

**CITY OF SANTA FE
CENTRAL PURCHASING OFFICE**

for

SANTA FE SOLID WASTE MANAGEMENT AGENCY

INVITATION TO BID

BULK FUEL AND DIESEL EXHAUST FLUID

ITB 23/03/B

DUE:

August 4, 2022

2:00 p.m.

**CITY OF SANTA FE
CENTRAL PURCHASING OFFICE
200 LINCOLN AVE., ROOM 122
SANTA FE, NM 87501
Purchasing@santafenm.gov**

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BID SCHEDULE

ITB 23/03/B

EVENT	DATE
Advertisement	July 21, 2022
Issuance of ITB	July 21, 2022
Deadline to Submit Additional Questions	July 29, 2022
Response to Written Questions and Any Addendum	August 1, 2022
Receipt of Bids	August 4, 2022, at 2:00 p.m. Mountain Time Electronically Submitted to the Central Purchasing Office Purchasing_ITB@santafenm.gov

BID OPENING: Due to the COVID-19 Pandemic, the Bid opening will be accomplished through a Zoom meeting as follows:

Join Zoom Meeting

<https://santafenm-gov.zoom.us/j/89041082366?pwd=SU0dTjYdEk4aUdZa2pJNUVrNndHZz09>

Meeting ID: 890 4108 2366

Passcode: 203904

One tap mobile

+16694449171,,89041082366#,,, *203904# US

+16699006833,,89041082366#,,, *203904# US (San Jose)

Dial by your location

+1 669 444 9171 US, +1 669 900 6833 US (San Jose), +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 646 931 3860 US, +1 929 205 6099 US (New York), +1 301 715 8592 US (Washington DC), +1 312 626 6799 US (Chicago)

Meeting ID: 890 4108 2366

Passcode: 203904

Find your local number: <https://santafenm-gov.zoom.us/u/kd9YLVzdQr>

Recommendation of Award to
Joint Powers Board

August 18, 2022

The Agency reserves the right to modify the dates and times mentioned above or withdraw the ITB due to significant justification(s) in the Agency's best interest.

SANTA FE SOLID WASTE MANAGEMENT AGENCY

BID SUBMITTAL FORM

ITB 23/03/B

BULK FUEL AND DIESEL EXHAUST FLUID

EXCEPTIONS TO SPECIFICATIONS

Bidder must check one of the following:

- a. All specifications, terms and conditions are met.
- b. Exceptions have been taken and noted on attached sheet(s).

All variations and/or exceptions to the specifications must be documented, referencing applicable paragraph (s) and explained in detail. Attach as many pages as necessary. If no exceptions are taken, it will be assumed that the bid meets all specifications and terms and conditions as stated in this complete bid package. Failure to list exceptions may disqualify bid. Delivery of non-conforming goods is at the expense of the Bidder and/or other penalties.

All other specifications not detailed herein shall be as listed in the manufacturer's printed literature for the current standard model. Manufacturer's printed literature and specifications sheets shall be submitted with the bid.

Exceptions will not necessarily eliminate the bid. Agency staff shall determine acceptance or non-acceptance of exceptions. Unless otherwise noted and approved, it is assumed that delivery of the unit shall be as stated.

Signed submission of this bid represents that the Bidder has accepted all terms, conditions and requirements of the bid unless a written exception is made and, if awarded, the bid will represent the agreement between the parties. Additionally, by signing this bid, the Bidder warrants that there was no collusion of any kind in submission of this bid.

State name, address and phone number of nearest authorized representative:

ADDITIONAL SUBMITTAL REQUIREMENTS

Bidder must complete and submit with their bid:

- Any addenda issued in reference to this ITB
- Specifications and Qualifications
- Bid Form
- Copy of City of Santa Fe and/or Santa Fe County Business License, if applicable.
- Copy of State of New Mexico CRS Tax Identification Number
- Copy of Resident Business Certificate issued by the New Mexico Department of Taxation and Revenue, if applicable.
- Copy of Resident Veterans Business Preference Certificate issued by the New Mexico Department of Taxation and Revenue, if applicable.

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INFORMATION FOR BIDDERS

1. RECEIPT OF ELECTRONIC BIDS

The Santa Fe Solid Waste Management Agency (herein called “Agency”) invites bidder(s) to submit their bid electronically on the forms attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the Central Purchasing Office of the City of Santa Fe until **2:00 p.m. Mountain Time on Tuesday, August 4, 2022.**

Bids shall be submitted electronically via email to the Central Purchasing Office at Purchasing_ITB@santafenm.gov. No late bids will be accepted under any circumstances. Bidders should include some lead-time for email delivery as late-delivered bids will be determined to be non-responsive, no matter whose fault it was. The email subject line should indicate the following information:

The ITB number and title, and Bidder’s name and address must be included in the content of the email.

No Bidder may withdraw a bid within 90 days after the actual date of the opening thereof.

2. COPIES OF INVITATION TO BID

The ITB is available in electronic version from the Central Purchasing Office via email to Purchasing@santafenm.gov or website http://www.santafenm.gov/bids_rfps.

In the event of conflict between a version of the ITB in the Bidder’s possession and the version maintained by the Central Purchasing Office, the Bidder acknowledges that the Central Purchasing Office's version shall govern.

3. PREPARATION OF BID

All blank spaces for bid prices must be filled in, hand or type written. No alternate bids will be considered unless pre-approved (5) five days prior to the bid opening date by Fran Dunaway, CPO, Chief Procurement Officer.

Bids must be in Word or PDF format.

This ITB may be canceled or any and all bids may be rejected in whole or in part whenever the Agency determines it is in the Agency's best interest to do so.

4. BID SECURITY

None required.

5. CORRECTION OR WITHDRAWAL OF BID

A bid containing a mistake discovered before bid opening may be modified or withdrawn by the Bidder prior to the deadline for receipt of bids by emailing a written notice to Purchasing@santafenm.gov. Withdrawn bids may be resubmitted up to the time and date designated for the receipt of bids, provided they are then fully in conformance with the ITB.

