



**DATE:** April 22, 2020

**TO:** Waste Management Authority Board

**FROM:** Pat Cabrera, Administrative Services Director

**SUBJECT:** Household Hazardous Waste (HHW) Memoranda of Understanding (MOUs)

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### **SUMMARY**

At the direction of the WMA, staff has prepared amendments to the HHW program Memoranda of Understanding (MOUs) with the County of Alameda Department of Environmental Health (herein referred to as the County) and the City of Fremont reflecting the terms of the new ordinance that was adopted on September 25, 2019.

### **DISCUSSION**

At the September 25, 2019 WMA meeting, the Board adopted Ordinance 2019-01 amending Ordinance 2014-01 ([Ordinance-2019-01](#)), which established an HHW collection and disposal fee. The amendment set the annual fee at \$6.64 per residential unit through at least June 30, 2024, at which time an analysis will be conducted to determine if the fee would need to be revised for the next five years (provided that it could never be more than the original fee of \$9.55 per residential unit).

While the WMA administers this fee (as well as the per-ton fee), the HHW facilities are operated by the County for the Oakland, Livermore and Hayward sites. The City of Fremont, who contracts with BLT, operates the Fremont site. Specific deliverables and reimbursement limits are established through MOUs between the WMA and the County and the WMA and the City of Fremont. Both current MOUs are scheduled to expire on June 30, 2020.

Attached are amended MOUs for both the County and the City of Fremont. The MOUs extend through June 30, 2029; however, they will be revisited prior to the end of June 30, 2024 to determine the reimbursement limits through June 30, 2029 based on the aforementioned analysis. In addition to implementing new reimbursements, revisions to the MOUs reflect the changes to the fee structure (flat fee as opposed to the previous convoluted calculation that changed the fee annually), reporting clarifications and changes to the one-day events from twelve per year (which was not obtainable) to at least eight per year.

Both MOUs have been reviewed by WMA Counsel and as shown in Attachment A, the City of Fremont has already approved its MOU with the WMA. While County Counsel has also reviewed its

MOU with the WMA (Attachment B), and agreed to its terms, consistent with past practice it will be placed on the Board of Supervisor's agenda for approval once approved by the Board.

**RECOMMENDATION**

That the WMA approve the MOUs with the County of Alameda Department of Environmental Health and the City of Fremont.

Attachment A: MOU with the City of Fremont

Attachment B: MOU with the County of Alameda, Department of Environmental Health

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding for Household Hazardous Waste (HHW) Services is entered into by and between the City of Fremont ("City") and the Alameda County Waste Management Authority ("Authority") and as of the Effective Date replaces the MOU between the parties dated August 1, 2014.

RECITALS

1. The Authority is a joint powers agency responsible for administration and implementation of the Alameda County Integrated Waste Management Plan and Hazardous Waste Management Plan and this MOU will not affect obligations under that joint powers agreement.
2. Pursuant to Public Resources Code Sections 47100 and 47101, and Health and Safety Code Section 25218 et seq, the City partially implements the countywide household hazardous waste program ("Program") and is responsible for the collection, recycling and disposal of hazardous wastes from households and Conditionally Exempt Small Quantity Generators ("CESQGs").
3. The Authority authorizes the funding of the Program through the Household Hazardous Waste (HHW) Fee per ton of waste disposed at landfills and through the Household Hazardous Waste Collection and Disposal Fee collected from each residential property owner (collectively, the "HHW Fees").
4. The Authority and the City (the "Parties") wish to set forth their respective roles and responsibilities for continuation of the Program.
5. Alameda County implements much of the Program and is accountable to the Authority for three countywide stand-alone facilities and other Program services.
6. The City of Fremont has contracted with a Facility Operator (BLT) to provide transfer station/recyclables processing services at the Fremont Transfer Station located at 41149 Boyce Road which includes a household hazardous waste drop off center which is convenient to the residents of Fremont, Union City and Newark, and is available to all Alameda County residents.
7. The Authority has agreed to contribute funding to the City for the Fremont HHW facility per Exhibit A attached. The funds are derived from the HHW fees. These funds will be used to reimburse the City for the operating costs of providing Program services at the Fremont site.

8. Environmental review for this Household Hazardous Waste Disposal Facility has been conducted under the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*

NOW, THEREFORE, the Parties agree as follows:

### **Article I. Definitions**

In addition to terms defined in the recitals above, the following definitions shall be used in this MOU:

- a) **Conditionally Exempt Small Quantity Generator (CESQG)** shall mean those businesses that are qualified to use the program pursuant to Section 25218, *et seq.*, of the California Health and Safety Code.
- b) **County** means County of Alameda, State of California.
- c) **Facility** means the Fremont Transfer Station and Materials Recovery Facility located at 41149 Boyce Road, including the Household Hazardous Waste Facility component, which collects, handles, treats, stores, recycles or disposes of Household Hazardous Waste, including hazardous waste from CESQGs.
- d) **Facility Operator** means BLT Enterprises of Fremont, Inc., or their assignee or successor.
- e) **Household Hazardous Waste (HHW)** means any hazardous waste generated incidental to owning or maintaining a place of residence. HHW also includes Universal Wastes.
- f) **Memorandum of Understanding (MOU)** means this agreement, including all exhibits, which are incorporated herein by reference, as this MOU may be amended from time to time.
- g) **Notice** (or **Notify** or other variation thereof) means written notice given by one Party to the other Party in relation to the execution of the various obligations of the Parties under this MOU.
- h) **Program** means the Countywide household hazardous waste and small quantity generator program for the collection, recycling and disposal of hazardous wastes from households and CESQGs. The program includes four permanent household hazardous waste collection facilities, one day events and satellite collection site partners, oversight, outreach and administration by Authority, and activities

pursuant to Waste Management Authority Ordinance 2019- 01 "Ordinance Amending the Household Hazardous Waste Collection and Disposal Fee Ordinance.

