

RESOLUTION NO. 14-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, AUTHORIZING AND DIRECTING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AN AGREEMENT WITH PAINTCARE INC. FOR A CALIFORNIA ARCHITECTURAL PAINT RECOVERY PROGRAM COLLECTION FACILITY AND WASTE PAINT MANAGEMENT SERVICES

WHEREAS, Assembly Bill 1343 requires the formation of a non-profit stewardship organization to implement the California Architectural Paint Recovery Program (the "Program"); and

WHEREAS, the State of California (the "State") has designated PaintCare Inc. ("PaintCare") to be the stewardship organization of the Program (Cal. Pub. Res. Code § 48700 *et seq.*); and

WHEREAS, PaintCare is authorized by the State to enter into agreements with jurisdictions having household hazardous waste collection programs accepting leftover paint products; and

WHEREAS, the City of Lancaster (the "City") operates a Certified Recycling Collection Facility located at the Public Works Maintenance Yard and collects products from the public; and

WHEREAS, the City has received a grant from the State to collect household hazardous waste (Household Hazardous Waste Grant Program Cycles 20 and 22); and

WHEREAS, City staff estimate that participating in the program may result in cost savings to the City of over \$10,000.00 annually; and

WHEREAS, City staff and PaintCare have negotiated the agreement attached hereto as Exhibit "A" (the "PaintCare Agreement") with terms acceptable to the City and PaintCare for services associated with the collection of paint products;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER AS FOLLOWS:

Section 1. The City Council hereby approves the City Manager, or his designee, to authorize and execute the PaintCare Agreement. The City Manager, or his designee, is authorized to take such actions as may be necessary or appropriate to implement the PaintCare Agreement. A copy of the PaintCare Agreement when executed shall be placed on file in the office of the City Clerk. The City Manager, or his designee, may enter into extensions and modifications to the PaintCare Agreement, consistent with the terms of the PaintCare Agreement, in order to carry out the Project.

Section 2. The Mayor shall sign the passage and adoption of this Resolution and thereupon the same shall take effect and be in force. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
GERI K. BRYAN, CMC  
City Clerk  
City of Lancaster

\_\_\_\_\_  
R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss  
CITY OF LANCASTER            )

CERTIFICATION OF RESOLUTION  
CITY COUNCIL

I, \_\_\_\_\_,  
City of Lancaster, CA do hereby certify that this is a true and correct copy of the original Resolution No. 14-12, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this  
\_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

(seal)

CALIFORNIA ARCHITECTURAL PAINT RECOVERY PROGRAM

1500 Rhode Island Ave, NW

Washington DC 20005

(855) 724-6809

Fax: (855) 385-2020

[www.paintcare.org](http://www.paintcare.org)



**California Architectural Paint Recovery Program  
Collection Facility Services Agreement**

**Between**

**PaintCare Inc.**

**and**

**City of Lancaster**

**California Architectural Paint Recovery Program  
Collection Facility Agreement**

This Agreement is made on this 25 day of February, 2014 (“Agreement”) by and between City of Lancaster, a California municipal corporation and charter city located at 44933 Fern Avenue Lancaster, CA 93534 (the “Service Provider”) 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 stewardship organization of the California Architectural Paint Recovery Program (Cal. Pub. Res. Code § 48700 *et seq.*) (the “Program”) and is organized to develop and implement a recovery program to reduce the generation of post-consumer architectural paint, promote the reuse of post-consumer architectural paint, and manage the end-of-life of post-consumer architectural paint in an environmentally sound fashion, including the collection, transportation, processing and disposal thereof;

**Whereas**, the Service Provider operates one or more sites in California that serve the waste management needs of residents; and

**Whereas**, the parties wish to enter into this Agreement, which describes the terms and conditions under which the Service Provider will act as an authorized Collection Facility for the Program;

**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 “Bulking/Bulked” means opening individual cans of paint and combining the latex paint into 55 gallon drums marked “Latex Paint” and the oil-based paint into separate 55 gallon drums marked “Oil-Based Paint.”
- 1.2 “Collect/Collected/Collection” means accepting from the public, and properly identifying and packing for transportation Program Products at the Collection Facility.
- 1.3 “Collection Containers” means containers that are provided by or approved for use by PaintCare or its contractors to hold Program Products.

- 1.4 “Collection Facility(ies)” means all permanent collection facilities that are owned, leased, subleased, or otherwise controlled by the Service Provider as generally described in the Section entitled “Who Can Be a Collection Site” in Attachment C (the “California Architectural Paint Recovery Program Guidelines for Collection Facilities”), and as specifically identified in Attachment B (“Collection Facility Information”), both of which Attachments are incorporated by reference as if set forth in full.
- 1.5 “Direct Reuse” or “Direct Reusing” means selling or giving away of paint to the public without combining it with the paint from other cans and without removing it from its original container.
- 1.6 “Including” means “including but not limited to.”
- 1.7 “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.
- 1.8 “Loose Packing” means placing Collected Program Products into Collection Containers in a manner conducive to safe and efficient transportation by Transportation Providers.
- 1.9 “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, but not Collection Containers, necessary for the Service Provider to comply with and fully perform its obligations under this Agreement.
- 1.10 “Non-Program Products” mean products not covered by the Program that are collected and managed by the Service Provider.
- 1.11 “Program Products” mean the materials described in Attachment A: Program Products Definition, which is incorporated by reference as if set forth in full.
- 1.12 “Required Insurance” is defined in Article 10.
- 1.13 “Services” mean the services described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.
- 1.14 “State” means the State of California.

- 1.15 “Transportation Providers” mean independent contractors hired by PaintCare to transport Program Products from the Collection Facility.

