RESOLUTION NO. 7310

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT SCH. 2017091011, AS RELATED TO A PROPOSED PROJECT CONSISTING OF THE RE-ESTABLISHMENT AND CONVERSION OF AN EXISTING NON-OPERATIONAL REGIONAL BIOSOLIDS PROCESSING FACILITY INTO A REGIONAL ORGANIC WASTE PROCESSING FACILITY; ADOPT FINDINGS OF FACT RELATED THERETO, AS REQUIRED BY PUBLIC RESOURCES CODE SECTION 21081(a) AND CEQA GUIDELINES, SECTION 15091; APPROVE A MITIGATION MONITORING AND REPORTING PROGRAM RELATED THERETO, AS REQUIRED BY PUBLIC RESOURCES CODE SECTION 21081.6 AND CEQA GUIDELINES SECTION 15097; AND ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS RELATED THERETO, AS REQUIRED BY PUBLIC RESOURCES CODE SECTION 21081(b) AND CEQA GUIDELINES SECTION 15093

WHEREAS, the applicant, Rialto Bioenergy Facility, LLC, ("Applicant") proposes re-establish and convert an existing non-operational biosolids processing facility on one (1) 5.7 acre parcel of land (APN: 0258-151-24) located at 503 East Santa Ana Avenue within the Heavy Industrial (H-IND) zone of the Agua Mansa Specific Plan ("Site") into a regional organic waste processing facility ("Project"); and

WHEREAS, the Project, will receive and process/recycle up to 1,080 wet tons per day of organic waste, which includes a combination of biosolids, biogas, food waste, and liquid waste, into approximately 13.38 megawatts (MW) of renewable energy in the form of electricity and natural gas and 27 dry tons of re-usable char; and

WHEREAS, the City of Rialto ("City") has undertaken review under the California Environmental Quality Act ("CEQA"), Public Resources Code Sections 21000, *et seq*. and California Code of Regulations ("CEQA Guidelines") Title 14, Sections 15000, *et seq*.; and

WHEREAS, the Applicant retained Trinity Consultants, Inc., an environmental consulting firm, to prepare an environmental impact report ("EIR") for the Project; and

WHEREAS, the City retained ECORP Consulting, Inc., an environmental consulting firm, to conduct a peer review of the EIR prepared for the Project by Trinity Consultants, Inc.; and

WHEREAS, on September 8, 2017, the City distributed a Notice of Preparation for Draft Environmental Impact Report SCH. 2017091011, for the Project, pursuant to CEQA Guidelines Section 15082 and Public Resources Code Section 21080.4, providing a 30-day period during which responsible agencies, trustee agencies, and members of the general public could provide comments to the City regarding the scope of the proposed EIR; and

WHEREAS, pursuant to the authority and criteria contained in CEQA and the City of Rialto environmental guidelines, the City, as the Lead Agency, analyzed the Project and directed the Applicant to prepare a Draft Environmental Impact Report ("DEIR"), and determined that the proposed Project would have significant impacts related to air quality and greenhouse gases from Project construction and operations; and

WHEREAS, consistent with the requirements of CEQA Guidelines Section 15085, upon completing the DEIR dated November 16, 2017, the City filed a Notice of Completion on November 16, 2017 with the Office of Planning and Research; and

WHEREAS, on November 16, 2017 consistent with the requirements of the Public Resources Code Section 21092 and CEQA Guidelines Section 15087, the City published a Notice of Availability of the DEIR in the San Bernardino Sun newspaper, and, on November 16, 2017, posted the Notice of Availability at City Hall and mailed a Notice of Availability to all responsible and trustee agencies, all organizations and individuals who had requested notice, and all property owners located within a 300 foot radius of the Site; and

WHEREAS, the Notice of Availability and Notice of Completion notified all agencies, organizations, and the public that they had 45 days to provide comments on the contents of the DEIR, which was available in hard copy for in-person review at City Hall – the Development Services Building - and available for download on the City of Rialto website, throughout the comment period; and

WHEREAS, at the conclusion of the 45-day public review and comment period related to the DEIR, the City directed the preparation of the Final Environmental Impact Report dated March

2017 ("FEIR") pursuant to CEQA Guidelines Sections 15088, 15089 and 15132, which included the DEIR, responses to public comments on the DEIR, a Mitigation Monitoring and Reporting Program, and minor corrections; and

WHEREAS, pursuant to CEQA Guidelines Section 15132, the FEIR is required to be completed in compliance with CEQA, and, pursuant to Section 21092.5 of CEQA, on February 15, 2018, the City sent via overnight mail the FEIR, including written responses to comments, to all agencies, organizations, and persons that commented on the DEIR; and

WHEREAS, on February 16, 2018, the City published a Notice of Public Hearing that the Planning Commission would consider certification of the FEIR and approval of the Project at its February 28, 2018 meeting in the San Bernardino Sun newspaper, posted the notice at City Hall, and mailed said notice to all property owners within a 300 foot radius of the Site as well as all to all organizations and individuals who had requested notice; and

WHEREAS, on February 28, 2018, the Planning Commission conducted a public hearing, and considered the record of proceedings for the FEIR, which includes, but is not limited to, the following:

(1) The Notice of Preparation for the Project (the "NOP"), and all other public notices issued by the City in connection with the Project;

(2) The FEIR dated February 2018;

(3) All written comments submitted by agencies or members of the public during any public review comment period on the DEIR;

(4) All written and verbal public testimony presented during a noticed public hearing for the Project at which such testimony was taken, including without limitation, the Staff Report to the Planning Commission, including all attachments, any all presentations by City staff, the City's consultants, the Applicant and the Applicant's consultants, the public, and any other interested party;

(5) The Mitigation Monitoring and Reporting Program for the Project (the "MMRP");

(6) The reports, studies and technical memoranda included and/or referenced in the DEIR and the FEIR and or their appendices;

(7) All documents, studies, or other materials incorporated by reference in the DEIR and the FEIR;

(8) All Ordinances and Resolutions presented to and/or to be adopted by the City in connection with the Project; and all documents incorporated by reference therein, specifically including, but not limited to, this Resolution and its exhibit;

(9) Matters of common knowledge to the City, including but not limited, to federal, state, and local laws and regulations, adopted City plans, policies (including but not limited to the 2010 Rialto General Plan and the Agua Mansa Specific Plan), and the professional qualifications of City staff members and consultants;

(10) Any documents expressly cited in this Resolution and its exhibit, the Staff Report to the Planning Commission, the FEIR which includes the DEIR; and

(11) Any other relevant materials required to be in the record of proceedings under Section 21167.6(e) of the Public Resources Code; and

WHEREAS, on February 28, 2018, following the public hearing, the Planning Commission considered and discussed the adequacy of the proposed FEIR as an informational document and applied its own independent judgment and analysis to review said FEIR, and considered a recommendation to the City Council that it certify the FEIR, as having been completed in compliance with CEQA, based on the findings found herein; and

WHEREAS, at its February 28, 2018 meeting, following the public hearing, the Planning Commission also considered and decided whether to approve or reject the Project at this time; and

WHEREAS, on February 28, 2018, the Planning Commission voted 5-0 (1 absence, 1 vacancy) to recommend certification of the Final Environmental Impact Report to the City Council; and

WHEREAS, on March 27, 2018, the City Council conducted a public hearing, and considered the record of proceedings for the FEIR, which includes, but is not limited to, the following:

(1) The Notice of Preparation for the Project (the "NOP"), and all other public notices issued by the City in connection with the Project;

(2) The FEIR dated February 2018;

(3) All written comments submitted by agencies or members of the public during any public review comment period on the DEIR;