- i) **Product Stewardship Offset** means the funds received or operational cost reductions in connection with activities pursuant to Waste Management Authority Ordinance 2019-01 and attributable to household hazardous waste product stewardship programs implemented in accordance with federal, state, or local laws (such as the PaintCare Product Stewardship Program established at Public Resources Code sections 48700 et seq.).
- j) **Residential Landlord Program Participants** means CESQs who are owners of residential rental property in Alameda County and choose to dispose of household hazardous wastes from households they own in Alameda County.
- k) **State** shall mean State of California.
- l) **Universal Waste** shall mean material identified by the California Department of Toxic Substances Control and specified in the California Code of Regulations as belonging to a special class of hazardous waste. Universal Waste generally includes household items such as batteries, electronics, fluorescent lamps, thermometers and thermostats, mercury-containing products and devices and non-empty aerosol cans.

## **Article 2. Term and Reimbursements**

### **a. Term**

The term of this MOU shall commence upon execution by both Parties and will be effective July 1, 2020 ("Effective Date") and continue without interruption as long as the Facility continues to provide services to all County residents, and the Authority continues to fund the reimbursements as described in Exhibit A, subject to the following reopener provision in Paragraph B below, and the amendment and termination provisions in Articles 10 and 12.

### **b. Reimbursements**

The Parties agree to the annual reimbursements listed in Exhibit A, as it may be amended, through June 30, 2024. No later than February 28, 2024, the City and the Authority agree to reopen this Agreement in order for the City and Authority to agree on reimbursement amounts for the period of time beginning on July 1, 2024. The current Exhibit A to this Agreement only describes the funding reimbursement through June 30, 2024. In the event the City and the Authority are unable to agree on the continuing amount of Authority

reimbursement at that time, City has the right to terminate this Agreement effective July 1, 2024.

c. Meet and Confer

The Parties agree to confer annually about revenues and expenditures by February 28<sup>th</sup> of each year beginning in fiscal year 20/21. The purpose of these consultations is to ensure the long-term fiscal stability of the Program. In addition, the consultation will attempt to address: (1) any extraordinary expenses, including those resulting from a change in law, incurred by the City from the Fremont HHW facility in the previous calendar year and (2) estimated expenses in future years. The Parties agree to discuss and make a good faith effort to resolve potential imbalances between long-term revenue and spending projections in order to take or plan any action by the Parties that may be necessary. Such actions could include but are not limited to operational changes, increased reimbursement from the Authority, or amendments to this MOU.

**Article 3. Operations and Marketing**

City agrees to require the Facility Operator to have the Facility open and available to accept HHW from Alameda County residents, Residential Landlord Program Participants, and CESQGs as outlined in Exhibit B. The City agrees that the HHW collection center will not charge: 1) residents of Alameda County Households or 2) Residential Landlord Program Participants for use of the HHW Facility. All other CESQGs will pay the fees for service established by the County. To assist in achieving performance goals, the Authority Board may with the concurrence of the City Manager of Fremont or designee and consistent with available funding, direct that the City adjust Program operations including, but not limited to, the method(s) by which the public uses the Facility, the timing during which the Facility is open, and the use of alternative collection methods. These changes may result in increases or decreases in specific line items in the spending plan, but shall not exceed the annual amounts listed in Exhibit A as it may be amended.

The City will be responsible for all marketing and advertising of the Facility to Fremont residents. However, the Authority will maintain web based information on its website.

**Article 4. Funding**

a. Reimbursements

The Parties agree to not exceed reimbursement amounts listed in Exhibit A, through June 30, 2024. However, pursuant to Ordinance 2019 -01 a financial analysis of the HHW program will be conducted prior to June 30, 2024 to

determine the fee for fiscal year 2024/25 through fiscal year 2028/29. Based on that analysis, reimbursement amounts may be revised for that five year period. The Authority will make reimbursement payments to City up to the amount of the reimbursement limits contained in Exhibit A, as it may be amended, within thirty days of receipt of an invoice for actual costs of the Program, net of fees paid by CESQG's to the Facility. Invoices shall be submitted in two installments as outlined below and shall specify total invoiced cost for salaries/employee benefits, indirect costs, and other costs together with other cost detail agreed upon by the Executive Director and the City Manager of Fremont or designee. If the City does not receive timely and full reimbursement in accordance with this agreement and following notice to Authority, then the dispute resolution provisions outlined in Article 8 and Article 12 shall apply.

The first installment will be submitted by the City to the Authority no later than February 15 and will contain actual cost information from July 1– December 31.

The second installment will be submitted no later than August 5 and will contain actual cost information from January 1 – June 30.

In the event that the City does not have actual cost information available for the second installment it can submit a final billing no later than September 15.

**b. Modification of Reimbursement Limits**

Reimbursement may exceed the annual amounts shown in Exhibit A if approved in advance in writing by the Executive Director. In general, this approval will be for an emergency or extraordinary circumstance or event. The annual City spending plan line items for the Program may include some multi-year contracts, such as disposal, so long as an explanation satisfactory to the Executive Director is included in the proposed Facility spending plan if a line item is intended to pay for multiple years of that cost. In no instance, however, shall actual annual reimbursement exceed the annual amounts specified in Exhibit A unless approved in advance in writing by the Executive Director.

