

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
SERVICES AGREEMENT
WITH TOWN RECYCLING, LLC
(Processing and Marketing of Recyclable Materials - 2019)**

This SERVICES AGREEMENT ("Agreement") is made and entered into by and between the Santa Fe Solid Waste Management Agency ("the Agency") and Town Recycling, LLC ("Contractor") to provide processing and marketing services of recyclable materials (RFP No. '19/06/P), as described in Exhibit A and below. The Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. SCOPE OF SERVICES

The services subject to this Agreement are set forth in the Scope of Work attached hereto as Exhibit A. Contractor shall provide processing and marketing services for all of the recyclable materials that are received at the Buckman Road Recycling and Transfer Station (BuRRT facility) in Santa Fe, NM. It shall be the responsibility of Contractor to perform according to the terms of this Agreement, those established in Exhibit A, and in the other Contract Documents, including Contractor's Proposal for RFP No. '19/06/P; to comply with all federal, state, and local laws and regulations; to obtain and comply with any permitting or licensing requirements, including but not limited to requirements imposed by environmental regulatory entities.

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. **COMPENSATION**

A. The Agency shall pay to Contractor in full payment for services rendered, a sum not to exceed Six Hundred Thousand Dollars and No Cents (\$600,000.00), including applicable gross receipts taxes.

B. Contractor shall be responsible for payment of gross receipts taxes by the State of New Mexico on the sums payable under this Agreement.

C. Payment shall be made upon receipt and approval by the Agency of reasonably detailed invoices describing the services performed. Invoices shall be rendered not more than once each month. Compensation shall be paid only for services actually performed.

D. Any invoices containing reimbursement expenses shall be itemized.

E. Contractor shall process and market the recyclable materials received by the Agency at the BuRRT facility and operate the material recovery facility (MRF) at the BuRRT facility as described in the Scope of Work.

F. For materials received and weighed across the scales located at the BuRRT facility in a given month, the value of the materials shall be determined by the Contractor Processing Fee/Agency Revenue Share formula as follows:

- (1) The Contractor Processing Fee shall be set at \$71.41 per ton.
- (2) The Average Market Value (AMV) of the materials shall be determined by the weighted average value of the current market price of each commodity, as defined by the designated published price index listed below and multiplied by the percent composition each commodity represents as determined by a Material Composition Audit.

Commodity

Published Index

Newspaper (#56)

RISI/PPI Southwest High Side Price for SRPN #56

Mixed Paper (#54)	RISI/PPI Southwest High Side Price for Mixed Paper #54
OCC (#11)	RISI/PPI Southwest High Side Price for OCC #11
PETE #1	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Plastics PETE
HDPE #2 - Natural	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Plastics HDPE-Natural
HDPE #2 - Color	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Plastics HDPE-Color
Tin Cans	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Metals Steel Cans, Sorted, Baled
Aluminum Cans	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Metals Aluminum Cans, Sorted
Plastics #3-#7	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Plastics Comingled #3-#7
Rigid Plastics	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Mixed Bulky Rigid
Scrap Metals	Secondary Materials Pricing.com (www.RecyclingMarkets.net) for Houston/South Central USA, Regional Average Price for Metals Steel Cans, Sorted, Baled

- (3) The price published in the earliest edition/posting of the month shall be used to calculate AMV for the entire month.
- (4) A Material Composition Audit is a weighted average by the percentage of the different commodities collected from various recycling collection programs in a 50 to 100-ton sample size. Contractor shall perform the first audit within the first month of the Agreement and, at a minimum, bi-annually thereafter. The Agency shall observe the audit.

(5) The Agency Revenue Share is twenty percent (25%) of the Average Market Value.

(6) The Agency shall pay the Contractor the Net Processing Fee, which is the difference between the Contractor Processing Fee and the Agency Revenue Share multiplied by the total tons of materials received by the Agency in that month. The formula for calculating the monthly Net Processing Fee is as follows:

a) $\text{Contractor Processing Fee} - \text{Agency Revenue Share} = \text{Net Processing Cost.}$

b) $\text{Net Processing Cost} \times \text{Total Tons Materials Received} = \text{Net Processing Fee}$

G. Upon mutual agreement of the Parties, if a published price index (or indexes) in Paragraph F (2) under this Article fails to reflect prevailing market conditions accurately, Contractor may use an alternative publication(s) or alternate method to determine the value of each affected commodity until such time that the published price index listed above returns to reflect prevailing market conditions accurately.

H. Contractor shall be responsible for all costs associated with the operation, maintenance and repairs of the MRF including the CP Manufacturing sorting equipment and Van Dyk Bollegraff baler.

I. Contractor shall be responsible for all costs associated with operating the Contractor's mobile material handling equipment required to manage the recyclable materials.

J. Contractor shall be responsible for all costs associated with operating the Agency's

mobile material handling equipment required to manage the recyclable materials.

