



AGENDA

SWMA JOINT POWERS BOARD
MARCH 17, 2022
5:00 PM
ATTEND VIRTUALLY



SPECIAL PROCEDURES FOR SOLID WASTE MANAGEMENT AGENCY JOINT POWERS BOARD MEETING

Due to the COVID-19 coronavirus, members of the public are encouraged to attend the Joint Powers Board meeting via Cisco WebEx video conferencing.

Join by WebEx Meeting Link using a computer/laptop/smartphone:

<https://santafesolidwastemanagementagency.my.webex.com/santafesolidwastemanagementagency.my/j.php?MTID=m85af3874fd94bab24f1acb3d37d106d6>

Join by Telephone or Mobile Device: (415) 655-0001

Meeting Number (Access Code): 2565 900 4817

Meeting Password: 473 83 775

The agenda and packet for the meeting will be posted at santafe.primegov.com/public/portal.

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **APPROVAL OF AGENDA**
- IV. **APPROVAL OF MINUTES**
 - A. Regular Meeting – February 17, 2022
- V. **MATTERS FROM THE PUBLIC**
- VI. **APPROVAL OF CONSENT CALENDAR**



AGENDA

SWMA JOINT POWERS BOARD
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VII. **CONSENT CALENDAR**

- A. Request for Approval to Award ITB No. '22/28/B – Glass Hauling Services for the Buckman Road Recycling and Transfer Station – to Pro-Motion Transportation, LLC of Espanola, NM, in the Amount of \$135,700; and
 - 1. Approval of Budget Increase to 8100852.510310 (Service Contracts) from 810.100700 (Operating Fund Cash Balance) in the Amount of \$39,825.
- B. Request for Approval of Amendment No. 3 to the Services Agreement with Payne's Nursery and Greenhouses, Inc. of Santa Fe, NM, for Composting Operation, Marketing, and Sales at the Caja del Rio Landfill (RFP No. '19/20/P); and
 - 1. Extend the Term of the Agreement through March 21, 2023.
 - 2. Amend the Compensation of the Agreement to Include the Use of a 5,000-Gallon Water Wagon at \$1,000 per Year.
- C. Request for Approval of Resolution 2022-____, A Resolution Determining Reasonable Notice for Public Meetings of the Santa Fe Solid Waste Management Agency.

VIII. **MATTERS FROM THE EXECUTIVE DIRECTOR**

IX. **MATTERS FROM STAFF - AGENCY, CITY, COUNTY**

- A. Shirlene Sitton, Division Director, City of Santa Fe Environmental Services Division.
- B. Les Francisco, Solid Waste Superintendent, Santa Fe County Public Works.

X. **MATTERS FROM THE BOARD**

XI. **NEXT MEETING: Thursday, April 21, 2022**

XII. **ADJOURN**

SUMMARY OF ACTION
SANTA FE SOLID WASTE MANAGEMENT AGENCY
JOINT POWERS BOARD
THURSDAY, FEBRUARY 17, 2022, 5:00 PM
ATTENDED VIRTUALLY

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER		1
ROLL CALL	QUORUM	1
ELECTION OF CHAIR PRO TEM TO PRESIDE OVER THE MEETING	REMOVED	1
MATTERS FROM THE PUBLIC	NONE	2
APPROVAL OF AGENDA	APPROVED	2
APPROVAL OF MINUTES	APPROVED	2
CONSENT AGENDA	APPROVED	2
 <u>CONSENT AGENDA</u>		
REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO THE SERVICE AGREEMENTS FOR SCRAP TIRE RECYCLING SERVICES (RFB NO. '20/10/B)	APPROVED ON CONSENT	2-3
REQUEST FOR APPROVAL OF AMENDMENT NO. 4 TO THE SERVICES AGREEMENT WITH PRO-MOTION TRANSPORTATION, LLC OF ESPANOLA, NM, FOR GLASS HAULING SERVICES FOR THE BUCKMAN ROAD RECYCLING AND TRANSFER STATION (RFB '18/09/B)	APPROVED ON CONSENT	3
REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO THE SERVICES	APPROVED ON CONSENT	3-4

AGREEMENT WITH UNIVERSAL
PROTECTION SERVICES, LP d/b/a
ALLIED UNIVERSAL SECURITY
SERVICES OF ALBUQUERQUE, NM
FOR SECURITY SERVICE
(ITB NO. '20/23/B)

REQUEST FOR APPROVAL TO
RECLASSIFY A FIELD SERVICE LUBE
TECH POSITION FROM AN SWU-06 TO
SWU-10 PAY RANGE

APPROVED ON CONSENT 4

REQUEST FOR APPROVAL OF FREE
DISPOSAL FEES FOR SANTA FE
HABITAT FOR HUMANITY FOR UP TO
20 TONS UNDER THE SFSWMA POLICY
2006.1 - FREE DISPOSAL FEES
PROGRAM.

APPROVED ON CONSENT 4

MATTERS FROM THE EXECUTIVE
DIRECTOR

FY-21 AUDIT STATUS UPDATE

INFORMATION/DISCUSSION 4-5

MATTERS FROM THE BOARD

ELECTION OF CHAIR AND VICE-CHAIR

APPROVED 5-6

MATTERS FROM STAFF - AGENCY,
CITY, COUNTY

SHIRLENE SITTON, DIVISION DIRECTOR,
CITY OF SANTA FE ENVIRONMENTAL
SERVICES DIVISION

INFORMATION/DISCUSSION 6

LES FRANCISCO, SOLID WASTE
SUPERINTENDENT, SANTA FE COUNTY
PUBLIC WORKS

INFORMATION/DISCUSSION 6

NEXT MEETING

MARCH 17, 2022 6

ADJOURN

ADJOURNED

6

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
JOINT POWERS BOARD
THURSDAY, FEBRUARY 17, 2022, 5:00 PM
ATTENDED VIRTUALLY**

I. CALL TO ORDER

The meeting of the Santa Fe Solid Waste Management Agency Joint Powers Board was called to order by Commissioner Anna Hansen, Vice Chair, at 5:00 pm on Thursday, February 17, 2022 and was attended virtually.

II. ROLL CALL

BOARD MEMBERS PRESENT

Commissioner Anna Hansen, Vice Chair
Councilor Michael Garcia
Councilor Christopher Rivera
Commissioner Anna Hamilton
Commissioner Hank Hughes

BOARD MEMBERS ABSENT

OTHERS PRESENT

Randall Kippenbrock, Executive Director, SWMA
Nancy Long, Long, Komer and Associates
Rosalie Cardenas, SWMA
Yvonne Herrera, Santa Fe County Finance Director
Les Francisco, Solid Waste Superintendent, Santa Fe County Public Works
Neal Denton, Environmental Services, City of Santa Fe
Danita Boettner, SWMA
Ernestina Baca, SWMA
Emily Pisula, SWMA
Mary McCoy, Finance Director, City of Santa Fe
Ricky Bejarano, Accounting Officer, Department of Finance
Elizabeth Martin, Stenographer

III. ELECTION OF CHAIR PRO TEM TO PRESIDE OVER THE MEETING

This item was removed from the agenda.

IV. MATTERS FROM THE PUBLIC

None.

V. APPROVAL OF AGENDA

MOTION A motion was made by Commissioner Hamilton, seconded by Councilor Rivera, to approve the agenda as presented.

VOTE The motion passed on a roll call vote as follows:

Councilor Rivera, yes; Councilor Garcia, yes; Commissioner Hamilton, yes; Commissioner Hansen, yes; Commissioner Hughes, yes.

**VI. APPROVAL OF MINUTES
NOVEMBER 18, 2021**

MOTION A motion was made by Commissioner Hamilton, seconded by Commissioner Hughes, to approve the minutes as presented.

VOTE The motion passed on a roll call vote as follows:

Councilor Rivera, abstained; Councilor Garcia, yes; Commissioner Hamilton, yes; Commissioner Hansen, yes; Commissioner Hughes, yes.

VII. CONSENT AGENDA

MOTION A motion was made by Commissioner Hamilton, seconded by Councilor Rivera, to approve the consent agenda as presented.

VOTE The motion passed on a roll call vote as follows:

Councilor Rivera, yes; Councilor Garcia, yes; Commissioner Hamilton, yes; Commissioner Hansen, yes; Commissioner Hughes, yes.

VIII. CONSENT AGENDA

A. REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO THE SERVICE AGREEMENTS FOR SCRAP TIRE RECYCLING SERVICES (RFB NO. '20/10/B) WITH:

1. STATE RUBBER AND ENVIRONMENTAL SOLUTIONS, LLC OF DENVER CITY, TX (SCRAP TIRE RECYCLING) AND;

- a. EXTEND THE TERM OF THE AGREEMENT THROUGH FEBRUARY 20, 2023.
 - b. INCREASE THE COMPENSATION BY \$24,000 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$78,000.
2. APPROVAL OF SERVICES AGREEMENT WITH ENCHANTMENT TRANSPORT, INC. OF ALBUQUERQUE, NM (SCRAP TIRE HAULING) AND;
- a. EXTEND THE TERM OF THE AGREEMENT THROUGH FEBRUARY 20, 2023.
 - b. INCREASE THE COMPENSATION BY \$33,600 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$102,600.

Approved on consent.

- B. REQUEST FOR APPROVAL OF AMENDMENT NO. 4 TO THE SERVICES AGREEMENT WITH PRO-MOTION TRANSPORTATION, LLC OF ESPANOLA, NM, FOR GLASS HAULING SERVICES FOR THE BUCKMAN ROAD RECYCLING AND TRANSFER STATION (RFB '18/09/B); AND
- 1. INCREASE THE AMOUNT OF COMPENSATION BY \$40,000 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$389,425.
 - 2. APPROVAL OF BUDGET INCREASE TO 8100852.510310 (SERVICE CONTRACTS) FROM 810.100700 (OPERATING FUND CASH BALANCE) IN THE AMOUNT OF \$40,000.

Approved on consent.

- C. REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO THE SERVICES AGREEMENT WITH UNIVERSAL PROTECTION SERVICES, LP d/b/a ALLIED UNIVERSAL SECURITY SERVICES OF ALBUQUERQUE, NM FOR SECURITY SERVICES (ITB NO. '20/23/B); AND
- 1. AMEND THE COMPENSATION OF THE AGREEMENT TO INCREASE THE RATES FOR SECURITY OFFICERS.
 - 2. AMEND THE NOTICES OF THE AGREEMENT.

Approved on consent.

D. REQUEST FOR APPROVAL TO RECLASSIFY A FIELD SERVICE LUBE TECH POSITION FROM AN SWU-06 TO SWU-10 PAY RANGE.

Approved on consent.

