

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Dave Klotzle, City Engineer/Public Works Director
Prepared by: Teri Davis, Senior Management Analyst 

DATE: July 14, 2011 (CC Meeting of 7/20/11)

SUBJECT: Consider Agreement with the City of Simi Valley to Provide Household Hazardous Waste Collection Services to City of Moorpark Residents

BACKGROUND & DISCUSSION

The City of Moorpark (Moorpark), since 1995, has contracted with the City of Simi Valley (Simi Valley) to provide Household Hazardous Waste (HHW) collection services to residents of Moorpark at Simi Valley's HHW collection events. The most recent agreement, the 2008 Agreement, between the cities expired on June 30, 2011 and staff is requesting approval of a new agreement. Attached is the 2008 Agreement, with proposed minor language modifications for the new agreement in the opening paragraph; "Section 2. Term"; and Moorpark's signature lines (legislative format). Typographical errors and format inconsistencies will also be addressed in the new agreement. The per vehicle cost will remain the same at this time and residents will continue to receive the benefit of the collection of additional waste streams.

FISCAL IMPACT

There will be no impact on the General Fund. HHW collections resides within the Solid Waste budgets and is funded with AB 939 dollars.

STAFF RECOMMENDATION

Approve the Agreement with Simi Valley to provide HHW collection services to Moorpark residents subject to final language approval by the City Manager and City Attorney.

Attachment A: Agreement

AGREEMENT BETWEEN THE CITY OF MOORPARK
AND THE CITY OF SIMI VALLEY FOR
HOUSEHOLD HAZARDOUS WASTE COLLECTION SERVICES

This Agreement is made and entered into on this ____ day of _____ 2008~~11~~, by and between the CITY OF MOORPARK, a municipal corporation, hereinafter referred to as MOORPARK, and the CITY OF SIMI VALLEY, hereinafter referred to as SIMI VALLEY.

RECITALS:

WHEREAS, SIMI VALLEY operates a state permitted Household Hazardous Waste Collection Program in accordance with the Federal Resource Conservation and Recovery Act, State Hazardous Waste Control Law, and Title 22 of the California Code of Regulations.

WHEREAS, MOORPARK retains SIMI VALLEY to provide Household Hazardous Waste Collection Program Services, and SIMI VALLEY hereby accepts such engagement.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are a part of this Agreement.

A. **Definitions**. The Following definitions shall apply to this Agreement:

“Event” means all activities of the City of Simi Valley Household Hazardous Waste Collection Program for which the City of Simi Valley’s contractor provides services at the designated Household Hazardous Waste event site.

“Household Hazardous Waste” (HHW) means solid wastes discarded from residences that are either hazardous waste defined by the Health and Safety Code, Section 25117 or wastes that are listed in the California Code of Regulations, Title 22, Division 4.5, Chapter 11, or that exhibit characteristics of ignitability, corrosivity, reactivity, or toxicity described therein. Household hazardous wastes may include, but are not limited to, common household products such as household cleaning products, spot remover, floor polish, furniture polish, aerosol cans, fluorescent light tubes, solvents, oven cleaners, pesticides, pool chemicals, oil based paints, latex paints, used motor oil, antifreeze, and car batteries, as well as mercury containing devices, prescriptions, over the counter medications, and home generated sharps waste as defined in the medical waste management act, California Health and Safety Code, Section 117671. Household hazardous waste does NOT include radioactive materials, explosives/ammunition, electronic waste, tires, propane tanks, or wastes produced in the course of operating a business, including a business operated out of a residence.

“Participants” means all persons who have been confirmed as authorized by virtue of jurisdiction or origin (both with and without appointments) to bring HHW to the event site.

“Program” means the City of Simi Valley Household Hazardous Waste Collection Program, which shall include all events and activities provided herein to accept, handle, and dispose of HHW generated by participants. The program will include without limitations all services to accept, reuse, recycle, store, and dispose of HHW.

“Moorpark resident” means any person with a residential address within the incorporated limits of the City of Moorpark who has either been pre-approved for attendance by City of Moorpark personnel, or, if an unscheduled participant, has an address that is on a list of incorporated Moorpark streets provided by the City of Moorpark.

2. **Term.** The term of this AGREEMENT shall be from the date this AGREEMENT is made and entered, as first written above, until the 30th day of June 2014~~2012~~, following which the Agreement shall be automatically extended for successive periods of one (1) year.— Either party may terminate this AGREEMENT at any time prior to the expiration date by giving thirty (30) days advance written notice thereof to the other party.

3. **Obligations of SIMI VALLEY.**

A. SIMI VALLEY administers a Contract with Viola Environmental Services Technical Solutions, L.L.C. (CONTRACTOR), for the operation of a Household Hazardous Waste Collection Program.

B. SIMI VALLEY shall oversee contract services by CONTRACTOR, which shall consist of operating eleven Household Hazardous Waste Collection Events per year.

C. SIMI VALLEY shall be deemed to be the legal generator, according to the Federal Resource Conservation and Recovery Act, State Hazardous Waste Control Law, and Title 22 of the California Code of Regulations, of all waste collected at designated site. As the legal generator, SIMI VALLEY obtains all State permits and variances.

