



CALIFORNIA ARCHITECTURAL PAINT RECOVERY PROGRAM

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**California Architectural Paint Recovery Program
Collection Facility and Waste Paint Management
Services Agreement**

Between

PaintCare Inc.

and

City and County of San Francisco

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**CALIFORNIA ARCHITECTURAL PAINT RECOVERY PROGRAM
COLLECTION FACILITY AND WASTE PAINT
MANAGEMENT SERVICES AGREEMENT**

This Agreement is made on this 2nd day of June, 2014 ("Agreement") by and between the City and County of San Francisco ("San Francisco"), through its Department of the Environment, located at 1455 Market Street, Suite 1200, San Francisco, CA 94103, and PaintCare Inc., a Delaware corporation having its office at 1500 Rhode Island Ave., N.W., Washington, D.C. 20005. ("PaintCare").

RECITALS

Whereas, PaintCare is the program manager of the California Architectural Paint Recovery Program (the "Program"), as set forth by Cal. Public Resources Code §§ 48700 – 48706 (2010) (the "Legislation");

Whereas, pursuant to the Program, PaintCare submitted a plan to the Department of Resources Recycling and Recovery, that the Department approved, to facilitate the management of "Program Products" (defined below) that are collected by "Collection Facilities" (defined below) under the Program;

Whereas, PaintCare desires to enter into agreements with hazardous waste and paint collection facilities for the purposes of collecting Program Products (as defined below);

Whereas, San Francisco has a household hazardous waste program whereby it operates and/or provides for the operation of "Collection Facilities" to which residents of San Francisco may bring certain types of household hazardous waste, including Program Products, for disposal at no charge to the residents, and to which Conditionally Exempt Small Quantity Generators located in San Francisco may bring certain types of hazardous waste, including Program Products, for disposal for a nominal fee;

Whereas, San Francisco intends to continue to collect Program Products from the public at those Collection Facilities and other locations, and then arrange for the transport of the Program Products to authorized processing facilities to be recycled, treated, and/or disposed of as set forth in this Agreement;

Whereas, PaintCare, as part of its responsibility to manage the Program, wishes to obtain the services of San Francisco for (i) the Collection of Program Products at San Francisco's Collection Facilities and other locations, (ii) the Transportation of Program Products by San Francisco or its subcontractors from San Francisco Collection Facilities and other locations to Processing Facilities, and (iii) the proper Processing of Program Products by Processing Facilities, as provided in this Agreement; and

Whereas, San Francisco will engage in Additional Activities that are part of the Program, including Reusing, Reprocessing, Bulking and Internal Transportation.

Now, therefore, for and in consideration of the terms of this Agreement and the mutual promises and covenants contained herein, the parties hereto agree as follows.

ARTICLE 1 – DEFINITIONS

- 1.1 "Agreement" means this executed document, including attachments, setting forth the obligations of the parties.
- 1.2 "Additional Activities" means activities performed by San Francisco other than Collection Activities, as described in Attachment A, Section 2 ("Additional Activities").
- 1.3 "Bulking" means opening individual cans of paint and combining the latex paint into 55 gallon drums marked "Latex Paint" and the oil-based paint into a separate 55 gallon drum marked "Oil-Based Paint."
- 1.4 "Collect/Collected/Collection" means accepting from the public, and identifying and packing for transportation Program Products at Collection Facilities.
- 1.5 "Collection Activities" means the activities performed by San Francisco, as described in Attachment A, Section 1 ("Collection Activities"), but excluding "Additional Activities."
- 1.6 "Collection Facilities" or "City Collection Facilities" means all permanent collection facilities and Temporary Collection Events that meet the following three criteria: (i) are owned, leased, subleased, or otherwise controlled by San Francisco; (ii) are generally described in the Section entitled "Who can be a Collection Facility" in Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines"); and, (iii) are specifically identified in Attachment C ("Collection Facility Information"). Attachments C and G are both incorporated by reference as if set forth in full.
- 1.7 "Direct Reuse" or "Direct Reusing" means selling or giving away of Program Products to the public without combining those Products with Program Products from other individual cans and without removing those Products from their original containers.
- 1.8 "Effective Date" means the date that the parties' obligations begin under this Agreement. The Effective Date for this Agreement is June 2, 2014.
- 1.9 "Including" means "including but not limited to."
- 1.10 "Indemnified Parties" is defined in Article 9.
- 1.11 "Internal Transportation" means San Francisco's use of its own employees or independent contractors selected by San Francisco to transport Program Products to its Collection Facilities from other PaintCare-Contracted Facilities.
- 1.12 "Law" means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to unemployment compensation, worker's compensation, disability, taxes, worker and public health and safety, the environment, and the Program.

- 1.13 "Loose Pack" or "Loose Packing" means placing acceptable Program Products into collection containers that are appropriate for safe transport of the Program Products to Processing Facilities.
- 1.14 "Materials and Activities" mean materials, supplies, tools, vehicles, equipment, labor, water, light, power, facilities, construction of any nature, supervision, and all other services, acts, activities, resources, and goods necessary for San Francisco to comply with and fully perform its obligations under the Agreement.
- 1.15 "Non-Program Products" mean products not covered by the Program that are collected and managed by San Francisco.
- 1.16 "PaintCare-Contracted Facility" means any facility in San Francisco other than a City Collection Facility collecting Program Products under a contract directly with PaintCare.
- 1.17 "Program Products" mean the materials described under the heading: "Acceptable Products (Program Products)" in Section 3 of Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines"), but excluding any materials described under the heading "Unacceptable Products (Non-Program Products)" in Section 3.
- 1.18 "Processed" or "Processing" means the processing, treatment, recycling, and/or disposal of Program Products in an appropriate manner, as specified in Attachment B ("Processing Facility Scope of Work"), which is incorporated by reference as if set forth in full.
- 1.19 "Processing Facility" means a facility authorized under all applicable Law to Process post-consumer architectural paint and that is contracted to Process Program Products under this Agreement on behalf of San Francisco.
- 1.20 "Quarter/Quarterly" refers to calendar quarters ending on March 31, June 30, September 30, and December 31 during each calendar year of the term of this Agreement.
- 1.21 "Reprocessed" or "Reprocessing" means the combining of acceptable latex paint at the Collection Facilities for resale or to give away to consumers.
- 1.22 "Required Insurance" is defined in Article 10.
- 1.23 "Services" mean the services that San Francisco agrees to perform that are described in this Agreement and Attachments hereto, including Collection Activities, the Additional Activities that San Francisco agrees to perform, the provision of any and all Materials and Activities, and arranging for the Transportation and Processing of Program Products.
- 1.24 "State" means the State of California.
- 1.25 "Subcontractor" means any party that is contracted by San Francisco or by any Subcontractor of San Francisco to perform any part of the Services on behalf of San Francisco, including Processing Facilities and any parties contracted to handle Internal Transportation and/or Transportation of Program Products.

- 1.26 "Temporary Collection Events" mean an event hosted by San Francisco to Collect Program Products at locations within San Francisco's geographical area, as defined in Attachment C ("Collection Facility Information").
- 1.27 "Transport" or "Transportation" means San Francisco's use of its own employees or Subcontractors to transport Program Products to Processing Facilities from Collection Facilities or PaintCare-Contracted Facilities.

ARTICLE 2 – TERM OF AGREEMENT

- 2.1 The parties' obligations under this Agreement shall commence upon the Effective Date. The term of this Agreement shall be twenty-four (24) months. By mutual agreement, the parties may extend this Agreement for up to a maximum of four (4) additional one (1) year terms at prices to be mutually-agreed upon, with the remaining terms and conditions of the Agreement to remain the same unless specifically amended by the parties. Any such extension shall be executed as an amendment to this Agreement.
- 2.2 If the Agreement is not renewed, or is terminated in accordance with Article 11 of this Agreement, the parties shall cooperate with each other in good faith to ensure the orderly termination of the Services.

ARTICLE 3 – GENERAL OBLIGATIONS OF SAN FRANCISCO

- 3.1 This Agreement applies to Program Products and Non-Program Products received by San Francisco at Collection Facilities and from PaintCare-Contracted Facilities. In consideration of PaintCare's payments to San Francisco, San Francisco agrees to perform the Collection Activities, Transportation, and Processing, as set forth in Attachment A, Section 1.
- 3.2 In consideration of PaintCare's payments to San Francisco, San Francisco also agrees to perform those Additional Activities described in Attachment A, Section 2.
- 3.3 San Francisco will perform Collection Activities and Additional Activities as described in Attachment A ("San Francisco Scope of Work") and in conformity with Attachment G (the "California Architectural Paint Recovery Program Municipal Collection Facility Guidelines"), both of which Attachments are incorporated by reference as if set forth in full, in accordance with the terms and conditions of this Agreement.
- 3.4 To the extent they perform such activities, San Francisco, its Subcontractors and agents, shall Transport, treat, store, recycle, Process, and dispose of all Program Products Collected by San Francisco in accordance with applicable Law. San Francisco shall maintain, and shall require its Subcontractors and agents to maintain, any facilities used in the performance of San Francisco's' obligations under this Agreement in accordance with all applicable law.

- 3.5 San Francisco shall take reasonable measures to ensure the ultimate Processing and disposition of Program Products Collected from City Collection Facilities or received from PaintCare-Contracted Facilities in San Francisco according to the following hierarchy, subject to applicable Law: reuse, recycling, treatment/neutralization, incineration, stabilization/solidification/landfilling, and direct hazardous waste landfilling, provided, however, that nothing in this Section 3.5 shall limit San Francisco's discretion to perform or not perform Additional Activities beyond the extent specifically required in this Agreement.
- 3.6 San Francisco shall be responsible for:
- a. Continuing day-to-day control over its household hazardous waste program, including the management and supervision of Collection Activities and Additional Activities, where applicable, under this Agreement;
 - b. Maintaining required permits for its Collection Facilities and operating them in accordance with the permit requirements;
 - c. Obeying and complying with applicable Law in the performance of this Agreement; and,
 - d. Management at San Francisco's sole expense of all Non-Program products it receives at City Collection Facilities or from PaintCare-Contracted Facilities in San Francisco.
- 3.7 San Francisco shall secure and lock permanent Collection Facilities at all times when the facilities are closed or not attended, and take reasonable precautions to secure Program Products at Temporary Collection Events.
- 3.8 As appropriate, and in accordance with Attachment A, Section 2 ("Additional Activities"), San Francisco will handle all Collected Program Products gathered through or managed at the City Collection Facilities or received from PaintCare-Contracted Facilities in San Francisco only in one or more of the following ways and not dispose of Program Products in any other method without the prior written approval of PaintCare:
- a. By placing the acceptable latex paint or oil-based paint "as is" out for Direct Reuse;
 - b. By Loose Packing or stacking in an appropriate container for safe Transport to Processing Facilities;
 - c. By Reprocessing; or
 - d. By Bulking.

Should a discrepancy exist between the terms of this Article 3 and Attachment A, Attachment A shall control. This paragraph does not impose on San Francisco an obligation to Direct Reuse, Loose Pack, Reprocess, or Bulk any Program

Products beyond those obligations set forth in Attachment A. Title and risk of loss as between San Francisco and PaintCare is defined in Article 6.

