



CITY of Manchester
Department of Public Works
475 Valley Street
Manchester, New Hampshire 03103

AGREEMENT

This **AGREEMENT** is made effective this 13th day of September, 2018 ("Effective Date") by and between the City of Manchester, New Hampshire, through the Department of Public Works, hereinafter called "CITY" and Tradebe Environmental Services, LLC of Merrillville, IN. hereinafter called "CONTRACTOR".

WHEREAS, the CITY has selected CONTRACTOR to manage and conduct two Household Hazardous Waste Collection Projects over a one year period, in which the CONTRACTOR will perform in a good and professional manner, the services identified in the Proposal Invitation FY19-500-06.

NOW, THEREFORE in consideration of the promises, mutual covenants and Agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CITY and CONTRACTOR agree as follows:

1. Scope of Work

CONTRACTOR will perform the following Scope of Work:

- A. CONTRACTOR shall provide all labor, equipment and materials required for Household Hazardous Management Services for "Household Hazardous Waste Collection" events.
- B. CONTRACTOR shall visit the City's collection site and shall submit to the City a required work plan, site safety plan (in accordance with ENV-WM 1003.04(10) b and c) and any other required information to be reviewed by the NH Department of Environmental Services, Waste Management Division.
- C. CONTRACTOR shall dedicate a minimum of four (4) trained staff specifically for removal of household hazardous waste from resident vehicles as needed to avoid congestion throughout each collection event.
- D. The CITY will provide one (1) 30-yard roll-off container at the hazardous waste collection location, one (1) 30-yard roll-off container at the oil collection location for disposal of empty containers, and provide poly liners for both containers.

- E. Appropriate container(s) shall be provided for cardboard recycling by the CITY for the purpose of recycling OCC. CONTRACTOR shall provide labor for breaking down/flattening cardboard boxes and depositing in container(s).
- F. The CONTRACTOR shall provide a licensed, certified vendor with adequate equipment and labor to accommodate "on site" collection of residential *used* motor oil for each event. The CONTRACTOR will provide collection, transportation and disposal.
- G. The CONTRACTOR is required to designate a "Safety Officer" whose duty shall be to monitor the project in order to insure that all safety measures alluded to in the contract and otherwise pertinent to this project, are strictly adhered to. Special attention shall be paid to maintaining existing guide, regulatory and warning signs affecting the movement of traffic.
- H. The CONTRACTOR shall have present at the site on collection day, an employee or agent trained in the identification of all hazardous and acutely hazardous waste and such employee(s) or agent(s) necessary to handle, containerize, label, load and transport such wastes out of the site in a manner conforming to New Hampshire and Federal laws and regulations. This person will also be responsible for the safety at the site during the collection event.
- I. The CONTRACTOR's set-up shall be neat, functional, organized and ready to accept household hazardous waste by 8:00 AM on collection day.
- J. The CONTRACTOR shall transport all accepted waste from site prior to 8:00 PM on the collection day.
- K. The CONTRACTOR is required to remove his materials and equipment from the site and restore the site to its original condition before finally departing from the site and City on collection day.
- L. The CONTRACTOR shall keep, maintain and make available all records/reports deemed necessary within the GENERAL section of these specifications.
- M. CONTRACTOR will provide other services as outlined in the CITY'S Proposal Invitation FY19-500-06.

2. Term

The initial term will commence upon execution of this Agreement and shall be completed immediately following the Spring 2019 collection. The CITY may renew this Agreement for four (4) additional one (1) year periods subject to satisfactory performance, Contractor acceptance, and determination that renewal will be in the best interest of the City.