(4) All written and verbal public testimony presented during a noticed public hearing for the Project at which such testimony was taken, including without limitation, the Staff Report to the City Council, including all attachments, any all presentations by City staff, the City's consultants, the Applicant and the Applicant's consultants, the public, and any other interested party;

(5) The Mitigation Monitoring and Reporting Program for the Project (the "MMRP");

(6) The reports, studies and technical memoranda included and/or referenced in the DEIR and the FEIR and or their appendices;

(7) All documents, studies, or other materials incorporated by reference in the DEIR and the FEIR;

(8) All Ordinances and Resolutions presented to and/or to be adopted by the City in connection with the Project; and all documents incorporated by reference therein, specifically including, but not limited to, this Resolution and its exhibit;

(9) Matters of common knowledge to the City, including but not limited, to federal, state, and local laws and regulations, adopted City plans, policies (including but not limited to the 2010 Rialto General Plan and the Agua Mansa Specific Plan), and the professional qualifications of City staff members and consultants;

(10) Any documents expressly cited in this Resolution and its exhibit, the Planning Commission recommendations, Staff Report to the City Council, the FEIR which includes the DEIR; and

(11) Any other relevant materials required to be in the record of proceedings under Section 21167.6(e) of the Public Resources Code; and

WHEREAS, the City has not pre-committed to approving the Project or the FEIR until the City Council considered and certified the FEIR for the Project based upon all evidence presented; and

WHEREAS, on March 27, 2018, following the public hearing, the City Council considered and discussed the adequacy of the proposed FEIR as an informational document and applied its own independent judgement and analysis to review said FEIR, and hereby desires to take action to certify the FEIR, as having been completed in compliance with CEQA, based on the findings found herein; and

WHEREAS, at its March 27, 2018 meeting, following the public hearing, the City Council also considered and decided whether to approve or reject the Project at this time; and

WHEREAS, CEQA requires in Public Resources Section 21081 the following:

"Section 21081. Findings necessary for approval of project. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the Project outweigh the significant effects on the environment."

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, the City Council hereby finds, determines, and resolves as follows:

SECTION 1: RECITALS. The City Council hereby specifically finds that all of the facts set forth in the recitals above this Resolution are true, correct, and incorporated herein.

SECTION 2: FINDINGS. The FEIR, available at the Development Services Department office and provided concurrently with this Resolution, includes the DEIR SCH No. 2017091011 dated November 16, 2017 and all related appendices, the Response to Comments, the Errata and all related appendices and attachments to the FEIR. The City Council finds, based upon the substantial evidence in the record of proceedings and the whole record before it, in the exercise of its independent judgment and analysis, that the FEIR is, procedurally and substantively, in compliance with the requirements of CEQA:

a. *Procedural Compliance*: The Final EIR was prepared in procedural compliance with the requirements of CEQA:

   1. Notice of Preparation. As described in the Recitals hereto, a Notice of Preparation was prepared in accordance with Section 15082 of CEQA.
   2. Public Review. As described in the Recitals hereto, the City held multiple public review periods pursuant to the CEQA Guidelines.
   3. Notice of Completion. As described in the Recitals hereto, the City has complied with CEQA Guidelines Sections 15085, 15086, 15087, and 15105 by providing a Notice of Completion of the DEIR to the State Clearinghouse and a Notice of Availability to responsible and trustee agencies and other persons and agencies as required.
   4. Written Comments. As described in the Recitals hereto, the City has evaluated and responded to all written comments received during the public review period and included both comments and

responses as part of the FEIR pursuant to CEQA Guidelines Section 15088.

b. *Findings Regarding Significant Effects that Can be Mitigated to Less Than Significant.* The FEIR identifies potentially significant effects on the environment that could result if the Project were adopted without changes or alterations in the Project and imposition of mitigation measures and further finds that changes, alterations, and mitigation measures have been incorporated into, or imposed as conditions of approval on, the Project. The City Council adopts the statements and findings in Exhibit A (Section 5, titled "Findings Regarding the Significant or Potentially Significant Environmental Effects of the Proposed Project which Can Feasibly Be Mitigated to Below a Level of Significance") to this Resolution, which is attached hereto and incorporated herein by this reference. These avoidable significant effects are identified in Exhibit A (Section 5) and include potentially significant impacts to biological resources, cultural resources, geology and soils, hazards and hazardous materials, and hydrology and water quality. However, mitigation measures can be implemented to reduce these impacts to a level that is less than significant; changes have been required in, or incorporated into, the Project through the imposition of mitigation measures as described in Exhibit A (Section 5). These mitigation measures identified in Exhibit A will be imposed pursuant to the MMRP found at Section 4.0 in the FEIR. These changes, alterations, and mitigation measures are fully enforceable because they have either resulted in an actual change to the Project as proposed or they have been imposed as conditions of approval on the Project.

c. *Findings Regarding Unavoidable Significant Impacts*. The City Council adopts the statements and findings in Exhibit A (Section 4, titled

"Findings Regarding the Significant or Potentially Significant Environmental Effects of the Proposed Project Which Cannot Feasibly Be Mitigated to Below a Level of Significance") to this Resolution, which is attached hereto and incorporated herein by this reference. The Project has significant effects that cannot be mitigated to a less than significant level through the imposition of mitigation measures. These significant effects are identified in Exhibit A (Section 4). Specific economic, legal, social, technological, or other considerations are found to make the Proposed Project acceptable notwithstanding that even with the required mitigation measures, and consideration of project alternatives identified in the FEIR for the significant impacts identified in Exhibit A (Section 4) all impacts cannot be reduced to less then and significant levels, including those based upon the findings in Exhibit A (Section 4) to this resolution, and the findings in Exhibit A (Section 4) regarding the proposed alternatives. Therefore, those impacts are found to be significant and unavoidable.

d. *Findings Regarding Less than Significant Impacts*. In the course of the DEIR evaluation, certain environmental impacts of the Project were found not to be significant. Any and all potential significant impacts discussed in the FEIR that are not subject to paragraph 2(b) or 2(c), above, as either an avoidable significant impact, or as an unavoidable significant impact, are insignificant impacts to the environment. There exists no fair argument that the environmental conditions that were found not to be significant in the DEIR will pose a significant environmental impact, due to the inability of a Project of this scope to create such impacts or the absence of Project characteristics producing significant effects of this nature.

SECTION 3: FEIR REVIEWED AND CONSIDERED. The City Council has reviewed and considered the information contained in the FEIR and finds that the FEIR has been completed in compliance with CEQA.

SECTION 4: ALTERNATIVES. The FEIR identified potential environmental impacts of separate project alternatives compared to impacts from the proposed Project. These alternatives were selected based upon their ability to avoid or substantially lessen the significant effects of the proposed Project, while still achieving the primary Project objectives. Most alternatives are hereby found infeasible due to lack of alternative site availability, failure to meet basic Project objectives, or the fact that some alternatives would still have the same types of significant and unavoidable impacts as the Project. The City Council hereby adopts the Statement of Findings on rejection of Project Alternatives in Exhibit A (Section 6, titled "Findings Regarding Alternatives") to this Resolution, which is attached hereto and incorporated herein by this reference.

SECTION 5: STATEMENT OF OVERRIDING CONSIDERATIONS. The City Council finds, pursuant to CEQA Section 21081(b) and CEQA Guidelines Section 15093, that the specific economic, legal, social, technological and other benefits of the Project outweigh the Project's unavoidable adverse environmental impacts, and therefore, the impacts are acceptable. The City Council hereby adopts the Statement of Overriding Considerations in Exhibit A (Section 7, titled "Statement of Overriding Considerations") to this Resolution, which is attached hereto and incorporated herein by this reference. The City Council finds that each of the Significant and Unavoidable Impacts identified in Exhibit A (Section 4) may be considered acceptable for the reasons cited.

