



# Board of County Commissioners Agenda Request

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Agenda Item #

**Requested Meeting Date:** March 27, 2018

**Title of Item:** HHW Agreement with WLSSD

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	<b>Action Requested:</b> <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <i>*provide copy of hearing notice that was published</i>
<b>Submitted by:</b> Terry Neff, Environmental Services Director		<b>Department:</b> Environmental Services
<b>Presenter (Name and Title):</b> Terry Neff, Environmental Services Director		<b>Estimated Time Needed:</b> N/A
<b>Summary of Issue:</b>  <p>The existing Agreement for Household Hazardous Waste (HHW) services with the Western Lake Superior Sanitary District (WLSSD) expired on 12/31/17. Attached is the updated Agreement that will be effective 1/1/18 thru 12/31/22. Jim Ratz, Aitkin County Attorney, has reviewed the Agreement and found it appropriate to form and content. I reviewed the Agreement and find it to mirror the previous Agreement, with as exception to the fee's being charged for the services. The proposed fees are flat fees, not based on participation (households attending our HHW collections). The cost of the services should remain the same or possibly lower with this change.</p>		
<b>Alternatives, Options, Effects on Others/Comments:</b> If the Agreement is not approved, we would have to contract with another provider for these services.		
<b>Recommended Action/Motion:</b> Approve the HHW Agreement with the WLSSD.		
<b>Financial Impact:</b> Is there a cost associated with this request? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ 5,500.00 Is this budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

**WESTERN LAKE SUPERIOR SANITARY DISTRICT  
JOINT POWERS AGREEMENT  
FOR THE OPERATION OF A HOUSEHOLD HAZARDOUS WASTE PROGRAM**

This Joint Powers Agreement (the "Agreement") is between **Western Lake Superior Sanitary District** ("WLSSD"), which has offices at 2626 Courtland Street, Duluth, MN 55806 (hereinafter the "District"), and Aitkin County, which has offices at 209 2<sup>nd</sup> Street NW Room 100, Aitkin, MN 56431 (hereinafter the "County").

**Recitals**

WHEREAS, this Agreement is made under the District's and County's authority in Minn. Stat. § 471.59 and Minn. Stat. Ch. 400 and 458D.

WHEREAS, the Minnesota Pollution Control Agency ("MPCA") is required by Minn. Stat. § 115A.96 to establish a statewide program to manage household hazardous wastes ("HHW"). Minn. Stat. § 115A.96, Subd. 3, provides that the statewide HHW program may be provided directly by the State or by contract with public or private entities.

WHEREAS, the District has partnered with the MPCA to provide a HHW program that furthers the goals of protecting the environment and the public health as articulated in the Waste Management Act and the State's, District's and County's Solid Waste Plans pursuant to a Joint Powers Agreement effective January 3, 2013 which expires on December 31, 2017. A new Joint Powers Agreement between the MPCA and WLSSD is effective January 1, 2018 (the "State Agreement"). The State Agreement refers to the District as an "Authorized Program" and the County as a "Participating County". The District and County will comply with the terms of this Agreement and all applicable Federal, State and local rules, regulations, ordinances and permit conditions and provide environmentally sound and safe management options for Program Wastes and encourage, to the extent feasible, reduction, reuse, recycling and safe storage and management of Program Wastes.

WHEREAS, the parties wish to allocate the risks and responsibilities resulting from operation of the HHW program, and to incorporate the provisions of Minn. Stat. § 115A.96, Subd. 7, into this Agreement.

WHEREAS, the State has created a PaintCare Architectural Paint Product Stewardship program which provides for reimbursement for certain Authorized Activities.

WHEREAS, the earlier Agreement dated January 3, 2013 was replaced with an Amendment #1 in 2015 which, among other changes, incorporated the PaintCare requirements and changes to reporting methods. This Agreement incorporates changes to PaintCare and related State Contract issues made in 2017.

NOW, THEREFORE, The parties, for valuable consideration received, make the following Agreement:

## 1 Definitions

Terms as used in this Agreement shall have the following meanings:

- 1.1 **Authorized Facility or Authorized Facilities.** A facility or facilities authorized by the State to store, blend, treat, reclaim, recycle, incinerate or dispose of Program Waste in accordance with State Contracts.
- 1.2 **Authorized Activities.** The list of activities contained in Exhibit A that may be performed by the District and County for compensation in accordance with this Agreement and the State Agreement.
- 1.3 **Authorized Program (AP).** The District, which has a contract with the State to operate a Program.
- 1.4 **Architectural Paint.** Interior and exterior coatings listed in the MPCA-approved PaintCare Architectural Paint Product Stewardship program plan.
- 1.5 **Base Funding.** Annual funding provided to the HHW programs by the State.
- 1.6 **Bulking.** The activity of opening individual cans of any product, including Architectural Paint, and combining them into 55-gallon drums.
- 1.7 **Collected/Collection.** The activity of accepting products from the public at a household hazardous waste Collection Site or Event, and then packing those products for transportation.
- 1.8 **Collection Site.** A permanent or temporary designated location with scheduled hours for collection where the public may bring household hazardous wastes, including architectural paint.
- 1.9 **Electronic Waste.** Devices containing complex circuitry, circuit boards and/or signal processing capabilities for processing and/or displaying information. Electronic waste may include, but is not limited to, computers and computer peripherals and laboratory, communications, audio, video and office equipment.
- 1.10 **Event.** A temporary Collection Site that accepts either or both Program Products or Program Wastes for a limited period of time.
- 1.11 **Hazardous Waste.** Has the definition as provided in Minn. Stat. § 116.06, Subd. 11.
- 1.12 **Household.** Has the definition as provided in Minn. Stat. § 115A.96, Subd. 1 (a).
- 1.13 **Household Hazardous Waste (HHW).** Has the definition as provided in Minn. Stat. § 115A.96, Subd. 1(b).