## **ARTICLE 2 – TERM OF AGREEMENT**

- 2.1 The Services shall commence upon execution of the Agreement, and shall remain in full force and effect for a period of two (2) years after the start date.
- 2.2 Option Years. This Agreement shall be automatically renewed each year for additional one (1) year terms unless either party notifies the other in writing at least sixty (60) days in advance of the renewal term commencement date that the Agreement shall not be renewed.
- 2.3 If the Agreement is not renewed, unless otherwise instructed by PaintCare, the Service Provider, before the end of the term of the Agreement, shall assemble all Collection Containers supplied by PaintCare whether or not full, and shall make them available for pick up at the Service Provider’s Collection Facility by a Transportation Provider. The Service Provider, at no additional cost to PaintCare, shall cooperate reasonably at the direction of PaintCare to undertake the orderly cessation of the Services.

## **ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 3.1 This Agreement applies to Program Products and Non-Program Products received by the Service Provider from California sources. In consideration of PaintCare’s obligations set forth below, the Service Provider agrees to:
- a. Collect Program Products and Loose Pack them into Collection Containers to be picked up by Transportation Providers;
  - b. Perform the Services provided for in Attachment B: Scope of Work and provide such Services in conformity with Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities, both of which Attachments are incorporated by reference as if set forth in full, in accordance with the terms and conditions of this Agreement;
  - c. Be responsible for:
    - i. Making day-to-day and critical decisions regarding the Services including the Collection, Direct Reuse, identification, handling, and sorting of Program and Non-Program Products; and
    - ii. Performing the Services in compliance with applicable Law; and
  - d. Be responsible for and manage, at the Service Provider’s expense, any and all Non-Program Products that Service Provider collects at each Collection Facility; and

- e. Secure and lock the Collection Facility at all times when the Collection Facility is closed or not attended; and
- f. In accordance with Attachment B: Scope of Work, manage all Collected Program Products gathered through the Collection Facility only through Loose Packing or Direct Reuse and not dispose of Program Products in any other method without the prior written approval of PaintCare.

In the event of a conflict between the terms of this Article 3.1 and Attachment B, Attachment B shall control.

- 3.2 The Service Provider shall not charge a fee to a consumer or customer for dropping off Program Products.
- 3.3 The Service Provider shall provide the Services at its own risk.
- 3.4 The Service Provider shall take every commercially reasonable precaution to protect all public and private property during the performance of the Services.
- 3.5 The Service Provider may not change the Services, including Attachment B: Scope of Work, or the location of the Collection Facility without prior written approval from PaintCare.
- 3.6 The Service Provider shall thoroughly familiarize itself with the nature and scope of the Services under this Agreement and with matters which may affect the Services, including the Law governing the Services and this Agreement. Any failure by the Service Provider to thoroughly familiarize itself with such matters shall not relieve the Service Provider of its obligations under this Agreement.
- 3.7 Work under this Agreement shall be performed only by competent personnel under the management, supervision, and direction of, and in the employment of, the Service Provider. All personnel must be managed, supervised, and directed by the Service Provider. The Service Provider shall commit adequate resources to participate in the Program.
- 3.8 The Service Provider shall provide and pay for any and all Materials and Activities as defined in section 1.8 above.
- 3.9 Project deliverables, as identified in Attachment B: Scope of Work, paragraph 6, including notifications and reports are as integral a part of the Services as are the technical requirements. The Service Provider shall respond to all reasonable requests from PaintCare for the preparation, access, review, and adjustment of these deliverables throughout the term of this Agreement.
- 3.10 The Service Provider shall perform the Services primarily at the Collection Facility and shall provide PaintCare and its representatives with reasonable access, as provided in Article 10 (Audit and Inspection Rights), to all places under the Service Provider's control where the Services are performed in order for PaintCare to fulfill its rights under Article 10 (Audit and Inspection Rights).

- 3.11 The Service Provider shall commence performing the Services under this Agreement on the start date set forth in Article 2.1 and shall perform such duties continuously and diligently until they are completed in accordance with this Agreement.
- 3.12 The Service Provider shall visually inspect the Collection Containers upon arrival and determine if they appear to be in proper condition for use. If the Collection Containers are not in proper condition based on a reasonable visual inspection, or if the Service Provider later discovers any defects in the Collection Containers, the Service Provider shall contact PaintCare immediately for prompt replacement of these Collection Containers. PaintCare shall promptly replace all Collection Containers, if any, that are found to be defective.
- 3.13 The Service Provider may amend Attachment D (“Collection Facility Information”) to add or delete sites, subject to PaintCare’s prior written approval.

#### **ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES**

The Service Provider represents, covenants, and warrants that:

- 4.1 The Service Provider is a California municipal corporation and charter city and has the approval, capacity, and authority to enter into this Agreement and to supply or utilize the personnel, services and facilities of the Service Provider to perform the obligations of the Service Provider under this Agreement;
- 4.2 This Agreement does not in any way conflict with any other agreements of the Service Provider;
- 4.3 The Service Provider possesses the business, professional, and technical expertise, training, and Materials and Activities required to perform the Services;
- 4.4 The Service Provider shall perform the Services in a diligent, safe, and workmanlike manner that conforms with generally accepted industry and professional practices, and the care and skill ordinarily exercised, for such Services; and
- 4.5 The Service Provider and/or its facilities, employees, or agents, have been issued, as of the date of this Agreement and throughout the term of the Agreement, all material permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules and regulations necessary to perform the Services.

#### **ARTICLE 5 – PAINTCARE OBLIGATIONS**

- 5.1 Within fourteen (14) days in rural areas, and five (5) days in urban areas of a request placed by the Service Provider, PaintCare shall, at its expense, cause



the pick-up and transport by the Transportation Providers of Program Products Collected by the Service Provider not subject to Direct Reuse to intermediary locations, processors, or other final destination that are part of the Program.