SECTION 6: MITIGATION MONITORING. The City as lead agency adopts the MMRP for the changes made to the Project that it has adopted in order to mitigate or avoid significant effects on the environment. Pursuant to Public Resources Code Section 21081.6, the MMRP set forth as Section 4.0 to the FEIR to this Resolution, which is attached hereto and incorporated herein by this reference, is hereby adopted to ensure that all mitigation measures adopted for the Project are fully implemented. The City Council hereby adopts the MMRP to ensure compliance with mitigation measures during Project implementation. As required by

Public Resources Code Section 21081.6, the MMRP designates responsibility and anticipated timing for the implementation of the mitigation measures recommended in the FEIR. The MMRP will remain available for public review during the compliance period.

SECTION 8: CERTIFICATION. Based on the above facts and findings, the City Council hereby certifies the FEIR for the Project as accurate and adequate. The City Council further recommends that the FEIR was completed in compliance with CEQA and the CEQA Guidelines.

SECTION 9: The Mayor shall sign the passage and adoption of this resolution and thereupon the same shall take effect and be in force.

PASSED, APPROVED AND ADOPTED this 27th day of March, 2018.

Deborah Robertson

DEBORAH ROBERTSON, MAYOR

ATTEST:

Barbara McGee

BARBARA MCGEE, CITY CLERK

APPROVED AS TO FORM:

FRED GALANTE, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF RIALTO)

I, BARBARA MCGEE, City Clerk of the City of Rialto, do hereby certify that the foregoing Resolution No. **7310** was duly passed and adopted at a regular meeting of the City Council of the City of Rialto held on the 27th day of March, 2018.

Upon motion of Councilmember Scott, seconded by Councilmember Baca Jr., the foregoing Resolution No. **7310** was duly passed and adopted.

Vote on the motion:

AYES: Mayor Robertson, Councilmembers: Scott, Baca Jr., Trujillo, Carrizales

NOES: None

ABSENT: None

IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of Rialto this 30th day of April, 2018.

Barbara McGee

BARBARA MCGEE, CITY CLERK

EXHIBIT A

FINDINGS AND FACTS IN SUPPORT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS PREPARED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE RIALTO BIOENERGY FACILITY PROJECT STATE CLEARINGHOUSE NO. 2017091011

[See Following Pages]

EXHIBIT A

CEQA FINDINGS

FINDINGS AND FACTS IN SUPPORT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS PREPARED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE RIALTO BIOENERGY FACILITY PROJECT STATE CLEARINGHOUSE NO. 2017091011

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STATE CLEARINGHOUSE NO. 2017091011
CEQA FINDINGS

1.0 INTRODUCTION

The City of Rialto (City) is considering the approval of applications filed by Rialto Bioenergy Facility, LLC (RBF or applicant) for the development of a 5.7 acre bioenergy facility located at 503 East Santa Ana Avenue, east of South Riverside Avenue, in the City of Rialto in San Bernardino County (the RBF Project, project or proposed project).

In compliance with the California Environmental Quality Act, Cal. Public Resources Code Sections 21000-21177 (CEQA) and the Guidelines for California Environmental Quality Act, 14 Cal. Code of Regs. Sections 15000-15387 (CEQA Guidelines), the City prepared the RBF Project Environmental Impact Report (State Clearinghouse No. 2017091011) (EIR) which addressed the environmental impacts of the RBF Project.

1.1 CEQA Requirements

The CEQA, Public Resources Code Section 21081, and the State CEQA Guidelines, 14 Cal. Code of Regs. Section 15091, require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. CEQA Section 21081 requires:

> *[N]o public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant environmental effects on the environment that would occur if the project is approved or carried out unless both of the following occur:*
>
> *(a) The public agency makes one or more of the following findings with respect to each significant effect:*
>
> *(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.*
>
> *(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.*
>
> *(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.*

> *(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological or other benefits of the project outweigh the significant effects on the environment.*

CEQA Guidelines Section 15091(b) states that "The findings required by subsection (a) shall be supported by substantial evidence in the record." CEQA Guidelines Section 15091(c) states that "The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives."

CEQA Guidelines Section 15091(d) further provides, "When making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures."

CEQA Guidelines Section 15093 further provides:

> *(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable".*
>
> *(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.*
>
> *(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.*

Where as a result of the environmental analysis of the project and the identification of project design features, compliance with existing laws, codes and statutes, and the identification of feasible mitigation measures, the following potentially significant impacts have been determined by the City to be reduced to a level of less than significant, the City has found in accordance with CEQA Section 21081(a)(1) and CEQA Guidelines Section 15091(a)(1) that "Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment," which is referred to herein as "***Finding 1***." Where the potential impact can be reduced to less than significant solely through adherence to and implementation of project design features or standard conditions, these measures are considered "incorporated into the project" which mitigate or avoid the potentially significant effect, and in these situations, the City also will make "Finding 1" even though no mitigation

measures are required but will note that the potential impact is less than significant by implementation of project design features and/or compliance with existing laws and regulations.

Where the City has determined pursuant to CEQA Section 21081(a)(2) and CEQA Guidelines Section 15091(a)(2) that "Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency, the City's findings is referred to herein as "***Finding 2***."

Where, as a result of the environmental analysis of the project, the City has determined that either (1) even with the identification of project design features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3) that "Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report," referred to herein as "***Finding 3***."

CEQA Section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." CEQA Guidelines Section 15364 adds another factor: "legal" considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565.)

The concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project (*City of Del Mar v. City of San Diego* [1982) 133 Cal.App.3d 410, 417.). "'[F]easibility' under CEQA encompasses "desirability" to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors." (*Ibid*.; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

For the purposes of these findings, the term "avoid" refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term "substantially lessen" refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less than significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Assn. v. City Council* (1978) 83 Cal.App.3d 515, 519-527, 147 Cal.Rptr. 842, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant efforts by adopting numerous mitigation measures, not all of which rendered the significant impacts in question (e.g., the "loss of biological resources") less than significant.

Although CEQA Guidelines Section 15091 requires only that approving agencies specify that a significant effect is "avoid[ed] or substantially lessen[ed]," these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level, or has simply been substantially lessened but remains significant.

With respect to a project for which significant impacts are not avoided or substantially lessened either through the adoption of feasible mitigation measures or feasible environmentally superior alternatives, a public agency, after adopting proper findings based on substantial evidence, may,

nevertheless, approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's benefits rendered acceptable its unavoidable adverse environmental effects. (CEQA Guidelines §15093, 15043(b); see also CEQA § 21081(b).)

1.2 Format of Findings

These Findings have been organized into the following sections:

Section 1.0, Introduction. This section provides an introduction to these Findings and to the proposed project and sets forth the requirements of CEQA for a lead agency to make the following Findings. This sections also sets forth the contents of the Record of Proceedings and pursuant to Section 21081.6(a)(2) of CEQA and Section 15091(e) of the State CEQA Guidelines, the location and custodian of the documents and materials which constitute the Record of Proceedings.

Section 2.0, Project Description. This section provides a summary of the project and an overview of the discretionary actions required for implementation of the project, and a statement of the project's objectives.

Section 3.0, General Findings. In addition to the specific findings presented herein, this section identifies the general CEQA findings of the Lead Agency.

Section 4.0, Findings Regarding the Significant or Potentially Significant Environmental Effects of the proposed project which cannot Feasibly be Mitigated to Below a Level of Significance. This section sets forth findings regarding the significant or potentially significant environmental impacts of the proposed project which cannot feasibly be mitigated to a less-than-significant level based on the threshold of significance criteria presented in the EIR and which will or may result from the implementation of the project.