E. REQUEST FOR APPROVAL OF FREE DISPOSAL FEES FOR SANTA FE HABITAT FOR HUMANITY FOR UP TO 20 TONS UNDER THE SFSWMA POLICY 2006.1 - FREE DISPOSAL FEES PROGRAM.

Approved on consent.

IX. MATTERS FROM THE EXECUTIVE DIRECTOR

A. FY-21 AUDIT STATUS UPDATE

Mr. Kippenbrock stated that he asked Ms. McCoy to attend the meeting today to give us an update on the FY-21 audit and a timeline of when it will be completed.

Mr. Kippenbrock said he sent four questions to Ms. McCoy that he would like her to answer.

Ms. McCoy read the questions posed by Mr. Kippenbrock and answered them.

Question #1: When will the FY 20 journal entries be posted and reflected in Munis so those entries can be rolled over into FY-21.

Response #1: We have had turnover in the Accounting Officer position which led to our being late in postings required by the auditor.

Question #2: Is the City still reconciling SWMA's cost, etc., through what month is it completed.

Response #2: The asset reconciliations have been 57% completed and they are on target for a March 31st deadline.

Question #3: When can the City post at least two capital assets (WIP) in Munis.

Response #3: The WIP journal entries were posted by Finance earlier this week.

Question #4: By when can SWMA expect a trial balance for each SWMA fund, including cash, interest on investments, and payroll liabilities.

Response #4: The Accounting Officer reviewed the documents submitted by SWMA staff via CLA's audit portal and saw that SWMA had already reconciled accrued payroll, and as far as interest receivable, that will be done last as Finance needs cash to be fully reconciled so that we know how to allocate out interest and all of this in on track for the March 31st deadline.

Mr. Kippenbrock stated that he was satisfied with Ms. McCoy's answers and thanked her for attending and addressing these issues. Mr. Kippenbrock said he met with the accounting firm CLA this week. As soon as all of the items we need are received, including the trial balance, it will take forty-five days to get out the audit.

Chair Hansen stated that she would like to request that next year, we make an effort to get the audit in on time. Our staff will be happy to work with you Ms. McCoy.

Ms. McCoy introduced Ricky Bejarano, the new Accounting Officer for the City Finance Department. The position has been vacant for six months and is a critical and key position. He is working with us on the audit at this time.

Mr. Bejarano said he has met with all of the City Departments regarding year end closings. He looks forward to a continued relationship between the City and SWMA.

Chair Hansen commented that Emily Pisula is our accounting person. She would like Ms. Pisula to meet with Mr. Bejarano and work with him.

X. MATTERS FROM THE BOARD

A. ELECTION OF CHAIR AND VICE-CHAIR

Ms. Long explained that the history of the Board is that the positions of Chair and Vice Chair are rotated between the City and the County each year. To be true to that, last year the Chair was a City Councilor and the Vice Chair was a County Commissioner. This year the Chair will be a County Commissioner and the Vice Chair a City Councilor.

Commissioner Hughes nominated Commissioner Hansen as Chair.

Councilor Rivera nominated Councilor Garcia as Vice Chair.

MOTION A motion was made by Commissioner Hughes, seconded by Councilor Rivera, to elect Commissioner Hansen as Chair and Councilor Garcia as Vice Chair.

VOTE The motion passed on a roll call vote as follows:

Councilor Rivera, yes; Councilor Garcia, yes; Commissioner Hamilton, yes; Commissioner Hansen, yes; Commissioner Hughes, yes.

XI. MATTERS FROM STAFF - AGENCY, CITY, COUNTY

A. SHIRLENE SITTON, DIVISION DIRECTOR, CITY OF SANTA FE ENVIRONMENTAL SERVICES DIVISION

Mr. Denton presented the matters from the City as Ms. Sitton was unable to attend.

Mr. Denton reported that on February 9th the City Council approved a rate increase effective March 1, 2022. It is the first increase in eight years and is based on the NewGen Strategies Study. The information is included on our website and notices went out to customers in their utility bills. The increase is \$3.50 a month for residential rates.

B. LES FRANCISCO, SOLID WASTE SUPERINTENDENT, SANTA FE COUNTY PUBLIC WORKS

Mr. Francisco stated that they are 100% up and running except on employees. They had a two hour delay this morning due to the snow.


**XII. NEXT MEETING
THURSDAY, MARCH 17, 2022**

XIII. ADJOURN

There being no further business before the Board the meeting adjourned at 5:30 pm.

Attested to By:


Commissioner Anna Hansen, Chair



Elizabeth Martin, Stenographer

Katharine E. Clark
Santa Fe County Clerk

MEMORANDUM

To: SFSWMA Joint Powers Board
From: Randall Kippenbrock, P.E., Executive Director 
Date: March 11, 2022
Subject: Request for Approval to Award ITB No. '22/28/B – Glass Hauling Services for the Buckman Road Recycling and Transfer Station - to Pro-Motion Transportation, LLC of Espanola, NM, in the Amount of \$135,700

SUMMARY

The Agency recommends approving a Services Agreement (Agreement) with Pro-Motion Transportation, LLC of Espanola, NM.

On January 28, 2022, the Agency issued Invitation to Bid (ITB) No. '22/28/B for glass hauling services for the Buckman Road Recycling and Transfer Station (BuRRT). Two bidders responded on February 22, 2022.

Olivas Trucking, Mora, NM
Pro-Motion Transportation, LLC, Espanola, NM

After reviewing the bids, Pro-Motion Transportation is the low bidder.

The compensation for Pro-Motion Transportation in the first year of the Agreement is \$135,700. Prices quoted by Pro-Motion Transportation will be firm during the Agreement. Any request for a price adjustment is subject to approval by the Board. Per Article 4, the Agreement can be renewed annually upon Board approval, not to exceed ten years.

Funding is available from 810.100700 (Operating Fund Cash Balance) for the remainder of FY-22 and will be available in FY-23 from 8100852.510310 (Service Contracts).

BACKGROUND

Table 1 is a bid summary of the two bidders. Bidders listed the price per load to haul glass in a semi-truck/end-dump trailer from BuRRT to Momentum Recycling in Broomfield, CO and Strategic Materials in Phoenix, AZ. The price per load includes all costs necessary to transport glass to the designated recycling facility, including labor, supervision, equipment, materials, registrations, licenses, insurance, taxes, and supplies.

Table 1. Bid Summary

Item & Description	Pro-Motion Transportation	Olivas Trucking
Price per load to haul glass to Momentum Recycling in Broomfield, CO.	\$1,475	\$2,344
Price per load to haul glass to Strategic Materials in Phoenix, AZ.	\$1,900	\$2,641

Momentum Recycling will be the primary glass recycling facility and Strategic Materials will be the secondary facility.

Pro-Motion Transportation will haul glass to the facility designated by the Agency. Pro-Motion Transportation will provide a semi-truck and leak-proof end-dump trailer capable of transporting up to 23 tons of glass and will follow DOT rules and regulations.

The Agency estimates 92 loads for the first year of the Agreement. BuRRT generates an average of two loads per week. The actual number may range from zero to four loads per week.

BuRRT receives glass bottles and jars from residents and businesses as part of the recycling program. Table 2 summarizes glass generation for the past two years.

Table 2. Glass Generation for BuRRT in 2020 and 2021

Year	2020	2021
Total (tons)	1,660	1,897

ACTION REQUESTED

The Agency recommends awarding ITB No. '22/28/B – Glass Hauling Services for the Buckman Road Recycling and Transfer Station - to Pro-Motion Transportation in the amount of \$135,700.

The Agency also requests approval of a budget increase to 8100852.510310 (Service Contracts) from 810.100700 (Operating Fund Cash Balance) for \$39,825.

Attachments:

- 1) Budget Adjustment Request
- 2) Services Agreement with Pro-Motion Transportation
- 3) ITB No. '22/28/B – Glass Hauling Services for the Buckman Road Recycling and Transfer Station – Without Appendices

M:\Memo\031122.1

ATTACHMENT 1
Budget Adjustment Request

Log # {Finance use only}:	
Batch # {Finance use only}:	

City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME					DATE	
SFSWMA					3/7/2022	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE	
<u>EXPENDITURES</u>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>	
Service Contracts	8100852	510310		39,825		
<u>REVENUES</u>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>	
JUSTIFICATION: <i>(use additional page if needed)</i> <i>--Attach supporting documentation/memo</i>				\$ 39,825	\$ -	

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>		
Budget for Service Agreement with Pro-Motion Transperation for Glass Hauling services at BuRRT	Fund(s) Affected	Fund Balance Increase/(Decrease)
	810	(39,825)
Cash is available in the SFSWMA Operations Fund (810.100700)		
TOTAL:		(39,825)

Emily Pisula	3/7/2022	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	
Prepared By <i>{print name}</i>	Date	CITY COUNCIL APPROVAL	Budget Officer
Division Director Signature <i>{optional}</i>	Date		Finance Director <i>{≤ \$5,000}</i>
Department Director Signature	Date		City Manager <i>{≤ \$60,000}</i>
		<i>JPB</i> <i>Approval Date</i>	Date
		<i>Agenda Item #:</i>	Date

ATTACHMENT 2

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@sfswma.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
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:

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 lading) 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.

ATTACHMENT 3

ITB No. '22/28/B – Glass Hauling Services for the Buckman Road Recycling and Transfer Station – Without Appendices

**CITY OF SANTA FE
CENTRAL PURCHASING OFFICE**

for

SANTA FE SOLID WASTE MANAGEMENT AGENCY

INVITATION TO BID

**GLASS HAULING SERVICES
FOR THE
BUCKMAN ROAD RECYCLING AND TRANSFER STATION**

ITB No. 22/28/B

DUE:

**February 22, 2022
2:00 p.m.**

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

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ADVERTISEMENT FOR BID

ITB No. 22/28/B

Competitive sealed bids will be received electronically by the Central Purchasing Office of the City of Santa Fe on behalf of the Santa Fe Solid Waste Management Agency ("Agency"). Responses shall be electronically submitted to Purchasing@santafenm.gov no later than 2:00 p.m. local prevailing time on February 22, 2022. Any bid received after this deadline will not be accepted and/or considered. This Invitation to Bid (ITB) is for the purpose of procuring the following:

**GLASS HAULING SERVICES
FOR THE
BUCKMAN ROAD RECYCLING AND TRANSFER STATION**

Attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said services shall apply to the bid throughout, and they will be deemed to be included in the bid document the same as though herein written out in full.

The successful vendor will be required to conform to the Equal Opportunity Employment regulations.

All questions related to this ITB must be submitted in writing via email to Danita Boettner, Procurement Manager, at dboettner@sfswma.org. No oral interpretations of the ITB document will be binding. Any revisions to be incorporated into this ITB document will be established in writing by addendum(s) before the bid due date.

