


MEMORANDUM

To: SFSWMA Joint Powers Board
From: Randall Kippenbrock, P.E., Executive Director 
Date: February 12, 2025
Subject: Request for Approval of Amendment No. 5 to the Services Agreement with Pro-Motion Transportation, LLC of Espanola, NM, for Glass Hauling Services for the Buckman Road Recycling and Transfer Station (ITB 22/28/B)

SUMMARY

The Agency is requesting the Board approve Amendment No. 5 to the Services Agreement with Pro-Motion Transportation, LLC of Espanola, NM.

The Amendment will continue glass hauling services to Glass to Glass Denver in Broomfield, CO, at \$1,800 per load.

The Amendment will increase the compensation by \$130,000 for a total amount not to exceed \$491,400. Funding is available in 8100852.510310 (Service Contracts).

The Amendment will extend the term of the Agreement through March 17, 2026, for the Agreement's fourth year. Per Article 5, the Agreement can be renewed annually upon approval by the Board, not to exceed ten years.

BACKGROUND

On January 28, 2022, the Agency issued ITB (Invitation to Bid) No. 22/28/B for glass hauling services at BuRRT. On March 17, 2022, the Board approved the Services Agreement with Pro-Motion Transportation for \$135,700. The Amendment provided glass hauling services to Glass to Glass Denver at \$1,400 per load and to alternate buyer Strategic Materials at \$1,900 per load.

On April 21, 2022, the Board approved Amendment No. 1 to the Agreement to increase the compensation by \$10,750 for a total amount not to exceed \$146,450. The Amendment provided Pro-Motion Transportation a \$125 per load fuel surcharge due to increased fuel prices. The Amendment also provided glass hauling services to Glass to Glass Denver at \$1,600 per load and Strategic Materials at \$2,025 per load.

On August 18, 2022, the Board approved Amendment No. 2 to the Agreement, which increased compensation by \$10,200 for a total amount not to exceed \$156,650. The Amendment provided Pro-Motion Transportation a \$150 per load increase due to increased costs for operations, insurance, tires, and wages. The Amendment also provided glass hauling services to Glass to Glass Denver at \$1,750 per load and Strategic Materials at \$2,175 per load.

On March 16, 2023, the Board approved Amendment No. 3 to the Agreement to increase the compensation by \$136,500 for a total amount not to exceed \$293,150. The Amendment continued

glass hauling services to Glass to Glass Denver at \$1,750 per load and Strategic Materials at \$2,175 per load.

On March 21, 2024, the Board approved Amendment No. 4 to the Agreement to increase the compensation by \$68,250 for a total amount not to exceed \$361,400. The Amendment provided Pro-Motion Transportation a \$50 per load increase due to increased costs for operations, insurance, tires, and wages. The Amendment provided glass hauling services to Glass to Glass Denver at \$1,800 per load. The Amendment removed the alternate buyer, Strategic Materials in Phoenix, AZ.

In the past year, Pro-Motion Transportation hauled 72 loads of glass to Glass to Glass Denver for a total of 1,651 tons. The average load weight was 23 tons.

The driving distance from BuRRT to Glass to Glass Denver is approximately 420 miles.

ACTION REQUESTED

The Agency requests the Board approve Amendment No. 5 to the Services Agreement with Pro-Motion Transportation. The Amendment continues glass hauling services from BuRRT to Glass to Glass Denver.

The Agency requests approval to extend the term of the Agreement through March 17, 2026.

The Agency also requests approval to increase the compensation of the Agreement by \$130,000 for a total amount not to exceed \$491,400.

ATTACHMENTS

- 1) Services Agreement – Amendment No. 5
- 2) Services Agreement – Amendment No. 4
- 3) Services Agreement – Amendment No. 3
- 4) Services Agreement – Amendment No. 2
- 5) Services Agreement – Amendment No. 1
- 6) Services Agreement with Pro-Motion Transportation

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ATTACHMENT 1

Services Agreement - Amendment No. 5

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 5
SERVICES AGREEMENT
PRO-MOTION TRANSPORTATION, LLC
(Glass Hauling Services – 2022)**

This AMENDMENT No. 5 (the "Amendment") to the SERVICES AGREEMENT, dated March 17, 2022 ("Agreement"), is made and entered between the Santa Fe Solid Waste Management Agency ("Agency") and Pro-Motion Transportation, LLC ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide glass hauling services at the Buckman Road Recycling and Transfer Station (ITB 22/28/B).

