



Request for Sealed Bid
Contract Documents and Specifications

**Municipal Solid Waste
Landfill Disposal Services**

May 2021

Contracting Agency

The City of Raton
224 Savage Avenue
Post Office Box 910
Raton, New Mexico 87740

NOTICE OF INVITATION FOR BID

Notice is hereby given that competitive sealed bids will be accepted by the City of Raton, New Mexico for Municipal Solid Waste Landfill Disposal (Tipping Fees). The contract shall be for a per ton price for tipping fees of an estimated 5,000 tons of municipal solid waste per year.

Sealed bids will be received at the Office of the City Clerk, located at the Raton Municipal Building, 224 Savage Avenue, P.O. Box 910, Raton, New Mexico 87740. Bids are due by Thursday, June 3, 2021 at 2:00 PM. All interested parties are invited to attend. Bids will be opened and publicly read aloud immediately after the specified closing time. Bids received after this date and time will be returned unopened. The City of Raton reserves the right to waive technicalities, accept or reject any or all bids as deemed to be in the best interest of the City of Raton.

Copies of the bid documents are available for download on the City's website www.ratonNm.gov or by contacting City Clerk/Chief Procurement Officer, Michael Anne Antonucci at 575-445-9451 or by email at mantonucci@cityofraton.com.

Raton City Clerk/Chief Procurement Officer: Michael Anne Antonucci
Date: May 6, 2021

INSTRUCTIONS TO BIDDERS

OWNER: The City of Raton

CONTRACT: City of Raton Municipal Solid Waste Landfill Disposal

Procurement Manager: Michael Anne Antonucci
Post Office Box 910
Raton, New Mexico 87740
(575) 445-1632
Email: maantonucci@cityofraton.com

DOCUMENTS

The Contract Documents may be examined as announced in the Advertisement for Bids. The Contract Documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract Documents.

QUESTIONS

Submit all questions about the Drawings or Specifications to the Engineer in writing no later than two days prior to the time set for receipt of bids. Corrections or clarifications shall be made by Addendum. Oral clarifications will not be binding.

SUBSTITUTIONS

Refer to General Conditions for requirements generally relating to substitutions of materials and equipment. If the Bid Form requires the Base Bid to be based on certain named products, the Bidder may quote on alternate products by listing them on the product data sheets provided, together with performance and cost data requested thereon.

The Owner may accept any proposed substitution by adjusting the bid by the by the amount of the difference between the named product and the proposed substitute. However, alternate quotations which are not required by the Contract Documents shall not be a factor in the selection of the successful bidder.

PREPARATION OF BIDS

Bidders are expected to examine the specifications, drawings, all instructions and the project site in order to fully identify the conditions and requirements of the project. Failure to do so will be at the Bidder's risk.

All bids are to be made only on the Bid Form furnished with the Specifications. All blank spaces for bid prices on each Bid Schedule upon which the bidder is submitting a bid must be filled in, in ink or typewritten, or it will be presumed that any such omitted entry is intentional, and the corresponding item is at no cost. In case of discrepancy between unit prices and extended total, the unit prices shall govern unless a contrary interpretation is apparent from the information contained in the bid. If supplemental prices are requested for adjusting the Contract Price for more or less work than

specified, such prices shall be included with the bid. The Owner reserves the right to reject any of these supplemental prices, without invalidating the acceptance of the bid, should they appear excessive or unbalanced. The Bid Form must be executed when submitted. Bidders shall furnish all information required by the solicitation. Bids must be signed and the Bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.) Only one copy of the Bid Form is required.

SUBMITTAL OF BIDS

Complete sets of Bidding Documents shall be used in preparing bids, and complete set shall be submitted as the bid. Each bid must be submitted in a sealed opaque envelope, addressed to the Owner, and plainly marked on the outside as a bid for the project as identified above, and marked with the name of the bidder, his address and his license number. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the Owner at the address identified above.

The following shall be submitted with and included as part of the bid forms provided or as otherwise described herein:

Bid Proposal Form and Itemized Bid Form, signed, sealed and attested and signed campaign contribution form.

Qualifying bids will be publicly opened and read at 2:00 P.M. on June 3, 2021 at the Raton Municipal Building located at 224 Savage Avenue, Raton, New Mexico. The apparent low bidder will be announced at the bid opening. The successful bidder will be determined following a detailed evaluation of bids and required submittals.

WITHDRAWAL OF BIDS

Any bid may be withdrawn prior to the scheduled time for the opening for bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid after the bid opening until the time below stipulated for award has expired. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the bidder.

OWNER'S INVESTIGATIONS

The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish to the Owner all such additional information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein, and such rejection shall not give rise to a cause of action against the Owner or Engineer, or impose a requirement upon the Owner or Engineer to divulge the information upon which such rejection is based.

