

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2023, 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 the collection and disposal of the Motor Oil Recycling and Used Oil Filter Collection Program for the City of Garden Grove per the Scope of Work in Attachment A and RFP S-1310.
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 three (3) fiscal years from full execution of the agreement, with an option to extend said agreement an additional three (3) fiscal years, for a total performance period of six (6) fiscal years. Option years shall be exercised one (1) year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY 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 \$150,000.00, for the first three years, payable in arrears and in accordance with the Proposal Pricing form, Attachment B. All work shall be in accordance with RFP No. S-1310.

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. Within 45 day of delivery of goods or completion of performance of services, CONTRACTOR must promptly render an invoice to CITY or payment may be significantly delayed. 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 May 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.

Section 4.0. INSURANCE REQUIREMENTS

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance and provide a Waiver of Subrogation in favor of the City.
- 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. Throughout the term of this Agreement, CONTRACTOR shall maintain the following insurance coverages for the duration of this Agreement. Coverages are based on the services and/or operations agreed to in RFP S-1310. CONTRACTOR reserves the right to make any minor changes to the insurance terms in Section 4.0, 4.1, 4.2 and 4.3 herein, so it conforms to CONTRACTOR's insurance policies but will continue to meet the CITY's insurance limits.

- (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.

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: Ilda Rodriguez (IRODRIG7@wm.com)
10633 Ruchti Road
South Gate, CA 90280
 - 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. **Public Records Act.** Unless otherwise stated, the CITY understands that the services provided by the CONTRACTOR hereunder contemplate collection, disposal of the Motor Oil Recycling and used oil filters Collection Program for the City of Garden Grove, and such services do not include "TRADE SECRET", "CONFIDENTIAL", or "PROPRIETARY" handling and/or destruction of the CITY's confidential information. As such, CONTRACTOR, its employees, affiliates or agents will not be responsible for disclosure of the CITY, its affiliates, agents, employees, contractors, suppliers or any third party's confidential and/or proprietary information contained in materials collected by CONTRACTOR, its employees, affiliates or agents during normal business operations. The CITY, its affiliates, agents, employees, contractors, suppliers or any third party shall be responsible to shred or otherwise destroy all its confidential or proprietary documents designated for and/or provided to CONTRACTOR for destruction.
18. **Force Majeure.** Neither the CITY nor CONTRACTOR shall be considered in default of any of its obligations under this Agreement should the parties be prevented from performing its services hereunder if delayed or rendered impossible for reasons of acts of God, civil commotion, government action, pandemic, fire, storm, floods, explosion, war, riots, strikes, walkouts or any other significant events or causes of any nature which is beyond the reasonable control of either party, including changes in law. Parties shall be excused from the failure to perform such services to the extent and for the period that such performance is prevented by such condition or event. If CONTRACTOR is unable to perform its services under this Agreement due to Force Majeure event, the CITY will not be liable for payments under this Agreement, until the services continue. Notwithstanding the foregoing, if the Force Majeure event continues for a period exceeding thirty (30) days, the CITY shall have the right, in its sole discretion, to terminate the Agreement.
19. **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.

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(Agreement Signature Block on Next Page)

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: _____

Name: _____

Title: _____

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:

Garden Grove City Attorney

**ATTACHMENT A
SCOPE OF WORK
RFP S-1310**

**Provide All Labor, Material and Equipment Related to Administering the
Used Motor Oil Recycling Collection 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. Over the past 20 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 Collection Program (Program). This funding has fully supported the City's Program.

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 and oil filters) 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 sixteen (16) Used Oil Collection Centers, completion of the Certified Center Site Visit Checklist Form (CalRecycle 664), 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 16 locations of the Certified Collection Centers are as follows:

| No. | Facility Name | Address | City | Postal Code |
|------------|--------------------------------------|--------------------------|--------------|--------------------|
| 1 | Firestone Store #010979 | 10081 Chapman Avenue | Garden Grove | 92840 |
| 2 | O'Reilly Auto Parts #2837 | 13933 Harbor Blvd | Garden Grove | 92843 |
| 3 | O'Reilly Auto Parts #3059 | 9851 Chapman Ave | Garden Grove | 92841 |
| 4 | AutoZone #5526 | 12951 Nelson St | Garden Grove | 92840 |
| 5 | AutoZone #2872 | 12056 Brookhurst Street | Garden Grove | 92840 |
| 6 | Jiffy lube #1991 | 13970 Harbor Blvd | Garden Grove | 92843 |
| 7 | Morrison Tire, Inc. | 12045 Valley View Street | Garden Grove | 92845 |
| 8 | Toyota Place | 9670 Trask Avenue | Garden Grove | 92844 |
| 9 | Volkswagen of Garden Grove | 10800 Trask Ave. | Garden Grove | 92843 |
| 10 | Tire Choice | 9572 Chapman Ave. | Garden Grove | 92841 |
| 11 | Garden Grove Nissan | 9222 Trask Ave | Garden Grove | 92844 |
| 12 | Garden Grove Kia | 13731 Harbor Blvd. | Garden Grove | 92843 |
| 13 | Garden Grove Hyundai | 9898 Trask Ave | Garden Grove | 92844 |
| 14 | Firestone Complete Auto Care #024856 | 13961 Brookhurst Street | Garden Grove | 92843 |
| 15 | AutoZone #5527 | 13220-B Harbor Blvd. | Garden Grove | 92843 |
| 16 | Valvoline Instant Oil Change IH0038 | 9001 Trask Ave | Garden Grove | 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 include 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.