**c. Small Quantity Generator Fees**

The Program currently includes a County-operated program for CESQGs, pursuant to State and Federal regulations. The City will provide substantially the same opportunities for the CESQGs to use the Facility and will require the Facility Operator to charge the same fees as County-operated HHW facilities, fees which are set by the Alameda County Board of Supervisors. The Rate Schedule for CESQG fees is attached as Exhibit C and incorporated by reference. CESQG fees may be adjusted from time to

time by the Alameda County Board of Supervisors. The Authority shall update Exhibit C at such time as the CESQG fees are revised by the Alameda County Board of Supervisors and shall provide the City a copy of such updated Exhibit C.

#### **Article 5. Reporting Requirements**

The following reports shall be submitted by the City to the Authority:

- a) **An annual report by October 30<sup>th</sup> for the prior fiscal year, with the first report due October 30<sup>th</sup>, 2015 to include the following:**
- A descriptive written summary of the Program's operation over the previous year.
  - Presentation of data including numbers of vehicles, transactions and households served, geographic distribution of households served by city/jurisdiction, quantities of materials collected and/or shipped based on CalRecycle Form 303 or equivalent, annual statement describing revenues and expenditures by categories including cost per pound and cost per household served. Product Stewardship Offsets. The City shall report funds received or reduced expenses, if any, attributable to Product Stewardship Offsets. Operational cost reductions shall be calculated based on the difference between the Facility's baseline or estimated cost to manage the particular materials covered by the product stewardship program if the product stewardship program did not exist, and the actual cost to manage those materials and the product stewardship program with the product stewardship program in existence. In some instances, this method may be infeasible to use because there is no baseline experience upon which to base a reasonable estimate of the cost in the absence of the product stewardship program. Operational cost reductions shall be calculated in a manner acceptable to the Executive Director and the City Manager of Fremont or designee. Funding from either of the parties to expand or enhance the Program beyond the activities pursuant to Waste Management Authority Ordinance "Ordinance 2019-01 are not Product Stewardship Offsets.
  - CESQG program reports including number of transactions by facility, quantity of waste handled, revenues; and for Residential Landlord Program Participants, the number of units served and geographic location statistics.
  - All reports shall be submitted in a form satisfactory to the Executive Director of the Authority and the City Manager of Fremont, or designee.
- b) **A detailed proposed annual spending plan for the next fiscal year by February 15<sup>th</sup> of each calendar year. Timely submittal of the detailed spending plan is**

essential for the success of the meet and confer process specified in Section 2.c.

c) **A quarterly report submitted within 30 days of the end of each quarter (i.e., January, April and July, for the three months preceding each of these months), beginning in January, 2015. These quarterly reports are expected to be a compilation of the monthly reports the City receives from its facility operator and are expected to include:**

- Numbers of vehicles and of households served.
- Geographic distribution of households served by jurisdiction.
- Types of households served (e.g., single family residential, 2-4 unit residential, 5+ unit residential).
- Number of transactions
- Type of customer (e.g., resident, CESQG or Residential Landlord Program Participant. Ownership of the residence served (i.e., owner-occupied or rented).
- Other such information or format as mutually agreed upon by the Executive Director of the Authority and the City Manager of Fremont or designee to better understand the patterns of use of the Program.

#### **Article 6. Insurance**

During the life of this MOU, the City shall ensure that the Facility Operator and its contractors and subcontractors, if any, maintain the following minimum insurance:

a. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000. The umbrella policy shall not be less than \$5,000,000.

b. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.

c. Statutory workers' compensation and employer's liability insurance as required by state law. The Facility Operator and its carrier shall not be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this MOU.

d. Upon request, the City shall require Facility Operator to submit to Authority certificates of insurance for the policies listed above. The certificates shall provide that the insurer give written notice to Authority at least 10 days prior to

cancellation of or any material changes in the policy.

#### **Article 7. Indemnification**

City agrees to continue to require in its HHW Service Contract with Facility Operator that the Facility Operator indemnifies and holds harmless the Authority, its officers, employees, and agents from and against any and all loss, liability, expense, claim, costs (including costs of defense), fines, penalties, consequences, and suits and damages of every kind, nature and description directly or indirectly arising from the negligent or intentional acts, errors, or omissions of the Facility Operator or its contractors and subcontractors, if any, in the performance of services under this MOU, and Facility Operator shall pay all claims, damages, judgments, legal costs, adjustors' fees and attorneys' fees and attorneys' fees related thereto.

#### **Article 8. Dispute Resolution**

The Parties shall make a good faith effort to settle any dispute or claim arising under this MOU. If the parties fail to resolve such disputes or claims, they shall submit them to nonbinding mediation in California. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any of these dispute resolution processes are invoked, each Party shall bear its own costs and attorneys' fees.

#### **Article 9. Notices**

All notices, requests, demands or other communications by either Party to the other Party shall be in writing and shall be effective upon receipt by (i) personal delivery or by courier to the address set forth below or (ii) when deposited in the U.S. Mail, first class, registered or certified mail, return receipt requested, to the address set forth below:

**To City:**  
City Manager  
City of Fremont  
3300 Capitol Avenue  
Fremont, CA 94538

Cc.  
Environmental Services Manager City of Fremont  
39550 Liberty Street  
Fremont, CA 94538

**To Authority:**  
Executive Director  
Alameda County Waste Management  
Authority  
1537 Webster Street  
Oakland, California 94612

**Article 10. Amendment**

This MOU shall not be modified or amended except in writing executed by all Parties. Notwithstanding the foregoing, the parties acknowledge that Exhibit C will be periodically updated, and such update does not constitute an amendment of the MOU.

**Article 11. Severability**

If any term, condition or provision of this MOU shall, at any time or to any extent be invalid or unenforceable, the remainder of the MOU, other than that provision which is held invalid or unenforceable, shall not be affected hereby and the remaining terms, conditions or provisions shall be valid and enforceable to the fullest extent permitted by law.