K. The Agency shall be responsible for the cost associated with diesel fuel for mobile equipment requiring diesel fuel.

L. The Agency shall be responsible for all costs associated with the transportation and disposal of residuals and contaminated recyclable materials at the Caja del Rio Landfill.

M. The Agency shall be responsible for all costs associated with utilities (i.e., electricity, water, propane).

N. The Agency shall be responsible for all costs associated with the repairs and maintenance of the buildings housing the MRF.

O. During the term of this Agreement, the Parties may mutually agree to adjust the Contractor Processing Fee and/or Agency Revenue Share, and in such event, this Agreement shall be amended to reflect the Contractor Processing Fee and/or Agency Revenue Share. If no such amendment occurs, the Contractor Processing Fee and/or Agency Revenue Share specified herein will remain in effect during the term of this Agreement.

P. Contractor shall not be compensated for any costs, expenses, or other items associated with this Agreement except as specifically provided for in this Agreement.

4. 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 the Contractor. Compensation shall be paid for all activities performed up to the date of notification under this Article and Article 6 of this Agreement. The

Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the Agency and terminate on May 30, 2020, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.

B. Pursuant to the limitations on multi-term contracts for services contracts codified in NMSA 1978 § 13-1-150, this Agreement may not exceed ten (10) years, including all extensions and renewals. Subject to that limitation, this Agreement can be renewed annually, if agreed upon by the Agency and Contractor and approved by the Joint Powers Board.

6. TERMINATION

A. The Agency may terminate this Agreement at any time and for any reason by giving one hundred twenty (120) days written notice to the Contractor. Reason for terminating the Agreement shall include, but not be limited to, Contractor's failure to satisfactorily process and market the recyclable materials received by the Agency, Contractor's failure to properly operate, maintain and repair the MRF sorting equipment and baler, Contractor's failure to maintain and repair the facilities utilized by the Contractor or Contractor's failure to correct a safety and/or environmental violation within the time frame stated by the regulatory agency. The decision to terminate the Agreement by the Agency shall be final and not subject to dispute or correction by the Contractor. If the Agency terminates the Agreement:

(1) Contractor shall render a final report of the services performed up to the

date of termination and shall turn over to the Agency original copies of all work product, research, or papers prepared for the services covered by this Agreement.

(2) Contractor shall make all payments due to the Agency pursuant to Article 3 of this Agreement within thirty (30) days of termination.

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, except as otherwise provided herein, to hold Contractor liable for any costs and damages associated with Contractor's default.

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

A. Contractor, its agents, and its employees are independent contractors performing professional 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.

8. 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.

9. CONFLICT OF INTEREST

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.

10. 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.

11. RELEASE

Contractor, upon 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 the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall not begin the services required under this Agreement until it has:

- (a) obtained, and upon the Agency's request provided to the Agency, insurance certificates reflecting evidence of all insurance required herein; however, the Agency reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the Agency;
- (b) obtained the Agency approval of each company or companies as required below, and
- (c) confirmed that all policies contain the specific provisions required.

Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage

required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of this Agreement by the Agency. Further, Contractor shall not modify any policy or endorsement thereto, which increases the Agency's exposure to loss for the duration of this Agreement.

B. Types of Insurance. At all times during the term of this Agreement, Contractor shall maintain insurance coverage as follows:

(1) Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate (Other than Products/Completed Operation)	\$2,000,000
Products/Completed Operation Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

(2) Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the Agency that reflects coverage for any automobile.

(3) Workers' Compensation. For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy &

Employers Liability policy. That policy shall provide

Employers Liability Limits as follows:

Bodily Injury by Accident	\$1,000,000	Each Accident
Bodily Injury by Disease	\$1,000,000	Each Employee
Bodily Injury by Disease	\$1,000,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Agency and its respective officials, officers, employees, agents, volunteers and representatives.

(4) Business and Personal Property Form Commercial Insurance. Contractor shall keep in full force and effect, Business and Personal Property Form (BPPF) commercial insurance at full replacement value of the Agency property, including any improvement and expansion, to insure against loss of, damage to, or destruction of the MRF equipment, mobile equipment and other contents of the BuRRT facility. Coverage must also include, but is not limited to, power failure, utility interruption, removal of recyclable materials and equipment breakdown. Such policy shall provide a limit of not less than \$3,000,000 per loss claim.

C. Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the Agency is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." In the event Contractors' insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the Agency within four working

days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

D. Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that has been approved by the Agency. The Agency will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

E. Deductibles. All deductibles or co-payments on any policy shall be the responsibility of the Contractor.

F. Specific Provisions Required. Each policy shall expressly provide, and an endorsement shall be submitted to the Agency, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the Agency and its respective officials, officers, employees, agents, volunteers and representatives.

G. All policies required herein are primary and non-contributory to any insurance that may be carried by the Agency and its officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the Agency.

H. Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the Agency's exposure to loss.

