

**Side Letter of Agreement:
Budget and Balancing Account for Household Hazardous Waste Operations**

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1. This Side Letter Agreement (“HHW Agreement”) is between the West Contra Costa Integrated Waste Management Authority (“Authority”), and West County Resource Recovery, Inc.; West Contra Costa Sanitary Landfill, Inc.; Golden Bear Transfer Services, Inc.; Richmond Sanitary Service, Inc.; and Keller Canyon Landfill Company operating subsidiaries of Republic Services, Inc.) (hereinafter collectively, “Contractor”). The Authority and Contractor may be referred to individually as “Party” or collectively as “Parties.”

2. On October 10, 2013, the Authority and Contractor entered into a Post-Collection Recycling, and Disposal Services Agreement (“Post-Collection Agreement” or “Agreement”). Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Post-Collection Agreement. If there is conflict between this HHW Agreement and the Post-Collection Agreement, the terms of this HHW Agreement shall prevail.

a. Section 4.1.7 of the Post-Collection Agreement provides that “Contractor shall contract with a vendor acceptable to the Authority for the operation of a permanent Household Hazardous Waste (HHW) drop-off facility (located at 101 Pittsburg Avenue, North Richmond) [“HHW Facility”] that shall serve the Member Agencies (Richmond, El Cerrito, San Pablo, Pinole, Hercules, and Contra Costa County unincorporated communities within the Authority service area). There are separate agreements with Contra Costa County to include the unincorporated communities adjacent to the Authority’s service area (Kensington, Rodeo, Crockett, Port Costa, and Tormey). The types of materials accepted, as well as days and hours of operation shall be determined by Authority, after good faith consultation with Contractor and County and may be subject to change at any time by the Authority Board of Directors with input from Contractor and County, subject to reasonable implementation lead time and budget considerations.

3. On January 1, 2014, Contractor initiated services under the Post-Collection Processing and Landfill Disposal Service Agreement with the City of El Cerrito (“El Cerrito Post-Collection Agreement”). Contractor’s existing obligations to provide household hazardous waste services to the City of El Cerrito as a Member of the Authority at the HHW Facility are referenced in Section 4.1(e) of the El Cerrito Post-Collection Agreement. For the purposes of this HHW Agreement, Contractor shall be allowed to contract with a vendor acceptable to the Authority for the operation of one or more satellite Household Hazardous Waste facilities as they may be or are developed within the Authority’s service area that shall serve the Authority’s member agencies

including the City of El Cerrito, and the unincorporated communities of Contra Costa County within Authority's service area. The other unincorporated areas of Contra Costa County outside the Authority service area shall be included by a separate agreement among Authority, Contractor, and County. The annual budget for HHW services and this HHW Agreement shall apply to any satellite HHW facility developed within the Authority's service area.

4. The Authority acknowledges that the Contractor has the right to utilize its assets and market its services. To the extent Contractor allows any additional ("out-of-area") jurisdictions to deliver HHW materials to the HHW Facility with the Authority as the generator of record, the Contractor and the Authority will meet and confer to develop an acceptable arrangement. The mutually acceptable arrangement will be included in the Republic annual HHW Budget submittal to the Board of Directors for review and consideration of approval.

5. Section 5.3.3 of the Post-Collection Agreement provides that Contractor and the Authority Contract Manager shall jointly prepare and submit a draft HHW budget to the Authority Board of Directors for its review and approval (HHW Budget). Section 5.3.3 further provides that the Board, "may approve that budget as submitted or may request modifications to the budget, including requesting either an increase in service levels or a reduction or elimination of Services to reduce costs." Once approved, the HHW Budget shall serve as the revenue requirement for the HHW portion of the Rate for the coming year. The HHW component of the 2014 rate was established based on jointly estimated calendar year proposed cost of service of seven hundred ninety-one thousand one hundred forty-four dollars (\$791,144). Section 5.3.3 further provides that "Contractor shall be entitled to an operating margin of eleven and fifty-five one hundredths percent (11.55%) for calendar year 2014 and fifteen percent (15%) in all subsequent Rate Years."

6. The Parties agree that the costs of the HHW Facility are variable, due to factors such as variable days and hours of operation, labor costs and the costs of handling and properly disposing of the HHW materials received from the public. The Parties are interested in creating an equitable solution to the handling of those costs, in the event that costs exceed or fall short of budgeted amounts.