6. INTERPRETATIONS AND ADDENDA

No oral interpretation of the meaning of any section of the ITB will be binding. Oral communications are permitted to assess the need for an addendum. Any questions concerning the ITB must be addressed prior to the date set for receipt of bids.

Every request for such interpretations should be submitted via email to Danita Boettner, Procurement Manager, at dboettner@sfswwa.org and to be given consideration must be received at least five (5) days prior to the date set for receipt of bids or July 29, 2022.

Any and all such interpretations and any supplemental instruction will be in written addenda to the ITB, which if issued, will be sent by email to all prospective Bidders known by the Agency to have received a complete ITB not later than three (3) days prior to the date set for receipt of bids or August 1, 2022. Failure of any Bidder to receive any such addenda or interpretations shall not relieve Bidder from any obligation under their bid as submitted. All addenda so issued shall become part of the contract documents.

Addenda may be obtained from Danita Boettner, Procurement Manager, via email at dboettner@sfswwa.org or website https://www.santafenm.gov/bids_rfps.

The Agency reserves the right not to comply with these time frames mentioned above if an addendum is required to extend the bid deadline or cancel the ITB due to significant justification(s) that are in the best interest of the Agency.

7. POWER OF ATTORNEY

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

8. LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over the subject of this ITB shall apply to the ITB throughout, which will be deemed to be included in the ITB the same as though written out in full.

9. COLLUSION

No Bidder shall submit more than one bid in response to the ITB. Collusion among Bidders or the submission of more than one bid under different names by any vendors or individual shall be cause for rejection of all bids in questions without consideration.

10. PENALTIES

The Bidder is notified that the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statues impose felony penalties for bribes, gratuities and kick-backs.

11. DISCLOSURE OF BID CONTENTS

All bids will be kept confidential until a contract is awarded. At that time, all bids and documents pertaining to the bid will be open to the public, except for the material that is proprietary or confidential.

Proprietary or confidential material shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the bid. Confidential data is generally restricted to confidential financial information about the Bidder's organization and data that qualifies as a trade secret under the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services bid shall not be designated as proprietary or confidential information.

If a request is received for disclosure of material for which a Bidder has made a written request for confidentiality, the Chief Procurement Officer shall examine the request and make a written determination that specifies which portions of the bid should be disclosed. Unless the Bidder takes legal action to prevent the disclosure, the bid will be disclosed. The bid shall be open to public inspection subject to any continuing prohibition on disclosing confidential data.

12. BRAND NAMES

In accordance with Section 13-1-168 NMSA 1978. all brand names specified in this bid are not meant to be restrictive, but to be used as descriptive or equal specification. Bidder should include enough information with the bid submitted so this determination can be made.

13. METHOD OF AWARD

The Agency reserves the right to award the ITB to the responsible bidder(s) submitting a responsive bid with resulting agreements that are most advantageous and in the best interest of the Agency. The Agency reserves the right to award the ITB to multiple Bidders to meet the needs of the Agency in accordance with Section 13-1-153 NMSA 1978.

14. IDENTICAL BIDS

If two or more identical bids are received, the Chief Procurement Officer will apply the process described in Section 13-1-110 NMSA 1978 of the New Mexico Procurement Code.

15. CONTRACT AWARD

The Agency anticipates awarding the contract during the regular scheduled Joint Powers Board meeting on August 18, 2022; however, the meeting's date is tentative and subject to change without notice.

16. REJECTION OR CANCELLATION OF BID

The ITB may be canceled, and any or all bids may be rejected in whole or in part, when it is in the Agency's best interest. A determination containing the reasons shall be made part of the project file (Section 13-1-131 NMSA 1978).

17. PROTEST DEADLINE

Any protest by a Bidder must be timely submitted and conform to Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) calendar day protest period shall begin on the day following the contract award and will end by close of business fifteen (15) calendar days after the contract award. Protests must be written and must include the protestor's name and address and the ITB number. Protests must also contain a statement of grounds for protest, including appropriate supporting exhibits, and must specify the ruling requested. Protests must be addressed and delivered to:

Fran Dunaway
Chief Procurement Officer
City of Santa Fe
fadunaway@santafenm.gov

Protests received after the deadline will not be accepted. The Agency reserves the right to implement the terms of the contract with the successful Bidder during the pendency of the protest.

18. AGENCY RIGHTS

The Agency reserves the right to accept all or a portion of a Bid.

19. RIGHT TO PUBLISH

Throughout the duration of this procurement process and contract term, potential Bidders and contractors must secure from the Agency written approval before the release of any information that pertains to the potential work or activities covered by this procurement or

the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Bidder's bid or termination of the contract.

20. COMPLIANCE WITH THE CITY OF SANTA FE AND SANTA FE COUNTY'S MINIMUM WAGE RATE ORDINANCES (LIVING WAGE ORDINANCES)

Bidder will be required to submit their bid such that it complies with the City of Santa Fe Living Wage Ordinance (Section 28-1 SFCC 1987) and Santa Fe County Living Wage Ordinance Nos. 2014-1 and 2014-5 to the extent applicable. The successful Bidder will be required to comply with the ordinances to the extent applicable, and any subsequent changes to the ordinances throughout the term of this contract.

21. PREFERENCES IN PROCUREMENT

Resident Business Preference: To receive a Resident Business Preference pursuant to Section 13-1-22 NMSA 1978, the Bidder **must** submit a copy of a valid Resident Business or Resident Contractor certificate issued by the New Mexico Department of Taxation and Revenue with its bid.

If a Bidder submits a copy of a valid Resident Business or Resident Contractor certificate with its bid, five (5) percent of the total weight of all evaluation factors used in the evaluation of bids may be awarded.

Certification by the New Mexico Department of Taxation and Revenue for the resident business or contractor takes into consideration such activities as the business or contractor's payment of property taxes or rent in the state.

OR

Resident Veteran Business Preference: To receive a Resident Veteran Business Preference pursuant to Section 13-1-22 NMSA 1978, the Bidder **must** submit a copy of a valid Resident Veteran Business certificate issued by the New Mexico Department of Taxation and Revenue with its bid.

