

AGREEMENT FOR PROCESSING RECYCLABLE MATERIALS FROM THE CITY OF EL CERRITO

This Agreement for Purchase of Recyclable Materials (“Agreement”) is entered into as of the 1st day of July 2022, by and between the CITY OF EL CERRITO, (the “City”), and Napa Recycling and Waste Services, LLC. (the “Processor”), each a “Party” and collectively the “Parties.”

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the Parties:

- A. The City desires to sell the recyclable material collected within its jurisdiction, including (1) loose commingled “single-stream” recyclable materials collected from both residential and commercial premises served by the City, and (2) loose commingled recyclable materials collected by the City at the City’s Recycling Center located at 7501 Schmidt Lane, El Cerrito, CA 94530 (the “Recycling Center”).
- B. The Processor desires to accept the materials, as defined in this Agreement, from the City and make payments or receive payments for processing such material based on the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree to the following:

1. MATERIALS.

1.1. For purposes of this Agreement, the term “Materials” shall be defined as those loose commingled “single-stream” recyclable materials collected from both residential and commercial premises served by the City and delivered to the Processor by the City in collection trucks and those loose commingled recyclable materials collected by the City at the City’s Recycling Center and delivered to the Processor. The types of Recyclables accepted shall include those materials collected through the City’s recycling programs, as described in **Exhibit 1**.

1.2. For the term of this Agreement, the City agrees to commit to deliver to the Processor for processing a portion of Materials collected by the City. The City makes no guarantee of the total daily, monthly, or annual tonnage of Materials delivered to the Processor’s facilities.

1.3 The City expressly disclaims any warranties, either express or implied, as to the composition or quantity of Materials delivered.

1.4 The City will make reasonable business efforts to deliver loads containing no more than 10% contamination by weight.

1.5 The Processor may choose to reject, within one (1) business day, any loads containing - in excess of 10% by weight - hazardous or toxic waste and materials not detailed in Exhibit 1 that otherwise cannot reasonably be diverted from landfill; if not rejected, all loads are deemed accepted as is. Once the Processor accepts the loads, transfer of ownership to the Processor occurs. Should the Processor reject any loads due to the presence or strong suspicion of contamination, the Processor shall immediately notify the City verbally and then follow the verbal notification with written notice. The notice shall identify the Processor's reasonable reason for rejection of the material and identify the truck that delivered such material if that truck was identified. Upon notice the City shall have the option to remove the rejected materials within 24 hours, or the Processor will assign a reasonable fee to cover the costs of handling and removal of the rejected materials. Before the expiration of 24 hours from the time the Processor notifies the City about any rejected materials, and before the Processor handles or removes those rejected materials, the Processor will provide the City with a good faith estimate of the costs of handling and removing the rejected materials and the proposed fee that would be assigned to the City. If the City deems that the proposed fee is not reasonable, the City will have an additional 24 hours (for a total of 48 hours since receiving notice from the Processor of rejected materials) to arrange for handling and removal of said materials. Alternatively, if the City deems that the proposed fee is not reasonable, the City and the Processor may negotiate a revised fee that would be agreeable to both Parties. In the event the Processor does assign a fee for the removal and handling of rejected materials, the Processor will provide documentation of what materials were handled, how they were removed, and how they were hauled and disposed of. This documentation shall include copies of any invoices for services provided to the Processor by any other entity and details of all the Processor time and resources expended on removal and handling of the rejected materials.

2. MEASUREMENT.

- 2.1 The Processor shall weigh all vehicles delivering Materials on an incoming and outgoing basis.
- 2.2 The Processor shall test and calibrate its scales in accordance with applicable law. Upon City request, the Processor shall provide the City with copies of scale calibration and test results.

3. PRICE AND PAYMENT.

- 3.1 The price per ton for Materials shall be calculated in the manner detailed in Exhibit 2, "Price Per Ton of Material". Either the City shall pay the Processor or the Processor shall pay the City for Materials that the City provides to the Processor based on the price per ton calculated according to Exhibit 2.

- 3.2 A ton shall consist of 2,000 pounds certified weight. Payments will be based on receiving weights and based on actual weight determined by state certified weight ticket at the Processor's locations at 820 Levitin Way, American Canyon, CA. The Processor may assign an alternative processing facility as long as there is no material impact on the time invested or expense by the City.
- 3.3 If the price per ton for Materials results in the Processor paying the City for Materials processed, the Processor shall make payment to the City on a monthly (net 30 day) basis, providing at a minimum the tonnage of Materials received, weight ticket numbers associated with the tonnage processed, and price per ton paid.
- 3.4 If the price per ton for Materials results in the City paying the Processor to process Materials in that quarter, the Processor shall invoice the City on a monthly (net 30 day) basis, providing at a minimum the tonnage of Materials received, weight ticket numbers associated with the invoiced tonnage processed, and price per ton invoiced.
- 3.5 The Processor shall receive all California Redemption Value (CRV) and other payments attributable to the materials delivered by the City to the Processor. The City understands that the price per ton compensation includes the value of CRV and other applicable state incentive payments for materials sold to the Processor. The City shall receive all state Supplemental recycling payments and other payments typically due to municipalities.
- 3.6 The City has the right, with reasonable prior written notice and provided it does not unreasonably interfere with the Processor's day to day operations, to inspect and audit the Processor's records showing:
 - a) tonnage of Materials accepted;
 - b) residual tonnage disposal supported by landfill weight tickets.