D. SIMI VALLEY shall administer an appointment-based system for the Household Hazardous Waste Collection Program, including scheduling appointments and mailing appointment cards to MOORPARK residents.

E. SIMI VALLEY and MOORPARK shall mutually agree upon the approximate number and distribution of appointments made available to MOORPARK.

F. SIMI VALLEY shall monitor the contract services provided at each Household Hazardous Waste Collection Event.

G. SIMI VALLEY reserves the right to reject or accept MOORPARK residents who do not have appointments for the events. SIMI VALLEY shall require residents accepted without appointments, to demonstrate jurisdiction of their residence.

Residents without an appointment must show a Drivers License. The Driver's License must have an address that is on a list of incorporated MOORPARK streets provided by MOORPARK. SIMI VALLEY staff will confirm Driver's License address is on MOORPARK'S list of incorporated MOORPARK streets at the time of the event.

H. SIMI VALLEY shall invoice MOORPARK based on the use of the services by MOORPARK residents at the rate of \$93.15 per MOORPARK resident's vehicle that delivers household hazardous waste to a Household Hazardous Waste Collection Event.

I. SIMI VALLEY'S Household Hazardous Waste Contractor will add (2) additional personnel on days when the projected temperature is expected to be above 90 degrees F for an additional cost of \$500.00. This cost will be equally shared by both cities.

J. SIMI VALLEY'S Household Hazardous Waste Contractor will make every attempt to reject unacceptable wastes such as radioactive materials and explosives. The Contractor at additional disposal costs per the contract with SIMI VALLEY, will manage any such wastes inadvertently accepted at Household Hazardous Waste Events and this cost will be shared equally by both cities.

K. SIMI VALLEY will provide the record of HHW appointments for MOORPARK residents to MOORPARK, fifteen (15) days prior to the scheduled HHW event. MOORPARK will respond to SIMI VALLEY within 2 business days of any discrepancy in the appointment list relative to MOORPARK including whether customers listed as residents of MOORPARK are actually City of Moorpark residents. MOORPARK will directly notify any MOORPARK customer not allowed to participate. Unless MOORPARK notifies SIMI VALLEY to the contrary, MOORPARK agrees that SIMI VALLEY'S designation of a participant as a resident of MOORPARK is an agreement that MOORPARK will pay the per vehicle rate as agreed to herein. SIMI VALLEY will honor MOORPARK'S limitation on their number of participants with appointments or total non-participation in specified events.

L. SIMI VALLEY shall provide MOORPARK with a participation summary within 15 days following each HHW collection event and quarterly invoicing for participation per the cost schedule.

M. SIMI VALLEY will notify MOORPARK, in writing at least 30 days prior to the effective date of change, of changes in the CITY HHW contractor and/or contract provisions impacting MOORPARK, including but not limited to, changes in cost and materials accepted.

N. SIMI VALLEY shall permit MOORPARK residents' equal access to all SIMI VALLEY HHW collection programs and events.

O. SIMI VALLEY may combine HHW from MOORPARK participants with HHW accepted from participants from jurisdictions other than MOORPARK.

4. **Obligations of MOORPARK.**

A. MOORPARK, upon notification, may periodically observe contract services and provide a summary of its observations to SIMI VALLEY. Should MOORPARK exercise said option; MOORPARK shall abide by the HHW contractor's Collection Event

General Safe Work Practices noted in the on-site Health and Safety Plan and HHW Collection Event Operational Procedures.

B. MOORPARK shall provide its own publicity for the program. Publicity shall identify acceptable and unacceptable wastes and shall advise participants on proper packaging guidelines to safely transport HHW.

C. MOORPARK has the right to limit the number of its participants and shall be responsible for notifying SIMI VALLEY in writing, thirty (30) days before the next event for which MOORPARK desires to impose said limit. MOORPARK may request SIMI VALLEY withhold services from MOORPARK residents without an appointment. Such notice will be provided not less than 10 days before the affected HHW collection event. MOORPARK shall be responsible for notifying MOORPARK residents of such determination.

D. MOORPARK shall be obligated to pay SIMI VALLEY for services provided to MOORPARK at the rate agreed to herein, multiplied by the actual number of Moorpark residents' vehicles that deliver household hazardous waste to a Household Hazardous Waste Collection Event. Payment will be made within 30 days of the invoice date.

E. SIMI VALLEY will provide the record of HHW appointments for MOORPARK residents to MOORPARK, fifteen (15) days prior to the scheduled HHW event. MOORPARK will respond to SIMI VALLEY within 2 business days of any discrepancy in the appointment list relative to MOORPARK, including whether customers listed as residents of MOORPARK are actually City of Moorpark residents. MOORPARK will directly notify any MOORPARK customer not allowed to participate. Unless MOORPARK notifies SIMI VALLEY to the contrary, MOORPARK agrees that SIMI VALLEY's designation of a participant as a resident of MOORPARK is an agreement that MOORPARK will pay the per vehicle rate as agreed to herein. SIMI VALLEY will honor MOORPARK'S limitation on their number of participants with appointments or total non-participation in specified events.