- 5.2 PaintCare shall provide Service Provider with a Spill Kit and consumer brochures and signage.
- 5.3 PaintCare shall provide or approve for use Collection Containers for each Collection Facility providing the Services. All Collection Containers supplied by PaintCare shall remain the property of PaintCare.
- 5.4 PaintCare shall have no authority to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including 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 Services, including the Collection, Direct Reuse, identification, handling and sorting.
- 5.5 Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Service Provider. The Service Provider shall not restrict PaintCare from contracting with other entities under the Program.

#### **ARTICLE 6 – COVENANTS OF PAINTCARE**

PaintCare covenants, represents and warrants that:

- 6.1 PaintCare is a non-profit corporation validly existing under the laws of Delaware and qualified to carry on business in California;
- 6.2 PaintCare has the corporate power, capacity and authority to enter into and complete this Agreement; and
- 6.3 The execution and delivery of this Agreement has been validly authorized by all necessary corporate action by PaintCare.

#### **ARTICLE 7 – AGREEMENT TERMINATION**

- 7.1 The Service Provider acknowledges that no payment will be made to the Service Provider under this Agreement; however, the Program will be responsible for all costs relating to dropping off and picking up the Collection Containers at the Collection Facility.
- 7.2 PaintCare or the Service Provider may terminate this Agreement at any time upon sixty (60) days written notice to the other party, without cause.
- 7.3 Either party may terminate this Agreement or any Services under this Agreement upon prior written notice if the other party:

- a) has breached any material provision of this Agreement, and has failed to cure such breach within thirty (30) days of receiving written notification of such breach; or
- b) has violated applicable Law.

## **ARTICLE 8 – TITLE AND RISK OF LOSS**

- 8.1 The Service Provider (and not PaintCare) has title to and risk of loss and liability for any and all Program Products and Non-Program Products that the Service Provider receives. Notwithstanding the foregoing, once a Transportation Provider accepts for transportation any Program Products Collected by the Service Provider under this Agreement, title to and risk of loss, including any risk of loss and 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 will transfer to that Transportation Provider. PaintCare at no time takes title to or assumes liability for Program Products or Non-Program Products; however, PaintCare shall require in its contracts with its Transportation Providers that the Transportation Providers accept such title and risk of loss immediately upon accepting any Program Products for transportation from a Collection Facility.
- 8.2 PaintCare shall not be responsible for any damage to persons or property as a result of the use or misuse of any equipment used by the Service Provider, or by any of its employees or contractors, including the Collection Containers, even if such equipment is furnished, rented, or loaned to the Service Provider by PaintCare.

## **ARTICLE 9 – CONSIDERATION AND PAYMENT**

- 9.1 As consideration under this Agreement, PaintCare will (i) provide the Service Provider with Collection Containers and spill kits, (ii) facilitate the transportation and processing of Program Products by Transportation Providers as set forth in this Agreement, (iii) pay the Service Provider as set forth in this Agreement for any Direct Reuse of Program Products, and (iv) perform other services incident to the management of the Program.

Payment for any Direct Reuse, if any, shall be made in the manner set forth in Attachment B, which is incorporated by reference as if set forth in full. Payment for any Services shall be made in United States currency. Other than the Collection Containers and the payment obligations outlined in Attachment B,

PaintCare will not provide or reimburse the Service Provider for: (a) the Materials and Activities; and (b) the sole collection of Program Products.

9.2 The Service Provider shall invoice PaintCare on a monthly basis, either by hard copy or electronically. Invoices submitted by the Service Provider under this Agreement shall comply with the provisions hereof.

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;
- ii. The specific work categories of Services provided for under the Agreement;
- iii. The specific quantity of units invoiced under each category, as appropriate; and
- iv. Additional information as agreed to in writing by the parties that is unique to the Services being performed by the Service Provider.

b) Each invoice shall include the signature of the Service Provider employee responsible for submitting the invoice and a certification that the invoice accurately reflects the work performed.

9.3 All amounts paid by PaintCare to the Service Provider are subject to audit by PaintCare.

9.4 All invoices shall be submitted to PaintCare by the method directed by PaintCare and/or at the address specified below. All payments made by PaintCare to the Service Provider shall be submitted at the address specified below.

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

To: City of Lancaster  
Attn: Justin Lewis  
Fax: 661-723-6221  
E-mail: [jlewis@cityoflancafterca.org](mailto:jlewis@cityoflancafterca.org)  
Address: 615 W Avenue H Lancaster, CA 93534

- 9.5 Provided that the Service Provider has supplied the required information 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 in writing the Service Provider of said objections and describe in reasonable detail the basis for the objections. The Arbitration provisions in Article 17 shall be used to resolve such disputed portion of an invoice. During any such dispute, the Service Provider shall continue with its responsibilities under this Agreement and shall not stop providing the Services; and PaintCare shall be obligated to make all payments due to the Service Provider over which there is no good faith dispute. PaintCare shall make a good faith effort to resolve such disputes.
- 9.6 PaintCare's payment of all or a part of an invoice shall neither relieve the Service Provider of any of its obligations under this Agreement nor constitute a waiver of any claims by PaintCare.
- 9.7 The Service Provider warrants that all documents including invoices, billings, back-up information for invoices, and reports submitted by the Service Provider to PaintCare to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain to the best of the knowledge of the Service Provider, and the Service Provider represents that PaintCare, for the purposes of this Agreement, may rely upon all such documents and the data therein as being complete and accurate. The Service Provider further agrees to promptly notify PaintCare upon discovery of any instances where the Service Provider becomes aware of any discrepancies concerning documents under this Article 7.7.

