

## 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 **MCT Waste, LLC**, a limited liability company ("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. 25-06 ("RFP") on March 28, 2024, requesting proposals for Hauling Services for Solid Waste and Recycling, as described in the RFP; and

**WHEREAS**, Contractor timely responded to the RFP by submitting a response dated July 20, 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 October 29, 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. TRANSPORTATION SERVICES:**

- 1. Contractor shall furnish all labor, supervision, equipment, materials, registrations, licenses and supplies necessary to transport waste and recycling from the Los Alamos County Eco Station ("Eco Station") located in Los Alamos to the designated disposal facilities.
- 2. Within ten (10) days of the Effective Date of this Agreement, Contractor shall submit an application for tire hauling to New Mexico Environment Department for transportation of waste tires.
- 3. Contractor shall provide a terminal tractor, (sometimes commonly referred to as "yard goat") with air suspension for moving transfer trailers at the Eco Station. The terminal tractor shall remain at the Eco Station. Properly trained and licensed County staff will operate the terminal tractor at the Eco Station to facilitate efficient loading of transfer trailers.
- 4. Contractor shall transport waste and recycle materials to designated disposal facilities as directed by the County, Monday through Saturday in a manner that ensures the timely removal of solid waste and recycling.

- 5. Contractor shall provide three (3) trucks and two (2) full time staff for performance of the Services, three (3) additional full time staff members shall be trained to perform the Services and a fourth truck shall be available to provide additional capacity during high volume times to accommodate the business needs of the County.
- 6. As of the Effective Date of this Agreement, Contractor shall provide nine (9), fifty-three (53) foot, one hundred twenty (120) cubic yard, self-ejecting/walking floor, leak proof, transfer trailers with a ratchet strap tarping system (unrolling from the passenger side and attaching on the driver side of the trailer to meet facility needs) for the transport of waste, recycling or mulch materials. The trailers shall have air bag suspension and be a maximum height of 13 feet 5 inches with the ability to inflate/deflate suspension air bags. Each trailer shall have a catwalk and a ladder located in the front of the trailer on the left side to allow for tarping access.
- 7. By April 1, 2025, Contractor shall provide one (1) additional trailer for a total of ten (10), fifty-three (53) foot, one hundred twenty (120) cubic yard, self-ejecting/walking floor, leak proof, transfer trailers with a ratchet strap tarping system for the transport of for the transport of waste, recycling or mulch materials.
- 8. Contractor shall provide at minimum six (6) empty transfer trailers at the beginning of each operating day. The Eco Station operates every day, with the exception of holidays observed by County. Each breech of the requirement to have six empty transfer trailers available at the start of each day, may result in the County having to turn away commercial waste coming into the Eco Station, at approximately \$75/ton. The County may therefore, for any breech of the start-of-the-day inventory, assess a \$1,500/20-ton transfer-trailer shortfall penalty for each trailer and each day such shortfall occurs.
- Contractor shall provide and maintain transfer trailers, ratchet strap tarp systems and terminal tractor in accordance with New Mexico Department of Transportation rules and regulations.
- 10. Contractor shall provide weekly preventative maintenance for all equipment.
- 11. Contractor shall provide and maintain a stock of petroleum products for the terminal tractor and transfer trailer equipment.
- 12. Contractor shall provide maintenance and necessary supplies for the upkeep of equipment within forty-eight (48) hours upon request by the Environmental Services Manager or Superintendent.
- 13. Contractor shall provide necessary maintenance and supplies for inoperable equipment at the Eco Station yard within four (4) hours of being notified, such as a mechanical failure.

**SECTION B. TERM:** The term of this Agreement shall commence January 1, 2025, and shall continue through December 31, 2031, unless sooner terminated, as provided herein.

#### **SECTION C. COMPENSATION:**

 Amount of Compensation. County shall pay compensation for performance of the Services in accordance with the cost per trip compensation rate schedule set out in Exhibit A, attached hereto and made a part hereof for all purposes. The cost per trip may change annually, and shall be adjusted annually, in an amount equal to the annual rate of inflation for the preceding twelve-month period as determined by the Consumer Price Index (CPI) rate change as established by the United States Department of Labor's Bureau of Labor Statistics. The fuel surcharge adjustment may change monthly and shall be adjusted monthly, utilizing the method set out in Exhibit A. County shall pay compensation for performance of the Services in an amount not to exceed TEN MILLION NINE HUNDRED NINETY-SEVEN THOUSAND TWO HUNDRED TWENTY-ONE AND 65/100 DOLLARS (\$10,997,221.65), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT").

- 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 Amendment to this Agreement. Any increase to the not-to-exceed compensation amount provided herein must be authorized by an Amendment to this Agreement, which must be approved by the County Council. It is the sole responsibility of Contractor to ensure that all work performed does not exceed the not-to-exceed amount of this Agreement or any subsequent Amendment. Any work performed under this Agreement by Contractor where the costs exceed the not-to-exceed amount, inclusive of reimbursable expenses and additional and optional services, 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 cost per trip for each load, number of loads, amount of compensation due, amount of any NMGRT, 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 NMGRT 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, 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. **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 E. Jemez Road Los Alamos, New Mexico 87544 E-mail: armando.gabaldon@lacnm.us

With a copy to:

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

E-mail: ~attorney@lacnm.us

Contractor:

Bennie Martinez, Owner MCT Waste, LLC 7451 Pan American Freeway NE Albuquerque, New Mexico 87109

