



LOS ALAMOS

AGR18-01

**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Friedman Recycling of Albuquerque, LLC**, an Arizona corporation ("Contractor"), to be effective for all purposes September 26, 2017.

WHEREAS, the County Purchasing Agent 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. 18-01 (the "RFP") on July 9, 2017, requesting proposals for Mixed Recycling Services, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated July 25, 2017 ("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, County Council approved this Agreement at a public meeting held on September 26, 2017; and

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

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

SECTION A. SERVICES AND DELIVERABLES:

County will deliver, at its discretion, any or all recyclable materials collected through its residential and commercial recycling collection programs, and Contractor will accept mixed recyclable materials for recycling services at Contractor's facility for sorting, processing and marketing services. The commingled, recyclable material County will deliver, at its discretion, to Contractor will include, but is not limited to the following:

1. Paper products in a form deemed acceptable by the County, including but not limited to, newspaper and inserts, shredded office paper (in clear bags), paper board, cereal and cracker boxes, milk boxes, juice boxes, corrugated cardboard, brown paper bags, junk mail, paper board, shredded office paper, magazines, catalogs, cardboard egg cartons, phone books, paperback books, hard back books as well as Sorted Office Paper (SOP) of Grades 1 and 2 by the standards established by the Institute of Scrap Recycling Industries as well as all other paper products deemed acceptable by the County.
2. Plastic products in a form acceptable by the County including but not limited to plastic products coded 1 thru 7 by the standards adopted by the Society of Plastics Industry (AKA Plastics Industry Association), including but not limited to, polyethylene terephthalate plastic bottles, and high density polyethylene containers as well as rigid plastic toys.

3. Metal products in a form acceptable to the County, including but not limited to, aluminum foil, metal pots and pans, cans, metal containers as well as small electronic devices and chords.

DELIVERABLES:

Contractor shall provide to County monthly reports on the tonnage of material received from County. Monthly reports shall be due by the fifth day of each month for the penultimate month preceding the report (i.e. a report due by May 5 will show information for the preceding month of March), and shall show the following information for the month reported upon:

1. The disposition of the Recyclable.
2. Written certification that all Standard Office Paper (SOP) was processed and recycled in a North American market or mill.
3. Determine the monthly average market value (AMV) of County's recyclable materials through a method or formula acceptable to the County which shall include the current market value of each commodity obtained from the recyclable material as determined by a standard market index acceptable to the County.
4. Perform an annual recycled materials audit to determine the composition percent of marketable commodities obtained from the recyclable materials provided to Contractor by the County.

SECTION B. TERM: The term of this Agreement shall commence September 26, 2017 and shall continue through September 25, 2024, 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 TWO HUNDRED THIRTY SIX THOUSAND NINE HUNDRED TWENTY-TWO DOLLARS (\$236,922.00), throughout the entire term of the Agreement, and which amount does not include applicable New Mexico gross receipts taxes ("NMGR"). Compensation shall be paid in accordance with the terms and rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Environmental Services Manager showing 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 will 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 will 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 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 will 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) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) 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; TWO MILLION DOLLARS

(\$2,000,000.00) 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. APPLICABLE LAW: 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. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

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. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. 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.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. 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 Q. 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 will 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 R. TERMINATION:

1. **Generally.** County 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 S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Environmental Services Manager
Incorporated County of Los Alamos
3701 E. Jemez Rd.
Los Alamos, New Mexico 87544

Contractor:

David Friedman, CEO
Friedman Recycling of Albuquerque, LLC
5021 Edith N. E.
Albuquerque, New Mexico 87107

SECTION T. 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 County and Contractor.

SECTION U. 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. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

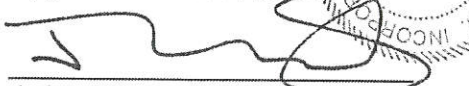
IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST



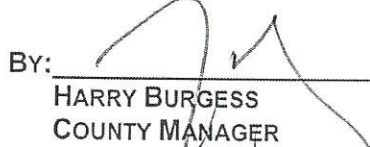
NAOMI D. MAESTAS
COUNTY CLERK

Approved as to form:



J. ALVIN LEAPHART
COUNTY ATTORNEY

INCORPORATED COUNTY OF LOS ALAMOS

BY:  9/28/17

HARRY BURGESS
COUNTY MANAGER DATE

FRIEDMAN RECYCLING OF ALBUQUERQUE, LLC, AN
ARIZONA LIMITED LIABILITY CORPORATION

BY:  11-28-17

DAVID FRIEDMAN
CHIEF EXECUTIVE OFFICER DATE

Exhibit "A"
Compensation Rate Schedule
AGR18-01

The Contractor shall be compensated for accepting Mixed Recyclables, exclusive or the recyclables listed in Section C, by payment of a Processing Fee Per Ton, as provided below in Chart A, that is subject to a reduction equal to the amount established by the Rebate Thresholds provide below in Chart B.