Section 5.0, Findings Regarding the Significant or Potentially Significant Environmental Effects of the proposed project which can Feasibly be Mitigated to Below a Level of Significance. This section sets forth findings regarding significant or potentially significant environmental impacts identified in the EIR which the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of project design features, standard conditions, and/or mitigation measures. In order to ensure compliance and implementation, all of these measures will be included in the Mitigation Monitoring and Reporting Program (MMRP) for the project. Where potentially significant impacts can be reduced to less than significant levels through adherence to project design features and standard conditions, these findings specify how those impacts were reduced to an acceptable level.

Section 6.0, Findings Regarding Alternatives. This section provides findings regarding those alternatives to the proposed project which were examined in the EIR and which were considered by the advisory and decision-making bodies of the City as part of their deliberations concerning the proposed project but which were not selected by the City of Rialto City Council (City Council) for approval.

Section 7.0, Statement of Overriding Considerations. This section contains the Lead Agency's Statement of Overriding Considerations (SOC) setting forth the City's reasons for finding that

specific economic, legal, social, technological, and other considerations associated with or attributable to the proposed project outweigh the project's potentially significant unavoidable adverse environmental effects.

1.3 Record of Proceedings

For purposes of CEQA and these Findings, the record of proceedings for the City's Findings and determinations include, but are not limited to the following documents which were considered by the City prior to taking action on the proposed project, and adopting these Findings.

(1) "Notice of Preparation" (NOP), "Notice of Completion" (NOC), "Notice of Availability" (NOA), "Notice of Determination" (NOD), and all other public notices issued by the City in conjunction with this CEQA process;

(2) "Draft Environmental Impact Report – State Clearinghouse No. 2017091011" (DEIR), including all technical appendices, all documents incorporated by reference therein, and all written comments submitted by public agencies and by members of the public during the public review periods established by the NOP and NOA;

(3) Other site-specific and/or project-specific technical studies and exhibits not included in the FEIR but explicitly referenced therein;

(4) "Response to Comments on the Draft Environmental Impact Report – State Clearinghouse No. 2017091011" (RTC), including all written comments submitted by public agencies and members of the public during the public review period established by the NOC and included in the Final Environmental Impact Report – State Clearinghouse No. 2017091011 (FEIR);

(5) All written and verbal public testimony presented during public hearings for the proposed project at which public testimony was taken, specifically the February 28, 2018 Planning Commission hearing and the March 27, 2018 City Council hearing;

(6) All project information submitted by the Applicant in its application to the City relating to the project and/or the FEIR.

(7) All agendas, staff reports, and approved minutes of the City's Planning Commission and City Council relating to the proposed project; and

(8) All other public reports, documents, studies, memoranda, maps, or other planning documents relating to the project, the DEIR, or the FEIR, prepared by the City, consultants to the City, or responsible or trustee agencies.

1.4 Custodian and Location of Records

The following information is provided in compliance with Section 21081.6(a)(2) of CEQA and Section 15091(e) of the State CEQA Guidelines.

The documents and other materials constituting the administrative record for the City Council's actions related to the FEIR are located at the City of Rialto, Development Services Department, Planning Division, 150 South Palm Avenue, Rialto, California 92376. The Development Services Director is the custodian of the administrative record for the proposed project. During the regular business hours of the City, copies of the documents constituting the FEIR's record of proceedings are available upon request at the offices of the Development Services Department.

2.0 PROJECT DESCRIPTION

2.1 Project Location

The project site is located within the City of Rialto (City or Lead Agency), San Bernardino County. The project site is located at 503 East Santa Ana Avenue, east of South Riverside Avenue in the City of Rialto in San Bernardino County. The project site is located in Section 25 in Township 1 South and Range 5 West, as depicted on the U.S. Geological Survey (USGS) 7.5-minute series San Bernardino South, California quadrangle (latitude 34° 03' 12.06" north and longitude 117° 21' 34.81" west).

The 5.7-acre project site consists of one parcel, with the following San Bernardino Assessor's Parcel Number (APN): 0258-151-24-0000. The topography of the project site is generally flat with a gentle downslope from north to south. The elevations onsite are approximately 940 feet above mean sea level (amsl).

2.2 Project Description

The project site is 5.7 acres and developed with a non-operating facility previously owned and operated by EnerTech. The existing non-operational biosolids plant is in a heavy industrial zone on a parcel owned by the City of Rialto. Existing onsite equipment, including biosolids drying components and wastewater processing components, will be incorporated into the proposed project.

RBF will produce 13.38 megawatts (MWs) of electrical equivalent of renewable energy from up to 1,080 tons per day of a combination of food waste extracted from municipal waste streams, liquid waste, and municipal biosolids and biogas captured from the adjacent WWTP. When fully operational, the proposed project will convert up to 700 tons per day (TPD) of food waste extruded from local municipal solid waste (MSW) into 5.15 MW of electrical power from biogas. Three MW of this power would be sold to Southern California Edison (SCE) via the BioMAT Power Purchase Agreement, with the balance used in powering the RBF onsite loads. An additional 8.2 MW of electrical equivalent in the form of biogas would be injected into the local natural gas pipeline, which would include up to 1,400 standard cubic feet per minute (scfm) of biomethane.

2.3 Discretionary Actions

City discretionary approvals required for the project include, but may not be limited to: 1) Certification and approval of the EIR; 2) Approval of Conditional Use Permit; 3) Approval of Precise Plan of Design; and 4) Approval of Encroachment Permit.

2.4 Project Objectives

The following objectives have been identified for the project:

- Revitalize the existing, non-operational Rialto Biosolids Facility.
- Provide organics recycling as part of AB 1826 compliance to meet the organics recycling objectives from local municipal solid waste into renewable natural gas and electricity.

- Reduce greenhouse gas (GHG) emissions by over 433,000 metric tons of carbon dioxide equivalents ($MTCO_2e$) over the next 10 years regionally through diverting 1,080 tons per day of food waste and municipal biosolids from landfill disposal and converting it into 14 MW or equivalent electrical power from recycling organics waste streams.
- Create additional income stream for the City of Rialto (lease and tip fees) and employment opportunities for the citizens of Rialto and surrounding communities.
- Implement the City's General Plan General Industrial Land Use policies and objectives.
- Implement the Agua Mansa Industrial Corridor Specific Plan by developing a land use envisioned and previously authorized by the Agua Mansa Industrial Corridor Specific Plan.

3.0 GENERAL FINDINGS

These findings and facts in support of findings are adopted by the City in accordance with the requirements of CEQA and the CEQA Guidelines. In addition to the specific findings identified herein, the City Council hereby finds that:

(1) Under CEQA, the City is the appropriate "Lead Agency" for the proposed project and during the project's CEQA proceedings no other agency asserted or contested the City's "Lead Agency" status;

(2) As part of the CEQA process, in compliance with the provisions of Senate Bill (SB) 18 and the Governor's Office of Planning and Research's (OPR) "Supplement to General Plan Guidelines – Tribal Consultation Guidelines" (2005), the Lead Agency notified the appropriate California Native American tribes of the opportunity to conduct consultation for the purpose of preserving or mitigating impacts to cultural places, referred the proposed action to those tribes that are on the Native American Heritage Commission (NAHC) contact list that have traditional lands within the agency's jurisdiction, and send notice to tribes that have filed a written request for such notice;

(3) In compliance with the provisions of Assembly Bill (AB) 52, the Lead Agency notified California Native American Tribes who have requested to be notified of CEQA actions subject to AB 52, and initiated and conducted consultation with the one Native American tribe, the Gabrieleno Band of Mission Indians – Kizh Nation that responded to the consultation notice.

