

DATA SHEET
Agenda Item No. 13.

Meeting Date: April 5, 2018

Agenda Item:

Authorize Agreement with the City of Aubrey for participation in program for collection of Household Hazardous Waste.

Placement: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Individual Consideration <input type="checkbox"/> Executive Session
Vote: <input checked="" type="checkbox"/> Non-Weighted <input type="checkbox"/> Weighted Capital
Recommending Department: Administration

Background:

The City of Aubrey (Aubrey) has expressed a desire to participate in the District's Household Hazardous Waste Program. The enclosed Agreement is similar to the HHW agreement with other participants; and, it requires a minimum of 25 households per collection event. As an alternative, Aubrey may purchase vouchers from the District to be distributed to its residents.

Aubrey plans to host its first collection event later this year.

Financial:


Standard rates will apply.

Recommendation:

The City Council for Aubrey approved the enclosed Agreement at its meeting on February 27, 2018. Staff recommends approval of the enclosed Agreement.

Enclosures:

Agreement between the District and Aubrey for the Aubrey's participation in the Household Hazardous Waste Collection Program.

Submitted By: 
Jason Pierce, Manager of Watershed I Contract Services

Date: March 30, 2018

**AGREEMENT BETWEEN THE UPPER TRINITY REGIONAL WATER DISTRICT
AND THE CITY OF AUBREY
FOR PARTICIPATION IN THE
HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM**

THE STATE OF TEXAS

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THE CITY OF AUBREY

THIS AGREEMENT (the "Agreement") **FOR PARTICIPATION IN THE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM** (hereinafter called "Program") is made and entered into on the 27 day of February 2018 (the "Agreement Date"), by and between **UPPER TRINITY REGIONAL WATER DISTRICT**, a special district created under the laws of the State of Texas located in Denton County, Texas, (hereinafter called "District") and the **CITY OF AUBREY**, a political subdivision of the State of Texas, operating under the Constitution and laws of the State of Texas, (hereinafter called "Aubrey").

WITNESSETH:

WHEREAS, District and Aubrey desire to enter into this Agreement, under which the District will administer a regional household hazardous waste collection Program; and

WHEREAS, Aubrey desires to participate in the Program for the benefit of the citizens of Aubrey; and

WHEREAS, District has entered into a certain contract with City of Fort Worth (hereinafter called "Contractor") to dispose of household hazardous waste collected through the Program; and

WHEREAS, District may enter into similar agreements with other parties to participate in the Program; and

WHEREAS, the District and Aubrey are authorized to enter into this Agreement pursuant to the District's enabling statute, H.B.3112 (1989 regular session of the Texas Legislature), and other applicable laws; and

WHEREAS, it is mutually advantageous to both parties to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions set forth herein, and the mutual benefits to each party, the receipt and sufficiency of which are hereby acknowledged, District and Aubrey hereby contract, covenant, warrant and agree as follows:

**ARTICLE I
ADOPTION OF PREAMBLE**

- 1.1** All matters stated in the preamble of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.
- 1.2** The attached Exhibit 1 (List of Acceptable Materials) is hereby incorporated into the body of this Agreement as though fully set forth herein.

ARTICLE II OBLIGATIONS OF THE DISTRICT

- 2.1** District will administer and operate the Program for the benefit of Aubrey. The Program will include operation of a Mobile Collection Unit, which will accept for disposal and/or recycling Household Hazardous Waste from households within Aubrey. Household Hazardous Waste to be collected under the District's program is defined in the contract between the District and its Contractor. A list of items the District will accept for disposal and/or recycling household hazardous waste from Aubrey is attached hereto as Exhibit 1, which list may be updated from time to time. The District will not accept compressed flammable gas containers; radioactive materials; explosives or potentially shock sensitive materials; biological, etiologic, and infectious materials; waste from businesses; nor any other waste that the District or its Contractor has determined to be unacceptable. Commercial waste is never accepted by the District.
- 2.2** District shall be responsible for the coordination and scheduling of collection events with Aubrey. District may schedule events for collection of Household Hazardous Waste solely for Aubrey residents or may schedule joint collection events that serve more than one participating entity, with written approval from Aubrey and other participant(s).
- 2.3** District shall provide, maintain, supply, transport and operate a Mobile Collection Unit for use in collecting Household Hazardous Waste.
- 2.4** District shall provide an event coordinator who shall be responsible for managing the overall operation of each collection event. The event coordinator shall have the right to refuse any unacceptable material delivered to the collection event. The event coordinator for each event shall have responsibility and authority over all activities and individuals assisting with the collection event. If necessary, the event coordinator shall have the authority to close an event to maintain safe conditions and to assure protection of the public.
- 2.5** For each collection event, District shall provide at least one trained hazardous waste technician who shall be responsible for categorizing, packaging, labeling and loading acceptable materials into the Mobile Collection Unit.
- 2.6** District shall provide necessary drivers to transport acceptable materials to the Contractor for disposal.
- 2.7** District shall schedule and coordinate training of Aubrey's personnel or volunteers to assist with each collection event.
- 2.8** Should a spill occur during a collection event, while the hazardous material is still in the possession of Aubrey, the event coordinator shall take control of the spill response and coordinate with appropriate emergency response personnel. Except as otherwise provided in applicable insurance carried by District, Aubrey shall be responsible for costs associated with clean-up activities for such a spill.
- 2.9** District shall have the authority and responsibility to issue reasonable rules concerning scheduling, training, safety, administration and operation of collection events. Such rules shall become a part of this Agreement and shall be enforceable under this Agreement for both parties.