Pursuant to Article 18, Amendment of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Agency and Contractor agree as follows:

1. COMPENSATION

Article 3, Compensation of the Agreement is hereby amended to increase the amount of compensation by a total of One Hundred Thirty Dollars and No Cents (\$130,000.00) so that Article 3 reads in its entirety as follows:

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed Four Hundred Ninety-One Thousand Four Hundred Dollars and No Cents (\$491,400.00), payable as follows:

DESCRIPTION	AMOUNT
ORIGINAL CONTRACT	\$135,700.00
AMENDMENT NO. 1	\$10,750.00
AMENDMENT NO. 2	\$10,200.00
AMENDMENT NO. 3	\$136,500.00
AMENDMENT NO. 4	\$68,250.00
AMENDMENT NO. 5	\$130,000.00
CONTRACT TO DATE	\$491,400.00

1) The Agency shall pay Contractor a fee of \$1,800.00 per semi-trailer load, including all applicable taxes, for the transportation of glass delivered to Glass to Glass Denver in Broomfield, Colorado.

B. Contractor shall be responsible for payment of gross receipts taxes levied 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 detailed invoices describing the services completed. Compensation shall be paid only for services performed as set forth in the Scope of Services of this Agreement.

D. Detailed invoices containing any reimbursement expenses shall be itemized.

2. TERM AND EFFECTIVE DATE

Article 5, Term and Effective Date of the Agreement is amended to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

A. This Agreement shall be effective when signed by the Agency and terminate on March 17, 2026, unless terminated sooner by the Agency pursuant to the terms of this Agreement.

B. Pursuant to the limitations on multi-term contracts for services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed ten (10) years, including all extensions and

renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor.

3. AGREEMENT IN FULL FORCE

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Camilla Bustamante
Chairperson

Date:

ATTEST:

Katharine E. Clark
Santa Fe County Clerk

CONTRACTOR:

Tomas Lovato
General Manager
Pro-Motion Transportation, LLC

Date

APPROVED AS TO FORM:

Nancy R. Long
Agency Attorney

Date:

ATTACHMENT 2

Services Agreement – Amendment No. 4

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 4
SERVICES AGREEMENT
PRO-MOTION TRANSPORTATION, LLC
(Glass Hauling Services – 2022)**

This AMENDMENT No. 4 (the "Amendment") to the SERVICES AGREEMENT, dated March 17, 2022 ("Agreement"), is made and entered between the Santa Fe Solid Waste Management Agency ("Agency") and Pro-Motion Transportation, LLC ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide glass hauling services at the Buckman Road Recycling and Transfer Station (ITB 22/28/B).

Pursuant to Article 18, Amendment of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Agency and Contractor agree as follows:

1. COMPENSATION

Article 3, Compensation of the Agreement is hereby amended to increase the amount of compensation by a total of Sixty-Eight Thousand Two Hundred Fifty Dollars and No Cents (\$68,250.00) so that Article 3 reads in its entirety as follows:

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed Three Hundred Sixty-One Thousand Four Hundred Dollars and No Cents (\$361,400.00), payable as follows:

DESCRIPTION	AMOUNT
ORIGINAL CONTRACT	\$135,700.00
AMENDMENT NO. 1	\$10,750.00
AMENDMENT NO. 2	\$10,200.00
AMENDMENT NO. 3	\$136,500.00
AMENDMENT NO. 4	\$68,250.00
CONTRACT TO DATE	\$361,400.00

1) The Agency shall pay Contractor a fee of \$1,800.00 per semi-trailer load, including all applicable taxes, for the transportation of glass delivered to Glass to Glass Denver in Broomfield, Colorado.

B. Contractor shall be responsible for payment of gross receipts taxes levied 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 detailed invoices describing the services completed. Compensation shall be paid only for services performed as set forth in the Scope of Services of this Agreement.

D. Detailed invoices containing any reimbursement expenses shall be itemized.

2. TERM AND EFFECTIVE DATE

Article 5, Term and Effective Date of the Agreement is amended to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

A. This Agreement shall be effective when signed by the Agency and terminate on March 17, 2025, unless terminated sooner by the Agency pursuant to the terms of this Agreement.

B. Pursuant to the limitations on multi-term contracts for services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed ten (10) years, including all extensions and

renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor.

