

## **FOURTH AMENDMENT TO AGREEMENT NO. 20-198**

(Revisions to Utilities Provisions to Address  
Photovoltaic System/Solar Power & Energy Storage)

THIS FOURTH AMENDMENT to Agreement No. 20-198, dated July 21, 2020, is made and entered into this 13th day of September, 2022, by and between the County of Yolo, a political subdivision of the State of California (“County”), and Northern Recycling, LLC, a California limited liability company (“Contractor”).

### WITNESSETH

WHEREAS, County and Contractor entered into an agreement for construction and operation of a composting (CF2) and construction, demolition and inerts (CDI) facility at the Yolo County Central Landfill (“YCCL”) on or about July 21, 2020 (Agreement No. 20-198), which the parties amended on or about February 9, 2021 (First Amendment, No. 21-38), June 29, 2021 (Second Amendment, No. 21-162), and June 28, 2022 (Third Amendment, No. 22-159).

WHEREAS, Agreement No. 20-198, including amendments, is referred to herein as “the Agreement.”

WHEREAS, the CF2 and CDI facilities, including all associated equipment, facilities and improvements, are referred to herein as “the Facility.”

WHEREAS, Agreement No. 20-198 included grant of a license for Contractor to use the Premises (as defined in the Agreement) for construction and operation of the Facility for the term of the Agreement.

WHEREAS, Exhibit A (Roles and Responsibilities) to the Agreement provides in pertinent part in Section 2.4, entitled “Utilities, that “Contractor shall be responsible for providing any/all other utility needs,” including electricity, and Section 7.1 of Exhibit B, Part 2 (General Provisions) of the Agreement similarly provides that Contractor is responsible for providing electricity needs at its sole cost.

WHEREAS, consistent with Section 2.4 of Exhibit A and Section 7.1 of Exhibit B of the Agreement, Contractor entered into a contract with Pacific Gas & Electric (“PG&E”) in April 2022 to provide electric service for the Facility.

WHEREAS, consistent with its renewable energy goals, the County has explored various renewable energy projects, including expansion of solar power to produce electricity at County facilities, including the YCCL.

WHEREAS, the County has been negotiating with Forefront Power, LLC (“Forefront”) for installation of a photovoltaic system on the Premises (“PV System”) and other County property under the School Project for Utility Rate Reduction (SPURR)’s Renewable Energy Aggregated Procurement (REAP) program.

WHEREAS, concurrent with this Fourth Amendment, the County approved an Energy Services Agreement with FFP BTM Solar, LLC, a direct subsidiary of Forefront (“Provider”) following a

noticed public hearing on or about September 13, 2022 for installation and operation of a 1,785.24 kW-DC carport canopy PV System along the perimeter of the Premises to the north and east. Provider will install, own, operate and maintain the PV System during the 20-year term of the Energy Services Agreement, which may be extended by the Provider and County as provided in the Energy Services Agreement.

WHEREAS, the PV System will generate electricity for the Facility and is anticipated to result in cost-savings over the term of the Energy Services Agreement for the Facility's electricity needs as compared to PG&E's electricity rates and charges.<sup>1</sup>

WHEREAS, Provider will also install a 500 kW AC energy storage system at the Premises, pursuant to an Energy Storage Agreement<sup>2</sup> with a 10-year term between the County and Provider also approved following a noticed public hearing on September 13, 2022, consisting of two multiple lithium battery stack units enclosed in locking battery containers and mounted within an approximately 27-foot × 20-foot 7-inch footprint, along with associated equipment ("Battery Storage System".) The Battery Storage System will dispatch stored electricity to the CF2 and CDI facilities during times of peak demand during the term of the Energy Storage Agreement. The system would be electrically interconnected to an existing 480V switchgear via wiring housed in conduits that will run underground (via trenches).

WHEREAS, County and Contractor now desire to modify the Agreement with respect to utilities to memorialize the parties' agreement regarding the PV System and the Battery Storage System that Provider will be installing on the Premises and Contractor's purchase of power produced by the PV System and the Battery Storage System.<sup>3</sup>

NOW, THEREFORE, the County and Contractor agree to further amend the Agreement as follows:

#### AMENDMENT

- A. Amendment to Exhibit A, Section 2.4. Section 2.4 of Exhibit A to the Agreement (Roles and Responsibilities) is amended and replaced to read as follows, with changes reflected in underline:

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<sup>1</sup> References to the "Energy Services Agreement" herein shall refer to County Agreement No. 22-\_\_\_\_\_ concerning the PV System to be installed on the Premises, including the General Conditions and all other schedules and exhibits thereto, which is incorporated herein by reference.

