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## **AGREEMENT FOR HOUSEHOLD AND SMALL QUANTITY GENERATOR HAZARDOUS WASTE SERVICES**

This Agreement is made and entered into as of the later date of the dates of execution by and between WEST COUNTY RESOURCE RECOVERY, INC., a California corporation ("WCRR"), the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("COUNTY"), and the WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY, a public entity Joint Powers Authority ("AUTHORITY"), which, collectively, shall be referred to as the "Parties."

### **RECITALS**

**WHEREAS**, WCRR warrants and represents that it has agreed under the terms of the Service Agreement For The Integrated Resource Recovery Facility ("Service Agreement"), entered into with the AUTHORITY to provide a Household Hazardous Waste Program at the Central Processing Facility ("Central Facility") for the collection of household and conditionally exempt small quantity generator ("CESQG") hazardous waste as described in said Service Agreement and the Second Supplemental Agreement Regarding Modification of the IRRF ("Second Supplemental Agreement") thereto, and

**WHEREAS**, WCRR has constructed a permanent household and CESQG hazardous waste facility at the Central Facility to receive the full range of household and CESQG hazardous waste allowed by the Cal/EPA permit by rule regulation governing such facilities; and

**WHEREAS**, the COUNTY desires to arrange for household hazardous waste and CESQG waste services at the Central Facility for the unincorporated communities known as Kensington, Crockett, Port Costa, and Tormey (collectively the "KCPT Area") which are not within AUTHORITY boundaries, nor a part of the unincorporated area served by Richmond Sanitary Service, Inc. for which the waste stream has been previously directed to the IRRF (the "County Area") and, therefore, such KCPT Area residents do not currently pay IRRF rates of any kind; and,

**WHEREAS**, the costs of construction and operation of the Central Facility are included in IRRF rates approved by the AUTHORITY and paid by ratepayers within the AUTHORITY boundaries and County Area; and

**WHEREAS**, the Parties seek to have household hazardous waste service provided at the Central Facility under arrangements whereby the COUNTY pays the full cost of receiving, handling, transporting and disposing of household hazardous waste delivered to the Central Facility by residents from the KCPT Area; and,

**WHEREAS**, the Parties seek to have CESQG service provided at the Central Facility under arrangements whereby the COUNTY pays a service charge for CESQG service reflective of the allocated costs for overhead and capitalization of the facility available to the KCPT Area CESQG's, who, in turn, will pay the actual cost for collection, packaging, transporting and disposal of the waste they dispose of at the Central Facility.

**THEREFORE**, the Parties hereby agree as follows:

## **SECTION 1.      DEFINITIONS**

The terms defined in this Section that begin in this Agreement with capital letters have these meanings:

1.1    Household Hazardous Waste ("HHW") means the types and quantities of Hazardous Waste typically found in residences (that may include, but are not limited to, pesticides, solvents, oil based paints, acids, bases, latex paint, used oil, antifreeze, lead-acid batteries, and household batteries) and generated incidental to owning or maintaining a place of residence. Household Hazardous Waste does not include (a) any waste generated in the course of operating a business concern at a residence, (b) ammunition, (c) explosives, (d) nuclear wastes, and/or (e) infectious waste.

1.2    CESQG Waste means Hazardous Waste from a Conditionally Exempt Small Quantity Generator (CESQG) which is a business generating no more than 100KG or 27 gallons per month of hazardous waste and meets all other requirements as set forth in 40 CFR 261.5.

1.3    Hazardous Waste shall have the same meaning as Section 2.60 of the IRRF Service Agreement between the AUTHORITY and WCRR.

1.4    Central Facility shall mean the HHW Facility constructed at the IRRF to receive Household Hazardous Waste and CESQG Waste from within the boundaries of the AUTHORITY and County Area.

## **SECTION 2.      SERVICES TO BE PROVIDED**

2.1 The HHW services provided to the KCPT Area by WCRR at the Central Facility shall be the same as those provided to the area within the boundaries of the AUTHORITY and County Area, provided that, all operational decisions involved in the providing of such service to KCPT Area residents shall remain the sole discretion of WCRR.

2.2 The CESQG services provided to the KCPT Area by WCRR at the Central Facility shall be the same as those provided to the area within the boundaries of the AUTHORITY and County Area, provided that, all operational decisions involved in providing of such service shall remain the sole discretion of WCRR. WCRR shall be obligated to accept waste only from CESQG's from the KCPT Area that pay the CESQG service charge for collection and disposal established and levied by WCRR prior to acceptance of said waste.