If a Bidder submits with its bid a copy of a valid and current veteran resident business certificate, ten (10) percent of the total weight of all the evaluation factors used in the evaluation of bids may be awarded.

Certification by the New Mexico Department of Taxation and Revenue for the resident veteran business requires the Bidder to provide evidence including, but not limited to, gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year and evidence of veteran status.

A resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person shall not benefit from the provisions of this section based on

more than one business concurrently.

The resident business preference is not cumulative with the resident veteran business preference.

Local Preference: Local preference is not applicable, pursuant to the Agency 2013 Purchasing Procedures and Finance Policy.

22. MULTIPLE AWARD

Pursuant to Sections 13-1-153 and 13-1-154 NMSA 1978, the Agency reserves the right to issue multiple awards to obtain the items specified. Multiple awards are recommended to ensure availability and timely delivery of services. The Agency may award contracts to multiple bidders under the indefinite quantity agreement or “on-call” procurement process.

23. INDEFINITE QUANTITY AGREEMENT

The items and/or services to be ordered shall be listed on the Bid Form. All orders issued hereunder will bear both an order number and this Price Agreement number (i.e., ITB 23/03/B). It is understood that no guarantee or warranty is made or implied by the Agency that any order for any definite quantity will be issued under this Price Agreement. The Bidder is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.

24. PRICE ADJUSTMENTS

Unless otherwise stated in the bid document, unit prices quoted by the Bidder are to be firm for the duration of the contract. A request for a price adjustment as a result of an increase or decrease by the product manufacturer/supplier of such bulk fuel and DEF fluid is subject to approval by the Agency via an amendment to the Price Agreement. Contractor shall submit to the Agency sufficient justification to support the request.

25. ESTIMATED QUANTITIES

Estimated quantities of fuel and DEF fluid products purchased have been provided for the interested Bidder’s use during submittal. The Agency assumes no liability in the event actual quantities ordered do not equal stated estimated quantities. Not all items listed are purchased each year. The quantities provided are for information only. Quantities of bulk fuel and DEF fluid purchased under this Price Agreement will vary based upon Agency needs throughout the duration of the contract.

26. COMPATIBILITY WITH BRAND NAMES

Bidders shall clearly indicate that it is offering an “equal” product unless the Bidder is offering the brand name product(s) referenced in the inquiry. Should any specified brands or models be listed incorrectly, discontinued or improved, the Bidder shall note such changes in their

responses and include the pertinent details regarding the change. In the event the item has been discontinued, the Bidder will be allowed to propose comparable goods or services along with the necessary supplemental documentation supporting their position.

27. LATE DELIVERY

It is expressly understood and agreed that, as a result of the public interest, and because of the monetary losses that the Agency may incur as a result of failure to deliver the materials and services described in the contract on time, that time is of the essence in the performance of this Price Agreement. It is agreed that damages resulting from late delivery can neither be accurately anticipated or calculated.

At the option of the Chief Procurement Officer, the Agency may invoke the default provisions of the Price Agreement contained herein.

28. PROCUREMENT UNDER EXISTING CONTRACTS

Bidder shall be made aware that other central purchasing offices may utilize the Price Agreement to procure services, construction, or items of tangible personal property pursuant to Section 13-1-129 NMSA 1978.

29. TAXES

The Agency is exempt from gross receipts tax on tangible personal property. A nontaxable transaction certificate (NTTC) will be issued upon written request.

The Agency is exempt from paying federal excise taxes on gasoline and shall not reimburse Contractor for any such expenses.

Also, the Agency is exempt from paying state and federal excise taxes on diesel fuel and DEF fluid and shall not reimburse Contractor for any such expenses.

Federal excise taxes shall be the sole responsibility of Contractor. Contractor shall be entitled to any credit or refund of excise taxes paid that is permitted under Section 6416 of the Internal Revenue Code of 1986.

Other taxes and fees for gasoline and diesel may be applicable.

30. INVOICING

The Contractor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices, applicable discounts, extended totals, applicable taxes and fees, and posted terminal price documentation from O.P.I.S. daily rack average price sheet (fuel only). Separate invoices shall be submitted for each and every complete order.

Invoices must be submitted to **Santa Fe Solid Waste Management Agency, 149 Wildlife Way, Santa Fe, NM 87506** and not the City of Santa Fe.

31. METHOD OF PAYMENT

Every effort will be made to process payments within thirty (30) days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

Contractor must register with the City of Santa Fe's Enterprise Resource Planning (ERP) System. Contractor's failure to do so will experience delays in processing of invoices and will not be able to do business with the Agency. Contractor can register online at <http://www.santafenm.gov/>.

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DEFINITIONS AND TERMS

1. **Addendum:** a written or graphic instrument issued prior to the opening of Bids, which clarifies, corrects, or changes the Invitation to Bid. Plural: addenda.
2. **Agency:** means the Santa Fe Solid Waste Management Agency.
3. **Bidder:** means the companies or firms submitting a bid in response to this Invitation to Bid.
4. **BuRRT:** means the Buckman Road Recycling and Transfer Station.
5. **Central Purchasing Office:** means the office responsible for the control of procurement of items of tangible personal property, services or construction.
6. **Chief Procurement Officer:** means that person within the Central Purchasing Office who is responsible for the control of procurement of items of tangible personal property, services or construction.
7. **City:** means the City of Santa Fe.
8. **Close of Business:** means 5:00 p.m. Mountain Time.
9. **Contractor:** means the successful Bidder who enters into a binding contract/agreement.
10. **Contract/Agreement:** means the Agency's Price Agreement for the procurement of items of tangible personal property, services or construction, including all exhibits attached to it and incorporated in it by reference, and all amendments in accordance with its terms.
11. **Desirable:** means the terms "can", "may", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.
12. **Determination:** means the written documentation of the Chief Procurement Officer's decision, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (Section 13-1-52 NMSA 1978).
13. **Invitation to Bid:** or "ITB" means all documents, including those attached or incorporated by reference, used for soliciting bids (Section 13-1-102 NMSA 1978).
14. **Joint Powers Board (JPB):** means the governing body of the Santa Fe Solid Waste Management Agency that operates the Caja del Rio Landfill and Buckman Road Recycling and Transfer Station.
15. **Landfill:** means the Caja del Rio Landfill.
16. **Mandatory:** means the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor that will result in the rejection of the Bidder's bid.