<sup>2</sup> References to the "Energy Storage Agreement" herein shall refer to County Agreement No. 22-\_\_\_\_\_ concerning the Battery Storage System to be installed on the Premises, including the General Conditions and all schedules and exhibits thereto, which is incorporated herein by reference.

<sup>3</sup> Unless otherwise stated, references to the "PV System" throughout the remainder of this Fourth Amendment includes both the PV System and the Battery Storage System.

## 2.4 Utilities

The site does not currently have utilities and the County cannot provide a water source. The County may develop a non-potable water source originating from the City of Davis wastewater treatment plant, but the County makes no warranties or guaranties as to the suitability of this potential water supply for Facility Operations. Contractor shall develop a groundwater well. The cost to develop a groundwater well may be shared with the County and the County may have access to the water from the well, all as more specifically set forth in Exhibit B.

Except as provided in Section 2.4.01 of this Exhibit regarding a photovoltaic system (PV System), Contractor shall be responsible for providing any/all other utility needs (electricity, fuel, gas, telephone service, toilets with hand wash stations, etc.) at the site, at its own expense, and in compliance with all applicable Federal, State, and local laws and regulations. Contractor shall be responsible for furnishing temporary bathrooms as required by local, state, or federal law.

- B. Amendment to Exhibit A to add new Section 2.4.01. The following Section 2.4.01 is added to Exhibit A of the Agreement (Roles and Responsibilities):

### 2.4.01 Photovoltaic (Solar Panel) System.

- a. PV System. County has contracted for the installation of a photovoltaic canopy system with battery storage on portions of the Premises (and with the connections and other infrastructure relating thereto, collectively, the "**PV System**"), which will be installed, at no cost to Contractor, in approximately the Premises' Area depicted in Exhibit 1, attached hereto and incorporated herein by reference.
  - i. The PV System shall be owned by Provider or the County pursuant to the County's Energy Services Agreement and Energy Storage Agreement. The PV system and the renewable energy (including environmental credits and related attributes) produced by the system are personal property and shall not be considered the property (personal or otherwise) of Contractor upon installation of the PV system at the Premises.
  - ii. Contractor shall not be responsible for the repair, replacement or maintenance of the PV System, provided, however, that any damage, repair, replacement or maintenance costs, or other costs, expenses or liabilities incurred by Provider or County related to the PV System caused in whole or in part by any act or omission of Contractor shall be promptly reimbursed in full by Contractor and subject to the indemnification responsibilities in the Agreement, including liabilities incurred by County under the terms of the Energy Services Agreement (e.g., Disruption Period payments required by Section 4.3 of the General Conditions (Exhibit A to the Energy Services Agreement and the Energy Storage Agreement)).
- b. Contractor's additional obligations with respect to the PV System shall be to: (1) allow Provider and County reasonable access to the Premises as necessary for the

installation, repair, replacement, and maintenance of the PV System, or to remove the PV System if County terminates the Energy Services Agreement; (2) purchase all electricity produced by the PV System as provided in subdivision “c.” of this Section 2.4.01, below; (3) promptly notify the County and Provider if it becomes aware of any damage to or loss of the use of the PV System or that could reasonably be expected to adversely affect the PV System; and (4) immediately notify the County and Provider if it becomes aware of any event or circumstance relating to the PV System or the Premises that poses a significant risk to human health, the environment, the PV System, or the Premises. County will provide Contractor with contact information for Provider. County and Provider will coordinate with Contractor regarding installation, repair, replacement, or maintenance of the PV System to ensure that such actions do not unreasonably interfere with Facility operations.

c. PV System Energy Rates and Payments.