- 1.14 ID Number.** The site-specific identification number that the State obtains for the Program.
- 1.15 Management Facility.** One or more permanent, temporary, mobile, satellite, or event collection sites located in the Service Area that accept Program Wastes for proper collection, management and storage. A Management Facility may be publicly or privately owned and/or operated.
- 1.16 Optional Program Wastes.** Wastes listed in Clause 6.3 of this Agreement.
- 1.17 Participating County (PC).** The County located partially or completely within the Service Area or Authorized Participant's program that has signed an agreement for participation in the Program.
- 1.18 Processing.** The bulking, treatment or recycling, and/or disposal of Program Products.
- 1.19 Product Stewardship.** A product-centered approach to environmental protection that calls on those in the product life cycle - manufacturers, retailers, users, and disposers - to share responsibility for reducing the environmental impacts of products.
- 1.20 Program.** The Program operated by the District and the County to implement Minn. Stat. § 115A.96, pursuant to this Agreement, which shall include the following major elements: (1) a HHW education and waste reduction program; and (2) a Management Facility or Facilities.
- 1.21 Program Products.** The products collected under the MPCA-approved PaintCare Architectural Paint Product Stewardship program plan.
- 1.22 Program Wastes.** HHW and Optional Program Wastes listed in Clause 6.3 of this Agreement.
- 1.23 Reciprocal Use Agreements.** Agreements entered into by the Program allowing use of a Management Facility for Program Waste generated outside the Service Area.
- 1.24 Reuse.** The activity of providing or donating collected architectural paint to the public for its original purpose.
- 1.25 Service Area.** The area included within the boundaries of the Regional Program.
- 1.26 State.** The State of Minnesota acting through the Minnesota Pollution Control Agency.

- 1.27 State Contract.** Contracts entered into by the State of Minnesota and that are made available for the off-site management of HHW generated by District HHW Programs under the State's Cooperative Purchasing Venture established pursuant to Minn. Stat. §16C.03, subdivision 10. Entities eligible to participate under the cooperative purchasing venture are described in Minn. Stat. §16C.105.
- 1.28 State Contracts.** Contracts entered into by the State and that are made available for the management of Program Wastes. These include: H-69(5) Hazardous Waste Management; H-79(5) Fluorescent Lamp, Lamp Ballast and Mercury Containing Materials and Residuals Transportation and Management; H-90(5) Used Electronic and Electronic Component Recycling and Management; W-192(5) Infectious (Biomedical); and H-94(5) Used Oil, Filter, Absorbent and Antifreeze Management.
- 1.29 State Contractor Services.** Waste management services performed for Program activities and made available by the State through its contracts with waste management firms. Waste management services include supplying materials, receiving and sorting Program Wastes, packaging, repackaging, consulting, training, sampling, analysis, treatment, transportation, storage, recycling, processing and disposal.
- 1.30 State Hazardous Waste Rules.** The Minnesota Pollution Control Agency Rules, Chapters 7045 and 7001.
- 1.31 State's Authorized Representative.** The State's Authorized Representative is Jennifer Volkman, HHW Program Coordinator, MPCA, 520 Lafayette Road, St. Paul, MN 55155, jennifer.volkman@state.mn.us, 651-757-2801, or her successor.
- 1.32 State's Authorized Transporter.** A transporter authorized to provide transportation or waste management services pursuant to a State Contract for transportation or management of Program Wastes as referred to in Minn. Stat. § 115A.96, Subd. 7.
- 1.33 Supplemental Funding.** Funding from the State in addition to the Base Funding.
- 1.34 Universal Waste.** Universal Waste has the meaning given at Code of Federal Regulations, title 40, section 273.9. Minnesota adopted the Federal Universal Waste Regulations in accordance with MN Rules, Chapter 7045.1400.
- 1.35 VSQG or Very Small Quantity Generator.** A Hazardous Waste generator which is classified as a VSQG in accordance with Minn. Rules pt. 7045.0206, and which has not lost VSQG status due to quantity of generation or over-accumulation.
- 1.36 VSQG Wastes.** Hazardous Wastes generated by a VSQG.

## 2 Term of Agreement

2.1 **Effective date: As of January 1, 2018.**

2.2 **Expiration date: December 31, 2022**, unless earlier terminated by law or in accordance with Clause 22 or 23 of this Agreement. It is the intent of the parties that termination or expiration of this Agreement shall not relieve the parties of the obligations assumed under this Agreement that occur after termination or expiration, including without limitation, the obligations to properly close the Management Facility or Facilities, to pay costs incurred during the term of this Agreement and to defend, indemnify and hold harmless pursuant to Clause 19 of this Agreement.