SUB TITLE D LANDFILL REFISTRATION REQUIRED

Bidders must have a valid permit in their jurisdiction to operate the landfill where the final disposal will occur. The bidder must maintain this permit for the duration of the contract and shall abide by all applicable laws.

BID SCHEDULE INFORMATION

The bid proposal form lists three bid schedules. They are for one, two, or three year terms. The bidder is not obligated to bid all three bid schedules. The bidder can bid all or any of the bid schedules and still be considered as a responsive bid. The City reserves the right to award the bid schedule that the City of Raton determines is in their best interest.

AWARD

The Owner shall award or reject the bids within sixty (60) days after the opening of bids. A conditional, qualified, or unbalanced bid may, at the discretion of the Owner, be rejected. The Owner may waive any informalities or minor defects or reject any and all bids. The basis of award for this project may not be the apparent low bidder. The City of Raton will formulate the costs of transportation of solid waste plus the amount bid for disposal fees. The contract for disposal shall ultimately be awarded to the bidder with the overall lowest cost when transportation costs have been factored in. It may be possible that the bidder that provides the lowest price per ton for disposal of municipal solid waste may not be the successful contract recipient. The City of Raton reserves the right to award this contract to the firm that offers the lowest total cost for disposal when transportation is factored in, as to provide the most cost effective disposal for the City of Raton

EXECUTION OF CONTRACT

The party to whom the Contract is awarded will be required to execute the contract and provide Certificates of Insurance within fifteen calendar days from the date when the Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement forms. In case of failure of the bidder to execute the Agreement, the Owner may, at his option, consider the bidder in default, in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner, within ten days of receipt of acceptable Certificates of Insurance and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the bidder may by written notice withdraw the bid. Withdrawal shall be effective upon receipt of the notice by the Owner.

PRICE BID SHALL INCLUDE ALL APPLICABLE TAXES AND FEES.

The bid amount must include any and all applicable taxes and fees. This specifically includes any sales tax, gross receipts tax, or other state, federal taxes and fees.

Bid Proposal Forms

and

Campaign Contribution Forms

(Must Be Submitted as Bid Documents)

BID PROPOSAL FORM

For: **City of Raton - Municipal Solid Waste
Landfill Disposal Services (Tipping Fees)
2:00 PM – Thursday June 3, 2021**

Bid submitted to: **The City of Raton
Office of the City Manager
Post Office Box 910
224 Savage Avenue
Raton, New Mexico 87740**

Gentlemen:

The undersigned bidder, having examined the requirements of the project, documents relating to the project and conditions and characteristics of the work, and having familiarized himself/ themselves with project locations, hereby proposes to furnish all materials as specified, tools, equipment and to perform all labor, supervision and work necessary for the complete construction of the work described and in accordance with attached project documents, applicable specifications and codes and to contract for the unit prices itemized as follows:

Bid Schedule “A” - Year One

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit Bid Price</u>	<u>Amount Bid</u>
1.	Municipal Solid Waste (MSW) Tipping Fees For a Contract Term of One (1) Year Bid Unit – Ton of MSW	5,000	_____	_____

******Amount Bid must include all applicable federal taxes, state taxes, and any fees******

Three (3) Additional one year extensions will be allowable up to a total of 4 years if agreed upon by both parties. Price adjustment off the annual C.P.I. for urban water, sewer and trash will be added to the amount bid to set pricing for the next year. The same process will be followed for additional years with the prior adjusted contract amount becoming the base and the C.P.I. will then be added.

Example (For Demonstration Purpose Only)

Base Bid (Year One)
\$10.00 Per Ton

Year Two Pricing
C.P.I. Year 1 = 2% (Water, Sewer, Trash C.P.I.)=(\$.20)
Year 2 Contract Amount =\$10.20

Year Three Pricing
C.P.I. Year 2 = 3%(Water, Sewer, Trash C.P.I.)=(\$.31)
Year 3 Contract Amount \$10.20 + 3 % for a new contract amount of \$10.51

******Amount Bid must include all applicable federal taxes, state taxes, and any fees******

As further consideration for the award of the contract, the undersigned agrees to the following terms, conditions and acknowledgements:

- A. The City of Raton reserves the right reject any or all bids, to waive any informalities, or to accept any portion of the bid as is in the best interest of the City of Raton.
- B. To execute the attached form of contract (without qualification), and to furnish Certificates of Insurance within fifteen (15) days following receipt of notification of acceptance of this proposal.
- C. To commence receipt and disposal of municipal solid waste (MSW) in accordance with the approved schedule or at the call of the City of Raton or its' authorized representatives.
- D. The City of Raton reserves the right to expand recycling and diversion practices throughout the life of the contract. Quantities listed on the bid form are estimated using recent data. These amounts are not guaranteed. Tonnage may increase or decrease depending on city population, citizen habits, and diversionary methods. Diversion activities may affect the total number of tons of solid waste generated, as the City of Raton intends to increase citywide recycling.
- E. Unit Bid Price shall be inclusive and comprehensive of all costs, expenses, requirements, incidentals and appurtenances necessary for receipt, measurement, inspection, transfer, handling, separation, compaction, processing, documentation and landfilling of municipal solid waste. Unit Bid Price shall include all applicable taxes, surcharges and incidental fees, exclusive of handling or treatment of special wastes or wastes not commonly classified as municipal solid waste. Bidder agrees that no additional cost or expense shall be assessed to the City of Raton in excess of the unit price as bid during the agreed term.
- F. Bidder/ landfill/ receiving facility operator shall provide certified truck scales at landfill receiving facility. Measurement for the purpose of payment shall be the net weight (gross weight minus tare weight) for each load of MSW delivered and landfilled at receiver's disposal facility. Landfill/ receiving facility operator shall weigh each load for determination of net weight, document measurement of each load and shall provide comprehensive documentation to the City of Raton on a monthly basis. Certification shall be provided by applicable state authority, and shall be continuously maintained by landfill/ receiving facility operator.
- G. The successful Bidder shall enter into a Contract with the Owner for the term consisting of the period outlined in the bid schedule.
- H. The City of Raton shall consider and apply provisions of NMSA 13-4-2 regarding Certified New Mexico Resident Contractor and NMSA 13-1-21/ 13-1-22 regarding Certified Veterans Preference in this procurement.

Bidder acknowledges receipt of the addenda: _____

Respectfully Submitted:

Firm Name: _____

By (Signature and Print Name): _____

Title: _____

Business Address: _____

Business Telephone: _____

State Issued Landfill
Registration Number: _____

New Mexico Resident Contractor
Certification Number
(If Applicable; NMSA 13-4-2) _____

New Mexico Veterans Preference
Certification Number
(If Applicable; NMSA 13-1-21/ 13-1-22) _____

Contractor's Federal I.D. Number: _____

ATTEST: _____

Secretary
(If Applicable)

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.*, NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

Mayor – James Neil Segotta
Mayor Pro Tem – Linde’ Schuster
Commissioner - Ronald Chavez
Commissioner – Donald Giacomo
Commissioner – Lori Chatterley
Municipal Judge – Roy Manfredi

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

Sample Contract

AGREEMENT
BETWEEN THE CITY OF RATON
AND _____
FOR
LANDFILL DISPOSAL SERVICES

THIS AGREEMENT FOR LANDFILL DISPOSAL SERVICES (this "Agreement") is made and entered into July 1, 2021, between the City of Raton, a New Mexico municipal corporation (City of Raton) and _____, (Contracting Landfill), a private company. The City of Raton and _____ (Contracting Landfill) are referred to herein collectively as the "Parties" or individually as a "Party."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City of Raton and Contracting Landfill hereby agree as follows:

1. Definitions.

The capitalized terms contained in this Agreement and not otherwise defined shall have the meanings set forth below:

"Acceptable Waste" means household solid waste collected by the Parties in their respective service areas for disposal in the Landfill that is normally generated by business, industrial, and commercial establishments, which consists of (i) household wastes; (ii) commercial waste (originating from entities such as restaurants, stores, markets, theaters, hotels, and warehouses); (iii) institutional waste material originating in schools, hospitals, research institutions, and public buildings; (iv) small amounts of remodeling, demolition, roofing materials and other construction debris; and (v) water treatment plant or wastewater sludge, capable of passing the mandated paint filter test, and delivered with an acceptable lab report (sample analysis according to appropriate waste testing protocol established by the Facility, as defined below). Acceptable Waste does not include any Hazardous Waste, Special Waste, Medical Waste, including "red bags," or Unacceptable Waste, as defined herein, or any other waste not normally accepted at the Facility, as such term is defined below.

"Applicable Laws, Rules, and Regulations" means the laws, statutes, regulations and rules enacted by the federal government or any agency thereof, the state or any political subdivision thereof, affecting the permitting, operation or use of the Facility (as defined below), as such laws, statutes, regulations and rules are now in effect or as adopted subsequently.

"Contract Year" means one calendar year.

"Dollars" means United States dollars.