3. **AGREEMENT IN FULL FORCE**

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Camilla Bustamante
Camilla Bustamante (Mar 26, 2024 09:39 MDT)
Camilla Bustamante
Chairperson

26/03/24
Date:

ATTEST:

Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk

CONTRACTOR:

Tomas Lovato
Tomas Lovato (Mar 26, 2024 10:55 MDT)
Tomas Lovato
General Manager
Pro-Motion Transportation, LLC

26/03/24
Date

APPROVED AS TO FORM:

Nancy R. Long
Nancy Long (Mar 25, 2024 12:46 MDT)
Nancy R. Long
Agency Attorney

25/03/24
Date:

ATTACHMENT 3

Services Agreement – Amendment No. 3

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 3
SERVICES AGREEMENT
PRO-MOTION TRANSPORTATION, LLC
(Glass Hauling Services – 2022)**

This AMENDMENT No. 3 (the "Amendment") to the SERVICES AGREEMENT, dated March 17, 2022 ("Agreement"), is made and entered between the Santa Fe Solid Waste Management Agency ("Agency") and Pro-Motion Transportation, LLC ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide glass hauling services at the Buckman Road Recycling and Transfer Station (ITB 22/28/B).

Pursuant to Article 18, Amendment of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Agency and Contractor agree as follows:

1. COMPENSATION

Article 3, Compensation of the Agreement is hereby amended to increase the amount of compensation by a total of One Hundred Thirty-Six Thousand Five Hundred Dollars and No Cents (\$136,500.00) so that Article 3 reads in its entirety as follows:

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed Two Hundred Ninety-Three Thousand One Hundred Fifty Dollars and No Cents (\$293,150.00), payable as follows:

DESCRIPTION	AMOUNT
ORIGINAL CONTRACT	\$135,700.00
AMENDMENT NO. 1	\$10,750.00
AMENDMENT NO. 2	\$10,200.00
AMENDMENT NO. 3	\$136,500.00
CONTRACT TO DATE	\$293,150.00

1) The Agency shall pay Contractor a fee of \$1,750.00 per semi-trailer load, including all applicable taxes, for the transportation of glass delivered to Glass to Glass Denver in Broomfield, Colorado.

2) The Agency shall pay Contractor a fee of \$2,175.00 per semi-trailer load, including all applicable taxes, for the transportation of glass delivered to Strategic Materials in Phoenix, Arizona.

B. Contractor shall be responsible for payment of gross receipts taxes levied 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 detailed invoices describing the services completed. Compensation shall be paid only for services performed as set forth in the Scope of Services of this Agreement.

D. Detailed invoices containing any reimbursement expenses shall be itemized.

2. TERM AND EFFECTIVE DATE

Article 5, Term and Effective Date of the Agreement is amended to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

A. This Agreement shall be effective when signed by the Agency and terminate on March 17, 2024, unless terminated sooner by the Agency pursuant to the terms of this Agreement.

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


3. **AGREEMENT IN FULL FORCE**

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates set forth below.


SANTA FE SOLID WASTE MANAGEMENT AGENCY:



Michael Garcia
Chairperson

3/29/23
Date:

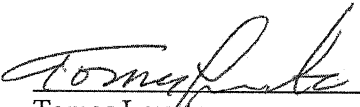




Kristine Bustos-Miheleic
Santa Fe City Clerk

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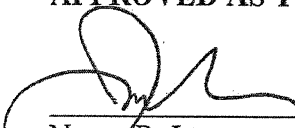
CONTRACTOR:



Tomas Lovato
General Manager
Pro-Motion Transportation, LLC

3-24-23
Date

APPROVED AS TO FORM:



Nancy R. Long
Agency Attorney

3.27.23
Date:

ATTACHMENT 4

Services Agreement – Amendment No. 2

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 2
SERVICES AGREEMENT
PRO-MOTION TRANSPORTATION, LLC
(Glass Hauling Services – 2022)**

This AMENDMENT No. 2 (the "Amendment") to the SERVICES AGREEMENT, dated March 17, 2022 ("Agreement"), is made and entered between the Santa Fe Solid Waste Management Agency ("Agency") and Pro-Motion Transportation, LLC ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide glass hauling services at the Buckman Road Recycling and Transfer Station (ITB No. '22/28/B).