## 3 Payment, Reporting and Funding

### 3.1 Reporting for HHW Program Operations and Authorized Activities.

- a. **Annual Reporting.** The District will forward access information for the Agency's HHW and VSQG Report Database (Database) to the County and instruct the County on how to enter calendar year participation, financial, and waste stream data for its HHW and VSQG Programs. The District will verify that the Program data entered for or by the County is complete and that the participation totals are accurate. Annual data entry shall be completed by the County no later than March 1 of each year. Upon completion of data entry, the District shall notify the State's Authorized Representative (SAR) that data entry is complete by providing a signed certification form provided by the SAR. The SAR may review the Program data and may require the District to make corrections to the data if errors are found.

Participation will be determined by the District based on the Program data using the following:

- Qualified participating households are only those participants delivering residential Household Hazardous Waste generated within Minnesota to the County such that they may be counted as households as provided in this section.
- One participant will be credited for the waste from one household. If more than one household is included in a delivery to a facility or collection, the actual number of households may be counted as qualified participating households, provided proper documentation is kept.
- Each of the multiple deliveries from the same participant within a calendar year may be counted.
- Participants that only deliver the following wastes will not be counted as qualified participating households: batteries, elemental mercury containing devices, antifreeze, circuit boards, PCB ballasts, CRTs and

other electronic devices, fluorescent lamps, used motor oil and filters, mercury thermometers from dedicated thermometer exchange events, compressed gas cylinders, pharmaceuticals, sharps, ammunition and/or fireworks.

- Participants that only remove items from product exchange shelves will not be counted as qualified participating households.
- Waste that is abandoned at a facility or collection may be counted as one participant if properly documented. No more than 5% of total participation may be accounted for in this manner.
- Participants from HHW collection efforts related to natural disasters will be evaluated by the State for qualification on a case-by-case basis.
- Very Small Quantity Generators will not be counted.

Program Data submitted by the County as of March 15 will be considered final. If the County does not enter its calendar year Program data on or before March 15, the County will not be eligible for the Stipend Amounts for that fiscal year. The District will review and confirm the participation numbers received from each County and pay the Stipend Amount to the County as made available by the State.

The State or the District may compile and prepare reports including the information received from the District and the County, which will be available to the public in accordance with Clause 15 of this Agreement. The District will provide the County's Authorized Representative with a copy of any reports it prepares or receives from the State, prepared for the legislature or other entities that includes data submitted by the County. The District shall compile and prepare reports summarizing information received on the Regional Program, subject to the limitations of the District's database, available staff time and the quality of report data received from PC Counties, and provide a copy to the County's Authorized Representative.

- b. **Reporting for Completion of Authorized Activities.** The County will provide such reporting as is required by the District on Product Stewardship or other Authorized Activities. The reporting will be in the format and containing the necessary information as requested by the District to complete the State funding requests.

**3.2 Fees Paid By County.** The County will pay to the District the following fees for Household Hazardous Waste Management assistance received from the District based upon the annual program operations of each county and the fee amounts set forth in Exhibit B. The District reserves the discretion to limit the number of Events or Clean-outs available to County during the year.

- a. Annual Administrative Fee. Each County will pay an annual fee for the administrative services set forth in this agreement. The annual administrative fee includes services provided by the District including data tracking, contract

management, contract development, reporting, financial management, creation of public information, and information acquisition.

- b. Clean Shop (VSQG) Collection Event Fee. The County may request very small quantity generator (VSQG) collection events each year to be operated and scheduled in accordance with this Agreement in exchange for payment of the applicable fee. Fees will be refunded within 30 days if the event is cancelled by written notice at least 14 days before the scheduled date of the event. Each party will provide the services identified on Exhibit C. No Mileage fee is assessed for this Event.
- c. HHW Collection Event Fee. The County may request a HHW Collection Event(s) each year by March 15 annually to be operated and scheduled in accordance with this Agreement in exchange for payment of the applicable fee for each event. Fees will be refunded within 30 days if the event is cancelled by written notice at least 14 days before the scheduled date of the event. Each party will provide the services identified on Exhibit C. No Mileage Fee is assessed for this Event.
- d. Facility Clean-out Services Fee. This is an annual fee for County HHW Programs that operate a seasonal Management Facility and require collection and management services. The services provided include management and collection of Program Waste, Clean Shop Services during collection of Program Waste, technical assistance, acceptance of household waste at District Management Facilities. No Mileage Fee is assessed for a Facility Clean-out.
- e. Technical Support Services Fee. This is an annual fee for a County that manages its own HHW services. The services provided include management of unidentified wastes, on-site assistance, acceptance of household and VSQG waste at District Management Facilities, and disposal assistance. The County shall be invoiced by WLSSD for all costs in excess of Authorized Activities which are reimbursed to the County through WLSSD.
- f. Staffing Fee. The County may request staffing services on an hourly rate as listed in Exhibit B. The County will be charged 1.5 times the hourly rate for the total hours (including travel time) in excess of 10 hours per day for any staff person providing staffing services to County. These hourly fees will also be charged if County Program Waste must be repackaged or reprocessed by District.
- g. Mileage Fee. The current Internal Revenue Service (IRS) approved rate will be charged for all mileage for services not otherwise included in other services listed in Section 3.2.