**Article 12. Termination, Breach and Default**

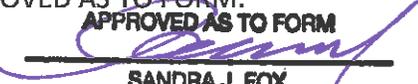
The Parties may terminate this MOU at any time by mutual written agreement. In the event the Authority determines it is unable to continue its funding obligations as described in this Agreement, Authority agrees to give City a six month Notice of such determination prior to implementation, in order for the City to have adequate time to pursue other funding sources, or to make the operational changes necessary to reflect the reduced budget.

In the event of a breach of this MOU by either Party, the offending Party shall be given written Notice of such breach and a sixty (60) day opportunity to cure. This Notice shall include with specificity the details of the alleged breach and the date of intended termination.

**Article 13. Governing Law**

This MOU is entered into and to be performed in Alameda County, California, and shall be governed by the laws of California.

IN WITNESS WHEREOF, EACH PARTY HEREBY APPROVES AND EXECUTES THIS  
MEMORANDUM OF UNDERSTANDING

City	Authority
 _____ City Manager or Designee  DATE: <u>3/16/2020</u>	_____ Wendy Sommer, Executive Director  DATE: _____
APPROVED AS TO FORM: <b>APPROVED AS TO FORM</b>  By: _____ SANDRA J. FOX Harvey Land, City Attorney	APPROVED AS TO FORM:  By: _____ Richard Taylor, Authority Counsel

**Exhibit A: City of Fremont Reimbursement Limits**

Period: July 1, 2020 - June 30, 2021

Annual Reimbursement: \$1,123,408

Period: July 1, 2021 - June 30, 2022

Annual Reimbursement: \$1,162,728

Period: July 1, 2022 - June 30, 2023

Annual Reimbursement: \$1,203,423

Period: July 1, 2023 - June 30, 2024

Annual Reimbursement: \$1,245,543

**Exhibit B:**

**Performance Goals & Operational Parameters**

**Performance Goals**

Attempt to annually serve 12-14% of Fremont service area which includes households in Fremont, Newark and Union City. This percentage amounts to approximately 13,000 households.

**Table 1: Operational Parameters:**

<b>Fremont Facility</b>
Open to households:  Wed-Fri: 8:30 am-2:30 pm Sat: 8 am-4:00 pm E-Waste Accepted
Small Businesses including Residential Landlord Program:  Tuesdays between 9 am and 2 pm  Drop in for Universal waste & Latex paint, other materials by appointment

### Exhibit C: Conditionally Exempt Small Quantity Generator Program Fee Schedule

<i>Paint, and Paint Related Materials</i> (Oil and Latex), Stain, Varnish, Roofing Tar, Primers, Coatings, Adhesives, Inks Joint Compounds, Glazes, and Other Petroleum Based Products, Misc Petroleum Based Products, Sludges. Solvents, Flammable liquids, Detergents in containers less than one gallon	\$0.60 Pound
<i>Solvents, Flammable liquids, Detergents - containers one gallon and up</i>	\$ 3.50 gallon
Aerosol Cans (including camping/torch propane bottles) to 16.4 oz	\$ 1.60 Each
Propane Tanks (5 gal/20 lb. Gas grill type) <i>Other sizes \$ 2.50/gallon shell volume</i>	\$12.50 Each
Motor Oil/Lubricating/Hydraulic Oil	\$1.30 Gallon
Contaminated Motor/Lubricating/Hydraulic Oil	\$3.50 Gallon
Oil Filters	from Cars \$1.50 Each Large Filters from Trucks \$6.00 Each
Antifreeze	\$2.75 Gallon
Petroleum Contaminated Soil, Lead Paint Chips for landfill	\$0.85 Pound
Photo Chemical Liquids (developers, fixers, stop baths)	\$6.00 Gallon
Chemicals (not toxic), Acids, Bases, Photo Solids & Liquids Swimming Pool Chemicals, Neutral Oxidizers, Bleach	\$2.10 Pound
Flammable Solids Contaminated soils/sorbents for incineration	\$2.60 Pound
Pesticides, Herbicides, Fungicides, toxic materials	\$3.10 Pound
Fertilizers	\$2.10 Pound
Dry cell batteries, SLA batteries, not including mercury batteries	\$0.60 Pound
Mercury, Mercury Containing Articles, Mercury Batteries	\$7.10 Pound
Cyanides, Acutely/Extremely Hazardous Materials	\$30.00 Pound
Organic Peroxides (epoxy hardeners) Tube=up to 4.0oz Quart = \$15.00 Gallon=\$50.00	\$3.00 Tube \$10.00 Pint
Materials Not Listed Above	Case by Case Basis
	Minimum charge \$ 25.00

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## ATTACHMENT B

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into by and between the County of Alameda, Department of Environmental Health ("County") and the Alameda County Waste Management Authority ("Authority") (collectively, the "**Parties**") and shall become effective the 1<sup>st</sup> day of July, 2020 and as of that date shall replace the memorandum of understanding between the parties dated July 1, 2014.

WHEREAS, pursuant to Public Resources Code Sections 47100 and 47101, and Health and Safety Code Section 25218 et seq., the County has a household hazardous waste and small quantity generator program for the collection, recycling and disposal of hazardous wastes from households and Conditionally Exempt Small Quantity Generators (the "Program"); and

WHEREAS, the Authority is a joint powers agency responsible for, inter alia, administration, and implementation of the Alameda County Integrated Waste Management Plan and Hazardous Waste Management Plan; and

WHEREAS, the Authority funds the Program through a Tipping Fee and through a Household Hazardous Waste Collection and Disposal Fee collected from each residential property owner; and

WHEREAS, the Authority and the County wish to set forth their respective roles and responsibilities for the Program.