17. **Multi-Term Contract:** means a contract having a term longer than one year (Section 13-1-68 NMSA 1978).
18. **Procurement Manager:** means the person or designee authorized by the Agency to manage or administer a procurement of a Bid.
19. **Purchase Order:** means a fully executed purchase document issued by the City of Santa Fe that specifies the items and services to be provided by the Contractor
20. **Redacted:** means a version/copy of the Bidder's bid with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978) and summarized herein blacked-out BUT NOT omitted or removed.
21. **Resident Business:** has the meaning set forth in Section 13-1-21 (A)(6) NMSA 1978, as amended from time to time.
22. **Resident Contractor:** has the meaning set forth in Section 13-4-2(A)(5) NMSA 1978, as amended from time to time.
23. **Resident Veteran Business:** has the meaning set forth in Section 13-1-22 (A)(7) NMSA 1978, as amended from time to time.
24. **Resident Veteran Contractor:** has the meaning set forth in Section 13-4-2(A)(6) NMSA 1978, as amended from time to time.
25. **Responsible Bidder:** means a Bidder who submits a responsive bid and who has furnished, when required, information and data to prove that the Bidder's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the invitation to bid (Section 13-1-82 NMSA 1978).
26. **Responsive Bid:** means an offer that conforms materially to the requirements in the invitation to bid. Material respects of the invitation to bid include, but are not limited to, price, quality, quantity or delivery requirements (Section 13-1-84 NMSA 1978).
27. **Services:** means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials merely incidental to the required performance. Services include the furnishing of insurance but does not include construction or the services of employees of the Agency (Section 13-1-87 NMSA 1978).
28. **Staff:** means any individual who is a full-time, part-time, or an independently contracted employee with the Bidders' company.

- 29. Unredacted:** means a version/copy of the bid containing all complete information; including any that the Bidder would otherwise consider confidential, such copy for use only for the purposes of evaluation.
- 30. Written:** means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

SPECIFICATIONS

ITB 23/03/B

BULK FUEL AND DIESEL EXHAUST FLUID

1. BACKGROUND AND SUMMARY

The Santa Fe Solid Waste Management Agency (Agency) intends to establish a price agreement(s) for the purchase and delivery of bulk fuel and diesel exhaust fluid (DEF). The Agency operates a variety of vehicles, heavy and industrial equipment in support of its operations.

2. GENERAL CONDITIONS

To establish a price agreement for the Agency for the purchase and delivery of, in bulk, recreational unleaded gasoline with no ethanol, E10 gasoline, diesel fuel and DEF fluid.

The Agency utilizes aboveground storage tanks (ASTs), mobile tanks and totes at the following locations:

- Caja del Rio Landfill – 149 Wildlife Way
 - One 6,000-gallon AST for diesel fuel; 4,000 gallons (average) delivered approximately every quarter
 - One 500-gallon AST for unleaded gasoline; 400 gallons (average) delivered approximately monthly
 - One 350-gallon tote (with pump) for DEF fluid; 200 gallons (average) delivered approximately every six weeks
- Buckman Road Recycling and Transfer Station – 2600 Buckman Road
 - One 600-gallon mobile fuel tank for diesel fuel; delivery every three weeks, if needed.
- Contractors Location
 - One 2,000-gallon mobile fuel tank for diesel fuel: 1,800 gallons (average) approximately weekly.
 - One 75-gallon mobile tank for DEF fluid: 60 gallons (average) approximately every two weeks, if needed.

The estimated annual quantities for the Agency are as follows:

Type	Quantity (gallons)
Diesel fuel	110,300
E10 gasoline	6,900
Recreational unleaded gasoline with no ethanol	(Small quantity as needed)
Diesel Exhaust Fluid (DEF)	2,200

The term of this agreement shall be for one (1) year from date of award with the option to extend for a period (s) of three (3) additional years, on a year-by-year basis, by mutual agreement of all parties and approval of the Agency's Joint Powers Board at the same price, terms and conditions. This agreement shall not exceed four (4) years.

Award will be based on delivery to the locations identified in this Price Agreement. Additional tank sizes and locations not identified in this Price Agreement may be utilized.

The quantities listed are for estimated purposes only and the Agency does not guarantee that the stated amount or any amount will be purchased.

Bidders shall be required to submit bids on all the required fuels for each specific delivery location, (i.e., if a particular location requires E10 gasoline and No. 2 diesel fuel, Bidder shall offer a bid price for each type of fuel).

Award shall be made for all fuel types (if applicable) for each location. Specifications shall indicate manufacturer's maximum allowable sulfur content.

Any aftermarket additive used shall be identified by brand or trade name and manufacturer's specifications provided with the bid. An additive, if used, shall be Environmental Protection Agency (EPA) approved, and compatible with the refiner's product. Additives which increase emissions of sulphur and other substances proven to damage the environment which are disallowed by EPA regulations will not be accepted.

3. PRODUCT SPECIFICATIONS

Fuels shall have a high level of detergent additive as recommended for engines equipped with fuel injection systems. Alcohol or alcohol blended fuels are not allowed in diesel fuels only.

- 1) Recreational unleaded gasoline (no ethanol), American Society of Testing Materials (ASTM) designation D439, Society of Automotive Engineers (SAE) J312 (most

recent issues) with a minimum octane rating of 90 minimum (r+m/2 method).