#### **ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF PAINTCARE**

- 10.1 PaintCare and its representatives shall have the right to (a) monitor and verify that the Service Provider has complied with this Agreement and the applicable Law; and (b) consult with the Service Provider about such compliance; provided, however, that PaintCare shall not, and affirmatively disclaims any ability to, control supervise or manage (1) the employees of the Service Provider; (2) the activities undertaken by the Service Provider in the performance of this Agreement; and (3) the means by which the Service Provider meets all requirements, including applicable Law. PaintCare may, within 24-hour notice, audit and inspect, with full access, the Service Provider's Collection Facilities during the Collection Facility's hours of operation.
- 10.2 The Service Provider agrees to maintain and to make available to PaintCare, during regular business hours, records relating to its Services under this Agreement. The Service Provider will permit PaintCare to audit, examine, and

make excerpts and transcripts, for any books or records, and to make audits of materials, records and other data related to all other matters covered by this Agreement. The Service Provider 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 produced under this Agreement or until after final audit has been resolved, whichever is later. The Service Provider will include this requirement in any subcontract for the Services performed under this Agreement.

10.3 In addition to those reports detailed in Attachment B: Scope of Work, the Service Provider shall maintain records detailing:

- a. The number of gallons of paint given to PaintCare's contracted Transportation Provider to transport in the form of a Bill of Lading or equivalent shipping documentation required for the Collection Facility to complete under applicable Law. The shipping document shall include:
  - i. The name, address, and telephone number of the originating Collection Facility, the Transportation Provider, and the destination of the Program Products.
  - ii. The quantity of Program Products being transported.
  - iii. The date on which the Transportation Provider accepts the Program Products from the originating location.
  - iv. The signatures of the Transportation Provider and a representative of the originating Collection Facility.
- b. The quantity of paint managed through Direct Reuse;
- c. Records of any inspections required by Law;
- d. The CESQG Certification in Appendix A of Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities, which is incorporated by reference as if set forth in full;
- e. Records of Appendix B in the Attachment C: Paint Reuse Waiver, which is incorporated by reference as if set forth in full. Service Provider may adopt its own version of the Paint Reuse 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 equal protection to PaintCare's interests as described in Appendix B in the Attachment C. If the Collection Facility does not use a waiver form, Service Provider, and not PaintCare, accepts any risk and liability for the materials provided to others through Direct Reuse;

- f. Records of Appendix B (numbers of containers distributed through Direct Reuse) in the Attachment C: Paint Direct Reuse Waiver, which is incorporated by reference as if set forth in full; and
- g. The Employee Training records in Appendix C of Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities, which is incorporated by reference as if set forth in full.

## **ARTICLE 11 – INDEMNIFICATION**

- 11.1 The Service Provider's Indemnification of PaintCare. The Service Provider, 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 from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including legal fees, expenses of litigation, court costs, and reasonable costs of investigation), and causes of action of every kind whatsoever, whether based in 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 Service Provider's performance of the Services, operations, or 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 actions, omissions, negligence, willful misconduct, or a breach of this Agreement attributable to PaintCare.
- 11.2 PaintCare's Indemnification of Service Provider. PaintCare, its successors and assigns, agrees to defend, indemnify, and hold harmless the Service Provider, its elected officials, officers, employees, agents, attorneys, successors and assigns from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including legal fees, expenses of litigation, court costs, and reasonable costs of investigation), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability, which are claimed in any way to result from, arise out of, or are connected with PaintCare's performance 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 actions, omissions, negligence, willful misconduct, or a breach of this Agreement attributable to the Service Provider.
- 11.3 Limitation of Service Provider's Liability. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED IN CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT,**

OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

- 11.4 Limitation of PaintCare's Liability. PAINTCARE'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL PAINTCARE BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED IN CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **ARTICLE 12 – INSURANCE**

The Service Provider at its own expense shall provide all appropriate environmental and commercial general liability insurance with limits for each of not less than \$1 million for each occurrence, as well as any other insurance, such as, for example and without limitation, worker's compensation or automobile insurance, to the extent and in the amounts required by applicable law.

## **ARTICLE 13 – ASSIGNMENT AND SUBCONTRACTING**

- 13.1 This Agreement and the obligations and rights hereunder shall not be assignable, novated, or otherwise transferred by operation of law by the Service Provider without the express written consent of PaintCare, which consent shall not be unreasonably withheld. Any change of control by the Service Provider, shall be deemed an assignment that requires prior written consent. A "change of control" includes, among other items, any merger, consolidation, sale of all or substantially all of the assets or sale of a substantial block of stock of the Service Provider. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.
- 13.2 The Service Provider may subcontract any part of the Services. As part of any subcontract hereunder, the Service Provider must include the following articles and attachments to the extent applicable for the Services being provided by the Subcontractor: Articles 17 and 18 and Attachments A and B. If the Service Provider does subcontract out any portion of the work, nothing contained in this Agreement or otherwise, shall create any contractual relationship between PaintCare and the subcontractors, and no subcontract shall relieve the Service

Provider of its responsibilities and obligations hereunder. The Service Provider 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 any of them as it is for the acts and omissions of persons directly employed by the Service Provider.

- 13.3 The Service Provider's obligation to pay its subcontractors is an independent obligation from PaintCare's obligation to make payments to the Service Provider. As a result, PaintCare shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor of the Service Provider.