I. The Agency reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the Agency. The Agency will reimburse the Contractor for the cost of the

additional premium for any coverage requested by the Agency in excess of that required by this Agreement without overhead, profit, or any other markup.

J. Contractor may obtain additional insurance not required by this Agreement.

13. 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 negligent 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. AMENDMENT

This Agreement shall not be altered, changed, or modified except by an amendment in writing executed by the parties.

19. SCOPE OF AGREEMENT

This Agreement expresses the entire agreement and understanding between the parties with respect to the services set forth in the Scope of Work 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.

20. 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.

21. 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.

22. NOTICES

A. Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

AGENCY: Mr. Randall Kippenbrock, P.E.
Executive Director
Santa Fe Solid Waste Management Agency
149 Wildlife Way
Santa Fe, NM 87506
Fax: (505) 424-1839
Email: rkippenbrock@sfswwma.org

CONTRACTOR: Mr. Victor Lara
Director of Operations
Town Recycling, LLC
4220 Broadway Blvd., SE
Albuquerque, NM 87105
Fax: N/A
Email: townrecycling@gmail.com

B. Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed

and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile or email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this Article by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

23. 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 kick-backs.

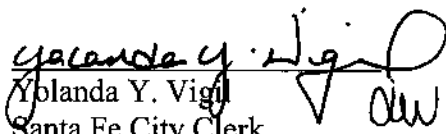
IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:


Renee Villarreal
Chairperson

5-30-19
Date:

ATTEST:


Yolanda Y. Vigil
Santa Fe City Clerk

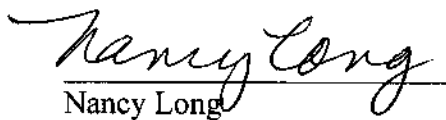
6-18-19
Date:

CONTRACTOR:


Victor Lara
Director of Operations
Town Recycling, LLC

5-30-19
Date:

APPROVED AS TO FORM:


Nancy Long
Agency Attorney

5-30-19
Date:

SCOPE OF WORK

Contractor warrants that they have the expertise and the appropriate resources to perform the Scope of Work required by the Agreement for the processing and marketing of recyclable materials received at the Buckman Road Recycling and Transfer Station (BuRRT facility) as described in RFP No. '19/06/P, per the approach provided to the Agency in Contractor's proposal dated January 17, 2019, and the requirements set forth in the BuRRT solid waste facility operating permit, which contains the Materials Recovery Facility Operations Plan (Contract Documents).

General Scope of Work

- Operate the Agency-owned Materials Recovery Facility (MRF) at the Agency-leased BuRRT facility to its fullest extent and capacity by accepting and processing recyclable materials received at the BuRRT facility for marketing to end-user manufacturers and mills.
- Operate and maintain the MRF in full compliance with all environmental and solid waste regulations and comply with all federal, state, and local laws and regulations.
- Recover a significant quantity of recyclable materials that otherwise would be disposed of at the Caja del Rio Landfill (Landfill).
- Develop and maintain practical and economically sustainable recycling markets for the Agency and its customers to grow and expand the recycling programs into the future.

Specific Duties

Contractor shall furnish all labor, material, services, tools, equipment, and fixtures necessary to perform the Scope of Work in the Agreement. Contractor shall have control over, and be solely responsible for, all means, methods and sequences for performing the Scope of Work.

Contractor agrees that the BuRRT facility is first and foremost an operating transfer station and that any MRF operations shall not have precedence over on-going transfer station operations. The Agency may disrupt MRF operations at any time if, in the discretion of the Agency, the needs of the transfer station require it.

Contractor shall operate the MRF located inside the transfer station at the BuRRT facility in accordance with the MRF Operations Plan under the NMED Solid Waste Permit No. SWM-261707. In general, the conveyors and sort line of the MRF occupies most of the western half of the transfer station. The baler for the MRF is positioned inside the Baler Building, which is west of and adjacent to the transfer station. Both buildings are shown in Appendix A, Figure 2 of the BuRRT General Operations Plan.

The MRF processing system consists of the following equipment/components/storage areas:

CP Manufacturing Sorting Equipment – installed in February 2007

1. Pre-sort in-floor in-feed conveyor [steel pans]

2. Pre-sort inclined in-feed conveyor [steel pans] – replaced in 2014
3. Metering drum
4. Pre-sort platform
5. OCC screen
6. OCC discharge conveyor [rubber belt]
7. OCC screen in-feed conveyor [rubber belt]
8. ONP screen – replaced star discs in 2010
9. ONP screen in-feed conveyor [rubber belt]
10. Elevated sort room – fully enclosed; illuminated by overhead lighting and equipped with HVAC
11. Sort line conveyor [rubber belt]
12. Six (6) manual sorting stations with chutes at waist level
13. Crossbelt magnetic separator – replaced in 2014
14. Eddy current separator – installed in 2008
15. Mixed container discharge conveyor [rubber belt]
16. Mixed container in-feed conveyor [rubber belt]
17. Baler in-floor in-feed conveyor [steel pans]
18. Baler inclined in-feed conveyor [steel pans] – replaced in 2017
19. Visual SCADA interface

