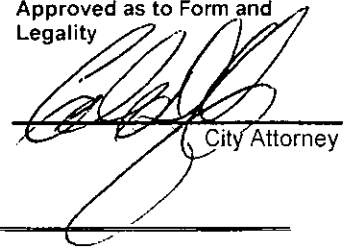


FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Approved as to Form and
Legality


City Attorney

2013 JAN 31 PM 1:01

RESOLUTION No. _____ C.M.S.

A RESOLUTION ADOPTING THE THIRD AMENDMENT TO THE CITY'S NON-DISPOSAL FACILITY ELEMENT (A RECYCLING PLANNING DOCUMENT REQUIRED BY THE STATE OF CALIFORNIA), WHICH DESCRIBES AND IDENTIFIES SOLID WASTE, RECYCLING, AND PROCESSING FACILITIES THAT CITY RESIDENTS, BUSINESSES AND MEMBERS OF THE PUBLIC USE TO REDUCE MATERIALS SENT TO LANDFILLS, TO ADD A NEW FACILITY AT THE EAST BAY MUNICIPAL UTILITY DISTRICT'S MAIN WASTE WATER TREATMENT PLANT

WHEREAS, in 1992 the City Council adopted the Source Reduction and Recycling Element (SRRE), pursuant to the California Integrated Waste Management Act of 1989 (Act); and

WHEREAS, Assembly Bill 3001 (Cortese, 1992) required every city and county in the State to prepare and adopt a Non-Disposal Facility Element (NDFE) that identified and described existing and planned non-disposal facilities to be used by cities and counties to assist in implementing programs identified in the SRREs; and

WHEREAS, in February 1994 through Resolution No. 70748 C.M.S. the City Council adopted the NDFE, and in February 2005 through Resolution No. 79083 C.M.S., and in April 2010 through Resolution No. 82689 C.M.S., the City Council adopted the First and Second Amendments to the NDFE; and

WHEREAS, Recology East Bay Organics (REBO) proposes to build and operate a facility in Oakland, at the East Bay Municipal Utility District (EBMUD) Main Waste Water Treatment Plant (MWWTP), that would pre-process organic-rich materials for anaerobic digestion, and is requesting that the facility be added to the City's NDFE in order to obtain a Solid Waste Facility Permit from CalRecycle; and

WHEREAS, in 2006 through Resolution No. 80286 C.M.S. the City Council approved the Zero Waste Strategic Plan, which calls for developing recycling infrastructure to achieve the Zero Waste goal and REBO adds to Oakland's recycling infrastructure; and

WHEREAS, REBO made commitments in their letter dated June 27, 2012 to voluntarily hire 50 percent or more of its workforce during construction from within the West Oakland area and work closely with the City to hire 50 percent of the permanent workforce from Oakland; and

WHEREAS, EBMUD, as the Lead Agency under CEQA, prepared an Environmental Impact Report (EIR) that evaluated the environmental impacts of its MWWTP Master Plan, one component of which is the Preprocessing Facility Project (Project); and

WHEREAS, EBMUD certified the EIR and approved the Project on June 28, 2011; and

WHEREAS, The City is considered a Responsible Agency under CEQA because it has some responsibility for carrying-out or approving the Project, in this case, the adoption of the Third Amendment to the City's Non-Disposal Facility Element; and

WHEREAS, the City has independently reviewed and considered the EBMUD Master Plan EIR, the June 28, 2011 EBMUD Staff Report, Resolution No. 33834-11 and CEQA findings; Now, therefore, be it

RESOLVED: The City Council hereby adopts as its own independent findings and conclusions, and incorporates herein by reference, the CEQA-related findings adopted by EBMUD, including rejection of alternatives as being infeasible, the Statement of Overriding Considerations (finding that the benefits of the Project outweigh its environmental impacts), and the Mitigation Monitoring and Reporting Program; and be it

FURTHER RESOLVED: As a separate and independent basis, adoption or updates to Non-Disposal Facility Elements are statutorily exempt from CEQA pursuant to Public Resources Code Section 41735(a); and be it

FURTHER RESOLVED: REBO has voluntarily agreed, to the maximum extent permitted by law, to hire (a) 50 percent or more of its workforce during construction from within the West Oakland area; and (b) 50 percent or more of its permanent workforce from Oakland, as stated in its letter dated June 27, 2012, attached as *Exhibit B* and hereby incorporated by reference; and be it

FURTHER RESOLVED: REBO has voluntarily agreed to institute additional Diesel Particulate Matter reduction measures as detailed in its letter dated June 27, 2012, attached as *Exhibit B* and hereby incorporated by reference; and be it

FURTHER RESOLVED: REBO has voluntarily agreed to institute additional odor controls as detailed in its letter dated May 21, 2012, attached as *Exhibit C* and hereby incorporated by reference; and be it

FURTHER RESOLVED: To the maximum extent permitted by law, REBO shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Public Works Agency and its respective agents, officers, employees and volunteers (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to this Non-Disposal Facility Element matter, City's CEQA approvals and determination, and/or notices in the Non-Disposal Facility Element matter; or (2) implementation of such in the event of further City actions, approvals, authorization and/or permitting. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees; and be it

FURTHER RESOLVED: Within ten (10) calendar days of the filing of any Action as specified above, REBO shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter of Agreement does not relieve REBO of any of the obligations contained in this Section or any other requirements or conditions of approval that may be imposed by the City; and be it

FURTHER RESOLVED: That the City's Environmental Review Officer is directed to cause to be filed a Notice of Determination/Exemption with the County; and be it

FURTHER RESOLVED: That the City Council hereby adopts the amended Non-Disposal Facility Element attached as Exhibit I and hereby incorporated by reference.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, KALB, KAPLAN, McELHANEY, 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 _____