter, Section 9.118; and affirming the adoption of,**
5 **and adopting, a negative declaration.**

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7 WHEREAS, The City, Recology San Francisco (f/k/a Sanitary Fill Company)
8 (“Recology”) and Waste Management of Alameda County, Inc. (“Waste Management”) (f/k/a
9 Oakland Scavenger Company) are parties to a Waste Disposal Agreement dated January 2,
10 1987 (the “Prior Landfill Agreement”), and City and Recology are parties to an Agreement in
11 Facilitation of Waste Disposal Agreement dated January 2, 1987 (the “Prior Facilitation
12 Agreement,” and together with the Prior Landfill Agreement, the “1987 Agreements”); and

13 WHEREAS, The Prior Landfill Agreement provides the City with landfill disposal
14 capacity of up to 15 million tons at Waste Management’s Altamont landfill, and, as of
15 January 1, 2015, the City has used approximately 14.6 million tons of that capacity; and

16 WHEREAS, The City estimates that it will exhaust the remaining landfill disposal
17 capacity under the Prior Landfill Agreement sometime in the first half of 2016, depending on
18 the rate at which residual solid waste is disposed of in San Francisco in the coming months;
19 and

20 WHEREAS, The California Department of Resources Recycling and Recovery
21 (CalRecycle) requires that the City have a plan for 15 years of landfill disposal capacity; and

22 WHEREAS, In 2006, the Department of the Environment began considering options for
23 disposal of the City’s refuse after the conclusion of the 1987 Agreements; and

24 WHEREAS, The Department elected to use a competitive selection process
25 (“Competitive Selection Process”) to select a proposed contractor. Specifically,

1 (1) The Department of the Environment held a series of noticed public hearings
2 in 2007 to assess the public's priority considerations for a new disposal agreement.

3 (2) On May 30, 2008, the Department of the Environment issued a Request for
4 Qualifications (RFQ), and invited every landfill operator in the State of California to submit a
5 response.

6 (3) In February 2009, the Department of the Environment sent all landfill
7 operators that responded to the RFQ the Request for Proposals for Landfill Disposal Capacity
8 (RFP). The RFP required each proposer to provide detailed information regarding its principal
9 proposed landfill and any proposed back-up landfill. Only two companies, Recology and
10 Waste Management, submitted responses to the RFP and satisfied all pre-submission
11 requirements.

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

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

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

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

16 WHEREAS, On September 23, 2010, the Department of the Environment asked the
17 Board of Supervisors to approve the Landfill Disposal Agreement and Facilitation Agreement
18 with Recology under Charter, Section 9.118(b); and

19 WHEREAS, Consistent with the Recology Proposal, the proposed Landfill Disposal
20 Agreement provided for disposal of the City's refuse at the Ostrom Road Landfill or, as a
21 back-up site, the Hay Road Landfill; and

22 WHEREAS, On July 26, 2011, after four committee hearings over ten months, the
23 Board of Supervisors adopted a resolution approving the Landfill Disposal Agreement and
24 Facilitation Agreement with Recology under Charter, Section 9.118(b); and

1 WHEREAS, At that time, the Board of Supervisors approved the Landfill Disposal
2 Agreement and Facilitation Agreement for terms exceeding ten years, and authorized the
3 Director of the Department of the Environment to execute agreements in substantially the
4 form of the Landfill Disposal Agreement and Facilitation Agreement on file with the Clerk of
5 the Board of Supervisors; and

6 WHEREAS, The Board of Supervisors also authorized the Director of the Department
7 of the Environment to enter into any additions, amendments, or other modifications to the
8 Landfill Disposal Agreement and Facilitation Agreement that satisfied specified terms; and

9 WHEREAS, Finally, the Board of Supervisors stated that it “approves and ratifies all
10 prior actions taken by officials, employees, and agents of the Department of the Environment
11 and the City with respect to the Landfill Disposal Agreement and Facilitation Agreement”; and

12 WHEREAS, On April 18, 2012, Yuba County announced its intention to complete an
13 Environmental Impact Report (EIR) concerning the transportation of San Francisco’s refuse
14 from Recology’s San Francisco transfer station to the Ostrom Road Landfill in Yuba County;
15 and

16 WHEREAS, The City’s Department of the Environment and Planning Department
17 elected to participate in the Yuba County EIR process as a Responsible Agency; and

18 WHEREAS, To facilitate the City’s participation as a Responsible Agency, the City
19 asked Recology to agree to terminate the Landfill Disposal Agreement and Facilitation
20 Agreement; and

21 WHEREAS, Accordingly, the City and Recology terminated the Landfill Disposal
22 Agreement and Facilitation Agreement on November 26, 2012; and

23 WHEREAS, Under the terms of the Termination Agreement, the City reserved full
24 discretion over any future decisions regarding the Recology Proposal in light of the California
25 Environmental Quality Act (CEQA); and

1 WHEREAS, On February 4, 2014, City's Board of Supervisors adopted Ordinance
2 No. 8-14 by an 11-0 vote, pursuant to which the Board of Supervisors:

3 (1) Found that the Competitive Selection Process that resulted in the City's
4 selection of Recology, and the Board of Supervisors' approval of the now-terminated Landfill
5 Disposal Agreement and Facilitation Agreement, complied with any requirements of
6 Chapter 21 of the San Francisco Administrative Code and that the purposes of competitive
7 selection had already been satisfied by the Competitive Selection Process.

8 (2) Ratified and confirmed all actions taken by City officials in carrying out the
9 Competitive Selection Process and selecting Recology as the City's preferred contractor, and
10 then terminating the Landfill Disposal Agreement and Facilitation Agreement.

11 (3) Endorsed the process under which the Department of the Environment, the
12 Planning Department and other City agencies and staff undertook environmental review of the
13 proposed project, including the disposal and transportation of refuse consistent with the
14 Recology Proposal.