- h. Disposal Costs. The District will bill the County for the County's pro-rata share of the costs of disposal of all Program Waste disposed of at the Regional Facility that is billed to the District by the Contractor. The costs of disposal of Product Stewardship activities will not be billed to the County. The District will submit reimbursable Product Stewardship activity costs to the State and retain any amounts received.
- i. Unspecified Expenses. All expenses incurred by the County in operating the PC Program as required under this contract, excluding those for which the District will provide payment pursuant hereto, shall be paid by the County.

Residents from within the County portion of the Service Area may deliver Household Hazardous Waste to the Regional Management Facility, and such waste will be accepted by WLSSD as an additional service covered by the fees set forth above. This delivery of waste will be counted as a participant in the program of the District, and will not be included for purposes of calculating the County annual participation.

**3.3 Assumption.** For purposes of this Agreement, calculations in this Agreement will be based on County participation numbers.

**3.4 Payment of Base and Supplemental Stipends.** Under the District funding agreement with the State, the District may receive base funding and supplemental funding stipends from the State. In order to receive a portion of the base and supplemental stipends, the County must operate its programs in accordance with the terms of the District-County Contract.

a. **Stipend Distribution.**

- i. **Base Stipend.** The first portion of the base stipend will be distributed with each County and the District receiving an equal share of up to \$1000 ("Equal Stipend"). Any remaining Base Stipend will be disbursed based on the following formula:

$$\text{Annual stipend} = (\text{State Base Stipend} - \text{Total Equal Stipend to all PC's and the District}) \div [\text{households in region}] \times [\text{households in PC Service Area}].$$

- ii. **Supplemental Participating County Program Operation and Waste Management Stipend.** Supplemental Stipends received from the State by the District for program operation and waste management ("O&M Stipend") will be distributed based on the following formula:

$$\text{Annual stipend} = (\text{State Participation Stipend} \div \text{total regional participation}) \times \text{annual HHW participants in PC Service Area}.$$

- b. **Available Funding.** Program funding from the District is contingent upon available State funding for PC Program activities, and the District shall have no obligation to provide funds to the County unless it has received such funds from the State. No minimum payment is guaranteed by the District.
- c. **Payment of Stipends.** The District shall distribute stipends to the County in accordance with this Agreement within 45 days after the District has received funds from the State.

### 3.5 Reimbursement of Product Stewardship Activities.

- a. **County Reporting and Invoicing.** To receive payment for Product Stewardship Authorized Activities, the County shall provide the District an invoice for the appropriate coverage period, itemizing the Product Stewardship Authorized Activities, and the amount of payment being requested in accordance with Exhibit A. Each invoice shall contain appropriate documentation justifying the payment request. The documentation may include shipping documents that show what was completed for the appropriate Product Stewardship Authorized Activity, summarized waste reports, and itemized expenses that are eligible for reimbursement.
- b. **Schedule.** The reporting and invoice information for Authorized Activities shall be submitted to the District at least 15 days prior to the date designated by the State.
- c. **District to Submit to MPCA.** The District will incorporate the information submitted by the County into an invoice for the Regional Program. The MPCA will reimburse the District, on behalf of the County, for approved Product Stewardship Authorized Activities listed in Exhibit A in accordance with the associated rate. The District shall distribute payments it receives within 45 days of receipt of payments from the State for completion of Authorized Activities by the County.
- d. **MPCA Process for Reimbursement.** The MPCA shall prepare a summary invoice representing the total reimbursement to the Authorized Program for completing Authorized Activities. The MPCA shall deliver the summary invoice to the product stewardship representative for review and payment in accordance with the schedule in Exhibit B to the State Agreement. All invoice discrepancies or questions for specific county invoices shall be resolved between the product stewardship representative and the District. The Product Stewardship entity shall forward, to the MPCA, payment for work performed for the final-approved invoice in accordance with the Schedule in Exhibit B to the State Agreement. The MPCA shall distribute this payment to the District in accordance with the Schedule in Exhibit B to the State Agreement. The payment amount for Authorized Activities received by the District will constitute the final payment for Authorized Activities for the time period

covered by the payment. The District is responsible for distributing payments to Participating Counties within the Regional Program.

- 3.6 County Payment.** The County shall remit payment to the District within thirty (30) days after receiving any bill from the District. The County shall send payment to District's billing address as follows:

Western Lake Superior Sanitary District  
2626 Courtland Street  
Duluth, MN 55806-1894

- 3.7 Contractor Services Payment.** State Contractor Services are waste management services which are performed for the County by a contractor made available by the State through its contracts with waste management firms. The County may receive State Contractor Services directly through the state contract without using the District. The County shall promptly pay the contractor for authorized services that are directly billed by the contractor to the County.

- 3.8 Billing By District.** By May 1 of each year, the District will bill the County for the Annual Service Fee and any scheduled Clean Shop Events. All other mobile events and services will be billed to the County after the services have been rendered.

