

**SPECIAL PROJECT SERVICE AGREEMENT FOR
LEAD-ACID BATTERY COLLECTION AND RECYCLING**

This SPECIAL PROJECT SERVICE AGREEMENT (hereinafter "Service Agreement") is made by and between the CENTRAL VIRGINIA WASTE MANAGEMENT AUTHORITY (hereinafter "CVWMA" or "Authority"), its successors and assigns, having its principal place of business at 2100 West Laburnum Avenue, Suite 105, Richmond, Virginia 23227; and (if executed on the appropriate page 8 – signature – end page of this agreement).

COUNTY OF HENRICO (HEN),
COUNTY OF HANOVER (HAN),
COUNTY OF NEW KENT (NKT),
COUNTY OF POWHATAN (POW),
CITY OF COLONIAL HEIGHTS (COL), and
CITY OF RICHMOND (RIC)

(hereinafter, collectively, "Participating Local Jurisdictions").

SECTION 1 - PURPOSE

A. The parties have entered into this Service Agreement pursuant to the authority of the Virginia Water and Waste Authorities Act (Title 15.2, Chapter 51 of the Code of Virginia, 1950 as amended), and the Articles of Incorporation of the CVWMA. Its purpose is to establish a special project for Lead-Acid Battery Collection and Recycling Services within the Participating Local Jurisdictions as authorized by Section 11 of the Articles.

B. The Participating Local Jurisdictions agree to participate in this special project according to the terms and conditions of this Service Agreement which references terms of the Contract. The Participating Local Jurisdictions further agree that this Service Agreement shall take effect in each Participating Locality upon execution and return of a signed copy of this Service Agreement to the CVWMA.

C. The parties agree that the CVWMA will implement this special project through a private vendor contract, based upon an Request for Proposals (RFP) 16-01 issued by the CVWMA on July 22, 2015 as reflected in a Service Contract entered into between the CVWMA and the Contractor, Battery Barn of Virginia, Inc.

SECTION 2 - DEFINITIONS

For the purpose of this Service Agreement, the definitions contained in this section shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

A. *Authority or CVWMA* - shall mean the Central Virginia Waste Management Authority, the instrumentality created under the provisions of the Virginia Water and Waste Authorities Act, §15.2-5100, et seq., and includes the individual members (or voting alternates) of the CVWMA Board of Directors, and the officers, agents or employees of the Central Virginia Waste Management Authority. For the purposes of this Service Agreement, "Authority" shall not include the governing bodies, the individual elected officials of the Participating Local Jurisdictions served by this Service Agreement, except those elected officials who serve as members or alternates of the CVWMA Board of Directors, nor the employees or agents of the Participating Local Jurisdictions acting on behalf of their employer or principal, respectively.

- B. *Contract* – shall mean the written contract and all amendments thereto, between the CVWMA and the Contractor, governing the provision of lead-acid battery collection and recycling services.
- C. *Contractor* - shall mean the individual, Contractor, firm, partnership, joint venture, corporation, or association performing Lead-Acid Battery Collection and Recycling Services under Contract with the Central Virginia Waste Management Authority (CVWMA).
- D. *Force Majeure* - Any cause beyond the reasonable control of the party whose performance under this Service Agreement is affected, including but not limited to acts of God, change in law, war, riot, fire, explosion, wind storm, flood, inability to obtain or use fuel, power, or raw materials, shortage or failure of the usual means of transportation, injunction, action by governments not party to this Service Agreement, accident, and breakdown of machinery or equipment. "Reasonable control" of a party shall specifically exclude that party's ability to reach a resolution in a labor dispute and that party's ability to settle or compromise litigation.
- E. *Member Jurisdictions* – shall mean the members of the CVWMA including the Counties of Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent, Powhatan and Prince George; the Cities of Colonial Heights, Hopewell, Petersburg, Richmond and the Town of Ashland.
- F. *Lead-Acid Battery* – shall mean a device consisting of one or more cells each containing the essentials for producing voltage electricity and designed and used for the storage of electrical energy through chemical reactions involving lead and acids. The battery contains lead electrodes with dilute sulfuric acid as the electrolyte. Throughout this Contract, the term battery or batteries shall be deemed to mean lead-acid batteries unless the context clearly requires a different interpretation.
- G. *Special Project Service Agreement or Service Agreement* - shall mean this Service Agreement between the CVWMA and the Participating Local Jurisdictions, together with all modifications or amendments thereto.
- H. *Sealed Lead-Acid Battery* – shall mean a lead acid battery designed for low maintenance that does not require addition of water to the cells.
- I. *Participating Local Jurisdictions* – shall mean those Member Jurisdictions that have executed this Special Project Service Agreement.

