



New York Postconsumer Paint Collection Program
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**New York Postconsumer Paint Collection Program
Transfer Station, Recycling Facility, and Landfill
Drop-Off Site and Waste Paint Management Agreement**

Between

PaintCare New York LLC

and

Town of Halfmoon

**NEW YORK POSTCONSUMER PAINT COLLECTION PROGRAM
TRANSFER STATION, RECYCLING FACILITY, AND LANDFILL DROP-OFF SITE AND
WASTE PAINT MANAGEMENT AGREEMENT**

This Agreement (the “Agreement”) is made by and between Town of Halfmoon located at 322 Route 146 Halfmoon, NY (the “Service Provider”) and PaintCare New York LLC, a Delaware limited liability company having its office at 901 New York Avenue NW, Suite 300W, Washington, D.C. 20001 (“PaintCare”).

RECITALS

Whereas, PaintCare is the program manager of the New York Postconsumer Paint Stewardship Program (the “Program”), pursuant to New York Environmental Conservation Law Sections 27-2001 - 2007;

Whereas, pursuant to the Program, PaintCare submitted a plan to the New York Department of Environmental Conservation to facilitate the management of “PaintCare Products” (defined below) that are collected by “Drop-Off Sites” (defined below) under the Program;

Whereas, PaintCare desires to enter into agreements with waste collection facilities for the purposes of collecting PaintCare Products;

Whereas, the Service Provider has and/or operates a waste collection program, including permanent collection sites and/or temporary collection events, to which local residents may bring certain types of waste, including PaintCare Products, for appropriate treatment, recycling, and/or disposal; and

Whereas, PaintCare, as part of its responsibility to facilitate the management of the Program, wishes to obtain the services of the Service Provider for the collection of PaintCare Products from the Service Provider’s Drop-Off Sites, as provided in this Agreement; and

Whereas, the parties previously entered into the July 25, 2022 New York Postconsumer Paint Collection Program Transfer Station, Recycling Facility, and Landfill Drop-off Site and Waste Paint Management Agreement, which expired on July 25, 2026, and rather than extend the term of the expired agreement, the parties desire to enter into this Agreement with the “Effective Date” (defined below) set forth herein.

Now, therefore, for and in consideration of the terms of this Agreement and the mutual promises and covenants contained herein, the parties hereto agree as follows.

ARTICLE 1 – DEFINITIONS

1.1 [RESERVED]

1.2 [RESERVED]

1.3 “Collect/Collected/Collection” means accepting PaintCare Products from the public at Drop-Off Sites and screening incoming materials in accordance with the Program Guidelines to determine which materials are acceptable PaintCare Products.

1.4 “Collection Bins” are containers provided by or approved for use by PaintCare or its contractors to hold PaintCare Products.

- 1.5 “Drop-Off Sites” mean all permanent collection facilities and Temporary Collection Events owned, leased, subleased, controlled, and/or operated by the Service Provider and are added to this Agreement according to its terms.
- 1.6 “Effective Date” means July 25, 2026, as of which date the parties’ obligations under this Agreement begin as if this Agreement had been executed on such date.
- 1.7 “Force Majeure” means any of the following that prevent performance of this Agreement and are not within the reasonable anticipation and control of the affected party, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time: riots; wars; civil disturbances; insurrections; acts of terrorism; strikes and labor disputes; embargoes; state or federal orders; epidemics or pandemics; and acts of nature (or any threat of such occurrences) whose effects prevent safe passage of vehicles upon state or federal highways for a continuing period of not less than fourteen (14) days; or any other similar events or circumstances.
- 1.8 “Haulers” mean independent contractors hired by PaintCare to transport PaintCare Products from the Drop-Off Sites.
- 1.9 “Including” (whether or not capitalized) means “including but not limited to.”
- 1.10 “Indemnified Parties” is defined in Article 9.1.
- 1.11 “Initial Term” is defined in Article 2.1.
- 1.12 “Law” means all federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to unemployment compensation, worker’s compensation, disability, taxes, worker and public health and safety, the environment, and the Program.
- 1.13 “Loose Packing/Loose Packed” means placing acceptable PaintCare Products into Collection Bins, including sorting oil-based and latex PaintCare Products into separate Collection Bins to the greatest extent practicable, in a manner that is conducive to safe and efficient transport.
- 1.14 “Non-PaintCare Products” mean products not covered by the Program that are collected and/or managed by the Service Provider.
- 1.15 “Paint Drop-Off Log” means the form provided by PaintCare to Drop-Off Sites that is used to verify whether businesses and organizations are eligible to use the Program for oil-based paint and other hazardous PaintCare Products. The Service Provider may adopt its own version of the Paint Drop-Off Log, subject to PaintCare’s prior written approval of that substitute version.
- 1.16 “Program Guidelines” mean the “New York Postconsumer Paint Collection Program Drop-Off Site Guidelines” in Attachment I, as may be updated by PaintCare from time-to-time.
- 1.17 “PaintCare Products” mean the materials that are eligible to be collected through the Program in the State, which may change from time to time. The Program Guidelines include a list of such eligible Program Products that is current as of the date of this Agreement. PaintCare will communicate in writing any changes to the types of materials that are eligible to be collected as Program Products.
- 1.18 “Services” mean all services for which Service Provider is responsible, as described in this Agreement and in the Attachments hereto.
- 1.19 “State” means the State of New York.