NOW, THEREFORE, the Parties agree as follows:

#### **1. Definitions**

In addition to terms defined in the recitals above, the following definitions shall be used in this MOU:

**Authority Board:** the Board of Directors of the Alameda County Waste Management Authority.

**Authority Costs:** the Authority's actual costs and expenditures for support of the Program including Authority costs related to supporting the Program as set forth in this Agreement, such as direct mail and other outreach methods. These include costs and expenditures for basic oversight, staffing, marketing and Indirect Costs.

**Conditionally Exempt Small Quantity Generator ("CESQG"):** businesses that are qualified to use the Program pursuant to Section 25218, et seq., of the California Health and Safety Code.

**City of Fremont Costs:** the City of Fremont's actual costs and expenditures in connection with operation of the Fremont Facility.

**Department of Environmental Health Costs:** the Department of Environmental Health's actual costs and expenditures for support of the Program as set forth in this Agreement including costs related to operating the facilities, One Day Events, and the small business program. These include costs and expenditures for basic oversight, staffing and Indirect Costs.

**Department of Environmental Health:** the Alameda County Department of Environmental Health, which is primarily responsible for County operation of the Program.

**Executive Director:** the Executive Director of the Alameda County Waste Management Authority.

**Fremont Facility:** the household hazardous waste and CESQG facility located in the City of Fremont for the collection, recycling and disposal of hazardous wastes from households and CESQGs.

**Household Hazardous Waste Collection and Disposal Fee ("HHW Collection and Disposal Fee"):** the fee collected from each residential property owner in accordance with Waste Management Authority Ordinance 2019- 01 "Ordinance 2019-01 Amending The Household Hazardous Waste Collection and Disposal Fee Ordinance

**Indirect Costs:** the reasonable overhead costs attributable to the Program.

**Program:** the Countywide household hazardous waste and small quantity generator program for the collection, recycling and disposal of hazardous wastes from households and CESQGs. The program includes four permanent household hazardous waste collection facilities, One Day Events and satellite collection site partners, oversight, outreach and administration by Authority, and activities pursuant to Waste Management Authority Ordinance 2019- 01. The County may in its sole discretion operate and fund, directly or through grants or other sources of funding, additional programs for collection of substances that may or may not be household hazardous wastes.

**Program Staff:** the Department of Environmental Health staff assigned to the Program.

**Product Stewardship Offset:** the funds received or operational cost reductions in connection with activities attributable to household hazardous waste product stewardship programs implemented in accordance with federal, state, or local laws (such as the PaintCare Product Stewardship Program established at Public Resources Code sections 48700 et seq.).

**Tipping Fee:** the Household Hazardous Waste Fee, currently \$2.15 per ton, for disposal at landfills.

## **2. Term**

The term of this MOU shall commence on the Effective Date and continue without interruption subject to the termination provisions set forth below.

## **3. Operations**

- a. **Facilities.** County agrees to operate the facilities listed in Attachment A during the hours and days listed in Attachment A. The County, after consultation with the Executive Director, may adjust opening and closing hours, however, any changes in days or a day's total hours of operation must be reviewed and approved by the Authority Board.
- b. **One Day Events.** County agrees to operate One-Day Events throughout the County as set forth in Attachment A.
- c. **Program Operations.** County is responsible for Program operations concerning collection, processing, and disposal of hazardous wastes except at the Fremont Facility and will exercise that responsibility in accordance with all applicable laws and consistent with industry standards. Authority is responsible for outreach and education and other matters as set forth in section 7. Performance goals for the permanent facilities and for One Day Events are contained in Attachment A. To assist in achieving performance goals, the Authority Board may with the concurrence of the Director of Environmental Health and consistent with available funding direct that the County adjust Program operations including, but not limited to, the method(s) by which the public uses the facilities, the timing during which each facility is open, and the use of alternative collection methods. These changes may result in increases or decreases in specific line items in the Program's budgeted expenses, but shall not exceed the annual amounts listed in Attachment B.

## **4. Accepting Materials from Alameda County Residents and Residential Property Owners**

- a. **Residents.** The County agrees that no charge will be imposed on residents of Alameda County households for using services funded by the HHW Collection and Disposal Fee.
- b. **CESQGs.** The County agrees that no charge will be imposed on CESQGs who are owners of residential rental property in Alameda County for disposal of household hazardous wastes from households they own in Alameda County. All other CESQGs will pay the fees for service established by the County.

## **5. Expenditures**

- a. **Revenue.** The Tipping fee and the HHW Collection and Disposal fee and any accrued interest resulting from these fees constitute the funds that will be used to make the reimbursements for Department of Environmental Health Costs, Authority Costs, and City of Fremont Costs. Funds not required for such costs may be used by Authority in its sole discretion consistent with applicable laws.
- b. **Reimbursements.** The Parties agree to the reimbursement amounts listed in Attachment B, through June 30, 2024. However as outlined in Ordinance 2019 -01 a financial analysis of the HHW program will be conducted prior to June 30, 2024 to determine what the fee will be for fiscal year 2024/25 through fiscal year 2028/29. Based on that analysis, reimbursement amounts may be revised for that five-year period.

The Authority will make reimbursement payments to the Department of Environmental Health and Authority, up to the amount of the reimbursement limits contained in Attachment B within thirty days of receipt of an invoice for actual costs of the Program net of fees paid by CESQG's to the Department of Environmental Health and not deposited with Authority. Invoices shall be submitted at least annually and not more frequently than bi-annually and shall specify total invoiced cost for salaries/ employee benefits, Indirect Costs, and other costs together with other cost detail agreed upon by the Executive Director and the Director of the Alameda County Department of Environmental Health. If the Department of Environmental Health does not receive timely and full reimbursement in accordance with this agreement and following notice to Authority and thirty days to cure any deficiency it can reduce services to adjust for the lack of reimbursement.