Van Dyk Recycling Solution Baling Equipment - installed in February 2007

1. HB-80 Bollegraaf baler
 - a. Ten-fold cross wire tying system; 16-fold cross wire for plastic bottles
 - b. Perforator for plastic bottles
2. Visual SCADA interface

Storage Areas

1. Transfer station floor area located along the east side of the MRF for commingled recyclable materials
2. Separated OCC bunker
3. Mixed containers bunker
4. Six (6) storage bunkers beneath the sorting stations for sort separated materials
5. Bale room storage area for approximately 90 bales
6. Two (2) parked 53-foot trailers located next to the Baler Building

Contractor shall demonstrate the MRF is capable of meeting all of the performance standards set forth in this Agreement in three separate phases. The phases are as follows:

1. Equipment Start-Up: Operate the MRF without recyclable materials for a specified period of time to check for equipment, motors, belts, control panels, control functions, safety guards, e-stops, excessive noise and vibration.
2. Initial Operation: Operate the MRF with recyclable materials for a specified period of time to ensure that the MRF equipment is capable of sorting, processing and baling the materials at specified throughputs.

3. Acceptance Operation: Operate the MRF with recyclable materials for a specified period of time under normal operating conditions and staffing level to verify throughputs, recovery rates, and residuals.

The Agency will provide technical assistance to the Contractor during the three stages of the performance standards.

Contractor shall maintain an Equipment Maintenance Log Book to record scheduled lubrication, scheduled preventive maintenance and repairs to ensure the MRF equipment is in a safe and usable condition and minimize downtime. Lubrication and preventive maintenance shall be scheduled and performed in a manner and frequency that meets or exceeds specifications and schedules set forth by the original equipment manufacturers. The logbook shall be made available for inspection to the Agency throughout the term of the Contract.

Contractor shall be responsible for all loss or damage to Agency property at full replacement cost as a result of the Agreement.

Any capital improvement, expansion or replacement for the MRF must be approved by the Agency.

Contractor shall be responsible for the heating, air conditioning, and plumbing system (HVAC) for the MRF sort room. The Agency will be responsible for the other HVAC systems throughout the BuRRT facility.

The Agency shall be responsible for the following:

1. Utilities - electricity, water, propane and sewer
2. Communication – landline telephone and internet
3. Other – exhaust fans, compressed air, lighting

The Agency shall be responsible for the repair and maintenance of the transfer station tipping floor, roof and structure. The Agency shall also be responsible for the inspection and maintenance of the fire suppression systems and fire extinguishers throughout the BuRRT facility.

Contractor shall be solely responsible for providing mobile equipment necessary for the MRF operation. Mobile equipment includes, but not limited to, skid steer loader, forklift truck, front-end loader, roll-off trucks, tractor-trailers.

Contractor shall be responsible for all loss or damage to materials, equipment, tools and supplies owned or rented by the Contractor.

Contractor shall be responsible for all costs associated with operating Agency owned mobile material handling equipment to manage the recyclable materials (e.g., skid steer loader, forklift truck).

The Agency shall be responsible for the cost associated with supplying diesel fuel for mobile equipment operated by the Contractor.

The Agency expects all of the recyclable materials defined as Acceptable Recyclable Materials to be processed by the Contractor using the MRF at the BuRRT facility. In the event that certain recyclable materials or groups of recyclable materials are sent to a secondary/downstream processor, the Contractor shall inform the Agency which recyclable materials are being processed in this manner and who will be doing the processing.

In the event the Contractor is unable to process recyclable materials for three (3) working days due to Contractor's actions (or its employees or subcontractors) resulting in inoperability of the MRF, the Contractor shall be required to procure another MRF for processing and marketing the materials and compensate the Agency for any and all costs incurred due to using an alternate MRF. Contractor shall transport the recyclable materials to another MRF at no additional cost to the Agency. Failure to procure another MRF for processing recyclable materials after three (3) days will result Contractor's responsibilities for any excess costs incurred.

Contractor shall provide a Contingency Plan to the Agency within thirty (30) days after the execution of this Agreement that identifies an alternate MRF to process and market the recyclable materials in the event the MRF at the BuRRT facility is unable to process the materials.

Contractor shall process the recyclable materials at a minimum of 95% recovery rate, excluding contamination, to ensure the overall residual rate remains low.

The Agency shall maintain a contamination rate in the recyclable materials equal to or less than 25%. Both Parties shall work in good faith to assess and reduce this level as much as possible.