- 2.10** District shall secure State and Federal permits if any be required to conduct the collection event.
- 2.11** District shall provide pollution liability insurance coverage for the mobile collection event and the transport of the waste to Contractor. Under said insurance coverage, Aubrey will be named as an additional insured party.

ARTICLE III OBLIGATIONS OF AUBREY

- 3.1** Aubrey shall coordinate with the District to schedule and plan for the use of the Mobile Collection Unit for each collection event. Aubrey shall have the right to schedule one collection event each year and agrees to coordinate with the District regarding time and location of such event for Aubrey residents. Additional collection events shall be at the discretion of the District upon written request from Aubrey.
- 3.2** Aubrey shall be responsible for securing and maintaining a collection event site, including arrangements for electric power service, sanitary services, solid waste disposal and other services needed for a safe and successful collection event. Said site is subject to the approval of the District.
- 3.3** Aubrey shall coordinate and fund all program advertising to its citizens, as it deems necessary. Such advertising shall include notice about the area to be served by the event and the eligibility of residents therein, the type of waste that will be accepted at the collection event and the requirement for proof of eligibility to participate in the collection event.
- 3.4** Aubrey shall be responsible for providing an adequate number of properly trained personnel and volunteers to assist the event coordinator and the hazardous waste technician at each collection event. Aubrey's personnel and volunteers shall be responsible for such activities as registering residents, surveying and unloading acceptable materials from resident's vehicles and any other reasonable tasks as may be deemed necessary and appropriate by the event coordinator.
- 3.5** Aubrey shall designate an official representative for each collection event. The representative shall be the principal contact for District personnel in scheduling and operating the collection event. Aubrey's representative, or designee, shall have the authority to request that a collection event be closed when the number of budgeted households has been reached, or for other reasons related to Aubrey's responsibility hereunder.
- 3.6** Aubrey shall secure any local permit required for such special events.
- 3.7** It will be the duty of Aubrey's representative to screen individuals bringing acceptable materials to a collection event to assure that they are eligible to participate in the collection event.
- 3.8** Aubrey shall be responsible for the proper disposal of unacceptable materials that are brought to the collection event. Solid waste receptacles shall be provided by Aubrey for disposal of such unacceptable materials.

- 3.9** As supplement to, or as an alternative to, hosting a collection event, Aubrey may purchase vouchers from the District to be distributed to Aubrey residents. With such voucher, an Aubrey resident may take their household hazardous waste to a collection event sponsored by another participating entity in the Program as may be scheduled from time to time. Alternatively, a resident may take their waste directly to the Fort Worth Collection Center for processing and disposal of the household hazardous waste. Details for use of said Collection Center shall be developed by the District and Aubrey and shall become a part of this Agreement shall be enforceable under this Agreement for both parties.

ARTICLE IV GENERAL PROVISIONS

- 4.1** For services to be provided to Aubrey under this Agreement, Aubrey agrees to pay District an amount sufficient to cover payments made by District to Contractor, plus any cost incurred by the District in developing, administering and operating the Program, including the cost of pollution liability insurance. At discretion of District, the District may provide Aubrey with detailed cost accounting for all District provided services associated with the event or District may establish a standard fee or rate for the services hereunder, based on the average cost of service for all participants in the Program. The fees to be paid by Aubrey to the District for participating in the Program will be determined by the District's Board of Directors annually, which fees are subject to change from year to year. Aubrey agrees to pay such fees, as provided herein, within 30 days of the date a bill for service is rendered. All amounts due and owing to District by Aubrey, if not paid when due, shall bear interest at the rate of ten (10) percent per annum from the date when due until paid.
- 4.2** It is mutually agreed that a minimum of twenty-five (25) participating households is required for a collection event to be feasible. Accordingly, Aubrey agrees to pay the District for twenty-five (25) households or for actual number of participating households, whichever amount is greater. Alternatively, Aubrey may choose to participate jointly with another entity in a shared collection event; if so, said minimum could be shared in a pre-approved manner.
- 4.3** District reserves the right to supply services of the Program to participating entities who are not members of the District. It is mutually agreed that the District may establish charges for the Program taking into account that member participants are obligated to pay certain cost of managing and operating the District, and in lieu thereof, the charges for non-member participants by an amount not to exceed seven (7.0%) percent.