- c. **Modification of Reimbursement Limits.** Reimbursement may exceed the annual amounts shown in Attachment B if approved in advance in writing by the Executive Director. The annual County spending plan line items for the Program may include some multi-year contracts, such as disposal, so long as an explanation satisfactory to the Executive Director is included in the proposed County Program spending plan if a line item is intended to pay for multiple years of that cost. In no instance, however, shall actual annual reimbursement exceed the annual amounts specified in Attachment B unless approved in advance in writing by the Executive Director.
- d. **Annual Meet and Confer.** The Parties agree to confer annually about revenues and expenditures by February 28<sup>th</sup> of each year beginning in 2021. The purpose of these consultations is to ensure the long-term fiscal stability of the Program by discussing any potential imbalance between long-term revenue and spending projections, and taking or planning any action by the Parties as necessary. Such actions could include but are not limited to operational efficiency improvements, changes in days or hours of operation, or amendments to this MOU.

## **6. Reporting**

The following reports shall be submitted by Program Staff to the Executive Director. The types and contents of reports to be submitted may be changed by mutual agreement of the Executive Director and Director of Environmental Health after consultation with

Program Staff:

- a. An annual report by October 30<sup>th</sup> for the prior fiscal year, with the first report due October 30<sup>th</sup>, 2020, to include the following:**
- A descriptive written summary of the Program's operation over the previous year.
  - Presentation of data including numbers of vehicles and households served per facility, geographic distribution of households served by city/jurisdiction, quantities of materials collected and/or shipped based on CalRecycle form 303 or equivalent, annual budget describing projected and actual revenues and expenditures by category.
  - Total number of transactions per jurisdiction (in addition to households)
  - A list of One Day Events, by location, cost and number of households served.
  - Performance indices in cost per pound and cost per household served.
  - Product Stewardship Offsets. Department of Environmental Health shall report funds received, if any, attributable to Product Stewardship Offsets. Operational cost reductions shall be calculated based on the difference between the Program's baseline or estimated cost to manage the particular materials covered by the product stewardship program if the product stewardship program did not exist, and the actual cost to manage those materials and the product stewardship program. Operational cost reductions shall be calculated in a manner acceptable to the Executive Director and the Director of the Alameda County Department of Environmental Health. Funding from either of the parties to expand or enhance the Program beyond the activities pursuant to Waste Management Authority Ordinance 2019- 01 are not Product Stewardship Offsets.
  - CESQG program reports including (1) for those paying a fee, the number of transactions by facility, quantity of waste handled, and revenues, and (2) for residential property owners (using the Program at no out of pocket cost) the number of units served and geographic location statistics.
  - Reports shall be submitted in a form satisfactory to the Executive Director and the Director of the Alameda County Department of Environmental Health.
- b. A detailed proposed annual spending plan for the next fiscal year no later than February 28<sup>th</sup> of each calendar year. Timely submittal of the detailed spending plan is essential for the success of the meet and confer process specified in Section 5.c.**

c. **A quarterly report submitted within 30 days of the end of each quarter (i.e., October, January, April and August, for the three months preceding each of these months). The quarterly report shall include:**

- Numbers of vehicles and of households served per facility and for One Day Events.
- Geographic distribution of households served by jurisdiction.
- Total number of transactions per jurisdiction (in addition to households).
- Other such information, by mutual consent, as the Executive Director may request to better understand the patterns of use of the Program.

The following data will be reported subject to availability:

- Types of households served (e.g., single family residential, 2-4 unit residential, 5+ unit residential)
- Type of customer (e.g., resident, or residential property owner or their agent registered as a CESQG)
- Ownership of the residence served (i.e., owner-occupied or rented).

## **7. Authority Responsibilities**

The Authority, in consultation with the Program Staff, shall develop and administer an outreach and education program to market the Program. Outreach shall include advertising, direct mail notice to residents, point of purchase information (e.g., in retail stores), and web based information.

The Authority will annually review the prior year's Program operations, funding, marketing activities and performance, and the coming year's proposed spending plan. The annual review may include, but is not limited to, review of staffing levels; revenues, expenditures and fund balances; County budgeting and Indirect Cost practices as applied to the Program; Authority and Program education, outreach and marketing activities; CESQG program status and One Day Event status. Performance will be reviewed by looking at use of the Program by the public and tonnage of material collected, compared to annual performance goals contained in Attachment A. This will serve as a measure of Program efficiency to allow the Authority and Department to evaluate program changes that can result in service improvements.

Authority will undertake administrative tasks necessary to collect, enforce, and defend any challenges to the Tipping Fee and the HHW Collection and Disposal Fee.

## **8. Insurance**

During the life of this MOU, the County shall have insurance (which may be satisfied through self-insurance) and require that its contractors and subcontractors, if any, maintain the following minimum insurance:

a. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be not less than \$2,000,000.

b. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.

c. Statutory workers' compensation and employer's liability insurance as required by state law. Insurance shall waive all rights of subrogation against the Authority, its elected or appointed officers, officials, agents and employees for losses paid under the terms of the policy which arise from this MOU.

Upon request, the County shall submit to Authority certificates of insurance for the policies listed above. The certificates shall provide that the insurer give written notice to Authority at least 10 days prior to cancellation of or any material changes in the policy. Upon request, the County shall request such certificates of insurance from any contractors and subcontractors for submission to the Authority

## **9. Indemnification**

County agrees to indemnify and hold harmless the Authority, its officers, employees, and agents from and against any and all loss, liability, expense, claim, costs (including costs of defense), fines, penalties, consequences, and suits and damages of every kind, nature and description directly or indirectly arising from the negligent or intentional acts, errors, or omissions of the County or its contractors and subcontractors, if any, in the performance of services under this MOU, and County shall pay all claims, damages, judgments, legal costs, adjustors' fees and attorneys' fees and attorneys' fees related thereto.