Contractor may reject a load for the following reasons: if the load contains contamination in excess of 30% by volume of the load; or the load presents a health or safety hazard. To reject a load, the Contractor shall notify the Agency immediately and before the truck leaving the tipping area that the load has been rejected and the reason the load has been rejected. Contractor shall email photos and approved form documenting the load contamination for the Agency's review. The Agency shall be allowed to inspect the load or evaluate it through the photos. The Agency, upon inspection, shall determine whether the load met either of the two reasons for rejections. If the Agency inspects the load and determines the load does not meet either two of the reasons for rejections, the Contractor shall accept the load. If the Agency determines the load does meet either of the two reasons for rejections, then the Agency will take necessary steps to dispose of properly said rejected materials. Contractor shall be responsible for providing to the Agency a written procedure for rejection of loads.

Contractor shall not dispose of any Acceptable Recyclable Material generated under this Agreement as a solid waste except for residuals. Contractor shall not market any Acceptable Recyclable Material that the Contractor knows or reasonably should have anticipated will become a solid waste except when authorized in writing by the Agency. Failure to comply with this requirement will result in a \$1,000 per occurrence penalty.

Contractor shall be responsible for marketing the Acceptable Recyclable Materials in accordance with this Contract. The Agency expects the Contractor to sell recyclable materials to the end market with the highest price available in the open market. In the event that recyclable materials

are no longer acceptable, Contractor shall provide the Agency with justifications as to why the material needs to be removed from the program. Acceptable Recyclable Materials shall be marketed within ninety (90) days of receiving/processing for conventional recyclable materials and within one hundred eighty (180) days for non-conventional recyclable materials, or as required by NMED regulations.

Contractor is encouraged to identify other recyclable materials beyond those defined as Acceptable Recyclable Materials to be processed and marketed by the Contractor. The Agency reserves the right to define the Acceptable Recyclable Materials, including any or all recyclable materials identified by the Contractor. Likewise, Contractor is also encouraged to identify a list of unacceptable items that cannot be processed at the MRF.

Contractor or its buyer shall be responsible for the shipment of recyclable materials to the buyer's specified location. Contractor shall not deduct transportation and handling costs or freight costs from the AMV of the recyclable materials.

Contractor shall submit invoices to the Agency by the 30th of each month for the previous month of recyclable materials received at the BuRRT facility. Invoices shall include monthly reports as per the Scope of Work.

Contractor shall perform a material composition study that is a weighted average by the percentage of the various commodities in the recycling stream from a 50 to 100-ton sample size. Contractor shall perform the first audit within the first month of Agreement and, at a minimum, bi-annually thereafter. The Agency reserves the right to observe the composition study.

The Agency, City of Santa Fe and Santa Fe County will promote recycling through its education and outreach programs. The parties will utilize methods to focus on reducing the amount of contamination based on feedback from the Contractor. Contractor shall provide pertinent and informative recycling data to the Agency to further promote the recycling programs.

Contractor shall have an education and outreach program including tours of the MRF. Contractor shall report to the Agency the education and outreach conducted by the Contractor.

Contractor shall furnish the Agency monthly reports of all recyclable materials delivered under this Agreement. The report shall include the following information: summary of deliveries including the Agency's scale ticket number, Agency's BOL number, time, date and net tonnage. Reports shall be due thirty (30) days after the end of the month.

Contractor shall furnish the Agency documentation of recyclable materials processed and marketed by commodity, general destinations marketed to and other non-proprietary information related to the marketing of the recyclable materials as requested by the Agency.

In the event the Contractor uses a secondary/downstream processor to further manage recyclable materials into clean commodity streams, the Contractor shall provide the Agency with the following information from each secondary/downstream processor: the types and tons of recyclable materials sent to markets as well as the tons of residue resulting from their processing.

This information will be provided as a separate report to the Agency and sent within thirty (30) days of the secondary/downstream market processing the material.

Contractor shall furnish the Agency an annual report outlining the total amount of recyclable materials delivered, processed by the Contractor and amount of recyclable materials sent to secondary/downstream markets. This report shall be due to the Agency within thirty (30) days of the end of each calendar year.

Contractor shall provide a quarterly status report to the Agency that will include any known compliance issues, and associated mitigating measures necessary for MRF compliance, etc. The details of this report will be agreed upon between both Contractor and the Agency.

All of Contractor's records shall be made available to the Agency and its representatives at reasonable times and places throughout the term of the Contract.

Contractor shall be responsible for maintaining all necessary registrations, permits, licenses, certificates and insurances to fulfill the Scope of Work in this Agreement. The registrations, permits, licenses, certificates and insurances shall be subject to inspection by the Agency. Contractor shall promptly notify the Agency of any non-compliance.

Contractor shall be responsible for maintaining proper work, safety, health and environmental protection standards. Contractor agrees to hold the Agency harmless for all fines and penalties from federal, state or local agencies. Contractor shall be responsible for paying all fines, penalties, and judgments levied by these government agencies resulting from activities under this Agreement. Contractor shall promptly notify the Agency of any non-compliance.