**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	INCORPORATED COUNTY OF LOS ALAMOS		
	Ву:		
NAOMI D. MAESTAS COUNTY CLERK	ANNE W. LAURENT COUNTY MANAGER	DATE	
Approved as to form:			
J. ALVIN LEAPHART COUNTY ATTORNEY			
GOOKIT ATTOMIC	MCT WASTE, LLC, A NEW MEXICO COMPANY	LIMITED LIABILITY	
	Вү:		
	BENNIE MARTINEZ PRESIDENT	DATE	

# Exhibit A Cost Per Trip Compensation Rate Schedule & Fuel Surcharge AGR25-06

Contractor shall be compensated for the services described in Section A of this Agreement by a fee paid to the Contractor for each trip the Contractor takes to transport waste and recycle materials to a designated disposal facility. A trip is defined as a round-trip so that the fee paid is for the round-trip as indicated below:

COST CATEGORY	MILES Round Trip	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	YR 7
Terminal Tractor (Yard Goat)	NA	Included in below Rates.	Included in below Rates.	Included in below Rates.				
Round-trip fee to Designated Disposal Facility from Los Alamos County Eco Station								
Bayo Canyon Compost, Los Alamos, New Mexico	20	\$350.00	Per CPI					
Albuquerque, New Mexico	186- 230	\$1,090.00	Per CPI					
Los Lunas, New Mexico	250	\$1,275.00	Per CPI					
Rio Rancho, New Mexico	170	\$990.00	Per CPI					
Sandoval County, New Mexico	170	\$990.00	Per CPI					
Denver City, Texas	690	\$3,700.00	Per CPI					

For years 2 – 7 (January 1, 2026 through December 31, 2031), the fees shown in year 1 may change **annually** and shall be adjusted **annually** in an amount equal to the annual rate of inflation for the preceding twelve month period as determined by the Consumer Price Index (CPI) utilizing the Unadjusted Percentage Change from January of the previous year to January of the current year to calculate the rate change, as established by the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Energy, Gasoline (All Types), as shown below:

#### **Annual Adjustments to Fees:**

Fee for year 2 shall be the rate for year 1 plus the CPI adjustment.

Fee for year 3 shall be the rate for year 2 plus the CPI adjustment.

Fee for year 4 shall be the rate for year 3 plus the CPI adjustment.

Fee for year 5 shall be the rate for year 4 plus the CPI adjustment.

Fee for year 6 shall be the rate for year 5 plus the CPI adjustment.

Fee for year 7 shall be the rate for year 6 plus the CPI adjustment.

### Fuel Surcharge:

The base fuel cost shall be based on a \$3.75 per gallon fuel cost in year one (1) of the Agreement, in years 2-7 the base fuel cost shall be adjusted by the percentage change in CPI as established by the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Energy, Gasoline (All Types) and shall be adjusted **annually** in an amount equal to the annual rate of inflation for the preceding twelve month period as determined by the Consumer Price Index (CPI) utilizing the Unadjusted Percentage Change from January of the previous year to January of the current year to calculate the rate change.

The Fuel Surcharge shall be applied as follows: For any monthly variance (increase) greater than \$0.25, as determined by the U.S. Energy Information Administration (US EIA), U.S. On-Highway Diesel Fuel Prices for the Rocky Mountain Region reported on the first reporting date of each calendar month, each incremental increase exceeding \$0.25 change over the prior period will result in a \$.05 per mile Fuel Surcharge Adjustment for each of the destinations listed below. Each whole \$0.25 change over \$4.00 will result in a \$0.05 per mile increase per \$0.25 variation, when calculating the whole number of \$0.25 variation increments, any decimal point portion of the calculation shall be disregarded.

For example, assuming the current fuel price per the US EIA Rocky Mountain on a specific date were \$5.41, this increase over the base fuel cost would result in a \$0.25 per mile Fuel Surcharge billed for each load, calculated as follows: \$5.41 - \$4.10 = \$1.31; \$1.31 / \$0.25 = 5.24, the whole number multiplier for the Fuel Surcharge Adjustment for the period in question would be 5 (truncate the 0.24 partial incremental block);  $5 \times $0.05/mile = $0.25/mile Fuel Surcharge$ . A trip to Cerro Colorado Landfill with a 230-mile round trip would result in a \$57.50/trip Fuel Surcharge, in this example.

Contractor shall provide to County a written calculation each month detailing the rate as published in the US EIA and the calculated per mile adjustment to be included with subsequent invoices. Contractor shall be compensated for the services described in Section A of this Agreement by a fee paid to the Contractor for each trip the Contractor takes to transport waste and recycle materials to a designated disposal facility, plus any applicable Fuel Surcharge Adjustment. A trip is defined as a round-trip so that the fee paid is calculated based on round-trip distances as indicated below:

Facility (Owner Operator)	Round Trip Miles – Between Los Alamos County Eco Station and destination
Los Alamos County - Bayo Canyon Compost	20
Rio Rancho Landfill (Waste Management Inc.)	170
Sandoval County Landfill (Sandoval County)	170
Waste Connection of New Mexico, Albuquerque Recycling	
Facility	186
Town Recycling (Albuquerque)	200
McKinnley Paper (Albuquerque)	202
Cerro Colorado Landfill (City of Albuquerque)	230
Valencia Regional Landfill (Waste Management Inc.) Los	
Lunas, New Mexico	250
NE New Mexico Regional Landfill (Herzog Environmental	
Inc.)	280
State Rubber (Denver City, Texas)	690