#### **ARTICLE 14 – FORCE MAJEURE**

- 14.1 Any delay or failure of either party to perform its obligations hereunder shall be suspended if, and to the extent, caused by the occurrence of a Force Majeure. In the event that either party intends to rely upon the occurrence of a 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.
- 14.2 "Force Majeure" means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, acts of nature whose effects preventing safe passage of vehicles upon state or federal highways for a continuing period of not less than fourteen (14) days and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time.

#### **ARTICLE 15 – 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.

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



Washington, DC 20005

To: City of Lancaster  
Attn: City Manager  
Fax: 661-723-6221  
Address: 44933 Fern Avenue, Lancaster, CA 93534

#### **ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS**

- 16.1 The parties intend that the Service Provider, in performing the services specified herein, is acting as an independent contractor and that the Service Provider will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.
- 16.2 The Service Provider shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The Service Provider shall have no 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 PaintCare, including, without limitation, the Transportation Providers.
- 16.3 The Service Provider understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the Service Provider and not employees of PaintCare. The Service Provider shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Service Provider pursuant to this Agreement.
- 16.4 The Transportation Providers are independent third-party contractors and are not employees, partners, or agents of either party. Neither party is liable for the acts or omissions of the Transportation Providers under this Agreement.

#### **ARTICLE 17 – ARBITRATION**

- 17.1 Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement.

- 17.2 Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement shall be exclusively settled by arbitration under the laws of the State of California, in accordance with the rules of the American Arbitration Association.
- 17.3 The parties agree to consolidation of any arbitration between them with any other arbitration involving, arising from or relating to this Agreement.
- 17.4 Each party hereto accepts the jurisdiction of the courts of the State of California for the purposes of commencing, conducting and enforcing an arbitration proceeding pursuant to this Article. Each party hereto further agrees to accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and such notice shall have the same effect as if the party had been personally served within the State of California.
- 17.5 Any decision of an arbitrator engaged under this Article shall be final, binding and enforceable upon both parties.
- 17.6 The parties shall continue to perform their respective duties under this Agreement during any dispute.
- 17.7 Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration processes. The cost of any independent decision maker shall be shared equally between the parties.

#### **ARTICLE 18 – COMPLIANCE WITH LAW**

- 18.1 The parties shall comply with all Law applicable to this Agreement.
- 18.2 Each party shall promptly notify the other party in writing upon discovery of any failure, or any allegation of any failure, of any person or entity to comply with any applicable Law relevant to the performance of Services or any requirement of this Agreement.
- 18.3 The Service Provider shall provide PaintCare with sixty (60) days prior written notice before entering into negotiations or engaging in any direct or indirect lobbying activities with any government authority or agency to develop any variance or revision to Cal. Public Resources Code §§ 48700 – 48706 (2010) and §§ 25217 – 25217.4 of the California Health & Safety Code.

- 18.4 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 19 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION;  
RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE**

- 19.1 The Service Provider shall place the greatest importance and priority on safety, health, and environmental protection during performance of the Services.
- 19.2 The Service Provider shall be responsible for safety, health, and environmental protection related to and in the performance of the Services and shall take appropriate measures necessary to ensure that it: (a) provides and maintains safe, health-protective, and environmental-protective working areas at or in proximity to where the Services are performed, including adjacent areas; (b) properly protects and safeguards (i) all persons at or in proximity to the Services, including those in adjacent areas, from risk or injury and danger to health, and (ii) property and equipment from damage or loss; (c) complies with the requirements of the California Health and Safety Code, section 25217; and (d) is aware of and complies with all other 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.
- 19.3 The Service Provider shall not permit an unsecure, unsafe, unhealthful, or environmentally unsound condition or activity at any Collection Facility. If the Service Provider becomes aware of any such condition or activity, it shall immediately halt any part of its operations affected by or contributing to the same, promptly notify PaintCare, and take appropriate measures to correct the situation.
- 19.4 The Service Provider shall be responsible for complying with all applicable Law governing the generation, handling, management, treatment, storage, or disposal of hazardous wastes. The Service Provider shall not allow the release of 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.*

- 19.5 Each party shall immediately notify the other party of any circumstance or occurrence during the performance of this Agreement that requires 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 hazardous substances pursuant to 42 U.S.C. § 9603 and Cal. Health & Safety Code 25507(a), and shall make such report immediately. A party shall ensure that any such reports are made within the applicable time limits and shall not delay making such reports because of the inability to notify the other party.
- 19.6 In the event of any action or occurrence during the performance of this Agreement which causes or threatens a release of 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, the party connected with the action or occurrence shall immediately notify the other party and shall ensure that all appropriate action is taken to prevent, abate, minimize, and cleanup such release and endangerment in conformance with applicable Law including applicable cleanup standards. A party shall not delay the undertaking of appropriate action because of the inability to notify the other party.

## **ARTICLE 20 – CONFIDENTIALITY/PUBLICITY**

- 20.1 The Service Provider shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Service Provider's need to identify its Services and related clients to sustain it, PaintCare shall not inhibit the Service Provider from publishing its role in the Program within the following conditions:
- a) Any publicity material that a Service Provider develops shall be approved in writing by PaintCare within ten (10) business days of receiving an approval request.
  - b) The Service Provider shall make available to its customers all Program materials provided by PaintCare; and

- c) During the term of the Agreement, the Service Provider 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 to be granted or denied within ten (10) business days, and which consent shall not be unreasonably withheld.
- 20.2 The Collection Facility shall be listed, referenced or advertised as a Collection Facility by PaintCare for the Program during the term of this Agreement in accordance with the attached guidelines in Attachment C, herein incorporated by reference.