- 1.20 “Temporary Collection Events” mean an event hosted and/or operated by the Service Provider to Collect PaintCare Products at locations within the State.
- 1.21 “Written” or “In Writing” (whether or not capitalized) means in a written communication in hardcopy or electronic form, including e-mail.

ARTICLE 2 – TERM OF AGREEMENT

- 2.1 **Term.** This Agreement will commence on the Effective Date and, unless terminated under Article 11 (“Termination of Agreement”), will remain in full force and effect for a period of two (2) years (such two-year period, the “Initial Term”). By mutual agreement, the parties may extend the Initial Term of this Agreement at prices to be mutually agreed upon. All other terms and conditions shall remain unless specifically amended by the parties.
- 2.2 **Intentionally Omitted.**
- 2.3 **Expiration.** If either party provides notice that the Agreement will not be renewed, unless otherwise instructed by PaintCare, the Service Provider, before the end of the Term of the Agreement, shall assemble all Collection Bins supplied by PaintCare whether or not full, and shall make them available for pick up by a Hauler at one of the Drop-Off Sites.

ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 3.1 **Managing Program Products.** In consideration for activities undertaken at the expense of PaintCare, the Service Provider shall perform the Services provided for in Attachment A (“Scope of Work”). The Service Provider shall manage at its own expense all PaintCare Products Collected at the Drop-Off Sites only in accordance with Attachment A (“Scope of Work”) and not process or dispose PaintCare Products by any other method without the prior written approval of PaintCare.
- 3.2 **Covered Permanent Drop-Off Sites.** Either party may amend Attachment C (“Drop-Off Site Information”) to add or delete sites subject to the other party’s prior written approval for each such addition/deletion.
- 3.3 **Covered Temporary Collection Events.** Service Provider’s Temporary Collection Events will automatically be added under this Agreement on an ongoing basis with the following conditions and exclusions:
- a. Service Provider must provide PaintCare with at least ten (10) days’ advance written notice of when each Temporary Collection Event is to take place. If Service Provider fails to provide at least ten (10) days’ advance written notice of a Temporary Collection Event as required hereunder, the Temporary Collection Event will not be added unless expressly approved by PaintCare in writing.
 - b. In instances where PaintCare receives timely advance notice of a Temporary Collection Event as required hereunder, PaintCare may decline the addition of a Temporary Collection Event(s) by providing Service Provider with written notice to that effect no later than ten (10) days after PaintCare received notice of that Temporary Collection Event(s) from Service Provider.
- 3.4 **Operational Responsibility.**
- a. The Service Provider (and not PaintCare) is responsible for:
 - i. making day-to-day and critical decisions regarding the Services, including the management and supervision of all activities comprising the Services; and

- ii. complying with all applicable Law relating to the Services and the operation of the Drop-Off Sites.
- b. The Service Provider is responsible for and will manage at its sole expense any and all Non-PaintCare Products it collects at the Drop-Off Sites. PaintCare in no way accepts responsibility for such Non-PaintCare Products.
- c. The Service Provider shall provide the Services at its own risk and take all reasonable precautions to protect all public and private property during the performance of the Services. If the Service Provider's personnel or equipment cause any damage to PaintCare's or one of its contractor's property, the Service Provider, at its sole expense, shall promptly replace the damaged property or repair it to the condition existing before the damage.
- d. Work under this Agreement shall be performed only by competent personnel under the management, supervision, and direction of, or in the employment of, the Service Provider. All personnel working for or at the direction of Service Provider must be managed, supervised, and directed by the Service Provider.

3.5 Compliance with PaintCare Program Guidelines.

- a. The Service Provider shall make best efforts to comply in all material respects with the Program Guidelines (except to the extent the Program Guidelines conflict with the terms of this Agreement or any applicable Law). The Service Provider must notify PaintCare in writing if the Service Provider is unable to comply with any aspect of the Program Guidelines.
- b. The Service Provider shall not charge Program participants a fee relating to any costs that are covered by the Program, unless approved by PaintCare, such approval not to be unreasonably withheld. Nothing in this Agreement prohibits the Service Provider from charging fees to participants for dropping off Non-PaintCare Products.

3.6 Spill Prevention and Response. The Service Provider is responsible for promptly containing and cleaning up any spills that may occur at the Drop-Off Sites, including (i) maintaining spill kits or other appropriate spill containment and clean-up materials at all Drop-Off Sites, (ii) instituting spill prevention and response procedures at the Drop-Off Sites, and (iii) training Drop-Off Site personnel on all such spill prevention and response procedures.

3.7 Reporting. The reporting and notification requirements identified in Attachment A ("Scope of Work") and elsewhere in this Agreement are an integral part of the Services. The Service Provider shall comply with all reasonable requests from PaintCare for preparation, access, review, and/or adjustment of these deliverables throughout the Term of this Agreement.

3.8 Collection Bins. The Service Provider shall inspect the Collection Bins upon arrival and determine whether they are in proper condition for use. PaintCare is responsible for replacing any defective Collection Bins and repairing normal wear-and-tear to the Collection Bins. The Service Provider shall immediately notify the Hauler if at any point during the Term of the Agreement a Collection Bin(s) is not in proper condition for use and shall not use any such defective Collection Bins until they are repaired or replaced by the Hauler. The Service Provider is responsible for its use (or misuse) of any equipment it uses to perform the Services, including any Collection Bins.

