

**RESOLUTION R2023-\_\_**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE UTILITIES DIRECTOR TO EXECUTE THE SB 1383 CONTRACT AMENDMENT TO CITY AGREEMENT NO. 8687 WITH NAPA RECYCLING & WASTE SERVICES, LLC ("NRWS") FOR A TERM THROUGH DECEMBER 31, 2031, FOR THE COLLECTION AND TRANSPORTATION OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, AND COMPOSTABLES, AND OPERATION OF THE NAPA MATERIALS DIVERSION FACILITY, AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS RESOLUTION ARE EXEMPT FROM CEQA

WHEREAS, the City of Napa (hereinafter referred to as "the City") and Napa Recycling and Waste Services, LLC, a California limited liability company (hereinafter referred to as "NRWS") entered into an agreement for the collection and transportation of Municipal Solid Waste, Recyclable Materials and Compostables and the operation of the Napa Materials Diversion Facility ("MDF") on December 7, 2004 (City Agreement No. 8687, hereinafter referred to as "Agreement"); and

WHEREAS, the parties executed the First Amendment to the Agreement on March 1, 2005 to replace seven conventional diesel fuel collection vehicles in the Agreement with seven collection vehicles powered by engines using compressed natural gas ("CNG"); and

WHEREAS, the parties executed the Second Amendment to the Agreement on July 6, 2010 to (a) formalize agreements made among the parties and an Affiliate of NRWS that had been reflected in a signed "Joint Summary Report," dated April 9, 2007, (b) to delete the diversion incentive described in Section 12.04 of the Agreement, and (c) document the parties' agreements on operational changes that evolved since NRWS commenced City collection and processing at the MDF on October 1, 2005, and

WHEREAS, the City exercised its right under Section 3.03 of the Agreement on April 16, 2014, to unilaterally extend the Term under the same terms and conditions for one (1) year to December 31, 2016; and

WHEREAS, the parties executed the Third Amendment to the Agreement on July 30, 2014 to (a) create incentives to financially compensate NRWS when diversion specific materials from landfill disposal are achieved, and (b) to document changes in operational procedures that have been put in place since the Second Amendment to Agreement was signed; and

WHEREAS, the City exercised its right under Section 3.03 of the Agreement on October 18, 2016, to unilaterally extend the Term under the same terms and conditions for one (1) year to December 31, 2017; and

WHEREAS, the City exercised its right under Section 3.03 of the Agreement on November 7, 2017, to unilaterally extend the Term under the same terms and conditions for one (1) year to December 31, 2018; and

WHEREAS, the City Council approved the 2018 Contract Amendment on April 17, 2018 (Council resolution R2018-043) extending the term through December 31, 2031. The 2018 Contract amendment included several major agreement changes and updates including: (a) purchase of new heavy refuse and recycling collection by the end of calendar year (CY) 2020 that was 100 percent powered by clean air compressed natural gas; (b) fixed annual increases for first five years of fourteen year extension at 3.5 percent for labor and 2.5 percent for non-labor operating expenses; (c) requirement for NRWS to bring in an additional flow of 30,000 tons per year of additional organic materials to City MDF (as allowed by MDF permits); (d) a full NRWS customer service center within City limits and use of NRWS-owned property at 600 Tower Road for MDF support purposes at no additional cost to the City; (e) approximately \$4 million in upgraded and/or new equipment for materials recovery sorting facility at City MDF; and (f) enhanced incentive and performance-based compensation to NRWS to maximize volumes and efficiency of Recyclable Materials and Compostable by NRWS within the City or received and processed at City MDF. Additionally, the 2018 Contract Amendment provided "placeholder" language for potential future operation of an anaerobic digestion to biofuel system and/or biomass gasification plant at the City MDF. Finally, the 2018 Contract Amendment identified certain contract provisions that required additional discussions and negotiations, particularly with regard to development of a new Reconciliation Review process to measure and compensate NRWS for growth (or decline) in services as well as the installation, operation and maintenance of a new covered aerated static pile (CASP) composting system and upgraded stormwater management system at the City's MDF; and