## **ARTICLE 21 – MISCELLANEOUS PROVISIONS**

- 21.1 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.
- 21.2 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 the other 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.
- 21.3 Entire Contract/Order of Precedence. This Agreement and all Attachments and exhibits hereto, and all referenced documents, including Attachment C, the California Architectural Paint Recovery Program Guidelines for Collection Facilities, 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 B: Scope of Work;
  - b. The terms of this Agreement;

- c. Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities;
  - d. Attachment A: Program Products Definition; and
  - e. Attachment D: Collection Facility Information
- 21.4 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.
- 21.5 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.
- 21.6 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.
- 21.7 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.
- 21.8 Authorization. The Service Provider, or the representative(s) signing this Agreement on behalf of the Service Provider, represents and warrants that the Service Provider 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 on behalf of the Service Provider and to bind the Service Provider to its contractual obligations hereunder.
- 21.9 Survivability. The continuing obligations, rights and remedies of the parties under this Agreement, including those set forth in the sections relating to the Service Provider’s representations and warranties (Article 4), title and risk of loss (Article 6), audit and inspection rights (Article 8), indemnification (Article 9), insurance (Article 10), 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.
- 21.10 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 relating to this Agreement shall initially be brought before a court of jurisdiction prescribed by law in the State of California.

**TO EVIDENCE THEIR AGREEMENT** each of the parties has executed this Agreement, effective on the date of the later signature below.

**City of Lancaster**

By:

\_\_\_\_\_  
(Authorized signatory)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print Name and Title)

**PAINTCARE INC.**

By:

  
\_\_\_\_\_  
(Authorized signatory)

Feb. 24, 2014  
Date

Jeffrey Wasikowski, Counsel

## ATTACHMENT A: PROGRAM PRODUCTS DEFINITION

1. “Program Products” means Architectural paint as defined in Cal. Public Resources Code § 48700 as follows:
  - a. “Architectural Paint” means interior and exterior architectural coatings, sold in containers of five gallons or less for commercial or homeowner use, but does not include aerosol spray paint or architectural coatings purchased for industrial or original equipment manufacturer use.
2. The following terms have the meanings indicated:
  - a. “Architectural Coatings” mean a coating recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs, but excluding adhesives and coatings recommended by the manufacturer or importer solely for shop applications or solely for application to non-stationary structures such as airplanes, ships, boats, and railcars.
  - b. “Industrial Maintenance Coatings” clearly labelled either (1) “For industrial use only” or (2) “For professional use only” or (3) “Not for residential use” or “Not intended for residential use” mean high performance architectural coatings, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions in an industrial, commercial, or institutional setting:
    - i. Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
    - ii. Acute or chronic exposure to corrosive caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;
    - iii. Repeated exposure to temperatures above 102°C (250° F);
    - iv. Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or
    - v. Exterior exposure of metal structures and metal components.
  - c. “Original Equipment Coatings” mean coatings that are applied to a product or a component of a product in a factory, shop, or other structure as part of a manufacturing production, finishing or repairing process (e.g., original equipment manufacturing coatings);
  - d. “Speciality Coatings” mean coatings, defined by the Federated Society of Coatings Technology’s Coatings Encyclopaedia as aerosols, arts and crafts, and automotive refinish coatings;



3. Program Products include the following non-exclusive listing of products in a maximum container of 5 gallons:
  - a. Interior and exterior architectural paints: latex, acrylic, water-based, alkyd, oil-based, enamel (including textured coatings)
  - b. Deck coatings and floor paints (including elastomeric)
  - c. Primers, sealers, undercoaters
  - d. Stains
  - e. Shellacs, lacquers, varnishes, urethanes (single component)
  - f. Waterproofing concrete/masonry/wood sealers and repellents (not-tar or bitumen-based)
  - g. Metal coatings, rust preventatives
  - h. Field and lawn paints
  
4. Program Products excludes, without limitation, the following, regardless of container size:
  - a. Paint thinners, mineral spirits and solvents
  - b. Aerosol paints (spray cans)
  - c. Auto and marine paints
  - d. Art and craft paints
  - e. Caulking compounds, epoxies, glues, adhesives
  - f. Paint additives, colorants, tints, resins
  - g. Wood preservatives (containing pesticides)
  - h. Roof patch and repair
  - i. Tar and bitumen-based products
  - j. 2-component coatings
  - k. Deck cleaners
  - l. Traffic and road marking paints
  - m. Industrial Maintenance (IM) coatings
  - n. Original Equipment Manufacturer (OEM) (shop application) paints and finishes

## ATTACHMENT B: SCOPE OF WORK

The Service Provider will provide the following Services under the Program.

- 1) The Service Provider shall Collect Program Products and put these Program Products into Collection Containers to be picked up by Transportation Providers.
- 2) The Service Provider shall notify PaintCare when there are at least five (5) Collection Containers full of Program Products ready for pick up by a Transportation Provider, but in any event, not less than 180 days from the date that the first Program Product is placed in a Collection Container. PaintCare shall cause a Transportation Provider to pick up Program Products at a schedule agreed-upon by both entities from the Collection Facility.
- 3) Service Provider shall manage all Collected Program Products gathered through the Collection Facilities only in the following ways and not dispose of Program Products in any other method without the written approval of PaintCare.
  - a) By Loose Packing; or
  - b) By placing acceptable latex paint or oil-based paint “as is” out of Reuse (pricing specified below).
- 4) Provide to PaintCare a minimum of ninety (90) days advance notice of any Temporary Collection Events conducted by the Service Provider that include the collection of Program Products that require PaintCare or its Transportation Providers to attend in order to pick up the Program Products collected at the Temporary Collection Event.
- 5) The Service Provider shall report any spills within the time frames detailed in the Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities or any health or safety incidents directly to PaintCare as soon as possible after the occurrence.
- 6) The Service Provider shall maintain all other reporting information required by Law, and shall report to PaintCare the number of containers of paint distributed for Direct Reuse to the public (this does not include the number of containers of paint that the public has not yet reclaimed) within thirty (30) days of the end of each month, as as required in Appendix B of Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities.