3.9 Accepting Oil-Based PaintCare Products from Businesses. The Service Provider shall not knowingly accept into the Program any oil-based paint or other hazardous materials from any business or organization unless that business or organization first signs the Paint Drop-Off Log to verify the business's or organization's eligibility to use the Program for such materials.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

- 4.1 **Mutual Representations and Warranties.** The parties each represent, covenant, and warrant that:
- a. it is an entity in good standing and qualified to carry on business in the State and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement; and
 - b. this Agreement does not in any way conflict with any of its other agreements.
- 4.2 **Service Provider's Additional Representations and Warranties.** The Service Provider additionally represents, covenants, and warrants that:
- a. it possesses the business, professional, and technical expertise, training, personnel, and equipment required to perform the Services;
 - b. it will perform the Services in a diligent, safe, and workmanlike manner that conforms with generally accepted industry and professional practices, and the care and skill ordinarily exercised, for such Services; and
 - c. it and/or its facilities, employees, or agents, have been issued, as of the date of this Agreement and throughout the Term of the Agreement, all permits, licenses, certificates, or approvals required by applicable Law to perform the Services.

ARTICLE 5 – GENERAL OBLIGATIONS OF PAINTCARE

- 5.1 **Coordinating Transportation and Processing.**
- a. PaintCare shall arrange for a Hauler to be available to pick up Collected PaintCare Products from any permanent Drop-Off Site within ten (10) business days of the Drop-Off Site placing a pick-up request to the Hauler. PaintCare shall, at its expense, arrange for the Hauler to transport such PaintCare Products after pick-up to intermediary locations, processors, or other final destinations that are part of the Program.
 - b. Provided that the Service Provider provides PaintCare with sufficient notice as required under this Agreement, PaintCare (or its Hauler) will coordinate with the Service Provider to arrange for the timely pick-up of PaintCare Products Collected at a Temporary Collection Event at a date and time designated by the Service Provider.
 - c. PaintCare shall require the Haulers and their subcontractors to treat, store, and dispose of all PaintCare Products picked up by Hauler from a Drop-Off Site in accordance with all applicable Law and in conformance with PaintCare's program plan. PaintCare shall require that any disposal or recycling facilities utilized as part of the Program are maintained in accordance with all applicable Law.
 - d. PaintCare will contract with its Haulers to arrange and provide for the ultimate disposition of the PaintCare Products as set forth in PaintCare's program plan.
- 5.2 **[RESERVED]**
- 5.3 **Collection Bins.** For each Drop-Off Site, PaintCare shall provide Collection Bins to the Service Provider or approve the Service Provider's containers as Collection Bins. All Collection Bins supplied by PaintCare or a Hauler will remain the property of PaintCare.
- 5.4 **No Exclusivity.** Nothing herein creates an exclusive arrangement between PaintCare and the Service Provider. The Service Provider may not restrict PaintCare from contracting with other entities under the Program, including other service providers with waste collection facilities in the Service Provider's geographical region.

- 5.5 **Damage to Property.** If PaintCare or a Hauler causes any damage to the Service Provider's or one of its subcontractor's property, PaintCare shall, at no expense to the Service Provider, either (i) promptly replace the damaged property or have it repaired to the condition existing before the damage, or (ii) require the Hauler to replace the damaged property or have it repaired to the condition existing before the damage.

ARTICLE 6 – TITLE AND RISK OF LOSS; DISCLAIMERS

6.1 Service Provider's Title and Risk of Loss.

- a. As between the Service Provider and PaintCare, the Service Provider has title to and risk of loss and liability for any and all PaintCare Products and Non-PaintCare Products that the Service Provider receives at the Drop-Off Sites, including any risk of loss and liability under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* and under state or local Law.
- b. Notwithstanding the foregoing, once a Hauler accepts for transportation any PaintCare Products Collected by the Service Provider under this Agreement, title to and risk of loss for those PaintCare Products will transfer to that Hauler. PaintCare at no time takes title to or assumes liability for any materials that Service Provider accepts at the Drop-Off Sites; however, for the PaintCare Products that Service Provider Collects under the Program, PaintCare shall require in its contracts with its Haulers that the Haulers accept such title and risk of loss immediately upon accepting those PaintCare Products for transportation from a Drop-Off Site.

- 6.2 **Disclaimer of Responsibility for the Services.** PaintCare has no authority or responsibility to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including how they perform the Services and achieve compliance with applicable Law. PaintCare does not have responsibility for making day-to-day and critical decisions regarding the Services, including the management or supervision of any activities comprising the Services. PaintCare is not responsible for any damage to persons or property resulting from the performance of the Services.

- 6.3 **Waiver of Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, OR SPECIAL 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 THIS PARAGRAPH CONSTITUTES A LIMIT OF THE INDEMNIFICATION OBLIGATIONS IN ARTICLE 9 ("INDEMNIFICATION").

ARTICLE 7 – [RESERVED]

ARTICLE 8 – AUDIT AND INSPECTION RIGHTS

- 8.1 **Compliance Monitoring.** PaintCare and its representatives may (a) monitor and verify that the Service Provider has complied with this Agreement and the applicable Law; and (b) consult with the Service Provider about such compliance; provided, however, that PaintCare shall not, and affirmatively disclaims any ability to, control, supervise, or manage (i) the employees of the Service Provider, (ii) the activities undertaken by the Service Provider in the performance of this Agreement, and (iii) the means by which the Service Provider meets all requirements, including applicable Law.
- 8.2 **Site Inspections.** PaintCare may, audit and inspect, with full access, the Service Provider's Drop-Off Sites during the Drop-Off Sites' hours of operation, as well as any other site at which

the Service Provider performs the Services. PaintCare will provide the Service Provider with at least seventy-two (72) hours' notice before any such audit or inspection.

