

INTERGOVERNMENTAL AGREEMENT FOR OVERSIGHT SERVICES AT REPUBLIC SERVICES TOWER LANDFILL

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made this 17th day of April 2023 by and between the Adams County Health Department (“ACHD”), located at 4430 S. Adams County Parkway, Brighton, Colorado and the City of Commerce City (“the City”), located at 7887 East 60th Ave. Commerce City, Colorado, 80022. ACHD and the City may be collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the Republic Services (“Republic”) Tower Landfill located at the southeast corner of 88th Avenue and Tower Road is in the City; and

WHEREAS, ACHD has submitted a proposal to the City to perform independent solid waste disposal site oversight services related to Tower Landfill; and

WHEREAS, the essential elements of said proposal are set forth in the document entitled “Adams County Health Department, Solid Waste Disposal Site Oversight Services for Tower Landfill”, a copy of which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, said proposal by ACHD would assist in protecting the health and safety of individuals located within the City; and

WHEREAS, funds to support ACHD’s work under said proposal will be provided by Republic; and

WHEREAS, the City has accepted the proposal from ACHD, as described above; and

WHEREAS, the City and ACHD mutually desire to embody their understanding and agreement in a written document as herein set forth.

ACHD and the City, for the consideration herein set forth, agree as follows:

1. Performance by ACHD: ACHD shall perform solid waste disposal site oversight pursuant to the terms and conditions set forth in Exhibit A. Any subsequent solid waste disposal site oversight services shall be subject to subsequent review and negotiation.

2. Term: The term of this Agreement shall be for one year from January 1, 2023 through December 31, 2023 and shall renew automatically on an annual basis unless otherwise terminated in accordance with the terms contained herein. ACHD and the City shall review this agreement and the oversight services set forth in Exhibit A every five years and make adjustments, in writing, as necessary to meet the needs of the City.

3. Oversight Fees: At no cost to the City, ACHD shall budget no more than \$25,000 per year for the oversight program and shall not exceed said amount unless authorized by the City in writing. ACHD shall submit quarterly invoices based on hours worked to Republic for payment, with a copy of the invoice mailed to the City for their records. Each ACHD invoice shall list the hourly work completed and the cost of each item.

4. ACHD Insurance: ACHD has adopted a plan of self-insurance.

5. Period Reports: ACHD shall verbally report any important findings to the City as soon as is practicable. The City may request a written report at any time for any specific finding or oversight activity that is performed by ACHD. Oversight activities shall be summarized in writing at a semi-annual meeting with the City Liaison each year.

6. Termination: Either the City or ACHD may terminate this Agreement by providing thirty (30) days advance written notice setting forth the effective date of termination. In the event of termination, ACHD shall cease work as of the effective date of the termination, but shall be compensated for all the work accomplished prior to the effective date of the termination.

7. Liaisons: The following individuals, or their designees, shall meet at least annually to analyze data about inspection results. Both parties can be present at inspections.

For ACHD:

Brian Hlavacek, MAS, REHS Adams County Health Department 4430 S. Adams
County Parkway, Brighton, Colorado 80601
Phone: 720-523-7209

For the City:

Dr. Rosemarie Russo, Sustainability Planner City of Commerce City
Community Planning and Development Services 7887 East 60th Avenue
Commerce City, Colorado 80022 Phone: (303) 289-3652

8. Amendment. The Parties may amend or modify this Agreement only by written instrument executed by both Parties.

9. Notice. Any notice required or permitted by this Agreement may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

For ACHD:

Brian Hlavacek,
Adams County Health Department

4430 S. Adams County Parkway, Brighton, Colorado 80601

For Commerce City:

City Attorney's Office
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

10. Entire Agreement. This Agreement contains the entire understanding between the parties as to the subject matter contained herein and supersedes any and all prior agreements, Memorandum of Understanding, arrangements, communications, promises, and representations whether oral or written.

11. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of the parties that any entity or person other than Commerce City and ACHD shall be deemed to be only an incidental beneficiary under this Agreement.

12. No Multiple Fiscal-Year Obligation. Nothing herein shall be construed to constitute an obligation of City or ACHD in violation of Article X, Section 20 of the Constitution of the State of Colorado. Therefore, notwithstanding any other provision herein to the contrary, no obligation or debt created hereunder shall be enforceable if the same is in violation of such constitutional provision. Specifically, all obligations of the parties which extend beyond the current fiscal year are subject to appropriation. The failure to appropriate funds shall be a defense to any claim against any non-appropriating party.