- 3.9 San Francisco shall not charge per-unit fees to a consumer or customer for dropping off Program Products without PaintCare's prior written consent, and such consent shall not be unreasonably withheld.
- 3.10 San Francisco shall provide the Services at its own risk, including Collecting, handling, managing, and Transportation of the Program Products it Collects at its Collection Facilities or receives from PaintCare-Contracted Facilities in San Francisco while those Program Products are within San Francisco's control. San Francisco's title and risk of loss for the Program Products in relation to PaintCare is defined in Article 6 below.
- 3.11 With PaintCare's prior written approval, San Francisco may add sites to, or remove sites from, the listings contained in Attachment C ("Collection Facility Information").
- 3.12 San Francisco shall thoroughly familiarize itself with the nature and scope of the Services that it is to perform under this Agreement, and with the Law governing the Services and this Agreement. Any failure by San Francisco to thoroughly familiarize itself with such matters shall not relieve San Francisco of its obligations under this Agreement.
- 3.13 PaintCare shall not have responsibility for the management, supervision, direction, or employment of, individuals performing the obligations of San Francisco under this Agreement.
- 3.14 San Francisco shall provide and pay for any and all Materials and Activities.
- 3.15 San Francisco shall provide reports as described in Attachment F, and that obligation shall be an integral part of this Agreement. San Francisco shall respond to all reasonable requests from PaintCare for preparation, access, review, and adjustment of these deliverables throughout the term of this Agreement in order for PaintCare to fulfill its reporting requirements under applicable Law.
- 3.16 San Francisco shall perform the Services primarily at Collection Facilities and shall provide PaintCare and its representatives with reasonable access, as provided in Article 8.1, to all places under San Francisco's control where the Collection Activities or Additional Activities are performed in order for PaintCare to exercise its Audit and Inspection rights under Article 8.
- 3.17 Both parties shall commence performing the Services under this Agreement on the Effective Date and shall perform such obligations continuously and diligently until they are completed in accordance with this Agreement.

San Francisco shall track (and require any of its Subcontractors to track) all Program Products managed at its Collection Facilities (including any Program Products received from PaintCare-Contracted Facilities) to their final destination, and prepare and supply all necessary manifests, bills of lading, and shipping papers in accordance with all applicable requirements of the United States

Environmental Protection Agency, the United States Department of Transportation and all other applicable Law.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

- 4.1 San Francisco represents, covenants, and warrants that it is a consolidated City and County of the State of California in good standing and qualified to carry on business in California and has the approval, capacity, and authority to enter into this Agreement and to supply or utilize the personnel, services and facilities of San Francisco to perform its obligations under this Agreement;
- 4.2 Each party represents, covenants, and warrants that it is not a party to any other agreement that would prohibit it from performing its obligations under this Agreement;
- 4.3 San Francisco represents, covenants, and warrants that it (and its Subcontractors) possesses the business, professional, and technical expertise, training, and that it (and its Subcontractors) possess or will acquire Materials and Activities necessary to meet its obligations under this Agreement;
- 4.4 Each party represents, covenants, and warrants that it (and its Subcontractors) shall perform its obligations under this Agreement, or cause its obligations to be performed, in a diligent, safe, and workmanlike manner that conforms with generally accepted industry and professional practices, and with the care and skill ordinarily exercised in the performance of such obligations; and
- 4.5 San Francisco represents, covenants, and warrants that its facilities, employees, or agents, possesses as of the date of this Agreement and will possess throughout the term of this Agreement, all permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules and regulations necessary to perform San Francisco's obligations under this Agreement. San Francisco represents, covenants, and warrants that it will require in its contracts with its Subcontractors that those Subcontractors' facilities, employees, and agents, shall possess, as of the date of each contract and throughout the term of that contract, all permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules and regulations necessary to perform the Subcontractor's obligations under the contract, and that San Francisco shall enforce those provisions of its contracts with its Subcontractors.

ARTICLE 5 – GENERAL OBLIGATIONS OF PAINTCARE

- 5.1 PaintCare will compensate San Francisco for its performance of the Services as set forth in Article 7 and Attachments A and D.
- 5.2 PaintCare shall have no authority to manage, direct, or supervise employees, representatives, or agents of San Francisco or any Subcontractor of San Francisco, including authority to manage, direct, or supervise how they perform the work and achieve compliance with applicable Law. PaintCare shall not have

responsibility for making day-to-day and critical decisions regarding the Collection, identification, handling, sorting, Direct Reuse, Loose Packing, Reprocessing, Bulking, Internal Transportation, Transportation, and Processing of Program Products, and the undertaking, managing, and supervising of those activities. PaintCare shall be responsible for any revisions to Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines").

- 5.3 Upon request, PaintCare shall, at no cost to San Francisco, provide training materials and/or on-site training based on Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines") and regarding the proper identification of Program Products before sites begin Collecting Program Products. PaintCare may conduct site visits of San Francisco's Collection Facilities on a routine basis and of Temporary Collection Events to ensure compliance with Program requirements. Within thirty (30) of any change in the types of Program Products covered by the Program, PaintCare shall notify San Francisco of such change. San Francisco may request, for itself and/or for its Subcontractors, and PaintCare shall not unreasonably deny, additional training at any time during the term of the Agreement.
- 5.4 Nothing herein is intended nor shall be construed as creating any exclusive arrangement between PaintCare and San Francisco. Nothing in this Agreement shall authorize San Francisco to restrict PaintCare from contracting with other entities under the Program, including other service providers with collection facilities in San Francisco's geographical region, as defined in Attachment C ("Collection Facility Information").
- 5.5 PaintCare shall notify San Francisco in writing if any of the existing latex paint collection partners listed in Attachment A, paragraph 4 ("Internal Transportation") becomes a PaintCare-Contracted Facility. PaintCare shall provide such notification within 10 working days of the execution of their contract.

ARTICLE 6 – TITLE AND RISK OF LOSS

- 6.1 San Francisco and not PaintCare shall have title to and risk of loss and liability for any Program Products and Non-Program Products that San Francisco Collects or receives from a PaintCare-Contracted Facility in San Francisco under this Agreement. Notwithstanding the above, San Francisco may transfer such title and risk of loss, including liability under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, or Carpenter-Presley-Tanner Hazardous Substance Account Act, *Cal. Health & Safety Code § 25300 et seq.*, for those Program Products to its Subcontractors, but at no time will PaintCare have title to and/or risk of loss and liability for any Program Products or Non-Program Products under this Agreement.

ARTICLE 7 – CONSIDERATION AND PAYMENT

- 7.1 PaintCare shall pay San Francisco for Transportation, Processing, and any Additional Activities provided to PaintCare by San Francisco as provided in Attachments A ("San Francisco Scope of Work") and D ("Pricing"). PaintCare shall make such payments in United States currency.
- 7.2 PaintCare shall have no obligation to reimburse San Francisco for the Materials and Activities that San Francisco provides or consumes in order for San Francisco to fulfill its obligations under this Agreement, or to make any payment to San Francisco for Collecting Program Products.
- 7.3 San Francisco shall invoice PaintCare on a Quarterly basis, either by hard copy or electronically, as determined by PaintCare. San Francisco shall send each Quarterly invoice to PaintCare no later than forty-five (45) days after the end of the Quarter to which the invoice pertains. San Francisco shall promptly notify PaintCare of any discrepancies or errors it discovers in any invoice it provides to PaintCare pursuant to this Section. Invoices furnished by San Francisco under this Agreement must be in a form acceptable to PaintCare.
- 7.4 PaintCare shall pay San Francisco for the Additional Activities that San Francisco performs upon PaintCare's receipt of an invoice meeting the requirements of subsections (a) and (b) below. San Francisco shall invoice PaintCare for Additional Activities on a Quarterly basis.
- a. Each invoice shall include the information included in Attachment E ("Model Invoice"), which is incorporated by reference as if set forth in full, and shall state:
 - i. The unique, identifying invoice number provided by San Francisco;
 - ii. The specific work categories of Additional Activities provided for under Attachment A, Section 2;
 - iii. The specific quantity of units invoiced under each category, as appropriate; and
 - iv. Additional information as agreed to in writing by the parties.
 - b. Each invoice shall include the signature of San Francisco employee responsible for submitting the invoice and a certification that the invoice accurately reflects the work performed.
- 7.5 All amounts paid by PaintCare to San Francisco are subject to audit by either party within three (3) years of the invoice date.
- 7.6 San Francisco shall submit all invoices to PaintCare at the address specified below. San Francisco may submit invoices by mail, fax, or e-mail. PaintCare shall make all payments to San Francisco at the address specified below.

To: PaintCare Inc.
Attn: PaintCare Accounting
Fax: (855) 385-2020
E-mail: paintcare@bill.com
Address: 1500 Rhode Island Avenue NW
Washington, DC 20005

To: San Francisco
To: SF Environment
Attn: Maggie Johnson
Address: 1455 Market Street, Suite 1200
San Francisco, CA 94103

- 7.7 Provided that San Francisco has submitted an invoice in the manner required under this Agreement and provided the specific information required above and otherwise performed its obligations under this Agreement, PaintCare shall pay such invoice within forty-five (45) days of the date that PaintCare receives the invoice. In the event PaintCare has a good-faith objection to an invoice, PaintCare shall pay the undisputed amount pursuant to the terms of this Agreement and notify San Francisco in writing of said objections and describe in reasonable detail the basis for the objections. The parties shall follow the Dispute Resolution provisions in Article 16 to attempt to resolve such disputed portion of an invoice. During any dispute, each party shall continue to fulfill its obligations under this Agreement and shall not stop providing the Services, and PaintCare shall make all payments due to San Francisco over which there is no good faith dispute. Both parties shall make a good faith effort to resolve all disputes.
- 7.8 PaintCare's payment of all or a part of an invoice shall neither relieve San Francisco of any of its obligations under this Agreement nor constitute a waiver of any claims by PaintCare.
- 7.9 San Francisco warrants that all documents including invoices, billings, back-up information for invoices, and reports submitted by San Francisco to PaintCare to support amounts invoiced in connection with the Transportation, Processing, and Additional Activities truly reflect the facts about the activities and transactions to which they pertain to the best of the knowledge of San Francisco, and San Francisco represents that PaintCare, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. San Francisco further agrees to promptly notify PaintCare upon discovery of any instances where San Francisco becomes aware of any discrepancies in relation to documents under this Article 7.

ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF PAINTCARE

- 8.1 PaintCare and its representatives shall have the right to (a) monitor and verify that San Francisco has complied with this Agreement and the applicable Law; and (b) consult with San Francisco about such compliance; provided, however,

that PaintCare shall not, and affirmatively disclaims any ability to, control supervise or manage (i) the employees of San Francisco; (ii) the activities undertaken by San Francisco in the performance of this Agreement; and (iii) the means by which San Francisco meets any requirements of the Agreement, including compliance with applicable Law. PaintCare may, upon 72-hour notice to San Francisco, audit and inspect, with full access, San Francisco's Collection Facilities during the Collection Facilities' hours of operation, unless more immediate access is required in the event of an emergency.