15 (4) Clarified that, consistent with prior practice in the approval of the
16 1987 Agreements, contracts for the disposal and transportation of refuse resulting from the
17 Competitive Selection Process were not contracts for "services" within the meaning of
18 Sections 21.02(i), (m) and (s) of the Administrative Code or their statutory predecessors; and

19 WHEREAS, Due to delays in environmental review for the project involving disposal of
20 the City's refuse at Recology's Ostrom Road Landfill in Yuba County, with transportation to
21 the landfill by rail (the "Ostrom Road Project"), the Department of the Environment determined
22 that the Ostrom Road Project could not be approved and constructed in a timely manner prior
23 to the expiration of the Prior Landfill Agreement; and

24 WHEREAS, To ensure disposal capacity for the City's refuse following expiration of the
25 Prior Landfill Agreement, and to enable the City and its ratepayers to take advantage of the

1 substantially lower disposal fees offered in the Recology Proposal, the Department of the
2 Environment decided to pursue a separate project involving the disposal of the City's refuse at
3 the Hay Road Landfill, with transportation to the landfill by truck (the "Hay Road Project"); and

4 WHEREAS, The Planning Department prepared a final negative declaration (FND) as
5 required by CEQA, and the Planning Commission found the FND was adequate, accurate and
6 objective, reflected the independent analysis and judgment of the Planning Commission, and
7 approved the FND for the Agreement in compliance with CEQA, the CEQA Guidelines and
8 Chapter 31 in its Motion No. 19376; and

9 WHEREAS, Consistent with Section V(B) of the RFP, which contemplated that the City
10 could negotiate changes to the terms of the selected proposal before entering into a definitive
11 agreement with the selected proposer, the Department of the Environment and Recology
12 have negotiated a proposed Landfill Disposal Agreement reflecting the Hay Road Project; and

13 WHEREAS, A copy of the proposed Landfill Disposal Agreement ("the Agreement") is
14 on file with the Clerk of the Board of Supervisors in File No. _____ and is hereby
15 declared to be a part of this Resolution as if set forth fully herein; and

16 WHEREAS, Under the Agreement, Recology San Francisco ("Recology") grants the
17 City the right to deposit at Recology's Hay Road landfill all solid waste collected in the City for
18 a period commencing upon expiration of the current agreement and continuing until 5 million
19 tons have been deposited (such period, the "Disposal Term"), which the parties estimate will
20 not occur in less than ten years; and

21 WHEREAS, The City wishes to designate Recology's Hay Road landfill as the
22 exclusive site for disposal of solid waste collected by Recology in the City or delivered to the
23 Recology transfer station from the City, and of residue from Recology's processing in or near
24 the City of recyclable or organic material from the City, during the term of the Agreement, and
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1 to direct that such solid waste be delivered to the transfer station operated by Recology and
2 thereafter transported to the Hay Road landfill site, or delivered directly to the landfill; and

3 WHEREAS, Under the Agreement, the City is not required to pay for the right to
4 deposit solid waste at the landfill, but authorizes Recology to charge waste haulers "tipping
5 fees" specified in the Agreement; and

6 WHEREAS, San Francisco Charter, Section 9.118 requires the Board of Supervisors to
7 approve contracts having a term of more than 10 years; and

8 WHEREAS, The Director of the Department of the Environment has recommended
9 approval of this Agreement by Memorandum dated June 1, 2015, contained in Board of
10 Supervisors File No. _____, and adopted the FND; and

11 WHEREAS, This Board has reviewed and considered the FND and the record as a
12 whole, finds that the FND is adequate for its use as the decision-making body for the
13 Agreement, that there is no substantial evidence that the Agreement may have a significant
14 effect on the environment, and adopts the FND and the findings set forth in the Memorandum
15 dated June 1, 2015, as its own; now, therefore, be it

16 RESOLVED, That the Board of Supervisors under Charter, Section 9.118 approves the
17 Landfill Disposal Agreement for a term exceeding 10 years and affirms the adoption of the
18 FND; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the
20 Department of the Environment to execute agreements in substantially the form of the Landfill
21 Disposal Agreement on file with the Clerk of the Board of Supervisors; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the
23 Department of the Environment to enter into any additions, amendments, or other
24 modifications to the Landfill Disposal Agreement (including, without limitation, preparation and
25 attachment of, or changes to, any or all of the exhibits, appendices, or ancillary agreements)

1 that the Director, in consultation with the City Attorney, determines to be in the best interest of
2 the City, do not materially increase the obligations or liabilities of the City or materially
3 decrease the public benefits accruing to the City, and are necessary or advisable to complete
4 the transactions contemplated and to effectuate the purpose and intent of this Resolution,
5 such determination to be conclusively evidenced by the execution and delivery by the Director
6 of any such documents; and, be it

7 FURTHER RESOLVED, Pursuant to Section 5 of the Refuse Collection and Disposal
8 Ordinance of November 8, 1932, as amended, the Board of Supervisors hereby designates
9 Recology as the sole entity for receipt of all City Waste (as defined in the Landfill Disposal
10 Agreement) for the duration of the Disposal Term, and directs that during the Disposal Term
11 all such waste shall be delivered to Recology at the Transfer Station (as defined in the Landfill
12 Disposal Agreement) or the Hay Road landfill for disposal or beneficial reuse in accordance
13 with the Landfill Disposal Agreement, except that the Director of the Department of the
14 Environment may direct small amounts of such waste to alternative disposal sites for the
15 purpose of testing alternative waste handling technologies; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors approves and ratifies all prior
17 actions taken by the officials, employees, and agents of the Department of the Environment
18 and the City with respect to the Landfill Disposal Agreement.

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