2.3 The services provided pursuant to this Agreement shall not in any way include publicity or promotion of the availability of the Central Facility. Neither the AUTHORITY nor WCRR shall publicize or promote the availability of the Central Facility to the KCPT Area, and COUNTY shall be solely responsible for publicizing and promoting the availability of the Central Facility to the KCPT Area. The AUTHORITY may provide reproducible art work, at cost, to the COUNTY for its use in publicizing the facility if it is available. The text, graphics and distribution of all publicity for the Central Facility shall first be reviewed by WCRR. COUNTY understands that promotions undertaken by AUTHORITY may be seen in the KCPT area and that WCRR and AUTHORITY shall not be financially responsible for additional demand and use of the Central Facility by the KCPT area resulting from those promotions.

2.4 WCRR shall provide reports on the number of KCPT Area residents using the Central Facility to the AUTHORITY and COUNTY on a monthly basis.

2.5 Service provided by WCRR under this Agreement shall be performed in accordance with the IRRF Service Agreement and modifications thereto.

2.6 In the event that off-site or mobile HHW events are provided by WCRR, KCPT Area residents and CESQG will be eligible to participate pursuant to a separate agreement among the Parties hereto, which separate agreement shall expressly set forth the services and related charges associated with any such events.

### **SECTION 3:      SERVICE CHARGES**

3.1 Effective upon the execution of this Agreement by the Parties, the total fee charged by WCRR to the COUNTY for HHW service to KCPT Area residents shall be based on WCRR's actual costs in providing such HHW service. WCRR's actual costs shall include, but not be limited to, the cost of labor, consumables, utilities, general overhead, administrative and management oversight, and any subcontractor costs for start-up services, receiving, handling, transporting and disposing of Household Hazardous Waste delivered to the Central Facility. WCRR's actual costs shall be determined by dividing such costs by the total number of users of HHW services during the invoice period set forth in Section 3.3. The per user cost shall then be multiplied by the number of users of HHW services from the KCPT Area to determine the COUNTY charge for the invoice period.

3.2 Effective upon the execution of this Agreement by the Parties, the total fee charged by WCRR to the COUNTY for CESQG service to KCPT Area residents shall be based on the COUNTY's proportionate share of overhead and capitalization of the Central Facility. The cost of overhead and capitalization shall not include the cost of transport or disposal and shall include, but not be limited to, the cost of labor, utilities, general overhead, administrative and management oversight, and capitalization of the Central Facility. The COUNTY's proportionate share shall be determined by dividing such costs by the total number of users of CESQG services during the invoice period set forth in Section 3.3. The per user cost shall then be multiplied by the number of users of CESQG services from the KCPT Area to determine the COUNTY's proportionate share for the period. The charge to the COUNTY for CESQG service is in addition to the charge WCRR is hereby authorized to establish and levy on CESQG users from the KCPT Area for, and as a pre-condition to, receiving, handling, transporting and disposing Hazardous Waste. The charge to CESQG users will be used to pay the actual cost of transporting and disposal of the waste they dispose of at the Central Facility. This charge will be subject to change as necessary to cover these costs. If funds collected from user charges exceed the cost of transporting and disposal then the excess will be applied to that quarter's overhead and capitalization costs.

3.3 WCRR shall invoice the COUNTY quarterly for services rendered to KCPT Area residents. The COUNTY shall pay for services rendered pursuant to this Agreement within thirty (30) days of receipt of a detailed statement.

3.4 The Parties hereto acknowledge that the charges to the COUNTY for HHW and CESQG services may fluctuate from time to time based on the total number of users, the number of users from the KCPT Area, and the costs incurred by WCRR from its subcontractors. The COUNTY shall have the right to inspect WCRR's records pertaining to the services rendered under this Agreement, upon reasonable notice, to verify WCRR's costs.

**SECTION 4: GENERATOR RESPONSIBILITY, INDEMNITY AND INSURANCE**

4.1 The COUNTY agrees to maintain status as the "generator of record" for the percentage, by weight or volume, whichever is greater, of wastes delivered to the Central Facility from the KCPT Area, to the extent permitted by law. Pursuant to existing agreements between WCRR and the AUTHORITY, the AUTHORITY will be listed as the "generator of record" for the wastes delivered to the Central Facility from the AUTHORITY's Area.

4.2 The COUNTY shall indemnify, hold harmless and defend WCRR, including its respective officers, employees, attorneys, board members and directors, from any action in law or equity related to claims, losses, damage, including property damage, personal injury (including death), and liability of every kind, nature and description, including but not limited to environmental liabilities and claims directly or indirectly arising from the COUNTY's performance hereunder or any waste generated from the KCPT Area. Notwithstanding the foregoing, COUNTY shall not be required to indemnify WCRR for the proportion of liability attributable to the active negligence or willful misconduct of WCRR. The provisions of this section shall survive the termination or expiration of this Agreement.