The ITB and subsequent addendum(s), if any, are available at the following website: http://www.santafenm.gov/bids_rfps.

Bids may be held for ninety (90) days subject to action by the Agency. The Agency reserves the right to reject any or all bids in part or in whole.

ATTEST:



Fran Dunaway, CPO, CNMB
Chief Procurement Officer

1/20/2022

Received by the Santa Fe New Mexican on February 1, 2022
To be published on February 4, 2022

Received by the Albuquerque Journal on February 1, 2022
To be published on February 4, 2022

BID SCHEDULE

ITB No. 22/28/B

EVENT	DATE
Advertisement	February 4, 2022
Issuance of ITB	February 4, 2022
Deadline to Submit Additional Questions	February 16, 2022
Response to Written Questions and Any Addendum	February 18, 2022
Receipt of Bids	February 22, 2022, at 2:00 p.m. Mountain Time Electronically Submitted to the Central Purchasing Office Purchasing@santafenm.gov
Recommendation of Award to Joint Powers Board	March 17, 2022

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

INFORMATION FOR BIDDERS

1. RECEIPT OF ELECTRONIC BIDS

The Santa Fe Solid Waste Management Agency (herein called "Agency") invites bidder(s) to submit their bid electronically on the forms attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the Central Purchasing Office of the City of Santa Fe until **2:00 p.m. Mountain Time on Tuesday, February 22, 2022.**

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

ITB No. – 22/28/B

ITB Title – Glass Hauling Services for the Buckman Road Recycling and Transfer Station

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

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

2. COPIES OF INVITATION TO BID

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

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

3. PREPARATION OF BID

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

Bids must be in Word or PDF format.

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

4. BID SECURITY

None required.

5. CORRECTION OR WITHDRAWAL OF BID

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

6. INTERPRETATIONS AND ADDENDA

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

Every request for such interpretations should be submitted via email to Danita Boettner, Procurement Manager, at dboettner@sfswwa.org and to be given consideration must be received at least five (5) days prior to the date set for receipt of bids or February 16, 2022.

Any and all such interpretations and any supplemental instruction will be in written addenda to the ITB, which if issued, will be sent by email to all prospective Bidders known by the Agency to have received a complete ITB not later than three (3) days prior to the date set for receipt of bids or February 18, 2022. Failure of any Bidder to receive any such addenda or interpretations shall not relieve Bidder from any obligation under their bid as submitted. All addenda so issued shall become part of the contract documents.

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

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

7. POWER OF ATTORNEY

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

8. LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over

the subject of this ITB shall apply to the ITB throughout, which will be deemed to be included in the ITB the same as though written out in full.

9. COLLUSION

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

10. PENALTIES

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

11. DISCLOSURE OF BID CONTENTS

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

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

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

12. BRAND NAMES

All brand names specified in this bid are not meant to be restrictive, but to be used as descriptive or equal specification. Bidder should include enough information with the bid submitted so this determination can be made.

13. METHOD OF AWARD

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

14. IDENTICAL BIDS

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

15. CONTRACT AWARD

The Agency anticipates awarding the contract during the regular scheduled Joint Powers Board meeting on March 17, 2022; however, the meeting's date is tentative and subject to change without notice.

16. REJECTION OR CANCELLATION OF BID

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

17. PROTEST DEADLINE

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

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

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

18. AGENCY RIGHTS

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

19. RIGHT TO PUBLISH

Throughout the duration of this procurement process and contract term, potential Bidders and contractors must secure from the Agency written approval before the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Bidder's bid or termination of the contract.

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

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

21. SUBCONTRACTORS, SUPPLIERS AND OTHERS

- A. The Bidder, in the bid documents, must identify in writing those portions of the Work that is proposed to be subcontracted, and after the Notice of Award, may only subcontract other portions of the work with the Agency's written consent.
- B. The Bidder will not be required to employ any other subcontractor, person, or organization against whom he has reasonable objection.
- C. The Bidder shall list all Subcontractor names, addresses and type of work to be performed.
- D. The Subcontractor threshold amount for this project is \$5,000. The General Contractor must list all subcontractors who will perform work in excess of this threshold. Only one Subcontractor may be listed for each category as defined by the Contractor. The Subcontractor Fair Practices Act (13-4-31 through 14-3-43 NMSA 1988) shall apply.
- E. EXEMPTION: In accordance with the "SUBCONTRACTOR'S FAIR PRACTICES ACT", Section 13-4-35, the Bidder shall not be required to submit a Subcontractor's Listing form with the bid for contracts for construction, improvement or repair of streets or highways, including bridges, underground utilities within easements, including but not limited to water lines, sewer lines and storm sewer lines. The SUBCONTRACTOR'S FAIR PRACTICES ACT shall apply, however, to that portion of contracts for construction, improvement or repair of streets or highways which covers street lighting and traffic signals.

The Bidder shall list the Subcontractor(s) or material supplier(s) they propose to use for all trades or items on the Subcontractor Listing Form attached to the Bid Form. The listing must include Subcontractors identified in Paragraph D above. If awarded the contract, the Bidder shall use the firm listed, or himself if "General Contractor" has been listed, unless a request for a change or substitution is approved by the Agency of any reason as outlined herein.

- F. For subcontract work involving the provision of "SUBCONTRACTOR'S FAIR PRACTICES ACT 13-4-31...43 NMSA 1978" summarized as follows, shall apply.

- (1) A Bidder may not substitute any Subcontractor listed unless the Agency approves in writing the substitution based on the following situations:
 - i. The Subcontractor fails or refuses to execute a contract due to bankruptcy or insolvency;
 - ii. The Subcontractor fails or refuses to perform;
 - iii. The Bidder demonstrates to the Agency that the listed Subcontractor was due to an inadvertent clerical error;
 - iv. Acceptance of an alternate by the Agency causes the original Subcontractor's bid not to be low;
 - v. The Bidder can substantiate to the Agency that a Subcontractor's bid is incomplete, or;
 - vi. The Subcontractor fails or refuses to meet bond requirements of the Bidder.
- (2) Prior to the approval of the contractor's request for substitution, the Owner shall give notice to the listed Subcontractor by certified mail. The Subcontractor shall have five (5) working days to submit written objections to the Agency. Failure to respond shall constitute Subcontractor's consent to the substitution. If written objections are received, the Agency shall give five (5) working days for notice of a hearing.
- (3) No other substitutions of Subcontractors may be permitted by the Bidder, other than for requested change orders in the scope of the work or unless the Bidder can show that no bids were received.
- (4) It shall be the responsibility of the Subcontractor to be prepared to submit performance or payment bonds if requested by the Bidder. If the Subcontractor, as per the provisions of item 1 above. (The requirement of such bonding must be included in the Bidder's written or published request for Subcontract bids).
- (5) If the Bidder does not specify a Subcontractor, they represent that they shall perform the work.
- (6) If the Bidder is claiming an inadvertent clerical error, notice shall be given to the Agency and the involved Subcontractor within two (2) working days of the bid opening. The Subcontractor shall have six (6) working days from the bid opening to submit written objections. Failure to respond shall constitute Subcontractor's agreement that an error was made.
- (7) If determined to be an emergency, upon written finding, subcontracting may be permitted although not originally designated in the bid.
- (8) By State statute, violation of this act may allow the Agency to cancel the Contract or assess the Bidder a penalty up to ten (10) percent of the subcontract involved, but in no case less than the difference between the amount of the listed Subcontractor and the Subcontractor used. The Bidder shall be entitled a hearing after notice of intent to assess a penalty.

- (9) If a hearing is held, the dispute shall be stated in writing and the Agency shall evaluate the issues of both sides and render a determination within ten (10) days of the hearing and provide the parties with a written copy of the decision by certified mail. The Agency may also refer the matter to arbitration.

22. PREFERENCES IN PROCUREMENT

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

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

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

OR

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

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

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

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

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

Local Preference: Local preference is not applicable, pursuant to the Agency 2013

Purchasing Procedures and Finance Policy.

23. MULTIPLE AWARD

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

24. INDEFINITE QUANTITY AGREEMENT

The items and/or services to be ordered shall be listed on the Bid Form. All orders issued hereunder will bear both an order number and this Services Agreement number (i.e., ITB No. 22/28/B). It is understood that no guarantee or warranty is made or implied by the Agency that any order for any definite quantity will be issued under this Services Agreement. The Bidder is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.

25. PRICE ADJUSTMENTS

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

26. PROCUREMENT UNDER EXISTING CONTRACTS

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

27. TAXES

The Agency is exempt from gross receipts tax on tangible personal property, except those used in construction. Services provided to the Agency are not exempt. A tax exempt certificate will be issued upon written request.

28. INVOICING

- (A) The Contractor's invoice shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices, and extended totals. Separate invoices shall be submitted for each and every complete order.

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

29. METHOD OF PAYMENT

- (A) Every effort will be made to process payments within thirty (30) days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.
- (B) Contractor must register with the City of Santa Fe's Enterprise Resource Planning (ERP) System. Contractor's failure to do so will experience delays in processing of invoices and will not be able to do business with the Agency. Contractor can register online at <http://www/santafenm.gov/>.

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DEFINITIONS AND TERMS

1. **Addendum:** a written or graphic instrument issued prior to the opening of Bids, which clarifies, corrects, or changes the Invitation to Bid. Plural: addenda.
2. **Agency:** means the Santa Fe Solid Waste Management Agency.
3. **Bidder:** means the companies or firms submitting a bid in response to this Invitation to Bid.
4. **BuRRT:** means the Buckman Road Recycling and Transfer Station.
5. **Central Purchasing Office:** means the office responsible for the control of procurement of items of tangible personal property, services or construction.
6. **Chief Procurement Officer:** means that person within the Central Purchasing Office who is responsible for the control of procurement of items of tangible personal property, services or construction.
7. **City:** means the City of Santa Fe.
8. **Close of Business:** means 5:00 p.m. Mountain Time.
9. **Contractor:** means the successful Bidder who enters into a binding contract/agreement.
10. **Contract/Agreement:** means the Agency's Services Agreement for the procurement of items of tangible personal property, services or construction, including all exhibits attached to it and incorporated in it by reference, and all amendments in accordance with its terms.
11. **Desirable:** means the terms "can", "may", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.
12. **Determination:** means the written documentation of the Chief Procurement Officer's decision, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (Section 13-1-52 NMSA 1978).
13. **Invitation to Bid:** or "ITB" means all documents, including those attached or incorporated by reference, used for soliciting bids (Section 13-1-102 NMSA 1978).
14. **Joint Powers Board (JPB):** means the governing body of the Santa Fe Solid Waste Management Agency that operates the Caja del Rio Landfill and Buckman Road Recycling and Transfer Station.
15. **Mandatory:** means the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor that will result in the rejection of the Bidder's bid.
16. **Multi-Term Contract:** means a contract having a term longer than one year (Section 13-1-68 NMSA 1978).