Pursuant to Article 18, Amendment of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Agency and Contractor agree as follows:

1. COMPENSATION

Article 3, Compensation of the Agreement is hereby amended to increase the amount of compensation by a total of Ten Thousand Two Hundred Dollars and No Cents (\$10,200.00) so that Article 3 reads in its entirety as follows:

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed One Hundred Fifty-Six Thousand Six Hundred Fifty Dollars and No Cents (\$156,650.00), payable as follows:

DESCRIPTION	AMOUNT
ORIGINAL CONTRACT	\$135,700.00
AMENDMENT NO. 1	\$10,750.00
AMENDMENT NO. 2	\$10,200.00
CONTRACT TO DATE	\$156,650.00

1) The Agency shall pay Contractor a fee of \$1,750.00 per semi-trailer load, inclusive of all applicable taxes, for the transportation of glass delivered to Momentum Recycling in Broomfield, Colorado.

2) The Agency shall pay Contractor a fee of \$2,175.00 per semi-trailer load, inclusive of all applicable taxes, for the transportation of glass delivered to Strategic Materials in Phoenix, Arizona.

B. Contractor shall be responsible for payment of gross receipts taxes levied 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 detailed statements containing a report of services completed. Compensation shall be paid only for services performed as set forth in the Scope of Services of this Agreement.

D. Detailed statements containing reimbursement expenses shall be itemized.

2. AGREEMENT IN FULL FORCE

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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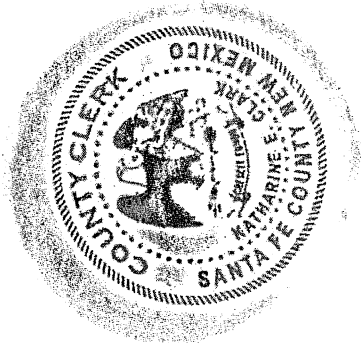
IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Agreement on the date set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hansen 8/18/22
Anna Hansen Date:
Chairperson

ATTEST:

Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk



CONTRACTOR:

Tomas Lovato 8-23-22
Tomas Lovato Date
General Manager
Pro-Motion Transportation, LLC

APPROVED AS TO FORM:

Nancy R. Long 8-18-2022
Nancy R. Long Date:
Agency Attorney

ATTACHMENT 5

Services Agreement – Amendment No. 1

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
 AMENDMENT No. 1
 SERVICES AGREEMENT
 PRO-MOTION TRANSPORTATION, LLC
 (Glass Hauling Services – 2022)**

This AMENDMENT No. 1 (the "Amendment") to the SERVICES AGREEMENT, dated March 17, 2022 ("Agreement"), is made and entered between the Santa Fe Solid Waste Management Agency ("Agency") and Pro-Motion Transportation, LLC ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide glass hauling services at the Buckman Road Recycling and Transfer Station (ITB No. '22/28/B).

Pursuant to Article 18, Amendment of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Agency and Contractor agree as follows:

1. COMPENSATION

Article 3, Compensation of the Agreement is hereby amended to increase the amount of compensation by a total of Ten Thousand Seven Hundred Fifty Dollars and No Cents (\$10,750.00) so that Article 3 reads in its entirety as follows:

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed One Hundred Forty-Six Thousand Four Hundred Fifty Dollars and No Cents (\$146,450.00), payable as follows:

DESCRIPTION	AMOUNT
ORIGINAL CONTRACT	\$135,700.00
AMENDMENT NO. 1	\$10,750.00
CONTRACT TO DATE	\$146,450.00

1) The Agency shall pay Contractor a fee of \$1,600.00 per semi-trailer load, inclusive of all applicable taxes, for the transportation of glass delivered to Momentum Recycling in Broomfield, Colorado.

2) The Agency shall pay Contractor a fee of \$2,025.00 per semi-trailer load, inclusive of all applicable taxes, for the transportation of glass delivered to Strategic Materials in Phoenix, Arizona.

B. Contractor shall be responsible for payment of gross receipts taxes levied 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 detailed statements containing a report of services completed. Compensation shall be paid only for services performed as set forth in the Scope of Services of this Agreement.

D. Detailed statements containing reimbursement expenses shall be itemized.

2. AGREEMENT IN FULL FORCE

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement on the date set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hansen 4/21/22
Anna Hansen Date:
Chairperson

ATTEST:

Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk



CONTRACTOR:

Tomas Lovato 4/22/22
Tomas Lovato Date
General Manager
Pro-Motion Transportation, LLC

APPROVED AS TO FORM:

Nancy R. Long 4-22-2022
Nancy R. Long Date:
Agency Attorney

ATTACHMENT 6

Services Agreement with Pro-Motion Transportation

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
SERVICES AGREEMENT WITH
PRO-MOTION TRANSPORTATION, LLC
(Glass Hauling Services – 2022)**

This SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“Agency”) and Pro-Motion Transportation, LLC (“Contractor”) for glass hauling services (ITB No. '22/28/B) 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 Services attached hereto as Exhibit A.