- 2) E10 gasoline with 10% ethanol, ASTM designation D439, SAE J312 (most recent issues) with a minimum octane rating of 86 minimum (r+m/2 method). Gasoline is to contain 10% ethanol by volume.
- 3) No. 1 diesel fuel, ultra-low sulphur diesel (ULSD), ASTM designation D975, SAE J313, (most recent issue) with a minimum cetane number of 40, maximum of 0.05 weight percent of sulphur, aromatic content of 35 volume percent maximum, viscosity of min. 1.3 and max. of 2.4, distillation of max. 288, carbon residue of approx. 0.15 and cloud point of -20 degree Celsius minimum and a maximum of 40 degree Celsius.
- 4) No. 2 diesel fuel, ultra-low sulphur diesel (ULSD), ASTM designation D975, SAE J313, (most recent issue) with a minimum cetane number of 40, maximum of 0.05 weight percent of sulphur, maximum aromatic content of 35 volume percent, viscosity of min. 1.9 and max. 4.1, distillation of min. 282 and max. of 338, carbon residue of 0.35 approx. Cloud point of min. of -20 degree Celsius and maximum of 40 degree Celsius.

Both diesel No. 1 and No. 2 shall be free of visible evidence of the blue dye 1.4 dialkylamine anthraquinone. Dye solvent red 164 or clear (white) low sulphur diesel fuel is acceptable; however, the Contractor is solely responsible for filling and obtaining any applicable IRS refunds if clear taxable fuel is provided. If dye solvent red 164 diesel is provided, Contractor is solely responsible for all confirmation and documentation (ref. Paras. 2.1.5 and 3.2), required by EPA and IRS.

Diesel fuels shall meet ASTM D-1552 for sulphur test, ASTM D482 for ash content, and the standards published in SAE HS-23 (or most recent issues).

Diesel fuel winter additive and oxygenated unleaded fuel may be required for the months of November through March. Fuel manufactured for use during these months is acceptable, SAE D975 (most recent issues).

Diesel exhaust fluid (DEF) should be American Petroleum Institute (API) Certified and meet International Organization for Standardization (ISO) 22241 specifications (most recent issues). Product must be produced, stored, and handled in accordance with these standards, and must be packaged using DEF-dedicated equipment to eliminate the potential for cross-contamination. High-quality urea must be premixed only with pure water to meet DEF fluid properties. DEF shall be compatible with all diesel selective catalytic reduction (SCR) systems, non-toxic, non-hazardous, and non-flammable solution of 67.5% purified water and 32.5% pure urea (± 0.7).

4. SAMPLING AND TESTING

Fuels provided under this Price Agreement shall be free from contamination.

Random sample tests for all fuels may be performed at time of delivery to ensure the fuel meets specifications. Testing costs will be paid by the Agency unless the sample is not in compliance, in which case the cost will be borne by the Contractor.

Fuel testing shall be ordered by the Agency using a qualified laboratory if Agency vehicles and/or pieces of heavy equipment require repairs to the fueling system, engine, or diesel selective catalytic reduction (SCR) systems as a result of using fuels or DEF fluid provided under this contract. If the malfunction is proved to be the result of the fuel or delivered, the Contractor shall be responsible for all repairs necessary to return the vehicle(s) and/or pieces of heavy equipment to good operating condition.

To determine whether the proposed DEF fluid conforms to these specifications, the Agency reserves the right to test and/or inspect proposed product. Tests and/or measurements other than those listed above may also be performed, as determined by the Agency. Upon request by the Agency, the bidder must submit samples for tests and inspection, at no cost to the Agency.

If the Agency determines that the delivery does not comply with specifications herein, the Contractor will be notified via e-mail, phone, or facsimile. Contractor shall have 48 hours from the time of notification to rectify the problem to the satisfaction of the Agency and/or remove the product, if circumstances dictate.

5. ORDERS AND DELIVERY

Fuel quantity shall be measured by the gross gallon, with a metered delivery truck bearing a current New Mexico Department of Agriculture approval seal.

Contractors not using metered trucks are grounds for termination. Delivery locations and storage tank capacities are identified in this Price Agreement. The Agency reserves the right to inspect bulkheads and meter measure contents of any tanks before, at the time of and/or after delivery. All tanks have been identified within this agreement (e.g., aboveground and mobile storage tanks). Contractors shall be prepared, upon delivery, for pumping into these types of tanks.

An authorized Agency representative must be on site at the time of any delivery. It is mandatory that the Contractor secures both a printed name and signature of the Agency representative receiving the delivery.

All fuels that require blending shall be blended at the Contractor's blending facility or at their suppliers' facility, not in the tanker that is used for delivery nor on-site at Agency locations. Failure to provide this service will result in immediate cancellation of a contract with the Agency upon written notice to the Contractor.

All deliveries shall be made within twenty-four (24) hours after receipt of order (phone or written), excluding weekends (Saturdays and Sundays) and any state/federal holidays

observed by the Agency. Deliveries shall be during normal operating hours for the Agency, unless different parameters are mutually agreed upon, in writing, between the Contractor and Agency's representatives. Any delivery to the Agency that is delayed because of the Contractor's fault shall be paid for at the originally ordered OPIS price.

Service trucks with large fuel tanks may be fueled by Contractor closest to job site.

Notwithstanding the existence of this agreement, the Agency reserves the right to order any fuel product(s) required for emergency purpose from any contractor who can deliver such product(s) to meet the requirements of the Agency, without waiving or voiding any of the terms of this agreement.

All prices shall be F.O.B. destination to the delivery location designated by the Agency. Contractor shall retain title and control of all goods until they are delivered and the contract coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor.

Contractor shall be responsible for all spillage which may occur during transit and unloading operations. Contractor shall immediately report spillage to the Agency, the appropriate fire department, and any agency with regulatory authority over hazardous materials spills. Contractor shall contain and remediate the spillage according to US EPA and State of New Mexico regulations and guidelines. Contractor shall be responsible for containment and cleanup costs of not only the immediate area but also all affected areas such as, but not limited to, surface, subsurface and water.

Contractor shall also be responsible for all cleanup required to all Agency's property, storage facilities, and equipment as a result of noncompliance with specifications. Furthermore, Contractor shall be fully responsible for any and all costs incurred by the Agency for any equipment sustaining damage, which is attributed to a contaminated fuel(s), which Contractor has delivered.

