


MEMORANDUM

To: SFSWMA Joint Powers Board
From: Randall Kippenbrock, P.E., Executive Director 
Date: August 9, 2019
Subject: Request for Approval of Amendment No. 1 to Extend the Term to the Price Agreement for Bulk Fuel to Multiple Vendors (Bid No. '19/02/B).

BACKGROUND AND SUMMARY:

The Agency is requesting the Board to approve Amendment No. 1 to the price agreement for Bid No. '19/02/B for bulk fuel to multiple vendors. The price agreement will provide for the continued delivery of bulk fuel (gasoline and diesel) for the Agency's fleet of heavy equipment, over-the-road trucks and vehicles at the Caja del Rio Landfill (Landfill) and the Buckman Road Recycling and Transfer Station (BuRRT).

Funding is available from:

- 8100851.531050 (Diesel Fuel – Landfill)
- 8100852.531050 (Diesel Fuel – BuRRT)
- 8100851.531000 (Unleaded Fuel – Landfill)

On July 13, 2018, the Agency issued Request for Bid No. '19/02/B to secure pricing with multiple vendors for bulk fuel (gasoline and diesel) for the Agency's fleet. On August 16, 2018, the Board awarded Bid No. '19/02/B via price agreement for the following vendors:

Brewer Oil Company, Albuquerque, NM
Honstein Oil and Distributing, Santa Fe, NM
SC Fuels, Albuquerque, NM

The RFB does not commit the Agency to a definite quantity or specific dollar value of bulk fuel. Instead, the RFB allows the Agency to procure fuel on an as-needed basis from multiple vendors.

For each vendor, the term of the price agreement is for one year from date of award with the option to extend for three additional years, on a year-by-year basis, by mutual agreement of all parties and approval of the Agency at the same price, terms specifications, and conditions. The price agreement cannot exceed four years.

Both Brewer Oil Company and Honstein Oil and Distributing have agreed to extend the term of the price agreement to August 24, 2020, at the same price, and upon the terms, specifications and conditions as described in RFB No. '19/02/B.

SC Fuels elected not to renew their price agreement.

ACTION REQUESTED:

The Agency requests approval of Amendment No. 1 to extend the term to the price agreement for Bid No. '19/02/B - Bulk Fuel through August 24, 2020, to multiple vendors.

Attachments:

- 1) Brewer Oil Company
 - a) Amendment No. 1 to the Price Agreement
 - b) Price Agreement (RFB No. '19/02/B Bulk Fuel)

- 2) Honstein Oil & Distributing, LLC
 - a) Amendment No. 1 to the Price Agreement
 - b) Price Agreement (RFB No. '19/02/B Bulk Fuel)

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ATTACHMENT 1
Brewer Oil Company

Amendment No. 1 – Price Agreement

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 1
PRICE AGREEMENT
WITH
BREWER OIL COMPANY
(Bulk Fuel - 2018)**

This AMENDMENT No. 1 (the "Amendment") to the PRICE AGREEMENT ("Agreement") dated August 24, 2018 (the "Agreement"), is made and entered into between the Santa Fe Solid Waste Management Agency ("the Agency") and Brewer Oil Company ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide an indefinite quantity of bulk fuel on an as-needed basis at the same price, and upon the terms, specifications and conditions as described in RFB No. '19/02/B.

Pursuant to Article 24, 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 8, Term and Effective Date of the Agreement is amended to extend the term of the Agreement, so that Article 8 reads in its entirety as follows:

A. This Agreement shall be effective when signed by the Agency and terminate on August 24, 2020, unless it is terminated sooner pursuant to Article 7 or Article 10 of this Agreement.

