

SUBJECT: APPROVAL OF FOURTH AMENDMENT TO AGREEMENT TO THE JOINT POWERS AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY

SOURCE: Public Works Department – Field Services Division

COMMENT: The City entered into an agreement with Tulare County Health and Human Services Agency (TCHHSA) on September 29, 2009, to establish a Household Hazardous Waste (HHW) Collection Facility in Porterville. This agreement is for a Recycle-Only HHW Collection Facility that only accepts latex paint, used oil, used oil filters, antifreeze, spent lead-acid batteries, nickel-cadmium, alkaline or carbon-zinc batteries, intact spent fluorescent lamps and intact spent high intensity discharge (HID) lamps. The current agreement is set to expire on June 30, 2013, and TCHHSA would like to renew the agreement for another year.

The City of Porterville will continue to be responsible for providing the site, facility, and staffing for collection and documentation of the Collection Facility. TCHHSA will continue to be responsible for obtaining any necessary permits and provide equipment and collection containers for the operation, transportation and disposal of materials, and signage and flyers. The City's yearly cost is approximately \$2000 and is funded from the Solid Waste Fund.

Staff recommends that City Council authorize the Mayor to sign the Fourth Amendment to the Agreement, with Tulare County Health and Human Services Agency, extending the original agreement for one more year.

RECOMMENDATION: That the City Council approve and authorize the Mayor to sign the Fourth Amendment to Agreement with Tulare County Health and Human Services Agency.

- ATTACHMENTS:
1. Fourth Amendment to Agreement between the City of Porterville and Tulare County Health and Human Services Agency
 2. Original Joint Powers Agreement between the City of Porterville and Tulare County Health and Human Services Agency

Dir AKL Appropriated/Funded MB CM J

Item No. 5

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By _____
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/Clerk of the Board
Of Supervisors of the County Of Tulare

By _____
Deputy Clerk

CITY OF PORTERVILLE

Date: _____

By _____
Title _____

Date: _____

By _____
Title _____

Corporations Code section 313 requires that contracts with a corporation shall be signed by the (1) chairman of the Board, the president or any vice-president and (2) the secretary, any assistant, the chief financial officer, or any assistant treasurer; unless the contract is also accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract.

Approved as to Form
County Counsel

By _____
Deputy

Dated _____



JOINT POWERS AGREEMENT

THIS AGREEMENT, is entered into as of 9/29/09, between the COUNTY OF TULARE, referred to as COUNTY, and the City of Porterville, referred to as CONTRACTOR, with reference to the following:

A. COUNTY wishes to jointly establish and operate a recycle-only household hazardous waste collection facility ("Facility") as defined in California Health and Safety Code Section 25218.1(n) within the City of Porterville; and

B. CONTRACTOR and COUNTY each have the power to establish, operate and maintain such a Facility as recognized by California Health and Safety Code Sections 25201(c) and 25218.8; and

C. CONTRACTOR is willing to enter into this Agreement with COUNTY upon the terms and conditions set forth herein and CONTRACTOR and COUNTY are authorized by Government Code Section 6500 et seq. to enter into this Joint Powers Agreement.

ACCORDINGLY, IT IS AGREED:

1. **TERM:** This Agreement shall become effective as of October 1, 2009 and shall expire at 11:59 PM on June 30, 2010 unless otherwise terminated as provided in this Agreement.
2. **SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**
3. **RESPONSIBILITIES:** The CONTRACTOR and COUNTY enter into this Agreement for exchange of services. CONTRACTOR and COUNTY shall generally be responsible for:

City:
 1. Provide and make available an appropriate site ("Site"), including such buildings as are available, for the Facility at its Corporation Yard located at 555 N. Prospect, Porterville, CA;
 2. Provide staff to oversee the Facility and receive, segregate, containerize and label recyclable household hazardous waste materials from the public during operating hours as established by the City.
 3. CITY shall limit materials to be accepted at the Facility to those recyclable household hazardous waste materials listed in paragraph 1 of subsection (b), Section 25218.8, Article 10.8, Chapter 6.5, Division 20, Health and Safety Code (see subsection c of Exhibit A).

- County:
1. Obtain any necessary permits and Hazardous Waste Generator ID Numbers for the Facility;
 2. Evaluate the suitability of existing buildings made available by CITY at the Site;
 3. Provide such equipment, containers, and labels as may be necessary to operate the Facility;
 4. Provide expertise and advice necessary to operate the Facility;
 5. Transport, or arrange for transport, of recyclable household hazardous waste materials collected at the Facility for proper recycling or disposal.

Responsibilities are more particularly described in Exhibit A.