6. PRICING STRUCTURE

Price(s) bid shall be on a per gallon complete delivered price. Contractor's mark-up price shall include all contractor's costs.

Any applicable tax shall be added separately to invoice at the time of delivery only if Contractor is liable for tax.

Any winter additive added to diesel fuel shall be added separately to invoice at the time of delivery by the Contractor if the winter additive is required during the months of November through March.

All bids must be submitted to the 4th decimal, including even numbered price(s) being bid; for example: a three-cent price would be expressed as .0300 not .03.

All prices shall be based on the date of delivery and not on the date on which the order was placed.

All prices offered shall include all costs incurred in the delivery to the Agency's storage tanks.

Price verification and calculation will be based on the 10:00 a.m. spot price(s) of the O.P.I.S. daily rack average on the date of delivery.

7. POSTED TERMINAL PRICE

Bidder shall list the refiner's depot(s) that will be used to supply fuel to the Agency's specified locations in the ITB. Failure to submit the refiner's depot information may be grounds for bid disqualification, or cancellation of the purchase order without further cause. Posted terminal price documentation, verifying posted price shall be furnished with all invoices. Refinery depot must be clearly stated on oil price information service (O.P.I.S.) rack price sheet and rack price sheet shall bear O.P.I.S. logo.

8. PRICE ADJUSTMENTS

Unless otherwise stated in the bid document, prices quoted on the Bid Form are to be firm for the duration of the contract. Any request for a price adjustment is subject to approval by the Joint Powers Board. The Contractor shall submit to the Agency sufficient justification to support the Contractor's request.

9. INVOICES

Invoices shall be accompanied by a copy of all specified posted terminal price document(s) which shall be dated the same date as the fuel delivery day.

Invoices not supported by all specified terminal price document(s) will be retained, and payment held in abeyance, until the required documentation is received. Failure to supply all specified posted terminal price documentation may be grounds for non-issuance of future purchase orders.

The Agency shall not be responsible for supplying the O.P.I.S. daily rack price sheet.

Should the Contractor's business name change, or should the Contractor's business be sold, transferred to, or assumed by a second party, written notification of the change should be provided to the Agency by all parties involved, no later than thirty (30) calendar days from the date of change. Failure to provide notification of the aforementioned change(s), within thirty (30) calendar days of the change, may be grounds for purchase order cancellation without further cause.

10. PRICING FACTORS

Pricing shall be strictly on bidder(s) markup price for each item/location bid.

The Agency will add Contractor’s markup price to O.P.I.S. daily rack average price to determine total cost per gallon at time of delivery.

Example:

O.P.I.S. daily rack average price on date of delivery – per gallon.

Bidder’s markup price to include freight, delivery costs, overhead and profit, etc. – per gallon.

Winter additive in No. 2 diesel fuel – per gallon.

Taxes – any applicable taxes shall be added to invoice as a separate item (e.g., NM petroleum loading fee, federal oil spill fee, federal LUST tax).

11. BILLING LOCATION AND CONTACT

Each Contractor is required to request the proper billing address upon the receipt of an order to ensure prompt and efficient payment from the Agency. Incorrect billings may cause delays in payment. The billing address is as follows:

Santa Fe Solid Waste Management Agency
Attn: Accountant, Emily Pisula
149 Wildlife Way
Santa Fe, NM 87506
Tel: (505) 424-1850 x 140
Fax: (505) 424-1839
Email: episula@sfswma.org

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BID FORM

ITB 23/03/B

If a product cannot be provided by your company, please indicate with “N/A”.

ITEMS RESPONSE 23/03/B Bulk Fuel and Diesel Exhaust Fluid				
Line Item	Description	Estimated Delivery Amount (Gallons)	Estimated Annual Quantity (Gallons)	Markup amount-per Gallon (USE 4 Decimals)
1	Unleaded Gasoline/Recreational – NO ethanol Delivered @ Contractor's location - Gallon	10	200	\$0._____
2	Gasoline E10 Delivered @ Caja del Rio -Gallon	400	6,700	\$0._____
3	Diesel No. 2 Delivered @ Caja del Rio - Gallon	4,200	16,800	\$0._____
4	Diesel No. 2 Delivered @ BuRRT - Gallon	-	-	\$0._____
5	Diesel No. 2 Delivered @ Contractor's location - Gallon	2,000	94,000	\$0._____
6	Diesel No. 1 Delivered @ Caja del Rio - Gallon	-	-	\$0._____
7	Diesel No. 1 Delivered @ BuRRT - Gallon	-	-	\$0._____
8	Diesel fuel winter additive (for all locations) - Gallon	-	-	\$0._____
Line Item	Description	Estimated Delivery Amount (Gallons)	Estimated Annual Quantity (Gallons)	Discount off of List Price - If no Discount, Enter 0%
9	Diesel exhaust fluid (DEF) Delivered @ Caja del Rio - Gallon	200	2,200	_____%
10	Diesel exhaust fluid (DEF) Delivered @ Contractor's location - Gallon	-	-	_____%

NOTES:

1. Bidder's markup price includes freight, delivery costs, overhead and profit, etc.
2. Line items #1, 2, 3, 5 are types of fuel and quantities that the Agency anticipates using annually.
3. Line item #8 is winter additive added to the diesel.
4. Price verification and calculation will be based on the 10:00am spot price(s) of the O.P.I.S. daily rack average on date of delivery.
5. Line items #9, 10 are for obtaining DEF fluid. Enter the percent discount off of list price. If there is no discount offered, but DEF Fluid can be supplied, enter 0%.

