

HHW PROGRAM / PAINTCARE AGREEMENT

THIS AGREEMENT is between PaintCare, a Delaware Corporation, 901 New York Ave., N.W., Suite 300 West, Washington, D.C. 20001 ("PaintCare") and the County of XXXXXX, State of Minnesota, [Address] ("County").

WHEREAS, PaintCare is a stewardship organization appointed by one or more producers of Architectural Paint to organize, implement and administer a product stewardship plan that meets the program requirements of the Minnesota Architectural Paint Recovery Program, as set forth in Minnesota Statutes Section 115A.1415 ("Program"); and

WHEREAS, Minnesota Statute 115A.1415 defines "Architectural Paint" as interior and exterior architectural coatings sold in containers of five gallons or less. Architectural Paint does not include industrial coatings, original equipment coatings, or specialty coatings

WHEREAS, the County, through its Household Hazardous Waste Management Program, and its Very Small Quantity Generator Collection Program, if applicable, collects Architectural Paint and utilizes the State's contractor to manage and transport Architectural Paint collected from the public; and

WHEREAS, to further facilitate compliance with Minnesota Statutes Section 115A.1415, PaintCare desires to enter into an agreement with County for the purpose of establishing indemnification rights and obligations, insurance protections and reimbursement for the Authorized Activities contained in Exhibit A.

NOW, THEREFORE, PaintCare and the County agree as follows:

1. TERM OF AGREEMENT

Effective date: January 1, 2023, or the date all required signatures are made, whichever is later.

Expiration date: December 31, 2027.

The indemnification obligations of PaintCare and County incurred under this Agreement will survive beyond the expiration of this Agreement.

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2. DEFINITIONS

- 2.1 Architectural Paint. Interior and exterior coatings listed in the MPCA-approved PaintCare Architectural Paint Product Stewardship Program plan.
- 2.2 Authorized Activities. The list of activities contained in Exhibit A that may be performed by the Program for compensation in accordance with this Agreement.
- 2.3 Bulking/Bulked. The activity of opening individual cans of Architectural Paint, and combining them into larger containers for on-site reuse or shipment to a recycler.
- 2.4 Collection Site. A permanent or temporary designated location with scheduled hours for collection of Architectural Paint from the public.
- 2.5 Household. Household as defined in Minn. Stat. §115A.96, Subd. 1(a).
- 2.6 Household Hazardous Waste (HHW). Waste as defined in Minn. Stat. §115A.96, Subd. 1(b).2.13 Household Hazardous Waste (HHW) Management Program. A program operated by the HHW Program and the MPCA that includes a broad based public education component; a strategy for reduction of household hazardous waste; and a strategy for separation of household hazardous waste from mixed municipal solid waste and the collection, storage, and proper management of that waste.
- 2.7 Reuse. The activity of providing or donating usable Architectural Paint to the public to use for its original purpose.
- 2.8 State Contractor Services. Waste management services performed for HHW Program activities and made available by the State of Minnesota 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.
- 2.9 Very Small Quantity Generator or VSQG. A Hazardous Waste generator who is classified as a VSQG in accordance with Minn. Rules Part 7045.0206, subp. 4.
- 2.10 VSQG Collection Program. A program operated in accordance with Minn. Rules Chapter 7045.0320, to collect hazardous waste from VSQGs.

3. AUTHORIZED REPRESENTATIVES

The parties' authorized representatives shall be the primary point of contact for the conduct of the day-to-day duties under this contract.

- 3.1 The HHW Program's Authorized Representative is [name], [address], [phone], [email], or his successor.

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3.2 PaintCare's Authorized Representative is Steve Pincuspy, Minnesota Program Manager, 612.719.5216, 901 New York Avenue, NW, Suite 300W, Washington, DC 20001, spincuspy@paint.org, or his successor.

4. INDEMNIFICATION

Each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The liability of the County is subject to applicable law.

The County shall defend, indemnify, and hold harmless PaintCare, Inc. from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including attorney 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 be connected with any transportation, management or disposal of Architectural Paint prior to the time that the Architectural Paint permanently leaves the County's possession and comes into the possession of the MPCA's authorized transporter except during the time that the Architectural Paint is transported between County facilities by an MPCA authorized transporter. This indemnification obligation by the County does not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action result from the negligence, willful misconduct, or breach of this Agreement attributable to PaintCare, its agents, directors, or employees, or attributable to transportation, management or disposal of the Architectural Paint after the Architectural Paint permanently leaves the County's possession and comes into the possession of the MPCA's authorized transporter or during the time that the Architectural Paint is transported between County facilities by an MPCA authorized transporter.