4.3 WCRR shall indemnify, hold harmless and defend the COUNTY, and the AUTHORITY, including their respective officers, employees, attorneys, board members and directors, from any action in law or equity related to claims, losses, damage, including property damage, personal injury (including death), and liability of every kind, nature and description, including but not limited to environmental liabilities and claims directly or indirectly arising from WCRR's

performance hereunder. Notwithstanding the foregoing, WCRR shall not be required to indemnify COUNTY for the proportion of liability attributable to the active negligence or willful misconduct of the COUNTY, nor shall WCRR be required to indemnify AUTHORITY for the proportion of liability attributable to the active negligence or willful misconduct of the AUTHORITY. The provisions of this section shall survive the termination or expiration of this Agreement.

4.4 The indemnity provisions of this Agreement are intended to operate as an agreement pursuant to 42 U.S.C. §9607(e) and California Health and Safety Code §25364 to insure, protect, hold harmless and indemnify said indemnitees from any and all liability in accordance to this section. Said indemnitees do not hereby waive or surrender any other indemnity available to all or any of them under any applicable law.

4.5 WCRR agrees to require in its contract(s) with the provider(s) of HHW transportation and disposal services to the Central Facility that the COUNTY, its officers, employees and agents be named as an additional insured in all applicable insurance policies under which WCRR is named as an additional insured.

## **SECTION 5: TERM OF AGREEMENT**

5.1 The term of this Agreement shall be for ONE (1) year from the later date of the dates of execution of this Agreement, except that this Agreement shall automatically renew itself for successive one-year terms unless WCRR or the COUNTY or the AUTHORITY gives notice in writing at least 30 days prior to expiration of the term. Notwithstanding any other provision of this Agreement, the COUNTY, the AUTHORITY or WCRR shall have the right to suspend or terminate this Agreement at any time, upon reasonable cause, upon ten (10) days' written notice. For purposes of this Agreement, "reasonable cause" shall include, but not be limited to, insufficient funding authorization from any public entity, including the AUTHORITY or the COUNTY, relative to the cost of providing household or CESQG hazardous waste services pursuant to this Agreement. In the event the COUNTY suspends or terminates this Agreement, WCRR shall suspend or terminate all HHW services and CESQG services to the KCPT Area. The COUNTY shall pay WCRR for all services completed or in progress at the time such written notice is received and WCRR may invoice the COUNTY immediately upon receipt of such notice.

## **SECTION 6:     NOTICES**

6.1 All notices shall be made in writing and delivered in person or by facsimile transmission or mailed to such party at their respective address as follows:

AUTHORITY:     West Contra Costa Integrated Waste Management Authority  
                  One Alvarado Square, San Pablo, CA 94806  
                  ATTN: Executive Director

WCRR:           West County Resource Recovery, Inc.  
                  101 Pittsburg Avenue, Richmond, CA 94801  
                  ATTN: General Manager

COUNTY:         Contra Costa County  
                  651 Pine Street, 4<sup>th</sup> Floor - North Wing, Martinez, CA 945553  
                  ATTN: Community Development Director

## **SECTION 7:     MISCELLANEOUS**

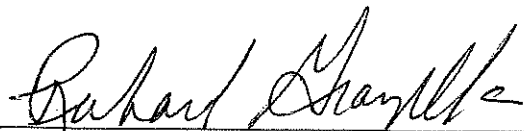
7.1 Any party shall be relieved of its obligations hereunder for the duration of an event of a force majeure or a change of law if, as a result of a force majeure or a change of law, such party is unable to perform or if such event renders a party's performance economically unreasonable. A force majeure shall include only events outside of the control of the parties and which are either acts of God or unforeseeable.

7.2 The waiver of any contractual, legal or equitable remedy by any Party hereto shall not constitute a waiver of any contractual, legal or equitable remedy by the others.

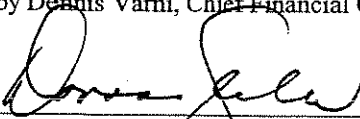
7.3 If any material part, term or provision of the Agreement is determined to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be null, void and terminated.

7.4 This agreement, and amendments and supplemental agreements hereto, may be executed in counterparts.

DATE: \_\_\_\_\_

  
WEST COUNTY RESOURCE RECOVERY, INC.  
by Dennis Varni, Chief Financial Officer

DATE: 6/6/00

  
COUNTY OF CONTRA COSTA  
by Chairperson of the Board of Supervisors

DATE: 5/19/00

  
WEST CONTRA COSTA INTEGRATED WASTE  
MANAGEMENT AUTHORITY  
by Executive Director