13. Primary Liability Insurance Coverage. With regard to any liability resulting from the negligent acts or omissions of City, its officers, employees, agents, or volunteers while performing the functions as described in this Agreement, the City's self-insurance program shall be primary. With regard to any liability resulting from the negligent acts or omissions of ACHD, its officers, employees, agents and volunteers while performing the functions or furnishing facilities as described in this Agreement, the liability insurance policy(s) of ACHD shall be primary.

14. Reservation of Governmental Immunity. Nothing herein shall be construed as a waiver of any rights of either the City or ACHD under the Colorado Governmental Immunity Act as set forth in C.R.S. § 24-10-101, *et seq.* The parties specifically reserve unto themselves and all defenses, and rights of notice, provided in such statute.

15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or illegal, such provision shall be re-written to affect the nearest intent of that provisions, and the remaining provisions shall remain applicable.

16. Counterparts. This Agreement may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Agreement. Additionally, a copy of an executed original Agreement signed by a Party hereto and transmitted by

facsimile or electronic mail shall be deemed an original, and any Party hereto is entitled to rely on the validity, authenticity, and authority of an original transmitted by facsimile or electronic mail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the date stated above.

CITY OF COMMERCE CITY, COLORADO

Jason Rogers, City Manager

ATTEST:

By: _____
Dylan A Gibson, City Clerk

APPROVED AS TO FORM:

By: _____
Interim City Attorney

ADAMS COUNTY HEALTH DEPARTMENT

Signature

Date

Printed Name

Title

Approved as to Form: _____
Adams County Attorney's Office

EXHIBIT A

ADAMS COUNTY HEALTH DEPARTMENT, SOLID WASTE DISPOSAL SITE OVERSIGHT SERVICES FOR TOWER LANDFILL

INTRODUCTION

ACHD will provide the City with technical advice related to the design, construction, operation, and closure of Tower Landfill. The goal of these services is to ensure that all reasonable or necessary measures are being taken by Republic at Tower Landfill to comply the requirements of the Certificate of Designation for the Landfill, as well as with the Colorado Solid Waste Act (C.R.S. § 30-20-101 *et seq.*) (The Act); applicable regulations promulgated thereunder by the Colorado Department of Public Health and Environment (CDPHE); and Chapter 8, § *et seq.* of the Commerce City Code of Ordinances. Specifically, will provide the following services:

- Review of significant changes to the Engineering Design and Operations Plan (EDOP) for the facility
- Operations Oversight
- Waste Characterization and Disposal Plan Oversight
- Construction Oversight
- Other consultation services
- In person semi-annual program overview meetings with the City
- Each of these specific service areas is described below.

SCOPE OF SERVICES

Work Element (WE) 1.0: Engineering Design and Operations Plan Review

ACHD will review significant changes to the approved EDOP for the facility. Significant changes are defined in 6 CCR 1007-2 Section 1.3.9 ACHD's review will focus on design and operational issues that are of local concern. In conducting a review, the objective is to make recommendations to the City that are within the requirements of the Act and regulations and that enhance the compatibility of the facility with the surrounding community. Design and operational issues that ACHD is expected to review and comment on include:

- ✓ Proposed amendments to the EDOP, submitted pursuant to Annexation Agreement between BFI Waste Systems of North America, Inc. and the City of Commerce City dated February 16, 1999
- ✓ Provisions for wind-blown litter control and retrieval
- ✓ Odor control
- ✓ Implementation of the existing bird control program
- ✓ Provisions to meet the requirements of CDPHE's high wind closure criteria
- ✓ Fugitive dust control
- ✓ Vector (flies and rodents) control

- ✓ Contaminated runoff control
- ✓ Recycling
- ✓ Household hazardous waste
- ✓ Revegetation timelines and criteria

WE 2.0: Operational Oversight

To meet the requirements of the Act and regulations, CDPHE conducts inspections of solid waste disposal sites. However, due to staffing limitations and other factors, major metropolitan area landfills are typically only inspected 1-2 times per year by CDPHE. ACHD believes that this level of oversight is inadequate for a major landfill located in a rapidly developing area.

ACHD believes that a higher level of oversight performed under the umbrella of a true “Public/Private” partnership will achieve great benefit to the landfill operator, the City, and the community. ACHD will provide this type of oversight service to the City for Tower Landfill.

As development increases around Tower Landfill, the facility undoubtedly will come under higher scrutiny from the community and from the public traveling to DIA. Minor lapses in fugitive dust control or in litter control may create a misconception that the facility is not being properly operated. With a routine ACHD oversight program, ACHD will work with Republic to rapidly address a control lapse and to communicate to the public the high level of effort that Republic puts into its operations to be compatible with surrounding development.