"Facility" means the Contracting Landfill located at _____

Facility Name: _____

"Force Majeure" means any act, event, or condition having a direct, material, adverse effect on the ability of City of Raton facilities to transfer and transport Acceptable Waste and the receiving landfill disposal facilities to accept or dispose of Acceptable Waste, if such act, event, or condition is beyond the reasonable control of the Parties relying thereon as justification for not performing an obligation or complying with any condition required of such Parties under this Agreement. Such acts, events, or conditions shall include, but shall not be limited to, the following:

- A. An act of God, lightning, earthquake, fire, severe weather conditions, epidemic, landslide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot, disturbance, labor strike or interruption, extortion, sabotage or similar occurrence or any exercise of the power of eminent domain, condemnation or other taking by the action of any governmental body on behalf of any public, quasi-public or private entity.
- B. The order, judgment, action, or determination of any court, administrative agency, or governmental body: (1) that adversely affects the
 - (a) operation of facilities;
 - (b) the right or ability for facilities to transfer, transport or receive Acceptable Waste, or;
 - (c) the right or ability of facilities to transfer, transport, receive or dispose of the Acceptable Waste; or resulting in the suspension, termination, interruption, denial or failure of renewal of issuance of any permit, license, consent, authorization, or approval necessary to the operation of facilities, or acceptance, processing, transportation, or disposal of Acceptable Waste; unless, it is shown that such order or judgment is the result of the grossly negligent, willful, or intentional action or inaction of the Party relying thereon or is the result of grossly negligent or willful violation of Applicable Laws, Rules and Regulations, as replaced or amended, and provided further that the contesting in good faith of any such order or judgment shall not constitute or be construed as a grossly negligent, willful or intentional action or inaction of such Party.
- C. The denial of an application, failure to issue, or suspension, termination, or interruption in the issuance or renewal of any permit if such denial, suspension, termination, interruption, or failure is not also the result of a wrongful or negligent act or omission or a lack of reasonable diligence of the Party relying thereon; provided that, the contesting in good faith or the failure in good faith to contest any such denial, suspension, termination, interruption, imposition or failure shall not constitute or be construed as such a wrongful or negligent act or omission or lack of reasonable diligence.

- D. The failure of any subcontractor or supplier to furnish services, materials or equipment on the dates agreed to if such failure is caused by a Force Majeure, if and to the extent, and only so long as Parties are not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment.

"Gate Rate" means the tipping fee for Acceptable Waste charged to a non-contract vehicle using the Landfill. The Gate Rate shall include any applicable taxes, fees, or levies, as replaced or amended, that the Landfill is required to pay for waste delivered to and accepted at the Landfill.

"Hard to Handle Waste" means waste requiring special handling such as the burial in an area away from the main working face of the Landfill, the breaking up of large materials as mobile homes or pieces of concrete, spools of wire and Hot Loads (as defined below).

"Hazardous Waste" means (A) any material or substance which, by reason of its composition or characteristics, is (1) toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq.*, as replaced or amended, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced or amended, or any laws of similar purpose or effect, and any rules, regulation, or policies thereunder, or (2) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954; (B) other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for transfer through, transportation by, or disposal from or to the Facilities; and (C) any material which would result in process residue being hazardous waste under (A) and (B) above.

"Hot Load" means any load of materials delivered to the Facility that is emitting smoke, fire or fumes, or may be in imminent danger of fire or explosion.

"Medical Waste" means any material or substance that, by reason of its composition or characteristics, is medical waste as defined by the applicable state or federal authority.

"Special Waste" means any waste that is defined as a Special Waste under or pursuant to applicable state law or regulation, or applicable federal or local laws or regulations, as replaced or amended.

"Tipping Fee" shall mean the total rate charged to the City of Raton by the Contracting Landfill for disposal of Acceptable Waste at the landfill disposal facility, as more fully set forth in Section 3.3 of this Agreement. The Tipping Fee shall include any applicable taxes, fees, or levies, as replaced or amended, that the Facility is required to pay for waste delivered to and accepted by the Facility.

"Ton " means two thousand (2,000) U.S. pounds.

"Unacceptable Waste" means that portion of solid waste that may not be disposed of at the Facility, such as, but not limited to: (A) explosives, radioactive materials, medical waste or infectious waste, tires (excluding tires delivered by City of Raton residents as per Section 2.2 b), cesspool waste, and sewage; (B) motor vehicles, including major motor vehicle parts, and agricultural and farm machinery and equipment; (C) used oil; (D) friable or regulated asbestos-containing material; (E) materials that, in the reasonable judgment of City of Raton and Contracting Landfill may present a risk to health or to safety, or has a reasonable possibility of adversely affecting the operation of the Facility such as Hot Loads; or (F) waste not authorized for disposal at any Facility by those entities having jurisdiction over any waste, the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste also includes any waste that is now or hereafter defined by federal/state law or by the disposal jurisdiction as radioactive waste, Medical Waste including "red bags," Special Waste, or Hazardous Waste.