- 8.2 San Francisco agrees to maintain and to make available to PaintCare, during regular business hours, accurate books and accounting records relating to San Francisco's performance of Collection Activities and Additional Activities, if applicable, under this Agreement. Except in cases where disclosing a document to PaintCare is prohibited by law or contract or where nondisclosure would be necessary to protect trade secrets, attorney work product or attorney-client privilege, San Francisco will permit PaintCare to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement. San Francisco shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of the final report or final payment under this Agreement, as applicable, or until after any final audit has been resolved, whichever is later. San Francisco will include this requirement in any subcontract for the performance of San Francisco's obligations under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, PaintCare's rights to audit and inspect non-public records or information of San Francisco or any of its Subcontractors shall be subject to PaintCare's entering into a reasonable confidentiality agreement with San Francisco or the Subcontractor, as applicable.
- 8.3 In addition to those reports detailed in Attachment A ("San Francisco Scope of Work") and Attachment F ("Required Deliverables"), San Francisco shall maintain records detailing:
- a. The quantity of paint managed through Direct Reuse or Reprocessing;
 - b. Records of any inspections required by Law;
 - c. Records of the certification described in Attachment G, Appendix A ("CESQG Certification"), which Attachment is incorporated by reference as if set forth in full. San Francisco may use its own version of the CESQG Certification but such use shall not limit or otherwise alter San Francisco's obligations to indemnify PaintCare, its agents, employees, member companies, officers, directors, stockholders, successors, assigns and attorneys under Section 9.1;
 - d. Records of the certification described in Attachment G, Appendix B ("Direct Reuse and Reprocessed Paint Waiver"), which is incorporated by reference as if set forth in full. San Francisco may use its own version of the Reuse and Reprocessed Paint Waiver, but such waiver must specifically waive, release and hold harmless PaintCare, its agents, employees, member companies,

officers, directors, stockholders, successors, assigns and attorneys from any and all liability and claims, and otherwise give equivalent protection to PaintCare's interests, as described in Appendix B; and

- e. Employee Training records described in and required by Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines"). San Francisco may use its own training records to meet this requirement.
- 8.4 PaintCare shall have the right to (a) monitor and verify that San Francisco and its Subcontractors have complied with applicable Law in the performance of this Agreement, and (b) consult with San Francisco regarding such compliance, including the manifesting, transporting, storage, Processing and disposal of any Program Products which San Francisco has Collected or is in any way responsible for under applicable Law. PaintCare may, upon 72-hour notice to San Francisco and during normal hours of operation, audit and inspect, with full access, the facilities of San Francisco's Subcontractors that handle storage, Transportation, and Processing of Program Products Collected by San Francisco or received by San Francisco from a PaintCare-Contracted Facility in San Francisco.

ARTICLE 9 – INDEMNIFICATION

- 9.1 San Francisco Indemnification of PaintCare. San Francisco, its successors and assigns, agrees to defend, indemnify, and hold harmless PaintCare and its sole member, as identified under its Certificate of Incorporation, and their member companies, officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the "PaintCare Indemnitees") from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, reasonable expenses (including legal, consultant and expert witness fees, expenses of litigation, court costs, and costs of investigation, in each case to the extent reasonable), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability, which are claimed by third parties (including any Subcontractors) in any way to result from or arise out of San Francisco's performance of the Services (either directly or through a Subcontractor) or other obligations under this Agreement. This indemnification shall not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action result from negligence, willful misconduct, violation of Law, or breach of this Agreement attributable to PaintCare Indemnitees. Nothing in this Agreement shall constitute a waiver or limitation of any rights that San Francisco may have under the applicable law.
- 9.2 PaintCare Indemnification of San Francisco. PaintCare, its successors and assigns, agrees to defend, indemnify, and hold harmless San Francisco, its Subcontractors, and both their officers, employees, directors, stockholders, successors, assigns, attorneys, agents and invitees, as applicable (collectively, the "San Francisco Indemnitees") from and against all claims, suits, demands,

obligations, losses, damages (including punitive or exemplary damages), liabilities, reasonable expenses (including legal, consultant and expert witness fees, expenses of litigation, court costs, and costs of investigation, in each case to the extent reasonable), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability, which are claimed by third parties in any way to result from or arise out of the performance by PaintCare of its obligations under this Agreement. This indemnification shall not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action result from negligence, willful misconduct, violation of Law, or breach of this Agreement attributable to San Francisco Indemnitees. Nothing in this Agreement shall constitute a waiver or limitation of any rights that PaintCare may have under the applicable law.

- 9.3 In the event of concurrent negligence of San Francisco, its officers, employees, and agents, and PaintCare, its officers, employees, and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence to the extent that theory applies under the applicable law prevailing at the time of adjudication of any dispute.
- 9.4 **Limitation of PaintCare's Liability. PAINTCARE'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN THIS AGREEMENT AND ANY INDEMNIFICATION OBLIGATIONS.**

ARTICLE 10 – INSURANCE

- 10.1 San Francisco at its own expense shall carry and maintain on a continuous basis the following insurance coverage during the term of this Agreement and thereafter as provided below unless self-insured as provided in Sections 10.1(e) and 10.3:
- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate. The Commercial General Liability insurance carried pursuant to this Article 10.1(a) shall include: i) comprehensive form; ii) premises – operations, improvements, and equipment; iii) explosion and collapse hazard; iv) underground hazard; v) products/completed operations hazard; vi) contractual insurance; vii) broad form property damage; viii) independent contractors; ix) personal injury; and x) all liability assumed under and indemnities provided under this Agreement;
 - b. Commercial Automobile Liability insurance written on an occurrence basis covering bodily injury and property damage with limits not less than \$1,000,000 for each occurrence combined single limit;
 - c. Workers' Compensation Insurance as required by the State of California or other applicable Law; and

- d. Environmental Pollution Liability Insurance with limits not less than \$2,000,000 each occurrence, and \$5,000,000 in the aggregate, including coverage for on-site or off-site claims for bodily injury, death, property damage or clean-up costs, for on-site and off-site clean-up and abatement costs and natural resource damages, for releases during transportation and related claims, clean-up, abatement or damages, and for costs incurred for clean-up or abatement or for other damages or claims at or in connection with any non-owned disposal, treatment, recycling, reclamation, unloading, storage, or other such locations on a blanket basis (all of the foregoing, the "San Francisco Required Insurance").
 - e. To the extent that San Francisco intends to rely on self-insurance to meet its obligations under this Article 10, San Francisco represents and warrants to PaintCare that above San Francisco Required Insurance is provided and all of the above requirements satisfied by virtue of its self-insurance, which insures and covers all claims, environmental or otherwise. San Francisco further represents and warrants that pollutants and hazardous substances and waste are covered under its self-insurance.
- 10.2 The Required Insurance shall contain or be endorsed to contain PaintCare, its officers, agents, and employees, as additional insureds, and a waiver of subrogation in favor of PaintCare and its officers, agents, and employees. San Francisco agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation. The San Francisco Required Insurance policies shall contain a written statement in the policies or in endorsements thereto that they are each primary insurance (except that the excess/umbrella policy is excess to the indicated policies only) to any other insurance available to San Francisco or to any additional insureds, and shall contain a separation of insureds provision stating that the insurance applies separately to each insured against whom a claim is made or a suit is brought and that the actions or omissions of any insured which might give rise to application of an exclusion to coverage shall only apply to that insured actually committing the actions or omissions.
- 10.3 San Francisco shall provide a certificate of insurance (or other written verification, as permitted under this paragraph) complying with this article within fifteen (15) days of execution of this Agreement or twenty-four (24) hours before Services under this Agreement commence, whichever date is earlier demonstrating that the San Francisco Required Insurance is in full force and effect and all premiums paid. The certificate of insurance shall have no disclaimers of liability. In lieu of providing a certificate of insurance as required in this paragraph, San Francisco may instead provide PaintCare with other signed written verification that San Francisco satisfies all of the requirements of this Article 10 by virtue of San Francisco's self-insurance. All San Francisco Required Insurance shall be placed with insurers with rating comparable to A-, VIII, or higher, that are authorized to do business in the State of California, and that are satisfactory to PaintCare. Approval of the insurance by PaintCare will not relieve or decrease the liability of San Francisco hereunder. Certified copies of all binders of insurance, policies of insurance, and all endorsements thereto

shall be provided to PaintCare within seven (7) days of its written request for the same.

- 10.4 All San Francisco Required Insurance policies shall provide thirty (30) days' advance written notice to PaintCare of reduction or nonrenewal of coverage or cancellation of coverage for any reason.
- 10.5 Should any of the San Francisco Required Insurance be provided under a claims-made form, San Francisco, at its sole expense, shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, and for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.
- 10.6 Should any of the San Francisco Required Insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the each occurrence or each claim limits specified above.
- 10.7 Should any of the San Francisco Required Insurance lapse during the term of this Agreement or during the three-year period set forth in Section 10.5 above, requests for payments originating after such lapse shall not be processed until PaintCare receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If the San Francisco Required Insurance is not reinstated, PaintCare may, at its sole discretion, terminate this Agreement effective on the date of such lapse of insurance and/or procure such insurance meeting all of the requirements of this Agreement and charge San Francisco for all costs (including premiums and broker's commissions) of the same.
- 10.8 All deductibles, self-insured retentions or similar amounts shall be sole responsibility of San Francisco or its Subcontractors and shall not be paid by or payable by PaintCare.
- 10.9 If a Subcontractor will be used to complete any portion of this Agreement or to provide any Services, San Francisco shall require that the Subcontractor provides insurance coverage as set forth herein and meeting all of the above requirements for the San Francisco Required Insurance, including naming PaintCare, its officers, agents and employees and San Francisco as additional insureds or additional named insured in conformity with the above provisions and provide a waiver of subrogation.
- 10.10 All San Francisco Required Insurance (and all Subcontractor Required Insurance, as defined below) shall be subject to audit and review by PaintCare or its designees at any time. San Francisco promptly shall cooperate with all reasonable requests made in connection with such audit or review. If any deficiencies are found during such audit or review related to any of the San Francisco Required Insurance or Subcontractor Required Insurance, they shall

be corrected by San Francisco at its sole expense as soon as reasonably possible and, in any event, within fourteen (14) days of being provided with notice thereof.