(4) Copies of the NOP, DEIR, and NOC were provided to those Responsible Agencies identified in the FEIR and each such agency was provided a specified review period to submit comments thereupon;

(5) In compliance with Section 21092.5(a) of CEQA, at least 10 days prior to the certification of the FEIR, the Lead Agency provided its written proposed response to those public agencies that submitted comments to the Lead Agency on the DEIR;

(6) The FEIR and all environmental notices associated therewith were prepared in compliance with CEQA and the State CEQA Guidelines and in accordance with the City's local guidelines and procedures;

(7) The City Council has independently reviewed and analyzed the FEIR and the FEIR reflects the independent judgment of the City Council;

(8) A MMRP has been prepared for the proposed project, identifying those feasible mitigation measures that the City Council has adopted in order to reduce the potential environmental effects of the proposed project to the maximum extent feasible;

(9) The mitigation measures adopted or likely to be adopted by the City Council will be fully implemented in accordance with the MMRP, verification of compliance will be documented, and each measure can reasonably be expected to have the efficacy and produce the post-mitigated consequences that have been assumed in the FEIR;

(10) The City has determined that neither the comments received nor the responses thereto add significant new information under Section 15088.5 of the State CEQA Guidelines that would require recirculation of the FEIR prior to its certification; and

(11) Copies of all the documents incorporated by reference in the FEIR are and have been available for review during the regular business hours of the City at the office of the Development Services Department from the custodian of records for such documents.

Because the EIR identified significant effects that may occur as a result of the project, and in accordance with the provisions of the CEQA Guidelines presented above, the City hereby adopts these findings set forth in this document as part of the approval of the project. These findings constitute the City's best efforts to set forth the evidentiary and policy bases for its decision to approve the project in a manner consistent with the requirements of CEQA.

The findings and determinations contained herein are based on the substantial evidence, both oral and written, contained in the entire record relating to the project and the EIR. The findings and determinations constitute the independent findings and determinations by the City in all respects and are fully and completely supported by substantial evidence in the record as a whole.

Although the findings below identify specific sections within the EIR in support of various conclusions reached below, the City incorporates by reference and adopts as its own, the reasoning and analysis set forth in the EIR and thus relies on that reasoning, even where not specifically mentioned or cited below, in reaching the conclusions set forth below, except where additional evidence is specifically mentioned. This is especially true with respect to the City's adoption of all mitigation measures recommended in the EIR and the reasoning set forth in responses to comments in the EIR. The City further intends that if these findings fail to cross-reference or incorporate by reference any other part of these findings, any finding required or permitted to be made by the City with respect to any particular subject matter of the project must be deemed made if it appears in any portion of these findings or findings elsewhere in the record. The EIR, comments and responses to comments, and all appendices are hereby fully incorporated herein by this reference.

4.0 FINDINGS REGARDING THE SIGNIFICANT ENVIRONMENTAL EFFECTS WHICH CANNOT FEASIBLY BE MITIGATED TO BELOW A LEVEL OF SIGNIFICANCE

The FEIR identified that the proposed project would result in the following significant effects which, even after application of feasible mitigation measures, and compliance with existing statutes, regulations, uniform codes, and project design features, cannot be mitigated to below a level of significance and therefore will remain significant and unavoidable:

- **Air Quality** (Impacts 4.8.1 (Operational Regional Emissions) and 4.9.1 (Cumulative Air Quality)). Based upon the size of the project, and current industry practices, no feasible mitigation measures exist to reduce some air quality impacts to below a level of significance. While measures such as requiring a substantial reduction in the size of the project and imposing severe operational constraints may reduce operations emissions, they are not feasible given the equipment needed to process the waste streams to produce bioenergy for the project to operate in an efficient manner.

  The project's recommended mitigation measures will not fully mitigate the project's projected exceedance of the thresholds of significance for operational emissions of oxides of nitrogen (NO_X). The NOx emissions are mainly associated with combustion sources from RBF operations. The FEIR has identified one mitigation measure to reduce air quality impacts. This measure includes entering into a Title V permit with the South Coast Air Quality Management District (SCAQMD) to further reduce NOx emissions as part of the air permit application process, including participating in emissions reduction programs such as purchasing emission reduction credits, removing equipment, and/or accepting permit conditions to limit operations. Despite imposition of this measure, operational emissions of NOx would still exceed the threshold of significance.

  In addition, any proposed project that would individually have a significant air quality impact would also be considered to have a significant cumulative air quality impact. Because the majority of emissions are associated with RBF operations, there are controls that could be implemented as part of the SCAQMD Title V permitting process. As the regional threshold for NO_X is exceeded, the proposed project's emissions are considered cumulatively significant. The City makes the following findings with respect to each of these significant and unavoidable environmental impacts.

4.1 Air Quality

Air Quality Impacts 4.8.1 and 4.9.1: The project will result in a cumulatively considerable net increase of a criteria pollutant for which the project region is in nonattainment under an applicable federal or State ambient air quality standard. Specifically, the project will generate long-term operational emissions from combustion sources. Nearly all operational emissions of the project would be below SCAQMD daily thresholds. However, emissions of oxides of nitrogen (NO_X) would exceed the 55 lb/day threshold. NO_X emissions from operations would be mainly associated with combustion sources. The project would result in a significant and unavoidable operational impact with respect to NO_X emissions.

Findings: The City Council hereby makes **Findings (2) and (3)**.

Facts in Support of Findings: The following facts are presented in support of these findings:

- Project-related and cumulative air quality impacts are addressed in Section 4.0 (Air Quality) and in Appendix B (Air Quality and Greenhouse Gas Emission Calculations) in the DEIR and that analysis is incorporated by reference herein.

- Operations of the proposed project has the potential to create air quality impacts through the use of combustion sources during project operations.

- In order to lessen the effects of this impact, the City adopts the following mitigation measures which were identified and analyzed in the FEIR:

  Mitigation Measure 4.8.1 and 4.9.1 - The applicant shall enter into a Title V permit with the SCAQMD and further reduce NOx emissions as part of the air permit application process, including participating in emissions reduction programs such as purchasing emission reduction credits, removing equipment, and/or accepting permit conditions to limit operations.

- The operations phase of the project would also result in significant air quality impacts to regional air quality. As discussed previously, the project would result in emissions which exceed the SCAQMD's regional significance threshold for NO_X. The application of **Mitigation Measure 4.8.1 and 4.9.1** would reduce emissions associated with project operations; however, the majority of emissions are due to combustion emissions, and while mitigation measures have been identified to reduce most air emissions to levels considered less than significant, NOx emissions will remain significant and unavoidable.

- With implementation of **Mitigation Measure 4.8.1 and 4.9.1**, NO_X emissions would be reduced but would remain above the 55 lb/day threshold of significance. Consequently, a significant operational air quality impact would still occur. Since there are no reasonably feasible mitigation measures for operational air quality emissions of NOx, this impact is considered significant and unavoidable.

  - The significant project-specific impacts related to operational air quality emissions are determined to be acceptable because they are substantially outweighed by the overriding social, economic, environmental and other benefits of the project, as more fully set forth in the Statement of Overriding Considerations in Section 7.0 below.

5.0 FINDINGS REGARDING THE SIGNIFICANT OR POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS OF THE PROPOSED PROJECT WHICH CAN FEASIBLY BE MITIGATED TO BELOW A LEVEL OF SIGNIFICANCE

The FEIR identified that the proposed project would result in the following significant effects which, after application of feasible mitigation measures, and compliance with existing statutes, regulations, uniform codes, and project design features, will reduce these impacts to below a level of significance.