2.0 Delivery of Acceptable Waste.

2.1 Acceptable Waste Delivered.

- A. City of Raton shall use its reasonable best efforts to ensure that all materials delivered to the Facility shall constitute only Acceptable Waste. Contracting Landfill shall have the right to refuse to accept Unacceptable Waste at the Facility. City of Raton may be charged the fees established in Section 3.3 below.
- B. City of Raton will be charged the established rate in section 3.3 below for Acceptable Waste delivered in self-hauled loads to the Facility for disposal. All appliances containing Freon will be assessed a separate fee to cover the cost the Facility incurs for Freon removal. The fee is subject to change at any time to reflect the market cost of Freon removal.
- C. Waste tires delivered by the City of Raton residents will be accepted and assessed a waste tire handling fee of \$3.00 per tire in addition to the Tipping Fee
- D. City of Raton and Contracting Landfill recognize that although waste tires with or without rims constitute Unacceptable Waste, they may on occasion be mixed with Acceptable Waste without City of Raton's knowledge or intent. In such event, waste tires will be handled by the Facility. However, should the receipt of such unacceptable Waste tires become an unreasonable burden on the Facility, both parties agree to make a reasonable effort to resolve the problem. Waste tires delivered by City of Raton residents, as discussed above, are not included as Unacceptable Waste.

2.2 Weighing of Acceptable Waste.

- A. Each vehicle delivering Acceptable Waste shall have a vehicle identification number permanently indicated and conspicuously displayed on the exterior of the vehicle, which is readily visible by the weigh scale operators. City of Raton shall provide a certified tare weight for each such identified vehicle.

All incoming Acceptable Waste shall be weighed and recorded. From time to time, the Parties may require revalidation of the tare weight of any vehicle or reweighing of unloaded trucks. City of Raton, at no extra cost, shall have the right to monitor the weighing of all vehicles delivering Acceptable Waste to the Facility.

- B. Contracting Landfill shall maintain the weighing devices at the Facility for the purpose of providing its services hereunder. Contracting Landfill shall test and recalibrate the scales at least once each quarter, or more often if necessary or if required by state that the landfill is located in. Calibration records shall be available for inspection by City of Raton.
- C. In the event the scales become temporarily inoperable due to testing or malfunction, Contracting Landfill shall estimate the weight of Acceptable Waste delivered to the Facility on the basis of truck volume and historical data obtained through operation of the Facility. These estimates shall serve as official records for the duration of the scale outage. Contracting Landfill shall use its best efforts to ensure that no such period of inoperability exists for more than five consecutive days, and in the aggregate not more than 15 days in any 30-day period.
- D. Contracting Landfill will provide City of Raton with a summary of all transactions on a monthly basis as specified in Section 3.1. Information on specific transactions or a daily report will be generated upon request.

2.3 Vehicle Turnaround Time. Each and every vehicle delivering Acceptable Waste to the Facility shall be able to enter the Facility, unload and exit the Facility within a period of not longer than 30 minutes, with the understanding that bad weather conditions, such as heavy rain, may cause delays beyond the control of the Facility. The average period of not longer than 30 minutes is based on the use of the scale system and an average period of not longer than 15 minutes to unload City of Raton transportation vehicles. Contracting Landfill shall provide experienced staff at the Facility to direct incoming drivers.

2.4. Delivery Vehicles. Acceptable Waste may be delivered to the Facility in a variety of vehicles including, but not limited to, side-loading collection trucks, rear-loading collection trucks, front-loading collection trucks, tractor-trailer vehicles, open top and closed roll-off containers, compactors, and other open or closed vehicles. The Facility shall be equipped to receive all vehicles that are lawfully used to transport Acceptable Waste.

3. Statements, Records, and Auditing.

3.1 Monthly Reports, Weight Tickets, and Monthly Reconciliation.

- A. Contracting Landfill shall deliver to City of Raton within ten working days after the end of the month, an electronic monthly report that shall specify the number of tons of waste received during the previous month. The report will provide a summary of the previous month's weight tickets for all waste received each day at the Facility, including transaction number, truck number, date, time, material type, net tons and total fee.
- B. Any weight that has been determined by estimate as described in Section 2.2(C) above shall be noted on all records of such weight.
- C. City of Raton shall review each monthly report and/or billing statement and pay the amount based upon the contract unit price for tonnage delivered to the Facility during the billing period within 30 days of receipt of billing.