PaintCare shall defend, indemnify and hold harmless the County from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including attorney 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 be connected with PaintCare's performance of its obligations under the PaintCare- MPCA Agreement. This indemnification obligation does not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action are proven to result from the negligence, willful misconduct, or breach of the MPCA-County Agreement or the PaintCare-MPCA Agreement attributable to the County, its agents, elected officials, or employees.

Neither party will be liable to the other for any indirect, special, consequential, punitive, or incidental damages, whether based on breach of contract, tort (including negligence), or any other legal theory, even if advised of such potential damages; however, nothing in

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this paragraph constitutes a limit of the parties' respective indemnification obligations other than any applicable limits imposed by Minnesota law.

5. INSURANCE



HHW Programs with insurance provided by the Minnesota Counties Intergovernmental Trust (MCIT)

5.1 HHW Program Obligation. PaintCare acknowledges that the HHW Program is a member of the MCIT, a joint-powers entity under Minnesota law. The HHW Program agrees to maintain, for the duration of this contract, coverage at the levels and with terms customarily available through MCIT, subject to and in accordance with the following provisions:

- a. All coverages will be maintained in accordance with the MCIT Coverage Document, as the same may from time to time be amended.
- b. All coverage will be maintained to be sufficient to meet the maximum liability amounts for Minnesota municipalities set forth in Minnesota Statutes, section 466.04.
- c. Nothing in the agreement shall be construed as requiring the County to obtain private insurance at any time for any purpose.
- d. County will take steps necessary and sufficient to make PaintCare, Inc. an Additional Covered Party under the MCIT Coverage Document, as the same may be amended from time to time, and provide proof of the same. It is understood and agreed that the scope of coverage for PaintCare as an additional covered party is no greater than the scope of the County indemnification obligation stated in paragraph b. above.

5.2 PaintCare Obligation. PaintCare at its own expense shall carry and maintain on a continuous basis the following insurance coverage during the term of this Agreement (collectively, "PaintCare Required Insurance"):

- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate.
- b. Environmental Pollution Liability Insurance with limits not less than \$1,000,000 each occurrence, and \$1,000,000 in the aggregate.

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c. The PaintCare Required Insurance must include the County and its agents, elected officials, and employees as additional insured (by blanket endorsement) PaintCare shall provide a certificate of insurance evidencing insurance complying with the above requirements. Upon receiving a written request from the HHW Program, PaintCare shall provide a certificate of insurance evidencing insurance complying with the above requirements. All PaintCare Required Insurance is subject to audit and review by the HHW Program or its designees at any time.

☐ **HHW Programs that are self-insured**

5.1 HHW Program Obligation. PaintCare acknowledges that the County is self-insured under the provisions of Minnesota Statutes, sections 383B.155, 471.981 and/or 466.06. This coverage includes tort liability and extends to County employees for activities arising out of the course and scope of their employment as defined under section 466.07. The County affirms that its coverage by virtue of self-insurance will be maintained to be sufficient to meet the maximum liability amounts for Minnesota municipalities set forth in section 466.04. Nothing in the agreement shall be construed as requiring the County to obtain private insurance at any time for any purpose.

5.2 PaintCare Obligation. PaintCare at its own expense shall carry and maintain on a continuous basis the following insurance coverage during the term of this Agreement (collectively, PaintCare Required Insurance”):

- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate.
- b. Environmental Pollution Liability Insurance with limits not less than \$1,000,000 each occurrence, and \$ 1,000,000 in the aggregate.
- c. The PaintCare Required Insurance must include the County and its agents, elected officials, and employees as additional insured (by blanket endorsement) PaintCare shall provide a certificate of insurance evidencing insurance complying with the above requirements. Upon receiving a written request from the Service Provider, PaintCare shall provide a certificate of insurance evidencing insurance complying with the above requirements. All PaintCare Required Insurance is subject to audit and review by the MPCA or its designees at any time.

6. NOTICE

The County shall notify PaintCare on the same day that it notifies the MPCA or the PCA or other state or federal agency after discovering any release of material at a Collection Site that requires reporting to a governmental authority under state or federal law.

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7. RIGHT TO INSPECT

The County will maintain and make available to PaintCare, during regular business hours, accurate books and accounting records relating to all amounts invoiced to PaintCare (either directly or via MPCA). The County will permit PaintCare or its designee to audit, examine, and make excerpts and transcripts of such materials during the County's regular business hours. The County shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the generation date of the applicable record or data.

PaintCare may inspect, with full access, the County's Collection Sites during normal hours of operation, as well as any other site where the County manages or stores Architectural Paint. PaintCare will provide the County with at least five (5) business days' notice prior to any such inspection, and if requested by County, an inspection checklist.