5.1 Biological Resources

Biological Resource Impact 2.6.IV(a): Construction of the project has the potential to result in an adverse impact on sensitive species.

Finding: The City Council hereby makes **Finding (1)**.

Facts in Support of Finding: The following facts are presented in support of this finding:

- Project-related biological resource impacts are addressed in Appendix A, Notice of Preparation/Initial Study, Section 2.6.IV (Biological Resources) in the DEIR and that analysis is incorporated by reference herein.

- The City of Rialto has established that impacts to biological resources are significant if the project interferes substantially with the movement of any resident or migratory wildlife species.

- In the case of RBF, there will be the installation of an off-site gas pipeline alignment in an already developed as a roadway—East Santa Ana Avenue. There is the potential for off-site construction activities to have potentially significant impacts on the movement of candidate, sensitive, or special status species.

- Because construction could have potentially significant impacts on the movement of candidate, sensitive, or special status species, construction of the proposed project could cause a significant impact, and mitigation is required.

- In order to reduce this impact, the City adopts the following mitigation measures which were identified and analyzed in the FEIR:

  Mitigation Measure BIO-1 All trenches must be inspected twice daily to ensure no wildlife become entrapped. Trenches shall be covered at night. All pipes must be inspected prior to closure to ensure no wildlife are present. If wildlife became entrapped in a trench, escape ramps shall be provided at each end for them to exit the trench. If a potential den or wildlife is observed at any time during construction, a qualified biologist must be contacted to determine the appropriate course of action.

- With implementation of this mitigation measure, biological resource impacts during construction of the project will be reduced to a less than significant level.

5.2 Cultural Resources

Cultural Resources/Tribal Cultural Resources Impact 2.6.V (a-e): Construction of the project has the potential to result in an adverse impact on cultural resources.

Finding: The City Council hereby makes **Finding (1)**.

Facts in Support of Finding: The following facts are presented in support of this finding:

- Project-related cultural resource impacts are addressed in Appendix A, Notice of Preparation/Initial Study, Section 2.6.V (Cultural Resources/Tribal Cultural Resources) in the DEIR and that analysis is incorporated by reference herein.

- The City of Rialto has established that impacts to cultural resources/tribal cultural resources are significant if the project results in the disturbance of a significant prehistoric or historic archaeological site or a property of historic, cultural significance, or tribal cultural significance to a community or ethnic or social group or a California Native American tribe or if the project area has unique paleontological resources or objects with cultural value to a California Native American tribe are present that could be disturbed by construction of the proposed project.

- In the case of RBF, there will be onsite and off-site ground disturbing activities during construction which would create a potentially significant impact and mitigated is required.

- In order to reduce this impact, the City adopts the following mitigation measures which were identified and analyzed in the FEIR:

  Mitigation Measure CR-1: The grading permit must contain a clause that, in the event that subsurface archaeological resources are encountered during ground disturbing activities in the project area, these activities must be suspended in the vicinity of the find until the deposits are recorded and evaluated by a qualified archaeologist. If human remains of any kind are found during construction activities, all work must cease immediately and the San Bernardino County Coroner must be notified. If the coroner determines the remains to be of Native American origin, he or she will notify the Native American Heritage Commission (NAHC); the NAHC will then identify the most likely descendants to be consulted regarding treatment and/or repatriation of the remains.

  Mitigation Measure CR-2: Monitoring of ground-disturbing construction activities below depths of 5 feet by a qualified paleontologist is required to avoid inadvertent impacts to buried paleontological deposits. At the beginning of the project, monitoring should take place periodically (e.g., one or two days per week). If paleontological specimens are observed, a decision can be made to continue the schedule of periodic monitoring or to increase the frequency. If paleontological specimens are encountered during ground disturbance, the paleontological monitor shall have the authority to halt or redirect work until the find(s) can be identified, removed, documented, and evaluated. Recovered specimens must be curated in a museum repository with permanent retrievable storage (e.g., San Bernardino County Museum). A report must be prepared with an appended

itemized inventory or specimens, if any are recovered.

- With implementation of this mitigation measure, cultural resource/tribal cultural resource impacts during construction of the project will be reduced to a less than significant level.

5.3 Geology and Soils

Geology and Soils Impact 2.6.VI (a-d): Construction of the project has the potential to expose persons or structures to substantial adverse effects, including the risk of loss, injury, or death involving seismic ground failure, substantial soil erosion or topsoil loss, unstable soils, and expansive soil creating risk.

Finding: The City Council hereby makes **Finding (1)**.

Facts in Support of Finding: The following facts are presented in support of this finding:

- Project-related geology and soils impacts are addressed in Appendix A, Notice of Preparation/Initial Study, Section 2.6.VI (Geology and Soils) in the DEIR and that analysis is incorporated by reference herein.

- The project location and onsite activities would be consistent with the current uses of the site and surrounding areas. The proposed project site is completely developed as a result of the previous EnerTech Project. Additional grading activities are expected to result in potential impacts to expose persons or structures to potentially substantial adverse effects, including the risk of loss, injury, or death involving seismic ground failure, substantial soil erosion or topsoil loss, unstable soils, and expansive soil creating risk during construction which would create a potentially significant impact and mitigated is required.

- In order to reduce this impact, the City adopts the following mitigation measures which were identified and analyzed in the FEIR:

  Mitigation Measure G-1: Prior to Grading Plan approval, the applicant shall demonstrate to the satisfaction of the City Engineer that the soils on the site are stable for construction of the Regional Biosolids Processing Facility or that the grading plan or facility engineering has been designed to account for any site-specific soils issues related to the landfill.

- With implementation of these mitigation measures, impacts to geology and soils during construction of the project will be reduced to a less than significant level.

5.4 Hazards and Hazardous Materials

Hazards and Hazardous Materials Impact 2.6.VII (a & b): Construction and operation of the project has the potential to create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

Finding: The City Council hereby makes **Finding (1)**.

Facts in Support of Finding: The following facts are presented in support of this finding:

- Project-related geology and soils impacts are addressed in Appendix A, Notice of Preparation/Initial Study, Section 2.6.VII (Hazards and Hazardous Materials) in the DEIR and that analysis is incorporated by reference herein.

- Past uses on the project site have involved the use, storage, and transport of hazardous materials for the previous Enertech Project operations. Proposed uses will include use, storage, and transport of hazardous materials. Prior to current uses, the project site supported agriculture uses and landfill activities. Agricultural chemicals, such as pesticides, herbicides, and fertilizers, may have been used on the project site. However, the site was previously mitigated for use as a bioenergy plant and previous activities therefore does not constitute a significant human or environmental health risk.

- The facility will be storing food waste and biosolids in large receiving bins located at the facility. The food waste will then be pumped into the anaerobic digestion chambers where biogas will be produced. The facility will have two 3.5 million gallon water level anaerobic digestion tanks. For the emissions control system, the facility will be hauling in and storing large quantities of caustic soda (5,000 gallons) and sulfuric acid (5,000 gallons). The caustic soda and sulfuric acid will be stored in large tanks onsite. Caustic soda (also known as sodium hydroxide) is not a regulated substance under U.S. EPA's risk management program or for California Accidental Release Prevention Program (CalARP) (U.S. EPA 2017 and CalARP 2017). Sulfuric acid is a regulated substance when stored in quantities of 10,000 gallons or more by the U.S. EPA (2017); the proposed project will be storing less than 10,000 gallons of sulfuric acid. The proposed project volume and concentration of sulfuric acid will exceed the threshold quantity for CalARP and therefore will require a Risk Management Plan under CalARP. This would create a potentially significant impact and mitigated is required.

