



**AGR24-60**



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 **Acme Iron and Metal Co., Inc.**, a New Mexico corporation ("Contractor"), collectively (the "Parties"), to be effective for all purposes April 29, 2024 ("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. 24-60 ("RFP") on February 29, 2024, requesting proposals for Recycling of Scrap Metal and White Goods, as described in the RFP; and

**WHEREAS**, Contractor timely responded to the RFP by submitting a response dated March 19, 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**, 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 provide collection, safe transport, and recycling services of scrap metal, white goods including major household and commercial large appliances, and other materials defined herein in Section A(4) ("Materials") and shall provide refrigerant removal services ("Services") as follows:

- 1) Contractor shall have up-to-date knowledge of, and shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to handling, transportation, storage and disposal of Materials and provision of Services. Such laws, regulations, rules, and orders include, but are not limited to those of the United States Environmental Protection Agency, the New Mexico Environmental Department, the United States Department of Transportation, and the New Mexico Department of Transportation.
- 2) Contractor shall provide all necessary equipment, labor, supervision, insurance, required licenses, permits, registrations, and certifications to perform Services. Contractor shall equip its collection personnel with appropriate personal protective equipment ("PPE") and training on safety procedures.
- 3) Collection shall take place at the County Eco Station, located at 3701 E. Jemez Road, Los Alamos, New Mexico on a monthly basis. The County may increase or decrease the collection frequency as necessary. The volume of Services and the volume of Materials shall be dependent on the volume of Materials collected by County, resulting from County's residential and commercial recycling collection programs. County provides no

guarantee for frequency or volume of work or Services to be provided for any given time period throughout the term of this Agreement.

- 4) The Materials collected may consist of ferrous and non-ferrous materials including but not limited to the following: refrigerators, stoves, ovens, washing machines, dryers, freezers, air conditioners, hot water heaters, duct work, sheet metal, light iron, barrels, autobody scrap and frames, batteries, drums, cable, rebar, strapping, wire, brass, copper, aluminum, tin, steel, zinc, electric motors, radiators, cast iron pipe, non-PCB ballasts, bicycles, lawn mowers, BBQ grills, propane and helium tanks, paper, cement, plastic, glass, tires, and rope.
- 5) Contractor shall designate one individual as a primary point-of-contact and shall notify the Environmental Services Manager or designee in writing of any changes to the County's point-of-contact throughout the term of this Agreement. Contractor shall schedule meetings or calls with the Environmental Services Manager or designee at a regular frequency to be determined by both Parties to ensure County's needs are being met.
- 6) Contractor shall provide hauling of full metal roll-offs within seventy-two (72) hours of receipt of notice from County.
- 7) Contractor shall provide and maintain at least four (4) forty (40)-yard roll-off containers for use at the Eco Station for the collection of Materials. All roll-off containers and any other equipment provided by Contractor for performance of Services under this Agreement shall be in good working condition and properly maintained to assure efficient and safe use.
- 8) Contractor shall inspect the roll-off containers prior to acceptance and transport to ensure safe and proper loading of Materials and shall notify County immediately of any issues. County shall be responsible for correcting any issues identified by Contractor and for reloading roll-off containers as necessary to ensure safe and proper loading. Once Materials are accepted by Contractor, Materials and all liability associated therewith, including handling, transporting, and recycling become the sole responsibility of the Contractor.
- 9) Contractor shall deliver all collected Materials to Contractor's facility, or to another facility that has been approved in writing by the County Manager or his designee. Contractor shall provide to County the name and address of the recycling facility used throughout the term of this Agreement.
- 10) Contractor shall use New Mexico certified truck scales and bonded and trained certified weigh masters and shall scan all inbound truck loads for low-level radiation.
- 11) Contractor's scale operators shall take a minimum of three camera shots when the scale master weighs incoming trucks, including the vehicle's rear angle, the load from above, and a front angle. Contractor shall include these pictures with its automated scale ticket records. Contractor shall provide these records and images upon County's request throughout the term of this Agreement.
- 12) Contractor shall, at no additional cost to County, remove all refrigerants from applicable Materials prior to recycling, including but not limited to refrigerators, freezers, and air conditioners, and such refrigerants shall be managed by Contractor as required under Section 608 of the Clean Air Act, and any other applicable laws, rules, and regulations.
  - i) Removal of refrigerants shall be performed by Contractor at Contractor's facilities.
  - ii) Contractor shall provide to County within thirty (30) business days of refrigerant removal, a certified statement and copy of its logbook to serve as a report of the refrigerant removal performed and shall confirm proper transport and disposal of the refrigerant in accordance with applicable laws, rules and regulations.
- 13) Contractor shall prepare Materials for shipping and recycling, which includes, but is not limited to shredding, cutting, shearing, baling, cable stripping, and segregating Materials.

