

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2017, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **WM Curbside , LLC**, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED _____.
2. CITY desires to utilize the services of CONTRACTOR Provide All Labor, Material and Equipment Related to Administering the Household Hazardous Program for the City of Garden Grove per the Scope of Work in Attachment A.
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be for period of one (1) year from full execution of the agreement, with an option to extend said agreement additional four (4) years, for a total performance period of five (5) years. Option years shall be exercised one (1) year at a time, at the mutual option of both parties. This agreement may be terminated by either party without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with Proposal Pricing form (Attachment B). Contractor is required to present evidence to support performed work completion.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Scope of Work which is attached as Attachment A, and is incorporated herein by reference. The Scope of Work and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of Fifty One Thousand Five Hundred Dollars (\$51,500.00), per year, payable in arrears and in accordance with Proposal Pricing form, Attachment B. All work shall be in accordance with RFP No. S-1199.

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in Proposal Pricing (Attachment B).

An annual CPI Index based on All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average. An average for the twelve (12) month period ending on the date of January 31. The CPI Adjustment shall not exceed five percent (5%) in any given year. Two months prior to the contract renewal, the Contractor must provide documentation supporting this rate adjustment for the City's review.

- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance Requirements

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work until all certificates and endorsements have been received and approved by the CITY. All liability insurance required by this Agreement shall not be cancelled until 30 days advance notice has been provided to the CITY, 10 days notice shall be provided for cancellation due to non-payment of premium.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
- (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (b) Automobile liability in an amount of \$1,000,000.00 combined single limit, and including auto pollution liability and MCS-90 endorsement. **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Pollution legal liability in the amount of \$1,000,000.00. Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY. CITY shall be included as an additional insured. Contractor shall maintain a self-insured retention of not less than \$1,000,000 per occurrence for the pollution legal liability policy for the term of this contract.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) and 4.3 (c) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Auto Pollution Endorsement (MCS-90) for the policy under section 4.3 (b) shall also be provided for coverage under the auto pollution policy.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - a. (Contractor)
WM Curbside, LLC
Attention: Courtney A. Tippy, VP and Secretary
5101 East La Palma Avenue, Suite 206
Anaheim, CA 92807
 - b. (Address of CITY) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement

12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.
15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** CONTRACTOR agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

17. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
WM Curbside, LLC

By: David R. Murphy
David R. Murphy
Name: _____
Title: President

Date: _____

Tax ID No. _____

Contractor's License: _____

Expiration Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Omar Landora
Garden Grove City Attorney

1-31-17

ATTACHMENT "A"
SCOPE OF WORK
RFP No. S-1199

**Provide All Labor, Material and Equipment Related to Administering the
Household Hazardous Program for the City of Garden Grove**

BACKGROUND

State law prohibits used hazardous waste from entering landfills due to toxicity levels, of which include used motor oil and batteries. Over the past 15 years, the City has received State grant funding from the Department of Resources Recycling and Recovery's (Calrecycle) Oil Payment Program to help administer the City's Used Motor Oil Recycling Program. This funding has fully supported the City's Used Motor Oil Recycling Program. In response to the 2006 State ban on batteries, the City initiated a battery collection program at City facilities with the intent of providing City staff with resources for proper battery disposal at designated sites. The internal battery collection service is funded through the Sanitary District.

SCOPE OF WORK:

Contractor will follow all current Calrecycle Used Motor Oil Recycling Grant Program requirements along with local, state and federal laws applicable to collection of hazardous waste (used motor oil, oil filters, and batteries) throughout the scope of work. Contractor will also assume all responsibility for ensuring that all licenses, permits and certificates required in connection with any and all services are obtained throughout the scope of this work.

CONTRACTOR REQUIREMENTS: Contractor must implement all California Code Regulations and the Department of Toxic Substances Control (DTSC) regulations. Contractor must provide proof of registration as a registered hazardous waste transporter with the Department of Toxic Substances Control in the bid package which the City will verify. Contractor must be registered with the DTSC on the bid submittal due date or the bid may be deemed as non-responsive.

CERTIFIED USED OIL COLLECTION CENTER SITE VISITS AND OIL FILTER COLLECTION

Contractor shall verify City businesses registered as Certified Used Oil Collection Centers (Certified Center). This verification will include on-site visits to fifteen (15) Used Oil Collection Center, completion of the "Collection Center Assessment Checklist", required signage, inquiry and assist on any program issues, and complete the Site Visit Report to be included in the City's Used Oil Annual Reporting, as required by Calrecycle. At these Certified Centers, it is agreed that they collect used motor oil and oil filters. Contractor will collect oil filters at the Certified Centers. *Used Oil Collection Centers will request pick up by Contractor on an as needed basis.*

The 15 locations of the Certified Collection Centers are as follows:

No	Center Name	Street Address	City/Zip
1	Auto Zone #3308	10842 W Katella Ave	Garden Grove, CA 92840
2	Auto Zone #5527	13190 Harbor Blvd	Garden Grove, CA 92843
3	AutoZone #2872	12056 Brookhurst Street	Garden Grove, CA 92841
4	Volkswagen of Garden Grove	10800 Trask Ave	Garden Grove, CA 92843
5	Firestone Store #27 JM	13961 Brookhurst St	Garden Grove, CA 92843
6	Firestone Store #2729	10081 Chapman Ave	Garden Grove, CA 92840
7	Jiffy Lube #1991	13970 Harbor Blvd	Garden Grove, CA 92843
8	Morrison Tire, Inc.	12045 Valley View St	Garden Grove, CA 92845
9	OC Nissan Garden Grove	9222 Trask Ave	Garden Grove, CA 92844
10	O'Reillys Auto Parts	9851 Chapman Ave	Garden Grove, CA 92841
11	O'Reillys Auto Parts	13933 Harbor Blvd	Garden Grove, CA 92843
12	Toyota Place	9670 Trask Avenue	Garden Grove, CA 92844
13	Auto Zone #5526	12951 Nelson St	Garden Grove, CA 92840
14	Certified Tire &Service Centers, Inc.	9572 Chapman Ave	Garden Grove, CA 92841
15	Garden Grove Kia	10081 Garden Grove Blvd	Garden Grove, CA 92844

RESIDENTIAL DOOR-TO-DOOR COLLECTION: Contractor must demonstrate experience in hazardous waste management and the operation of door-to-door household used motor oil program, transportation, waste analysis, waste collection, and storage and disposal operations. Contractor will provide all necessary services, qualified personnel, equipment, vehicles, facilities supplies, and documentation to collect, manage and dispose of waste for the program. The Contractor shall perform work under this Scope in compliance with all applicable local, state and federal laws and regulations. Tasks to be performed including the following:

Hotline Operation and Management: Contractor will operate and manage a toll-free hotline for residents to obtain program information and to schedule appointments. The hotline should be staffed during normal business hours, Pacific Time, with an after-hours message and recording service where

resident can leave information on how to be contacted the following business day.

Participant Screening: Each participant is eligible for pick-up of up to 10 gallons of used motor oil and 5 used oil filters. Contractor will screen residents for program eligibility. Business waste will not be accepted through this program. Waste must be derived from retail sales to the general public and related to reasonable activities of a homeowner or residents. Residents requesting less than 2 gallons of used motor oil will be directed to a Certified Center. Residents inquiring about other household hazardous waste (e.g. sharps, paint, etc.) will be directed to the County's household hazardous collection sites.

Collection: Contractor will provide instructions necessary to properly and safely package waste for collection. Vehicles must be appropriately licensed and suited to collect and transport used motor oil. All spills resulting from the collection shall be addressed and properly cleaned up by the Contractor.

Storage and Disposal: Waste shall be properly stored and disposed of according to all local, state and federal regulations. The selected Contractor shall assume generator status for all waste collected.

Reporting and Documentation: The selected Contractor shall maintain proper program documentation. Monthly invoice reports shall include addresses of participants and amount of each type of material collected for the month and total pounds collected. All manifest and waste tracking documents shall be provided upon request.

Supplies: Contractor will provide all supplies, personnel, facilities and vehicles required for the program.

GRANT ADMINISTRATION

Contractor will assist City with grant administration of Calrecycle's Oil Payment Program, including, but not limited to the preparation of reimbursement requests to the State, assisting with administrative compliance issues, and preparation of required status reports along with the required annual grant reporting. Contractor will assist with creating a budget of anticipated expenditures to stay within City's grant funding.

PUBLIC EDUCATION

To increase public awareness of the benefits of recycling used motor oil, Contractor will create a Public Education Budget approved by the City and facilitate outreach efforts. The public outreach methods include, but are not limited to, City utility bill inserts, newspaper ads and flyers. All advertisements will be approved by the City prior to reaching the public. Related materials for public outreach purposes may be purchased on behalf of the City and later billed to the City, which includes, but are

not limited to, oil rags, and oil funnels. Prior to purchasing outreach materials, Contractor must receive City approval to ensure purchased materials meet eligibility requirements under grant guidelines.

BATTERY COLLECTION AT CITY FACILITIES

Contractor shall provide all services necessary for the loading, transporting and handling of all batteries collected from designated City facilities that adhere to all applicable federal, state and local regulations. All manifest and waste tracking documents shall be provided upon request. Battery containers will be provided by the Contractor and replaced if needed at the designated City locations. *City shall request pick up of batteries by Contractor on an as needed basis.*

ADDENDA: Addenda Number One and Two also apply to this contract.

RFP NO. S-1199
HOUSEHOLD HAZARDOUS WASTE PROGRAM
"ATTACHMENT B"

THE HONORABLE MAYOR AND CITY COUNCIL CITY
OF GARDEN GROVE
11222 ACACIA PARKWAY
GARDEN GROVE, CALIFORNIA 92840

To: THE HONORABLE MAYOR AND CITY COUNCIL: The undersigned having carefully examined the Plans and Specifications to: Provide All Labor, Material and Equipment Related to Administering the Household Hazardous Program for the City of Garden Grove. HEREBY PROPOSE to furnish all labor, materials and transportation, and do all the work required to complete work in accordance with the Scope of Work.