State the refiner's depot(s) / terminal(s) name and address that will be used to supply the fuel:

1. _____

2. _____

3. _____

BIDDER'S INFORMATION

Company Name

Address

Authorized Signature

Print Name

Title

Email Address

Phone Number

Fax Number

Date

APPENDIX A
SAMPLE PRICE AGREEMENT

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
PRICE AGREEMENT WITH
CONTRACTOR
(Bulk Fuel and Diesel Exhaust Fluid– 2022)**

This PRICE AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and _____ (“Contractor”) for an indefinite quantity of bulk fuel and diesel exhaust fluid (“DEF”) as described in ITB No. 23/03/B and below. The Price Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. SCOPE OF AGREEMENT

The items to be provided under this Agreement are set forth in ITB No. 23/03/B and all terms, specifications and conditions, contained therein and Contractor's response for cost of items and services submitted thereto, all of which are incorporated into this Agreement and attached hereto as Exhibit A.

2. STANDARDS OF PERFORMANCE; LICENSES

- A. Contractor represents that it possesses the experience and knowledge necessary to perform the services described in this Agreement.
- B. Contractor agrees to obtain and maintain throughout the term of this Agreement all applicable professional and business licenses required by law for itself and its employees, agents, representatives and subcontractors.

3. DEFINITIONS

- A. Agency means the Santa Fe Solid Waste Management Agency.
- B. Agency Facility means the Caja del Rio Landfill at 149 Wildlife Way, Santa Fe, New Mexico 87506 or Buckman Road Recycling and Transfer Station at 2600

Buckman Road, Santa Fe, NM 87507.

- C. Items means tangible goods or tangible items of personal property required for Agency operations. All items are to be new and of most current production, unless otherwise specified.
- D. Price means the discounted price or costs for bulk fuel and DEF fluid paid by the Agency as described in Exhibit A.
- E. Price Agreement means this indefinite quantity Price Agreement which requires Contractor to provide bulk fuel and DEF fluid to the Agency.
- F. Purchase Order means a fully executed purchase document issued by the City of Santa Fe Purchasing Department on behalf of the Agency that specifies the items and services to be provided by Contractor.
- G. Services mean services to be performed by personnel that do not need extensive education or specialty training or licensing. Services excludes professional services that are typically performed by a person holding a license, such as engineering, architecture, or legal services.
- H. Tangible goods are products that can be touched. This includes software licenses and intellectual property.

4. ITEMS / SERVICES TO BE PROVIDED

- A. Price of Items - Exhibit A of this Agreement contains the prices for Contractor's items (i.e., tangible goods) and services. Exhibit A also indicates any specifications required for the items and services, if any, that are the subject of this Agreement.
- B. Purchase Orders - the Agency may issue purchase orders for the purchase of the items listed in Exhibit A. Any service ordered by the Agency must be a service

described in Exhibit A. All purchase orders for items and services issued hereunder must reference the purchase order number and Price Agreement number ITB No. 23/03/B.

- C. Quantities - it is understood that this is an indefinite quantity Price Agreement and the Agency may purchase any quantity of the item(s) or services listed in Exhibit A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) or services be issued under this Agreement. Contractor is required to accept the purchase order(s) and furnish the item(s) and services.
- D. Specifications - the services furnished under this Agreement shall meet or exceed the specifications provided in ITB No. 23/03/B, including any addenda. Purchase orders issued pursuant to this Agreement must show the applicable Agreement items(s) or services(s).
- E. Delivery and Billing Instructions
 - 1) Contractor shall deliver the items and services in accordance with the Agency's instructions. Each delivery shall be accompanied by a packing slip which itemizes materials and quantities delivered, packaging, purchase order number, Price Agreement number and Agency facility.
 - 2) Delivery shall be made within three (3) business days of order placement. Contractor shall notify the Agency immediately if delivery is expected to exceed this time frame or if the complete order cannot be fulfilled. Whenever the Agency does not accept any deliverable and returns it to Contractor, all related documentation furnished by Contractor shall also be returned. The

Agency will inform Contractor within five (5) business days that a deliverable is unacceptable by the Agency.

- 3) Prices listed in Exhibit A shall be the fixed prices for the items and rates for the services, respectively.
- 4) Prices listed in Exhibit A for the items and services shall remain in effect for the term of this Agreement.

5. COMMERCIAL WARRANTY

Contractor agrees that the items or services furnished under this Agreement shall be covered by the most favorable commercial warranties Contractor gives for such to any customers for such items or services. The rights and remedies provided herein shall extend to the Agency and are in addition to and do not limit any rights afforded by the Agency by any other Article of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

6. PAYMENTS

- A. All payments under this Agreement are subject to the following provisions.
 - 1) Inspection - final inspection and acceptance of all items and services ordered shall be made at the Agency Facility. Items rejected at the Agency Facility for non-conformance with specifications shall be removed, at Contractor's risk and expense, promptly after notice of rejection.
 - 2) Acceptance - in accordance with NMSA 1978, Section 13-1-158, the Agency shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Agency. Unless otherwise agreed

upon between the Agency and Contractor, within thirty (30) days from the receipt of items, the Agency shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Agency gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

- 3) Issuance of Purchase Orders - only written, signed and properly executed Purchase Orders are valid under this Agreement.
- 4) Invoices - Contractor may submit invoices for payment no more frequently than monthly. Contractor's invoice shall contain the following information: Purchase Order number, Price Agreement number, description of supplies or services, quantities, unit prices, extended totals, delivery tickets and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Agency and not the City of Santa Fe Purchasing Division.
- 5) Payment of Invoices - upon written certification from the Agency that the Items and Services have been received and accepted, the Agency shall pay to Contractor in full payment for services rendered, including applicable New Mexico gross receipts taxes.
- 6) Gross Receipts Taxes - applicable New Mexico gross receipts taxes shall be included on each invoice and shown as a separate item to be paid. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this agreement.

7. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate upon written notice from the Agency to Contractor. The Agency shall be responsible for charges incurred up to the date of notification under this Section per Section 10 of this Agreement. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

8. TERM AND EFFECTIVE DATE

- A. This Agreement shall be effective when signed by the Agency and terminate on August 18, 2023, unless it is terminated sooner pursuant to Article 7 or Article 10 of this Agreement.
- B. Pursuant to the limitations on multi-term contracts for services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed four years, including all extensions and renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor.