- 8.3 **PaintCare Audit Rights.** The Service Provider will maintain and make available to PaintCare, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. The Service Provider will permit PaintCare to audit, examine, and make excerpts and transcripts, for any books or records, materials, and other data related to all other matters covered by this Agreement. The Service Provider shall maintain such data and records (and ensure that any subcontractors of the Service Provider maintain any such data and records) in an accessible location and condition for a period of not less than three (3) years from the date of the final report under this Agreement, as applicable, or until after final audit has been resolved, whichever is later.
- 8.4 **Record Retention.** In addition to those reports detailed in Attachment A ("Scope of Work"), the Service Provider shall maintain the following records:
- a. for each pick-up of PaintCare Products by a Hauler from a Drop-Off Site, a bill of lading, manifest, or equivalent shipping documentation specifying the following:
 - i. the name, address, and telephone number of both the originating Drop-Off Site and the Hauler;
 - ii. the destination of the PaintCare Products;
 - iii. the quantity of PaintCare Products being transported;
 - iv. the date on which the Hauler accepted the PaintCare Products from the originating location; and,
 - v. the signatures of both the Hauler and a representative of the originating Drop-Off Site;
 - b. records of any inspections required by Law;
 - c. Paint Drop-Off Logs; and
 - d. Employee Training records, as described in and required by the Program Guidelines.

ARTICLE 9 – INDEMNIFICATION

- 9.1 **The Service Provider's Indemnification of PaintCare.** To the extent permitted by Law, and subject to Article 9.3 below, the Service Provider, its successors and assigns, agrees to indemnify, defend, and hold harmless PaintCare, its affiliate and related companies, and their member companies, officers, directors, employees, agents, successors, and assigns (collectively, "Indemnified Parties") from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including attorney fees, litigation expenses, 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 the performance of the Services (whether by the Service Provider or any subcontractor of the Service Provider), the Service Provider's operation of a Drop-Off Site, or the Service Provider's performance of its obligations under the Agreement.
- 9.2 **Indemnification of Service Provider.**
- a. PaintCare shall require in its contracts with its Haulers that, subject to Article 9.3 below, the Haulers agree to indemnify the Service Provider, its agents, elected officials, and employees, from and against all claims, losses, damages, liabilities, expenses, and causes of action of every kind whatsoever, whether based in contract, tort, statute,

common law, or strict liability, which result from or arise out of the Hauler's (or its subcontractors') transportation or processing/disposal of any PaintCare Products that the Hauler picks up from any of the Service Provider's Drop-Off Sites.

- b. Subject to Article 9.3 below, PaintCare will indemnify, defend, and hold harmless the Service Provider, its agents, elected officials, and employees, from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including attorney fees, litigation expenses, and reasonable costs of investigation), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability that result from any of the following:
 - i. PaintCare's failure to include the contractual requirement for the Hauler to indemnify the Service Provider, as described in Article 9.2(a), or PaintCare's failure to maintain such a requirement in its Hauler contracts;
 - ii. PaintCare's failure to pay the Haulers for the services rendered by the Haulers (or any subcontractors thereof) relating to the Drop-Off Sites;
 - iii. any breach by PaintCare of its obligations to remedy any property damage caused to a Drop-Off Site by PaintCare or a Hauler, as described in Article 5.5; or
 - iv. the activities of PaintCare staff while present at the Drop-Off Sites.

9.3 **Indemnification Exceptions.**

- a. The indemnification obligations in this Article 9 do not apply to any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action that result primarily from the negligence, willful misconduct, or breach of this Agreement attributable to the party seeking indemnification.
- b. For the avoidance of doubt, nothing in this Article 9 is intended to make either party liable for the acts or omissions of the Haulers or any subcontractor thereof relating to their transportation, storage, management, treatment, processing, or disposal of PaintCare Products or other materials.

ARTICLE 10 – INSURANCE

- 10.1 **Service Provider Insurance Requirements.** The Service Provider shall comply with the requirements set forth in Attachment D ("Insurance Requirements for PaintCare Drop-Off Sites").
- 10.2 **Hauler Insurance Requirements.** PaintCare shall require that its Haulers carry appropriate insurance, including the following (collectively, the "Hauler 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. Commercial Automobile Liability insurance (owned, non-owned or hired) with limits not less than \$1,000,000 combined single limit; and
 - c. Workers' Compensation Insurance as required by the State or other applicable Law.
- 10.3 **Additional Insurance Requirements for Hazwaste Haulers.** For any Hauler that PaintCare designates to pick up hazardous PaintCare Products from the Drop-Off Sites, the Hauler Insurance will include environmental pollution liability insurance covering liability arising from the handling or release of pollutants by the Hauler, including during transport. Such environmental

pollution liability insurance will have limits not less than \$2,000,000 each occurrence, and \$5,000,000 in the aggregate.

- 10.4 **Hauler Additional Insured Obligations.** PaintCare shall require in its contracts with its Haulers that the Hauler include the Service Provider and its agents, elected officials, and employees as additional insured (which may be by blanket endorsement) under the Hauler Insurance policies (other than Worker's Compensation).