3.2 Recordkeeping, Accounting and Auditing.

- A. Contracting Landfill shall keep and maintain complete and detailed records related to the delivery of Acceptable Waste and Unacceptable Waste and records providing the basis for the invoicing requirements under this Section including (1) tonnage of Acceptable Waste delivered by City of Raton to the Facility and (2) quantities of Unacceptable Waste and the disposition of such material including the character of the waste, the date, time, and vehicle identification of each vehicle. Contracting Landfill shall further keep and maintain accurate and complete accounting records and vouchers evidencing all costs, receipts, payments and any other matter of accounting associated with their performance under this Agreement in accordance with generally accepted accounting principles.
- B. City of Raton, or its audit representative, shall have the right at any reasonable time to inspect, copy and audit the records, accounting records, vouchers, and any source documents which serve as the basis for charges for Acceptable Waste tonnage (the "Accounting Records"). The Accounting Records shall be available for inspection and audit for a period of three years following the termination of this Agreement, or seven years from the date such Accounting Records were first created, whichever comes first.

3.3 Tipping Fees.

- A. Contract Tipping Fee for facility disposal services at the Landfill Disposal Facility shall be as follows for all Acceptable Municipal Solid Waste:

\$ 0.00 for first contract year, Contract adjusted based on Water, Sewer, Trash C.P.I. annually if renewal is requested..

Tipping Fee per ton of Acceptable Municipal Solid Waste measured, received, and disposed at Landfill Disposal Facility.

Contract Tipping Fee shall include all applicable city, state, and federal taxes and all fees, costs, expenses, requirements, incidentals and appurtenances necessary for receipt, measurement, inspection, transfer, handling, separation, compaction, processing, documentation and landfilling of municipal solid waste. Contract Tipping Fee includes all applicable surcharges and incidental fees, exclusive of Unacceptable Waste. Contracting Landfill agrees that no additional cost or expense shall be assessed to the City of Raton in excess of the unit price as bid during the agreed term.

- B. The Tipping Fee may not be adjusted at any time to reflect any adjustments of, changes to, or additions to Federal, State, or County taxes, fees, or levies for waste accepted at the Facility.

4. Term and Termination.

- 4.1 Term of Agreement. The term of this Agreement shall begin on the effective date of July 1, 2021, and shall continue thereafter until June 30, 2022. This Agreement may be extended on terms and conditions acceptable to both Contracting Landfill and City of Raton for additional annual periods not to exceed a total of four years, without change to Contract Tipping Fee, unless terminated pursuant to Section 4.2 below.

- 4.2 Termination.

Notwithstanding the provisions of Section 4.1 above, City of Raton may terminate this Agreement without cause by providing 90 day written notice.

5. General Obligations.

- 5.1 Operation and Maintenance of the Facility. Contracting Landfill shall operate and maintain the Facility in a manner that is consistent with its obligations under this Agreement and is consistent with all Applicable Laws, Rules, and Regulations, as replaced or amended.
- 5.2 Laws and Regulations. Contracting Landfill shall, in the operation of the Facility and the performance of its obligations under this Agreement, comply with any and all Applicable Laws, Rules, and Regulations, as replaced or amended, during the term of this Agreement, which are applicable to the Parties, their respective employees, agents, or subcontractors, if any.

6. Facility Operations.

- 6.1 Hours and Days of Operation. The Facility must be operational to receive Acceptable Waste from 7:30 a.m. to 4:00 p.m., Monday through Friday, and on Saturday if closed during the week. Contracting Landfill holidays. Alternative holiday schedules may be established by mutual agreement of the Parties.
- 6.2 Right to Inspect. City of Raton shall have the right to enter and inspect the Facility to observe operations during operating hours as long as: (A) such visits are conducted in a manner that does not cause unreasonable interference with operations; and (B) any person conducting such visits (1) complies with safety rules and regulations and (2) is escorted by a designated Facility employee.

7. Unacceptable Waste.

7.1 Discovery of Unacceptable Waste. If Contracting Landfill discovers Unacceptable Waste or waste that it suspects is Unacceptable Waste received from City of Raton, Contracting Landfill shall:

- A. Isolate, remove and set aside that portion of the load which it determines is or may be Unacceptable Waste.
- B. Notify City of Raton of the discovery of Unacceptable Waste within one hour of that discovery, unless that discovery occurs after 4:00 p.m., in which event notification shall be given by 9:00 a.m. of the next business day.
- C. Gather, preserve, maintain and make available to City of Raton all evidence demonstrating that the Unacceptable Waste was delivered by City of Raton.
- D. Test or arrange to have tested the suspected Unacceptable Waste to ascertain whether that waste is Unacceptable Waste.
- E. Allow City of Raton to (1) inspect such Unacceptable Waste within 2 days of notice to City of Raton of the existence of such waste and (2) test the waste and

examine all other evidence gathered by Contracting Landfill within 5 days after the discovery of such waste. For purposes of any inspection conducted, City of Raton shall have access to the Facility and/or any other site at which Unacceptable Waste is located, subject to the conditions set forth in Section 6.2 above.