In general, the costs of the Program shall be administered on the basis of households, not individuals or groups, participating in the collection event. However, the basis for recovery of cost is subject to modification by the Contractor and the District to alternative forms, such as per pound, per gallon or other unit. It shall be the duty of Aubrey to pay all charges for households which participate in the collection event. Further, the parties agree that multiple households are not allowed to consolidate Household Hazardous Waste as a means to avoid paying a fair share of costs. The District's event coordinator shall have the authority to determine if a given lot of materials being brought to the collection event reasonably represents one household or more than one household.

- 4.5** District and Aubrey agree to save and hold each other harmless, to the extent authorized by law, from all claims, demands, and causes of action which may be asserted by anyone

on account of the receipt, handling, processing, transportation and delivery of said hazardous material while title remains in such party. Both Aubrey and District agree to be responsible for their own respective negligent acts, provided, however, neither party waives its right of governmental immunity.

- 4.6 This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof.
- 4.7 No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties.
- 4.8 This Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 4.9 In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 4.10 The obligations and undertakings of each of the parties to this Agreement are and shall be performable within the boundaries of Aubrey, and in Denton County, Texas.
- 4.11 All amounts due under this Agreement, including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Denton County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Agreement that Denton County, Texas, is the place of performance of this Agreement; and in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Denton County, Texas.
- 4.12 If by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligation of Aubrey to make the payments required under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "**Force Majeure**" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, curtailment of fuel supplies for vehicles, or on account of any other causes not reasonably within control of the party claiming such inability.

4.13 The term of this Agreement shall be for a period of (1) year from the Agreement Date, subject to terms and renewal of the Contract with the District's Contractor. Provided neither party is in default at the expiration of the initial term, this Agreement shall be extended on a year to year basis, unless either party gives written notice of intent to not renew.

4.14 After the initial year, the parties shall each have the right to terminate the Agreement for any reason, with or without cause, upon thirty (30) days' written notice to the other party, subject to Aubrey's obligation to pay any costs incurred by District on behalf of Aubrey prior to such notice.

4.15 Any notices required to be given under this Agreement shall be delivered as follows:

If to the District, to: Executive Director
Upper Trinity Regional Water District
P.O. Drawer 305
Lewisville, Texas 75067

If to Aubrey, to: Mayor
City of Aubrey
107 South Main Street
Aubrey, Texas 76227

[REMAINING PORTION LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Agreement Date.

UPPER TRINITY REGIONAL WATER DISTRICT

By: _____
Kevin Mercer, President, Board of Directors

ATTEST:

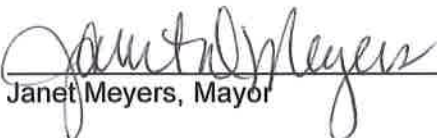
Mike Fairfield, Secretary, Board of Directors

[DISTRICT SEAL]

APPROVED AS TO FORM AND LEGALITY:

John F. Boyle, Jr., Counsel for District

CITY OF AUBREY

By: 
Janet Meyers, Mayor

ATTEST:


Jenny Huckabee, City Secretary



APPROVED AS TO FORM AND LEGALITY:

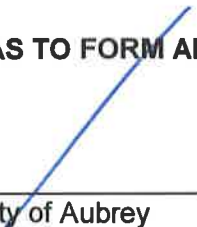

Counsel for City of Aubrey

EXHIBIT 1

Items Accepted for Disposal and/or Recycling Household Hazardous Waste Collection Program

Acids
Aerosol cans
Antifreeze
Batteries (car and household)
Brake Fluid
Craft & Hobby Chemicals
Degreasers
Drain Cleaners
Fertilizers
Fluorescent Lights
Fungicides
Gasoline
Herbicides
Household Cleaners
Items with Mercury
Motor Oil
Oil Filters
Paints / Stains / Varnishes
Paint Thinners
Pest Strips
Pesticides
Photo Chemicals
Pool Chemicals
Solvents
Unwanted Fuel