#### **4 Education and Waste Reduction Program**

The County shall operate an education and waste reduction program in coordination with the State and in accordance with Minn Stat § 115A 96, Subd 6 (a). The purpose of the program is to assist and inform the public concerning the proper management, identification and reduction of Program Wastes. The County may work with a Product Stewardship entity to develop, share or use materials with that entity. The County shall not utilize the name of the Product Stewardship entity, their mark, or their logo without first obtaining written consent from the Product Stewardship entity. The District shall make education and waste reduction materials available to the County.

#### **5 Program Operations and Training**

- 5.1 Training.** The State and the District have jointly developed a training program that may be accessed by County staff. This training program may contain information from Product Stewardship entities or other entities that partner with the District in managing Program Wastes or Program Products.

- 5.2 Standard Operating Procedures.** The State has worked with the District to develop and make available generic standard operating procedures. The District has developed Program specific standard operating procedures based on the generic standards available on the MPCA's website. The Program specific standards are not less restrictive than the generic standards.

## **6 Waste Acceptance and Management**

- 6.1** The County shall provide for the operation of Management Facilities in accordance with this Agreement and all applicable rules, regulations, standards, and permit requirements. If a Management Facility is privately owned or operated, the County shall require the private owner or operator to meet the conditions and requirements set forth in this Agreement.
- 6.2** The County shall collect, store or otherwise manage HHW and may collect, store or otherwise manage Program Wastes listed in Clause 6.3 below upon obtaining all applicable governmental approvals. The County may manage any waste listed in Section 6.3 below and commingle said wastes with HHW and manage said wastes under the ID Number acquired by the State. The State shall complete the "Notification of Regulated Waste Activity" form and acquire the ID Number solely in the name of the State for each Management Facility that requires an ID Number. The ID Number shall be used for transportation and disposal of all Program Wastes collected at a Management Facility. The County may also choose to obtain or retain its own ID Numbers for its Management Facilities if the wastes are managed in accordance with this Agreement and all applicable rules, regulations, permits and policies.
- 6.3** Program Wastes which may be accepted and commingled with HHW and which may be shipped under the State's ID Number include:
- (a) HHW generated outside the service area and which is accepted in accordance with Minn. Rules pt. 7045.0310, subp 6;
  - (b) Hazardous wastes generated by a VSQG;
  - (c) Abandoned wastes that the District agrees to manage;
  - (d) Federal Universal Waste, defined in the Code of Federal Regulations, title 40, section 273.9, and in MN Rules 7045.1400 including: fluorescent or high-intensity discharge lamps, mercury-containing devices, pesticides, and batteries, and any additional waste streams added to the Federal Universal Waste list that are adopted by the State during the term of this Agreement;
  - (e) Architectural Paint or Program Products;
  - (f) Electronic Waste; and
  - (g) Latex wastes, used oil and used oil filters, antifreeze, sharps and any other wastes managed under the contracts listed in paragraphs 1.28 through 1.30.

However, if Architectural Paint and Program Wastes are comingled, they are not eligible for reimbursement and distribution under Clause 3.5.

- 6.4 At the expiration of this Agreement, or at the time of cancellation of this Agreement by either party, the County and its contractor shall cease to use the ID Number acquired by the State. If Hazardous Waste will no longer be manifested from the Management Facility, the State will cancel the ID Number. If the County plans to continue to manifest Hazardous Waste from a Management Facility, the County shall, within 7 days of cancellation or non-renewal, submit a "Subsequent Notification" form to the entity authorized to assign ID Numbers. The County shall provide, to the District's Authorized Representative, documentation confirming that the number has been reassigned within 30 days of expiration or cancellation of this Agreement.
- 6.5 Nothing in this Agreement is intended to preclude the collection, management or storage of waste which is not Program Wastes at the Management Facility, provided that the County neither commingles the waste with Program Wastes nor uses the State's ID Number when shipping said waste.
- 6.6 Specific allocation of duties can be found in Exhibit C.

## 7 **Manifest Signature**

In the event that the County has direct pick up of Program Waste by the States Authorized Transporter, the County shall provide written documentation to the State demonstrating that its staff and its contractor's staff have been certified by their employer to sign manifests in accordance with DOT regulations 49 CFR 172.704. The County shall also provide documentation to the State demonstrating that its staff and its contractor's staff have been trained and certified to sign manifests in accordance with applicable Hazardous Waste regulations. Documentation for the Contractor's staff shall be in the form of a letter from the employer to the State's Authorized Representative that confirms that staff are certified and trained and shall be signed by the County's Authorized Representative. Documentation shall be maintained in accordance with Clause 20 of this Agreement. County and contractor staff shall not sign manifests prior to submitting documentation to the State. Waste shipped on a manifest signed by County or contractor staff for which documentation has not been submitted prior to signature shall not be covered by the indemnification provided in Clause 19.2 of this Agreement.

The County shall submit signed manifest copies to regulatory agencies in accordance with applicable manifesting regulations and shall retain copies of manifests as specified in Clause 20 of this Agreement. The County shall notify the State's Authorized Representative if manifest copies are not received from the transporter or receiving facility in accordance with Minn. Rules Parts 7045.0351 through 7045.0397. If a Management Facility is privately operated, the County shall include a provision in its contract with the private operator that requires the operator to notify the State's Authorized Representative if manifest copies are not received from the transporter or receiving facility in accordance with Minn. Rules, Parts 7045.0351 through 7045.0397.