SECTION 3 – TERM OF AGREEMENT

The term of this Service Agreement shall run concurrently with the term of the Contract with the Contractor, and shall terminate when such Contract terminates. The term of that Contract is on or about October 1, 2015 through September 30, 2020, with one (1) additional five (5) year renewal option. Renewal of any such Contract will be by mutual written consent of the CVWMA and the individual Contractor. The CVWMA and any Participating Local Jurisdiction may renew this Service Agreement by written consent given not less than one hundred and eighty (180) days prior to the expiration of its then current term. This Service Agreement shall become effective and operations hereunder may commence in a Participating Local Jurisdiction following execution of this Service Agreement by such Participating Local Jurisdiction.

SECTION 4 – SPECIAL PROJECT DESCRIPTION, PAYMENT SCHEDULE

- A. The CVWMA will contract with the Contractor for the collection of sealed and unsealed lead-acid batteries weighing two and one half pounds or more from collection sites designated by the CVWMA Participating Local Jurisdictions. The CVWMA will work with Participating Local Jurisdictions and the Contractor to coordinate collection sites, schedules and anticipated quantities.

- B.** The Contractor shall provide the services meeting the stated criteria as well as all federal, state and local laws and regulations for the loading, transportation and handling of all batteries collected by Participating Local Jurisdictions through this project. The Contractor shall assure that batteries be properly loaded, labeled, transported and handled during shipment to a licensed and properly permitted battery recycling facility. The Contractor will provide the CVWMA with documentation that the Contractor is in compliance with all applicable federal, state and local laws, regulations and ordinances for these responsibilities as well as all requirements necessary to perform Scope of Services. The Contractor will also certify and provide documentation to the CVWMA that all batteries collected, and handled through this project are being sent to a facility or facilities where the batteries are recycled in a manner compliant with all applicable federal, state and local laws regulations and ordinances. The Contractor shall provide all necessary equipment and personnel needed to carry out the project, either solely or through their subcontractors or affiliates. The Contractor will be required to report the number of batteries collected by size in each participating locality monthly to the CVWMA.
- C.** Collections shall be made at the request of the Participating Local Jurisdiction and the CVWMA. Requests for collection shall be made to the CVWMA by the Participating Locality and communicated in writing by the CVWMA to the Contractor. Neither the CVWMA nor the Participating Local Jurisdiction shall be charged for the collection of the lead-acid batteries.
- D.** The Contractor will pay the CVWMA as follows:
- a. Lead Acid Batteries greater than or equal to 2.5 pounds but less than 15.0 pounds - \$0.75 each
 - b. Lead Acid Batteries greater than or equal to 15.0 pounds but less than 35.0 pounds - \$2.00 each
 - c. Lead Acid Batteries greater than or equal to 35.0 pounds but less than 100.0 pounds - \$3.50 each
 - d. Lead Acid Batteries greater than or equal to 100.0 pounds - \$5.00 each
- E.** The Contractor shall provide a listing of the number by size of batteries collected during the prior month from each Participating Locality to CVWMA by the end of the tenth workday of each month. The Contractor shall provide that listing of the number of batteries by size collected by Collection Location for each Participating Locality. The CVWMA shall remit to each Participating Local Jurisdiction all amounts collected from the Contractor for lead-acid batteries from Collection Locations within such Participating Local Jurisdiction. The remittance shall be made by the 25th of the month following the month during which the CVWMA received payment.
- F.** The Contract is a "requirements" Contract and neither the CVWMA nor the Participating Local Jurisdictions guaranty any quantities of batteries to be presented to the Contractor. Nevertheless, the Contract provides that the Contractor shall purchase, collect, transport and recycle or otherwise dispose of all batteries collected by the Participating Local Jurisdictions in accordance with the terms of the Contract.
- G.** Each Participating Local Jurisdiction will specify to the CVWMA the site or sites from which it wishes to have the Contractor collect the lead-acid batteries.
- H.** Title to, control of and responsibility for batteries collected from the Collection Sites shall transfer to Contractor upon loading of such materials on the vehicles designated by the Contractor. The CVWMA will at no time hold title to batteries or other materials collected under this Agreement or the Contract.

