

AMENDMENT NO. 2 TO CITY AGREEMENT NO. 8891

This Amendment No. 2 (this "Amendment") to City Agreement No. 8891 entitled Lease (the "Lease") by and between the City of Napa, a California charter city ("Landlord"), and Napa County Recycling & Waste Services, LLC ("Tenant") is effective as of January 1, 2020.

RECITALS

A. Landlord and Tenant entered into the Lease effective October 4, 2005 for Tenant's temporary use of City Property located at 820 Levitin Way, Napa, APNs 057-110-049, 057-110-052, 057-110-065, 057-110-066, 057-110-067 & 057-110-068, (the "Premises").

B. The initial term of the Lease expired on November 30, 2015 and Tenant exercised its options to extend the Lease for up to four (4) additional successive period(s) of one (1) year each.

C. On December 11, 2015, the parties executed Amendment No. 1 to the Lease, which extended the first option under Section 3 of the Lease, "Term and Option", through midnight on December 31, 2016 in order to coincide to expire with the terms of Tenant's service agreements with the City of Napa and County of Napa for recycling and waste collection services.

D. Tenant exercised its options for the remaining three Extended Terms, through December 31, 2019.

E. Tenant has extended waste collection agreements with the City of Napa and the County of Napa and wishes to further amend the Lease so that term of the Lease coincides with the term of Tenant's waste collection agreements, as well as to capture miscellaneous revisions to the Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Amendment hereby incorporates by reference all terms and conditions set forth in the Lease, as amended, unless specifically modified by this Amendment. All terms and conditions set forth in the Lease which are not specifically modified by this Amendment shall remain in full force and effect.

2. AMENDMENT. Section 3.A. of the Lease is hereby amended by deleting the existing text in its entirety and replacing it with the following: "The term of the Lease shall commence on October 1, 2005 and expire at midnight on December 31, 2031, unless terminated sooner as provided for in the Lease."

3. AMENDMENT, Section 3.B. of the Lease is hereby amended by deleting the existing text in its entirety and replacing it with the following: "Following the term ending December 31, 2031, Tenant shall have the option to extend the Lease for one (1) additional successive period of one (1) year (the "Extended Term") provided that Tenant has abided by the terms and conditions of this Lease and is not in default hereunder. If Tenant should decide to exercise Tenant's option to extend, Tenant shall give written notice thereof to Landlord at least ninety (90) days before expiration of the then current term. The terms of this Lease

shall govern any Extended Term. Tenant shall have no right to extend the term beyond the Extended Term.”

4. AMENDMENT. Section 4 of the Lease, “Rent” is hereby amended by deleting the existing text in its entirety and replacing it with the following:

“A. Tenant agrees to pay Landlord as Base Rent for the Premises beginning with the payment due October 1, 2020, the annual sum of Fifty Three Thousand, Two Hundred Sixty Eight Dollars (\$53,268.00) payable in equal monthly installments of Four Thousand, Four Hundred Thirty Nine Dollars (\$4,439.00) in advance on or before the first day of each and every calendar month during the Initial Term hereof without any setoff or deduction. Said rent shall be payable to the City of Napa and shall be paid at the City of Napa Finance Department, 955 School Street, Napa, California, 94559, or any other place designated by written notice from Landlord. Failure to pay rent within ten (10) days of said due date constitutes a delinquency, and Landlord may, in addition to its other rights under law, assess a penalty of five percent (5%) for each and every delinquent payment. The parties agree that this late charge represents a reasonable estimation of the expenses that Landlord will incur because of any late payment of Rent (other than interest and attorney’s fees and costs). Landlord’s acceptance of such liquidated change shall not constitute a waiver of Tenant’s default regarding the overdue amount or prevent Landlord from exercising any rights and remedies available to Landlord under this Lease. Tenant shall pay the charge as additional rent with the next installment of rent.

B. The amount of Base Rent payable hereunder shall automatically be increased 2.5% annually on each annual anniversary date of the Term or any Extended Term, as provided in Section 3B above, the “Adjustment Date.” Such adjustments shall be for the purpose of reflecting the increase in the cost of living.”

5. ENTIRE AGREEMENT. This Amendment (including the Lease as amended herein and all documents incorporated herein by reference) comprises the entire integrated understanding between the parties concerning the subject matter hereof. This Amendment supersedes all prior negotiations, agreements and understandings regarding the additional services described herein, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all.

6. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the Tenant and the Landlord. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have duly executed this Amendment the day and year first above written.

CITY OF NAPA, a California charter city

NAPA COUNTY RECYCLING AND WASTE SERVICES, LLC

By: _____
Phil Brun, Utilities Director

By: _____
Greg Kelley,
General Manager/Managing Member

ATTEST:

Tiffany Carranza, City Clerk

COUNTERSIGNED:

Joy Riesenbergs, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Budget Code:

MDF Revenue Account No. 51006-36201 (Rents and Royalties)

*Corporation, partnership, limited liability corporation, sole proprietorship, etc.

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 Treasurer 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 corporation.