**8 Approval to Store Waste More than 90 Days or Receive Waste from another Management Facility**

In accordance with Minn. Rules, pt. 7045.0310, subp. 6, the County may request, in writing, approval to store Program Wastes for more than 90 days or to accept Program Wastes from other Management Facilities. The County shall not store Program Wastes for more than 90 days and/or accept Program Wastes from other Management Facilities until written approval has been received.

**9 Alternative Management of Program Wastes**

In accordance with Minn. Rules, pt. 7045.0310, subp. 7, the County may request, in writing, State approval to treat Program Wastes on-site or manage Program Wastes at a facility not regulated pursuant to Minn. Rules pts. 7045.0208, subp. 1, or 7045.0310 (alternative management facility). The County shall not treat Program Wastes on-site or deliver Program Wastes to an alternative management facility until written approval is received from the State. Requests for treating waste on-site should be submitted to the State's Authorized Representative.

**10 State Contractor Services**

- 10.1** The State, through its State Contracts, shall provide for the management, transportation and disposal of Program Wastes from the time that the Program Wastes come into the possession of a State's Authorized Transporter. The State shall manage all risks associated with the management, transportation and disposal of Program Wastes, from the time that Program Wastes come into possession of the State's Authorized Transporter, and any time thereafter, to avoid liability to the District and County. Said management, transportation and disposal shall be in accordance with all applicable rules, regulations, standards, permit requirements, and this Agreement.
- 10.2** The State shall make available to the District and County, State Contractor Services and shall require the State's Authorized Transporter to meet the conditions and requirements set forth in the State Contracts and this Agreement. Except as may be provided in other agreements between the parties, the County shall pay for the cost of State Contractor Services in accordance with the terms of the State Contracts with the State's Authorized Transporter. The State shall consult with the counties in the procurement of State Contractor Services and in the development of the terms and conditions of the State Contracts.
- 10.3** The State has agreed to include a clause in any waste management contract developed for use by the Program indemnifying and holding the State and District harmless from all liability, obligations, claims, loss and expense, including reasonable attorneys and other professional fees, resulting from the acts of the contractor, its agents, employees or sub-contractors or obligations assumed by the contractor in said contract.

- 10.4** The State shall investigate and resolve matters related to the failure of the State's Authorized Transporters to perform services in accordance with the terms of the State Contracts listed in 1.29. The District shall notify the County when it receives notice of a release to the environment by a State's Authorized Transporter.
- 10.5** The provisions of Clause 19.2 of this Agreement shall apply to Program Wastes collected pursuant to this Agreement that are transported by the State's Authorized Transporter. Use of the State's Authorized Transporter shall constitute use of the Agency's Authorized Transporter within the meaning of Minn. Stat. § 115A.96, Subd. 7. Additionally, the County shall be deemed to be using the State's Authorized Transporter if the County contracts directly with the State's Authorized Transporter and wholly incorporates the terms of a State Contract for State Contractor Services.
- 10.6** The County is encouraged, but not required, to use State Contractor Services for the operation of a Management Facility. If the County chooses to use a transporter other than the State's Authorized Transporter for the management of Program Wastes, the provisions of Clause 19.2 of this Agreement shall not apply to such Program Wastes and the County will not be eligible for reimbursement for disposal of Program Products under the approved PaintCare Architectural Paint Product Stewardship Program.
- 10.7** The District's Authorized Representative shall provide information to the County regarding the location of the State Contracts so that the County can readily access State Contracts for transportation and disposal.

**11 Required Equipment and Inspections**

The County shall arrange for the provision, inspection, maintenance and record keeping for all the safety equipment, personal protective equipment and other equipment necessary for Program operations.

**12 Closure**

The County is responsible for proper closure of a Management Facility in accordance with all applicable rules and regulations and Clause 6.4 of this Agreement. If approval to accept and store waste has been received pursuant to Clause 8 of this Agreement, the County shall arrange for the proper closure of the Management Facility in accordance with the terms of said approval.

**13 Product Stewardship**

The District shall inform the County of projects and opportunities related to product stewardship. The District will support County participation by reviewing initiatives and

assisting in the resolution of issues that arise with implementation of product stewardship initiatives. The District may, at its sole discretion, provide supplies and public information materials to assist with implementation of product stewardship based efforts.

#### **14 Authorized Representatives**

The County's Authorized Representative is Terry Neff, Environmental Services Director, 209 2<sup>nd</sup> Street NW Room 100, Aitkin, MN, 56431 or his/her successor.

The District's Authorized Representative is **Heidi Ringhofer**, Solid Waste Services Director, 2626 Courtland Street, Duluth, MN 55806; 218-722-3336; Heidi.ringhofer@wlssd.com, or her successor.

#### **15 Government Data Practices**

The District and County must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the County or District under this Joint Powers Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the County under the Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the District or the County. If the County receives a request to release the data referred to in this clause, the County must immediately notify the District.

#### **16 Compliance with Laws**

All acts performed by the parties under this Agreement shall be performed in accordance with all applicable federal, state and local laws.