- i. Contractor agrees to purchase all electricity produced by the PV System at the following rates during the Term of the Agreement and so long as the Energy Services and Energy Storage Agreements are in effect, in accordance with the following rate schedule, which is subject to further adjustment to reflect PV System project cost-changes and system size changes as provided herein:

PV System - Rate Table

<b>System Operation Year</b>	<b>kWh Rate (\$/kWh)</b>	<b>Battery Storage Rate (\$/year/kW AC for each Term Year based on Estimated Battery Storage System Size of 500 kW AC)</b>	<b>Expected Monthly Battery Storage Payment</b>
1	\$ 0.1600	\$123.28	\$5,136.55
2	\$ 0.1650	\$123.28	\$5,136.55
3	\$ 0.1700	\$123.28	\$5,136.55
4	\$ 0.1737	\$123.28	\$5,136.55
5	\$ 0.1737	\$123.28	\$5,136.55
6	\$ 0.1737	\$123.28	\$5,136.55
7	\$ 0.1737	\$123.28	\$5,136.55
8	\$ 0.1737	\$123.28	\$5,136.55
9	\$ 0.1737	\$123.28	\$5,136.55
10	\$ 0.1737	\$123.28	\$5,136.55
11	\$ 0.1737		
12	\$ 0.1737		
13	\$ 0.1737		
14	\$ 0.1737		
15	\$ 0.1737		
16	\$ 0.1737		
17	\$ 0.1737		
18	\$ 0.1737		
19	\$ 0.1737		
20	\$ 0.1737		

- ii. Cost Changes. Contractor understands and acknowledges that during design/permitting/interconnection review of the PV System, the PV System size may change, or the County may incur additional costs to complete the PV System. Such costs may include upgrades to the existing electrical system, relocation of irrigation, or additional interconnection upgrades required by PG&E or other project scope changes as provided in Schedule II.A of the Energy Services Agreement and other sections of the Energy Services and Energy Storage Agreements (“Cost Changes”). In the event of any such Cost Changes, County shall have the election, in its sole discretion and following reasonable notice to Contractor, to either have Contractor bear all such costs and expenses of the Cost Changes or pay an increase in the per kWh Rate set forth in column two of the Rate Table above commensurate with the increase to the County’s per kWh rate.
- iii. System Size Changes. The Battery Storage System size is based on estimates as of the Effective Date of the County’s Energy Storage Agreement. Contractor understands and acknowledges that if the Battery Storage System Size changes from the estimated 500 kW AC, the Expected Monthly Battery Storage Payment reflected in the fourth column of the Rate Table above will also change. Contractor further understands and acknowledges that if the PV System size changes from the estimated 1,785.24 kW-DC carport canopy, the kWh Rate reflected in the second column of the Rate Table above will also change.
- iv. Lost Savings Credits. The Energy Services and Energy Storage Agreements require Provider to credit the County for Lost Savings (as defined in those Agreements) when the Provider fails to meet certain minimums related to Minimum Guaranteed Output, Minimum Guaranteed Demand Reduction or the Minimum Guaranteed Energy Arbitrage. In the event of such a Lost Savings credit or payment for the PV System on the Premises, County will apply a credit in an equal amount that it receives from Provider on the next monthly billing to Contractor after the credit is applied to County’s account.
- v. Monthly Billing. Following commencement of the commercial operation of the PV System (to be determined based upon the “Commercial Operation Date” as defined in the Energy Services and Energy Storage Agreements), the County will provide a monthly statement to Contractor reflecting the “Solar Services Payment” owed by Contractor to the County for the actual amount of energy produced by the PV System equal to the product of (x) Actual Monthly Production for the PV System for the relevant month multiplied by (y) the kWh Rate, plus (z) the monthly Battery Storage Payment (as such rates may be revised by Cost Changes or System Size Changes).
  - 1. “Actual Monthly Production” means the amount of energy recorded by Provider’s metering for the PV System during each calendar month, commencing after the Commercial Operation Date. County will provide notice to Contractor of the Commercial Operation Date once the County receives such notice from the Provider.