Please list the pricing in the unit of measure indicated. DO NOT make any changes to this form or leave any lines blank. Incomplete Proposal Pricing forms will not be considered and may be deemed as non-responsive.

TYPE	LOCATION	ADDRESS	UNIT
1. Used Motor Oil	15 Certified Collection Centers	SEE LIST PROVIDED IN SCOPE OF WORK	\$ 200.00 PER DRUM
2. Annual Site Inspections	15 Certified Collection Centers	SEE LIST PROVIDED IN SCOPE OF WORK	\$100.00 PER HOUR
3. Advertising- Utility Bill Insert	N/A Done 3-6 times per year (30,000 Qty printing/delivery ; insert size 8.5 x 3.66"; delivery location at Infosend-4240 E. La Palma Avenue Anaheim, CA 92807)	N/A	\$ 1,364.00 Bill Insert (For each group of 30,000 utility bill inserts, total cost to vary depending on 3-6 x)
4. Advertising-	N/A Done 4-9 times per year (Direct mail piece with grocery ads- big sheet- 8.375"x12", double sided)	N/A	\$ 2,560.00 grocery ad (per drop, total cost to vary, depending upon 4-9 x of this amount)

5. Two (2) Annual State Report	N/A (Calrecycle Oil Payment Program's Annual Report and CalRecycle 303 report for Household Hazardous Waste Collection Information)	N/A	\$270.00 for Both Annual Reports
6. Used Motor Oil	Residential Door-to Door Collection	VARIOUS LOCATIONS	\$ <u>90.00</u> PER STOP
7. Batteries	Garden Grove City Hall	11222 Acacia Parkway, Garden Grove, CA	\$ <u>180.00</u> PER STOP
8. Batteries	Garden Grove Municipal Service Center	13802 Newhope Street, Garden Grove, CA	\$ <u>180.00</u> PER STOP
9. Batteries	H. Louis Lake Senior Center	11300 Stanford Avenue, Garden Grove, CA	\$ <u>180.00</u> PER STOP
10. Batteries	Garden Grove Fire Station # 1	11301 Acacia Parkway Garden Grove, CA	\$ <u>180.00</u> PER STOP

PROPOSAL PRICING

RFP NO. S-1199: HOUSEHOLD HAZARDOUS WASTE PROGRAM "ATTACHMENT B" CONT.

PLEASE PROVIDE ANY ADDITIONAL COSTS ASSOCIATED WITH PROVIDING SERVICES THAT ARE NOT ALREADY INCLUDED IN TEMS 1-10 ABOVE.

HOME COLLECTON PROGRAM FOR OIL AND OIL FILTERS

WM Curbside, LLC will invoice the municipality for completed home collections. A collection of oil and oil filters from a participating household in the contracted area is considered a *completed home collection* or *stop*. Only completed stops will be billed.

The cost of a completed stop at each participating household is \$90.00.

CERTIFIED CENTER PROGRAM

WM Curbside, LLC will complete CalRecycle's required annual site visits to participating Certified Centers within the municipality's jurisdiction. Then complete OPP grant required paperwork and submit to municipality along with annual report.

The cost per visit to each Certified Collection Center is \$100.00 per site

OIL FILTER COLLECTION SERVICE

WM Curbside, LLC will collect drums of used oil filters from the Certified Collection Centers or any approved, designated site at a cost of \$ 200.00 per drum.

GRANT REPORT

Each Oil Program Payment Program grant cycle, which is sponsored by CalRecycle, requires completion of documentation for the grant process. We are able to offer the assistance with completing the required documentation.

The cost to complete the OPPP grant 303 Form is \$135.00

The cost to complete CalRecycle Annual Collection Report is \$135.00

WM CURBSIDE, LLC

Action by Written Consent of the Sole Member

The undersigned, being the Sole Member of WM CURBSIDE, LLC, a(n) Delaware limited liability company (the "Company"), hereby consents to the taking of the following action in lieu of a meeting of the Members of the Company and hereby waives any notice whatsoever required to be given in connection therewith:


Corporate Seal

RESOLVED, that in addition to any previously adopted corporate seal of the Company, the corporate seal, an impression of which is affixed below, is hereby adopted for use (i) as may be deemed necessary, advisable or appropriate in connection with the issuance of surety bonds, undertakings and/or similar instruments, or (ii) in connection with any other actions deemed necessary, advisable or appropriate in the judgment of the Secretary or any Assistant Secretary.

The Secretary or Assistant Secretary of the Company is directed to file a copy of this written consent with the minutes of the proceedings of the Company.

Dated: July 1, 2013

WASTE MANAGEMENT NATIONAL SERVICES, INC.,
Sole Member



Linda J. Smith, Vice President