



**AGR24-48**



LOS ALAMOS

## **INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT**

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Waste Management of New Mexico, Inc.**, a New Mexico corporation ("Contractor"), collectively (the "Parties"), to be effective for all purposes January 1, 2025 ("Effective Date").

**WHEREAS**, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 24-48 ("RFP") on February 15, 2024, requesting proposals for Solid Waste and Recycling Hauling and Disposal Services, as described in the RFP

**WHEREAS**, Contractor timely responded to the RFP by submitting a response dated March 14, 2024 ("Contractor's Response"); and

**WHEREAS**, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

**WHEREAS**, the County Council approved this Agreement at a public meeting held on July 30, 2024; and

**WHEREAS**, Contractor shall provide the Services, as described below, to County.

**NOW, THEREFORE**, in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

**SECTION A. SERVICES:** Contractor shall possess all permits, registrations, and provide labor, supervision, equipment, materials, supplies and reporting necessary to properly landfill the solid waste material generated from the Los Alamos County Eco Station ("Services"), throughout the term of this Agreement,

1. Contractor has supplied to County for review and acceptance, the documents listed below regarding regulatory correspondence, requirements, necessary permits, records and operating procedures of the disposal facility, which are required prior to the execution of the Agreement:
  - a. Post Collection Facility Operation Procedures
  - b. Transporters Operation Policy Requirements
  - c. Facility Inspection Report
  - d. Solid Waste Facility Permit
  - e. Special Waste Permit

2. County reserves the right to select one of two options for disposal services as offered by Contractor, County shall provide confirmation of the selected option in writing at least thirty (30) days prior to the effective date of this Agreement. The options are described in the rate schedule set out in Exhibit A, attached hereto and made a part hereof for all purposes.
3. Pursuant with the above paragraph, County, at its discretion, shall deliver waste to Contractor's Landfill, located either in Rio Rancho, New Mexico or Los Lunas, New Mexico.
4. Contractor warrants that its Rio Rancho Landfill has the capacity to receive two thousand five hundred (2,500) tons per month from the County, and further warrants that Contractor shall accept the delivered waste at its Rio Rancho Landfill through the permit expiration date of September 23, 2028.
5. Contractor warrants that its Valencia Regional Landfill has the capacity to receive two thousand five hundred (2,500) tons per month from the County, and further warrants that Contractor shall accept the delivered waste at its Valencia Regional Landfill throughout the term of this Agreement.
6. Should the Contractor be unable to accept the County's delivered waste at its Rio Rancho Landfill, Contractor shall accept the County's delivered waste at the Contractor's Valencia Regional Landfill in Los Lunas, New Mexico.
7. Contractor shall provide guaranteed disposal capacity of two thousand five hundred (2,500) tons per month from the County for the term of the Disposal Agreement.
8. Contractor shall provide knowledgeable and experienced staff to assist with offloading issues, equipment problems and any repair parts delivered to the landfill site(s). Site management shall be available to address any requests or operational issues, and to resolve issues as quickly as possible.
9. Contractor shall provide to County the Contractor's policies and procedures for the delivery of waste to its landfill site.
10. Contractor shall submit monthly reports to County, showing the solid waste material received from the Los Alamos County Eco Station ("Eco Station") was properly landfilled.
11. Contractor shall submit monthly detailed reports listing the date, vehicle identification and corresponding weight of delivered loads of waste, included with the monthly billing.
12. Contractor's proprietary scale-house software shall provide printed scale tickets for each load, provided to the drivers, and offer an option for storing tare weights (unladen weight) to eliminate weighing out after dumping/offloading.

13. Contractor shall maintain a record of Eco Station waste buried in the Rio Rancho Landfill, located at 1132 33<sup>rd</sup> Street NE, Rio Rancho, New Mexico, and provide such record to County upon request.
14. Contractor shall maintain a record of Eco Station waste buried in the Valencia Regional Landfill, located at 1600 Highway 6 NW, Los Lunas, New Mexico, and provide such record to County upon request.
15. For the purpose of determining compliance with the terms of the Agreement, Contractor agrees and consents that County shall, at reasonable times, have the right to enter and inspect Contractor's disposal facilities that receive waste from County.

**SECTION B. TERM:** The term of this Agreement shall commence January 1, 2025, and shall continue through December 31, 2032, unless sooner terminated, as provided herein.

**SECTION C. COMPENSATION:**

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed, in accordance with the cost per ton compensation rate schedule set out in Exhibit A, attached hereto and made a part hereof for all purposes, and which amount does not include applicable New Mexico gross receipts taxes ("NMGR"). The cost per ton rate may change annually, and shall be adjusted in an amount equal to the annual rate of inflation for the preceding twelve month period ended October 31, as determined by the Consumer Price Index (CPI) rate change as established by the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services in U.S. City Average, Unadjusted Percentage Change. The total compensation for performance of the Services shall not exceed FIVE MILLION SEVEN HUNDRED THIRTY-SEVEN THOUSAND TWO HUNDRED SEVENTY-SEVEN AND 47/100 DOLLARS (\$5,737,277.47), which does not include applicable New Mexico gross receipts taxes ("NMGR").
2. **Total Not-to-Exceed Compensation Amount.** The Parties understand that County can only utilize Contractor's Services, as specified herein, throughout the Term of this Agreement, in a manner that does not surpass the total not-to-exceed compensation amount for Services originally estimated by County and specified in Section C(1) herein, unless approved by written Amendment to this Agreement approved by County and Contractor. Any increase to the not-to-exceed compensation amount provided herein must be authorized by an Amendment to this Agreement. It is the sole responsibility of Contractor to ensure that all work performed does not exceed the not-to-exceed amount of this Agreement and any subsequent Amendment. Any work performed under this Agreement by Contractor where the costs exceed the not-to-exceed amount is not a just and lawful debt payable to Contractor.
3. **Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Environmental Services Manager showing the rate per ton for each load, number of loads delivered, amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGR levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely, and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right, and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend, and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