2. The County will include the monthly Solar Services Payment statement with the monthly compensation summary that the County provides to Contractor pursuant to Section VII.A of the Agreement. The Solar Services Payment will be included in the itemization of the compensation due to County for the previous month for purposes of determining the payment due to either Contractor or County pursuant to Section VII.B. of the Agreement.
- vi. Commitment to Negotiate on Battery Storage Rate for Year 11+ and PV System Rate for Year 21+.
  1. The parties acknowledge and agree that if the Energy Storage Agreement is still in effect nine years from the Commercial Operation Date, then they shall negotiate in good faith regarding the appropriate Battery Storage System rate. If the parties are unable to reach agreement prior to Year 11 following the Commercial Operation Date, County may adjust the then-applicable Battery Storage System Rate according to the CPI Adjustment provisions in effect pursuant to Exhibit C (Compensation) of the Agreement.
  2. The parties further acknowledge and agree that if the Energy Services Agreement and the Agreement are still in effect 19 years from the Commercial Operation Date, then they shall negotiate in good faith regarding the appropriate PV System kWh per hour rate. If the parties are unable to reach agreement prior to Year 21 following the Commercial Operation Date, County may adjust the then-applicable kWh per hour rate according to the CPI Adjustment provisions in effect pursuant to Exhibit C (Compensation) of the Agreement.
- vii. Early Termination Fees. If Contractor defaults on its obligations or covenants in this Agreement or takes any other action that results in a termination of the Energy Services Agreement or Energy Storage Agreement and imposition of the Early Termination Fee(s) on County pursuant to the provisions of the Energy Services Agreements or Energy Services Payments, Contractor shall be responsible for the entire Early Termination Fee(s) (or the entire Pre-Installation Termination Fee, if charged by Provider instead of the Early Termination Fee).
- viii. Contractor Responsibility for Additional Electricity Needs. Without limiting the foregoing, Contractor shall be responsible for providing, at Contractor's sole cost, all electricity needs not provided by the PV System. Contractor shall further be solely responsible for any charges or costs imposed by electricity providers, such as PG&E or Valley Clean Energy, related to Contractor's service agreement(s) or arrangement with such other electricity providers, including any PG&E deficiency charges that may be related to lower electricity purchases from PG&E as a result of the power generated by the PV System for Contractor's electricity needs. However, Contractor shall be

entitled to any net energy metering (NEM) credits generated by the PV System so long as it is the electricity customer of record with the electricity provider for the Facility.

ix. No warranty. Notwithstanding any contrary provision of the Energy Services Agreement, this Fourth Amendment, or the Agreement, the County makes no representations or warranties whatsoever to Contractor with respect to the condition of the PV System, including without limitation, the performance thereof or the capacity thereof. Nor does County make any representations or warranties that the PV System will remain in place during the full Term of the Agreement. Contractor further acknowledges and understands that it is not a third-party beneficiary of the County's Energy Services Agreement with Provider.

d. Environmental Attributes Owned by County. The PV System may result in the generation of certain "Environmental Attributes," which means, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® credits. Contractor acknowledges and understands that the Environmental Attributes generated by the PV System belong to the County.

C. Amendment to Exhibit B, Section 7.1. Section 7.1 of Exhibit B – Part 2 to the Agreement (General Provisions) is amended and replaced to read as follows with changes reflected in underline:

#### **7.1 Utilities**

Contractor may establish a water reuse pond with the approval of the County and regulatory agencies for use as an on-site water supply.

Contractor may develop and maintain a water supply well, with the costs of such well and access to the well to be shared with the County, as may further be agreed upon in writing by the parties.

Except as provided above and in Section 2.4.01 of Exhibit A of the Agreement (Roles and Responsibilities) regarding a photovoltaic system (PV System), the Contractor shall be responsible for providing any/all other utility needs (fuel, gas, electricity, water, telephone service, toilets with hand wash stations, etc.) at the site, at its own expense, and in compliance with all applicable Federal, State, and local laws and regulations.

D. Except as expressly amended in this Fourth Amendment, all other provisions of the Agreement shall remain in full force and effect.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the parties have executed this Fourth Amendment to the Agreement as of the day and year set forth above.

**CONTRACTOR**

**COUNTY OF YOLO**

By: \_\_\_\_\_  
Name: Greg Kelley  
Title: Managing Member

By: \_\_\_\_\_  
Angel Barajas, Chair  
Board of Supervisors

Attest:  
Julie Dachtler, Senior Deputy Clerk  
Board of Supervisors

By: \_\_\_\_\_  
(Seal)

Approved as to Form:  
Philip Pogledich, County Counsel

By: \_\_\_\_\_  
Kimberly Hood, Assistant County Counsel