17. **Procurement Manager:** means the person or designee authorized by the Agency to manage or administer a procurement of a Bid.
18. **Redacted:** means a version/copy of the Bidder's bid with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978) and summarized herein blacked-out BUT NOT omitted or removed.
19. **Resident Business:** has the meaning set forth in Section 13-1-21 (A)(6) NMSA 1978, as amended from time to time.
20. **Resident Veteran Business:** has the meaning set forth in Section 13-1-22 (A)(7) NMSA 1978, as amended from time to time.
21. **Responsible Bidder:** means a Bidder who submits a responsive bid and who has furnished, when required, information and data to prove that the Bidder's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the invitation to bid (Section 13-1-82 NMSA 1978).
22. **Responsive Bid:** means an offer that conforms materially to the requirements in the invitation to bid. Material respects of the invitation to bid include, but are not limited to, price, quality, quantity or delivery requirements (Section 13-1-84 NMSA 1978).
23. **Services:** means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials merely incidental to the required performance. Services include the furnishing of insurance but does not include construction or the services of employees of the Agency (Section 13-1-87 NMSA 1978).
24. **Staff:** means any individual who is a full-time, part-time, or an independently contracted employee with the Bidders' company.
25. **Unredacted:** means a version/copy of the bid containing all complete information; including any that the Bidder would otherwise consider confidential, such copy for use only for the purposes of evaluation.
26. **Written:** means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

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SPECIFICATIONS

ITB No. 22/28/B

GLASS HAULING SERVICES FOR THE BUCKMAN ROAD RECYCLING AND TRANSFER STATION

Background

The Santa Fe Solid Waste Management Agency (Agency) operates the Buckman Road Recycling and Transfer Station (BuRRT), located at 2600 Buckman Road, Santa Fe, NM. The Agency provides solid waste and recycling services for commercial businesses and approximately 143,000 residents.

BuRRT operates seven (7) days per week and is closed on major holidays. BuRRT operating hours are 8:00 a.m. and 4:45 p.m.

The Agency receives glass bottles and food jars from residents and businesses at the BuRRT facility. In March 2017, the City of Santa Fe ended its curbside glass collection program and established drop-off centers for the glass in addition to the BuRRT facility. The following table summarizes total glass generation for the past two years keeping in mind some reduction in tonnage has occurred as a result of the COVID-19 pandemic.

Description	2020	2021
Total (tons)	1,660	1,897

Glass is collected in a bunker. Glass is will be loaded by BuRRT staff into the Contractor's end-dump trailer with a loader. The Contractor will transport the glass load(s) from the BuRRT facility to the designated recycling facility(s).

The designated glass recycling facilities are:

- Momentum Recycling, Broomfield, Colorado
- Strategic Materials, Phoenix, Arizona

Scope of Work

The Contractor shall furnish all labor, supervision, equipment, materials, registrations, licenses and supplies necessary to transport glass from the BuRRT to the designated recycling facility.

The Agency has designated Momentum Recycling as the primary glass recycling facility and Strategic Materials as the secondary facility.

The Contractor shall haul the glass to the designated facility, as determined by the Agency, Monday through Friday in a manner that ensures the timely removal of glass.

The Contractor shall provide a semi-truck and a leak-proof end-dump trailer capable of transporting up to twenty-three (23) tons of glass that are maintained in accordance with DOT rules and regulations.

The Agency estimates 100 loads in a given year. The average number of loads per week is two (2) loads. However, the Contractor shall be prepared to haul no glass in a given week or as much as four (4) loads in a given week.

Specifications and Qualifications

Y___ N___ Semi-truck(s) with end-dump trailer(s) capacity to handle up to twenty-three (23) tons of glass per load.

Y___ N___ Maintains all necessary licenses, permits and insurances for transporting glass to Momentum Recycling in Broomfield, CO, and Strategic Materials in Phoenix, AZ.

Y___ N___ Maintains proper working and safety conditions for its semi-truck(s) and end-dump trailer(s).

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SANTA FE SOLID WASTE MANAGEMENT AGENCY

BID SUBMITTAL FORM

ITB No. 22/28/B

GLASS HAULING SERVICES FOR THE
BUCKMAN ROAD RECYCLING AND TRANSFER STATION

EXCEPTIONS TO SPECIFICATIONS

Bidder must check one of the following:

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

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

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

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

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

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

ADDITIONAL SUBMITTAL REQUIREMENTS

Bidder must complete and submit with their bid:

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

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BID FORM

ITB No. 22/28/B

GLASS HAULING SERVICES FOR THE BUCKMAN ROAD RECYCLING AND TRANSFER STATION

Item	Description	Final Destination	Unit Price ⁽¹⁾ (\$/load)
1	Per load price for hauling glass in a semi-truck / end-dump trailer to Momentum Recycling in Broomfield, CO. Price per unit to include ALL COSTS associated with the contract.	Broomfield, Colorado	
2	Per load price for hauling glass in a semi-truck / end-dump trailer to Strategic Materials in Phoenix, AZ. Price per unit to include ALL COSTS associated with the contract.	Phoenix, Arizona	

(1) Includes all applicable taxes.

The Santa Fe Solid Waste Management Agency reserves the right to alter quantities based on availability of budget. If this will alter the bid amount, the Bidder must note the percent increase for lesser quantities.

BIDDER'S INFORMATION

Firm

Address

Authorized Signature

Print Name

Title


E-Mail Address

Phone Number

Fax Number

Date

MEMORANDUM

To: SFSWMA Joint Powers Board
From: Randall Kippenbrock, P.E., Executive Director 
Date: March 11, 2022
Subject: Request for Approval of Amendment No. 3 to the Services Agreement with Payne's Nursery and Greenhouses, Inc. of Santa Fe, NM, for Composting Operation, Marketing, and Sales at the Caja del Rio Landfill (RFP No. '19/20/P)

SUMMARY

The Agency is requesting the Board approve Amendment No. 3 (Amendment) to the Services Agreement with Payne's Nursery and Greenhouses, Inc. of Santa Fe, NM (Payne's).

The Amendment extends the term of the Agreement through March 21, 2023 (Year 4).

The Amendment also amends the compensation to include use of the Agency's Caterpillar 613C 5,000-gallon water wagon at \$1,000 per year.

BACKGROUND

On March 21, 2019, the Board approved a Services Agreement (Agreement) with Payne's for the composting operation at the Caja del Rio Landfill (RFP No. '19/20/P).

Amendment No. 1 extended the term of the Agreement through March 21, 2021 (Year 2).

Amendment No. 2 extended the term of the Agreement through March 21, 2022 (Year 3).

Payne's will continue to compost mulch, manure, and food waste, and in the future will include any materials deemed to be compostable. The operation involves a static windrow process to produce various mixes of compost products. The windrows are turned regularly and watered during the process and then cured to stabilize. Various compost mixes are produced based upon the intended end use; this dictates the time needed to complete the process.

Composting requires watering the windrows to provide the necessary moisture for microbes to break down the materials. Using the Agency's 5,000-gallon water wagon will provide for a more efficient watering of the windrows, thereby, allowing more compost mixes to be produced at a faster rate.

Payne's will maintain and repair the water wagon.

Payne's will continue to pay the Agency \$4.00 per ton from the sale of mulch and compost products. In 2021, Payne's Nursery paid the Agency \$10,099.72 for 2,524.93 tons of materials.

Payne's will also continue to pay \$100.00 per year for using the Agency's trommel screen.

ACTION REQUESTED

The Agency requests the Board approve Amendment No. 3 to the Services Agreement with Payne's Nursery.

Attachments:

- 1) Services Agreement – Amendment No. 3
- 2) Services Agreement – Amendment No. 2
- 3) Services Agreement – Amendment No. 1
- 4) Services Agreement with Payne's Nursery and Greenhouses, Inc.

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ATTACHMENT 1

Services Agreement - Amendment No. 3

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 3
SERVICES AGREEMENT
PAYNE'S NURSERY & GREENHOUSES, INC.**

(Composting Operation, Marketing and Sales at the Caja del Rio Landfill - 2019)

This AMENDMENT No. 3 ("Amendment") to the SERVICES AGREEMENT, dated March 21, 2019 ("Agreement"), is made and entered into between the Santa Fe Solid Waste Management Agency ("Agency") and Payne's Nursery & Greenhouses, Inc. ("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 operate the Composting Facility at the Caja del Rio Landfill and to market the mulch and finished compost products for sale to prospective buyers (RFP No. '19/20/P).

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 include Contractor's use of a 5,000-gallon water wagon as described below and in the Scope of Work attached hereto as Exhibit A so that Article 3 reads in its entirety as follows:

- A. Contractor shall pay to the Agency \$4.00 per ton from Contractor's sale of mulch and finished compost products as weighed across the scales located at the Caja del Rio Landfill on a monthly basis.
- B. Contractor shall pay the Agency for reclaimed wastewater used by Contractor at the Landfill at fifty (50) percent of the rate for potable water as set forth in the City of Santa

Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987), plus administrative costs and applicable state taxes.

- C. Contractor shall pay the Agency for the use of a trommel screen machine that is owned by the Agency at the rate of \$100.00 per year.
- D. Contractor shall pay the Agency for the use of a 5,000-gallon water wagon that is owned by the Agency at the rate of \$1,000.00 per year.
- E. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico, if any, on any value received by Contractor under this Agreement.
- F. Compensation to the Agency shall be paid in accordance with the fee schedule set forth in the Scope of Work hereto attached in Exhibit A.
- G. Contractor shall not be compensated for any costs, expenses, or other items associated with this Agreement.

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 21, 2023, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.
- B. Pursuant to the limitations on multi-term contracts for professional services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed four years, including all extensions and renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor.

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.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT No. 3 to the Agreement as of the dates set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hansen
Chairperson, Joint Powers Board

Date:

ATTEST:

Katharine E. Clark
Santa Fe County Clerk

CONTRACTOR:

Lynn Payne
President and Chief Executive Officer
Payne's Nursery & Greenhouses, Inc.

Date:

APPROVED AS TO FORM:

Nancy R. Long
Agency Attorney

Date:

EXHIBIT A
Scope of Work

SCOPE OF WORK

Contractor warrants that they have the expertise and the appropriate resources to perform the Scope of Work required by the Agreement for the composting operation, marketing and sales at the Caja del Rio Landfill as described in RFP No. '19/20/P, per the approach provided to the Agency in Contractor's proposal dated February 8, 2019, and the requirements set forth in the Landfill operating permit, which contains the Mulching and Composting Operations Plan (Contract Documents).

