

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jennifer Mellon, Administrative Services Manager



DATE: June 10, 2015 (CC Meeting of 6/17/15)

SUBJECT: Consider Agreement with the City of Simi Valley for Household Hazardous Waste Collection Services

BACKGROUND AND DISCUSSION

On July 28, 2008, the City entered into an Agreement with the City of Simi Valley for Household Hazardous Waste (HHW) collection services which expired on June 30, 2011. The City has been continuing to send Moorpark residents to the City of Simi Valley HHW events without an Agreement since July 1, 2011.

Staff and the City of Simi Valley wish to enter into the attached ten year Agreement to continue to offer Moorpark residents the ability to attend the six HHW events that the City of Simi Valley holds each year. On average, over the past few years, the HHW events that are held every other month in Simi Valley have between 15 and 20 Moorpark residents who make appointments and attend. Per the Agreement, the City of Simi Valley invoices Moorpark in the amount of \$93.15 per Moorpark resident vehicle that disposes of HHW. The amount charged per Moorpark participant as well as other provisions of the Agreement remain the same as they were in previous Agreements except the frequency of events has changed from 12 per year to 6 per year on the third Saturday of odd numbered months.

As a second option to Moorpark residents, the City also contracts with the City of Camarillo to provide HHW collection services. The City of Camarillo Agreement provides HHW collection for Moorpark residents on a monthly basis, by appointment, on the second Friday and Saturday of each month.

FISCAL IMPACT

The fiscal impact for this agreement will vary from year to year throughout the term of the Agreement depending on number of Moorpark residents who participate in the Simi Valley HHW collection events. The City of Moorpark budgets \$10,000 per year for Simi Valley HHW collection event participation and reserves the right within the Agreement to limit the number of participants if staff believes that the \$10,000 budget is expended. This equates to approximately 107 annual appointments or an average of 17 per event.

Honorable City Council
June 17, 2015 Regular Meeting
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STAFF RECOMMENDATION

Authorize the Mayor to sign the Agreement with the City of Simi Valley subject to final language approval by the City Manager.

Attachment: 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 _____, 2015, by and between the CITY OF MOORPARK, a municipal corporation, hereinafter referred to as MOORPARK, and the CITY OF SIMI VALLEY, a municipal corporation, 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:

“Contractor” means the company utilized by SIMI VALLEY to provide Household Hazardous Waste collection services for SIMI VALLEY.

“Event” means all activities of the SIMI VALLEY Household Hazardous Waste Collection Program for which the SIMI VALLEY provides services at the designated Household Hazardous Waste Event site.

“Household Hazardous Waste” (HHW) means a hazardous waste discarded from residences that is 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. HHW 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. HHW 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.

“Household Hazardous Waste Element” (HHWE) means the most current and approved document cities and counties are required to prepare, adopt and submit to California Department of Resources Recycling and Recovery, in which the HHWE document identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households within their jurisdiction.

“Participants” mean 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 SIMI VALLEY HHW 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 MOORPARK personnel, or, if an unscheduled Participant, has an address that is on a list of streets provided by 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 2025. 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 shall administer the operation of a HHW Collection Program.

B. SIMI VALLEY shall oversee the services of the Contractor, which shall consist of operating up to six (6) HHW 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 shall obtain all State permits and variances.

D. SIMI VALLEY shall administer an appointment-based system for the Program, including scheduling appointments and mailing appointment cards to scheduled Participants.

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

F. SIMI VALLEY reserves the right to reject or accept Moorpark Residents who do not have appointments for the Events. SIMI VALLEY shall require Moorpark Residents accepted without appointments, to demonstrate jurisdiction of their residence. Moorpark Residents without an appointment must show a Driver's License. The Driver's License must have an address that is on a list of incorporated City of Moorpark streets provided by MOORPARK and SIMI VALLEY staff will confirm Driver's License address is on the provided list at the time of the Event.

G. SIMI VALLEY shall invoice MOORPARK based on the use of the services by Moorpark Residents at the currently agreed upon rate of ninety-three dollars and fifteen cents (\$93.15) per Moorpark Resident's vehicle that delivers HHW to an Event.

H. The agreed upon rate for Moorpark Residents delivering HHW to the Event may be renegotiated by the Director of Public Works for SIMI VALLEY and the City Manager for MOORPARK. SIMI VALLEY shall notify MOORPARK of any rate change. SIMI VALLEY will provide MOORPARK with at least forty-five (45) days advance notice in writing prior to the effective date of any changes in SIMI VALLEY's rate. Upon receipt of SIMI VALLEY's notification, MOORPARK's City Manager, or his designee, shall send written acceptance of the rate change to SIMI VALLEY's Director of Public Works, within ten (10) days prior to the effective date.

I. SIMI VALLEY shall provide the record of Event appointments for Moorpark Residents to MOORPARK, ten (10) days prior to the scheduled Event. MOORPARK will respond to SIMI VALLEY within two (2) business days of any discrepancy in the appointment list relative to MOORPARK including whether customers listed as residents of MOORPARK are actually 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.

J. SIMI VALLEY shall provide MOORPARK with a participation summary within fifteen (15) days following each Event and quarterly invoicing for participation per the agreed upon rate.

K. SIMI VALLEY shall notify MOORPARK, in writing at least thirty (30) days prior to the effective date of any Program change, of changes in the Program or process impacting MOORPARK, including but not limited to, changes in Event location, cost, and materials accepted.

L. SIMI VALLEY shall permit Moorpark Residents equal access to SIMI VALLEY's Program.

M. SIMI VALLEY may combine HHW from Moorpark Residents 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 the most current 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, sixty (60) days prior to the next Event for which MOORPARK desires to impose said limit. MOORPARK may also request SIMI VALLEY withhold services from Moorpark Residents without an appointment. Such notice shall be provided not less than ten (10) days before the affected 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 HHW to an Event. Payment will be made within thirty (30) days of the invoice date.

E. SIMI VALLEY shall provide the record of Program appointments for Moorpark Residents to MOORPARK, ten (10) days prior to the scheduled Event. MOORPARK shall respond to SIMI VALLEY within two (2) business days identifying any discrepancy in the appointment list relative to MOORPARK, including whether customers listed as residents of the incorporated City are actually Moorpark Residents. MOORPARK shall 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 Moorpark Resident is an agreement that MOORPARK shall pay the per vehicle rate as agreed to herein. SIMI VALLEY shall 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 verbal agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such verbal 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.** The Contractor is to provide proof of insurance coverage as required by SIMI VALLEY. 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 Event or disposal (long-term or storage at a waste management facility) of any HHW 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 MOORPARK in the previous twelve (12) month period, divided by the total number of Participants the previous twelve (12) month period who participated in SIMI VALLEY's Events.

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 HHWE 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:

Ky Spangler
Deputy Director/City Clerk

By:

Robert O. Huber, Mayor of the City of
Simi Valley, California

Approved as to Form:

Lonnie J. Eldridge, City Attorney

Approved as to Content:

Eric J. Levitt, City Manager

Ronald K. Fuchiwaki, Director
Department of Public Works

City of Moorpark, a Municipal Corporation

Attest:

Maureen Benson
City Clerk

By:

Janice S. Parvin, Mayor of the City of
Moorpark, California

Approved as to Content:

Steven Kueny, City Manager