2. STANDARDS OF PERFORMANCE; LICENSES

A. Contractor represents that it possesses the experience and knowledge necessary to perform the services described in this Agreement.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement all applicable professional and business licenses required by law for itself and its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed One Hundred Thirty-Five Thousand Seven Hundred Dollars and No Cents (\$135,700.00), payable as follows:

- 1) The Agency shall pay Contractor a fee of \$1,475.00 per semi-trailer load, inclusive of all applicable taxes, for the transportation of glass delivered to Momentum Recycling in Broomfield, Colorado.
- 2) The Agency shall pay Contractor a fee of \$1,900.00 per semi-trailer load,

inclusive of all applicable taxes, for the transportation of glass delivered to Strategic Materials in Phoenix, Arizona.

B. Contractor shall be responsible for payment of gross receipts taxes levied 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 detailed statements containing a report of services completed. Compensation shall be paid only for services performed as set forth in the Scope of Services of this Agreement.

D. Detailed statements containing reimbursement expenses shall be itemized.

4. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the Agency and terminate on March 17, 2023, unless terminated sooner by the Agency pursuant to the terms of this Agreement.

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

5. TERMINATION

A. The Agency may terminate this Agreement upon ten (10) days written notice to 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, if any. The Agency shall pay Contractor for services rendered and expenses incurred to the date of termination, including for preparation of the final report, if requested by the Agency.

2) The Agency shall pay Contractor for services satisfactorily performed as set forth in the Scope of Services of this Agreement, through the date Contractor receives notice of such termination for which compensation has not already been paid.

6. APPROPRIATIONS

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

7. DEFAULT

The Agency reserves the right to terminate all or any part of this Agreement without cost to the Agency if Contractor defaults in the performance of this Agreement, and except as otherwise provided herein, to hold Contractor liable for any cost or damage incurred by the Agency due to Contractor's default.

8. FORCE MAJEURE

A. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation under this Agreement if the delay or failure to perform is as a result of force majeure. Event of force majeure means:

- 1) Acts of God or a public enemy;
- 2) Acts or omissions of any government entity;
- 3) Fire, flood or other casualty for which a party is not responsible;
- 4) Pandemic, epidemic or quarantine restriction;
- 5) Unanticipated work stoppage or freight embargo;

- 6) Strike, lockout, labor dispute, or civil disturbance; and
- 7) Unusually severe weather conditions.

B. Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from or delaying that party in performing its obligations under this Agreement. The party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Agreement and to fulfill its obligations under the Agreement.

9. 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.

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

A. Contractor, its agents, and its employees are independent contractors performing services for the Agency and are not employees of the Agency.

B. Contractor, its agents, and its employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Agency and shall not be permitted to use Agency vehicles in the performance of this Agreement.

C. Contractor shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors Contractor retains to perform any of its obligations pursuant to this Agreement.

11. **CHANGE IN CONTRACTOR'S REPRESENTATIVE**

The Agency reserves the right to require a change in Contractor representative if the assigned representative fails to perform to the satisfaction of the Agency. Contractor will have fifteen (15) days from the Agency's written notice to remove and replace the representative with another representative acceptable to the Agency.

12. **RELEASE**

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

13. **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.

14. **OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Contractor in the performance of this Agreement shall be and remain the property of the Agency without restriction or limitation upon its use or dissemination by Agency. Contractor may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Contractor.

15. 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.

16. INSURANCE

A. Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement commercial general liability insurance of \$1,000,000 for each occurrence and \$2,000,000 in general aggregate coverage for bodily injury and property damage liability, in a form and with an insurance company acceptable to the Agency. The required limits may be provided by a combination of general liability insurance and commercial umbrella liability insurance. The Agency shall be named as an additional insured under the insurance policy, and the policy shall provide that the Agency will be notified no less than 30 days before the policy is canceled for any reason. Contractor has furnished the Agency with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this Section as a condition of entering into this Agreement.

B. Contractor shall carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$1,000,000 combined single limit for each accident. The required limits may be provided by a combination of automotive liability insurance and commercial umbrella liability insurance.

C. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout the term of this

Agreement. Contractor shall provide the Agency with evidence demonstrating that appropriate Workers' Compensation insurance has been obtained.

17. **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.