- 7.2 Rejection of Unacceptable Waste. Contracting Landfill shall have the right to reject Unacceptable Waste after the load is unloaded at the Facility by giving notice to City of Raton as set forth in Subsection 7.1(B) above. Unacceptable Waste shall be deemed accepted if not rejected.
- 7.3 Disposal of Unacceptable Waste. If Unacceptable Waste is discovered at the Facility and there is substantial proof that the Unacceptable Waste was delivered to the Facility by City of Raton under this Agreement, City of Raton shall (A) to the extent practicable, promptly remove and dispose of the Unacceptable Waste or (B) pay Contracting Landfill the actual reasonable cost for disposal of the Unacceptable Waste.
- 7.4 Disposal of waste not deemed Unacceptable. If, after inspecting and/or testing the waste, Contracting Landfill discovers no Unacceptable Waste, or discovers that the Unacceptable Waste was not delivered to the Facility by City of Raton, Contracting Landfill shall dispose of that waste at no additional cost to City of Raton.

8. Representations and Warranties.

Contracting Landfill hereby represents and warrants to City of Raton that:

- A. Contracting Landfill has the full power and authority to execute and deliver this Agreement to City of Raton and carry out the transactions contemplated hereby.
- B. Contracting Landfill has taken all necessary action to execute, deliver and perform this Agreement.
- C. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein or Contracting Landfill's compliance with any of the terms and provisions of this Agreement do not or will not contravene any existing law, judgment, governmental rule, regulation or order applicable to or binding on it or any of its properties which, if violated, would have a material adverse effect on Contracting Landfill's obligations under this Agreement.
- D. The Facility is and will remain appropriately permitted or licensed to accept the Acceptable Waste and otherwise perform as required by this Agreement.

9. Indemnification.

A. Definitions:

"Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, arbitration or other alternate dispute resolution mechanism, including attorney and other professional fees for:

- (a) damage to or loss of the property of any person (including, but not limited to City, Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); or
- (b) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of City, Contractor, Contractors subcontractors, and third parties); or
- (c) any environmental claim including, without limitation, claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or claims under any other state, federal, or local law whether or not based on fault, strict liability, or other basis, and arising out of the performance of this Contract.

"Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. Indemnification

Each Party (as "indemnitor") agrees, to the extent permitted by law, to indemnify, defend, and hold harmless the other Party and its officers, employees, and elected or appointed officials (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees (collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims are caused by the negligence, misconduct, intentional act or other fault of the indemnitor, its officers, employees, contractors, elected or appointed officials. Contracting Landfill further agrees to indemnify, defend and hold harmless City of Raton and its officers, employees and elected or appointed officials for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees arising out of Contracting Landfill's failure to comply with all Applicable Laws, Rules, and Regulations. Nothing herein shall be deemed to limit the rights of the City of Raton or Contracting Landfill (Including but not limited to the right to seek contribution) against any third party who May be liable for an indemnified claim.

10. Obligations during Force Majeure

- 10.1 Notice Relating to Force Majeure. If any act or event of Force Majeure occurs which affects either Party's ability to perform under this Agreement, the Party affected and relying thereon to excuse its performance hereunder shall give oral notice to the other as soon as reasonably practicable, and shall deliver to the other Party within 48 hours after such oral notice, written notice setting forth such information as may be available to it with respect to the nature, extent, effect, and anticipated duration of the act or event of Force Majeure.
- 10.2 Obligation of the Parties during an Event of Force Majeure. If such an act or event of Force Majeure occurs which has the effect of reducing the amount of Acceptable Waste that a Party can accept from or deliver to the other, both Parties shall be excused from performance during the existence of the Force Majeure upon written notice to the other Party claiming Force Majeure. A Force Majeure for which said notice has not been given shall be an unexcused delay. The effects of said Force Majeure shall be remedied with all reasonable dispatch, and said Party giving notice shall use best efforts to eliminate and mitigate the consequences thereof.

11. General Provisions

11.1 Non-Assignment

Neither Party shall assign, transfer, convey, subcontract, pledge or otherwise hypothecate this Agreement or its rights, duties or obligations hereunder or any part thereof without prior written consent of the other Party, which may be withheld in its reasonable discretion. Any assignment made in violation of this Section shall be void and of no force or effect and shall constitute a material breach of the Agreement.

11.2 Headings

All sections and descriptive headings of sections and subsections in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

11.3 Contracting Landfill shall provide documentation of compliance with state requirements for approved landfill closure/ post closure plans and statutory financial assurance for closure costs and environmental claims.