**SECTION J. RECORDS:** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

**SECTION K. DUTY TO ABIDE:** Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability, or veteran status.

**SECTION M. CHOICE OF LAW:** The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

**SECTION N. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION:** County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

**SECTION O. WAIVER OF JURY TRIAL:** In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both

County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

**SECTION P. INDEMNITY:** Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims, demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

**SECTION Q. FORCE MAJEURE:** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence; provided, however, that the Party failing to perform shall (i) as soon as possible, inform the other Party of the occurrence of the circumstances preventing or delaying the performance of its obligations, and describe at a reasonable level of detail the circumstances causing such delay, and (ii) exert reasonable efforts to eliminate, cure, or overcome any of such causes and to resume performance of its Services with all possible speed. In such event, the non-performing Party may be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail, and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay.

**SECTION R. NON-ASSIGNMENT:** Contractor shall not assign this Agreement or any privileges or obligations herein and shall not novate this Agreement to another without the prior written consent of the County Manager.

**SECTION S. LICENSES:** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION T. PROHIBITED INTERESTS:** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION U. TERMINATION:**

- 1. Generally.** The County Manager may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination, and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated

by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION V. NOTICE:** Unless otherwise provided in this Agreement, any notices required under this Agreement shall be made in writing. Notices shall be sent via 1) hand-delivery; 2) registered or certified mail; 3) a nationally recognized overnight courier service; or 4) electronic mail (with copy by mail or courier). All notices shall be sent to each party at the addresses set out in this section or any address later provided by such party in writing, with postage prepaid by the sender, and shall be deemed delivered upon hand delivery, verified proof of delivery by courier, or three (3) days after deposit in the United States Mail.

County:

Environmental Services Manager  
Incorporated County of Los Alamos  
3701 East Jemez Road  
Los Alamos, New Mexico 87544  
E-mail: armando.gabaldon@lacnm.us

Contractor:

Douglas Shimic, Facility Operator  
Waste Management of New Mexico  
1132 Carpenter St. NE  
Rio Rancho, New Mexico 87144

With a copy to:

County Attorney's Office  
1000 Central Avenue, Suite 340  
Los Alamos, New Mexico 87544

E-mail: ~attorney@lacnm.us

**SECTION W. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein, and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

**SECTION X. NO IMPLIED WAIVERS:** The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

**SECTION Y. SEVERABILITY:** If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

**SECTION Z. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes.


**SECTION AA. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES:** Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

**SECTION AB. DUPLICATE ORIGINAL DOCUMENTS:** This document may be executed in two (2) counterparts, each of which shall be deemed an original.

**SECTION AC. NEGOTIATED TERMS:** This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

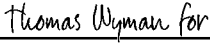
  
\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**



**INCORPORATED COUNTY OF LOS ALAMOS**

**BY:**  8/1/2024  
\_\_\_\_\_  
**ANNE W. LAURENT** **DATE**  
**COUNTY MANAGER**

**Approved as to form:**

  
\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**WASTE MANAGEMENT OF NEW MEXICO, A NEW MEXICO CORPORATION**

**BY:**  8/1/2024  
\_\_\_\_\_  
**GREG WERMES** **DATE**  
**M&I SALES DIRECTOR**



**Exhibit A**  
**Compensation Rate Schedule**  
**AGR24-48**

Service Option 1 - Valencia Regional Landfill							
Location	Cost Per Ton Year 1	Cost Per Ton Year 2	Cost Per Ton Year 3	Cost Per Ton Year 4	Cost Per Ton Year 5	Cost Per Ton Year 6	Cost Per Ton Year 7
Valencia Regional	\$32.00	\$32.00 + CPI	\$Year 2 + CPI	\$Year 3 + CPI	\$Year 4 + CPI	\$Year 5 + CPI	\$Year 6 + CPI
Service Option 2 - Rio Rancho Landfill initial 3 years, and Valencia Regional for the remainder of the term.							
Location	Cost Per Ton Year 1	Cost Per Ton Year 2	Cost Per Ton Year 3	Cost Per Ton Year 4	Cost Per Ton Year 5	Cost Per Ton Year 6	Cost Per Ton Year 7
Rio Rancho Landfill	\$50.00	\$50.00 + CPI	\$Year 2 + CPI	\$Year 3 + CPI	\$Year 4 + CPI	\$Year 5 + CPI	\$Year 6 + CPI
Valencia Regional*				\$Year 3 + CPI	\$Year 4 + CPI	\$Year 5 + CPI	\$Year 6 + CPI

The rate for Valencia Regional landfill in Option 2 will follow the calculation for year three, using the pricing from Service Option 1 above, with \$32.00 in year 1, adding CPI for year 2, and adding CPI to year 3 to calculate the rate for the beginning of year 4.

The CPI for use in calculation of the annual increase or decrease shall be the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services in U.S. City Average, Unadjusted Percentage Change (not seasonally adjusted).

The CPI Calculation shall be submitted by Contractor to the County prior to November 30, each contract year. The calculation shall be made as of the proceeding twelve-month period ending October 31 for each year of the term in which a calculated CPI is required.