General Scope of Work

- The Landfill's compost facility to be utilized to its fullest extent and capacity by accepting, processing, and marketing quantities of compost, mulch and soil amendment materials.
- Establish a comprehensive composting operation in full compliance with all environmental and composting regulations.
- Establish a practical and sustainable marketing and sales program for all the finished compost products.
- The composting operation to result in a diversion of a significant quantity of materials that otherwise would be disposed of at the Caja del Rio Landfill.

Specific Duties

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

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

Contractor shall conduct the composting operation at the 18-acre compost facility sited at the Landfill. In general, the compost facility is located at the northeast corner of the Landfill and north of the Landfill's maintenance repair shop. The compost facility will consist of active composting and curing areas (static piles and/or windrows), a processing area and an equipment storage area. Any expansion of the compost facility must be approved by the Agency.

Contractor shall operate the composting operation in accordance with the Landfill's operating permit and the nuisance abatement measures taken during normal operation. Contractor shall be responsible for controlling vector populations. Vectors include any rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans. Contractor shall also control odors throughout the composting process, no matter the type of material that is being composted (e.g., green waste, manure, food waste, etc.). Contractor shall minimize the risks of fires caused

by spontaneous combustion during the composting process by monitoring moisture, temperature and pile size. Contractor shall be responsible for any costs related to fire mitigation and providing a fire safety plan to the Agency.

Contractor shall have a certified compost operator onsite at all times during the composting operation and delivery of food waste. Should certification(s) lapse, or should Contractor otherwise default on its obligations pursuant to this Agreement, such that the Agency is required to terminate this Agreement and take over the composting operations, or perform services that Contractor agrees to perform pursuant to this Agreement, Contractor shall compensate the Agency for the reasonable costs and expenses incurred by the Agency.

Contractor shall update the Mulching and Composting Operations Plan listed in the Landfill operating permit (Revision No. 3, dated May 5, 2015) to match Contractor's proposed composting operation, which in turn the Agency shall submit the updated plan to the New Mexico Environment Department (NMED). Upon approval from NMED, Contractor shall commence the approved composting operation.

Contractor shall assist the Agency in developing an NMED approved closure plan for the composting operation, an estimate of the financial assurance to cover the costs of a third party performing the closure and the means to cover the costs (e.g., performance bond, etc.).

Contractor agrees to market and sell one or more 'recipes' of compost based on the delivered feed stock materials and the process methods that Contractor uses to compost the feed stock materials (e.g., mulch, manure, food waste, wood and paper products).

Contractor agrees to use best efforts to market and sell the finished compost products at a rate that matches the market demand and no longer than eighteen (18) months after the commencement of the curing phase of each compost windrow or static pile. Contractor may request additional time by updating the Mulching and Composting Operations Plan. Marketing and sales are the sole responsibility of Contractor.

Contractor shall test the compost material, at a minimum, for heat production, pH, moisture content, and other physical signs of active composting to ensure a quality product for its intended use.

Contractor shall pay the Agency \$4.00 per ton for all mulch and finished compost products sold by Contractor as weighed across the truck scales located at the Landfill on a monthly basis until all of the finished compost products have been sold. All mulch and finished compost products not sold by Contractor upon the termination of this Agreement shall remain the property of the Agency. Contractor shall have the opportunity to purchase any such remaining materials at the market rate and shall, if an agreement to purchase is reached, be given a reasonable time, not to exceed six months, to remove the materials from the premises.

Contractor agrees to sell the majority of the mulch and finished compost products for retail at one or more of its facilities to minimize vehicle traffic at the Landfill.

Contractor shall provide to the Agency the data necessary for the NMED annual report due in February each year. In addition, Contractor shall provide a quarterly status report to the Agency that will include information on the material coming into the facility and leaving, identify any known compliance issues, and associated mitigating measures necessary for facility compliance, etc. The details of this report will be agreed upon between both Contractor and the Agency.

Contractor understands that there is no potable water at the Landfill. The Agency receives treated effluent wastewater (reclaimed wastewater) from the City of Santa Fe Wastewater Plant via Marty Sanchez Golf Course. The Agency operates and monitors the use of Class 1B reclaimed wastewater under NMED Discharge Permit No. DP-1120. Contractor may use the available reclaimed wastewater for its composting operation and dust control. If reclaimed wastewater is not available on site for Contractor, then Contractor shall pay for transporting reclaimed wastewater to the composting facility for composting and dust control.

Contractor shall pay the Agency for its use of the reclaimed wastewater at fifty (50) percent of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987), plus administrative costs and applicable state taxes.

Contractor may use potable water from outside sources for the composting operation at Contractor's own expense.

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

The Agency operates under a Title V air quality operating permit with the Environmental Protection Agency (EPA). Contractor shall operate machinery in compliance with the approved operating permit.

Contractor shall be responsible for being in compliance with the New Mexico Department of Agriculture (NMDA) requirements regarding the sale of a soil amendment, such as compost.

Contractor shall be responsible for any and all violations imposed by NMED, the Environmental Protection Agency (EPA), NMDA, or other regulatory agencies as they relate to the composting operation. In the event that the violations are not corrected in a timely manner, the Agency has the right to terminate the Agreement with Contractor for the use and operation of the composting facility.

Contractor shall be required to comply with all rules and regulations promulgated by the New Mexico Department of Motor Safety and the Federal Motor Carrier Safety Administration. Contractor shall abide by the rules and regulations related to maximum vehicle weights as no loaded vehicles will be permitted to leave Agency property in excess of these limits.

The Landfill's operating hours are Monday through Saturday, 7:00 a.m. to 5:00 p.m. Contractor shall perform the composting operation during the stated operational hours. Contractor may request to operate outside of these hours with prior written authorization by the Agency.

Contractor shall provide a plan for handling small vehicle traffic at the Landfill for approval by the Agency to ensure compliance with the current Landfill operating plan.

Contractor shall accept deliveries of feed stock materials (e.g., mulch, manure, food waste, wood and paper products) between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. Contractor may request to operate outside of these hours with prior written authorization by the Agency. Contractor agrees not to operate the composting operation during inclement weather (e.g., high wind conditions).

Contractor and its customers shall adhere to the posted speed limits at all times including the following: 45 miles per hour (mph) on Caja del Rio Road, 35 mph on Wildlife Way before the first gate to the Landfill, 30 mph on Wildlife Way between the first and second gates to the Landfill and 25 mph inside the second gate on the paved and unpaved access roads inside the Landfill.

The Agency owns a 2003 Duratech Tromax 7216 trommel screen (Serial #30-6-FI-0111) with approximately 200 machine hours of use. Contractor may use the trommel screen for a rate of \$100.00 per year. Contractor shall maintain and repair the trommel machine. The trommel machine shall be utilized only at the Landfill. Contractor shall ensure proper handling and disposal of all waste products resulting from maintenance of the trommel screen.

The Agency owns a 2002 Caterpillar 613C 5,000-gallon water wagon (Serial #8LJ02377) with approximately 7,499 machine hours of use. Contractor may use the water wagon for a rate of \$1,000 per year. Contractor shall maintain and repair the water wagon. The water wagon shall be utilized only at the Landfill. Contractor shall ensure proper handling of treated effluent water resulting from the use of the water wagon.

The Agency shall act as scale master for all loads of incoming feed stock materials delivered and outgoing finished compost products removed from the Landfill. As such, the Agency retains the right to enforce weight limits as described in this Scope of Work. The Agency's scale house shall also serve as the scale of record to determine the weight of finished compost products removed from the Landfill and subsequent payments potentially due to the Agency. The Agency can provide "double prints" of the scale tickets for Contractor to use for billing purposes. All monetary transactions will be handled directly with Contractor.

The Agency shall be responsible for grinding green waste into mulch at the Buckman Road Recycling and Transfer Station (BuRRT). Green waste includes, but is not limited to, cuttings and trimmings from trees, shrubs, or lawns and similar materials. Green waste does not include rock, dirt, metal, plastic, paper or any type of construction and demolition materials. The mulch may contain residues of paper, plastics and metal.

The Agency may sell approximately 7,000 cubic yards of mulch a year to customers on a first come, first serve basis (e.g., the City of Santa Fe Wastewater Treatment Plant, Santa Fe residents, etc.). Contractor shall be responsible for composting the remaining mulch not sold to customers, which will vary from year to year. The Agency anticipates between 20,000 and 25,000 cubic yards of mulch to be available to Contractor annually with no minimum guarantee to Contractor. In the

event the Agency has no mulch available, Contractor may supplement the composting operation with other feed stock materials upon approval by the Agency.

The Agency shall be responsible for transporting mulch from the BuRRT facility to the compost facility at the Landfill.

The Agency may add the following materials to the green waste mulching program in effort to increase diversion from the Landfill:

- Food Waste
- Stumps/Trunks
- Pallets
- Untreated Dimensional Lumber

The Agency shall accept food waste and manure from customers approved by the Agency at the Landfill at no charge unless new fees are established in future solid waste fee ordinance(s).

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

When requested by Contractor, the Agency shall deliver finished compost products, mulch and manure to Contractor's organic soil yard located at 6037 Ague Fria Street, Santa Fe, NM, or another Contractor facility as long as the facility is located within a 25-mile radius from one of the Agency's facilities that accepts the materials.

The Agency makes no representation or warranties as to the finished compost products, mulch and manure and Contractor accepts the material as is and as delivered.

Deliveries will be made when the Agency has sufficient staff to operate its daily operations without interruption.

Each load delivered to Contractor's facility shall be charged at \$100.00 per load. In addition to the transportation charge, material sales for finished compost products, mulch and manure delivered to Contractor's facility shall be charged at \$4.00 per cubic yard.

Contractor shall provide a dedicated area at their facility for the Agency to drop-off materials.

Contractor's staff will be on site to ensure that the Agency has access to the facility for the purposes of delivering materials.

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

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

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

ATTACHMENT 2

Services Agreement – Amendment No. 2

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 2
SERVICES AGREEMENT
PAYNE'S NURSERY & GREENHOUSES, INC.**

(Composting Operation, Marketing and Sales at the Caja del Rio Landfill - 2019)

This AMENDMENT No. 2 ("Amendment") to the SERVICES AGREEMENT, dated March 21, 2019 ("Agreement"), is made and entered into between the Santa Fe Solid Waste Management Agency ("Agency") and Payne's Nursery & Greenhouses, Inc. ("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 operate the Composting Facility at the Caja del Rio Landfill and to market the mulch and finished compost products for sale to prospective buyers (RFP No. '19/20/P).

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. 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 21, 2022, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.
- B. Pursuant to the limitations on multi-term contracts for professional services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed four years, including all extensions and renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor.

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.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT No. 2 to the Agreement as of the dates set forth below.