The Contracting Landfill shall provide documentation of coverage for not less than the following amounts or greater as required by law or regulations:

a. Comprehensive General Liability	
Bodily Injury – Each Occurrence	\$1,000,000
Property Damage – Each Occurrence	\$500,000
Combined Single Limit	\$1,000,000
b. Comprehensive Automobile Liability:	
Bodily Injury – Each Occurrence	\$1,000,000
Property Damage – Each Occurrence	\$500,000
Combined Single Limit	\$1,000,000

11.4 Notification of Intent to Temporarily Interrupt Landfill Service

The Contracting Landfill shall provide notification to the City of Raton that the Contracting Landfill intends to temporarily or intermittently cease landfill operations. Contracting Landfill acknowledges that temporary or intermittent cessation of operations may have adverse impacts on the City of Raton and Haulage Contractor. In acknowledgment of such, Contracting Landfill agrees to provide notification to the City of Raton and Haulage Contractor as soon as practicable **and** a minimum of 2 hours prior to the proposed closure. Contracting Landfill agrees to unload City of Raton transport vehicles that have been dispatched prior to issuance of temporary closure notification.

11.5 Severability; Integration

Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the Parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any Party hereto which is not embodied in this Agreement, and no Party hereto shall be bound by or liable for any alleged misrepresentation, promise inducement or statement of intention not so set forth.

11.6 Indulgences Not Waivers

Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. Payments by the respective Parties shall not constitute a waiver of contract rights.

11.7 Construction

This Agreement is intended to express the mutual intent of the Parties and, irrespective of the identity of the Party preparing this Agreement or any document or instrument referred to herein, no rule of strict construction against the Party preparing a document shall be applied.

11.8 No Other Parties To Benefit

This Agreement is made for the sole benefit of the Parties hereto and their successors and assigns. Except as may be expressly provided herein, no other person or entity is intended to or shall have any rights of benefits hereunder, whether as third-party beneficiaries or otherwise.

11.9 Inurement

This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

11.10 Governing Law; Forum; Venue

This Agreement is executed and delivered in the State of New Mexico, and the substantive laws of the State of New Mexico (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in the State or Federal courts of the State of New Mexico and each of the Parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

11.10 Modification and Waiver

No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the Parties hereto.

11.11 Laws and Regulations

The Parties shall, in the operation of the Facility and the performance of their obligations under this Agreement, comply with any and all federal, state, and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to the Parties, their respective employees, agents, or subcontractors, if any.

11.11 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below, or such other address, and to the attention of

such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage, (C) the following business days after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by email during the normal business hours of the recipient. If a copy of a notice is also five to a party's counselor other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counselor other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

11.12 Contact Person

Upon execution of this Agreement, each Party shall provide and maintain with the other the following:

- A. The name and address to whom financial or accounting statements should be sent or of whom inquiries should be made.
- B. The name and address of the person or persons to be contacted for day-to-day matters except for the matters listed above.

11.13 Non-Exclusive Agreement

The Parties acknowledge that this is a non-exclusive Agreement and that City of Raton and Contracting Landfill may contract with others to provide for services similar to those in this Agreement with respect to the Facility and the collection and delivery of Acceptable Waste.

11.14 Contractual Status

Each Party is acting independent of the other Party under this Agreement and nothing herein is intended nor shall it be construed to create a joint venture or partnership between City of Raton and Contracting Landfill, or to render either City of Raton or Contracting Landfill liable for contractual or governmental obligations of the other including, without limitation, obligations to various agents and/or subcontractors, in any manner whatsoever, it being expressly agreed between the Parties that neither of them have any intention of assuming any contractual or other liability of the other by reason of the execution of this Agreement.

11.15 Remedies

The Parties to this Agreement, in addition to the right of terminations provided pursuant to Section 4.2 of this Agreement, shall in the event of a material breach of any term of this Agreement have available all remedies provided by law or in equity for such breach, including expressly the right to an award of reasonable attorney's fees and court costs to the prevailing Party in connection with any dispute respecting any term of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

This Agreement will be effective on _____
(which is the Effective Date of The Agreement).

OWNER:
The City of Raton

CONTRACTING LANDFILL:

By: _____
[CORPORATE SEAL]

By: _____
[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:
Post Office Box 910
224 Savage Avenue
Raton, New Mexico 87740

Address for giving notices:

(Where Applicable)
Agent for service of process: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:
Name: *Mr. Scott Berry*
Title: *City Manager*
Address: *224 Savage Avenue*
Raton, New Mexico 87740
Phone: *(575) 445-9551*
Facsimile: *(575) 445-3398*

Designated Representative:
Name: _____
Title: _____
Address: _____

Phone: _____
Facsimile: _____