7. The intent of this HHW Agreement is to memorialize a procedure for establishing the HHW Budget for all subsequent Rate Years, using a balancing account approach.

8. The Parties therefore agree upon the following terms and conditions:

a. The Board of Directors shall, on an annual basis, approve an HHW Budget prior to December 1 for the following calendar year's budget.

b. In establishing the HHW Budget for the following calendar year, the Parties shall consider Contractor's actual prior year costs incurred in the operation of the HHW Facility. The line item accounts for prior year costs are identified in Exhibit A.

c. In establishing the HHW Budget, the Parties shall also agree upon certain operational parameters, including, but not limited to, the assumed number of part-time and full-time staff; the days and hours of all HHW facilities operations; and assumed volume of HHW materials received by type. These operational parameters will form the basis of annual allowable costs for the HHW Budget, as described in Exhibit A.

d. Unless the Parties are proposing changes to the operational parameters, some of the current year budget line items would be adjusted by the average monthly change in the San Francisco-San Jose-Oakland All Urban Consumers CPI (CPI) to arrive at the HHW Budget for the following calendar year as described in Exhibit A. Exhibit A shall identify those budgets items to be subject to the CPI adjustments.

e. Except in the event of an emergency or other exigent circumstance, neither Authority nor Contractor may adjust the operational parameters of the HHW Budget without prior written authorization of the Board of Directors. The Authority and Contractor must mutually determine whether an emergency or other exigent circumstance exists.

f. If the HHW Budget parameters are changed without approval of the Board of Directors and those adjustments result in increased costs of operation, those increased costs shall not be allowable in consideration of the balancing account established below.

g. Once the HHW Budget is approved for the calendar year, neither Contractor nor the Authority shall add new categories of allowable costs in Exhibit A without the Authority verification and written authorization of the Board of Directors.

h. The previous approved Budgets in prior years have been approved by the Authority Board of Directors as follows:

- 2014 Budget \$791,144
- 2015 Budget \$836,818
- 2016 Budget \$857,284
- 2017 Budget \$978,684
- 2018 Budget \$1,058,785

Contractor will provide Authority with a reconciliation of actual expenses vs. budget amounts for 2014, 2015, 2016, and 2017. Contractor and Authority agree that the overall reconciliation for 2014 through 2017 could be in favor of Contractor; if so, Contractor would receive a direct payment or credit of no more than \$41,500. Contractor waives the right to any further payment, reimbursement, credit or other compensation after the

Annual Statement line item reconciliation of actual expenses vs. budget amounts for 2014, 2015, 2016, and 2017 is completed.

Contractor will provide Authority with a reconciliation of actual expenses vs. budget amounts for 2018 by April 1, 2019. The reconciliation for years 2014, 2015, 2016, 2017 and 2018 shall include details of actual costs incurred and actual total revenues received compared to the approved budget in the operation of the HHW Facility for that calendar year, including any revenues allocated to the HHW Budget from jurisdictions other than the Member Agencies. The reconciliation shall include supporting documentation from Contractor's vendors and subcontractors. The reconciliation shall also be in a format as agreeable by the Authority in good faith consultation with the Contractor. Upon the Authority's request, Contractor shall provide any additional records not already provided with the reconciliation, that are relevant to the determination of the accuracy and appropriateness of the reported revenues and costs. Contractor shall grant such access to the relevant records within thirty (30) calendar days of such request. Contractor may provide electronic or hard copies of such records. The Authority acknowledges that some records may be "trade secrets" and must be kept confidential. Either the Authority or the Contractor shall be entitled to recover any surplus/shortfall in actual revenues relative to actual allowable costs. The Authority or the Contractor shall recover such surplus/shortfall either by (a) a direct payment; or (b) as a credit/debit against the following year's rates.

i. To manage the HHW Budget, the Parties further agree to establish a balancing account effective January 1, 2019, for the remainder of the term of the Post-Collection Agreement.

j. The intent of the balancing account is to create an equitable arrangement to allow sufficient, but not excessive, revenues to cover actual costs and agreed-upon operating margin. The balancing account shall function as follows:

i. Contractor will provide Authority with a reconciliation of actual expenses vs. budget amounts for the previous budget year in the form of an "Annual Statement".