ARTICLE 11 – TERMINATION OF AGREEMENT

- 11.1 **Termination for Cause.** Either party may terminate this Agreement or any Services under this Agreement under the following conditions:
- a. Immediately upon prior written notice if the other party has breached any material provision of this Agreement, and has failed to cure such breach within thirty (30) days of receiving written notification of such breach; or
 - b. upon ten (10) days' prior written notice if the other party has violated applicable Law.

Any notice of termination must specify the date of termination and the reasons for termination.

- 11.2 **Termination for Convenience.** Either party may terminate this Agreement (in whole or in connection with one or more particular Drop-Off Sites) at any time without cause upon thirty (30) days' written notice to the other party.
- 11.3 **Effect of Termination.** Upon any termination of this Agreement, unless otherwise instructed by PaintCare, the Service Provider promptly shall assemble all Collection Bins supplied by PaintCare, whether or not full, and shall make them available for pick up by a Hauler at one of the Service Provider's Drop-Off Sites.

ARTICLE 12 – ASSIGNMENT AND SUBCONTRACTING

- 12.1 **Limitations on Assignment.** Neither party may assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect. Notwithstanding the foregoing, PaintCare will provide notice but does not require prior consent to assign the Agreement to an entity that is at least fifty percent (50%) owned or controlled by PaintCare or to an entity that owns or controls at least fifty percent (50%) of PaintCare.
- 12.2 **Service Provider's Subcontracting Rights.** The Service Provider may subcontract any part of its obligations under this Agreement by providing written notice to PaintCare. Nothing contained in this Agreement or otherwise, creates any contractual relationship between PaintCare and any subcontractor of the Service Provider. A subcontract does not relieve the Service Provider of its responsibilities and obligations hereunder. It is the Service Provider's responsibility to ensure that any subcontractor is aware of and complies with the terms of this Agreement relating to the services being performed by that subcontractor. The Service Provider agrees to be as fully responsible to the other party for the acts and omissions of its subcontractors as it is for its own acts and omissions.
- 12.3 **Subcontractor Payment Obligations.** PaintCare has no obligation to pay or to enforce the payment of any moneys to any subcontractor of the Service Provider.

ARTICLE 13 – FORCE MAJEURE

- 13.1 Any delay or failure of either party to perform its obligations hereunder will be suspended if, and to the extent, caused by the occurrence of a Force Majeure. In the event that either party intends to rely upon the occurrence of a Force Majeure to suspend or to terminate its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible (but no later than ten (10) calendar days), setting forth the particulars of the circumstances. Written notices shall likewise be given after the effect of such occurrence has ceased.

ARTICLE 14 – NOTICES

- 14.1 **Delivery of Notices.** Except where otherwise expressly authorized, notice will be by email, first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery. Notices will be addressed as set forth below. Either party may change the address information below by providing written notice to the other party. Notice is effective upon delivery. If delivery is refused, notice must be attempted by an alternate method hereunder. If delivery is refused for more than one method of notice specified herein, notice is deemed to be effective as of the date the second notice was attempted.

To: PaintCare New York LLC
Attn: General Counsel
Email: Legal@paintcare.org
Address: 901 New York Avenue NW, Suite 300W
Washington, DC 20001

[SERVICE PROVIDER]

To: Town of Halfmoon
Attn: William Bryans
Email: bbryans@townhalfmoon.org
Address: 322 Route 146 Halfmoon, NY 12065

ARTICLE 15 – INDEPENDENT CONTRACTOR STATUS

- 15.1 **Relationship Between the Parties.** The parties intend that the Service Provider, in performing the Services specified herein, is acting as an independent contractor and that the Service Provider will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.
- 15.2 **Compensation of Employees.** Each party, or its subcontractors, as appropriate, is solely liable and responsible for providing all compensation and benefits due to, or on behalf of, all persons performing work on its behalf in connection with this Agreement. Neither party has any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other party.
- 15.3 **Workers' Compensation.** Each party understands and agrees that all persons performing work pursuant to this Agreement on its behalf are, for purposes of Workers' Compensation liability, solely employees of that party and not employees of the other party. Each party is solely liable and responsible for furnishing any and all Workers' Compensation benefits to its employees as

a result of any injuries arising from or connected with any work performed by or on behalf of that party pursuant to this Agreement.

- 15.4 **Relationship of Haulers.** The Haulers are independent third-party contractors and are not employees, partners, or agents of either party. Neither party is liable for the acts or omissions of the Haulers under this Agreement.

ARTICLE 16 – DISPUTE RESOLUTION

- 16.1 **Good Faith Negotiation.** Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement.
- 16.2 **Agreement to Arbitration.** Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement will be exclusively settled by arbitration under the laws of the State, in accordance with the rules of the American Arbitration Association. Any decision of an arbitrator engaged under this Article is final, binding and enforceable upon both parties. The parties agree to consolidation of any arbitration between them with any other arbitration involving, arising from, or relating to this Agreement.
- 16.3 **Enforcement of Arbitration.** Each party hereto accepts the jurisdiction of the courts of the State for the purposes of commencing, conducting and enforcing an arbitration proceeding or arbitration decision pursuant to this Article. Each party will accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party according to Article 14.1, and such notice will have the same effect as if the party had been personally served within the State.
- 16.4 **Performance During Dispute Resolution.** The parties shall continue to perform their respective obligations during the dispute resolution process in a diligent and timely manner in accordance with all applicable provisions of this Agreement.
- 16.5 **Dispute Resolution Costs.** Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration processes. The cost of any independent decision maker shall be shared equally between the parties.