The City benefits by having a highly qualified technical advisor who will be up to speed on all environmental and public nuisance related elements of the landfill operations, thus allowing a “third party” to assist in dealing with community concerns that will inevitably arise regarding the facility. The community will benefit by having a facility that performs a vital public function in a manner that limits adverse environmental and nuisance related concerns.

ACHD will conduct 4 full scope site visits and 8 limited scope site visits per year. Each full scope site visit will include the following:

- A review of the operating record for the facility including groundwater and landfill gas monitoring records
- A field visit to observe provisions to control stormwater runoff from the site
- A field visit to observe provisions for controlling wind-blown refuse
- Observation of waste placement techniques
- Observation of fugitive dust control techniques
- Monitor for compliance with existing bird control program
- Monitor at site boundary for hazardous air pollutants emissions
- An exit briefing with Allied personnel to discuss concerns that may require immediate attention

- A phone conversation, e-mail or brief meeting with the City to discuss the findings of the site visit

Limited scope site visits are intended to address Republic's operational procedures related to litter control, dust control, bird hazard control, and other daily operations. These site visits might be conducted in response to a complaint received by the City or ACHD or when certain climatic conditions exist at the facility. For example, limited scope site visits may be conducted when high winds are present at the site or when the fall gull migration is attracting large numbers of birds to the site.

WE 3.0: Waste Characterization and Disposal Plan Oversight

Republic has developed and CDPHE has approved a Waste Characterization and Disposal Plan (WCDP) for Tower Landfill. The WCDP sets forth waste screening methodologies, waste handling procedures, and waste exclusion procedures for the facility. Implementation of the requirements of the WCDP often involves complex decision making related to waste characterization, waste sampling and analysis, material handling, fugitive emissions control, containment, and community perception. ACHD has the qualifications and experience to assist the City in understanding these complex issues.

ACHD will assist the City by monitoring Republic's compliance with the provisions of the WCDP for Tower Landfill. Services that will be furnished for certain wastes streams include:

- Review of waste characterization procedures and data to confirm that certain waste streams have been properly characterized
- Review of specific waste handling and/or disposal methods for certain waste streams

ACHD will review waste characterization data and handling/disposal methods weekly or when new waste streams are identified if less frequent. ACHD will include the following waste streams in this program:

- Wastes from CERCLA NPL sites that are part of cleanup operations
- Wastes generated from RCRA Corrective Action cleanups
- Wastes generated from Voluntary Cleanups (CRS Title 25 Article 16)
- Treated formerly characteristic hazardous waste
- Solid wastes containing dioxin, PCBs, and organochlorine pesticides
- Other wastes that Republic and the City mutually agree to have ACHD review

Any concerns regarding acceptance of the waste stream or recommendations for waste handling to minimize potential nuisance conditions will be forwarded to Republic and the City for consideration.

ACHD takes the position that CDPHE makes the final regulatory determination whether a specific waste stream is a non-hazardous 'solid waste' within the meaning of applicable

Colorado law and regulations, and, therefore acceptable for disposal at Tower Landfill. Further, ACHD and the City acknowledge that Republic in no case will be obligated to wait for ACHD to complete ACHD's fast-track review to dispose, at Republic's own regulatory risk, of waste Republic independently determines to be 'solid waste' acceptable for disposal at Tower Landfill.

WE 4.0: Construction Oversight

Proper construction of landfill liners, covers, and leachate collection and removal systems is vital to the long-term performance of any landfill. CDPHE typically provides little or no direct field oversight of landfill construction. ACHD has developed a high level of expertise related to landfill construction oversight. ACHD oversight services shall typically consist of providing field observation of landfill construction to ensure that owner's Construction Quality Assurance Plan (CQAP) complies with applicable regulations and that the facility is being constructed in accordance with its approved drawings and specifications.

ACHD shall implement a landfill construction oversight program for Tower Landfill. The specifics of the construction oversight program will be developed with the City and Republic on a project specific basis and will be dependent on the type of construction being performed. The fees for construction oversight are not subject to the \$25,000 per year maximum set forth in Paragraph 3 of the Agreement between the City and ACHD. However, to assist Republic in preparation of its annual budget, ACHD estimates its fees for construction oversight based on past project costs as follows:

- Landfill liner and leachate collection construction: \$1000 per acre
- Landfill cover system construction \$1000 per acre

These estimated amounts are for budgeting purposes only. The exact amount of ACHD fee for each liner or cover construction project will be based on actual hours spent on construction oversight activities.

