

**SECOND AMENDMENT TO
AGREEMENT BETWEEN THE CITY OF NAPA AND
NORTHERN RECYCLING OPERATIONS AND WASTE SERVICES, LLC
FOR PROCESSING OF RECYCLABLE MATERIALS
(CITY AGREEMENT NO. 2010-147)**

THIS SECOND AMENDMENT is entered into as of the ____ day of _____, 2020, by and between the CITY OF NAPA, a charter city and municipal corporation (hereinafter referred to as the “City”) and NORTHERN RECYCLING OPERATIONS AND WASTE SERVICES, LLC, a California limited liability company (hereinafter referred to as “Northern”).

RECITALS

- A. The City and Northern entered into an agreement for the processing of recyclable materials on July 6, 2010 (City Agreement No. 2010-147, hereinafter referred to as “Agreement”).
- B. The Agreement was amended and extended by the first amendment executed on August 18, 2016 ("First Amendment").
- C. Pursuant to the Agreement, Northern agreed to deliver certain recyclable materials received at the Devlin Road Transfer Station to the City’s Materials Diversion Facility for processing and marketing.
- D. The City’s Materials Diversion Facility is operated by Napa Recycling and Waste Services, LLC (hereinafter “NRWS”) pursuant to a contract with the City dated December 7, 2004 (City Agreement No. 8687, hereinafter “NRWS Contract”).
- E. The prices and charges described in Section 3 of the Agreement are inextricably linked to, and dependent upon, the revenue sharing arrangements between the City and NRWS for the sale of recyclable materials, contained in the NRWS Contract, as amended.
- F. Therefore, the term of the Agreement was designed to be within that of the NRWS Contract, which was originally scheduled to terminate December 31, 2015 and has since been extended to December 31, 2031 per the 2018 Contract Amendment, approved by the Napa City Council per resolution R2018-043 on April 17, 2018.
- G. In May 2005, the City executed a Memorandum of Understanding (“MOU”) with the County of Napa (City Agreement No. 8782) to process Recyclable Materials and Yardwaste collected in County unincorporated areas by Napa County Recycling and Waste Services, LLC (“NCRWS”) for a period of ten (10) years. Since that time, the MOU has been amended and extended the base term to December 31, 2030 with five one-year options available to extend the MOU through December 31, 2035. The pricing for Yardwaste and Food Material delivered by Northern to the Napa MDF

pursuant to the Agreement is calculated based upon the Yardwaste pricing in the MOU.

- H. The parties now desire to revise pricing and term for delivery of Yardwaste and Food Material by Northern to the City's Materials Diversion Facility for processing to reflect the current terms of the MOU.
- I. Additionally, the parties desire to extend the term of the Agreement for a period of ten (10) years so that the Agreement's term continues to correspond to the term of the MOU with Napa County with a base end date of December 31, 2030 and five (5) one-year extension options through December 31, 2035.

NOW, THEREFORE, in consideration of the mutual promises contained in this Second Amendment, and for other good and valuable consideration, the parties agree as follows:

SECTION 1. MATERIALS TO BE DELIVERED AND PROCESSED

Section 1B of the Agreement is hereby deleted and replaced with the following:

B. Yardwaste, Food Material and Packaged Organics.

Northern is not required to deliver Yardwaste, Food Material or Packaged Organics from the DRTS or other generators for composting at the Napa MDF. However, the City will accept Yardwaste, Food Material or Packaged Organics from Northern provided (1) there is sufficient capacity at the Napa MDF, (2) there is sufficient available capacity for City of Napa and Napa County origin compostable materials before any additional Northern organic materials are delivered to the Napa MDF for processing and (3) such delivery does not interfere with City and the Napa MDF operator's compliance with all applicable permits and state and local regulations.

SECTION 2. UPDATED SPECIFIC PER TON PRICES & ADDITION OF PACKAGED ORGANICS

Section 3A of the Agreement is hereby deleted and replaced with the following:

“A. Yardwaste and Food Material/Packaged Organics.

1) Yardwaste. Northern agrees to pay the City forty-three dollars (\$43.00) per ton for Yardwaste delivered to the Napa MDF from January 1, 2020 through September 30, 2020. Northern agrees to pay the City forty-five dollars (\$45.00) per ton for Yardwaste delivered to the Napa MDF from October 1, 2020 through September 30, 2021. This is based upon the current price paid by the County of Napa pursuant to the MOU between the City and the County of Napa dated May 3, 2005 (as amended on January 7, 2020) plus two dollars (\$2.00) per ton. As MOU pricing for Napa County has not been determined beyond September 30, 2021, Northern agrees to pay the City two dollars (\$2.00) per ton more than MOU pricing for Yardwaste (“Yard

Trimming” in MOU) beginning October 1, 2021 and through remainder of this Agreement. This price difference is in recognition of the obligation of the City set forth in Section III Part M of the MOU that states: “The City will not enter into a contract with any third party allowing it to deliver unprocessed Recyclables and Compostables to the MDF on financial terms that are more favorable than those extended to the County in Section III.E, taken together.”