ii. The "Annual Statement" shall be developed as follows: Within one hundred twenty (120) days following the end of each calendar year, Contractor shall submit to the Authority its statement of actual costs incurred and actual total revenues received compared to the approved budget in the operation of the HHW Facility for that calendar year, including any revenues allocated to the HHW Budget from jurisdictions other than the Member Agencies. The Annual Statement shall include supporting documentation from Contractor's vendors and subcontractors. The Annual Statement shall also be in a format as agreeable by the Authority in good faith consultation with the Contractor.

iii. In reviewing the Annual Statement, the Authority Contract Manager and the Contractor shall determine if actual allowable costs exceeded annual budgeted costs, and if actual revenues exceeded or fell short of budgeted revenues. Upon the Authority's request, Contractor shall provide any additional records not already provided with the Annual Statement, that are relevant to the determination of the accuracy and appropriateness of the reported revenues and costs. Contractor shall grant such access to the relevant records within thirty (30) calendar days of such request. Contractor may provide electronic or hard copies of such records. The Authority acknowledges that some records may be "trade secrets" and must be kept confidential. The Authority Contract Manager may deny or reject an increase in the HHW Budget for the following year if Contractor fails to provide such requested records within thirty (30) calendar days. Beginning in Calendar Year 2019, Authority and Contractor agree that line item accounts for fuel, utilities, property tax and insurance, as listed in Exhibit A and as included in the 2019 Board Approved HHW budget, are not subject to reconciliation. These four-line items shall be subject to an annual CPI adjustment as described in Exhibit A for all subsequent years and will be considered actual costs.

iv. The Authority shall review and either approve or reject the Annual Statement within sixty (60) days of receipt of the same. However, if any reported revenues and/or costs are disputed by the Authority, the Authority's approval of the Annual Statement may be delayed until such disputed items are resolved. Authority shall provide Contractor with a detailed statement outlining the areas of dispute. Contractor and the Authority shall then resolve any disputes pursuant to Section 8.17 of the Post-Collection Agreement.

v. Upon the Authority's approval of the Annual Statement, Contractor shall be allowed to recover any shortfall in actual revenues relative to actual allowable costs. If the amount of any shortfall is twenty-five thousand dollars (\$25,000) or less, then the Authority shall compensate Contractor for the shortfall through a direct payment to Contractor. If, however, the amount of any shortfall is greater than twenty-five thousand dollars (\$25,000), then the Authority shall compensate Contractor for the shortfall either through (a) a direct payment to Contractor; or (b) by adjusting the following year's rates.

vi. In addition, the Authority shall be entitled to recover any surplus in actual revenues relative to actual allowable costs. The Authority shall recover such surplus either by (a) a direct payment from Contractor; or (b) as a credit against the following year's rates.

9. On June 17, 2017 Contractor contracted with a vendor acceptable to the Authority and the City of El Cerrito for the operation of a satellite HHW facility located at 7501 Schmidt Lane in El Cerrito, California pursuant to an Agreement between

Contractor, the Authority and El Cerrito ("El Cerrito Facility"). The El Cerrito Facility serves the Member Agencies. The HHW budget for the El Cerrito Facility shall be part of the entire HHW Budget approved by the Authority Board of Directors. The HHW Budget for the El Cerrito Facility shall not include any non-allowable costs identified in Exhibit A.

10. This HHW Agreement shall expire upon completion of the final HHW Budget reconciliation which shall be conducted after expiration of the Post-Collection Agreement.

11. The terms and conditions set forth in this HHW Agreement have been mutually agreed upon by the Parties.

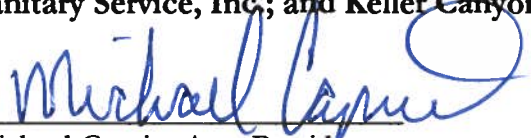
West Contra Costa Integrated Waste Management Authority



Stan Hakes, Executive Director

Dated: 1-3-18 19 *gdt*

West County Resource Recovery, Inc.; West Contra Costa Sanitary Landfill, Inc.; Golden Bear Transfer Services, Inc.; Richmond Sanitary Service, Inc.; and Keller Canyon Landfill Company



Michael Caprio, Area President

Dated: 1/10/19

Exhibit A: Allowable Costs

A. Allowable Costs

Contractor shall calculate its cost of operations including the actual and direct costs of operating the HHW Programs, Permanent HHW Facility, any satellite HHW Facilities, special one day collection events, and any additional HHW services/programs as necessary for the following allowable costs:

1. Direct wages and benefits paid to Contractor for an HHW supervisor who oversees HHW programs and manages the budget in cooperation with the Authority. For the 2019 Budget, the amount is ninety-two thousand four hundred thirty four dollars(\$92,434). This amount will be estimated for budget purposes using the actual fully loaded wages for the previous twelve months from July 1st through June 30th. For the 2020 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
2. Maintenance supplies, spare parts, consumables & outside services costs incurred directly to perform the HHW services required under the Post-Collection Agreement. For the 2019 budget, this amount is forty-three thousand two hundred forty-eight dollars (\$43,248). This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
3. HHW Facility Outside Services which are limited to the subcontracted services of Stericycle (or a replacement subcontractor approved by the Authority) for the receipt, handling, processing, and responsible disposal of the materials collected by the HHW program. Contractor shall separately account for and report the various components of this cost (i.e. labor, handling, transportation, material disposal, etc.) in both their budget request and Annual Statement. For the 2019 budget, this amount is five hundred fifty-two thousand dollars (\$552,000). For budget purposes, this amount will be the actual costs for the previous twelve months from July 1st through June 30th. For the 2020 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
4. Fuel costs incurred in the operation of mobile equipment used specifically for the benefit of the HHW program. To the extent that such mobile equipment is shared with other operations of Contractor, Contractor shall have the burden of demonstrating the appropriateness of the allocation of these costs to the Authority's Executive Director. For the 2019 budget, this amount is two thousand eight hundred fourteen (\$2,814). This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.
5. Utilities costs incurred by Contractor in the operation of the HHW program. For the 2019 budget, this amount is eleven thousand five hundred

seventeen (\$11,517) dollars. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.

6. Property taxes which represents a 7.29% allocation of the total property taxes paid by Contractor for the 101 Pittsburg Ave, Richmond site. The 7.29% allocation is based on Contractor's representation of the square footage of the site occupied by the HHW facility. For the 2019 budget, the allocated amount to the HHW facility is fifteen thousand five hundred forty-four dollars (\$15,544). This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.

7. Insurance costs directly attributable to the operation of the HHW program for the types and levels of coverage required by the Agreement. For the 2019 budget, this amount is nine thousand two hundred eighty (\$9,280) dollars. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2020 budget until the end of the PC Agreement.

8. JPA Requested Programs will be budgeted based on a budget for those programs as determined jointly by the Authority and Contractor.

9. Contractor expenses for Household Hazardous Waste, motor oil, and universal waste training, education networking and related travel expenses not to exceed \$3,500 per year.

10. Capital costs or Depreciation included in a Board approved annual HHW Budget.

11. All other unforeseen costs such as payments to repair damage, fines and penalties not due to Contractor's negligence, both the Authority and Contractor agree to meet and confer in good faith towards a resolution.

B. Non-Allowable Costs

Non-allowable costs shall not be included in the Annual Statement and, if determined by the Authority to have been included in the Annual Statement, shall be deducted from actual costs. Non-allowable costs include but are not limited to the following:

1. Any costs or portions of allocated costs associated with the Contractor's provision of similar services to "out of area" users of the HHW Facility that are not approved by Authority Board of Directors.

2. Labor and equipment costs for personnel and vehicles that are not specified in the operational parameters and assumptions that are approved as part of the HHW Budget.

3. Payments or other compensation to managers, directors, and/or owners of Contractor.

4. Corporate overhead allocations or other charges for Contractor's selling, general, and/or administrative employees, except for insurance and other overhead included in a Board approved annual HHW Budget.

5. Travel and entertainment expenses except for Household Hazardous Waste, motor oil and universal waste training, education networking and related travel expenses.

6. Payments to repair damage to public or private property due to Contractor's negligence.

7. Fines or penalties due to Contractor's negligence.

8. Liquidated Damages assessed under the Agreement.

9. Federal or State income taxes.

10. Charitable or political donations, except non- profit organization HHW fees waivers approved by RecycleMore staff.

11. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased unless approved by the Board as part of the Budget.

12. Attorney's fees and other expenses incurred by Contractor in any dispute, negotiation, or court proceeding.

13. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of the Agreement.

14. Payments to Affiliates for products or services, in excess of the cost to the Affiliates for those products or services.

15. Goodwill.

16. Profit and/or profit sharing distributions exceeding the operator's margin described in the Agreement.

17. Bad debt.