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

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

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 Santa Fe Solid Waste Management Agency Price Agreement as of the dates set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Renee Villarreal
Chairperson, Joint Powers Board

Date:

ATTEST:

Yolanda Y. Vigil
Santa Fe City Clerk

CONTRACTOR:

Terry D. Calhoun
Sales Manager
Brewer Oil Company

Date:

APPROVED AS TO FORM:

Nancy Long
Agency Attorney

Date:

Price Agreement (RFB No. '19/02/B Bulk Fuel)

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
PRICE AGREEMENT
WITH
BREWER OIL COMPANY
(Bulk Fuel – 2018)**

This PRICE AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and Brewer Oil Company (“Contractor”) for an indefinite quantity of bulk fuel as described in RFB No. ‘19/02/B and below. The Price Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. SCOPE OF AGREEMENT

The items to be provided under this Agreement are set forth in RFB No. ‘19/02/B and all terms, specifications and conditions, contained therein and Contractor's response for cost of items and services submitted thereto, all of which is incorporated into this Agreement and attached hereto as Exhibit A.

2. STANDARDS OF PERFORMANCE; LICENSES

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

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

3. DEFINITIONS

A. "Agency" means the Santa Fe Solid Waste Management Agency.

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

Santa Fe, NM 87507.

C. "Items" means tangible goods or tangible items of personal property required for Agency operations. All items are to be new and of most current production, unless otherwise specified.

D. "Price" means the discounted price or costs for bulk fuel paid by the Agency as described in Exhibit A.

E. "Price Agreement" means this indefinite quantity Price Agreement which requires Contractor to provide bulk fuel to the Agency.

F. "Purchase Order" means a fully executed purchase document issued by the City of Santa Fe Purchasing Department on behalf of the Agency that specifies the items and services to be provided by Contractor.

G. "Services" mean services to be performed by personnel that do not need extensive education or specialty training or licensing. Services excludes professional services that are typically performed by a person holding a license, such as engineering architecture or legal services.

H. "Tangible Goods" are products that can be touched. This includes software licenses and intellectual property.

4. **ITEMS / SERVICES TO BE PROVIDED**

A. Price of Items and Services. Section 11 of Exhibit A of this Agreement contains the prices for Contractor's items (i.e., tangible goods) and services. Exhibit A also indicates any specifications required for the items and services, if any, that are subject of this Agreement.

B. Purchase Orders. The Agency may issue Purchase Orders for the purchase of the items listed in Exhibit A. Any service ordered by the Agency must be a service described in

Exhibit A. All Purchase Orders for items and services issued hereunder must reference the Purchase Order number and Price Agreement number RFB '19/02/B.

C. Quantities. It is understood that this is an indefinite quantity Price Agreement and the Agency may purchase any quantity of the item(s) or services listed in Exhibit A on an as-needed basis. The Agency makes no guarantee or warranty, implied, or otherwise, that any order for any definite quantity of items or services be issued under this Agreement. Contractor shall be required to accept the Purchase Order(s) and furnish the items or services.

D. Specifications. The Services furnished under this Agreement shall meet or exceed the specifications provided in RFB No. '19/02/B, including any addenda. Purchase Orders issued pursuant to this Agreement must show the applicable Agreement items or services.

E. Delivery and Billing Instructions

- 1) Contractor shall deliver the items and services in accordance with the Agency's instructions. Each delivery shall be accompanied by a packing slip which itemizes materials and quantities delivered, packaging, Purchase Order number, Price Agreement number and Agency facility.
- 2) Delivery shall be made within one (1) business day of order placement. Contractor shall notify the Agency immediately if delivery is expected to exceed this time frame or if the complete order cannot be fulfilled.
- 3) Whenever the Agency does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
- 4) Prices listed in Exhibit A shall be the fixed prices for the items and rates for the services, respectively.

- 5) Prices listed in Exhibit A for the items and services shall remain in effect for the term of this Agreement.

5. **COMMERCIAL WARRANTY**

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

6. **PAYMENTS**

- A. All payments under this Agreement are subject to the following provisions.
 - 1) Inspection. Final inspection and acceptance of all items and services ordered shall be made at the Agency facility. Items rejected at the Agency facility for non-conformance with specifications shall be removed, at Contractor's risk and expense, promptly after notice of rejection.
 - 2) Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Agency shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Agency. Unless otherwise agreed upon between the Agency and Contractor, within thirty (30) days from the receipt of items, the Agency shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per

Purchase Order. Unless the Agency gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

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

7. **APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate

upon written notice from the Agency to Contractor. The Agency shall be responsible for charges incurred up to the date of notification under this Section per Section 10 of this Agreement. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

8. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the Agency and terminate on August 24, 2019, unless it is terminated sooner pursuant to Article 7 or Article 10 of this Agreement.