9. CANCELLATION

- A. The Agency reserves the right to cancel without cost to the Agency all or any part of any order placed under this Agreement if the services or deliverables fail to meet the requirements of this Agreement.
- B. The failure of Contractor to perform its obligations under this Agreement shall constitute a default of this Agreement.

- C. Contractor may be excused from performance if Contractor's failure to perform the Purchase Order arises out of causes beyond the control and without the fault or negligence of Contractor, unless the Agency shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the federal, state or local government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The Agency may cancel all, or any part, of any purchase order without cost to the Agency if Contractor fails to meet material provisions of the purchase order and Contractor shall be liable for any excess costs incurred by the Agency that is associated with such default.

10. TERMINATION

- A. Consistent with applicable New Mexico law, this Agreement may be terminated by the Agency, without penalty, at any time prior to the expiration date of this Agreement. The Agency will provide ten (10) days prior written notice to Contractor of the date of termination. Notice of Termination of this Agreement shall not affect any outstanding Purchase Order(s) issued under this Agreement prior to the effective date of termination for convenience by the Agency.
- B. The Agency further reserves the right to cancel all or any part of this Agreement without cost to the Agency if Contractor fails to meet the provisions of this Agreement and to hold Contractor liable for any excess costs associated with

Contractor's default. The rights and remedies of the Agency are not limited to those provided for in this Article and are in addition to any other rights provided for by law.

11. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- A. Contractor, its agents, and its employees are independent contractors performing services for the Agency and are not employees of the Agency.
- B. Contractor, its agents, and its employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Agency and shall not be permitted to use Agency vehicles in the performance of this Agreement.
- C. Contractor shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors Contractor retains to perform any of its obligations pursuant to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the Agency's prior written approval.

13. CONFLICT OF INTEREST

- A. Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance of its obligations pursuant to this Agreement. Contractor further agrees that it shall not employ or contract with anyone in the performance of this Agreement that has any such conflict of interest.

- B. Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

14. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

The Agency reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the Agency, serving the needs of the Agency adequately.

15. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interests under this Agreement, including any claims for money due, without the Agency's prior written consent. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the Agency's prior written approval.

16. NON-COLLUSION

In signing this Agreement, Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

17. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Agency, its officers, and its employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the Agency to any obligation not assumed herein by the Agency unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

18. INSURANCE

- A. Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement comprehensive general liability insurance

of \$1,000,000 for each occurrence and \$2,000,000 in general aggregate coverage for bodily injury and property damage liability, in a form and with an insurance company acceptable to the Agency. The Agency shall be named as an additional insured under the insurance policy, and the policy shall provide that the Agency will be notified no less than thirty (30) days before the policy is cancelled for any reason. Contractor has furnished the Agency with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this section as a condition of entering into this Agreement.

- B. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the Agency with evidence demonstrating that appropriate Workers' Compensation insurance has been obtained.
- C. Contractor shall carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$1,000,000 combined single limit for each accident.
- D. Contractor shall carry and maintain throughout the term of this Agreement auto pollution liability in the amount of \$5,000,000 per occurrence.
- E. Contractor shall also carry and maintain throughout the term of this Agreement erroneous delivery liability insurance in the amount of \$1,000,000 per occurrence.

19. INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit,

judgment, execution, claim, action, or demand whatsoever to the extent arising from the acts, errors, or omissions, or willful and reckless disregard of obligations under this Agreement, in the performance of any services covered by this Agreement, whether occurring on Agency managed or owned property or otherwise, by Contractor or its employees, agents, representatives, or subcontractors, excepting only such liability that arises out of the Agency's negligence.

20. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Agency in connection with this Agreement is subject to the immunities and limitations set forth in the New Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1 to 41-4-27. The Agency and its employees do not waive sovereign immunity, any available defense, or any limitation of liability recognized by law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

21. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title, or interest in, or for the benefit of, any person other than the Agency and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary.

22. RECORDS AND AUDIT

Contractor shall maintain throughout the term of this Agreement and for a period of three years thereafter detailed records that indicate the date, time, and nature of services rendered. These records shall be subject to inspection by the Agency, the City of Santa Fe Finance Department, and the State Auditor. The Agency shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

23. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Agency. In any action, suit, or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in the First Judicial District Court, State of New Mexico.

24. AMENDMENT

This Agreement may only be amended by mutual agreement of the Agency and Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding purchase order(s) issued, by the Agency, prior to the effective date of the amendment.

25. SCOPE OF AGREEMENT

This Agreement expresses the entire agreement and understanding between the parties with respect to Contractor's Items and Services attached hereto as Exhibit A. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

26. 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 services Contractor undertakes pursuant to this Agreement on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

27. SEVERABILITY

If one or more of the provisions of this Agreement or any application thereof is found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Agreement and any other application thereof shall not in any way be affected or impaired.

28. NOTICES

- A. Any notice required to be given under this Agreement shall be in writing and served to the parties at the following addresses:

AGENCY: Randall Kippenbrock, P.E.
Executive Director
Santa Fe Solid Waste Management Agency
149 Wildlife Way
Santa Fe, NM 87506

CONTRACTOR:

- B. Such notices may be delivered by:
- 1) personal delivery;
 - 2) certified U.S. mail, returned receipt requested; or
 - 3) recognized overnight delivery service.
- C. Any such notice shall be effective upon actual receipt by the party entitled thereto.
- D. Any party may change its address for purposes of this Article by giving notice to the other party as herein provided.

29. COMPLIANCE WITH LAWS AND REGULATIONS; PROHIBITION OF BRIBES, GRATUITIES, AND KICKBACKS

Contractor shall comply with all applicable federal, state, and local laws and regulations throughout the term of this Agreement. Contractor expressly acknowledges that the New Mexico

Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation, and New Mexico criminal statutes impose penalties for bribes, gratuities, and kickbacks.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hanson
Chairperson, Joint Powers Board

Date:

ATTEST:

Katharine E. Clark
Santa Fe County Clerk

CONTRACTOR:

Signatory
Title
Company

Date:

APPROVED AS TO FORM:

Nancy R. Long
Agency Attorney

Date:

EXHIBIT A