



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 26, 2012

From: Joseph Moon **Item No:** 8
Special Projects Manager

Subject: HOUSEHOLD HAZARDOUS WASTE COLLECTION AGREEMENT
BETWEEN THE TOWN OF APPLE VALLEY AND THE SAN
BERNARDINO COUNTY FIRE PROTECTION DISTRICT.

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve the Household Hazardous Waste (HHW) Agreement between the Town of Apple Valley and the San Bernardino County Fire Protection District.

SUMMARY:

The Town's current Household Hazardous Waste (HHW) agreement with the County Fire Protection District (County) expires on July 1, 2012. That agreement was executed in 2007 for a five (5) year contract amount starting at \$67,568 and increased by three percent (3%) each successive year to the current amount of \$79,052. The annual fee also included a per capita formula that could have increased the contract amount if the Town's population increased for a given year. The County is now proposing to enter into a new five-year agreement with the Town that sets the annual contract fee at \$79,052, and will remain at that fee for the entire five-year term.

STAFF RECOMMENDATION:

Staff recommends that the Town Council approve the Household Hazardous Waste (HHW) Agreement between the Town of Apple Valley and the San Bernardino County Fire Protection District.

FISCAL IMPACT:

If the current agreement fee calculation of a 3% increase per year was applied the fee would be approximately \$88,973 in the 2016/17 FY, therefore the proposed frozen contract fee of \$79,052 per year reflects a significant yearly savings for the Town.



**SAN BERNARDINO COUNTY
FIRE PROTECTION
DISTRICT**

F A S

STANDARD CONTRACT

FOR OFFICIAL USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	FAS Vendor Code	Dept. SC	Dept. A	Contract Number		
ePro Vendor Number				ePro Contract Number		
San Bernardino County Fire Protection District				Contractor's License No.		
Contract Representative Ionie Wallace				Telephone (909) 382-5401		Total Contract Amount \$79,052 per year
<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other. Contract Type If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date 7/1/12	Contract End Date 6/30/17	Original Amount \$	Amendment Amount \$	
Fund FHH	Dept. 107	Organization 160	Appr.	Obj/Rev Source 8842	GRC/PROJ/JOB No.	Amount \$79,052
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$
Project Name Household Hazardous Waste Agreement with Collection Facility				Estimated Payment Total by Fiscal Year		
				FY	Amount	I/D
				12/13	\$79,052	15/16
				13/14	\$79,052	16/17
				14/15	\$79,052	

THIS CONTRACT is entered into in the State of California by and between the **SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT** hereinafter called the **DISTRICT**, and

Name
Town of Apple Valley hereinafter called Town
Address
14955 Dale Evans Parkway
Apple Valley, CA 92307
Telephone (760) 240-7000 Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

HOUSEHOLD HAZARDOUS WASTE COLLECTION AGREEMENT

This Agreement is made and entered into between the San Bernardino County Fire Protection District, hereinafter referred to as "District" and the Town of Apple Valley hereinafter referred to as the "Town."

RECITALS:

WHEREAS, the California Public Resources Code (Section 47000 *et seq.*) requires cities and counties to prepare a Household Hazardous Waste Element which identifies a program for the safe collection, recycling,

Auditor/Controller-Recorder Use Only

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Input Date	Keyed By

treatment and disposal of hazardous wastes which are generated by households in the Town or county and which should be separated from the solid waste stream; and,

WHEREAS, the County of San Bernardino and each of the cities in the County have developed Household Hazardous Waste Elements (HHWE) which identify a county-wide cooperative program for the management of Household Hazardous Waste; and,

WHEREAS, the existing Household Hazardous Waste program operated by the District is consistent with the adopted HHWE; and,

WHEREAS, the District's Division of Hazardous Materials, is a division of District responsible for the safe management of hazardous waste; and,

WHEREAS, the Town desires for the protection, health and welfare of the public and its personnel, the removal of hazardous waste from homes so that such materials will pose no danger in the event of fire, the prevention of potential environmental degradation and the conservation of resources through recycling.