Contractor shall pay an hourly rate, no less than the City of Santa Fe's Living Wage, to the employees employed for the MRF operation at the BuRRT facility.

Contractor shall not subcontract any portion of the Scope of Work to be performed under this Agreement without written approval from the Agency.

Upon termination of this Agreement, Contractor, at its sole cost and expense must return the MRF in the same or similar condition that existed on the Effective Date of this Agreement, reasonable wear and tear excepted.

For any material breach in this Agreement, the Agency shall notify Contractor in writing of the nature of the breach. Contractor shall have thirty (30) days from the receipt of such notice to cure or otherwise eliminate such cause. If the Contractor does not remedy the breach, to the reasonable satisfaction of the Agency, then the Agreement shall terminate pursuant to Article 6 of this Agreement.

Contractor shall have a certified recycling facility operator onsite at all times during the MRF operation. Should certification(s) lapse, or should Contractor otherwise default on its obligations pursuant to this Agreement, such that the Agency is required to terminate this Agreement and take over the MRF operation, or perform services that Contractor agrees to perform pursuant to this

Agreement, Contractor shall compensate the Agency for the reasonable costs and expenses incurred by the Agency.

Contractor shall staff the MRF operation with the appropriate number of employees consistent with good management and industry standards and practices to reasonably enable Contractor to perform all of the Contractor's responsibilities under this Agreement. At a minimum, Contractor shall staff the number of full-time employees listed in the Contractor's Proposal for RFP No. '19/06/P as follows:

1. Six (6) sorters
2. Lead/controller
3. Baler/forklift operator
4. Tipping floor loader
5. Site manager

Contractor's employees for the MRF operation must be appropriately trained in accordance with all applicable rules and regulations and good management and industry standards and practices.

Contractor shall comply with the health and safety training requirements of the Agency. The Agency, may at any time, require Contractor to complete additional training if such is deemed necessary to promote and conduct safe, efficient, and orderly MRF operating practices at the BuRRT facility. Training topics and training frequencies for Contractor's employees shall include, but are not limited to, the following:

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|-------------------------------------|--|
| 1. MRF Operator Certification | When hired and every 3 years for certified operators |
| 2. General Operations Plan | When hired and annually thereafter |
| 3. Materials Recovery Facility Plan | When hired and annually thereafter |
| 4. Waste Screening and Inspection | When hired and annually thereafter |
| 5. Contingency Plan | When hired and annually thereafter |
| 6. Alternative Waste Handling | When hired and annually thereafter |
| 7. First Aid/CPR/AED | Every 2 years for designated employees |
| 8. Fire Extinguisher Use | When hired and annually thereafter |
| 9. SWPPP (Stormwater Plan) | Annually for designated employees |
| 10. Bloodborne Pathogens | Within 10 days of hire and annually thereafter |
| 11. Drug & Alcohol – Employees | Annually |
| 12. Drug & Alcohol – Supervisors | Annually |
| 13. Sexual Harassment | Annually |
| 14. Workplace Violence | Annually |
| 15. Ergonomics | When hired and retraining when observations dictate |
| 16. Forklift | Every 3 years for certified operators and retraining when observations dictate |
| 17. Hazard Awareness | When hired and retraining when observations dictate |
| 18. Hazard Communication | Within 10 days of hire |
| 19. Confined Space Awareness | When hired for designated employees and retraining when observations dictate |
| 20. Respiratory Protection | When hired and annually thereafter |

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|---|---|
| 21. Respiratory Physical and Fit Test | When hired and annually thereafter for designated employees |
| 22. Walking, Working Surfaces and Fall Protection | When hired and retraining when observations dictate |

Contractor shall report to the Agency any unsafe work conditions, worksite hazards, all work-related injuries and illnesses immediately, or as soon as possible. Contractor shall participate in investigations for work-related injuries and illnesses.

Contractor shall report to the Agency incidents involving near misses or damage to Agency equipment and or property immediately, or as soon as possible.

The BuRRT facility operating hours to the public are Monday through Sunday, 8:00 a.m. to 4:45 p.m. The Agency receives most of the recyclable materials Mondays through Fridays along with some additional recyclable materials on the weekends. The Agency receives recyclable materials from the City of Santa Fe, Santa Fe County, BuRRT Recycling Drop-Off Center, private haulers and other customers.

Contractor shall accept deliveries of recyclable materials between the hours of 8:00 a.m. and 4:45 p.m., Sunday through Saturday.

Contractor shall perform the MRF operation during the BuRRT facility's operating hours from 7:00 a.m. to 5:30 p.m., Sunday through Saturday. Contractor may request in writing to the Agency to operate outside of these hours for such tasks as paperwork, equipment maintenance, etc.

Contractor shall notify the Agency in advance any scheduled days the MRF will not operate.