- 10.11 San Francisco shall require in any contract with its Subcontractors that the Subcontractor, at its own expense, shall carry and maintain on a continuous basis the following insurance coverage during the term of this Agreement and thereafter as provided below:
- a. Commercial General Liability Insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate. The Commercial General Liability Insurance carried pursuant to this requirement shall include: i) comprehensive form; ii) premises – operations, improvements, and equipment; iii) explosion and collapse hazard; iv) underground hazard; v) products/completed operations hazard; vi) contractual insurance; vii) broad form property damage; viii) independent contractors; ix) personal injury; and x) all liability assumed under and indemnities provided under the contract with the Transportation Provider;
 - b. Commercial Automobile Liability Insurance written on an occurrence basis covering bodily injury and property damage with limits not less than \$1,000,000 for each occurrence combined single limit;
 - c. Workers' Compensation Insurance as required by the State of California or other applicable law; and
 - d. Environmental Pollution Liability Insurance with limits not less than \$2,000,000 each occurrence and \$5,000,000 in the aggregate, including coverage for on-site and off-site claims for bodily injury, death, property damage or clean-up costs, for on-site and off-site clean-up and abatement costs and natural resources damages, for releases during transportation and related claims, clean-up, abatement or damages, and for costs incurred for clean-up or abatement or for other damages or claims at or in connection with any non-owned disposal, treatment, recycling, reclamation, unloading, storage, or other such locations on a blanket basis (all of the foregoing, the "Subcontractor Required Insurance").
 - e. To the extent that any Subcontractor of San Francisco intends to rely on self-insurance to meet its obligations under this Section 10.11, San Francisco represents and warrants to PaintCare that above San Francisco Required Insurance is provided and all of the above requirements satisfied by virtue of the Subcontractor's self-insurance, which insures and covers all claims, environmental or otherwise. San Francisco further represents and warrants that pollutants and hazardous substances and waste are covered under the Subcontractor's self-insurance.

ARTICLE 11 – TERMINATION OF AGREEMENT

- 11.1 Termination Without Cause. Either party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other party.
- 11.2 Termination for Cause. Either party may terminate this Agreement if the other party:
 - a. Has breached any material provision of this Agreement, and has failed to cure such breach within ten (10) days of receiving written notification of such breach from the other party. Such notice shall specify the provision relied upon and the circumstances of the breach, and shall state the effective date of the termination;
 - b. Has violated applicable Law.
- 11.3 In the event of termination, San Francisco shall deliver to PaintCare copies of all reports and other work performed by San Francisco under this Agreement and upon receipt thereof, PaintCare shall pay San Francisco for any Transportation, Processing, and Additional Activities performed and reimbursable expenses incurred prior to the date of termination. San Francisco shall provide PaintCare within twelve (12) months of termination all Certificates of Disposal for Program Products under this Agreement not previously supplied.

ARTICLE 12 – ASSIGNMENT AND SUBCONTRACTING

- 12.1 This Agreement and the obligations and rights hereunder shall not be assignable, novated, or otherwise transferred by operation of law by San Francisco without the express written consent of PaintCare, which consent shall not be unreasonably withheld.
- 12.2 Notwithstanding any other provision of this Agreement to the contrary, either party may subcontract any part of the performance of its obligations under this Agreement. No subcontract shall relieve either party of its responsibilities and obligations under this Agreement. As part of any subcontract hereunder, San Francisco must include the following Articles and Attachments to the extent applicable for the Services being provided by the Subcontractor: Articles 17 and 18, and, to the extent relevant to the work being performed by the Subcontractor, Attachment G. If either party subcontracts out any portion of the work, nothing contained in this Agreement will create any contractual relationship between a party and the other party's subcontractors, nor will any subcontract relieve either party of its responsibilities and obligations hereunder. San Francisco agrees to be as fully responsible to PaintCare for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by San Francisco.
- 12.3 Each party's obligation to pay its subcontractors is an independent obligation from PaintCare's obligation to make payments to San Francisco. As a result, neither party shall have any obligation to pay or to enforce the payment of any moneys to any subcontractor of the other.

ARTICLE 13 – FORCE MAJEURE

- 13.1 Except for PaintCare's obligation to pay San Francisco for Transportation, Processing, and Additional Activities, any delay or failure of either party to perform its obligations under this Agreement shall be excused if, and to the extent, caused by the occurrence of an Incident of Force Majeure. In the event that either party intends to rely upon the occurrence of an Incident of Force Majeure to suspend or to terminate its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, setting forth the particulars of the circumstances. Written notices shall likewise be given after the effect of such occurrence has ceased.
- 13.2 "Incident of Force Majeure" means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, acts of nature (such as earthquakes, floods, hurricanes or other similar catastrophic events), labor unrest, federal or state government orders, or any other similar cause, in each case which is beyond the reasonable anticipation of the applicable party and which prevents performance of this Agreement. A party's obligations will be excused only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time.

ARTICLE 14 – NOTICES

Except where otherwise expressly authorized, notice shall be by facsimile, first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery and addressed as set forth below, unless changed in writing by the party to whom the notice is being sent. Notice shall be effective upon delivery.

PaintCare Inc.
Attn: PaintCare General Counsel
Fax: (855) 385-2020
Address: 1500 Rhode Island Avenue, NW
Washington, DC 20005

San Francisco
To: SF Environment
Attn: Maggie Johnson
Fax: 415-554-6393
E-Mail: margaret.johnson@sfgov.org
Address: 1455 Market Street, Suite 1200
San Francisco, CA 94103

ARTICLE 15 – INDEPENDENT CONTRACTOR STATUS

- 15.1 The parties intend that each party, in performing its obligations under this Agreement, is acting as an independent contractor. This Agreement is not

intended and may not be construed to create a relationship between the parties of agent, servant, employee, partnership, joint venture, or association.

- 15.2 Each party and its contractors shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing work pursuant to this Agreement. Neither party shall have any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other party.
- 15.3 Each party understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of that party and not employees of the other party. Each party shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to its employees as a result of any injuries arising from or connected with any work performed by or on behalf of that party pursuant to this Agreement.

ARTICLE 16 – DISPUTE RESOLUTION

- 16.1 Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement. If the dispute cannot be settled by good faith negotiations between the parties, PaintCare and San Francisco shall submit the dispute to non-binding mediation, under terms and conditions to be agreed upon by the parties.

Any disputes under this Agreement that are not resolved by mutual agreement of the parties may be decided by recourse to an action at law or in equity. Until final resolution of any dispute under this Agreement, both parties shall diligently pursue the performance of any obligations not the subject of the dispute. Any dispute over a question of law or fact arising under this Agreement shall be governed by the laws of the State of California. The parties mutually agree to waive their respective rights to a trial by jury. The rights and remedies reserved to the parties shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

ARTICLE 17 – COMPLIANCE WITH LAW

- 17.1 Each party shall comply with all Law applicable to this Agreement.
- 17.2 The Department of the Environment shall make all reasonable efforts to confer with PaintCare regarding any concerns or complaints that the Department has regarding the implementation of this Agreement or the California Architectural Paint Recovery Program before pursuing other remedies.
- 17.3 Each party shall promptly notify the other party in writing upon discovery of any material failure, or any allegation of any material failure, of the notifying party or other persons or entities to comply with any applicable Law relevant to the performance of any requirement of this Agreement.

- 17.4 Duties and obligations imposed by the Agreement, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed by applicable Law.

**ARTICLE 18 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION;
RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE**

- 18.1 Each party shall be responsible for safety, health, and environmental protection related to and in the performance of its obligations under this Agreement and shall take (and require that its Subcontractors take) appropriate measures required by applicable Law and legal standards to avoid liability and to:
- (a) provide and maintain safe, health-protective, and environmental-protective working areas at or in proximity to where such activities are performed, including adjacent areas, and
 - (b) protect and safeguard (i) all persons at or in proximity to the activities, including those in adjacent areas, from risk or injury and danger to health from Program Products or the party's activities under this Agreement, and (ii) property and equipment from damage or loss.
- 18.2 San Francisco shall be aware of and, to the extent required by applicable Law, comply with (and require that its Subcontractors be aware of and comply with):
- (a) the requirements for household waste collection facilities pursuant to the California Health and Safety Code, sections 25218-25218.13;
 - (b) all applicable Law governing the generation, handling, management, treatment, storage, or disposal of hazardous wastes; and
 - (c) all applicable health, safety, and environmental Law, including the requirements of the U.S. Occupational Safety and Health Administration ("OSHA"), U.S. Environmental Protection Agency ("EPA"), delegated state programs authorized by OSHA and EPA, the California Department of Resources, Recycling, and Recovery, the California Environmental Protection Agency, the California Department of Toxic Substances Control, and applicable California certified unified program agencies.
- 18.3 San Francisco shall not knowingly allow (and shall require that its Subcontractors not knowingly allow) the release of Program Products or any other materials Collected at a Collection Facility or received from a PaintCare-Contracted Facility that are that are hazardous substances, hazardous wastes, or hazardous materials that require a notification, cleanup, or response action under any applicable Law, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, or Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code § 25300 *et seq.*
- 18.4 San Francisco shall immediately notify PaintCare of any circumstance or occurrence during the performance of its obligations under this Agreement that require reporting to any governmental authority under any applicable Law, including reporting to the National Response Center because of the release of a reportable quantity of Program Products or any other materials from its Collection Facility or during the course of Internal Transportation that are hazardous

substances pursuant to 42 U.S.C. § 9603 and Cal. Health & Safety Code 25507(a), and shall make such report as soon as reasonably practicable, but in any event, no later than three (3) business days after the incident giving rise to the reporting obligation. San Francisco shall (and shall require its Subcontractors to) make any such reports within the applicable time limits and not delay making such reports because of the inability to notify PaintCare.

- 18.5 In the event of any action or occurrence during the performance of its obligations under this Agreement which causes or threatens a release of a Program Product or any other material from its Collection Facility or during the course of Internal Transportation that is a hazardous substance, hazardous waste, or hazardous material into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment and/or requires cleanup or a response action under applicable Law, San Francisco shall notify PaintCare as soon as reasonably practicable, but in any event, no later than three (3) business days after the incident giving rise to the reporting obligation and shall take all appropriate action to prevent, abate, minimize, and cleanup such release and endangerment in conformance with applicable Law including applicable cleanup standards. San Francisco and not PaintCare shall be responsible for the costs of such action and any liability and damages of any type, including actual, incidental, consequential, and punitive damages, arising from any action or occurrence or claim asserted against PaintCare identified in this Article 18.5. San Francisco shall not delay the undertaking of appropriate action because of the inability to notify PaintCare.

ARTICLE 19 – CONFIDENTIALITY/PUBLICITY

- 19.1 PaintCare acknowledges and agrees that San Francisco is a public agency subject to the public disclosure requirements of the California Public Records Act and other applicable federal, state, and local public records laws (collectively, the "Disclosure Laws").
- 19.2 San Francisco acknowledges that PaintCare claims that the pricing information for Additional Services set forth in Attachment D is proprietary information. In the event San Francisco receives a request for disclosure of such information under the Disclosure Laws, San Francisco will give PaintCare with reasonable prior notice, and in no case less than ten (10) days' notice, of the request prior to disclosing the information or records. If PaintCare claims that the disclosure is exempt from disclosure under the Disclosure Laws, it must obtain a protective order, injunctive relief, or other appropriate remedy from a court of law having jurisdiction prior to the statutory deadline for making such disclosure. If PaintCare fails to obtain such judicial relief within that time, San Francisco may disclose the requested information or records without any penalty or liability to PaintCare.
- 19.3 PaintCare shall not inhibit San Francisco from publishing PaintCare's role in the Program within the following conditions:

- a. San Francisco may utilize and develop publicity material regarding the PaintCare Program only upon the prior written consent of PaintCare, which consent shall not be unreasonably withheld; and
 - b. During the term of the Agreement, San Francisco shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of PaintCare without the prior written consent of PaintCare, which consent shall not be unreasonably withheld.
- 19.4 The Collection Facilities and the PaintCare-Contracted Facilities may be listed, referenced or advertised as Collection sites by PaintCare for the Program during the term of this Agreement in accordance with Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines").