NOW, THEREFORE, in consideration of mutual covenants and conditions the parties hereto agree as follows:

**WITNESSETH:
RESPONSIBILITIES AND DUTIES OF THE TOWN**

1. The Town agrees to operate a Household Hazardous Waste Collection Facility (hereinafter referred to as "Facility") for the District at the following location: Town of Apple Valley, 13450 Nomwaket Road, Apple Valley, CA, in accordance with the most recent edition of "The Satellite Facilities Operations Manual", as referred to and amended from time to time in accordance with Section 8 hereof (hereinafter referred to as "Operations Manual"). Employees of the Town who have current training by the District will accept only "Household Hazardous Waste", as defined in Title 22, section 66260.10 of the California Code of Regulations and in California Health and Safety Code section 25218.1(e). The Facility will be open to County residents for collection of Household Hazardous Waste at least ten (10) hours per month, except during inclement weather. The designated employees of the Town will categorize, pack and label the wastes in accordance with the Operations Manual. The wastes will be stored in their original packaging (except used motor oil and used antifreeze) and placed in the District -provided containers inside the waste storage area (located within the fenced area of the Facility).
2. The Town shall be responsible for maintenance of the Facility, the safety of persons and materials on the property of the Facility, and keeping the Facility secure. It shall not be necessary for the Town to require a person to be present at all times on the site of the Facility where the waste will be stored.
3. The Town shall notify and obtain approval from the District prior to making any changes in the maintenance and/or operations of the Facility. The Town shall notify the District of any changes in the management of the Facility.
4. The Town shall publicize to its residents the need to properly recycle, reduce, store, transport and dispose of Household Hazardous Waste and inform its residents of the availability of the Facility for the safe management of Household Hazardous Waste.
5. Agreement Compliance. Town agrees to comply with all applicable Federal, State and County laws, regulations and policies in carrying out its responsibilities under this Agreement.

RESPONSIBILITIES AND DUTIES OF THE DISTRICT

6. The District shall act as the generator and transporter of the Household Hazardous Wastes, and shall assume responsibility for maintaining the necessary site and transportation permits. Further, the District will train Town personnel and provide the Operations Manual, which designates waste to be accepted, defines a categorization scheme for wastes anticipated, and specifies emergency procedures to be followed. The District shall continue to provide an initial 32-hour training course for new personnel of the Town and a subsequent annual 8-hour "refresher" training course for Town employees. If there are changes to the Operations Manual, written notification and/or special training sessions shall be provided to the Town at least thirty (30) days prior to their effective date. The Operations Manual shall be consistent with all state and federal regulations applicable to Household Hazardous Waste facilities and amended as necessary.
7. The District will provide approved waste storage containers, meeting the specifications of the Department of Transportation for the disposal of hazardous waste and sufficient absorbent materials for "over packing" the waste containers. At the termination or expiration of this Agreement, all items provided by the District shall belong to the District, unless otherwise agreed upon in writing. District employees shall be available to assist the Town on a 24-hour basis should an emergency arise at the Facility.
8. The District shall either remove the wastes or independently contract with a licensed hazardous waste hauler to remove the accumulated wastes, monthly, and to recycle or dispose of wastes at an approved facility, at no additional cost to the Town.
9. The District shall provide an annual report to the Town that shall include the amounts and types of waste collected, participation by jurisdiction, and final disposition of the waste.
10. District shall compile and provide to the California Department of Resources Recycling and Recovery (CalRecycle), the Department of Toxic Substances Control, and the Certified Unified Program Agency, the Town's Annual Form 303 Report. District shall also compile and submit the annual NPDES reports to the County Storm Water Programs.

CONSIDERATION

11. In consideration for the services provided, Town shall pay the District \$19,763 each quarter, fiscal year 2012/2013 through fiscal year 2016/2017, (payment due on: July 15, October 15, January 15, and April 15). This payment includes a discount to the Town of \$12,000 annually, (\$3,000) quarterly) to assist with staffing cost for the HHW facility and to assist with paint management activities.

TERM AND TERMINATION

12. This Agreement shall be effective July 1, 2012 and shall remain in effect through June 30, 2017, but may be renewed for specified periods, unless, otherwise terminated or amended.
13. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon 90 days prior written notice to the other party.