**SANTA FE SOLID WASTE
MANAGEMENT AGENCY:**

Randall Kippenbrock
Randall Kippenbrock, P.E.
Executive Director

3-22-21
Date:

CONTRACTOR:

Lynn Payne
Lynn Payne
President and Chief Executive Officer
Payne's Nursery & Greenhouses, Inc.

3/22/21
Date:

APPROVED AS TO FORM:

Nancy R. Long
Nancy R. Long
Agency Attorney

3-22-2021
Date:

ATTACHMENT 3

Services Agreement – Amendment No. 1

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 1
SERVICES AGREEMENT
PAYNE'S NURSERY & GREENHOUSES, INC.**

(Composting Operation, Marketing and Sales at the Caja del Rio Landfill - 2019)

This AMENDMENT No. 1 ("Amendment") to the SERVICES AGREEMENT, dated March 21, 2019 ("Agreement"), is made and entered into between the Santa Fe Solid Waste Management Agency ("Agency") and Payne's Nursery & Greenhouses, Inc. ("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 operate the Composting Facility at the Caja del Rio Landfill and to market the mulch and finished compost products for sale to prospective buyers (RFP No. '19/20/P).

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. 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 21, 2021, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.
- B. Pursuant to the limitations on multi-term contracts for professional services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed four years, including all extensions and renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor.

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.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT No. 1 to the Agreement as of the dates set forth below.

**SANTA FE SOLID WASTE
MANAGEMENT AGENCY:**

Randall Kippenbrock
Randall Kippenbrock, P.E.
Executive Director

3-16-20
Date:

CONTRACTOR:

Lynn Payne
Lynn Payne
President and Chief Executive Officer
Payne's Nursery & Greenhouses, Inc.

3/18/20
Date:

APPROVED AS TO FORM:

Nancy R. Long
Nancy R. Long
Agency Attorney

3-11-2020
Date:

ATTACHMENT 4

Services Agreement with Payne's Nursery

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
SERVICES AGREEMENT
WITH PAYNES NURSERY & GREENHOUSES, INC.
(Composting Operation, Marketing and Sales at the Caja del Rio Landfill - 2019)**

This SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and Payne’s Nursery & Greenhouses, Inc. (“Contractor”) to operate the Composting Facility at the Caja del Rio Landfill and to market the mulch and finished compost products for sale to prospective buyers (RFP No. ‘19/20/P), as described in Exhibit A and below. The Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. SCOPE OF SERVICES

The services subject to this Agreement are set forth in the Scope of Work attached hereto as Exhibit A. Contractor shall compost green waste provided by the Agency, and other suitable materials (e.g., food waste, manure, wood products) at the Composting Facility located at the Caja del Rio Landfill. It shall be the responsibility of Contractor to perform according to the terms of this Agreement, those established in Exhibit A, and in the other Contract Documents; to comply with all federal, state, and local laws and regulations; to obtain and comply with any permitting or licensing requirements, including but not limited to requirements imposed by environmental regulatory entities; and to market and sell finished compost and other products pursuant to the schedule set forth in Exhibit A.

2. STANDARDS OF PERFORMANCE; LICENSES

Contractor represents that it possesses the experience and knowledge necessary to perform the services described in this Agreement. 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. Contractor shall pay to the Agency \$4.00 per ton from the sale of mulch and finished compost products as weighed across the scales located at the Caja del Rio Landfill on a monthly basis.

B. Contractor shall pay the Agency for reclaimed wastewater used by Contractor at the Landfill at fifty (50) percent of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987), plus administrative costs and applicable state taxes.

C. Contractor shall pay the Agency for the use of a trommel screen machine that is owned by the Agency at the rate of \$100.00 per year.

D. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico, if any, on any value received by Contractor under this Agreement.

E. Compensation shall be paid in accordance with the fee schedule set forth in the Scope of Work hereto attached in Exhibit A.

F. Contractor shall not be compensated for any costs, expenses, or other items associated with this Agreement.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate upon written notice from the Agency to Contractor. Compensation shall be paid for all activities performed up to the date of notification under this Article and Article 6 of this Agreement. The Agency's

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

5. **TERM AND EFFECTIVE DATE**

A. This Agreement shall be effective when signed by the Agency and terminate on March 21, 2020, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.

B. Pursuant to the limitations on multi-term contracts for services contracts codified in NMSA 1978 § 13-1-150, this Agreement may not exceed four (4) years, including all extensions and renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor and approved by the Joint Powers Board.

6. **TERMINATION**

A. The Agency may terminate this Agreement at any time and for any reason by giving thirty (30) days written notice to Contractor. Reason for terminating the Agreement shall include, but not be limited to, Contractor's failure to make substantial progress towards the operation, marketing and sale of the mulch and finished compost products or Contractor's failure to correct a violation within the time frame stated by the regulatory agency. If the Agency terminates the Agreement:

(1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Agency original copies of all work product, research, or papers prepared for the services covered by this Agreement.

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

B. The Agency further reserves the right to cancel all or any part of this Agreement without cost to the Agency if Contractor fails to meet the provisions of this Agreement, and except as otherwise provided herein, to hold Contractor liable for any costs associated with Contractor's default. Contractor shall not be liable for any costs if failure to perform is due to causes beyond its control and not the fault of Contractor's conduct and these causes have been made known to the Agency in written form within five working days of Contractor becoming aware of a cause which may create any default or delay in performance. Such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the Agency shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit Contractor to meet its performance obligations. The rights and remedies of the Agency are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

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

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

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

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

obligations pursuant to this Agreement.

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

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

10. ASSIGNMENT; SUBCONTRACTING

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

11. RELEASE

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

12. INSURANCE

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

(a) obtained, and upon Agency's request provided to Agency, insurance certificates reflecting evidence of all insurance required herein; however, the Agency reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by Agency; (b) obtained Agency approval of each company or companies as required below; and (c) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by Agency. Further, Contractor shall not modify any policy or endorsement thereto which increases Agency's exposure to loss for the duration of this Agreement.

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

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

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

(2) Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect,

automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to Agency that reflects coverage for any automobile.

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

Employers Liability Limits as follows:

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

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

(4) Environmental Impairment Liability. For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, an Environmental Impairment Liability policy. Such policy shall provide a limit of not less than \$1,000,000 per loss claim.

C. Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail

such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.” In the event Contractors’ insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the Agency within four working days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

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

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

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

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

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

I. The Agency reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the Agency. The Agency will reimburse Contractor for the cost of the additional premium for any coverage requested by the Agency in excess of that required by this Agreement without overhead, profit, or any other markup.

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

13. INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action, or demand whatsoever to the extent arising from the negligent acts, errors, or omissions, or willful and reckless disregard of obligations under this Agreement, in the performance of any services covered by this Agreement, whether occurring on Agency managed or owned property or otherwise, by Contractor or its employees, agents, representatives, or subcontractors, excepting only such liability that arises out of the Agency's negligence.

14. NEW MEXICO TORT CLAIMS ACT

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

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title, or interest in, or for the benefit of, any person other than the Agency and Contractor. No person shall claim any

right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary.

16. RECORDS AND AUDIT

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

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

This Agreement expresses the entire agreement and understanding between the parties with respect to the services set forth in the Scope of Work attached hereto as Exhibit A. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. **NON-DISCRIMINATION**

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the services Contractor undertakes pursuant to this Agreement on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. **SEVERABILITY**

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

22. **NOTICES**

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

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

CONTRACTOR: Mr. Lynn Payne
President and Chief Executive Officer
Payne's Nursery & Greenhouses, Inc.
715 St. Michael's Drive
Santa Fe, NM 87505

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

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

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

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

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hamilton
Anna Hamilton
Chairperson

3/21/19
Date:

ATTEST:

Geraldine Salazar 3/28/2019
Geraldine Salazar
Santa Fe County Clerk



CONTRACTOR:

LDB/E
Lynn Payne
President and Chief Executive Officer
Payne's Nursery & Greenhouses, Inc.

3/22/19
Date:

APPROVED AS TO FORM:

Nancy Long
Nancy Long
Agency Attorney

3-21-19
Date:

EXHIBIT A

Scope of Work

SCOPE OF WORK

Contractor warrants that they have the expertise and the appropriate resources to perform the Scope of Work required by the Agreement for the composting operation, marketing and sales at the Caja del Rio Landfill as described in RFP No. '19/20/P, per the approach provided to the Agency in Contractor's proposal dated February 8, 2019, and the requirements set forth in the Landfill operating permit, which contains the Mulching and Composting Operations Plan (Contract Documents).

General Scope of Work

- The Landfill's compost facility to be utilized to its fullest extent and capacity by accepting, processing, and marketing quantities of compost, mulch and soil amendment materials.
- Establish a comprehensive composting operation in full compliance with all environmental and composting regulations.
- Establish a practical and sustainable marketing and sales program for all the finished compost products.
- The composting operation to result in a diversion of a significant quantity of materials that otherwise would be disposed of at the Caja del Rio Landfill.

Specific Duties

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

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

Contractor shall conduct the composting operation at the 18-acre compost facility sited at the Landfill. In general, the compost facility is located at the northeast corner of the Landfill and north of the Landfill's maintenance repair shop. The compost facility will consist of active composting and curing areas (static piles and/or windrows), a processing area and an equipment storage area. Any expansion of the compost facility must be approved by the Agency.

Contractor shall operate the composting operation in accordance with the Landfill's operating permit and the nuisance abatement measures taken during normal operation. Contractor shall be responsible for controlling vector populations. Vectors include any rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans. Contractor shall also control odors throughout the composting process, no matter the type of material that is being composted (e.g., green waste, manure, food waste, etc.). Contractor shall minimize the risks of fires caused

by spontaneous combustion during the composting process by monitoring moisture, temperature and pile size. Contractor shall be responsible for any costs related to fire mitigation and providing a fire safety plan to the Agency.

Contractor shall have a certified compost operator onsite at all times during the composting operation and delivery of food waste. Should certification(s) lapse, or should Contractor otherwise default on its obligations pursuant to this Agreement, such that the Agency is required to terminate this Agreement and take over the composting operations, or perform services that Contractor agrees to perform pursuant to this Agreement, Contractor shall compensate the Agency for the reasonable costs and expenses incurred by the Agency.

Contractor shall update the Mulching and Composting Operations Plan listed in the Landfill operating permit (Revision No. 3, dated May 5, 2015) to match Contractor's proposed composting operation, which in turn the Agency shall submit the updated plan to the New Mexico Environment Department (NMED). Upon approval from NMED, Contractor shall commence the approved composting operation.

Contractor shall assist the Agency in developing an NMED approved closure plan for the composting operation, an estimate of the financial assurance to cover the costs of a third party performing the closure and the means to cover the costs (e.g., performance bond, etc.).