ARTICLE 20 – MISCELLANEOUS PROVISIONS

- 20.1 No Waiver. The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted shall not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.
- 20.2 Selective Waiver. Either party hereto may waive any default by the other party under this Agreement by an instrument in writing to that effect and any such waiver shall not extend to any subsequent or other default by such party. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.
- 20.3 Entire Contract/Order of Precedence. This Agreement and all attachments and exhibits hereto, and all referenced documents, including Attachment G ("California Architectural Paint Recovery Program Municipal Collection Facility Guidelines"), constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying document shall be construed and interpreted as consistent whenever possible. Any conflicts in this Agreement and the accompanying documents shall be resolved in accordance with the following descending order of precedence:
- a. Attachment A: San Francisco Scope of Work;
 - b. The terms of this Agreement;
 - c. Attachment B: Processing Facility Scope of Work;
 - d. Attachment G: the California Architectural Paint Recovery Program Municipal Collection Facility Guidelines;

- e. Attachment D: Pricing;
 - f. Attachment C: Collection Facility Information;
 - g. Attachment F: Required Deliverables; and
 - h. Attachment E: Model Invoice.
- 20.4 Amendment or Modification. Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement shall be effective unless in writing and signed by the respective duly authorized officers of the parties hereto.
- 20.5 Governing Law/Venue. This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings regarding this Agreement initially shall be brought before a court of jurisdiction prescribed by law in the State of California. Venue for this Agreement, and performance of it, shall be the same location.
- 20.6 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 20.7 Calendar Days. Any reference to the word "day" or "days" herein shall mean calendar day or calendars days, respectively, including weekends and Federal Holidays unless otherwise expressly provided. To the extent a deadline falls on a weekend or Federal Holiday, the next business day shall be the applicable deadline.
- 20.8 No Third-Party Beneficiary. This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction or any party in connection therewith.
- 20.9 Authorization. The representative(s) signing this Agreement on behalf of the parties, represent and warrant that the party on whose behalf they sign has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representatives signing this Agreement, have the authority to execute this Agreement and to bind the party so represented to its contractual obligations hereunder.
- 20.10 Survivability. The continuing obligations, rights and remedies of the parties under this Agreement, including those set forth in the sections relating to the parties' representations and warranties (Article 4), title and risk of loss (Article 6), audit and inspection rights (Article 8, Section 2), indemnification (Article 9), insurance (Article 10) (but only for the period specified in Section 10.5), independent contractor status (Article 15), arbitration (Article 16), compliance with the Law (Article 17), safety, health, and environmental protection releases of hazardous substances, emergency response (Article 18), and confidentiality/publication (Article 19) shall survive the expiration or termination of this Agreement.


ARTICLE 21 – ADDITIONAL SAN FRANCISCO PROVISIONS

- 21.1 Nondiscrimination. In the performance of this Agreement, PaintCare agrees not to discriminate against any employee, San Francisco employee working with PaintCare or any contractor of PaintCare, applicant for employment with PaintCare, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.
- 21.2 Compliance with ADA. PaintCare acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. PaintCare shall not discriminate against any person protected under the ADA in connection with all or any portion of this Agreement and shall comply at all times with the provisions of the ADA.

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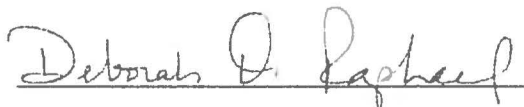
IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative effective on the day and year first set forth below.

By:



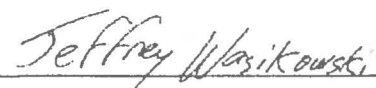
Authorized Signatory

PaintCare Inc.



Authorized Signatory

San Francisco



Print Name

Deborah O. Raphael



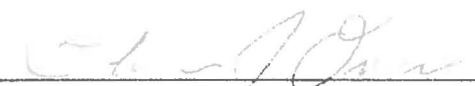
Print Title

Director, Department of the Environment

Date: 6-10-14

Date: 6-3-14

Approved as to form:



Deputy City Attorney

ATTACHMENTS

- Attachment A: San Francisco Scope of Work
- Attachment B: Processing Facility Scope of Work
- Attachment C: Collection Facility Information
- Attachment D: Pricing
- Attachment E: Model Invoice
- Attachment F: Required Deliverables
- Attachment G: California Architectural Paint Recovery Program
Municipal Collection Facility Guidelines

ATTACHMENT A: SAN FRANCISCO SCOPE OF WORK

San Francisco shall provide the following Services under the Program:

- 1) COLLECTION ACTIVITIES
 - a) San Francisco shall:
 - i) Loose Pack the Program Products that San Francisco Collects at its Collection Facilities into collection containers appropriate for safe Transportation of the Program Products to a Processing Facility; and,
 - ii) Manage all Collected Program Products gathered through the Collection Facilities only as set forth in this Agreement and not dispose of Program Products in any other method without the prior written approval of PaintCare.
- 2) ADDITIONAL ACTIVITIES
 - a) Subject to the terms set forth in this Attachment A, San Francisco may, in lieu of Loose Packing, manage any Program Products managed at its Collection Facilities in the following ways:
 - i) Accept Program Products for Direct Reuse by accepting and redistributing acceptable latex paint or oil-based paint "as is";
 - ii) By Reprocessing latex paint; or,
 - iii) By Bulking Program Products.
 - b) San Francisco will manage all Latex Program Products at its Collection Facilities in accordance with the following criteria:
 - i) At least fifty-five percent (55%) of the total Quarterly latex Program Product volume must be managed via Direct Reuse and/or Reprocessing.
 - ii) No more than forty-five percent (45%) of the total Quarterly latex Program Product volume may be managed via any combination of Loose Packing and Bulking; however, no more than fifteen percent (15%) of the total Quarterly latex Program Product volume may be managed via Loose Packing.
 - A. If San Francisco Loose Packs more than fifteen percent (15%) of the total Quarterly latex Program Product volume, PaintCare will (i) pay the Latex Paint Loose Pack Rate set forth in Attachment D ("Pricing") for the amount of latex Program Products equal to fifteen percent (15%) of the total Quarterly latex Program Product volume, and (ii) pay for the Loose Packed amount in excess of the fifteen percent (15%) cap at the lower per-gallon rate set forth in Attachment D for Latex Paint Reprocessing.

- B. If San Francisco Bulks more than thirty percent (30%) of the total Quarterly latex Program Product volume, PaintCare will: (i) pay the Bulk Latex Paint Rate set forth in Attachment D ("Pricing") for an amount equal to thirty percent (30%) of the total Quarterly latex Program Product volume, and (ii) pay for the Bulk amount in excess of the thirty percent (30%) cap at the lower per-gallon rate set forth in Attachment D for Latex Paint Reprocessing.
 - C. Notwithstanding the foregoing, to the extent that San Francisco Bulks latex Program Product instead of Loose Packing them and the combined Quarterly volume of latex Program Product that is Bulk/Loose Packed is less than forty-five percent (45%) of the total Quarterly latex Program Product volume, PaintCare will pay San Francisco the normal Bulk Latex Paint Rate set forth in Attachment D ("Pricing") for the entire volume of Bulk latex Program Product, even if that volume of Bulk latex Program Product is greater than thirty percent (30%) of the total Quarterly latex Program Product volume.
- c) San Francisco will manage all oil-based Program Products at its Collection Facilities in accordance with the following criteria:
 - i) No more than ten percent (10%) of the total Quarterly oil-based Program Product volume may be managed via Loose Packing.
 - A. If San Francisco Loose Packs more than ten percent (10%) of the total Quarterly oil-based Program Product volume, PaintCare will (i) pay the Oil-Based Paint Loose Pack Rate set forth in Attachment D ("Pricing") for an amount equal to ten percent (10%) of the total Quarterly oil-based Program Product volume, and (ii) pay for the Loose Packed amount in excess of the ten percent (10%) cap at the lower per-gallon rate set forth in Attachment D for Latex Paint Reprocessing.
 - d) In any given Quarter, if unforeseen circumstances reasonably require San Francisco to exceed the limits on Loose Packing Program Products set forth herein, the parties will discuss in good faith a waiver of the established Loose Packing limits for that Quarter (such waiver subject to the parties' mutual agreement). Likewise, should circumstances change over time such that the Loose Packing limits set forth herein become unreasonable for San Francisco's operations, the parties will negotiate in good faith to revise the Loose Packing limits.
 - e) San Francisco shall include the following information in its Quarterly reports to PaintCare:

- i) The number of containers of paint San Francisco has distributed to the public by Direct Reuse during the prior Quarter, not including any paint that the public has not yet reclaimed;
- ii) The number of gallons of paint San Francisco has Reprocessed and distributed to the public during the prior Quarter, not including any paint that the public has not yet reclaimed;
- iii) The number of 55-gallon drums of latex paint that San Francisco has Bulked and shipped offsite during the prior Quarter; and
- iv) The number of 55-gallon drums of oil-based paint that San Francisco has Bulked and shipped offsite during the prior Quarter.

3) TRANSPORTATION

Except for any Program Products that are subject to Direct Reuse or Reprocessing at a Collection Facility, San Francisco will Transport to a Processing Facility (or arrange for such Transport through a Subcontractor) all Program Products that San Francisco Collects at a Collection Facility or receives from a PaintCare-Contracted Facility in San Francisco.

4) INTERNAL TRANSPORTATION

San Francisco shall engage in Internal Transportation for the specific businesses that are existing latex paint collection partners listed below at such time as they become PaintCare-Contracted Facilities. San Francisco may, at its sole discretion, engage in Internal Transportation for any other PaintCare-Contracted Facilities located in San Francisco. With PaintCare's prior written approval in each instance, San Francisco may add sites to, or remove sites from, the list below.

Brownies Hardware	1563 Polk Street
Cliff's Variety	479 Castro Street
Cole Hardware (4th)	70 4th Street
Cole Hardware (Cole)	956 Cole Street
Cole Hardware (Mission)	3312 Mission Street
Cole Hardware (Polk)	2254 Polk Street
Fredericksen Hardware	3029 Fillmore Street
Golden City Building Supply	1279 Pacific Avenue
Last's Paint Clearance Center	2141 Mission Street
Roberts Hardware	1629 Haight Street
Center Hardware	999 Mariposa Street

5) PROCESSING

Except for any Program Products that are subject to Direct Reuse or Reprocessing at a Collection Facility, San Francisco will arrange for Processing

at a Processing Facility of all Program Products Collected at its Collection Facility a or received from a PaintCare-Contracted Facility in San Francisco.