4. DELIVERY.

- 4.1 Costs of transportation of Materials to the Processor are the responsibility of the City.
- 4.2 Receiving Hours. The Processor will accept Materials between 5 a.m. and 4 p.m. on Monday through Friday and 8 a.m. to 4 p.m. on Saturday, including all Holidays except Thanksgiving Day, Christmas Day and New Year's Day. Hours may be adjusted via written amendment to this Agreement as per Section 8, below.

5. ASSIGNMENT. This Agreement may be assigned only upon the express written consent of the Parties.

6. TERM.

6.1 The term of this Agreement shall commence upon execution and terminate within one year of the effective date of this agreement, unless the term of the Agreement is otherwise terminated or modified, as provided for herein.

6.2 The term of this Agreement shall be automatically renewed for up to two (2) successive terms of one (1) year each unless either Party provides one hundred and twenty (120) days written notice to the other cancelling the automatic renewal provision of this Section 6.2.

7. TERMINATION. City may cancel this Agreement at any time and without cause upon written notification to Processor. In the event of termination, Processor shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; City, however, may condition payment of such compensation upon Contractor delivering to City documents and records identified in Section 3 of this Agreement. Processor recognizes the operational impacts to the City in the event Processor wishes to terminate this Agreement, and thus shall provide the City with 120 days written notification of its intent to terminate.

8. AMENDMENT. This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

9. NOTICES. All notices required hereunder shall be provided in writing and shall be personally delivered to a representative of the Parties at the addresses below, or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), or sent by overnight courier such as Federal Express, postage prepaid, and addressed to the Parties as followed:

To the City: City of El Cerrito, CA
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: Operations + Environmental Services Manager

To the Processor: Napa Recycling and Waste Services
P.O. Box 239
Napa, CA 94559
Attn: General Manager

or to other such address as either of the Parties may hereafter designate by notice sent in the manner set forth above.

10. ENTIRE AGREEMENT. This Agreement consisting of eight (8) pages and one exhibit represents the full and entire Agreement between the Parties regarding the matters covered herein.

11. INSURANCE.

- 11.1 **Processor Insurance.** The Processor shall secure and maintain, in full force and effect during the Term, adequate insurance that shall be the types and amounts of insurance coverage listed below. The Processor shall supply a certificate of insurance and additional insured endorsement. The terms and obligations of this section shall survive termination of this Agreement.
- 11.2 **Workers' Compensation Insurance.** The Processor shall take out and maintain during the life of this Agreement, Workers' Compensation and Employer's Liability insurance for all of its employees performing work related to this Agreement. In lieu of evidence of Workers' Compensation insurance, the City will accept a Self-Insuring Certificate from the State of California.
- 11.3 **Comprehensive Automobile and General Liability Insurance.** The Processor shall take out and maintain during the life of this Agreement General Liability insurance in the amount of two million dollars (\$2,000,000) for combined single limit coverage for bodily injury, personal injury and property damage. The following coverages or endorsements must be indicated on the certificate:
- (1) The City, its directors, officers and employees are additional insureds in the policy as to the work being performed,
 - (2) The coverage is primary to any other insurance carried by the City;
 - (3) Thirty (30) days' prior written notice shall be given to the City in the event of cancellation or non-renewal of the policy.
- 11.4 **Amounts of Insurance.** The amounts of insurance shall be the following:
- General Liability – two million dollars (\$2,000,000) per occurrence
Auto Liability – two million dollars (\$2,000,000) per occurrence
Worker's Compensation – State statutory limit
- 11.5 **Delivery of Proof of Coverage.** Simultaneously with the execution of this Agreement, the Processor shall furnish City certificates of insurance required hereunder, in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements.
- Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverages throughout the term.
- 11.6 **Other Insurance Requirements.** In the event any services to be provided pursuant to this Agreement are delegated to a subcontractor, the Processor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees

engaged in the work in accordance with this section. The liability insurance required by this section shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this section.

The Processor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Processor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against the Processor or any subcontractor on account of any occurrence related to this Agreement, the Processor shall promptly report the facts in writing to the insurance carrier.

If the Processor fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Processor's reasonable expense, such insurance as it may deem proper and deduct the cost thereof from any monies due the Processor.