All prices shall remain firm for the initial one (1) year period. Contractor may request a price increase for any subsequent renewal period (extensions) by submitting a fully-documented request at least ninety (90) days prior to expiration of the Agreement. Request for increase may not exceed 4% per year and shall be based upon the latest Consumer Price Index for Boston (CPI-W) as published by the United States Department of Labor, Bureau of Labor statistics, compared

This Agreement may be terminated by either party by giving thirty (30) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the other. In addition, the CITY reserves the right to terminate the contract at anytime or to reduce the Scope of Services in order to be consistent with the availability of funds. In the event of termination due to the fault of others than the CONTRACTOR, the CONTRACTOR shall be paid compensation for services performed up to termination date. The rights, duties and responsibilities of the Parties hereto shall continue in full force until the expiration of the Term.

3. Compensation

Payments shall be made per the City of Manchester, NH ordinances, provided however, that the CONTRACTOR present a statement to the CITY of the services performed, which, statement shall be approved for payment by the City's representative.

Compensation shall be made per the Pricing Proposal as submitted by CONTRACTOR in Proposal Invitation.

4. Ownership

All reports and material prepared by CONTRACTOR specifically in the performance of this Agreement shall become property of the CITY.

5. Successors and Assigns

This Agreement shall be binding upon the Parties and their respective partners, affiliates, heirs, legal representatives, successors and assigns. No portion of this Agreement or any right or obligation hereunder can be transferred or assigned, in whole or in part, whether by operation of law or otherwise, by either Party without prior written consent of the other Party.

6. No Joint Venture

CONTRACTOR and CITY are and shall be independent contractors to one another, and nothing herein shall be deemed to cause the Agreement to create an agency, partnership or joint venture. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR or any employee or agent of CONTRACTOR.

7. No Consequential Damages

In no event, shall either CONTRACTOR or CITY be liable to each other or any third party for any incidental, special, indirect, exemplary or consequential damages, including but not limited to loss of use of loss or loss of profits, whether foreseeable or not, occasioned by or arising out of CONTRACTOR'S or CITY'S breach hereof or performance hereunder, delay in performance or any other cause whatsoever.

8. Exclusive Remedy

The CITY'S and CONTRACTOR'S sole obligation and exclusive remedy to each other, in the event of an alleged breach or defect in any service provided hereunder is the correction by that Party of such alleged breach or defect. If after repeated efforts that Party is unable to correct, or if that Party fails within reasonable time to attempt to correct and continues not to attempt to correct within ten (10) days of receipt from other Party of written notice of such breach or defect, the other Party shall be entitled to terminate this Agreement and to recover actual damages in an amount not to exceed the amount of fees due and payable to CONTRACTOR by Supplier under this Agreement. Both parties understand and agree that this exclusive remedy allocates risk of service defects between the Parties as authorized by applicable law.

9. Indemnification

The CITY and CONTRACTOR mutually agree to indemnify and hold harmless each other from any claims, actions or other proceedings and any losses, damages or liabilities asserted by third parties in respect to personal injury or death to any person, or damage to any property arising out of or based upon any act or omission of the Parties in performance of this Agreement, but only to the extent that the indemnifying Party is negligent or its action constitutes willful misconduct.

10. Arbitration

All claim or controversy or claim arising out of or relating to this Agreement, or the formation or breach thereof, shall be settled by arbitration in Manchester, New Hampshire in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This Agreement shall be governed by, and construed in accordance with the laws of the State of New Hampshire

Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

11. Miscellaneous

This Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR

In the case of a discrepancy this Agreement shall prevail.

This Agreement, together with the proposal invitation FY19-500-06, the exhibits attached hereto and any written amendments thereof, constitutes the entire Agreement and understanding between the Parties with respect to the subject matter hereof and merges and supersedes all prior discussions and writings with respect thereto. If any provision contained in this Agreement shall for any reason be held unenforceable in any respect under the law of any state or the United States of America, such unenforceability shall not affect any other provisions in this Agreement; this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Agreed and accepted on behalf of

CONTRACTOR

By: [Signature]
Name: Derek Duggan
Title: VP Customer Experience
Date: 10/10/18

City of Manchester, New Hampshire

By: [Signature]
Name: Kevin A Sheppard
Title: PWD
Date: 9-13-18