ATTACHMENT B: PROCESSING FACILITY SCOPE OF WORK

San Francisco shall require that the Processing Facilities Process all Program Products in one of the following manners.

- a. The Processing Facilities shall Process post-consumer latex paint according to the following hierarchy (listed from most desirable to least desirable):
 - i. Recycling the paint into recycled-content paint or a raw material for other products;
 - ii. Using the paint for beneficial use, as permissible by state and local authority; or
 - iii. Appropriately disposing of the paint.

- b. The Processing Facilities shall Process post-consumer oil-based paint according to the following hierarchy (listed from most desirable to least desirable):
 - i. Recycling the paint into recycled-content paint;
 - ii. "Fuel blending" the paint; or
 - iii. "Fuel incineration" of the paint.

- c. The Processing Facilities shall manage Non-Program Products in accordance with applicable federal, state and local Law.


San Francisco shall not authorize a Processing Facility to Process Program Products in any other manner, unless authorized in writing by PaintCare.

ATTACHMENT C: COLLECTION FACILITY INFORMATION

- A. San Francisco will provide Collection Services in the following geographical area:
City and County of San Francisco
- B. List the following for each Collection Facility that participates in the PaintCare Program:
- Facility name: San Francisco Household Hazardous Waste Collection Facility
 - Permit By Rule ("PBR") holder: City & County of San Francisco – Department of the Environment
 - Facility address: 501 Tunnel Ave, San Francisco, CA 94134-2940
 - Contact name, e-mail and phone: Maggie Johnson, Margaret.johnson@sfgov.org 415-844-0263
 - Facility days and hours of operations: HHW: Thursday/Friday/Saturday 8-4; CESQG: Two Wednesdays per month 8:30-11:30 (by appointment only)
 - Audience served (HHW, CESQG, both) : both
- C. List the following for planned Temporary Collection Events taking place during the term of this agreement where the location is known:
- n/a
- D. List the following for planned Temporary Collection Events taking place during the term of this agreement where the location is TBD:
- n/a

ATTACHMENT D: PRICING**

Service	Description	Unit Price
Direct Reuse Rate	PaintCare agrees to pay San Francisco for each container of Program Product that is actually taken by a public consumer from a Direct Reuse program, whether sold or given away without charge.	██████████ per container
Latex Paint Reprocessing Rate	PaintCare agrees to pay San Francisco for each gallon of Reprocessed latex paint produced from Program Products that is actually taken by a public consumer, whether sold or given away without charge.	██████████ per gallon
Latex Paint Loose Pack Rate	PaintCare agrees to pay San Francisco for each yard box of Loose Packed quart and smaller sized containers of latex paint Program Products that is Transported to a Processing Facility and then Processed. Rate includes yard box cost.	██████████ / Loose Packed yard box
Latex Paint Bulked Rate	PaintCare agrees to pay San Francisco for every 55-gallon drum of Bulked "bad" latex paint Program Products that is Transported to a Processor and then Processed. Rate includes drum cost.	██████████ per Bulked 55-gallon drum
Oil-Based Paint Loose Pack Rate	PaintCare agrees to pay San Francisco for each yard box of Loose Packed quart and smaller sized containers of oil-based paint Program Products that is Transported to a Processing Facility and then Processed. Rate includes yard box cost.	██████████ / Loose Packed yard box
Oil-Based Paint Bulked Rate	PaintCare agrees to pay to San Francisco for every 55-gallon drum of Bulked	██████████ per Bulked 55-gallon drum

	oil-based paint Program Products that is Transported to a Processing Facility and then Processed. Rate includes drum cost.	
Internal Transportation Rate within San Francisco	PaintCare agrees to pay to San Francisco per gallon for the Internal Transportation of Program Products from PaintCare-Contracted Facilities to San Francisco's primary Collection Facility. (Gallons collected and transferred to be documented on Recyclable Material Bills of Lading.)	

****PaintCare will reimburse the Service Provider solely for performing the Services listed above and not for the mere Collection of Program Products.**

ATTACHMENT E: MODEL INVOICE

San Francisco

Primary Collection Facility Location:

501 Tunnel Avenue, San Francisco, CA 94134

PaintCare-Contracted Facilities Served:

Unique Identifying Invoice Number:

Service	Quantity of Units Included	Unit Price	Total Invoiced Amount
Direct Reuse		\$ 0.25 per container	
Latex Paint Reprocessing		\$ 5.72 per gallon	
Latex Paint Loose Packed		\$ 700 per yard box	
Latex Paint Bulked		\$ 373.35 per Bulked 55-gallon drum	
Oil-Based Paint Loose Packed		\$ 700 per yard box	
Oil-Based Paint Bulked		\$ 373.35 per Bulked 55-gallon drum	
Internal Transportation		\$ 2.38 per gallon	

The above invoice represents, to the best of my knowledge, complete and accurate information regarding the Services rendered and for which San Francisco seeks reimbursement through the Program. The attached backup documentation is accurate.

Signed:

Date:

Print Name:

Title:

ATTACHMENT F: REQUIRED DELIVERABLES

- A. Within thirty (30) days of the end of each Quarter, San Francisco shall provide (or have its Subcontractor provide) to PaintCare a report that states for each Collection Facility:
- i. The total quantity of Program Products Collected or received by San Francisco, by type (latex or oil-based paint) during the prior Quarter;
 - ii. The total quantity, by type, of Program Products that was Bulked or Loose Packed by San Francisco during the prior Quarter;
 - iii. The total quantity, by type, of Program Products that was Bulked or Loose Packed and Transported to a Processing Facility during the prior Quarter;
 - iv. The number of containers of paint distributed for Direct Reuse to the public at each Collection Facility during the prior Quarter (this does not include the number of containers of paint that the public has not yet reclaimed);
 - v. The number of gallons of paint Reprocessed and distributed to the public at each Collection Facility during the prior Quarter (this does not include the number of gallons of paint that the public has not yet reclaimed); and
 - vi. The quantity of Program Products that San Francisco received from each PaintCare Collection Site in San Francisco during the prior Quarter.
- B. For Program Products Transported to a Processing Facility, San Francisco shall provide (or have its Subcontractor provide) PaintCare the following information in a Quarterly report no later than thirty (30) days after the end of each Quarter:
- i. The amount of latex paint, if any, per pound or per gallon, that was managed via Direct Reuse during the prior Quarter, and the name of the Collection Facility at which the Direct Reuse occurred
 - ii. The amount of latex paint, if any, per pound or per gallon that was Processed into recycled-content paint during the prior Quarter and the name of the Processing Facility or Facilities used to conduct the activity;
 - iii. The amount of latex paint, if any, per pound or per gallon that was Processed into raw or alternative material during the prior Quarter, and the name of the Processing Facility or Facilities used to conduct the activity;
 - iv. The amount of latex paint, if any, per pound or per gallon that was Processed by other means, including the Processing method and the name of the Processing Facility or Facilities used to conduct the activity;
 - v. The amount of oil-based paint, if any, per pound or per gallon, that was managed via Direct Reuse, and the name of the Processing Facility or Facilities used to conduct the activity;

- vi. The amount of oil-based paint, if any, per pound or per gallon that was Processed into recycled-content paint and the name of the Processing Facility or Facilities used to conduct the activity;
 - vii. The amount of oil-based paint, if any, per pound or per gallon, that was Processed by other means, including the Processing method and the name of the Processing Facility or Facilities used to conduct the activity.
- C. Within forty-five (45) days of the end of each Quarter, San Francisco shall provide (or have its Subcontractor provide) to PaintCare a Certificate of Recycling and/or Disposition for all Program Products that are Processed or Reprocessed under this Agreement.
- D. San Francisco shall promptly notify PaintCare of any discrepancies or errors it discovers in any document or report provided to PaintCare pursuant to this Attachment F.

**ATTACHMENT G: CALIFORNIA ARCHITECTURAL PAINT RECOVERY PROGRAM
MUNICIPAL COLLECTION FACILITY GUIDELINES**



CALIFORNIA ARCHITECTURAL PAINT RECOVERY PROGRAM

1500 Rhode Island Ave, NW

Washington DC 20005

(855) 724-6809

Fax: (855) 385-2020

www.paintcare.org

Attachment G - Municipal Collection Facility Guidelines for City and County of San Francisco

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Contact Information

Site Name: <i>San Francisco Household Hazardous Waste Collection Facility</i>
Site Address: <i>501 Tunnel Avenue, San Francisco, CA 94134</i>
Mailing Address (if different): <i>c/o SF Dept of the Environment, 1455 Market St, 12th Flr, San Francisco, CA 94103</i>
Site Contact 1. Name/Phone: <i>Brad Drda, 415-657-4003</i>
Site Contact 2. Name/Phone: <i>Billy Puk, 415-657-4030</i>
PaintCare Contact Name:
PaintCare Contact Phone/Email:
Transporter Company and Contact Name: <i>N/A</i>
Transporter Contact Phone/Email: <i>N/A</i>
CUPA Contact Name/Phone: <i>San Francisco HMUPA Sue Cone/415-292-3900</i>

Section 1

PaintCare® Collection Facilities

Legislation

In 2010, Governor Schwarzenegger signed Assembly Bill 1343 creating the California Architectural Paint Recovery Program. The new law requires paint manufacturers to develop and implement a program to collect, transport, and process post-consumer paint and other architectural coatings to reduce the costs and environmental impacts of their disposal in California. The program's primary goals are to: (1) reduce the generation of post-consumer architectural coatings; (2) promote reuse/using up of post-consumer architectural coatings; and (3) ensure proper recycling and disposal at their end of life.

About PaintCare

The law allows for the formation of a non-profit stewardship organization to implement the program. To serve this purpose, PaintCare Inc. was formed by the American Coatings Association (ACA), the non-profit trade association for the paint and coatings industry. PaintCare submitted a management plan to the California Department of Resources Recycling and Recovery (CalRecycle) on behalf of paint manufacturers in April 2012. The Department approved the Plan on July 19, 2012. The California program began 90 days after Plan approval – on October 19, 2012.

Various studies have demonstrated that between 3 and 10% of all paint purchased is "leftover" – goes unused. To capture this paint, PaintCare will pay for storage containers, transportation and recycling/proper disposal for leftover paint delivered to contracted collection locations like yours. PaintCare will also conduct extensive public outreach about the Program, and promote your sites as a Collection Facility.

Before the PaintCare Program ("Program"), California residents and businesses recycled or disposed of paint primarily through government-sponsored household hazardous waste (HHW) programs or through private hazardous waste management companies. The PaintCare Program increases recycling opportunities for California consumers by partnering with hundreds of retail and reuse stores throughout the state to serve as paint Collection Facilities, as well as by partnering with municipal program like yours.

PaintCare Provides

Once a contract is established between PaintCare and the Collection Facility, the Program will provide the following:

- Poster identifying your site as a PaintCare Collection Facility
 - Educational print materials for your customers
-

PaintCare Does
Not Provide

The Program does not provide personal protective equipment (PPE) or gear that may be required by the U.S. Occupational Safety and Health Administration (OSHA) or California occupational and safety regulations for your place of work. It is your site's responsibility to provide appropriate PPE for your workplace.