SECTION 5 – NO PARTNERSHIP

Nothing herein shall be construed to constitute a joint venture or the formation of a partnership among or between the CVWMA, the Contractor and/or the Participating Local Jurisdictions, any or all of them.

SECTION 6 – FORCE MAJEURE

Should any Contractor fail to perform the services under the Contract with the CVWMA by reason of Force Majeure, the CVWMA shall, where practicable, take all reasonable steps to secure another Contractor to perform those services. Failure of the CVWMA to perform under this Agreement by reason of Force Majeure affecting the CVWMA or any Contractor shall not constitute a default or cause for termination of this Agreement. However, in case of non-performance due to Force Majeure, the CVWMA shall immediately notify the Participating Local Jurisdictions in writing of the failure, including reasons for such failure, and shall make reasonable efforts to correct such failure and to continue performance at the earliest possible date.

SECTION 7 – TERMINATION AND NON-APPROPRIATION

A. A Participating Local Jurisdiction desiring to withdraw from this Service Agreement shall give the CVWMA thirty (30) days advance written notice of its intent withdraw.

B. The parties to this Service Agreement agree that termination pursuant to Section 7 shall be without penalty or liability to either party.

C. Notwithstanding the withdrawal of any Participating Local Jurisdiction, this Service Agreement shall remain in effect with respect to any remaining Participating Local Jurisdiction(s).

SECTION 8 – COMPLIANCE WITH LAWS AND REGULATIONS AND GOVERNING LAW.

The parties to this Service Agreement agree that the laws of the Commonwealth of Virginia shall govern the validity, construction, interpretation, and effect of this Service Agreement. This Service Agreement is entered into and is to be performed in the Commonwealth of Virginia. Any dispute or claim arising out of or relating to this Service Agreement or the Contract shall be resolved in the Circuit Court of the City of Richmond, Virginia.

SECTION 9 – SEVERABILITY AND WAIVER

In the event any provision of this Service Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be binding upon the parties. Should any term, provision or other part of this Service Agreement be held to be unenforceable, such provision or portion thereof shall be reformed to comply with applicable laws or regulations preserving to the greatest extent possible the original intent of the unenforceable provision. Waiver of a breach by any party of any provision, term, condition, or covenant of this Service Agreement shall not be construed by the other party as a waiver of a subsequent breach of such provision by the waiving party.

SECTION 10 – NON-ASSIGNMENT

Neither the Participating Local Jurisdictions nor the CVWMA shall assign their respective duties under this Service Agreement without the written consent of all other signatories to this Service Agreement. This Service Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties.

SECTION 11 – INSURANCE AND INDEMNIFICATION

A. Insurance. The Contractor shall be required to carry and maintain in effect public liability insurance coverage with a company licensed to do business in the Commonwealth of Virginia and in the amounts and coverages specified below. The Contractor shall, prior to commencement of work under the Contract, deliver Certificates of Insurance from carriers acceptable to the Contractor specifying such limits, with the CVWMA and each Participating Local Jurisdiction participating in this proposed project named as additional insured parties. The Contractor shall insure that the carrier or carriers shall agree to give the CVWMA thirty (30) days written notice of its decision to cancel, change or fail to renew coverage. The CVWMA reserves the option to increase the required insurance amounts if the contract is renewed beyond the initial five-year term.