12. INDEMNIFICATION

- 12.1 To the fullest extent allowable by law, the Processor shall indemnify, defend (with counsel reasonably acceptable to the City) and hold harmless the City and its council members, officers, directors, employees, administrators, and agents for its share of any and all loss, liability, penalty, forfeiture, fine, claim, demand, damages, expense costs (including attorney's fees), action, proceeding or suit of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, including, but not limited to, personal injury, bodily injury, interference with third party contract, or for damage to property or resources arising out of, or resulting from any act, error or omission of the Processor in connection with the Processor's performance of this Agreement, including but not limited to, compliance with applicable laws or legal requirements, or breach of representations and obligations set forth in this Agreement, and excepting the active negligence or willful misconduct of the City, its council members, officers, directors, employees, administrators, and agents. This indemnification and defense shall survive the expiration or earlier termination of this Agreement.

- 12.2 To the fullest extent allowable by law, the City shall indemnify, defend (with counsel reasonably acceptable to the Processor) and hold harmless the Processor and its officers, directors, employees, administrators, and agents for its share of any and all loss, liability, penalty, forfeiture, fine, claim, demand, damages, expense costs (including attorney's fees), action, proceeding or suit of any and every kind and description, whether judicial, quasi-judicial or administrative in

nature, including, but not limited to, personal injury, bodily injury, interference with third party contract, or for damage to property or resources arising out of, or resulting from any act, error or omission of the City in connection with the City's performance of this Agreement, including but not limited to, compliance with applicable laws or legal requirements, or breach of representations and obligations set forth in this Agreement, and excepting the negligence or willful misconduct of the Processor, its officers, directors, employees, administrators, and agents. This indemnification and defense shall survive the expiration or earlier termination of this Agreement. City will not indemnify the Processor for delivery of contaminated material or material that does not meet a particular quality or grade but recognizes the Processor's right to reject any such material consistent with Section 1.5 of this Agreement.

13. COUNTERPARTS. This Agreement may be executed in counterparts each of which shall be considered an original.

14. WAIVERS. No waiver by either party with respect to any breach or default or of any right or remedy shall be deemed to constitute a continuing waiver of any breach or of any other right or remedy, unless such waiver is expressed in writing and signed by the party to be bound. No failure by the party to exercise a right or remedy available hereunder, or otherwise available under law shall constitute a waiver of any obligation of the other party to perform strictly in accordance with the terms thereof.

15. COMPLIANCE WITH LAW. The City and the Processor shall comply with all applicable local, State and Federal Laws, rules and regulations in the performance of the Agreement, including, without limitation, the Economic Stabilization Act, the Fair Labor Standards Act of 1938, as amended, Title VII of the Civil Rights Act of 1964, as amended, and the non-discrimination provision of Executive Order 11246 and any amendments thereof.

16. GOVERNING LAW. This Agreement and all rights and obligations hereunder, including matters of constructions, validity and performance, shall be governed by the laws of the State of California. If any provision of the Agreement is declared invalid, the remainder of the Agreement shall not be affected thereby, and each term and provision of the Agreement shall be valid and enforced to the fullest extent permitted by law.

17. CERCLA DISPOSAL RECORDS. For purposes of defense against possible CERCLA litigation, the Processor shall maintain, retain and preserve records that can establish where residue was disposed (and therefore establish where it was not). This provision shall survive the expiration or earlier termination of this agreement. The Processor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement, or shall transfer these records to the City at the expiration or earlier termination of this Agreement.

18. DISPENSATION DESCRIPTION. For purposes of educating the El Cerrito community about the end uses of materials collected for recycling by the City, the Processor shall provide descriptions detailing how each category of recyclable Materials described in Exhibit 1 gets recycled. The descriptions shall include the name of the country in which each of the material categories gets processed, a summary of the processes employed, and specific examples of the final products or uses of those re-processed materials. The descriptions may be fairly general, and pertain to each category of Materials listed in Exhibit 1, with a minimum of one (1) paragraph description per Material category listed.

IN WITNESS WHEREOF, City and the Processor have caused the Agreement for Purchase of Materials to be executed by their duly authorized representatives, in duplicate, as of the day and year first set forth above.

CITY OF EL CERRITO

PROCESSOR

Karen Pinkos
City Manager

Greg Kelley
General Manager

ATTEST:

Holly M. Charléty
City Clerk

APPROVED AS TO FORM:

Sky Woodruff
City Attorney

EXHIBIT 1

ACCEPTABLE MATERIALS

- Mixed paper – all types
- Cardboard - all types
- Plastic Bottles - all types except PVC
- Hard plastics – except PVC, plastic foams, plastic utensils and straws
- Aluminum, tin, and scrap metals – all types
- Glass containers – all types
- Milk cartons and aseptic containers – all types
- Additional materials upon mutual agreement

EXHIBIT 2

PRICE PER TON OF MATERIALS

The Cost to the City shall be fifty five dollars \$55.00 per ton of material delivered to Processor.