#### **17 Dispute Resolution**

In the event of a dispute between the parties arising out of this Agreement, either due to alleged non-compliance with the terms, or a disagreement regarding the terms, the parties agree to engage in good faith negotiation to resolve the dispute before resorting to legal process. Negotiation may include mediation or arbitration through third parties if both parties agree. Nothing communicated during the course of negotiation, mediation or arbitration may be used against either party in legal process if the dispute is not resolved.

## 18 Assignment, Amendments, Waiver, and Contract Complete

- 18.1 Assignment.** The County may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the District and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 18.2 Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 18.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to enforce it.
- 18.4 No Waiver.** Nothing in this Agreement is intended to waive or limit the provisions of the Tort Claims Acts, Minn. Stat. § 3.736, or Minn. Stat. Ch. 466, or any other law, legislative or judicial, which limits governmental liability.
- 18.5 Contract Complete.** This Agreement contains all negotiations and agreements between the County and the District. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

## 19 Liability and Indemnification

It is the intent of the parties that any liability which may arise as a result of activities contemplated by this Agreement be governed according to the following provisions:

- 19.1 Liability to third persons.** The parties intend that any claims or causes of action by third persons are subject to the limitations upon liability provided by law. Further, nothing in this Agreement is intended to create a cause of action with respect to any third person.
- 19.2 State Indemnification.** The District and the County acknowledge and agree that the District and any County are indemnified by the State as provided for in Minn. Stat. § 115A.96, Subd. 7. In the event that Minn. Stat. § 115A.96, Subd. 7, is inapplicable to a specific situation, then the County and the District agree to be responsible for their own acts and omissions subject to the provisions, limitations, and exclusions of the Tort Claims Acts - Minn. Stat. Ch. 466.

## 20 Audits

Under Minn. Stat. § 16C.05, Subd. 5, the District and County shall have available for inspection for a minimum of six years following the expiration or cancellation of this Agreement, complete and accurate records of the work funded by state funds disbursed under this Agreement, including, but not limited to: collection participant surveys, operational logs showing each qualifying delivery of waste, check-off sheets or

electronically scanned participant data; personnel time sheets; paid invoices for public education services, paid invoices for waste management services; training costs; and data and quality control information. Upon receipt of a request from the District's authorized representative, the County shall, in addition, retain the records for such longer period as requested during the time of any administrative, judicial or other proceeding for which the records may be needed. The retention period shall continue until the administrative, judicial, or other proceeding for which the records may be needed is finally completed or until the District's authorized representative notifies the County in writing that the records need no longer be kept.

## **21 Governing Law and Venue**

**21.1** This Agreement and all statutes and rules cited herein shall be interpreted pursuant to the laws of the State of Minnesota.

**21.2** Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in St. Louis County, Minnesota.

## **22 Termination**

The District may cancel this Agreement at any time, with or without cause, upon 180 days written notice to the County. The County may cancel this Agreement, with or without cause, by providing written notification to the District's Authorized Representative at least 180 days prior to the date of cancellation.

## **23 Termination for Insufficient Funding**

The District may immediately terminate this Agreement if it does not obtain funding from the State of Minnesota, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered herein. Termination must be by written or fax notice to the County. The District is not obligated to pay for any services that are provided after notice and effective date of termination. However, the County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The District will not be assessed any penalty if the Agreement is terminated because of the decision of the State of Minnesota, or other funding source, not to appropriate funds. The District must provide the County notice of the lack of funding within a reasonable time of the District's receipt of that notice.

## **24 E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

For services valued in excess of \$50,000, the County certifies that as of the date of services performed on behalf of the District, the County and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the District. The County is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>.

All subcontractor certifications must be kept on file with the County and made available to the District upon request.

**25 Survival of Terms**

The following Clauses survive the expiration or cancellation of this Agreement: 6.4 ID Numbers; 15 Government Data Practices; 16 Compliance with Laws; 19 Liability and Indemnification; 20 State Audits and 21 Governing Law and Venue.

**Western Lake Superior Sanitary District**

**Aitkin County**

*The District certifies that the appropriate person(s) have executed the Agreement on behalf of the District as required by applicable articles, bylaws, resolutions, or ordinances.*

*The County certifies that the appropriate person(s) have executed the Agreement on behalf of the County as required by applicable articles, bylaws, resolutions, or ordinances.*

Print name: Marianne Bohren

Signature: \_\_\_\_\_

Title: WLSSD Executive Director Date: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit A: Authorized Activity List and Pricing Formulas**

Authorized Activity	Activity Description	Costs Covered
<b>Ship Collected Program Products Off-site, Using the State's Contractor</b>	PaintCare agrees to reimburse the Authorized Programs <sup>1</sup> through the MPCA for all collected Program Products transported off-site pursuant to the State Contract H-69 <sup>2</sup> at the rate specified in the State Contract for the unit volume of collected Program Products managed in accordance with the State Contract. Incidental, Non-Program Products managed under the State Contracts will be reimbursed by PaintCare.	Eligible supplies <sup>3</sup> + Mobilization and line item waste stream pricing in the State Contract. The mobilization price shall be adjusted by multiplying the mileage rate by the percent volume of Program Products contained in each shipment. + Line item waste stream pricing from the State Hazardous Waste Management Contract, H-69
<b>Reuse Rate Per Container</b>	PaintCare agrees to pay the Authorized Programs through the MPCA for each container of Program Product that is managed via reuse.	\$1.35 per container \$0.20/lb. Rate includes processing labor only.
<b>Reuse Rate Per 5-Gallon Container of Consolidated Paint</b>	PaintCare agrees to pay the Authorized Programs through the MPCA for each 5-gallon container of paint offered for reuse that is generated by consolidating several individual containers of paint into one 5-gallon container.	\$18.90 + The cost of the 5-gallon container if purchased at a price that is less than the State Contract price
<b>Paint Bulking Rate for Oil Based Paint (Not for Reuse)</b>	PaintCare agrees to pay the Authorized Programs through the MPCA for every 55-gallon drum of Program Products that is bulked by the Authorized Program and picked up from a collection site for transportation pursuant to the State Contract H-69.	\$114.75 per Bulk 55-gallon drum Rate includes bulking labor only.  Mobilization and management cost for drums and eligible supplies are additional as specified in the "Ship Collected Program Products" off-site