PaintCare has no authority and disclaims any responsibility to manage, direct, or supervise your employees, representatives, or agents, including how they perform the work and achieve compliance with applicable Law. PaintCare does not have responsibility for making day-to-day and critical decisions regarding the Services that you provide.

Who Can Be
a Collection
Facility

PaintCare Collection Facilities may be any of the following:

- Municipal household hazardous waste collection facilities (permanent and temporary)
 - Paint retailers including paint, hardware and home improvement stores, and reuse stores (i.e., stores that sell salvaged or excess building materials)
 - Waste transfer stations, landfills, public works yards, and other appropriate, publicly accessible facilities
-

General
Guidelines for
Collection
Facilities

Below are general guidelines for San Francisco's Collection Facility. However, we recognize that this location will have unique logistical, contractual, and operational considerations. All PaintCare Collection Facilities must make their own decisions and use their best judgment to operate in the safest manner possible in accordance with applicable Law. To be a Collection Facility, you must:

- Accept Program Products from participants during your regular advertised or posted operating hours
 - Have appropriate signage that informs the public of the hours of operation
 - Display the PaintCare poster to identify you as a Collection Facility – this poster should be posted in a highly visible area, preferably at the entrance
 - Have adequate space, staffing and training to collect and store Program Products and consolidate them only in Collection Containers provided by San Francisco. Provide a secure space for empty and full Collection Containers
 - Segregate Program Products from non-Program Products prior to packaging into Collection Containers (see Section 3 for a description of Program Products)
 - Schedule shipments of Program Products from your Collection Facility
 - Maintain records
 - Train staff to be familiar with the requirements and practices of this guide
 - Have adequate comprehensive and/or commercial general liability insurance to cover potential risks and liability associated with activities on premises
 - Know and comply with applicable federal, state and local laws as they pertain to your Collection Facility and train staff accordingly – these may include zoning requirements for your activities, state permit requirements (air, hazardous waste, water quality, solid waste, storm water) and OSHA requirements
 - For additional information on state law regarding collection of the Program Products, visit the Department of Toxic Substance Control's website at www.dtsc.ca.gov
-

Storage Area
for Collection
Containers

Provide sufficient storage area for Collection Containers and Program Products.

Collection Container storage areas must include secondary containment to contain liquids in the event a can leaks while in storage; however, they should also be placed on an impermeable surface (e.g., concrete, asphalt, sealed wood floor) whenever possible.

Store Collection Containers away from ignition sources.

Place Collection Containers away from storm drains and floor drains.

Protect Collection Containers from temperature extremes by storing them inside or under cover if possible.

Mark the Collection Container with the date on which the first Program Product is placed in it and ensure that no Collection Container with content is stored for more than twelve (12) months, as required by applicable Law.

If you store Collection Containers outdoors, you may need approval from your local fire or hazardous materials oversight agency.

Storage area information should be included in your Hazardous Materials Business Plan (HMBP) if required by your local fire or hazardous materials oversight agency.

Security

The Collection Facility should be secured and locked when it is closed or not attended.

Only Collection Facility staff should have access to the Collection Containers and storage area.

Use and
Maintenance
of Collection
Containers

Keep Collection Containers closed except when adding Program Products.

Maintain enough space around Collection Containers to inspect for leakage and emergency access.

Do not overfill Collection Containers.

Pack 5 gallon buckets on the bottom layer of loosepacked Collection Containers for stability.

Pack all Program Products (cans, buckets, bottles) upright and as tight as possible in loosepacked Collection Containers to protect contents from shifting and leaking in transit. Use safe practices for handling, storage and management of Program Products.

Use good housekeeping standards; keep paint storage areas clean and orderly.

Section 2

Accepting Program Products

What Is Architectural Paint

It is an important responsibility for PaintCare Collection Facilities to only accept Program Products for management under the PaintCare partnership. Section 3 includes the primary examples of architectural paint products accepted by the PaintCare Program ("Program Products") and paint or paint-related products not accepted by the PaintCare Program ("Non-Program Products"). Collection Facilities that accept Non-Program Products will be responsible for managing all Non-Program Products at the Collection Facilities' expense.

Generally, architectural paints include latex and oil-based house paint, stains and clear coatings. The Program excludes (a) industrial maintenance coatings, labeled "for industrial use," or other appropriate wording; (b) Original Equipment Manufacturer coatings or coatings used for OEM applications; and (c) specifically excluded Specialty coatings.

Architectural paint is classified as either latex (water-based) or oil-based (alkyd) and the classification is important in order to decide how the product should be handled and recycled. Being able to tell the difference between latex and oil-based products is also important in determining which types of businesses can use the PaintCare Program (see next two sub-sections).

Who Can Drop Off Program Products

In general, the PaintCare Program accepts paint from the following:

Households. Residents may drop off any Program Product.

CESQG Businesses. These are businesses that generate less than 100 kilograms (about 27 gallons) of hazardous wastes per month. These businesses are called CESQGs for "Conditionally Exempt Small Quantity Generators." They are often small painting contractors or commercial property owners, but they can be any type of business as long as they do not generate more than 27 gallons of hazardous waste per month. CESQG businesses may drop off any Program Product.

SQG and LQG Businesses. These are businesses that generate more than 100 kilograms (about 27 gallons) of hazardous waste per month. These businesses are either Small Quantity Generators or SQGs (generate 100-1000 kilograms of hazardous waste per month) or Large Quantity Generators or LQGs (generate more than 1000 kilograms of hazardous waste per month) and are typically larger painting contractors or big manufacturing businesses. These businesses are more heavily regulated and they must use a hazardous waste management company to manage their hazardous waste, including oil-based paint. They may, however, drop off latex-based Program Product at PaintCare Collection Facilities.

Latex Paint is Special. When post-consumer latex paint is intended for recycling, as it is when accepted at PaintCare Collection Facilities, it may be considered by a special California law to be handled and considered "non-hazardous waste." Therefore SQG and LQG businesses may drop off latex paint at Collection Facilities, even though they may not drop off oil-based paint.

**How to Know
If a Business
Qualifies**

Each business is responsible for determining its own generator status under the applicable Law.

When a business has oil-based paint to drop off, they must sign the CESQG Certification, included in Appendix A, to verify that they are CESQGs and therefore qualified to use the Program for oil-based paint. Once signed, you may accept up to 27 gallons of oil-based paint from a CESQG.

Certifications may be reviewed by PaintCare or government agencies and compared with a list of registered hazardous waste generators to see that only CESQG businesses are using the Program for their oil-based paint.

**Can Facilities
Charge Fees?**

Program participants should never be charged a fee for Program Products; as a PaintCare Collection Facility you may not charge residents and qualifying businesses that are dropping off Program Products. Exceptions may be allowed for overhead and other costs not covered through the PaintCare partnership.

What Is Acceptable

Before accepting products from participants for management under the PaintCare program, Collection Facility staff must (1) check the product label and/or container contents to verify that it contains a Program Product, and (2) check the condition of the container for acceptance in the Program.

Acceptable Containers and Unacceptable Containers

Acceptable

- The container must be labeled (with either an original product label and/or contents verified by trained Collection Facility staff) as containing one of the designated Program Products listed below
- The container must be in good condition and not leaking
- The container must be 5 gallons in size or smaller

Not Acceptable

- The container is leaking or has no lid
- The container is larger than 5 gallon
- The container is empty

Program Products and Non-Program Products

Acceptable Products (Program Products)

- Interior and exterior paints: latex, acrylic, water-based, alkyd, oil-based, enamel (including textured coatings)
- Deck coatings and floor paints (including elastomeric)
- Primers, sealers, undercoaters
- Stains
- Shellacs, lacquers, varnishes, urethanes (single component)
- Waterproofing concrete/masonry/wood sealers and repellents (not tar or bitumen-based)
- Metal coatings, rust preventatives
- Field and lawn paints

Unacceptable Products (Non-Program Products)

- Paint thinner, mineral spirits, solvents
- Aerosol paints (spray cans)
- Auto and marine paints
- Art and craft paints
- Caulking compounds, epoxies, glues, adhesives
- Paint additives, colorants, tints, resins
- Wood preservatives (containing pesticides)
- Roof patch and repair
- Tar and bitumen-based products
- 2-component coatings
- Deck cleaners
- Traffic and road marking paints
- Industrial Maintenance (IM) coatings
- Original Equipment Manufacturer (OEM) (shop application) paints and finishes

Section 4

Operations

Greet the Consumer

Participants must be assisted and supervised when they come to drop off Program Products. Collection Facility staff should greet participants and verify eligibility of the participant and their leftover paint products as Program Products.

Examine the Product

Screen products to ensure that only the following are accepted into the PaintCare Program:

- Container is 5 gallons in size or smaller
- Container has label that is readable (unlabeled containers of Program Products should be appropriately labeled by qualified Collection Facility staff)
- Container has a lid and is not leaking
- Latex paint from anyone
- Oil-based paint from households and CESQG businesses
- IMPORTANT: Never allow the participant or any other non-Collection Facility staff to open a Program Product container

Screen products to ensure that the following are not accepted into the PaintCare Program:

- Non-Program Products
 - Oil-based paint from SQG or LQG businesses
-

Collection Facility Limits

While the PaintCare Program intends to collect as much Program Product as is available, we recognize that your Collection Facility may have storage limitations. PaintCare Collection Facilities, in agreement with PaintCare, may limit the amount of Program Products they accept from a customer.

If you have a participant with a significant amount of Program Products that your location cannot manage, contact PaintCare directly for additional assistance. We may direct the participant to another PaintCare Collection Facility that can manage the large load or offer a direct pickup.

Refusing an Unacceptable Product

Do not accept into the PaintCare program any containers that are larger than 5 gallons, empty, or leaking, and do not accept Non-Program Products from any participant.

When refusing a Program Product, Collection Facility staff must: explain why the Program Product cannot be accepted (not part of Program, leaking, from SQG/LQG, etc.).

Storing and Packing Collection Containers

Place Program Products into Collection Containers as soon as practical upon acceptance to minimize the possibility of spills.

Place 5 gallon containers at the bottom of loosepacked Collection Containers to provide stability for second layer of 1 gallon and smaller cans.

Place all Collection Containers upright to prevent leaks or spills.

Pack the Program Products as tightly as possible inside the loosepacked Collection Containers. This helps to keep paint products from shifting during transit.

If being stored outside, keep lids on Collection Containers to keep out rain.

Make sure the Collection Container lid sits flat on top the Collection Container.

Never overfill Collection Containers.

Contact your local fire and/or hazardous materials oversight agency to find out if you need a Hazardous Materials Business Plan (HMBP) specific to your Collection Facility to accept and store Program Products.

Closing a Collection Facility

Please notify PaintCare in writing at least 60-days before stopping collection services to give us adequate time to remove your information from Program promotional materials.

As soon as possible, remove the poster ("Recycle Your Paint Here") from the Collection Facility and post a new sign at the entrance to the site to notify the public that you will no longer be accepting Program Products.

