

**First Amendment to and Restatement of Side Letter of Agreement:
Budget and Balancing Account for Household Hazardous Waste Operations**

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Agreement

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.”

Definitions

1.1 “Allowable Costs” shall have the meaning set forth in Exhibit A.

1.2 “HHW Program” means Household Hazardous Waste and Small Quantity Generator Hazardous Waste services provided by Contractor to pursuant to the PCA.

Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the PCA. If there is conflict between this Amended Agreement and the PCA, the terms of PCA shall prevail.

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.

b. Unincorporated communities adjacent to the Authority's service area, and known as Kensington, Rodeo, Crockett, Port Costa and Tormey ("KCPT") may receive some Authority HHW Program Services at the discretion of both the Authority and Contractor, shall be charged for all HHW Program services based on usage pursuant to a separate written agreement between the Authority, Contractor and third parties including KCPT. A "User" shall be any individual's use of HHW Program services, including but not limited to, the use of a Permanent or Satellite HHW Facility or participation in a one-day event conducted by Contractor as part of the HHW Program. Actual Allowable Costs will be divided by the total number of Users and the number of Users from KCPT Area jurisdictions. The KCPT Area jurisdictions will be charged in accordance with their proportionate share of total Users. Consolidated deliveries from more than one address or location, shall be treated as separate deliveries from each separate address or location. At the discretion of the Authority Board, a per use surcharge may also be imposed on users from outside the Authority's service area.

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 \$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 ("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 Executive Director 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 Executive Director 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 2020, Authority and Contractor agree that line item accounts for fuel, utilities, property tax, insurance, accounting support, permit fees, and site maintenance costs, as listed in Exhibit A, paragraph 4 and as included in the 2020 Board Approved HHW budget, are not subject to reconciliation. These seven-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 expenses relative to the actual Allowable Costs and Authority shall be allowed to recover any surpluses from actual expenses relative to Allowable Costs.

Given that HHW Program budgeted Revenues are to equal budgeted Allowable Costs, any variances between actual HHW Program Revenues less actual HHW Program Allowable Costs must be reconciled annually in a true-up, as noted above. Therefore, if actual HHW Program Revenues exceed actual Allowable Costs for the year being reviewed, then the amount of the difference shall be "Excess Cost" and be reconciled by adding such Excess Cost to the HHW Program_Revenue budgeted for the HHW Program expense Budget for the calendar year subsequent to the year being reviewed. The effect would be to reduce other HHW Program expenses needed to balance the HHW Program_Revenues for the subsequent calendar year. The intended effect is to reduce the calculated HHW Program portion of Contractor's collection rate for such ensuing year, as collection rates are calculated based on the HHW Program_Revenue necessary to balance the HHW Program Budget with Allowable Costs. For example:

If actual HHW Program Budget Revenues for calendar Year 2021 are \$1,200,000 and the actual Allowable Costs for calendar year 2021 are (\$1,100,000) then the difference would be a 2021 under budget carryover amount of \$100,000.

If HHW Program budget of calendar year 2022 are budgeted at \$1,300,000 then 2021 budget carryover amount of \$100,000 reduces necessary 2022 Revenue by (\$100,000) and, thus, other 2022 Revenues necessary to balance the budget are \$1,200,000.

This example balances the 2021 actual HHW Program_budget and actual Allowable Costs by reducing the 2022 HHW Program Revenue necessary to balance the 2022 Budget by the amount of Excess Net Revenue from 2021.

Conversely, if actual Allowable Costs exceed actual HHW budget for the year being reviewed, then the amount of the difference shall be unbudgeted Allowable Costs and be reconciled by adding such unbudgeted Allowable Costs to the Allowable Costs budgeted for the HHW Program Budget for the year subsequent to the year being reviewed. The effect would be to increase the HHW Program budget in order to balance the HHW Program budget for the ensuing calendar with budgeted Allowable Costs. The effect is to increase the calculated HHW Program budget portion of Contractor's collection rate for the ensuing year, as collection rates shall be calculated based on the HHW Program budgeted expenses necessary to balance the HHW Program budget with Allowable Costs. For Example:

If actual the HHW Program budgets for calendar Year 2021 are \$1,200,000 and the actual Allowable Costs for calendar year are (\$1,250,000) then the unbudgeted Allowable Costs for 2022 would be (\$50,000)

If HHW Program Allowable Costs of calendar year 2022 are budgeted at \$1,300,000 then the 2021 unbudgeted Allowable Costs would be added in the amount of \$50,000 and, thus, the HHW Program expense budget necessary to balance the 2022 Budget would be \$1,350,000.