In addition to the prices described herein, the City reserves to the right to propose higher MOU pricing to Napa County with sixty (60) days' written notice (Section II Part D of MOU). If City avails itself of this right under the MOU, the Yardwaste processing price charged by the City to Northern shall be the total per ton price charged to the County of Napa plus two dollars (\$2.00) per ton.”

2) Food Material & Packaged Organics. Northern agrees to pay the City fifty-three dollars (\$53.00) per ton for Food Material and Packaged Organics delivered to the Napa MDF from January 1, 2020 through September 30, 2020. Northern agrees to pay the City fifty-five dollars (\$55.00) per ton for Food Material and Packaged Organics delivered to the Napa MDF from October 1, 2020 through September 30, 2021. This is based upon the current price paid by the County of Napa pursuant to the MOU between the City and the County of Napa dated May 3, 2005 (as amended on January 7, 2020) plus two dollars (\$2.00) per ton. As MOU pricing for Napa County has not been determined beyond September 30, 2021, Northern agrees to pay the City two dollars (\$2.00) per ton more than MOU pricing for Food Material and Packaged Organics (“Food Scraps and Soiled Paper” and “Packaged Organics” in MOU) beginning October 1, 2021 and through remainder of this Agreement.

In addition to the prices described herein, the City reserves to the right to propose higher MOU pricing to Napa County with sixty (60) days' written notice (Section II Part D of MOU). If City avails itself of this right under the MOU, the Food Material and Packaged Organics processing price charged by the City to Northern shall be the total per ton price charged to the County of Napa plus two dollars (\$2.00) per ton.”

SECTION 3. TERM OF AGREEMENT

Section 5 of the Agreement is hereby deleted and replaced with the following:

“A. Base Term. The Base Term of this Agreement shall begin on July 6, 2010 and end on December 31, 2030.

B. Extensions. At the End of the Base Term, and at the mutual agreement of the City and Northern, Northern may request and City may grant up to five (5) one-year extensions of this Agreement. Northern shall give City written notice of any potential Extension no less than ninety (90) days prior to the conclusion of the Base Term or the End Date as extended by any prior Extension(s). The City shall have sixty (60) days from receipt of Northern’s notice of potential Extension to agree or reject the offer or Extension in writing. If no action is taken by City within 60 days following receipt of the offer of Extension, it shall be assumed that the offer

of Extension has been accepted for an additional one (1) year. City has no express or implied right to any Extension.”

SECTION 4. DEFINITIONS

Attachment One is hereby amended as follows and by adding a new definition for “Base Term” and “End Date” and “Packaged Organics” and revising the definition of "Yardwaste" and "Food Material":

“Base Term” means July 6, 2010 through December 31, 2030.

“End Date” means December 31, 2030.

“Packaged Organics” means discarded Food Material (compostable organic materials) that have not been removed from non-compostable packaging that City accepts for processing at the Napa MDF. For the purposes of this Agreement, pricing for Packaged Organics shall match Food Material with any known pre-known product liquid weight deducted.

"Yardwaste" has the same meaning as "Yard Trimmings" in the MOU and means the following compostable organic materials:

1. Leaves, garden plants, and grass
2. Tree and brush trimmings and branches up to 6” diameter
3. Flowers, floral trimmings & holiday greenery (non-synthetic)
4. Sawdust, cotton balls/cotton swaps with paper stems
5. Natural cork and untreated and unpainted wood under 36” (e.g., small wooden crate)
6. Hair, fur, and feathers (non-synthetic)
7. Animal bedding and manure from non-meat eating animals (e.g., chickens, cows, etc.)
8. Unacceptable Contamination includes rocks, dirt, plastics, Municipal Solid Waste (as that term is in defined in the MOU), Single-Stream Recyclables (as that term is in defined in the MOU), pet waste, Hazardous Waste (as that term is in defined in the MOU), tree trunks/stumps/branches greater than 6” in diameter.

SECTION 5. FULL FORCE AND EFFECT

Except as expressly modified by this Second Amendment, all terms and conditions contained in the Agreement dated July 6, 2010 or First Amendment to Agreement dated August 18, 2016 shall remain in full force and effect.

IN WITNESS WHEREOF, City and Northern have executed this Second Amendment as of the day and year first above written.

CITY OF NAPA:

**NORTHERN RECYCLING
OPERATIONS AND WASTE
SERVICES, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY*:**

By: _____
(Signature)

Phil Brun, Utilities Director
(Type Name and Title)

(Tax I.D. Number)

ATTEST:

By: _____
(Signature)

(Signature)

Greg Kelley, Managing Member
(Print Name and Title)

Tiffany Carranza, City Clerk
(Type Name and Title)

By: _____
(Signature)

(Print Name and Title)

COUNTERSIGNED:

(Signature)

Desiree Brun, City Auditor
(Type Name and Title)

*Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President **and** the Secretary or Assistant Secretary of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability company.

APPROVED AS TO FORM:

(Signature)

Michael W. Barrett, City Attorney

Budget Code(s): 51005-34402 (MDF Gate Fees – Revenue Account)
51005-58911 (Payment for Material – Expenditure Account)