Section 5

Direct Reuse and Paint Reprocessing

Requirements for Direct Reuse

PaintCare encourages reuse of leftover paint through Direct Reuse (also known as a "paint exchange" or "swap shop"). These programs return good quality unused paint to the local community at low or no cost.

When selecting products to place in the direct reuse area, containers must be labeled, more than half full, and in good physical and aesthetic condition. Contents must be liquid and relatively new. The container should be closed securely before placing it in the reuse storage area. Containers must never be opened by customer at the Collection Facility. Direct Reuse products must be displayed in a separate storage area by Collection Facility staff.

Requirements for Paint Reprocessing

PaintCare also encourages on-site latex paint Reprocessing. These programs, on average, Reprocess 30-60% of latex paint brought to an HHW facility back into bulked usable paint available for return to the local community.

The San Francisco HHW Collection Facility must have and follow its own procedures for sorting and reprocessing paint. At a minimum, these procedures will include:

- Open each container to visually inspect the contents
- Determine if the contents are latex, oil-based, or other paint
- Determine if the condition of the paint is suitable for recycling (e.g. not moldy, rusty, etc.)
- Sort containers according to type, quality and color

For containers of products suitable for paint reprocessing:

- Bulk contents into larger container (e.g. drum) for mixing
- Mix paint until homogenous
- Repackage paint into 5 gallon or smaller containers
- Label Reprocessed paint

For containers of products unsuitable for Reprocessing, either:

- Close container and loosepack in a Collection Container (must be completely resealed and not leaking)
 - Bulk the contents into a drum for "bad" latex
-

Customer Waiver

Customers must sign the Direct Reuse and Reprocessed Paint Waiver included in Appendix B explaining that the paint is taken "as is" with no guarantee of quality or contents. The customer is required to read, complete and sign the form and the staff is required to verify what has been taken by the customer. If the facility does not use a waiver form, the facility, and not PaintCare, accepts the risks and liability for the materials. The staff must record the number of containers taken by each customer and the total estimated volume. Customers may return paint to the site if does not meet their expectations.

Section 6

Working with Transporters

San Francisco will utilize its own contractors and subcontractors to transport Program Products not suitable for direct reuse or reprocessing on-site. San Francisco will also provide its own DOT-approved drums and other packaging materials.

Section 7

Inspections and Records

Inspections

At the end of each day, staff should:

- Inspect the Collection Facility and storage area to ensure Collection Containers are in good condition, closed properly, and the area is secured
 - Inspect Collection Containers for damaged or missing labels and correct as necessary
-

Record Keeping

The following records are to be maintained for a minimum of 3 years:

- Inspection records
 - CESQG Certification (see: Appendix A)
 - Direct Reuse and Reprocessed Paint Waiver (see: Appendix B)
 - Employee training records
 - Bills of Lading and/or other documentation required by applicable Law for outgoing shipments of Program Products
-

Training

All employees handling Program Products must receive training in product identification, acceptance, handling, packaging, inspection and emergency response procedures before collecting Program Products or engaging in any PaintCare Program activities.

Ensure that employees conduct Program Products collection activities in a safe manner that protects workers and the environment.

Ensure Program Products collection activities follow general safety practices including proper lifting techniques.

Ensure Collection Facility employees are equipped for and understand hazards associated with Program Products.

Maintain training plans and records for each employee.

A form for recording staff training on the PaintCare Program is included in Appendix C.

Safety

Store personal protective equipment (PPE) and spill response equipment in an accessible location.

Ensure the Collection Facility is equipped with appropriate emergency response equipment including a fire extinguisher, spill kit and PPE. Monthly inspections of equipment are recommended.

Ensure spill supplies are available, at a minimum safety goggles, gloves, absorbent, duct tape and plastic bags.

Ensure emergency procedures and emergency contact numbers including police, fire department and emergency services are posted by phone near the Collection Facility area.

If applicable, develop and maintain emergency action plan as required by OSHA.

If required by federal, state or local law, familiarize police, fire departments and emergency response teams with the layout of your facility, properties of Program Product handled at your facility and evacuation routes.

A form for recording emergency contacts is included in Appendix D.

Spills

The information in this section will assist with spills from damaged or leaking Program containers. It is important that all Collection Facility staff understand corrective actions to minimize exposure to people or the environment.

Collection Containers should be kept in a clean, accessible area. Avoid spills through good housekeeping, safe handling techniques, proper storage and best management practices.

Clean up any spill or release of Program Product immediately and place spill residue in a sealed container according to Facility standard operating procedures.

Reporting

Any spill or release of Program Product to the environment through a storm drain, waterway or soil contamination of more than 10 gallons must be immediately reported to the appropriate governmental authority, including the Certified Unified Program Agency, ("CUPA"). Contact PaintCare within 24-hours of making such a report.

Post emergency contact numbers including police, fire department, and emergency services.

Spill Response Procedures

If a spill is small enough to be managed by Collection Facility staff, follow these steps or existing Facility procedures:

- Isolate the area and restrict access to the spill
 - Ensure personal safety, put on protective gear (glasses and gloves) provided in the spill kit
 - Stop the movement of paint by placing the leaking container upright or in a position where the least amount will spill, and place leaking container in plastic bags provided in spill kit
 - Contain the spill by placing absorbent pads or granular absorbent around and on the spill – if outdoors, place barriers around storm drains to prevent a release to the environment
 - Collect the contaminated absorbent material and place it in plastic bag(s) along with the leaking container and contaminated PPE, seal the bag(s) and place in the Collection Container
 - Remove any clothing that may be contaminated, wash thoroughly to remove spilled material from your hands or body
 - Replace any used spill control supplies
 - Document the date, location and amount and type of material spilled
 - Immediately report the spill to the appropriate governmental authority as required by local, state, and federal law.
-

Appendix A. CESQG Certification

VSQG Tracking Sheet

(CalEPA 600-618-6942)

Appointment Date & Time	2/12/2014 08:30 AM	EPA ID	CAL000312070
Rainbow Waterproofing Alfredo Lopez 600 Treat Ave, San Francisco CA 94110		Phone	641 1578

My signature certifies 1) that the wastes I am transferring to the VSQG Program were generated in San Francisco by the business listed above and that I have transferred these wastes to the San Francisco Household Hazardous Waste Collection Facility (SFHHWCF) for proper management and/or disposal, and 2) that I represent the business listed above and that this business generates less than 100 kilograms of hazardous waste per month and less than 1 kilogram of "extremely hazardous waste" per month.

I understand that PaintCare Inc., its sole member, and their agents, employees, member companies, officers, directors, successors and assigns do not assume liability for my waste and that such liability remains with my organization. By signing below, I waive release and hold harmless the entities and persons referred to in this paragraph from any liability, claim, injury, losses and damages arising from the provision of these materials to the SFHHWCF.

Print Name _____ Signature _____

Waste Description

Extremely Hazardous Waste? Yes No

Waste Type	Amount	Unit Price	Total
Acids			
Aerosol Cans			
Asbestos			
Bases			
Batteries (HH)	LB Box	LB Charge	
Batteries (Auto)			
Fluorescent CFLs	CFLs Box	CFLs Charge	
Fluorescent Tubes	Tubes Box	Tubes Charge	
Mercury Amalgam			
Motor Oil			
Oxidizers			
PaintCare Paint			
Paint (non PaintCare)			
Paint Chips (lead)			
Photochemicals			
Poisons			
Solvents, Thinners			
Solids, Ink, Sludge			
Unknowns			
Total Cost			

Staff Initials	<input type="checkbox"/> Check#	<input type="checkbox"/> Cash	<input type="checkbox"/> To Invoice
	\$	\$	\$

Appendix B. Direct Reuse and Reprocessed Paint Waiver

Waiver for the Release of Recycled Paint and Paint for Reuse

The City and County of San Francisco (City) and Recology San Francisco (RSF) jointly operate the San Francisco Household Hazardous Waste Collection Facility (SFHHWCF). Paints brought to the SFHHWCF, or received from other City, RSF, or PaintCare programs, that are in good condition or have been recycled at the SFHHWCF are available for distribution to the public. Paint is the only available item for recycling or reuse through the SFHHWCF.

By signing below, I waive, release, indemnify, and hold harmless the City, RSF, PaintCare Inc., PaintCare Inc.'s sole member, and all of their agents, employees, member companies, officers, directors, successors, and assigns from any liability, claim, injury, losses, damages (including punitive or exemplary damages), or cause of action of any kind whatsoever, whether based on contract, tort, statute, common law, or strict liability, which are claimed in any way to result from, arise out of, or are connected with the handling, receipt, use, storage, transportation, treatment, disposal (including spilling and leaking) or release of paint obtained from the SFHHWCF. I accept all paint that I obtain from the SFHHWCF with full understanding and appreciation of the actual or potential dangers stemming from its proper or improper use. I accept all risk related to my handling, receipt, use, storage, transportation, treatment, disposal (including spilling and leaking) or release of paint obtained from the SFHHWCF and agree to manage the paint in compliance with all applicable local, state, and federal laws.

The City, RSF, and PaintCare Inc. have not thoroughly characterized the paint and make no warranties concerning (1) the physical or chemical characteristics of the paint, (2) its marketability or fitness for use, (3) the manner in which such paint may be transported, stored, treated, discharged, disposed of, used, handled, or otherwise managed, or (4) any actual or potential effects to human health and safety or to the environment from any activities stated in (3) above. Neither the City, RSF, nor PaintCare Inc. shall be responsible for any consequential damages stemming from the use of any paint obtained from the SFHHWCF.

The undersigned has read and understands the foregoing, and agrees to comply with all of the conditions, covenants and provisions herein.

Print Name	Organization
Address	

City/State/Zip	Phone
Signature	Date

STAFF USE ONLY: Please list the amount of recycled paint being taken.

# of 1-gal Size Containers	Total Amount of 1-gal Size Paint
# of 5-gal Size Containers	Total Amount of 5-gal Size Paint

Appendix C – PaintCare Program Training Record for Collection Facility Staff

Training for Collection Facility personnel is based on the PaintCare Municipal Collection Facility Guidelines and other materials provided to Collection Facilities as part of their training requirement. Training includes information on the following: PaintCare Collection Facilities, accepting Program Products, what is and is not acceptable, Program operations, working with transporters, inspections and records, training and safety, and spill response.

Date	Trainee (Print Name) and Signature	Trainer Initials

Appendix D – Emergency Contact Information

This form is to be completed prior to the first day of collection.

Basic Local Emergency Contacts

Facility Emergency Coordinator (name/phone): _____

Alternate Emergency Coordinator (name/phone): _____

Fire Department Phone Number 911 _____

Police Phone Number 911 _____

Hospital Phone Number _____

For Spills of Program Product:

Report any spill or release of Program Product to the environment (air, water or soil) greater than 10 gallons or any release of any Program Product to the storm drain or waters of the State to the appropriate local and state enforcement agencies immediately, and to PaintCare within 24 hours.

Local enforcement agency (name/phone): _____

State agency (name/phone): California Emergency Management Agency (Cal EMA) 1-800-852-7550

PaintCare: 1-855-PAINT09

Other (name/phone): _____

Other (name/phone): _____