WHEREAS, the City Council approved the amendment of the Agreement in accordance with the terms of the "Proposed 2022 Contract Amendment (10/18/2022 version)" to add the Reconciliation Review Process, fix the annual inflation adjusted compensation for remainder of contract term, and to compensate NRWS for the installation, operation and maintenance of the new CASP composting system and upgraded stormwater management system at the City's MDF, which was presented to the City Council at its meeting of October 18, 2022 ("2022 Contract Amendment"); and

WHEREAS, while negotiating the 2022 Contract Amendment, the City adopted Ordinance No. O2022-001, which amended Napa Municipal Code Chapter 5.60 and Title 5 to add Chapter 5.61 "Mandatory Municipal Solid Waste, Recyclable Material, and Compostables Disposal Reduction" to comply with the requirements of SB 1383 (Lara, Chapter 395, Statutes of 2016) ("SB 1383"); and

WHEREAS, SB 1383 represents the state's most aggressive waste reduction law in the last 30 years and enacted mandated targets to reduce organic waste in landfills as well as significant regulatory requirements imposed on the City to meet those requirements, including required residential and commercial organic waste collection

services, collection route reviews and sampling, reporting to the state, and mandatory enforcement and penalties starting in 2024; and

WHEREAS, given the aggressive timelines and comprehensive regulatory requirements, the City Council approved the submittal of a Notification of Intent to Comply with CalRecycle (R2022-008), which contained the City's detailed schedule and plan for full compliance with SB 1383. The City's Notification of Intent to Comply was approved by CalRecycle on April 5, 2022; and

WHEREAS, during the 2022 Contract Amendment negotiations, the City and NRWS agreed to address specific SB 1383 requirements with a separate amendment; and

WHEREAS, the parties now wish to amend the Agreement to address SB 1383 related requirements, including processing upgrades to the City's Materials Recovery Facility ("MRF") and organics processing at the City's MDF; quarterly MRF facility audits; expanded SB 1383 organics collection service and corresponding increases to staffing and rolling stock; and staffing for new monitoring and public education requirements; and

WHEREAS, City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

2. The City Council hereby determines that the action authorized by this resolution is exempt under CEQA Guidelines Sections 15301 and 15302 since it (a) involves the operation of an existing facility involving negligible or no expansion of use and (b) consists of replacing or reconstructing existing structures located on the same site and will have substantially the same purpose and capacity as the structure replaced. In addition, the City Council hereby determines that the potential environmental effects of portions of the actions authorized by this resolution were adequately analyzed by an Initial Study and Mitigated Negative Declaration adopted on November 7, 2013 (Resolution No. PC2013-15) that was prepared for the Napa Renewables Resources Project (File No. PL 12-0022); Technical Addendum dated June 23, 2014; Technical Addendum dated January 17, 2017; and the Notice of Determination for the Covered Aerated Static Pile system dated March 5, 2018 (issued in accordance with Resolution No. 2018-013). Based upon this prior review, subsequent environmental review pursuant to CEQA Guidelines Section 15162 is not required.

3. The City Council hereby authorizes the Utilities Director to take all actions necessary to finalize the terms of, and to execute on behalf of the City, in substantial conformance with the "Proposed SB 1383 Contract Amendment (4/6/2023 Version)," attached hereto and incorporated herein by reference. This will amend City Agreement No. 8687 with Napa Recycling & Waste services, LLC (NRWS) for a term through December 31, 2031, for the collection and transportation of municipal solid waste, recyclable materials, and compostables, and operation of the Napa Materials Diversion Facility. The executed version of the document will delete the temporary title "Proposed SB 1383 Contract Amendment (4/6/2023 Version)" on the header of each page and replace it with "SB 1383 Contract Amendment to Agreement No. 8687 (April 2023)."

4. The City Council hereby authorizes the Utilities Director or designee(s), pursuant to the City Council-approved budgets and as provided by, or in substantial conformance with, the Proposed SB 1383 Contract Amendment (4/6/2023 Version), amending City Agreement No. 8687, to execute changes in NRWS' scope of work and to implement new operational requirements as necessary to administer the Agreement. Changes for new expenses exceeding the City Council-approved budget by \$125,000 per project or budget line item in a fiscal year are subject to additional City Council approval; provided funds may be moved between approved budget line items in a fiscal year.

5. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 18<sup>th</sup> day of April, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
Tiffany Carranza  
City Clerk

Approved as to form:

\_\_\_\_\_  
Michael W. Barrett  
City Attorney