Contractor agrees to market and sell one or more 'recipes' of compost based on the delivered feed stock materials and the process methods that Contractor uses to compost the feed stock materials (e.g., mulch, manure, food waste, wood and paper products).

Contractor agrees to use best efforts to market and sell the finished compost products at a rate that matches the market demand and no longer than eighteen (18) months after the commencement of the curing phase of each compost windrow or static pile. Contractor may request additional time by updating the Mulching and Composting Operations Plan. Marketing and sales are the sole responsibility of Contractor.

Contractor shall test the compost material, at a minimum, for heat production, pH, moisture content, and other physical signs of active composting to ensure a quality product for its intended use.

Contractor shall pay the Agency \$4.00 per ton for all mulch and finished compost products sold by Contractor as weighed across the truck scales located at the Landfill on a monthly basis until all of the finished compost products have been sold. All mulch and finished compost products not sold by Contractor upon the termination of this Agreement shall remain the property of the Agency. Contractor shall have the opportunity to purchase any such remaining materials at the market rate and shall, if an agreement to purchase is reached, be given a reasonable time, not to exceed six months, to remove the materials from the premises.

Contractor agrees to sell the majority of the mulch and finished compost products for retail at one or more of its facilities to minimize vehicle traffic at the Landfill.

Contractor shall provide to the Agency the data necessary for the NMED annual report due in February each year. In addition, Contractor shall provide a quarterly status report to the Agency that will include information on the material coming into the facility and leaving, identify any known compliance issues, and associated mitigating measures necessary for facility compliance, etc. The details of this report will be agreed upon between both Contractor and the Agency.

Contractor understands that there is no potable water at the Landfill. The Agency receives treated effluent wastewater (reclaimed wastewater) from the City of Santa Fe Wastewater Plant via Marty Sanchez Golf Course. The Agency operates and monitors the use of Class 1B reclaimed wastewater under NMED Discharge Permit No. DP-1120. Contractor may use the available reclaimed wastewater for its composting operation and dust control. If reclaimed wastewater is not available on site for Contractor, then Contractor shall pay for transporting reclaimed wastewater to the composting facility for composting and dust control.

Contractor shall pay the Agency for its use of the reclaimed wastewater at fifty (50) percent of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987), plus administrative costs and applicable state taxes.

Contractor may use potable water from outside sources for the composting operation at Contractor's own expense.

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

The Agency operates under a Title V air quality operating permit with the Environmental Protection Agency (EPA). Contractor shall operate machinery in compliance with the approved operating permit.

Contractor shall be responsible for being in compliance with the New Mexico Department of Agriculture (NMDA) requirements regarding the sale of a soil amendment, such as compost.

Contractor shall be responsible for any and all violations imposed by NMED, the Environmental Protection Agency (EPA), NMDA, or other regulatory agencies as they relate to the composting operation. In the event that the violations are not corrected in a timely manner, the Agency has the right to terminate the Agreement with Contractor for the use and operation of the composting facility.

Contractor shall be required to comply with all rules and regulations promulgated by the New Mexico Department of Motor Safety and the Federal Motor Carrier Safety Administration. Contractor shall abide by the rules and regulations related to maximum vehicle weights as no loaded vehicles will be permitted to leave Agency property in excess of these limits.

The Landfill's operating hours are Monday through Saturday, 7:00 a.m. to 5:00 p.m. Contractor shall perform the composting operation during the stated operational hours. Contractor may request to operate outside of these hours with prior written authorization by the Agency.

Contractor shall provide a plan for handling small vehicle traffic at the Landfill for approval by the Agency to ensure compliance with the current Landfill operating plan.

Contractor shall accept deliveries of feed stock materials (e.g., mulch, manure, food waste, wood and paper products) between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. Contractor may request to operate outside of these hours with prior written authorization by the Agency. Contractor agrees not to operate the composting operation during inclement weather (e.g., high wind conditions).

Contractor and its customers shall adhere to the posted speed limits at all times including the following: 45 miles per hour (mph) on Caja del Rio Road, 35 mph on Wildlife Way before the first gate to the Landfill, 30 mph on Wildlife Way between the first and second gates to the Landfill and 25 mph inside the second gate on the paved and unpaved access roads inside the Landfill.

The Agency owns a 2003 Duratech Tromax 7216 trommel screen (Serial no. 30-6-FI-0111) with approximately 200 machine hours of use. Contractor may use the trommel screen for a rate of \$100.00 per year. Contractor shall maintain and repair the trommel machine. The trommel machine shall be utilized only at the Landfill. Contractor shall ensure proper handling and disposal of all waste products resulting from maintenance of the trommel screen.

The Agency shall act as scale master for all loads of incoming feed stock materials delivered and outgoing finished compost products removed from the Landfill. As such, the Agency retains the right to enforce weight limits as described in this Scope of Work. The Agency's scale house shall also serve as the scale of record to determine the weight of finished compost products removed from the Landfill and subsequent payments potentially due to the Agency. The Agency can provide "double prints" of the scale tickets for Contractor to use for billing purposes. All monetary transactions will be handled directly with Contractor.

The Agency shall be responsible for grinding green waste into mulch at the Buckman Road Recycling and Transfer Station (BuRRT). Green waste includes, but is not limited to, cuttings and trimmings from trees, shrubs, or lawns and similar materials. Green waste does not include rock, dirt, metal, plastic, paper or any type of construction and demolition materials. The mulch may contain residues of paper, plastics and metal.

The Agency may sell approximately 7,000 cubic yards of mulch a year to customers on a first come, first serve basis (e.g., the City of Santa Fe Wastewater Treatment Plant, Santa Fe residents, etc.). Contractor shall be responsible for composting the remaining mulch not sold to customers, which will vary from year to year. The Agency anticipates between 20,000 and 25,000 cubic yards of mulch to be available to Contractor annually with no minimum guarantee to Contractor. In the event the Agency has no mulch available, Contractor may supplement the composting operation with other feed stock materials upon approval by the Agency.

The Agency shall be responsible for transporting mulch from the BuRRT facility to the compost facility at the Landfill.

The Agency may add the following materials to the green waste mulching program in effort to increase diversion from the Landfill:

- Food Waste
- Stumps/Trunks
- Pallets
- Untreated Dimensional Lumber

The Agency shall accept food waste and manure from customers approved by the Agency at the Landfill at no charge unless new fees are established in future solid waste fee ordinance(s).

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

When requested by Contractor, the Agency shall deliver finished compost products, mulch and manure to Contractor's organic soil yard located at 6037 Ague Fria Street, Santa Fe, NM, or another Contractor facility as long as the facility is located within a 25-mile radius from one of the Agency's facilities that accepts the materials.

The Agency makes no representation or warranties as to the finished compost products, mulch and manure and Contractor accepts the material as is and as delivered.

Deliveries will be made when the Agency has sufficient staff to operate its daily operations without interruption.

Each load delivered to Contractor's facility shall be charged at \$100.00 per load. In addition to the transportation charge, material sales for finished compost products, mulch and manure delivered to Contractor's facility shall be charged at \$4.00 per cubic yard.

Contractor shall provide a dedicated area at their facility for the Agency to drop-off materials.


Contractor's staff will be on site to ensure that the Agency has access to the facility for the purposes of delivering materials.

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

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

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

MEMORANDUM

To: SFSWMA Joint Powers Board
From: Randall Kippenbrock, P.E., Executive Director 
Date: March 11, 2021
Subject: Request for Approval of Resolution 2022-____, A Resolution Determining Reasonable Notice for Public Meetings of the Santa Fe Solid Waste Management Agency

SUMMARY

The proposed Resolution 2022-____ rescinds Resolution 2021-1 – related to the New Mexico Open Meetings Act – and adopts annual notice requirements for 2022.

The Open Meetings Act requires a public body to "determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body" [NMSA 1978, Section 10-15-1 (D)].

There are no substantive differences between the proposed Resolution 2022-____ and the current Resolution 2021-1.

The proposed resolution maintains the languages from the current resolution for public emergency health provisions to hold meetings virtually.

ACTION REQUESTED

The Agency recommends approval of Resolution 2022-____.

Attachments:

- 1) Proposed Resolution 2022-____. A Resolution Determining Reasonable Notice for Public Meetings of the Santa Fe Solid Waste Management Agency
- 2) Redline Version of Resolution 2021-1

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ATTACHMENT 1

**Proposed Resolution 2022-____
A Resolution Determining Reasonable Notice for Public Meetings of the Santa Fe Solid
Waste Management Agency**

SANTA FE SOLID WASTE MANAGEMENT AGENCY

RESOLUTION NO. 2022-____

A RESOLUTION DETERMINING REASONABLE NOTICE FOR PUBLIC MEETINGS OF THE SANTA FE SOLID WASTE MANAGEMENT AGENCY

WHEREAS, NMSA 1978, Section 10-15-1 *et seq.*, as amended, known as the Open Meetings Act, provides that all meetings of a quorum of members of any board, commission, or other policy-making body of any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations, or ordinances, discussion of public business or taking any action within the authority or the delegated authority of any board are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act; and

WHEREAS, the Open Meetings Act further provides that any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs, and at which a majority or quorum of the body is in attendance, and any closed meeting shall be held only after reasonable notice to the public of its meetings as required by the Open Meetings Act and that the affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body; and

WHEREAS, on March 11, 2020, Governor Michelle Lujan Grisham issued Executive Order No. 2020-004 declaring a public health emergency due to the spread of COVID19 in New Mexico, after which time, the Governor and the Department of Health issued additional executive orders limiting gatherings, closing state buildings, directing residents to stay at home, and other measures to reduce in-person contact and transmission of the coronavirus; and

WHEREAS, the New Mexico Attorney General provided guidance to public entities regarding their ongoing obligations to comply with the Open Meetings Act during the state of public health emergency in New Mexico; and

WHEREAS, the Santa Fe Solid Waste Management Agency Joint Powers Board (the “Board”) will participate in meetings virtually via videoconferencing, teleconferencing, or similar technology when advisable due to the public health emergency; and

WHEREAS, the Santa Fe Solid Waste Management Agency (the “Agency”) will include information on the agendas on how members of the public can listen and participate in meetings remotely; and

WHEREAS, the Agency now desires to adopt this Open Meetings Act Resolution in compliance with the Act’s requirement for annual determination of reasonable notice for meetings of the Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE SANTA FE SOLID WASTE MANAGEMENT AGENCY THAT:

1. Regular, Special and Emergency Meetings shall be held as follows:
 - a. Regular Meetings: Regular meetings shall be held as determined by the Agency, and notice to the public of any and all regular meetings shall be given at least seven (7) days in advance of any meeting of a quorum of the Board held for the purpose of taking any action within the authority of the Board. A notice shall be posted in a conspicuous and appropriate place at the Santa Fe County Administration Complex and the Santa Fe City Clerk’s Office at least seven (7) days prior to the public meeting, and notice shall be published in a newspaper of general circulation at least seven (7) days before such a meeting. Notice of meetings shall be provided

to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for such notices.