County will provide access to records and site inspection within five (5) days of receipt of the notice, **or if such timing is not feasible, within a reasonable period of time thereafter not to exceed fifteen (15) days, unless otherwise agreed to by both parties.**

8. COLLECTION OPERATIONS

PaintCare and County acknowledge that the County, not PaintCare, has direct control over the operations in the County.

County shall abide by its Standard Operating Procedures as required in the MPCA-County Agreement.

The Program shall notify PaintCare of collection events that include Architectural Paint at least 30 days prior to the date of the event, or cancellation of an event, using PaintCare's online portal.

The HHW Program and Participating Counties shall use State Contractor Services for the off-site management of Architectural Paint for which the HHW Program and Participating Counties seek reimbursement.

9. EDUCATION

The HHW Program and Participating Counties shall not utilize the name of the Product Stewardship Program, their mark, or their logo without first obtaining written consent from the Product Stewardship Program.

10. REIMBURSEMENT OF AUTHORIZED PRODUCT STEWARDSHIP ACTIVITIES.

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- 10.1 PaintCare shall provide a succinct report form to the (Program) on which to record Authorized Activities as established in Exhibit A.
- 10.2 The HHW Program shall provide the following information to PaintCare in accordance with the schedule established in Exhibit B:
 - a. a completed report, using PaintCare's designated report form, for all Authorized Activities completed during the reporting period;
 - b. supporting documents including, but not limited to: supply and waste management invoices for Authorized Activities in Exhibit A, reuse inventories and internal transport logs; and
 - c. a description of the item (e.g., drum, box, liner, etc.) number of items, unit cost of item, extended total per item, and total cost of supplies for all supplies purchased by HHW Programs from sources other than the State's Contractor.
- 10.3 PaintCare shall review reports and documentation and notify the (Program) of discrepancies, if any, within 30 days. The (Program) shall correct discrepancies within 30 days.
- 10.4 Upon notification from PaintCare that the quarterly report is complete, the (Program) shall submit an invoice directly to PaintCare, through its designated invoicing and payment system, following the schedule set forth in Exhibit B.
- 10.5 PaintCare shall pay the (Program) within 30 days of receipt of the Program's invoice.
- 10.6 The payment amount for Authorized Activities received by the HHW Program will constitute the final payment for Authorized Activities for the time period covered by the payment.
- 10.7 Nothing in this agreement shall prohibit PaintCare from providing additional payments, equipment, and supplies to help support the HHW Program.

11. DISPUTE RESOLUTION

- 11.1 Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract.
- 11.2 The parties shall continue to perform the obligations under this Contract that are not directly involved in the dispute during the dispute resolution process in a diligent and timely manner in accordance with all applicable provisions of this Contract.
- 11.3 Either party may consult with the MPCA for assistance in resolution of any dispute.

12. ENTIRE AGREEMENT

The entire Agreement between the parties is contained here and this Agreement supersedes all oral agreement and negotiations between the parties relating to the subject matter. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

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13. GOVERNING LAW

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota without giving effect to the principles of conflict of laws. All litigation regarding this Agreement shall be venued in a court of competent jurisdiction in the State. Each party consents to personal and subject matter jurisdiction of the courts of the State for all purposes related to this Agreement.

14. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

15. TERMINATION

The HHW Program may terminate this Agreement at any time, with or without cause, upon 180 days written notice to PaintCare. PaintCare may terminate this Agreement, with or without cause, by providing written notification to the HHW Program at least 180 days prior to the date of cancellation. All work completed prior to the notice of cancellation shall be reimbursed in accordance with Part 10 of this Agreement.

Exhibit A: Authorized Activity List, Reimbursement Rates, and Calculations

Authorized Activity	Activity Description	Reimbursement Rates
Ship Collected Architectural Paint Off-site, Using the State's Contractor	PaintCare agrees to reimburse the HHW Programs for all collected Architectural Paint transported off-site in accordance with State Contract H-69 ¹ at the rate specified in the State Contract for the unit volume of collected Architectural Paint managed. http://www.mmd.admin.state.mn.us/pdf/H-69(5).pdf Incidental, Non-Architectural Paint managed under the State Contracts will be managed by PaintCare.	Eligible supplies: non-DOT boxes, liners, lids, pallets; totes, 55-gal drums, and 5 gal containers for consolidating paint. + 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 Architectural Paint contained in each shipment. +