Contractor shall not operate the MRF on the following holidays:

- New Year's Day
- Memorial Day
- Independence Day (July 4th)
- Labor Day
- Thanksgiving Day
- Christmas Day

Contractor may choose not to operate the MRF on other nationally recognized holidays provided the Contractor submits a written notice to the Agency before January 1st of each calendar year.

Contractor shall not operate on Easter Sunday.

The Agency shall act as scale master for all loads of incoming recyclable materials delivered and outgoing loads of processed recyclable materials removed from the BuRRT facility. As such, the Agency retains the right to enforce weight limits. The Agency's scale house shall also serve as the scale of record to provide guidance on the material leaving the facility and provide a basis for calculating the value of the material and payment to the Agency. The Agency shall work with the

Contractor to ensure that accurate weights are collected and monthly reports are provided to the Contractor. Contractor shall reference the weights and BOLs on payments for recordkeeping and audit purposes.

Contractor shall have all of the equipment necessary to load the trailers to maximum capacity for transportation of recyclable materials, residuals and contamination.

The Agency will maintain a designated floor space in the transfer station for Contractor to accept deliveries of recyclable materials from customers.

The Agency will maintain a designated loading area (hopper) for Contractor to load open-top, walking floor (or similar) trailers with residuals and contamination.

Contractor shall comply with the BuRRT Operations Plan, as it may be amended from time to time. This includes adherence to on-site traffic rules, posted speed limits and wait times for the loading of trailers, if applicable.

The Agency shall be responsible for all costs associated with the transportation and disposal of residuals and contamination at the Landfill. Contractor shall load residuals and contamination into the Agency's trailers in such a manner to minimize wait time.

Contractor shall ensure inventory of recyclable materials or recycled materials does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance at the BuRRT facility pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC.

Contractor shall handle and store recyclable materials in a manner that does not create a nuisance, harbor vectors or create a public health hazard.

Contractor shall be responsible for controlling vector populations. Vectors include any rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans.

Contractor shall control odors throughout the MRF operation.

Contractor shall minimize the risks of fires caused by spontaneous combustion. Contractor shall be responsible for any costs related to fire mitigation. Contractor shall provide a fire safety plan to the Agency within thirty (30) days after the execution of this Agreement.

Contractor shall comply with the BuRRT facility's stormwater pollution prevention plan (SWPPP). In the event Contractor introduces a new discharge not covered under the current SWPPP, Contractor will be responsible for filing a new Notice of Intent (NOI) and submitting a new SWPPP for the operation associated with the MRF operation.

In the event of any release or threatened release of any material, including but not limited to any hazardous material, special waste, or other contaminant, relating in any way to any of the Scope of Work under this Agreement, regardless of whether such release or threatened release is caused or contributed to by Contractor, any Subcontractor, or any other person or entity, Contractor must

promptly notify the Agency and provide all pertinent information, including but not limited to the nature, scope, location and sources or causes of the release or threatened release and all actions taken, being taken and to be taken by Contractor with respect to the release or threatened release.

Contractor shall be responsible for any and all violations imposed by NMED, the Environmental Protection Agency (EPA), Occupational Health and Safety Administration (OSHA), or other regulatory agencies of the federal, state and local governments as they relate to the MRF operation at the BuRRT facility. In the event that the violations are not corrected in a timely manner, the Agency has the right to terminate the Agreement with Contractor for the MRF operation at the BuRRT facility.

Contractor shall provide a Procedure Plan to the Agency within thirty (30) days after the execution of this Agreement that includes, but not be limited to, the following:

1. Organization chart with a brief job description for each job title
2. Procedure for providing and monitoring health and safety training
3. Procedure for inspecting incoming recyclable materials
4. Procedure for storing incoming recyclable materials
5. Procedure for loading residuals and contamination
6. Procedure for storing, loading and shipping of processed materials
7. Procedure for monitoring and reporting residuals and contamination
8. Procedure for monitoring and reporting recovery rate
9. Procedure for monitoring and controlling MRF costs
10. Procedure for performing a material composition study annually
11. Procedure for responding to complaints
12. Procedure for providing tours and presentations

Contractor shall comply with all applicable rules and regulations of the New Mexico Department of Motor Safety and the Federal Motor Carrier Safety Administration. Contractor shall pay particular attention to the rules and regulations related to maximum vehicle weights as no loaded trailers will be permitted to leave the Agency facility in excess of these limits.

The Agency employs a security company to patrol the BuRRT facility during closed hours to prevent trespassing, destruction of property, and to monitor the premises for unusual activity (e.g., fires). The Agency may notify Contractor of any unusual activity related to the MRF operation.

Contractor shall ensure that the MRF is locked and secured whenever the Contractor is not present (e.g., Baling Building, Door Nos. 4, 5 and 6). Contractor shall be responsible for all security within the MRF operating limits.