- 7) Keep records of CESQG screening waivers/Logs, as required in Appendix A of Attachment C: California Architectural Paint Recovery Program Guidelines for Collection Facilities.
- 8) Keep records of Employee Training record, as required in Appendix C of Attachment C: the California Architectural Paint Recovery Program Guidelines for Collection Facilities.

**DIRECT REUSE PRICING\*\***

<b>Service</b>	<b>Description</b>	<b>Unit Price</b>
Direct Reuse Rate	PaintCare agrees to pay to the Service Provider 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.	\$ 0.25 per container

**\*\* PaintCare will reimburse the Service Provider solely for Direct Reuse and not for the mere Collection of Program Products.**

**ATTACHMENT C: CALIFORNIA ARCHITECTURAL PAINT PROGRAM GUIDELINES  
FOR COLLECTION FACILITIES**



# Collection Facility Guidelines

January 2014

<b>Contents</b>	1. PaintCare® Collection Facilities .....	1
	2. Accepting Program Products .....	5
	3. What Is Acceptable.....	7
	4. Operations .....	8
	5. Direct Reuse .....	10
	6. Working with Transporters.....	11
	7. Inspections and Records.....	12
	8. Training and Safety.....	13
	9. Spill Response .....	14
<b>Appendices</b>	A. CESQG Certification.....	16
	B. Direct Reuse Waiver .....	17
	C. Training Record for Collection Facility Staff .....	18
	D. Emergency Contact Information .....	19

## Contact Information

<i>Site Name:</i>	
<i>Site Address:</i>	
<i>Mailing Address (if different):</i>	
<i>Site Contact 1. Name/Phone:</i>	
<i>Site Contact 2. Name/Phone:</i>	
<i>PaintCare Contact Name:</i>	
<i>PaintCare Contact Phone/Email:</i>	
<i>Transporter Company and Contact Name:</i>	
<i>Transporter Contact Phone/Email:</i>	
<i>CUPA Contact Name/Phone:</i>	<i>Haz Mat Business Plan? (y/n)</i>

**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 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 transfer stations and other convenient sites.

---

**PaintCare  
Provides**

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

- Paint storage Collection Containers (usually 1 cubic yard containers)
  - Labels for paint Collection Containers
  - Spill kit (upon request)
  - Recordkeeping forms and/or log book
  - 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 a typical Collection Facility. However, we recognize that each location will have unique logistical and operational considerations. 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 or approved for use by PaintCare or its contractors to hold and transport Program Products
- Provide a secure space for empty and full Collection Containers
- Pack only Program Products into Collection Containers (see Section 3 for a description of Program Products)
- Schedule shipments of Program Products from your Collection Facility
- Do not accept, handle, pack, or ship Non-Program Products, including unacceptable containers (see Section 3 for list of Non-Program Products and unacceptable containers) because the Collection Facility may assume liability for Non-Program Products if it engages in these activities under California Health & Safety Code § 25217
- 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](http://www.dtsc.ca.gov)



---

**Storage Area  
for Collection  
Containers**

Establish a sufficient, dedicated storage area for Collection Containers and Program Products.

Collection Containers 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 the first Program Product is placed in it and ensure that no Collection Container with content is stored for more than six (6) 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 the Collection Containers for stability.

Pack all Program Products (cans, buckets, bottles) upright and as tight as possible in the 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.

---

# 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

The 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 log, included in Appendix A, to verify that they are CESQGs and therefore qualified to use the Program for oil-based paint. The log includes an explanation of what types of businesses qualify to use the Program. (If a business has only latex paint they do not need to sign anything.)

Once signed, you may accept up to 27 gallons of oil-based paint from a CESQG.

Certification logs 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; as a PaintCare Collection Facility you may not charge residents and qualifying businesses that are dropping off Program Products.

---

# What Is Acceptable

Before accepting products from participants for management under the PaintCare program, Collection Facility staff must (1) check the product label 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 Program Product must be in its original container
- The container must be labeled 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 not original (e.g., paint was transferred into a jar)
- The container does not have an original label
- 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 architectural paints: latex, acrylic, water-based, alkyd, oil-based, enamel (including textured coatings)
- Deck coatings, 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 thinners, 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

# 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:

- Container is 5 gallons in size or smaller
- Container has label that is readable
- Container had a lid and is not leaking
- Latex paint from anyone
- Oil-based paint from households and CESQG businesses
- IMPORTANT: Never allow the participant to open a product to see what is inside

Screen products to ensure that the following are not accepted:

- 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 your Collection Containers are completely full, inform the participant that you are temporarily unable to accept Program Products and redirect them to the nearest alternative PaintCare Collection Facility (see: [www.paintcare.org](http://www.paintcare.org)) or ask them to come back at a later date. Contact the PaintCare transporter immediately to have your Collection Containers picked-up and replaced with empties.

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 any containers that are larger than 5 gallons, empty, unlabeled 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, unlabeled, etc.)
- Refer the individual to the local municipal HHW collection program, garbage hauler or health department for assistance; HHW facilities can typically accept Non-Program Products from households and CESQG businesses

---

## **Storing and Packing Collection Containers**

Place Program Products into Collection Containers immediately upon acceptance to minimize the possibility of spills.

Place 5 gallon containers at the bottom of 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 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.

All Program Products must be stored in Collection Containers at all times.

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.

Before your last pick-up, verify that all Program Products and Collection Containers are returned to PaintCare.

---

# Direct Reuse

---

**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. This can be determined by gently shaking, but not opening the container. HHW programs may open the container to check the contents. 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.