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Authorized Activity	Activity Description	Reimbursement Rates
		Line item waste stream pricing from the State Hazardous Waste Management Contract, H-69
Reuse Rate Per Container	PaintCare agrees to pay the HHW Programs for each container of Architectural Paint that is managed via reuse.	\$2.09 per container \$0.32 /lb.
Reuse Rate Per 5-Gallon Container of Bulked Architectural Paint	PaintCare agrees to pay the HHW Programs for each 5-gallon container of Bulked Architectural Paint offered for reuse.	\$29.20 + The cost of the 5-gallon container if purchased at a price that is less than the State Contract price
Bulking Rate for Architectural Paint (55-Gallon Drum; not for reuse)	PaintCare agrees to pay the HHW Programs for each 55-gallon drum of Architectural Paint that is bulked by the HHW Program and picked up from a collection site for transportation pursuant to the State Contract H-69.	\$141.84 per Bulked 55-gallon drum Mobilization and management cost for drums and eligible supplies are additional as specified in the "Ship Collected Architectural Paint Off-site" activity.

Authorized Activity	Activity Description	Reimbursement Rates
HHW Program Internal Transportation Rate for Architectural Paint	PaintCare agrees to pay the HHW Programs to transport collected Architectural Paint between collection facilities, or from events to collection facilities. Price includes labor and transport.	\$3.20/mile Per mile rate shall be adjusted by multiplying the mileage rate by the percent volume of Architectural Paint contained in each shipment.
Solid Waste Management of Solidified Architectural Paint	PaintCare agrees to pay the HHW Programs for each container of solidified Architectural Paint that is managed at a local SW disposal facility.	\$1.01 per container \$0.29/lb.

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The conversion chart below shall be used to calculate the weights and volumes for the purpose of reporting and reimbursement under this Agreement.

Material	Conversion Rate
Gallons to Pounds	
latex paint	10.9 pounds/gallon
oil paint	9.4 pounds/gallon
paint bulking rate	10 lbs/gallon
Items to Pounds	
latex paint	7.05 pounds/item/gal equivalent
oil based paint	6.35 pounds/item/gal equivalent
solidified paint	3.5 lbs./container
Drums and Cubic Feet equivalents	
latex 1 cubic foot	26.1 pounds (3.7 cans x 7.05 lbs.)
latex paint 55 gal drum	600 pounds
oil paint 1 cubic foot	23.5 pounds (3.7 cans x 6.35 lbs.)
oil paint 55 gallon drum	517 pounds

Exhibit B Reporting, Invoicing and Payment Schedule for Authorized Activities

Due Date	Jan 31	Feb 28	Mar 31	Apr 30	May 31	Jun 30	Jul 31	Aug 31	Sep 30	Oct 31	Nov 30	Dec 31
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Metro Programs	Send Dec report with supporting documents to PC	Send Jan report with doc. to PC Correct Oct-Dec reports, if needed Send quarterly invoice to PC	Send Feb report with doc. to PC	Send Mar report with doc. to PC	Send Apr report with doc. to PC Correct Jan-Mar reports, if needed Send quarterly invoice to PC	Send May report with doc. to PC	Send Jun report with doc. to PC	Send Jul report with doc. to PC Correct Apr-Jun reports, if needed Send quarterly invoice to PC	Send Aug report with doc. to PC	Send Sep report with doc. to PC	Send Oct report with doc. to PC Correct Jul-Sep reports, if needed Send quarterly invoice to PC	Send Nov report with doc. to PC
Regional Programs	Pay Participating counties in Region Send Oct-Dec report with supporting documents to PC	Correct Oct-Dec reports, if needed Send quarterly invoice to PC	Participating Counties invoices Regional Program	Pay Participating counties in Region Send Jan-Mar report with doc. to PC	Correct Jan-Mar reports, if needed Send quarterly invoice to PC	Participating Counties invoices Regional Program	Pay Participating counties in Region Send Apr-Jun report with doc to PC	Correct Apr-Jun reports, if needed Send quarterly invoice to PC	Participating Counties invoices Regional Program	Pay Participating Counties in Region Send Jul-Sep report with doc to PC	Correct Jul-Sep reports, if needed Send quarterly invoice to PC	Participating Counties invoices Regional Program
PaintCare		Review HHW Program Reports for Oct--Dec	Pay HHW programs for Oct-Dec Provide quarterly reporting and payment summary to MPCA		Review HHW Program Reports for Jan-Mar	Pay HHW programs for Jan-Mar Provide quarterly reporting and payment summary to MPCA		Review Apr-Jun HHW Program Reports	Pay HHW programs for Apr-Jun Provide quarterly reporting and payment summary to MPCA		Review July-Sept HHW Program Reports	Pay HHW programs for July-Sept Provide quarterly reporting and payment summary to MPCA
MPCA			Review reporting and pymt info			Review reporting and pymt info			Review reporting and pymt info			Review and file payment summary