Authority agrees to indemnify and hold harmless the County, its officers, employees, and agents from and against any and all loss, liability, expense, claim, costs (including costs of defense), fines, penalties, consequences, and suits and damages of every kind, nature and description directly or indirectly arising from the negligent or intentional acts, errors, or omissions of the Authority or its contractors and subcontractors, if any, in the performance of services under this MOU, and Authority shall pay all claims, damages, judgments, legal costs, adjustors' fees

and attorneys' fees and attorneys' fees related thereto.

This mutual indemnification agreement is adopted pursuant to Government code section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government code section 895.6.

### **10. Dispute Resolution**

The Parties shall make a good faith effort to settle any dispute or claim arising under this MOU. If the Parties fail to resolve such disputes or claims, they shall first consider submitting them to nonbinding mediation in Alameda County, California. If mediation is not acceptable to either party or does not arrive at a satisfactory result, arbitration, if agreed to by the Parties, or litigation may be pursued. In the event any of these dispute resolution processes are invoked, each Party shall bear its own costs and attorneys' fees.

### **11. Notices**

All notices, requests, demands or other communications by either Party to the other Party shall be in writing and shall be effective upon receipt by (i) personal delivery or by courier to the address set forth below or (ii) when deposited in the U.S. Mail, first class, registered or certified mail, return receipt requested, to the address set forth below:

**To County:**

Director of Environmental Health  
Alameda County Department of Environmental Health  
1131 Harbor Bay Parkway  
Alameda CA 94502-6577

**To Authority:**

Executive Director  
Alameda County Waste  
Management Authority  
1537 Webster Street  
Oakland, California 94612

### **12. Miscellaneous**

- a. Except as otherwise provided in this Agreement, attachments to this MOU may be reasonably revised in by mutual agreement of the Executive Director and the Director of Environmental Health to help achieve participation goals contained in Attachment A as long such revisions are approved by the Authority Board.

- b. This MOU supersedes and replaces the prior MOU between the parties, dated July 1, 2014.
- c. This terms of this MOU are limited to the provision by the County of Program services. The Authority is individually and solely responsible for any costs (including costs of defense), penalties, consequences, and suits and damages of every kind, nature and description directly or indirectly related to the HHW Collection and Disposal Fee. The Authority agrees to indemnify and hold harmless the County, its officers, employees, and agents from and against any and all loss, liability, expense, claim, costs (including costs of defense), fines, penalties, consequences, and suits and damages of every kind, nature and description directly or indirectly arising from the HHW Collection and Disposal Fee and Authority shall pay all claims, damages, judgments, legal costs, adjustors' fees and attorneys' fees and attorneys' fees related thereto. The Department of Environmental Health shall reasonably cooperate with Authority in defense of any claim subject to this section 12.c. This indemnification shall not apply if the County brings or voluntarily joins with any plaintiff in any such claim.
- d. The Parties may terminate this MOU at any time by mutual written agreement or by either Party with thirty-day prior written notice. Except in the case of unilateral termination by County, Authority will fund actual program closure costs up to \$750,000, which amount shall be adjusted beginning July 1, 2022 and each year thereafter by the percentage change in the Consumer Price Index (April over April time period) for All Urban Consumers (not seasonally adjusted) San Francisco-Oakland-Hayward area (1982-1984 = 100) as published by the Bureau of Labor Statistics, U.S. Department of Labor.
- e. The Parties may terminate or suspend this MOU for material breaches of this MOU if a Party fails to cure a defect within 60 days following the service on the offending party of written notice specifying the defect, and the date of intended termination absent cure. Material breaches include but are not limited to repeated failure to comply with any term, of the MOU.

[Signatures on next page]

IN WITNESS WHEREOF, each party hereby approves and executes this Memorandum of Understanding.

COUNTY OF ALAMEDA

By: \_\_\_\_\_  
Richard Valle, President, Board of Supervisors  
County of Alameda, State of California

Dated: \_\_\_\_\_

Approved as to Form:  
Donna R Ziegler, County Counsel

By: \_\_\_\_\_  
Kathleen Pacheco, Senior Deputy County Counsel

ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

By: \_\_\_\_\_  
Chair of the Board

Dated: \_\_\_\_\_

Dated:

Approved as to Form:

By: \_\_\_\_\_  
Richard Taylor, General Counsel

**Attachment A**  
**Performance Goals & Operational Parameters**

**Performance Goals**

Permanent facilities: Annually serve, through the Oakland, Hayward and Livermore HHW facilities, 12-14% of households in all cities in Alameda County except Fremont, Newark and Union City. This is currently approximately 60,000 households.