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

9. CANCELLATION

A. The Agency reserves the right to cancel without cost to the Agency all or any part of any order placed under this Agreement if the Agency determines in its sole discretion that the services or deliverables fail to meet the requirements of this Agreement.

B. The failure of Contractor to perform its obligations under this Agreement shall constitute a default of this Agreement and/or the Purchase Order.

C. Contractor may be excused from performance if Contractor's failure to perform the Purchase Order arises out of causes beyond the control and without the fault or negligence of Contractor, unless the Agency shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the federal, state or local government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.

E. In the event that the Agency cancels all, or any part, of any Purchase Order because Contractor failed to meet material provisions of the Purchase Order, Contractor shall be liable for any excess costs incurred by the Agency that is associated with such default.

10. TERMINATION

A. Consistent with applicable New Mexico laws, this Agreement may be terminated by the Agency, without penalty, at any time prior to the expiration date of this Agreement. The Agency will provide ten (10) days prior written notice to Contractor of the date of termination. Notice of Termination of this Agreement shall not affect any outstanding Purchase Order(s) issued under this Agreement prior to the effective date of termination for convenience by the Agency.

B. The Agency further reserves the right to cancel all or any part of this Agreement without cost to the Agency if Contractor fails to meet the provisions of this Agreement and to hold Contractor liable for any excess costs associated with Contractor's default. The rights and remedies of the Agency are not limited to those provided for in this Article and are in addition to any other rights provided for by law.

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

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

B. Contractor, its agents, and its employees shall not accrue leave, retirement,

insurance, bonding, or any other benefits afforded to employees of the Agency and shall not be permitted to use Agency vehicles in the performance of this Agreement.

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

12. CONFIDENTIALITY

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

13. CONFLICT OF INTEREST

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

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

14. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

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

15. ASSIGNMENT: SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interests under this Agreement, including any claims for money due, without the Agency's prior written

consent, which shall not be unreasonably withheld. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the Agency's prior written approval.

16. NON-COLLUSION

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

17. RELEASE

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

18. INSURANCE Acceptance of COE dated Sept 17, 2014 T.C. 9-17-18

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

B. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout

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

C. Contractor shall carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$1,000,000 combined single limit for each accident.

D. Contractor shall carry and maintain throughout the term of this Agreement auto pollution liability in the amount of \$5,000,000 per occurrence. The required limits may be provided by a combination of auto pollution liability insurance and commercial umbrella liability insurance.

E. Contractor shall also carry and maintain throughout the term of this Agreement erroneous delivery liability insurance in the amount of \$1,000,000 per occurrence. The required limits may be provided by a combination of erroneous delivery liability insurance and commercial umbrella liability insurance.

19. **INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action, or demand whatsoever to the extent arising from the 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.

20. **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the Agency in connection with this Agreement is subject to the

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

21. THIRD PARTY BENEFICIARIES

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

22. RECORDS AND AUDIT

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

23. APPLICABLE LAW: CHOICE OF LAW: VENUE

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

County.

24. AMENDMENT

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

25. INTEGRATION

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

26. NON-DISCRIMINATION

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

27. SEVERABILITY

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

28. **NOTICES**

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

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

CONTRACTOR: Terry D. Calhoun
Sales Manager
Brewer Oil Company
2701 Candelaria Rd NE
Albuquerque, NM 87107
Fax: (505) 884-1987
Email: tcalhoun@breweroil.com


B. Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile or email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this Article by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

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

Contractor shall comply with all applicable federal, state, and local laws and regulations throughout the term of this Agreement. Contractor expressly acknowledges that the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation, and New Mexico criminal statutes impose penalties for bribes, gratuities, and kickbacks.