ARTICLE 17 – COMPLIANCE WITH LAW

- 17.1 **Compliance with Law.** Each party shall comply with all Law applicable to the performance of its obligations under this Agreement.
- 17.2 **Cumulative Obligations and Remedies.** Duties and obligations imposed by the Agreement, and rights and remedies available thereunder, are in addition to (and not a limitation of) duties, obligations, rights, and remedies otherwise imposed on or afforded to the parties under applicable Law.

ARTICLE 18 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION; RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE

- 18.1 **Health and Environmental Safety.** The Service Provider is responsible for safety, health, and environmental protection related to the performance of the Services and shall take appropriate measures required by applicable Law and legal standards to ensure that it (and any of its subcontractors):
- a. provide and maintain safe, health-protective, and environmental-protective working areas at or in proximity to where the Services are performed;

- b. protect and safeguard (i) all persons at or in proximity to the Services, including those in adjacent areas, from risk or injury and danger to health, and (ii) all property and equipment from damage or loss;
- c. comply with all applicable Law governing the generation, handling, management, treatment, storage, or disposal of hazardous wastes, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, and all requirements for household waste collection facilities pursuant to all applicable permits and state law; and
- d. comply with all other applicable health, safety and environmental Law, including the requirements of the U.S. Occupational Safety and Health Administration ("OSHA"), U.S. Environmental Protection Agency ("EPA"), and delegated state programs authorized by OSHA and EPA.

18.2 **Notification of Releases.** The Service Provider shall notify PaintCare within twenty-four (24) hours of any circumstance or occurrence during the performance of the Services that requires reporting to any governmental authority under any applicable permit or Law, including reporting to the National Response Center because of the release of a reportable quantity of hazardous substances pursuant to 42 U.S.C. § 9603 or under applicable state or local law. The Service Provider shall ensure that any such reports are made within the applicable time limits and shall not delay making such reports because of any inability to notify PaintCare.

18.3 **Notification of Dangerous Conditions at Drop-Off Sites.** In the event of any action or occurrence during the performance of the Services which causes or threatens a release of a hazardous substance, hazardous waste, or hazardous material into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment and/or requires cleanup or a response action under applicable Law, the Service Provider shall (i) immediately take all appropriate action to prevent, abate, minimize, and cleanup such release and endangerment in conformance with applicable Law and cleanup standards, and (ii) notify PaintCare of the incident within twenty-four (24) hours. As between the parties, the Service Provider is solely responsible for the costs of such action and any liability and damages of any type arising from any action or occurrence identified in this Article. The Service Provider shall not delay the undertaking of appropriate action because of any inability to notify PaintCare.

ARTICLE 19 – PUBLICITY

19.1 The Service Provider shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the PaintCare service mark without the prior written consent of PaintCare. The Drop-Off Sites and any events may be listed, referenced, or advertised as Collection sites by PaintCare for the Program during the Term of this Agreement in accordance with the Program Guidelines.

ARTICLE 20 – MISCELLANEOUS PROVISIONS

20.1 **No Waiver.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.

20.2 **Selective Waiver.** Either party may waive any default by the other party under this Agreement by an instrument in writing to that effect, and no such waiver will extend to any subsequent or other default by the other party. No failure or delay on the part of either party to exercise any

right hereunder operates as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.

- 20.3 **Amendment or Modification.** Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized representatives of the parties hereto.
- 20.4 **Governing Law/Venue.** The laws of the State, without giving effect to its principles of conflicts of law, govern the interpretation and effect of this Agreement. Subject to the provisions of Article 16 ("Dispute Resolution"), any legal proceedings regarding this Agreement initially will be brought before a court of jurisdiction prescribed by law in the State.
- 20.5 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 20.6 **Calendar Days.** Any reference to the word "day" or "days" herein shall mean calendar day or calendars days, respectively, including weekends and federal holidays unless otherwise expressly provided. If a deadline falls on a weekend or federal holiday, the next business day will be the applicable deadline.
- 20.7 **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any party in connection therewith.
- 20.8 **Authorization.** Each party represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations set forth herein. The representative(s) signing this Agreement on behalf of each party represents that he/she has the authority to execute this Agreement on behalf of the applicable party and to bind it to its contractual obligations hereunder.
- 20.9 **Headings.** The section and subsection headings used in this Agreement are for convenience only and are not intended to define or limit any of the terms or provisions herein.
- 20.10 **Survivability.** All continuing obligations, rights, and remedies of the parties under this Agreement will survive the expiration or termination of this Agreement, including the continuing obligations in the following articles: Article 6 ("Title and Risk of Loss; Disclaimers"); Article 8 ("Audit and Inspection Rights"); Article 9 ("Indemnification"); Article 10 ("Insurance"); Article 16 ("Dispute Resolution"); Article 17 ("Compliance With Law"); and Article 18 ("Safety, Health, and Environmental Protection; Releases of Hazardous Substances; Emergency Response).

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative on the day and year set forth below.

By:

Authorized Signatory
PaintCare

Authorized Signatory
Service Provider

Print Name

Print Name

Print Title

Print Title

Date: _____

Date: _____

ATTACHMENT A: SCOPE OF WORK

As part of the Services under this Agreement, the Service Provider shall do the following:

- 1) Collect PaintCare Products and Loose Pack them into Collection Bins to be picked up by Haulers.
- 2) Notify the Hauler in advance of when Collection Bins will be full and ready for pick up by the Hauler, or sooner if earlier pickups are necessary for the Service Provider to comply with storage limits or other applicable Law.
- 3) Manage at the Drop-Off Sites (or other locations approved by PaintCare in writing) all collected PaintCare Products gathered through the Drop-Off Sites only in the following ways and not dispose of PaintCare Products in any other method without the written approval of PaintCare:
 - a) By Loose Packing.
- 4) Report directly to PaintCare any spills or health or safety incidents as provided in the Agreement.
- 5) Provide to PaintCare advance notice, as required herein, of any Temporary Collection Events.