- a. Worker's Compensation
Coverage A - Statutory Requirements
Coverage B - \$100,000/\$500,000/\$100,000
Other States Endorsement
- b. Automobile Liability, Including Owned, Non-Owned and Hired Car Coverage
Limits of Liability - \$2,000,000 Combined Single Limit for Bodily Injury and Property Damage
- c. Comprehensive General Liability
Limits of Liability - \$2,000,000 Combined Single Limit for Bodily Injury and Property Damage
Including: Completed Operations/Products
Contractual Liability for Specified Agreements
Personal Injury
XCU (Explosion, Collapse and Underground Coverage)
Broad Form Property Damage

NOTE: The levels of coverage required in b. and c. can be met by the primary policy alone or in concert with an excess liability policy.

The Contractor shall provide, if required, evidence showing compliance with the above requirements to the satisfaction of the CVWMA prior to commencement of work under the Contract. Failure to comply with this requirement may be cause for termination of the Contract, in the sole discretion of the CVWMA.

B. Indemnification. The Contractor shall indemnify, and hold CVWMA, its agents and employees, as well as its member jurisdictions and its employees and agents, harmless, now and in the future for all obligations and situations, relating to compliance with any and all federal, state or local environmental laws and regulations applicable to any of facilities, properties (real or personal) or any operations or equipment used in connection with the Contractor's or any of its subcontractor's performance under this Contract, including such laws regulating the ownership, use, monitoring and/or operation of any facility, batteries or other associated equipment or operations pursuant to the Contract.

The Contractor shall indemnify and hold the CVWMA, its agents and employees, as well as its member jurisdictions and its employees and agents, harmless from and defend against all claims, (legal, equitable, or administrative), damages, losses, expenses, fees of consultants, experts and attorneys, remediation, removal and clean-up costs and all other costs, liabilities or expenses arising out of or resulting from (a) the performance or failure to perform contracted services or (b) the purchase, collection, sale or disposal of goods or the failure to do any of the foregoing under this Contract by either Contractor or subcontractor. Contractor's obligation to indemnify shall extend, but not be limited to, (c) any such claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use, or economic loss, and (d) any and all claims against the CVWMA or any of the Participating Local

Jurisdictions by third-parties or agencies of the federal, state or local governments for any environmental liability due to a release of pollutants to the environment, whether imposed by statute, ordinance, regulation or common law now or hereafter in effect. The making of a claim or the institution of legal or equitable or administrative action on any one cause shall not prejudice or bar subsequent claim or action on any other cause or causes of action, regardless of when such cause of action may have arisen.

SECTION 12 – ADDITIONAL PARTIES

- A. It is understood and agreed upon by the parties, upon written request from any of the other Member Jurisdictions of the CVWMA service area, that the CVWMA may enter into a Service Agreement Addendum with such other Member Jurisdiction(s).
- B. It shall be understood by the parties to this Service Agreement that no other additional parties shall be eligible to participate in this special project without a written addendum to this Service Agreement.
- C. This Service Agreement shall remain in full force and effect between the remaining parties notwithstanding termination with respect to any Participating Local Jurisdiction.

SECTION 13 – ENTIRE AGREEMENT

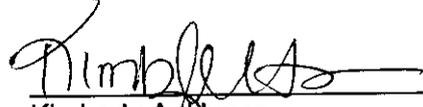
This Service Agreement represents the entire agreement between the CVWMA and the Participating Local Jurisdiction(s) and supersedes all prior negotiations, representations or agreements, either written or oral. This Service Agreement may only be amended by written document signed by the Participating Local Jurisdiction(s) and the CVWMA after approvals granted by the governing bodies of the Participating Local Jurisdiction(s) and the CVWMA unless said amendment authority has been previously delegated to the authorized representatives of the CVWMA and the Participating Local Jurisdiction(s) in the opinion of local and CVWMA legal counsel.

IN WITNESS WHEREOF, CVWMA and the Participating Local Jurisdictions have caused this Agreement to be executed.

APPROVED AS TO FORM:


McCandlish Holton, P.C.

**CENTRAL VIRGINIA
WASTE MANAGEMENT AUTHORITY**

By: 
Kimberly A. Gynes
Executive Director

Date: 5/31/16

APPROVED AS TO FORM:


City Attorney or designee

CITY OF COLONIAL HEIGHTS

By: 
City Administrator/Deputy City Administrator

Date: 7/19/16

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