5. **Audit.** MOORPARK shall have the option of inspecting and/or auditing all records and other written materials used by SIMI VALLEY in preparing its statements to MOORPARK as a condition precedent to any payment to SIMI VALLEY.

6. **Hold Harmless and Indemnification.**

A. MOORPARK shall defend and provide legal defense with attorney(s) acceptable to SIMI VALLEY, indemnify, and hold harmless SIMI VALLEY, its agents, officials, officers, representatives and employees, from and against all claims, lawsuits, liabilities or damages of whatever nature arising out of or in connection with, or relating in any manner to any act or omission of SIMI VALLEY, its agents, employees, and subcontractors, and employees thereof, pursuant to the performance or non-performance of this AGREEMENT. MOORPARK shall thoroughly investigate any and all claims and indemnify SIMI VALLEY and do whatever is necessary to protect SIMI VALLEY, its agents, officials, officers, representatives and employees as to any such claims, lawsuits, liabilities, expenses, or damages arising out of this AGREEMENT.

B. SIMI VALLEY shall defend and provide legal defense with attorney(s) acceptable to MOORPARK, indemnify, and hold harmless MOORPARK, its agents, officials, officers, representatives and employees, from and against all claims, lawsuits, liabilities or damages of whatever nature arising out of or in connection with, or relating in any manner to any act or omission of MOORPARK, its agents, employees, and subcontractors, and employees thereof, pursuant to the performance or non-performance of this AGREEMENT. SIMI VALLEY shall thoroughly investigate any and all claims and indemnify MOORPARK and do whatever is necessary to protect MOORPARK, its agents, officials, officers, representatives and employees as to any such claims, lawsuits, liabilities, expenses, or damages arising out of this AGREEMENT.

7. **Amendments.** Any amendment, modification, or variation from the terms of this AGREEMENT shall be in writing and shall be effective only upon mutual written approval by MOORPARK'S City Manager and SIMI VALLEY'S Director of Public Works.

8. **Complete AGREEMENT.** This AGREEMENT shall constitute the complete AGREEMENT between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

9. **Authority to Execute Agreement.** Both MOORPARK and SIMI VALLEY do covenant that each individual executing this AGREEMENT on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

10. **Jurisdiction and Venue.** Jurisdiction is in the State of California and venue lies in Ventura County.

11. **Liability.** SIMI VALLEY'S Household Hazardous Waste CONTRACTOR is required to submit proof of insurance coverage as required by the bid specification. If an incident should occur, and the resources (including insurance) of the CONTRACTOR and/or the responsible disposal facility operator are insufficient or unavailable to pay the necessary cost of remediation, or if liability to any party in this AGREEMENT arises in any way out of the HHW Event or disposal (long-term or storage at a waste management facility) of any HHW waste collected at any event, liability shall be apportioned in the following manner:

Percent of liability apportioned to each party shall be the number of participants from the party's jurisdiction in the previous twelve month period, divided by the total number of participants the previous twelve month period who participated in SIMI VALLEY'S Household Hazardous Waste event.

12. **Agreement.** This AGREEMENT shall be constituted as an agreement between SIMI VALLEY and MOORPARK hereto, but is not intended and shall not be construed by any third person as establishing a standard of care, and shall not create or impose a mandatory duty under Government Code Section 815.6, nor shall this AGREEMENT be construed to constitute a statute, ordinance, or regulation within the meaning of Evidence Code Section 669.

13. **Household Hazardous Waste Element.** SIMI VALLEY and MOORPARK shall be responsible for any liability related to the implementation of its respective Household Hazardous Waste Element and shall not seek reimbursement from one another for such liability.

14. **Notices.** All written notices required by, or related to this AGREEMENT shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this AGREEMENT shall refuse to accept such mail; the parties to this AGREEMENT shall promptly inform the other party of any change of address. All notices required by this AGREEMENT are effective on the day of receipt, unless otherwise indicated herein. The mailing address of each party to this AGREEMENT is as follows:

SIMI VALLEY Department of Public Works
 City of Simi Valley
 2929 Tapo Canyon Road
 Simi Valley, CA 93063
 Attn: Joe Deakin, Assistant Director of Public Works
 (805) 583-6401

MOORPARK City of Moorpark
 799 Moorpark Avenue
 Moorpark, CA 93021-1155
 Attn: Steven Kueny, City Manager
 (805) 517-6212

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

City of Simi Valley, A Municipal Corporation

Attest:

Anne Morrow
Deputy Director/City Clerk

By:

Paul Miller, Mayor of the City of
Simi Valley, California

Approved as to Form:

David H. Hirsch, City Attorney

Approved as to Content:

Mike Sedell, City Manager

Ronald K. Fuchiwaki, Director
Department of Public Works

City of Moorpark, A Municipal Corporation

Attest:

~~Deborah S. Traffenstedt~~ Maureen Benson
City Clerk

By:

~~Patrick Hunter~~ Steven Kueny
Mayor City Manager