ATTACHMENT B:

[RESERVED]

Attachment C: Drop-Off Site Information

Please complete all sections for permanent sites; complete sections A-B for temporary events.



A. Basic Site Information

1. Name of site Halfmoon Transfer Station
2. Street address for site 322 Route 146
3. City, state, zip code for site Halfmoon, NY 12065
4. Permit holder (if applicable)
5. Service area (counties/cities/towns) Town of Halfmoon
6. Type of Site: ☐ HHWCF ☐ One-Day HHW Event ☒ Transfer Station ☐ Paint-Only Event
☐ Other:

7. If One-Day Event: Date/Hours

B. Contacts

8. Primary contact's agency/company Town of Halfmoon
9. Primary contact's name and title William Bryans Highway Superintendent
10. Primary contact's email and phone # bbryans@townofhalfmoon.org
(518) 664-3127
11. Second contact's agency/company
12. Second contact's name and title
13. Second contact's email and phone #

C. Information for Household Customers

14. Phone # for households (518) 664 -3127
15. Website for households <https://www.townofhalfmoon-ny.gov/transfer-station>
16. Days/hours for households Sa 8-1, F 12-5, Tu 8/12
17. Volume limits for households

D. Info for Businesses (if applicable)

18. Days/hours for businesses
19. Phone # for businesses, if different
20. Website for businesses, if different
21. Admin fee for businesses, if any
22. Volume limits for businesses

E. Other

23. Is paint given away for reuse? ☐ yes ☒ no
24. Best media outlets for promoting this site (newspaper, radio station, website, etc.)?
25. Would you like PaintCare to list this site in advertising* in your area? ☒ yes ☐ no
26. Additional info or special notes for your site on PaintCare's site locator

**Site listings in print ads are for permanent sites only. PaintCare does not list one-day events in print ads.*

Drop-Off Site Information #2

Please complete all sections for permanent sites; complete sections A-B for temporary events.

A. Basic Site Information

1. Name of site
2. Street address for site
3. City, state, zip code for site
4. Permit holder (if applicable)
5. Service area (counties/cities/towns)
6. Type of Site: ☐ HHWCF ☐ One-Day HHW Event ☐ Transfer Station ☐ Paint-Only Event
☐ Other: _____
7. If One-Day Event: Date/Hours

B. Contacts

8. Primary contact's agency/company
9. Primary contact's name and title
10. Primary contact's email and phone #
11. Second contact's agency/company
12. Second contact's name and title
13. Second contact's email and phone #

C. Information for Household Customers

14. Phone # for households
15. Website for households
16. Days/hours for households
17. Volume limits for households

D. Info for Businesses (if applicable)

18. Days/hours for businesses
19. Phone # for businesses, if different
20. Website for businesses, if different
21. Admin fee for businesses, if any
22. Volume limits for businesses

E. Other

23. Is paint given away for reuse?
24. Best media outlets for promoting this site (newspaper, radio station, website, etc.)?
25. Would you like PaintCare to list this site in advertising* in your area?
26. Additional info or special notes for your site on PaintCare's site locator

☐ yes ☐ no

☐ yes ☐ no

**Site listings in print ads are for permanent sites only. PaintCare does not list one-day events in print ads.*

Site ID No. _____ (internal use only)

ATTACHMENT D: Insurance Requirements for PaintCare Drop-Off Sites

1. **Service Provider's Required Insurance.** The Service Provider must continuously carry (without interruption) the following types of insurance:
 - a. **Commercial General Liability** insurance written on an occurrence coverage basis covering claims for bodily injury, death, and property damage (including loss of use), personal injury, and advertising injury, at least as broad as the 1986 (or later) *Insurance Services Office Commercial General Liability Policy form CG 0001* ©, current edition occurrence form.
 - b. **Automobile Liability** insurance covering liability arising from the use or operation of any auto, including owned, hired, leased, rented and non-owned vehicles. The coverage must be at least as broad as the *Insurance Services Office Business Automobile Policy form CA 0001* ©, current edition.
 - c. **Workers' Compensation** meeting or exceeding the requirements imposed by statute or law in (i) the State of the Project and (ii) all other States, if any, in which Services are performed, including as may be available on a voluntary basis. Statutory coverage must be provided in all State(s) in which any of the Services are being performed, including as may be available on a voluntary basis.
 - d. **Employer's Liability** insurance providing coverage for liability to employees for work-related bodily injury or disease, other than liability imposed by a workers' compensation law.
2. **Minimum Limits of Insurance.**
 - a. All insurance that the Service Provider and any Subcontractors are required to carry pursuant to this Agreement must meet the following minimum limits (or any higher limits that may be mandated by applicable law):