4. **NO SEPARATE ENTITY:** There will be no separate and distinct public entity created pursuant to this Agreement.
5. **LEAD AGENCY:** COUNTY shall be the lead agency and will be primarily responsible for all activities and obligations set forth herein unless otherwise indicated.
6. **RULES AND REGULATIONS:** COUNTY will, with consultation and approval from CITY, develop all necessary and appropriate policies, rules, and regulations, for the use of, and public access to, the Facility.
7. **COMPLIANCE WITH LAW:** The parties agree to jointly operate and maintain the Facility in accordance with applicable Federal, State, and local laws, regulations and directives, including, without limitation, those provided in Division 20, Chapter 6.5, Article 10.8 of the Health and Safety Code (commencing with Section 25218). With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
8. **PAYMENT FOR SERVICES:** The annual funding provided by County under this Agreement is limited to a maximum of \$75,000.
9. **INDEPENDENT CONTRACTOR STATUS:**
 - (a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

10. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

11. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

12. **CONFLICT OF INTEREST:**

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests

and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

13. **INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in **EXHIBIT B** attached.

14. **INDEMNIFICATION:** COUNTY and CONTRACTOR shall hold each other harmless, defend and indemnify their respective agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, arising out of the activities of COUNTY or CONTRACTOR or their agents, officers and employees under this Agreement. This indemnification shall be provided by each party to the other party regarding its own activities undertaken pursuant to this Agreement, or as a result of the relationship thereby created, including any claims that may be made against either party by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, or any claims made against either party alleging civil rights violations by such party under Government Code section 12920 et seq. (California Fair Employment and Housing Act). This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

15. **AUTHORITY TO ACT:** Authority to act under this Agreement on behalf of each party is hereby vested with the City Manager of CITY and the Environmental Health Director of COUNTY, or their designees.

16. **TERMINATION:**

(a) Without Cause: County will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement, or
- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall

not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR's services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

17. **LOSS OF FUNDING:** It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

18. **SOFTWARE WARRANTY:** CONTRACTOR warrants that any software furnished hereunder, or any software used by it to perform the services to be provided under this Agreement, will continue processing accurately for the term of this Agreement and any extension thereof and that the use of said software will not cause incorrect scheduling or reporting or other improper operations or results.

19. **FORM DE-542:** CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

20. **NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

CONTRACT UNIT

TULARE HEALTH & HUMAN SERVICES AGENCY

5957 S. Mooney Boulevard

Visalia, CA 93277

Phone No.: 559-737-4686

Fax No.: 559-737-4059

CONTRACTOR:

CITY OF PORTERVILLE

291 N. Main Street

Porterville, CA 93257-3737

Phone No.: (559) 782-7514

Fax No.: (559) 782-8937

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

21. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

22. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

23. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

24. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

25. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

26. **NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

27. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

28. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

29. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

30. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

31. **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any

characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the Contractor and the County have the responsibility to protect County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to County pursuant to this Agreement with other employees where County is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.

32. NON-DISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS:

(a) By signing this Agreement CONTRACTOR agrees to comply with Title VI and VII of the Civil Rights Act of 1964 as amended; section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977 as amended and the non-discrimination compliance regulations contained in 7 CFR 272.6; Title II of the Americans with Disabilities Act of 1990; The Unruh Act, California Civil Code section 51 et seq., as amended; California Government Code sections 11135-11139.5 as amended; California Government Code section 12940 (c), (h), (i), (j) and (l); California Government Code section 4450; Title 22, California Code of Regulations sections 98000-98413; the Dymally-Altorre Bilingual Services Act (California Government Code sections 7290-7299.8); section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84 and 91, 7 CFR Part 15, and 29 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and will immediately take any measures necessary to effectuate this Agreement.

(b) This assurance is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and the CONTRACTOR hereby gives assurance that administrative methods/procedures, which have the effect of subjecting individuals to discrimination, will be prohibited.

(c) CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized county, state and federal government personnel, during normal working hours, to review such books and accounts as needed to ascertain compliance. If there are any violations of this assurance, the state shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code sections 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance. This assurance is binding on the CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

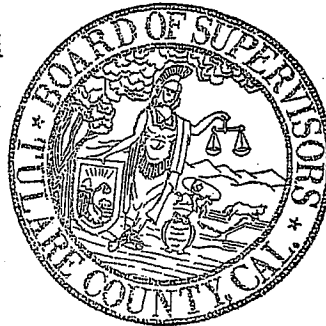
THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: 9/29/09 BY [Signature]
Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By [Signature]
Deputy Clerk



CONTRACTOR
City of Porterville

Date: 9-1-09 BY [Signature]
TITLE Mayor

Date: 9/2/09 BY [Signature]
TITLE City Manager

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form
County Counsel:

By *Greenfield*
Deputy 2009755

Date 9/10/2009