- 14) Final disposition of all Materials must be recycled by Contractor in a method approved by County, and in accordance with all federal, state, and local laws, rules regulations and ordinances applicable to handling, transportation, storage, and disposal of said Materials.
- 15) Contractor shall provide the Environmental Services Manager or designee copies of certificates of destruction documents and any available shipping and disposal manifests for the recycled Materials.
- 16) Contractor shall maintain accounting records, participate in financial audits as required, and provide County access to all paperwork, records, and documents relating to the scrap and white goods recycling program.
- 17) Contractor shall submit payment to County, within thirty (30) days for all metal collected and recycled. Contractor shall have the ability to submit payment to the County via wire, Automated Clearing House ("ACH") or check voucher, as may be requested by County. The Environmental Services Manager or designee shall provide written payment instructions via email to Contractor within ten (10) business days of the Effective Date of this Agreement and shall notify Contractor via email of any change to payment instructions throughout the term of this Agreement.

**SECTION B. TERM:** The term of this Agreement shall commence April 29, 2024 and shall continue through April 28, 2031 unless sooner terminated, as provided herein.

**SECTION C. COMPENSATION:** Contractor shall pay County compensation for the weight of the metal collected equal to fifteen percent (15%) of the price of No. 1 Heavy Melt as provided for in Dealer Selling Prices for No.1 Heavy Melt in the Houston Market as established in the American Metal Market (AMM) Scrap Iron and Steel Prices index, as reported via the Fastmarkets™ cross-commodity price reporting agency for the day the contractor collects the metal. This does not include applicable New Mexico gross receipts taxes. The following illustrates the price formula outlined above:

Houston Index Price:	\$340.00	a Gross Ton (2,240 pounds)
	x.8929	convert to Net Tons
	\$303.59	a Net Ton (2,000 pounds)
	x.85%	- Adjustment
	\$45.54	= Net Ton Final Price
Or \$45.54 divided by 2,000 pounds		= \$.023 per pound Net Price

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRS 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, Automobile Liability Insurance, Professional Liability Insurance, and Pollution 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.

- 4. Professional Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00). Professional Liability Insurance, if applicable, shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.
- 5. Pollution Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) aggregate. Pollution Liability Insurance shall provide coverage for Services provided during the term of this Agreement and for a period of at least five (5) years thereafter.

**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:

Vice President  
Acme Iron and Metal Co., Inc.  
P.O. Box 6605  
Albuquerque, New Mexico 87197  
E-mail: paulwynn@acmeironandmetal.com

With a copy to:

County Attorney's Office  
1000 Central Avenue, Suite 340  
Los Alamos, New Mexico 87544  
E-mail: lacattorney@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.

**SECTION AD. CONFIDENTIAL INFORMATION:** Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit A. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

**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*

**NAOMI D. MAESTAS**  
**COUNTY CLERK**



**INCORPORATED COUNTY OF LOS ALAMOS**

BY: *Anne W. Laurent* 4/26/2024  
**ANNE W. LAURENT** **DATE**  
**COUNTY MANAGER**

**Approved as to form:**

*Thomas Wyman*

for

**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**ACME IRON AND METAL CO., INC., A NEW MEXICO CORPORATION**

BY: *Paul Wynn* 4/26/2024  
**DATE**

NAME: Paul Wynn

TITLE: President



**Exhibit A**  
**Confidential Information Disclosure Statement**  
**AGR24-60**

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement ("Statement") defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

	<b>Contractor</b>	<b>County</b>
<b>Name:</b>	Paulwynn	Armando Gabaldon
<b>Title:</b>	Ptesident	Environmental Services Manager
<b>Address:</b>	PO Bix 3903	3701 East Jemez Road
<b>City/State/Zip:</b>	Albuquerque NM 87190	Los Alamos, New Mexico 87544
<b>Email:</b>	Paulwynn76@gmail.com	armando.gabaldon@lacnm.us

2. Definitions:
  - a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
  - b) **Discloser** - the party disclosing Confidential Information.
  - c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient's possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser's prior written approval.
  - d) **Recipient** – the party receiving Confidential Information.
3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.