Chart A: Mixed Recycling Processing Fees

Year	Processing Fee Per Ton	Estimated Tons (1.5 % annual increase)	Annual Cost w/o Rebate
1	\$ 15	1791	\$ 26,872
2	\$ 16	1818	\$ 29,094
3	\$ 17	1846	\$ 31,376
4	\$ 18	1873	\$ 33,720
5	\$ 19	1901	\$ 36,127
6	\$ 20	1930	\$ 38,599
7	\$ 21	1959	\$ 41,136
Total Compensation for 7 Years			\$ 236,922*

* Does not include applicable New Mexico gross receipts taxes ("NMGRT")

Section B: Rebate Thresholds

The Processing fee due to the Contractor for Mixed Recycling, as calculated per Chart A, shall be reduced when the Average Market Value of the Mixed Recycling falls within the ranges of Average Market Value, described below in the left hand column, in an amount equal to the rebate described below in Chart B in the right hand column.

Chart B: Average Market Value

Average Market Value (AMV)	Rebate Paid to County
\$0 to \$75 per ton	No Rebate Available
\$75+ to \$95 per ton	\$15 per ton
\$95+ to \$115 per ton	\$30 per ton
\$115+ to \$140 per ton	\$40 per ton
\$140+ and Above	\$50 per ton

Section C: Sorted Office Paper (SOP) Grade 1, Sorted Office Paper (SOP) Grade 2, Loose Old Corrugated Cardboard, and Baled Old Corrugated Cardboard

The Processing Fee due the Contractor for the Sorted Office Paper (SOP) Grade 1, Sorted Office Paper (SOP) Grade 2, Loose Old Corrugated Cardboard, and Baled Old Corrugated Cardboard shall be calculated as provided below:

1. The Processing Fee due the Contractor for (SOP) Grade 1 is an amount equal to the value of Standard Office Paper #37 as listed on the Pulp & Paper Index (PPI) of the Official Board Markets (OBM) for LA Domestic Ports, as of the date of delivery of the (SOP) Grade 1 recyclable to the Contractor, multiplied by the weighted amount in ton units of the (SOP) Grade 1 recyclable delivered to the Contractor less an amount equivalent to \$95.00 per ton of the (SOP) Grade 1 recyclable delivered to the Contractor.
2. The Processing Fee due the Contractor for (SOP) Grade 2 is an amount equal to the value of Standard Office Paper #37 as listed on the Pulp & Paper Index (PPI) of the Official Board Markets (OBM) for LA Domestic Ports, as of the date of delivery of the (SOP) Grade 2 recyclable to the Contractor, multiplied by the weighted amount in ton units of the (SOP) Grade 2 recyclable delivered to the Contractor less an amount equivalent to \$115.00 per ton of the (SOP) Grade 2 recyclable delivered to the Contractor.
3. The Processing Fee due the Contractor for Loose Old Corrugated Cardboard is an amount equal to the value of #11 OCC as listed on the Pulp & Paper Index (PPI) of the Official Board Markets (OBM) for LA Domestic Ports for Free Alongside Shipping (FAS), as of the date of delivery of the Loose Old Corrugated Cardboard recyclable to the Contractor, multiplied by the weighted amount in ton units of the Loose Old Corrugated Cardboard recyclable delivered to the Contractor less an amount equivalent to \$99.00 per ton of the Loose Old Corrugated Cardboard recyclable delivered to the Contractor.
4. The Processing Fee due the Contractor for Baled Old Corrugated Cardboard is an amount equal to the value of #11 OCC as listed on the Pulp & Paper Index (PPI) of the Official Board Markets (OBM) for LA Domestic Ports for Free Alongside Shipping (FAS), as of the date of delivery of the Baled Old Corrugated Cardboard recyclable to the Contractor, multiplied by the weighted amount in ton units of the Baled Old Corrugated Cardboard recyclable delivered to the Contractor less an amount equivalent to \$79.00 per ton of the Baled Old Corrugated Cardboard recyclable delivered to the Contractor.

September 29, 2017

David Friedman, CEO
Friedman Recycling of Albuquerque, LLC
5021 Edith N.E.
Albuquerque, NM 87107

Re: AGR18-01 Mixed Recycling Services

Greetings,

COUNTY COUNCIL

David Izraelevitz
Council Chair

Susan O'Leary
Council Vice-Chair

COUNCILORS

Chris Chandler
James A. Chrobocinski
Antonio Maggione
Rick Reiss
Pete Sheehy

COUNTY MANAGER

Harry Burgess

Enclosed are two original sets of the above-mentioned Agreement/Amendment. Please execute both documents and return one to my attention at the address listed below:

Lillie Martinez, Buyer/Planner
Incorporated County of Los Alamos
Procurement Division
101 Camino Entrada, Building 3
Los Alamos, NM 87544

Please include a copy of your company's insurance certificate that is in compliance with Section I of the Agreement. Please indicate the Agreement Number in the description and that County is additionally insured.

Should you have any questions regarding this correspondence, I can be reached at 505-662-8052 or by email at Lillie.martinez@lacnm.us.

Sincerely,



Lillie Martinez,
Buyer/Planner