Contractor shall maintain good housekeeping throughout the MRF (i.e., equipment, bunkers and floor areas), Baler Building and Administration Building (i.e., restrooms, lockers area, lunch area, conference room, reception area).

Contractor shall perform litter patrols on the outside areas affected by the MRF operations on a daily basis.

The Agency or its representatives shall have access to inspect the MRF as it deems reasonably necessary to determine whether the services provided by the Contractor conform to the terms of the Contract. Contractor shall assist in facilitating the inspection by the Agency. The Agency shall inspect during the BuRRT hours of operation.

Definitions:

1. **Acceptable Recyclable Materials:** means recyclable materials which the Contractor will accept for processing and marketing, including:
 - a. Newspaper and Inserts (ONP)
 - b. Corrugated Cardboard (OCC)
 - c. Brown Paper Bags
 - d. PET (#1) Plastic Bottles
 - e. HDPE (#2) Natural and Colored Containers
 - f. Aluminum Cans and Foil
 - g. Steel/Tin Cans
 - h. Junk Mail
 - i. Shredded Office Paper
 - j. Other Paper
 - k. Magazines and Catalogs
 - l. Phone Books
 - m. Paperback and Hardcover Books
 - n. Mixed Plastics (#3 - #7), including bottles, jars, yogurt/margarine tubs, deli/salad clamshells; excluding Styrofoam and plastic bags
 - o. Other Rigid Plastic (e.g., toys, laundry baskets, recycling bins, buckets)
 - p. Paperboard/Chipboard (e.g., cereal boxes, egg cartons, beverage packaging material)
 - q. Milk Cartons and Drink Boxes
2. **Agency:** means the Santa Fe Solid Waste Management Agency.
3. **Average Market Value:** means a calculation of the value of each ton of the Agency's recyclable materials based upon the current market price of each individual commodity as defined by the designated published regional price indexes agreed upon by the Agency and the Contractor and the percent composition each commodity represents as determined by bi-annual material composition audits. The AMV shall be computed monthly and the updated value will apply to all deliveries within that month.
4. **BuRRT facility:** means the Buckman Road Recycling and Transfer Station.
5. **Contamination:** means non-recyclable materials mixed in with acceptable recyclable materials in a commingled, or single stream recycling program. Examples of non-recyclable materials that may contaminate acceptable recyclable materials include trash, garbage, glass, yard waste, household hazardous waste, plastic bags, food waste, Styrofoam, wax coated cardboard, diapers, and medical waste.

6. Contractor: means Town Recycling, LLC.
7. Conventional Recyclable Materials: means items such as newspaper, junk mail cardboard, brown paper bags, PET (#1) plastic bottles, HDPE (#2) natural and colored containers, aluminum cans and steel/tin cans.
8. HDPE (#2) Natural and Colored Containers: means high density polyethylene that is used in the production for natural or colored plastic bottles or containers labeled with the #2 symbol for such items as milk jugs and laundry soap bottles.
9. Joint Powers Board (JPB): means the governing body for the Santa Fe Solid Waste Management Agency.
10. Marketing: means creating a market and/or selling recyclable materials to end-markets.
11. Mixed Paper: means mean recovered paper items such as newspaper inserts, junk mail, magazines, telephone books, cereal boxes and other paperboard/chipboard products.
12. MRF: means a Materials Recovery Facility that processes and bales recyclable materials.
13. Non-Conventional Recyclable Materials: means items such as #3-#7 plastics, other rigid plastics, milk carton, aseptic containers and drink boxes.
14. PET (#1) Plastic Bottles: means polyethylene terephthalate that is used in the production of clear plastic bottles or containers labeled with the #1 symbol for such items as water, soft drinks, sports drinks, food packages and personal care products.
15. Price Indexes: means RISI/PPI paper indexes, SecondaryMaterialsPricing.com and RecyclingMarkets.net.
16. Processing: means the process of separating, cleaning, treating, and reconstituting post-consumer material(s) that would otherwise be disposed of as solid waste, but does not include incineration or other similar processes.
17. Recycling: means any process by which recyclable materials are collected, separated, processed and reused or returned to use in the form of raw materials or products.
18. Registered Recycling Facility: means a MRF that has been registered with the NMED and its registration is current.
19. Residual: means a portion of acceptable recyclable materials that is not captured during the MRF processing (e.g., incidental, under-recovered). Residual is not the same as Contamination.
20. Secondary/Downstream Processor: means a company that purchases mixed grades of material (e.g., mixed paper, mixed plastics, mixed metals) with the intent to further separate

this mixed material into sellable grades of commodity for sale in the market, either at their facility or another facility they partner with.

21. Solid Waste: means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, construction, demolition and agricultural operations and from community activities as defined in 20.9.2. NMAC.
22. Ton: means a unit of weight, equivalent to 2,000 pounds.
23. UBC: means used beverage containers made primarily of aluminum such as soda cans, juice cans, vegetable juice cans, and beer cans.