- b. Special Meetings: Special meetings may be scheduled by the Chairperson or by a majority of the Board at such time and place as in the opinion of the Chairperson or a majority of the Board a special meeting should take place to consider and take action on public business. Notice of such special meetings shall be posted in a conspicuous and appropriate place at the Santa Fe County Administration Complex and Santa Fe City Clerk's office at least seventy-two (72) hours prior to the public meeting. Notice of meetings shall be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for such notices.
- c. Emergency Meeting: Emergency meetings may be scheduled by the Chairperson or by a majority of the Board to consider any matter which could not have been anticipated and which threatens the health, welfare or safety of the citizens of Santa Fe County or to protect the Agency from substantial financial loss if not addressed immediately by the Agency. Emergency meetings may be conducted at a time and place designated by the Chairperson or by a majority of the Board, and notice of such meetings shall be posted in a conspicuous and appropriate place at the Santa Fe County Administration Complex and Santa Fe City Clerk's office at least twenty-four (24) hours prior to the emergency meeting, if possible. If twenty-four (24) hours advance notice cannot be given, notice shall be posted as soon as possible under the circumstances. Notice for emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the

agenda. Notice of meetings shall be provided to broadcast stations licensed by the Federal Communication Commission and newspapers of general circulation that have made a written request for notices. Within ten (10) days of taking action on an emergency matter, the Agency shall report to the attorney general's office the action taken and the circumstances creating the emergency.

- d. Agendas: Any notice for meetings of the Board shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting, or information on how the public may obtain a copy of an agenda. At least seventy-two (72) hours before a regular or special meeting the agenda shall be made available at the Santa Fe County Administration Complex, 100 Catron Street and the Santa Fe City Clerk's Office, 200 Lincoln Avenue, Santa Fe, New Mexico, and shall be posted on the Agency's website at www.sfswma.org. Board members shall have the right to have matters placed on the agenda at their request.
- e. Public Health Emergency Provisions: Notwithstanding any other provision of this Resolution, meeting locations, in-person meetings, posting requirements and any other deviation deemed necessary or advisable due to any public health emergency or conditions, including any emergency as may be declared by the WHO and/or the New Mexico Department of Health or other public health authority, may be made, while taking into account any guidance provided by the New Mexico Attorney General's Office for public meetings during public health emergencies. Specifically, Board members may participate remotely in meetings by conference telephone, video platforms or other similar communications equipment provided that means are provided to allow for the public to hear and/or view the Board

meeting. Additionally, the Board Chair has the authority to take the following actions: (i) exclude or limit the public from in-person attendance at meetings, provided that the public may witness the meeting either by telephone or video means; or (ii) cancel any meeting prior to commencement of such meeting to preserve the public health, safety and welfare.

2. **BE IT FURTHER RESOLVED**, that the Agency may recess and reconvene a meeting to a later day if, prior to recessing, the Agency specifies the date, time and place for continuation of the meeting, and immediately following the recessed meeting posts notice of the date, time and place of the reconvened meeting on or near the door of the place where the original meeting was held and on the public bulletin board at the Santa Fe County Administration Complex or Santa Fe City Clerk's Office. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.
3. **BE IT FURTHER RESOLVED**, that a member of the Board may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.
4. **BE IT FURTHER RESOLVED**, that notwithstanding any provision contained herein, the Agency may establish such additional notice requirements as may be deemed necessary and advisable.
5. **BE IT FURTHER RESOLVED**, that Resolution 2021-1 is hereby rescinded.

PASSED, APPROVED, AND ADOPTED this 17th day of March 2022.

**SANTA FE SOLID WASTE
MANAGEMENT AGENCY:**

Anna Hansen
Chair, Joint Powers Board

Date:

ATTEST:

Katharine E. Clark
Santa Fe County Clerk

Date

APPROVED AS TO FORM:

Nancy R. Long
Agency Attorney

Date:

ATTACHMENT 1

Redline Version of Resolution 2021-1

SANTA FE SOLID WASTE MANAGEMENT AGENCY

RESOLUTION NO. ~~2021~~2022-1

A RESOLUTION DETERMINING REASONABLE NOTICE FOR PUBLIC MEETINGS OF THE SANTA FE SOLID WASTE MANAGEMENT AGENCY

WHEREAS, NMSA 1978, § ~~Section~~ 10-15-1 *et seq.*, as amended, known as the Open Meetings Act, provides ~~in part that the formulation of public policy or the conduct of business by vote shall not be conducted in closed meetings, and that~~ all meetings of a quorum of members of any board, commission, or other policy-making body of any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations, or ordinances, discussion of public business or taking any action within the authority or the delegated authority of any board are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act; and

WHEREAS, the Open Meetings Act further provides that any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs, and at which a majority or quorum of the body is in attendance, and any closed meeting shall be held only after reasonable notice to the public of its meetings as required by the Open Meetings Act and that the affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body; and

WHEREAS, on March 11, 2020, Governor Michelle Lujan Grisham issued Executive Order No. 2020-004 declaring a public health emergency due to the spread of COVID19 in New Mexico, after which time, the Governor and the Department of Health issued additional executive

orders limiting gatherings, closing state buildings, directing residents to stay at home, and other measures to reduce in-person contact and transmission of the coronavirus; and

WHEREAS, the New Mexico Attorney General provided guidance to public entities regarding their ongoing obligations to comply with the Open Meetings Act during the state of public health emergency in New Mexico; and

WHEREAS, the Santa Fe Solid Waste Management Agency Joint Powers Board (the “Board”) will participate in meetings virtually via videoconferencing, teleconferencing, or similar technology when advisable due to the public health emergency; and

WHEREAS, the Santa Fe Solid Waste Management Agency (the “Agency”) will include information on the agendas on how members of the public can listen and participate in meetings remotely; and

WHEREAS, the Agency now desires to adopt this Open Meetings Act Resolution in compliance with the Act’s requirement for annual determination of reasonable notice for meetings of the Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE SANTA FE SOLID WASTE MANAGEMENT AGENCY THAT:

1. Regular, Special and Emergency Meetings shall be held as follows:
 - a. Regular Meetings: Regular meetings shall be held as determined by the Agency, and notice to the public of any and all regular meetings shall be given at least seven (7) days in advance of any meeting of a quorum of the Board held for the purpose of taking any action within the authority of the Board. A notice shall be posted in a conspicuous and appropriate place at the Santa Fe County Administration Complex and the Santa Fe City Clerk’s Office at least seven (7) days prior to the

public meeting, and notice shall be published in a newspaper of general circulation at least seven (7) days before such a meeting. Notice of meetings shall be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for such notices.

- b. Special Meetings: Special meetings may be scheduled by the Chairperson or by a majority of the Board at such time and place as in the opinion of the Chairperson or a majority of the Board a special meeting should take place to consider and take action on public business. Notice of such special meetings shall be posted in a conspicuous and appropriate place at the Santa Fe County Administration Complex and Santa Fe City Clerk's office at least seventy-two (72) hours prior to the public meeting. Notice of meetings shall be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for such notices.
- c. Emergency Meeting: Emergency meetings may be scheduled by the Chairperson or by a majority of the Board to consider any matter which could not have been anticipated and which threatens the health, welfare or safety of the citizens of Santa Fe County or to protect the Agency from substantial financial loss if not addressed immediately by the Agency. Emergency meetings may be conducted at a time and place designated by the Chairperson or by a majority of the Board, and notice of such meetings shall be posted in a conspicuous and appropriate place at the Santa Fe County Administration Complex and Santa Fe City Clerk's office at least twenty-four (24) hours prior to the emergency meeting, if possible. If twenty-four (24) hours advance notice cannot be given, notice shall be posted as soon as

possible under the circumstances. Notice for emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Notice of meetings shall be provided to broadcast stations licensed by the Federal Communication Commission and newspapers of general circulation that have made a written request for notices. Within ten (10) days of taking action on an emergency matter, the Agency shall report to the attorney general's office the action taken and the circumstances creating the emergency.

- d. Agendas: Any notice for meetings of the Board shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting, or information on how the public may obtain a copy of an agenda. At least seventy-two (72) hours before a regular or special meeting the agenda shall be made available at the Santa Fe County Administration Complex, 100 Catron Street and the Santa Fe City Clerk's Office, 200 Lincoln Avenue, Santa Fe, New Mexico, and shall be posted on the Agency's website at www.sfswma.org. Board members shall have the right to have matters placed on the agenda at their request.
- e. Public Health Emergency Provisions: Notwithstanding any other provision of this Resolution, meeting locations, in-person meetings, posting requirements and any other deviation deemed necessary or advisable due to any public health emergency or conditions, including any emergency as may be declared by the WHO and/or the New Mexico Department of Health or other public health authority, may be made, while taking into account any guidance provided by the New Mexico Attorney General's Office for public meetings during public health emergencies. Specifically, Board members may participate remotely in meetings by conference

telephone, video platforms or other similar communications equipment provided that means are provided to allow for the public to hear and/or view the Board meeting. Additionally, the Board Chair has the authority to take the following actions: (i) exclude or limit the public from in-person attendance at meetings, provided that the public may witness the meeting either by telephone or video means; or (ii) cancel any meeting prior to commencement of such meeting to preserve the public health, safety and welfare.

2. **BE IT FURTHER RESOLVED**, that the Agency may recess and reconvene a meeting to a later day if, prior to recessing, the Agency specifies the date, time and place for continuation of the meeting, and immediately following the recessed meeting posts notice of the date, time and place of the reconvened meeting on or near the door of the place where the original meeting was held and on the public bulletin board at the Santa Fe County Administration Complex or Santa Fe City Clerk's Office. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.
3. **BE IT FURTHER RESOLVED**, that a member of the Board may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

4. **BE IT FURTHER RESOLVED**, that notwithstanding any provision contained herein, the Agency may establish such additional notice requirements as may be deemed necessary and advisable.

5. **BE IT FURTHER RESOLVED**, that Resolution ~~2020~~2021-1 is hereby rescinded.

PASSED, APPROVED, AND ADOPTED this ~~18th~~17th day of March ~~2021~~2022.

**SANTA FE SOLID WASTE
MANAGEMENT AGENCY:**

~~JoAnne Vigil Coppler~~Anna Hansen Date: _____
Chair, Joint Powers Board

ATTEST:

~~Kristine Bustos-Miheleie~~Katharine E. Clark Date _____
Santa Fe ~~City~~County Clerk

APPROVED AS TO FORM:

Nancy R. Long Date: _____
Agency Attorney