- In order to reduce this impact, the City adopts the following mitigation measures which were identified and analyzed in the FEIR:

  Mitigation Measure HAZ-1: Prior to operations, RBF will prepare and implement a CalARP compliant Risk Management Plan for sulfuric acid. CalARP is authorized under Health and Safety Code Sections 25531 to 25543.3, with program regulations in CCR Title 19, Section 2735.1 through 2785.1. The intent of the Risk Management Plan is to provide basic information that may be used by first responders to prevent or mitigate damage to public health and safety and the environment from the release or threatened release of a hazardous material. A Risk Management Plan is prepared by the owner containing detailed information, including, but not limited to, the following: 1) regulated substances held onsite at the stationary source; 2) off-site consequences of an accidental release of a regulated substance; 3) the accident history of a stationary source; 4) the emergency response program for the stationary source; 5) coordination with local emergency responders; 6) hazard review or process hazard analysis; 7) operating procedures at the stationary source; 8) training of the stationary source's personnel; and 9) maintenance and mechanical integrity of the stationary source's physical plant; and incident investigation.

- With implementation of these mitigation measures, impacts to hazards and hazardous materials during project operations will be reduced to a less than significant level.

5.5 Hydrology and Water Quality

Hydrology and Water Quality Impact 2.6.VIII (a through f): Construction of the project has the potential to result in a violation of water quality standards, waste discharge requirements, or otherwise substantially degrade water quality.

Finding: The City Council hereby makes **Finding (1)**.

Facts in Support of Finding: The following facts are presented in support of this finding:

- Project-related hydrology and water quality impacts are addressed in Appendix A, Notice of Preparation/Initial Study, Section 2.6.VIII (Hydrology and Water Quality) in the DEIR and that analysis is incorporated by reference herein.

- The Final EIR for the previous Enertech Project operations required mitigation measures to address degradation of surface water; given the RBF Project EIR incorporated by reference the EnerTech Final EIR and the proposed project will also contribute to the degradation of water quality, there are applicable mitigation measures to be applied to the RBF Project.

- The grading phase of the proposed project will require the disturbance of surface soils, which could potentially result in erosion and sedimentation and therefore affect water quality. Stockpiles and excavated areas may be susceptible to high rates of erosion from wind and rain and, if not managed properly, could result in increased sedimentation in local watercourses. This would create a potentially significant impact and mitigated is required.

- The delivery, handling, and storage of construction materials and wastes, as well as the use of onsite construction equipment could increase the risk of storm water contamination through the spill, leakage and routine usage of substances such as fuels, oils, paints, and solvents. These substances can be transported to nearby surface waterways and/or to groundwater in storm water runoff, wash water, and dust control water, potentially reducing the quality of the receiving waters. This would create a potentially significant impact and mitigated is required.

- Short-term storm water pollutant discharges from the project site will be mitigated through compliance with the required NPDES permits. Some permits, however, do contain certain generic BMPs. The implementation of NPDES permits, including the General Construction permit, ensures that the federal and State standards for clean water are met. Enforcement of required NPDES permit requirements will prevent sedimentation and soil erosion through implementation of an SWPPP and periodic inspections by RWQCB staff.

- In order to reduce this impact, the City adopts the following mitigation measures which were identified and analyzed in the FEIR:

Mitigation Measure W-2: Prior to issuance of City permits, the project applicant shall apply to be enrolled in the existing NPDES Statewide General Permit for Storm Water Discharges from Construction Activity (Construction Activity General Permit) as required by the State Water Resources Control Board (SWRCB). The Biosolids Facility will be subject to annual storm water reporting requirements to SWRCB in addition to the preparation of a SWPPP and monitoring plan.

Mitigation Measure W-4: Prior to issuance of City permits, the project applicant will need to complete and file Form 200 (Form 200 - Report of Waste Discharge) as required by the Santa Ana RWQCB to document/disclose the disposal of the water that was dewatered from the sludge.

- With implementation of these mitigation measures, impacts to hydrology and water quality during construction of the project will be reduced to a less than significant level.

- RBF will update the storm water plan (the WQMP) with the Santa Ana RWQCB as part of the project required actions. The proposed project incorporates onsite drainage control structures and programs sufficient to meet the applicable federal, State, and local water quality requirements. Through the use of project site design BMPs, source control BMPs, and treatment control BMPs, the resulting pollutant loads coming from the project will be reduced, thereby reducing pollutants discharged from urban storm water runoff to surface water bodies. Compliance with the requirements of the NPDES permit, which include implementation of the BMPs outlined in the WQMP, would reduce proposed project operational impacts.

- With implementation of these mitigation measures, impacts to hydrology and water quality during operation of the project will be reduced to a less than significant level.

6.0 FINDINGS REGARDING PROJECT ALTERNATIVES NOT SELECTED FOR IMPLEMENTATION

As required by CEQA Guidelines Section 15126.6, the City's EIR described a range of reasonable and potentially feasible alternatives to the project which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluated the comparative merits of the alternatives in the EIR.

The FEIR considered one alternative to the proposed project, as follows:

(1) **No Project/No Build:** This alternative assumes that no new bioenergy facility would be constructed. No ground disturbing activities would take place, nor would any industrial structures or equipment would be installed. The existing organics waste stream would continue to be disposed of in regional landfills. Under this alternative, the potential impacts associated with development of the proposed project would not occur. This alternative provides for an analysis of the existing conditions at the time the Notice of Preparation (NOP) was published, as well as what would reasonably be expected to occur in the foreseeable future if the proposed project were not approved, based on current plans and consistent with available infrastructure and community services.

This alternative evaluates the circumstance under which the proposed project does not proceed. The discussion compares the environmental effects of the project site remaining in its existing state against environmental effects which would occur if the proposed project is approved. This alternative means "no build" wherein the existing environmental setting is maintained. The failure to proceed with the proposed project would not result in preservation of existing environmental conditions.

This alternative would be the environmentally superior alternative to the proposed project. However, maintaining the project site's existing improvements and uses would not fulfill any of the project objectives.

The City recognizes that the project will result in significant unavoidable environmental impacts that cannot be feasibly reduced to below a level of significance, and in doing so, considered the alternative identified in the DEIR in light of the environmental impacts which cannot be avoided or substantially lessened. The City makes the following findings regarding the No Project/No Build alternatives, and has rejected that alternative as infeasible for the reasons hereinafter stated. In making these findings, the City incorporates by reference the analysis of project alternatives that was presented in Section 6.0 (Alternatives) in the DEIR.

6.1 Alternative No. 1: No Project/No Build

Alternative Description:

A "no project" alternative is required under CEQA. As specified in the State CEQA Guidelines, "the 'no project' alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved" (14 CCR 15126.6[e][3][B]).

Under this alternative, no physical changes to the project site would occur, no improvements to the site would be authorized, and no change in organization would be pursued. The site would remain in its current state as a non-operational biosolids facility. No landform alterations would occur. Under this alternative, no physical disturbance, applicant-funded infrastructure improvements, and truck trips would predictably occur within and from the project site.

Comparison of the Effects of the Alternative to the Significant Effects of the Proposed Project:

This alternative would result in the avoidance of those significant project-related and cumulative air quality impacts associated with the adoption and implementation of the proposed project.

Under this alternative, no construction activities would occur on the project site and no further intensification of the subject property would be authorized. As a result, there would be no increase in either construction-term or operational air emissions above existing baseline levels.