This example balances the 2021 actual budget and Allowable Costs by increasing the 2022 budgeted Allowable Costs necessary to balance the 2022 Budget.

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 HHW Program Revenues and/or Allowable Costs are disputed by the Authority, the Authority's approval of the Annual Statement may be delayed until such disputed items are resolved. The 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.

vi. Pursuant to an annual true up, the Authority shall be entitled to recover any surplus as a result of lower expenses relative to actual Allowable Costs. The Authority shall recover such surplus as a credit against the following year's rates. The Contractor shall be entitled to recover any unbudgeted actual costs relative to Allowable Costs. The Contractor shall recover such unbudgeted Allowable Costs as an increase in the HHW budget for the following year.


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

 Steve Duran, Interim Executive Director

Dated: Nov 21, 2019

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: _____

Exhibit A: Allowable Costs

A. Allowable Costs

The costs of the Permanent and Satellite HHW Facilities 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. Therefore, the Parties commissioned an independent audit of costs and reviewed historical data, and based on said audit and review, the Parties define Allowable Costs and as follows:

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, manager and similar staff members who directly oversee HHW programs, manage the budget in cooperation with the Authority and provide support to the program on site. For the 2020 Budget, the amount is \$132,085. For the 2021 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.
2. Maintenance supplies, spare parts, consumables and outside costs incurred directly to perform the HHW services required under the Post-Collection Agreement. For the 2020 budget, this amount is \$38,121. This amount will be increased by 85% of the CPI for each subsequent budget with the 2021 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 2020 budget, this amount is \$408,351. For the 2021 budget, this amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.
4. The Contractor incurs facility and administrative costs in support of the HHW program. These costs are allowable as follows:
 - a. Fuel costs incurred in the operation of mobile equipment used specifically for the benefit of the HHW program. For the 2020 budget, this amount is

\$4,635. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

b. Utilities costs incurred by Contractor in the operation of the HHW program and facility. For the 2020 budget, this amount is \$16,945. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

c. Property taxes which represents a 7.29% allocation of the total property taxes paid by Contractor for the 101 Pittsburg Avenue, 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 2020 budget, the allocated amount to the HHW facility is \$19,540. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

d. Insurance costs directly attributable to the operation of the HHW program for the types and levels of coverage required by the Agreement. For the 2020 budget, this amount is \$9,594. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

e. Accounting and Financial management support to manage HHW revenues, process invoices, prepare the Annual Statement, respond to Authority inquiries and assist with budget management. For the 2020 budget, this amount is \$32,646. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

f. Costs to maintain components of the larger IRRF site that are shared with the HHW program. This includes, but is not limited to security, landscaping, janitorial, improvements/repair of main office building, repair of forklift or other equipment shared with HHW, site lighting, security cameras, internet access, site communication, perimeter fencing, entry gate, sweeping, exterminator, fire suppression system, etc. These costs represent approximately 18% of the cost to maintain the entire site. For the 2020 budget, this amount is \$40,320. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

g. Costs for permit fees for the entire IRRF site that are shared with the HHW program. This does not include HHW specific permits which are allowable under section 2, above. For the 2020 budget, this amount is \$10,472. This amount will be increased by 85% of the CPI for each subsequent budget beginning with the 2021 budget until the end of the PC Agreement.

5. JPA Requested Programs will be budgeted based on a budget for those programs as determined jointly by the Authority and Contractor.
6. 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.
7. Capital costs or depreciation included in a Board approved annual HHW Budget.
8. All other unforeseen costs such as payment 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 the 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 fee waivers approved by RecycleMore staff.
11. Depreciation or interest expense for Collection vehicles, Containers or 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.