

SOLID WASTE TRANSPORTATION AGREEMENT

THIS SOLID WASTE TRANSPORTATION AGREEMENT (this “Agreement”) is entered into on the ___ day of _____, 2014 (the “Date of this Agreement”), between _____ (the “Contractor”) and the LEA COUNTY BOARD OF COUNTY COMMISSIONERS, on behalf of Lea County (the “County”).

RECITALS

- A. The County is the owner of convenience centers in Hobbs, Maljamar, Monument, and Knowles, New Mexico (the “Convenience Centers”).
- B. Contractor has responded to the County's invitation for BID # 07 (13-14) for providing solid waste hauling services to the Convenience Centers and certain other County-owned locations and has been awarded the bid to provide such services under the terms and conditions set forth below.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

1. TERM AND OPTION TO RENEW. The Agreement shall begin thirty (30) days after the Date of this Agreement (the “Effective Date”) and shall continue for one year after the Effective Date unless earlier terminated by the parties. Thereafter, upon the agreement of both parties this Agreement may be extended for Three (3) additional one year periods in conformance with state statutes and contingent upon the successful performance of Contractor.

2. SCOPE OF SERVICES.

2.1. Contractor shall transport solid waste containers from the following locations to the Lea County Landfill at the following rates (the “Base Rates”):

Location	Base Rate for Single Haul	Base Rate for Double Haul
North Hobbs Convenience Center		
Knowles Convenience Center		
Maljamar Convenience Center		
Monument Convenience Center		
Lea County Fairgrounds, Lovington		
Lea County Event Center, Hobbs		
Lea County Courthouse, Lovington		

2.2. The County shall provide 20, 30, 40, or 50 cubic yard solid waste containers or 40 cubic yard solid waste compactors, which will be stored at the Convenience Centers.

2.3. Contractor will furnish tarps or covers for waste containers during transportation to the Lea County Landfill.

- 2.4. Contractor will have at least one vehicle and trailer available on-site to provide services under this Agreement during the hours that the the North Hobbs Convenience Center is open. Contractor will provide the telephone numbers for the driver and the driver's immediate supervisor to the County and the on-site supervisor at the North Hobbs Convenience Center. The driver shall move full containers from loading areas, replace full containers with empty containers, and begin transportation of solid waste containers within two hours after receipt of telephone notice or such later time as requested by the County. Contractor will not allow loaded containers to accumulate at the North Hobbs Convenience Center in an amount equal to or in excess of 240 cubic yards in any 24-hour period.
- 2.5. Final inspection of waste will be made at the destination. Any products or services rejected at the destination for non-conformance with specifications shall be removed, at the Vendor's risk and expense, promptly after notice of rejection.

3. PAYMENT FOR SERVICES.

- 3.1. The County shall pay Contractor the Base Rates, adjusted as provided in this Section 3, within thirty (30) days after receipt of an invoice by the County. Invoices to the County will include the date, origin of haul, weight, and number of containers on each haul. The actual per ton disposal cost for each haul will be paid by Lea County to the Lea County Landfill.
- 3.2. The Base Rates are based upon the diesel fuel price of \$3.85 per gallon. The Base Rates shall be adjusted up or down on the first Monday of each month according to the price of diesel fuel at the gas station located at 5000 N. Lovington Highway, Hobbs, NM (across from the Lea County Event Center) as shown on the Diesel Fuel Adjustment Schedule attached as Exhibit A.
- 3.3. The base rate may be increased, upon annual renewal of the contract, by eighty percent (80%) of the annual percent change in the Consumer Price Index ("CPI") for All Urban Consumers for the United States as published by the Bureau of Labor Statistics for the 12-month period ending 90 days prior to the renewal date. Contractor shall provide the County with 60 days advance written notice of the CPI adjustment to take effect on the renewal date and shall provide the County with its computation of the CPI adjustment.
- 3.4. Contractor may request an increase in the Base Rates to recover increases in the cost of operations for circumstances that are not within the reasonable control of Contractor. Such circumstances include, but are not limited to: (i) a change in Contractor's operations due to Force Majeure (as defined in Section 9); (ii) any change in laws, statutes, rules, regulations, ordinances, orders, permit conditions, or other requirements of any Federal, State, regional, or local government that becomes effective after the date of this Agreement, including but not limited to increases in surcharges, fees, assessments, or taxes levied upon waste transportation; (iii) changes in the scope or method of services provided by Contractor required, initiated, or approved by the County; (iv) change in disposal location from the Lea County Landfill; or (v) other industry-related reasons. Requests will be reviewed and either approved or denied by the County within 60 days after receipt of a request.

- 4. INSURANCE.** Contractor shall obtain and maintain throughout the term of this Agreement, at Contractor's sole cost and expense, not less than the insurance coverage set forth below. The County will be named as additional insured. Contractor will provide to the County a Certificate of Insurance each policy year for the duration of this Agreement certifying the following list of insurance requirements:
- a) General liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
 - b) Auto liability insurance in the amount of \$1,000,000.00 & \$2,000,000.00 aggregate.
 - c) Umbrella/excess liability insurance in the amount of \$1,000,000.00 aggregate minimum.
 - d) Workers' Compensation insurance as required by New Mexico State Statute.
- 5. INDEMNITY.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless; the County, its officials, employees, agents, successors, and assigns from and against any and all liabilities, penalties, fines forfeitures, demands, claims, causes of action, suits, and costs and expenses incidental thereto, including cost of defense, settlement, and reasonable attorney fees, which any or all of them may hereinafter suffer, incur, be responsible for or pay out as a result of bodily injuries, including death, to any person, damage, including loss of use, to any property, public or private, contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, directly or indirectly, or arising out of or resulting from the acts, or failure to act, of the Contractor, its employees, agents, subcontractors, or other persons engaged by or under the control, supervision or direction of the Contractor, or its subcontractors, in the performance of this Agreement. This paragraph shall survive after the completion or the termination of the Agreement.
- 6. PERMITS AND LICENSES.** Contractor, at its sole cost and expense, shall maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for Contractor to perform the work and services described herein.
- 7. INDEPENDENT CONTRACTOR.** Contractor shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of the County. Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and nothing herein shall be construed as creating a partnership or joint venture between the County and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant, or employee of the County, and no such person shall be entitled to any benefits available or granted to employees of the County.

8. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Contractor shall comply with all Federal, State and local laws, ordinances, rules and regulations pertinent to the services and work performed hereunder. This includes, but is not limited to:

- a) All ordinance requirements applicable to Contractor's activities, including the Lea County Solid Waste Ordinance as they now exist or as they may be amended or replaced; and
- b) All New Mexico Environment Department rules and regulations applicable to Contractor's activities.

9. FORCE MAJEURE. If either party is delayed, hindered or prevented from performing any act required by this Agreement by circumstances beyond its reasonable control, whether or not foreseeable, including, fires, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, failure of power, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, or federal government ("Force Majeure"), then performance of such act shall be excused for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay. The party claiming Force Majeure shall promptly provide telephone notice followed by written notice to the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated.

10. EARLY TERMINATION. The County's payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Either party may cancel this Agreement, with or without cause, by giving the other party 30 days advance written notice.

11. DEFAULT

11.1. Other than as provided in Section 11.2, should either party fail to perform any of its obligations under this Agreement, this Agreement may be terminated for cause upon 30-days prior written notice to the other party unless the failure is cured within 30 days after receipt of such written notice (or if more than 30 days is required due to the nature of the failure, the party commences curing the violation within the 30-day period and proceeds diligently to complete the cure).

11.2. If Contractor fails to provide transportation services within the applicable timeframes provided in Section 2 (a "Transportation Default"), the County shall provide telephone notice of such failure to the driver's immediate supervisor, and written notice of such failure to Contractor as provided in Section 12. If Contractor fails to cure a Transportation Default within thirty-six (36) hours after giving telephone notice to the driver's immediate supervisor and transmitting written notice by fax of said Collection Default to the local office of the Contractor, County may, at its option, secure substitute performance by another contractor at the best obtainable price. In the event the price paid by the County is in excess of the contract price, Contractor shall pay to County the difference in price, which may be offset against other sums due the Contractor from the County. County shall send Contractor written notice within seven (7) days of the procurement of the substitute performance. If Contractor fails to cure a Transportation Default within four (4) days after receipt of written notice of said Collection Default from the County, the County may, at its option, terminate this Contract by providing written notice to the Contractor.

12. NOTICES. Except for notice by telephone as provided in Sections 2, 9, and 11.2, notices to each party shall be sent by certified mail, addressed to:

County: Lea County
 Attn: County Manager
 100 N. Main, Suite 4
 Lovington, NM 88260
 (575) 396-8601

Contractor: Name
 Address Line 1
 City, State ZIP
 Phone Number
 Fax Number

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices shall be deemed received three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage.

13. MISCELLANEOUS.

- 13.1. **Applicable Law.** This Agreement is interpreted according and subject to New Mexico law, including but not limited to, the New Mexico Procurement code, the New Mexico Public Works Minimum Wage Act, and all federal and state laws, rules and regulations pertaining to equal employment opportunity. The rights and obligations set forth herein are to be construed and interpreted according to said laws, regardless of whether they are expressly set forth herein. Any action to interpret and/or enforce this Agreement shall be brought and maintained in the District Court in and for Lea County, New Mexico. Pursuant to Section 13-1-191 NMSA 1978, reference is made to the criminal laws of the State of New Mexico including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities. Further, the Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978) impose civil and criminal penalties for violations.
- 13.2. **Modification.** This Agreement shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.
- 13.3. **Merger Clause.** This agreement with the original bid document, BID # XX (2013-14), and any exhibits thereto constitute the entire agreement and understanding of the parties and all other matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating such matters. In case of a conflict between the terms and conditions shown in this Agreement and those from the original bid document, the terms and conditions listed in the original bid document supersede those found in this Agreement.
- 13.4. **Assignment.** Neither party shall assign or transfer, or permit the assignment or transfer of, this Agreement or any rights or interest hereunder without the prior written consent of the other party, which consent shall not unreasonably be withheld. In the event of such assignment or transfer, the assignee shall assume the liability of assignor, but such assumption of liability shall not relieve the assignor of its obligations and liability under this Agreement.

- 13.5. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.
- 13.6. **Survival.** All covenants, agreements, warranties and representations and remedies provided herein shall survive the termination of this Agreement.
- 13.7. **Authority to Practice.** The Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to perform the work and services described herein.
- 13.8. **Third Parties.** The parties agree that it is not intended that by any of the provisions of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to this Agreement to maintain suit for wrongful death, bodily and/or personal injury to persons, damage to property, and/or any claim whatsoever pursuant to the provisions of this Agreement.
- 13.9. **Defenses.** By entering this agreement the County, its public employees as defined in the New Mexico Tort Claims act, do not waive sovereign immunity, do not waive any defense and/or waive any limitation of liability pursuant to law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Date of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

“COUNTY”

LEA COUNTY BOARD OF COUNTY
COMMISSIONERS

By: Gregg Fulfer, Chairman

ATTEST:

Pat Chappelle
LEA COUNTY CLERK

REVIEWED BY LEGAL:

By: Kelli Williams, Deputy

COUNTY ATTORNEY

“CONTRACTOR”

Company Name

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