Authorized Activity	Activity Description	Costs Covered
		activity.
<b>Paint Bulking Rate for Latex Paint (Not for Reuse)</b>	PaintCare agrees to pay the Authorized Programs through the MPCA for every 55-gallon drum of Program Products that is bulked by the Authorized Programs and picked up from a collection site for transportation pursuant to the State Contract H-69.	\$90 per Bulked 55-gallon drum Rate includes bulking labor only.  Mobilization and management cost for drums and eligible supplies are additional as specified in the "Ship Collected Program Products" off-site activity.
<b>HHW Program Internal Transportation Rate for Program Products</b>	PaintCare agrees to pay the Authorized Programs through the MPCA to transport collected Program Products between collection facilities or from events to collection facilities. Price includes labor and transport.	\$1.68/mile <sup>4</sup> Per mile rate shall be adjusted by multiplying the mileage rate by the percent volume of Program Products contained in each shipment.

<sup>1</sup> "Authorized Programs" include the County.

<sup>2</sup>State Contract H-69, which is used by Authorized Counties to manage Program Products, is found here: [http://www.mmd.admin.state.mn.us/pdf/H-69\(5\).pdf](http://www.mmd.admin.state.mn.us/pdf/H-69(5).pdf)

<sup>3</sup>Eligible supplies include: non-DOT cubic-yard boxes, liners, lids and pallets; 55-gallon drums; 5 gallon containers used to consolidate paint; and totes used for bulking or shipment of Program Products.

<sup>4</sup>Rate based on data obtained from ATRI at <http://atri-online.org/wp-content/uploads/2016/10/ATRI-Operational-Costs-of-Trucking-2016-09-2016.pdf>

## **Exhibit B**

Populations for use in this Agreement are based on the 2010 Census.

<b>County</b>	<b>Population</b>
Aitkin	16,029
Carlton	15,656
Cook	5,839
Itasca	27,065
Koochiching	7,900
Lake	7,681
St. Louis	44,936
Wlssd	58,122

### **County HHW Agreement Fees**

Fees are dependent on services requested, except all counties will pay the annual administrative fee.

1. Clean Shop Collection	\$1000 per event
2. HHW Collection Event	\$3000 per event
3. Facility Clean-out Services	\$2500 per year
4. Technical Support Services	\$2000 per year
5. HHW Disposal	Pay as generated
6. Administrative Fee	\$2500 per year
7. Hourly Staffing Rates	\$50

## **Exhibit C**

### **Allocation of Specific Duties**

#### **District Duties**

- Serve as liaison between the County and the State for purposes of this contract.
- Coordinate summary annual reports to the State from the region.
- Provide administrative services including data tracking, contract management, contract development, reporting, financial management, creation of public information and information acquisition which are included in the annual administrative fee.

#### **County Duties:**

- Procure all necessary safety equipment, personal protective equipment and other equipment for County Management Facility operations, as required by regulation.
- Designate staff for County Management Facility activities.
- Provide necessary training for workers who will staff County Management Facilities.
- Ensure that all staff performing duties related to County Management Facility activities are properly qualified and trained.

### **HHW Collection Event**

#### **District Duties**

- Approve collection sites that meet State criteria.
- Provide necessary training for workers who will staff HHW Collection Event.
- Compile collection summaries for County and annual state reports.
- Provide necessary District staff and vehicle to service the HHW Collection Event and provide for management of the collected Program Waste.

#### **County Duties:**

- Arrange for the use of collection sites.
- Publicize HHW Collection Event information.
- Conduct coordination tasks, including volunteers, lift equipment, and safety or emergency services if requested.
- Publicize and conduct product exchanges in conjunction with a District scheduled HHW Collection Event.
- Pay the costs of disposal of Program Wastes.

## **Clean Shop (VSQG) Collection Event**

### **District Duties:**

- Provide the County with applications and support.
- Serve as the contact for the VSQG participant, process all applications, handle transactions, advise participant on proper handling methods.
- Process and handle all waste according to state, federal and local regulations and appropriate sections of this Agreement and the contract between the District and the State.
- Notify the State of planned Clean Shop Collection Event dates at least 30 days prior to the proposed date.

### **County Duties:**

- Promote the Clean Shop Collection Event a minimum of 45 days prior to the collection.
- Distribute printed materials upon request by a VSQG participant.