---

**Customer  
Waiver**

Customers must sign the Direct Reuse Waiver log 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. The staff must record the number of containers taken by each customer and the total estimated volume on the log.

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 on the log.

---

# Working with Transporters

---

PaintCare contracts with public and private transporters for the delivery of supplies, empty Collection Containers and pick-up of full Collection Containers.

---

## Scheduling the Transporter to Pick Up Collection Containers

When half of your Collection Containers are full or you anticipate that your Collection Containers will be full within fourteen (14) days in rural areas and five (5) days in urban areas, call your Transportation Service Provider to schedule a pickup. The name of your Transportation Service Provider and the contact information should be filled in on the cover of this guide.

When establishing an appointment for pick-up, please indicate:

- That your facility is a PaintCare Collection Facility
  - Name of Collection Facility and address
  - Your name
  - Your phone number
  - Number of full Collection Containers to be picked up and the number of empty Collection Containers needed for replacement
- 

## Preparing Collection Containers for Removal

On the scheduled pickup day, Collection Containers should be readily accessible to the transporter for quick and efficient loading. The transporter will bring shipping documents and Collection Container labels. Please assist the transporter with Collection Container loading and off-loading and keep a copy of the shipping documents for your records.

---



## 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 closed properly and the area is secured
  - Inspect Collection Containers for damage and report any damaged Collection Containers to PaintCare for replacement or repair
  - Inspect Collection Container 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 log (see: Appendix A)
  - Direct Reuse and Reprocessed Paint Waiver (see: Appendix B)
  - Employee training records (see: Appendix C)
  - 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 is included in Appendix C.

---

**Safety**

Store personal protective equipment (PPE) and spill response equipment in an accessible location adjacent to the Collection Containers.

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 kit contains 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.

---

# Spill Response

---

## 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 in a Collection Container. Label it. Contact PaintCare to replenish spill kit materials as needed.

---

## 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 Kits

Upon request, PaintCare provides each Collection Facility with a spill kit containing:

- Latex gloves
- Safety glasses
- Absorbent
- Plastic bags

Any material used should be replaced immediately after it is used. Contact PaintCare for replacement items.

---

## Spill Response Procedures

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

- 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
-

---

## *Appendix A. CESQG Certification*

---

Any business may drop latex paint Program Products at this Collection Facility, but you may only use this Program for oil-based Program Products if you are a household or a Conditionally Exempt Small Quantity Generator (CESQG). A CESQG is a business that generates less than 100 kilograms (about 27 gallons or 220 pounds) of hazardous waste (e.g. solvents or oil-based paint) per month. If your business does not qualify as a CESQG, you must use a licensed hazardous waste hauler for managing your oil-based paint products.

By signing this document, I certify that my organization is as a CESQG. I also understand that the Collection Facility accepting this waste and 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 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 or damages arising from the provision of these materials to the Collection Facility.

<b>Business or Organization (Please Print)</b>	<b>Name of Person Dropping Off Program Product (Please Print)</b>	<b>Signature</b>	<b>Phone Number</b>

## *Appendix B. Direct Reuse Waiver*

By signing below, I waive, release and hold harmless the Collection Facility, 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, treatment, disposal (including spilling and leaking) or release of Program Product obtained for reuse from the PaintCare Program. For all materials that I obtain from the PaintCare Program, I accept with full understanding and appreciation of the actual or potential dangers stemming from the proper or improper use. I accept all risk related to my handling receipt, use, storage, treatment, disposal (including spilling and leaking) or release of such Program Product.

All Program Product that I obtain from the PaintCare Program, I accept as is, with no warranties. I recognize that PaintCare does not warrant that any materials obtained from the Collection Facility are merchantable, or fit for any particular use. PaintCare shall not be responsible for any consequential damages stemming from the use of any material obtained from the Collection Facility.

Date	Print Name	Signature	Latex* (gallons)	Oil-Based* (gallons)	Number of Containers	Staff Initials
<b>Totals</b>						

\*Estimate the actual gallons of liquid, not container volume (e.g., 4 one-gallon cans that are half full equals 2 gallons.)

***Appendix C – Training Record for Collection Facility Staff***

Training for Collection Facility personnel is based on the PaintCare 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.

<b>Date</b>	<b>Trainee (Print Name) and Signature</b>	<b>Trainer Initials</b>

---

## *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 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): \_\_\_\_\_



## ATTACHMENT D: COLLECTION FACILITY INFORMATION

- A. The Service Provider will provide Collection Services in the following geographical area: City of Lancaster, California.**
- B. List the following for each Collection Facility that participates in the PaintCare Program:**
- City of Lancaster Recycling Center
  - Permit By Rule (“PBR”) not required for “Recycle Only” Centers
  - 615 W Avenue H. Lancaster, Ca. 9354
  - Donald Watkins, [Dwatkins@cityoflancafterca.org](mailto:Dwatkins@cityoflancafterca.org), 661-945-6895; City of Lancaster (661) 723-6121 ([cityoflancafterca.org](http://cityoflancafterca.org))
  - Open 7am – 5pm Mon-Fri
  - Services households
- 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
- E. List the following for current and proposed sites that will be serviced through Internal Transportation by the Service Provider:**
- n/a

**ATTACHMENT E: MODEL INVOICE**

**Service Provider: City of Lancaster**

---

**Collection Facility Location:**

---

**Unique Identifying Invoice Number:**

---

<b>Service</b>	<b>Quantity of Units Included</b>	<b>Unit Price</b>	<b>Total Invoiced Amount</b>
Direct Reuse		\$0.25 per container	

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

---

**Name:**

**Company Title:**

**Date:**