WE 5.0: Other Consultation Services

The Solid Waste Act (CRS 30-20-100) and the regulations promulgated by the CDPHE (6 CCR 1007-2) identify:

- A. Issues requiring local approval or concurrence from the local governing body, which in this case is the City
- B. Issues where CDPHE will seek consultation from the local governing body
- C. Other areas of local responsibility
- D. Information that is required to be submitted to the local governing body.
- E. Training of ACHD staff to maintain proficiency

Examples of each of these areas are listed below:

A. ISSUES REQUIRING LOCAL APPROVAL OR CONCURRENCE

- Certificate of Designation and revisions to the CD
- Financial assurance
- Alternative wind measuring devices
- Closure extensions
- Waste isolation demonstration
- Alternative daily cover
- Completion of Post-Closure care
- Reports documenting that groundwater contamination is not from the facility
- Assessment Monitoring Program Corrective Measures Study timeframe
- Sludge disposal
- Liquids disposal
- Emissions of Hazardous Air Pollutants

B. ISSUES WHERE CDPHE WILL SEEK LOCAL CONSULTATION

- Waivers of regulatory requirements
- Adequacy of financial assurance
- Justifications for changing financial assurance
- Closure Plan
- Post-Closure Plan
- Proposed deletion of parameters from the Detection Monitoring Program
- Addition of parameters to the Detection Monitoring Program
- Determination that a Corrective Measure is unnecessary
- Selection of alternative groundwater protection standards
- Determinations that standards at the point of compliance are not being achieved and that an alternative remedy is necessary

C. OTHER AREAS OF LOCAL RESPONSIBILITY

- Enforcement of local ordinance or rule
- Issuance of the CD
- Enforcement of CD stipulations and conditions precedent
- Suspension of a CD for insufficient financial assurance
- Suspension of a CD for failure to release financial assurance
- Seek to have the facility enjoined for being a public nuisance
- Inspection for compliance with Act and Regulations (Optional)
- 30-Day Public Comment Period on Corrective Measures Assessment

D. INFORMATION THAT IS REQUIRED TO BE SUBMITTED TO THE LOCAL GOVERNING BODY

- Proof of financial assurance
- Violations of the Act and Regulations
- Conditions or events likely to cause a release of a substance on the

- groundwater monitoring list
- Exceedance of explosive gas limits within site buildings or at the boundary
- Explosive gas remediation plans
- Operating Record Notification - Location restriction demonstration
- Operating Record Notification – Inspection records
- Operating Record Notification – Training procedures
- Operating Record Notification – Gas monitoring results
- Operating Record Notification – Design documentation for leachate and gas
- Operating Record Notification – Closure and Post Closure Care plans
- Operating Record Notification – Cost estimates and financial assurance documentation
- Operating Record Notification – Information demonstrating compliance with waivers
- Bird Hazard Mitigation Plan
- Unstable Area Demonstration
- Notification of Closure Deed Restriction
- Notification of significant change to background groundwater quality levels
- Remedy Completion Reports
- Results of initial sampling events from the Groundwater Assessment Monitoring Program
- Results of subsequent sampling events from the Groundwater Assessment Monitoring Program
- Documentation that Assessment Monitoring Program Appendix II results are at or below background
- Reports regarding Appendix II results that are above background
- Notification of Intent to implement interim measure for groundwater corrective measure
- Groundwater Corrective Measures Selection Report
- Periodic progress reports on corrective measures implementation

ACHD is available to assist the City by providing consultation services associated with any of the above listed areas. ACHD will make specific recommendations to the City when, in ACHD's opinion, there is a need for such services based on ACHD's assessment of any specific situation. This work element would also include conducting complaint investigations or other services associated with Tower Landfill that is requested by the City.

E. TRAINING

Training of ACHD staff in order to stay informed of current operational and construction techniques that Republic may use. Up to \$2,500 per year for training to include travel and accommodations as required. This \$2,500 is included in the \$25,000 annual budget.

WE 6.0: Reporting

This WE includes a Semi-annual meeting with the City. Discussion at each Semi-annual meeting shall include:

- A summary of all oversight activities
- A synopsis of each full and limited scope inspection
- An interpretation of groundwater and methane monitoring results
- The resolution of any complaints that ACHD assists in resolving
- A six-month look ahead for the oversight activities that will be conducted in the next reporting period

At times it may be necessary for ACHD to contract with its engineering consultant to work at Republic's Tower Landfill in order to assist in satisfying the obligations of ACHD to the City pursuant to this Agreement. Any additional cost incurred as a result of using the engineering consultation will be included within the \$25,000 annual budget authorized herein.