One Day Events: Annually serve 6,000 households through at least 8 One Day Events

**Operational Parameters:**

<b>Oakland facility</b>	<b>Hayward Facility</b>	<b>Livermore Facility</b>
<b>Household Program</b>		
Wed-Fri 9-2:30 Sat 9-4:00	Thursday 9- 2:30 Fridays 9-2:30 Sat 9-4:00	Thursday 9-2:30 Fridays 9-2:30 Sat 9-4:00
Accept E-Waste	Accept E-Waste	Accept E-waste
<b>Small Business program</b>		
Tuesdays (excluding holidays and training)	Alternate Tuesdays or Wednesdays 2x per month	Alternate Tuesdays or Wednesdays 2x per month
Residential landlord program	Residential landlord program	Residential landlord program
Drop in for Universal waste - Latex paint, other materials by appointment	Drop in for Universal Waste/Latex paint, other materials by appointment	Drop in for Universal waste/Latex Paint, other materials by appointment

Attachment B: Annual Reimbursement Limits

Year	Department of Environmental Health Reimbursement Limits	Authority Reimbursement Limits
FY 20-21	\$5,086,090	\$526,638
FY21-22	\$5,340,394	\$543,379
FY 22-23	\$5,607,414	\$560,689
FY 23-24	\$5,887,784	\$578,589

**Other:**

The estimated savings from PaintCare are included in the reimbursement limits. As part of the financial analysis that will be conducted by March 31, 2024 and in five year intervals thereafter as outlined in Ordinance 2019-01, PaintCare and other product stewardship-related cost reductions will be factored into the analysis to determine the fee for the next five years.

2. Notwithstanding section 5.c of this agreement the limits above may be increased by up to 5% in any year to address changes in market conditions. If increases in excess of 5% are requested, the limits may be modified in accordance with section 5.c of this agreement and by agreement of the parties.

3. a. The County understands that the Authority in the course of Program administration may expend funds to respond to, defend, or settle protests or legal claims associated with the HHW Collection and Disposal Fee, or to comply with any order of a Court of competent jurisdiction with respect to the fee, which are Indirect Costs of the Authority.

b. If such costs together with other Authority Costs exceed the amount in Authority column, then County shall contribute up to \$200,000 per year from its Indirect Cost budget to assist with such costs, as long as the County's indirect cost reimbursement is not reduced to less than \$370,000 per year. Whether and how these funds are used is the sole determination of the Authority, consistent with the purposes of this agreement.

c. The Authority will notify County in advance of each fiscal year beginning in FY20-21 if it expects that reimbursement limits may be affected during that period.

d. The above amounts do not include any costs or amounts for services provided to Authority by other County Departments.

Attachment C  
Alameda County Household Hazardous Waste CESQG Fee Schedule

Item	Price	Unit
<b>PaintCare Eligible Paint, Oil Base:</b> Stain, varnish, deck coating, floor paint (including elastomeric), primer, sealer, undercoat, shellac, lacquer, varnish, urethanes & epoxy (single component), waterproofing concrete/masonry/wood and repellents (no tar or bitumen-based) metal coatings, rust preventative, field and lawn paints	\$0.10	Pound
<b>Paint Related Materials &amp; Non-PaintCare Paint:</b> (Oil base and Latex): ink, colorant & pigments, roofing tar, adhesive, joint compound, glaze, paint sludge; solvents in containers under 1 gallon	\$1.00	Pound
<b>Solvents, Flammable liquids, Detergent liquids, Contaminated motor oil (non-PCB):</b> one gallon and larger	\$ 0.55	Pound
<b>Chemicals, other than Toxic/Poisons:</b> Acids, Bases, Oxidizers, Salts, Photo Chemical Solids & Liquids, Cleaning Compounds, Swimming Pool Chemicals, Bleach, Laboratory Chemicals	\$ 2.40	Pound
<b>Poison /Toxic materials:</b> Pesticides, Herbicides, Fungicides, Lab Chemicals, wood preservative	\$ 3.20	Pound
<b>Contaminated Solids: Lead Paint Chips, Soil/Sorbents</b> - suitable for Hazardous Waste landfill	\$1.80	Pound
<b>Lamp Ballasts:</b> (Magnetic transformer type under 15 lbs. PCB or non-PCB)	\$1.00	Pound
<b>Antifreeze</b>	\$ 0.35	Pound
<b>Photo Chemical Liquids:</b> one gallon and larger (developers, fixers, stop baths)	\$ 0.70	Pound
<b>Motor Oil, Lubricating &amp; gear Oil: one quart and larger</b>	\$ 0.20	Pound
<b>Oil Filters</b>	\$ 2.00	Pound
<b>Flammable Solids, Service Station fuel filters, Contaminated Soils/Sorbents/Materials requiring incineration (contains VOC)</b>	\$ 3.50	Pound
<b>Mercury, Mercury Containing Articles, Mercury Batteries</b>	\$18.00	Pound
<b>Propane Tanks: Camping &amp; Torch type</b> (1 pound)	\$2.50	Pound
<b>Propane Tanks:</b> (20 pound) gas grill type, no vehicle tanks	est. 20 Lb. each	\$12.50
<b>Lead Acid Auto Batteries, Engine Starting Batteries</b>	est. 30 Lb. each	\$ 5.00
<b>Materials not list above Case by Case Basis</b>		
<b>Universal Waste</b>		
<b>Aerosol Cans</b> up to 16.4 oz	\$ 1.80	Pound
<b>Household Batteries: Alkaline; Rechargeable Ni/Cd, NiMh, Lion, Sealed lead acid; Lithium</b>	\$ 0.80	Pound
<b>DDR Lithium Ion Batteries: damaged, swollen lithium ion cells &amp; packs; Lion packs &gt;300 AH</b>	\$15.00	Pound
Fluorescent lamps: Straight tube lamps, over 2 foot long	\$ 2.00	Pound
Compact Fluorescent Bulbs, D-tubes, U tubes, PL inserts, Small tubes, Misc. mercury lamps	\$3.00	Pound
<b>HID Mercury lamps:</b> Mercury Vapor, Sodium Vapor, Metal Halide, auto headlights, video projection	\$4.00	Pound
Compact Fluorescent Bulbs, D-tubes, U tubes, PL in <b>Latex Paint</b> tubes, Misc. mercury lamps		
<b>Latex Paint: PaintCare Eligible Product</b>	\$ 0.10	Pound
*For all of the above items there is a \$25 Minimum Charge		