Type of Insurance	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits
1. Commercial General Liability	\$ 1,000,000	\$ 2,000,000
a. Bodily Injury/Property Damage	\$ 1,000,000	\$ 2,000,000
b. Products/Completed Operation	\$ 1,000,000	\$ 2,000,000
c. Personal and Advertising Injury	\$ 1,000,000	\$ 2,000,000
d. Loss of Use Insurance	\$ 1,000,000	\$ 2,000,000
2. Commercial Automobile Liability	\$1,000,000 Combined Single Limit Each Accident	\$ N/A
3. Worker's Compensation	Statutory Limits	Statutory Limits
4. Employer's Liability (Bodily Injury by Accident)	\$ 1,000,000	\$ N/A
a. By Disease	\$ 1,000,000	\$ N/A
b. Each Accident	\$ 1,000,000	\$ N/A
c. Each Employee	\$ 1,000,000	\$ N/A

- b. The Service Provider may utilize self-insurance to satisfy some or all of its insurance carriage obligations hereunder. To the extent that the Service Provider relies on its self-insurance to meet its obligations, the Service Provider warrants that it satisfies all of the requirements of this Article by virtue of its self-insurance. The intent of this paragraph is to impose on the Service Provider all of the same requirements and obligations that would have been imposed on one or more insurance carriers had the Service Provider procured the required insurance instead of relying on self-insurance.

3. **Additional Insurance Requirements.**

- a. All insurance that the Service Provider (and any Subcontractor) is required to carry hereunder must contain the following additional provisions:
 - i. Additional Insured – PaintCare, its officers, agents, and employees must be listed as additional insureds on all Commercial General Liability and Automobile Liability policies required herein as respects claims or liabilities arising from, or connected with the Services, including completed operations. The additional insured endorsements must be at least as broad as the current editions of the Insurance Services Offices forms CG 20 10 and CG 20 37. Upon reasonable request, the Service Provider shall provide PaintCare with proof of status as an additional insured under CG 20 10 during the Term of the Agreement, and under CG 20 37 for completed operations through the expiration of the longest applicable statute of limitations or period of repose.
 - ii. Primary Coverage – All insurance coverage required hereunder must be primary insurance, and any insurance or self-insurance maintained by PaintCare will be excess of and non-contributory with respect to such insurance.
 - iii. Severability of Interest - Except with respect to the limits of insurance, all insurance required hereunder will apply separately to each insured or additional insured.
 - iv. Waiver of Subrogation – The Service Provider hereby agrees to waive, and to procure from its insurers waivers of, subrogation against PaintCare and its officers, agents, and employees. The Service Provider further agrees to hold harmless, defend and indemnify PaintCare and its officers, agents, and employees for any loss or expense incurred as a result of the Service Provider's (or any Subcontractor's) failure to obtain such waivers of subrogation from its insurers.

- 4. **Acceptability of Insurers.** All insurance required under this Agreement must be placed with insurers with a current A.M. Best's rating of not less than A- VII, unless otherwise approved in writing by PaintCare.

5. **Verification of Coverage.**

- a. Upon PaintCare's reasonable request, the Service Provider shall provide to PaintCare a certificate of insurance evidencing the coverage required of it under this Agreement. Likewise, upon PaintCare's reasonable request, the Service Provider shall procure and provide to PaintCare certificates of insurance from any Subcontractors evidencing the coverage required of them under this Agreement. Each certificate shall be signed by a person authorized by the insurer(s) to bind coverage on its/their behalf. The Service Provider shall provide renewal certificates to PaintCare prior to the expiration of any required insurance policy.
- b. Upon reasonable request, the Service Provider shall provide PaintCare with copies of all policies of insurance and endorsements thereto for all required insurance under this Agreement (including that of any Subcontractors). Such copies may be excerpted or redacted to remove premium pricing or other confidential business information; provided, however, that any such excerpted/redacted copies must include sufficient information for PaintCare to verify the Service Provider's (and its Subcontractor(s)) full compliance with the requirements of this Agreement and to evaluate actual, prospective, or denied claims as additional insured under such policies.
- c. Failure of PaintCare to request certificates or identify deficiencies will in no way limit or relieve the Service Provider of its obligations to maintain such insurance and require that its Subcontractors maintain such insurance. Failure of the Service Provider (or any of its Subcontractors) to maintain the required insurance constitutes a default under this Agreement and PaintCare may, at its option, terminate this Agreement for cause. PaintCare's acceptance of a non-conforming insurance certificate does not constitute a waiver, compromise or release of PaintCare's rights. If PaintCare is damaged by the failure of the Service Provider (or its Subcontractors) to purchase or maintain insurance required under this Agreement, the Service Provider shall bear all costs (including attorneys' fees, consultant fees and court and settlement expenses) attributable to such failure to purchase or maintain the required insurance.

6. **Subcontractor Insurance.** If the Service Provider uses a Subcontractor to provide any portion of the Services, the Service Provider may satisfy the foregoing requirements applicable to the subcontracted Services by ensuring that the Subcontractor providing those Services satisfies each and all of the insurance requirements herein in the same manner as required had the Service Provider maintained that insurance. To the extent the Subcontractor fails to do so, however, the Service Provider is responsible and shall defend, indemnify and hold harmless PaintCare and its officers, agents, and employees to the same extent had all insurance required hereunder been properly procured and maintained by the Service Provider or its Subcontractor, as applicable.

ATTACHMENT E
[RESERVED]

ATTACHMENT F

[RESERVED]

ATTACHMENT G

[RESERVED]

ATTACHMENT H

[RESERVED]

ATTACHMENT I

NEW YORK POSTCONSUMER PAINT COLLECTION PROGRAM

DROP-OFF SITE GUIDELINES

***** (attached separately) *****