18. **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, 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.

19. **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.

20. 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 a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

21. 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.

22. 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.

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, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation, and New Mexico criminal statutes impose penalties for bribes, gratuities, and kickbacks.

24. **AMENDMENT**

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

25. **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 Services attached hereto as Exhibit A. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

26. **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.

27. **NOTICES**

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

AGENCY: Mr. Randall Kippenbrock, P.E.
Executive Director
Santa Fe Solid Waste Management Agency
149 Wildlife Way
Santa Fe, NM 87506
E-mail address: rkippenbrock@sfswwa.org

CONTRACTOR: Mr. Tomas Lovato
General Manager
Pro-Motion Transportation, LLC
15 County Road 126C
Española, NM 87532
E-mail address: tomaslovato1960@gmail.com

- B. Such notices may be delivered by:
- 1) personal delivery;
 - 2) certified U.S. mail, returned receipt requested; or
 - 3) recognized overnight delivery service.
- C. Any such notice shall be effective upon actual receipt by the party entitled thereto.
- D. Notice may also be given by email, provided a hard copy of the notice is also transmitted via personal delivery, certified mail, or overnight courier to the parties at the respective addresses set forth in Paragraph A of this Article.
- E. Any party may change its address for purposes of this Article by giving notice to the other party as herein provided.

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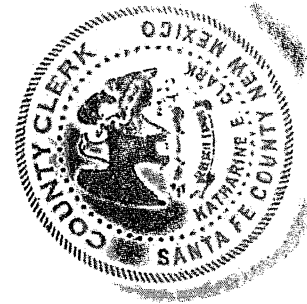
IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hansen 3/17/2022
Anna Hansen Date:
Chairperson

ATTEST:

Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk



CONTRACTOR:

Tomas Lovato 3-23-22
Tomas Lovato Date
General Manager
Pro-Motion Transportation, LLC

APPROVED AS TO FORM:

Nancy R. Long 3-18-2022
Nancy R. Long Date:
Agency Attorney

EXHIBIT A
Scope of Services

EXHIBIT A

The parties agree as follows as to the services to be delivered under this Agreement:

- When requested by the Agency, Contractor shall transport glass bottles (“glass”) from Buckman Road Recycling and Transfer Station at 2600 Buckman Road, Santa Fe, New Mexico to Momentum Recycling located in Broomfield, Colorado or Strategic Materials in Phoenix, Arizona.
- The Agency shall load glass onto Contractor’s end-dump trailers when the Agency has sufficient staff to operate its daily operations without interruption.
- The Agency shall act as scale master for all loads of glass. As such, the Agency retains the right to enforce weight limits as described herein. The Agency shall also serve as recordkeeping for loads and material quantities delivered to Momentum Recycling and Strategic Materials.
- The Agency shall pay Contractor a total of \$1,475.00, inclusive of all taxes, for each load transported to Momentum Recycling.
- The Agency shall pay Contractor a total of \$1,900.00, inclusive of all taxes, for each load transported to Strategic Materials.

Contractor agrees to provide the following services:

- Contractor shall provide semi-trucks with end-dump trailers for the transportation of glass to Momentum Recycling and Strategic Materials. The maximum gross vehicle weight of a standard semi-truck and end-dump trailer combination is 80,000 pounds with approximately 46,000 pounds allocated for glass.
- Contractor’s staff will be on site to ensure that the Agency has properly loaded the trailers with glass for the purposes of transporting the glass to Momentum Recycling and Strategic Materials.
- Contractor shall use the Agency’s BOLs (bill of ladings) as shipping paper to Momentum Recycling and Strategic Materials. Contractor shall return the associated scale tickets from Momentum Recycling and Strategic Materials to the Agency. Each scale ticket shall have an Agency’s BOL number.
- Contractor shall be responsible for maintaining all necessary licenses, permits and insurances for transporting glass to Momentum Recycling and Strategic Materials. These licenses permits and insurances shall be subject to inspection by the Agency. Contractor shall also notify the Agency of any non-compliance.

- Contractor shall be responsible for maintaining proper working and safety conditions for its semi-trucks and end-dump trailers. Contractor agrees to hold the Agency harmless for all fines from federal, state, or local agencies. Contractor shall be responsible for paying all fines and judgments levied by these agencies resulting from activities performed under this Agreement.
- Contractor shall submit to the Agency invoices with supporting backups including the Agency's BOLs accompanying the Momentum Recycling and Strategic Materials' scale tickets.