Feasibility/Effectiveness in Meeting Project Objectives:

Because the project site would generally remain in its current condition, the "no project/no development" alternative generally fails to meet the City's broad-based objectives creating employment opportunities, providing new development consistent with regional and municipal service capabilities, providing industrial facilities and services that capitalize on the area's close proximity to freeways and other transportation corridors, implementing the City's General Plan General Industrial Land Use policies, and implementing the Agua Mansa Industrial Corridor Specific Plan by developing a land use envisioned by the Agua Mansa Industrial Corridor Specific Plan.

Based on these factors, the City finds that this alternative would not meet the City's or RBF's key objectives, and that this alternative is undesirable from a policy standpoint as it would not sufficiently support the City's interest in promoting several important objectives and policies.

Additional Environmental Impacts Resulting from the Selection of this Alternative:

Should the "no project/no development" alternative be selected, no additional industrial bioenergy facility would be provided and no new job opportunities would be created on the project site. The existing organics waste stream would continue to be disposed of in regional landfills and no reduction in regional greenhouse gas emissions would be realized. If an incremental contribution toward the fulfillment of those identified regional and localized employment demands cannot be provided on the subject property, it is reasonable to assume that additional development pressures for the creation of those new jobs would be placed on other properties located throughout the City and within proximal unincorporated County areas. This alternative would also have land use impacts in that it would conflict with the City General Plan (Land Use Element) which designates the project site for development pursuant to a specific plan. While this alternative would not result in any direct impacts to regional air quality it could have greater indirect impacts as the proposed organics recycling and conversion into renewable natural gas and electricity and gas would not be realized.

6.2 Conclusion

While for the short-term this alternative is technically "feasible" in that the property could remain in its current condition, it is unrealistic to assume that this City-owned property would remain permanently unused and the income stream for the City from leasing of the property would not be realized. This is even more so given the designation in the City's General Plan that this area is considered appropriate for development under the Agua Mansa Industrial Corridor Specific Plan. Therefore, it is reasonable to assume that some level of development and economic use of the project site would be pursued over the long-term. Therefore, the "no project/no development" alternative would ultimately be infeasible in that it could not be accomplished over time because it is logical from an economic perspective that the City as the landowner would seek some economic use of the property, and from a political and social perspective that the City would seek some form of implementation of its General Plan land use objectives for this property. Moreover, this alternative does not meet any of the project objectives. For these reasons, the City Council finds that this alternative is infeasible and rejects it in favor of the proposed project.

7.0 STATEMENT OF OVERRIDING CONSIDERATIONS

7.1 Introduction

The City is the Lead Agency under CEQA for preparation, review and certification of the FEIR for the RBF Project. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed project and which of those impacts are significant, and which can be mitigated through imposition of mitigation measures to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed project. In making this determination the City is guided by CEQA Guidelines Section 15093 which provides as follows:

> *(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable".*
>
> *(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.*
>
> *(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.*

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the proposed project against the following unavoidable adverse impacts associated with the proposed project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the proposed project, none of which attain most of the project objectives, would be feasible or would be environmentally preferable to the proposed project for the reasons discussed in Section 6.0 of these Findings and Facts in Support of Findings.

The City Council having reviewed the FEIR for the RBF Project, and reviewed all written materials within the City's public record and heard all oral testimony presented at public hearings, adopts

this Statement of Overriding Considerations, which has balanced the benefits of the project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the project.

7.2 Significant Unavoidable Adverse Environmental Impacts

Although most potential project impacts have been substantially avoided or mitigated, as described in Section 5.0 of these Findings and Facts in Support of Findings, there remain some project and cumulative environmental impacts for which mitigation to a less than significant level is not feasible. For some impacts, mitigation measures were identified and adopted by the Lead Agency, however, even with implementation of the measures, the City finds that the impact cannot be reduced to a level of less than significant. For other impacts, no feasible mitigation measures were identified and no feasible alternatives were identified that would avoid or minimize these impacts. The impacts and alternatives are described below and were also addressed in the Findings.

The FEIR identified the following unavoidable adverse impacts of the proposed project, and adopted findings for these impacts in Section 5.0 of these Findings and Facts in Support of Findings:

- Air Quality (Impact 4.8.1 and Cumulative Impact 4.9.1). Although nearly all of the long-term operational emissions for the proposed project would be below SCAQMD daily thresholds, emissions of NOx, would exceed the 55 lbs/day threshold of significance. The NOx emissions are mainly associated with combustion sources. The FEIR requires that the applicant shall enter into a Title V permit with the SCAQMD and further reduce NOx emissions as part of the air permit application process, including participating in emissions reduction programs such as purchasing emission reduction credits, removing equipment, and/or accepting permit conditions to limit operations. Despite imposition of this measures, operational emissions of NOx would still exceed the threshold of significance. In addition to the operationally significant NOx emission impacts, as the regional threshold for NOx is exceeded, the proposed project's emissions when considered with other related projects, is considered cumulatively significant. As there is no reasonably feasible mitigation for this cumulative impact, this is also considered significant and unavoidable.

7.3 Overriding Considerations

The City, after balancing the specific economic, legal, social, technological, and other benefits of the proposed project, has determined that the unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the proposed project, each of which standing alone is sufficient to support approval of the project, in accordance with CEQA Section 21081(b) and CEQA Guideline Section 15093.

1. **Revitalize existing industrial area.** The project site is currently occupied by a non-operational biosolids plant. This regional biosolids processing facility, originally developed by EnerTech, is on City of Rialto property and has been unproductive for several years. The proposed project would reuse some of the existing equipment and would put into operation this existing non-operational industrial site.

2. **Develop Renewable Energy from Organic Waste Streams.** RBF will produce 13.38 MW in equivalent electricity of renewable energy from up to 1,080 tons per day of a

combination of food waste, liquid waste, and municipal biosolids. Renewable energy will be produced in the form of electricity (3.0 MW) used for sale to SCE through the BioMAT Power Purchase Agreement and biogas upgraded for delivery to the Southern California Gas Company (8.2 MW of equivalent power) for use in offsite power generation and vehicle fuels. The RBF Project will be converting organic waste streams by 2019 and assist large-quantity commercial food waste generators with meeting the AB 1826's new mandatory commercial organic waste recycling program requirements.

3. **Reduce Regional Greenhouse Gases.** The proposed project would reduce GHG emissions by over 433,000 metric tons of carbon dioxide equivalents ($MTCO_2e$) over the next 10 years regionally through diverting 1,080 tons per day of food waste and municipal biosolids from landfill disposal and converting it into 14 MW or equivalent electrical power from recycling organics waste streams

4. **Create an Additional Income Stream for the City of Rialto and Employment Opportunities for the Region.** The proposed project would generate lease and tipping fee income for the City of Rialto from the use of City property. The proposed project will provide short-term construction jobs and new long-term employment opportunities. Although the exact number of construction jobs is may adjust with phasing, the project would generate from 10 to 30 construction jobs and 13 jobs during operations.

5. **Implementation of the Agua Mansa Industrial Corridor Specific Plan.** The industrial uses proposed by the project will help implement the goals of the specific plan and will replace old industrial uses to more modern, clean industrial development consistent with the Agua Mansa Industrial Corridor Specific Plan.

7.4 Conclusion

In conclusion, the City Council has identified economic and social benefits and important public policy objectives that will result from implementation of the proposed project. These Project characteristics will provide benefits to not only the City and its residents, but members of the public from surrounding cities and the region. The City Council has sought to balance these substantial economic and social benefits against the significant unavoidable adverse environmental effects of the proposed project. Given the substantial social and economic benefits that will accrue to the City and to the region from the implementation of the proposed project, the City Council finds that the proposed project's identified benefits override the project's identified significant environmental impacts.