INSURANCE AND INDEMNIFICATION

14. Town and District are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

15. District agrees to indemnify, defend (with counsel reasonably approved by Town) and hold harmless Town, its officers, employees, agents and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including, the acts, errors or omissions of any person and for any costs or expenses incurred by Town on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The District's indemnification obligation applies to Town's "active" as well as "passive" negligence but does not apply to Town's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

Town agrees to indemnify, defend (with counsel reasonably approved by District) and hold harmless District, its officers, employees, agents and volunteers, from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by District on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Town's indemnification obligation applies to District's "active" as well as "passive" negligence but does not apply to District's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

In the event District and/or Town are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, District and/or Town, as applicable, shall indemnify the other to the extent of its comparative fault.

Notwithstanding indemnification for any claim, action, loss, or damage involving a third party, District and Town hereby waive any and all rights of subrogation recovery against each other.

Furthermore, if District or Town attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, District and Town agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

GENERAL TERMS AND CONDITIONS

16. Representation of the District. In the performance of the Agreement, Town, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the District.
17. Change of Address. Town shall notify the District in writing of any change in mailing address within ten (10) business days of the change.
18. Agreement Assignability. Without the prior written consent of the District, the agreement is not assignable by Town, either in whole or in part.
19. Agreement Amendments. The Parties agree that any alterations, variations, modifications, waivers, or provisions of the Agreement shall be valid only when reduced to writing, duly signed, and attached to the original Agreement and approved by the required persons of both Town and District.
20. Correction of Performance Deficiencies. Failure by either of the Parties to comply with any of the provisions, covenants, requirements or conditions of this agreement shall be a material breach of this agreement.

In the event of a non-cured breach, the non-breaching party may, at its sole discretion and in addition to immediate termination and any other remedies available at law, in equity, or otherwise specified in this Contract:

- A. Afford the breaching party a time period within which to cure the breach, which period shall be established at sole discretion of the non-breaching party; and/or,
 - B. Terminate this Contract.
21. Attorney Fees and Costs. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under INDEMNIFICATION paragraphs.
22. Venue and Governing Law. The venue of any action or claim brought by any party to this Agreement will be the Central District Court of San Bernardino County. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District Court of San Bernardino County. This contract shall be governed by the laws of the State of California.
23. Notification. In the event of a problem or potential problem that will impact the level of performance under this Agreement, the Town shall notify the District within one (1) working day, in writing and by telephone.
24. Former County and District Officials. Town agrees to provide or has already provided information on former San Bernardino County and District administrative officials (as defined below) who are employed by or represent Town. The information provided includes a list of former County and District administrative officials who terminated COUNTY or District employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Town. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County or District department or group head, assistant department or group head, or an employee in the Exempt Group, Management Unit, or Safety Management Unit.
25. Inaccuracies or Misrepresentations. If in the course of or the administration of this Agreement District determines that Town has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this Agreement may be immediately terminated. If the Agreement is terminated according to this provision, the District is entitled to pursue any available legal remedies.
26. Waiver. No delay on the part of either party in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof of any other power or right. No waiver by any party of any right hereunder or of any default shall be binding upon such party unless such waiver is in writing and signed by a duly authorized official of such party; and no waiver of any default or failure by such party to exercise any right hereunder shall operate as a waiver of any other or further exercise of such right or of any further default.
27. Severability. If any provisions of this agreement, or portions thereof, or the application thereof to any circumstances shall be held invalid or unenforceable, the remainder of this agreement and the application thereof to other circumstances shall nevertheless be valid.

28. Notices and Reports. Any notices shall be addressed to the respective parties as set forth below:

DISTRICT: **Ionie Wallace**, Interim Deputy Fire Marshal
Household Hazardous Waste Division
2824 East "W" Street
San Bernardino, CA 92415-0799

Town: **Joseph Moon**, Special Projects Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

29. Entire Agreement.

- A. This agreement is intended by the parties hereto as a final expression of their agreement and understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms hereof and supersedes any and all prior and contemporaneous agreements and understandings.
- B. The signatures of the Parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.

IN WITNESS WHEREOF, the Board of Directors has caused this Agreement to be subscribed to by the Clerk thereof, and Town has caused this Agreement to be subscribed on its behalf by its duly authorized officers, the day, month and year written.

San Bernardino County Fire Protection District

▶ _____
Josie Gonzales, Chair, Board of Directors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD
Laura H. Welch, Secretary

By _____
Deputy

Town of Apple Valley

(Print or type name of corporation, company, contractor, etc.)

By ▶ _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to Board for Signature
▶ _____ Counsel	▶ _____	▶ _____
Date _____	Date _____	Date _____