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

SANTA FE SOLID WASTE MANAGEMENT AGENCY:


Anna Hamilton
Chairperson, Joint Powers Board


9/12/18
Date:

ATTEST:


Geraldine Salazar
Santa Fe County Clerk

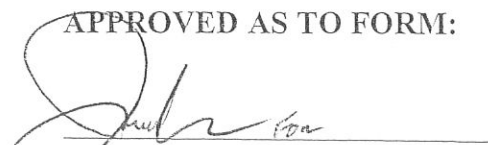


CONTRACTOR:


Terry D. Calhoun
Sales Manager
Brewer Oil Company

9-17-18
Date:

APPROVED AS TO FORM:


Nancy R. Long
Agency Attorney

09/12/2018
Date:

EXHIBIT A

ITEMS / SERVICES TO BE PROVIDED

RFB No. '19/02/B

1. GENERAL CONDITIONS

A. The Agency utilizes aboveground storage tanks (ASTs) at the following locations:

- Caja del Rio Landfill – 149 Wildlife Way
 - One 6,000-gallon AST for diesel fuel; 4,200 gallons delivery every three weeks
 - One 500-gallon AST for unleaded gasoline; 450 gallons delivery every three weeks
- Buckman Road Recycling and Transfer Station – 2600 Buckman Road
 - One 600-gallon AST for diesel fuel; delivery every three weeks

B. The estimated annual quantities for the Agency are as follows:

Type	Quantity (gallons)
Diesel fuel	123,000
E10 gasoline	6,200
Regular unleaded gasoline	(Small quantity as needed)

C. Additional tank sizes and locations not identified in this Agreement may be utilized. The quantities listed are for estimated purposes only and the state does not guarantee that the stated amount or any amount will be purchased.

2. PRODUCT SPECIFICATIONS

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

- 1) Regular unleaded gasoline, ASTM designation D439, SAE J312 (most recent issues)

with a minimum octane rating of 86 minimum (r+m/2 method).

- 2) E10 gasoline with 10% ethanol, ASTM designation D439, SAE J312 (most recent issues) with a minimum octane rating of 86 minimum (r+m/2 method). Gasoline is to contain 10% ethanol by volume.
 - 3) No. 1 diesel fuel, ultra-low sulphur diesel (ULSD), ASTM designation D975, SAE J313, (most recent issue) with a minimum cetane number of 40, maximum of 0.05 weight percent of sulphur, aromatic content of 35 volume percent maximum, viscosity of min. 1.3 and max. of 2.4, distillation of max. 288, carbon residue of approx. 0.15 and cloud point of -20 degree Celsius minimum and a maximum of 40 degree Celsius.
 - 4) No. 2 diesel fuel, ultra-low sulphur diesel (ULSD), ASTM designation D975, SAE J313, (most recent issue) with a minimum cetane number of 40, maximum of 0.05 weight percent of sulphur, maximum aromatic content of 35 volume percent, viscosity of min. 1.9 and max. 4.1, distillation of min. 282 and max. of 338, carbon residue of 0.35 approx. Cloud point of min. of -20 degree Celsius and maximum of 40 degree Celsius.
 - 5) No. 2 biodiesel fuel (B5), ultra-low sulphur diesel (ULSD), ASTM designation D975 which includes up to 5% biodiesel (B5) in the conventional petro diesel specification (ASTM D975). Biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act, and the requirements of the American Society of Testing Materials (ASTM) D6751.
- B. Both diesel No. 1 and No. 2 shall be free of visible evidence of the blue dye 1.4

dialkylamine anthraquinone. Dye solvent red 164 or clear (white) low sulphur diesel fuel is acceptable; however, Contractor is solely responsible for filling and obtaining any applicable IRS refunds if clear taxable fuel is provided. If dye solvent red 164 diesel is provided, Contractor is solely responsible for all confirmation and documentation (ref. Paras. 2.1.5 and 3.2), required by EPA and IRS.

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

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

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

3. FUEL SAMPLES AND TESTING

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

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

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

remove the product, if circumstances dictate.

D. Testing shall be ordered by the Agency using a qualified laboratory if Agency vehicles and/or pieces of heavy equipment require repairs to the fueling system or engine as a result of using fuels provided under this Agreement. If the malfunction is proved to be the result of the fuel, the Contractor shall be responsible for all repairs necessary to return the vehicle(s) and/or pieces of heavy equipment to good operating condition.

4. ORDERS AND DELIVERY

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

B. Contractor not using metered trucks is grounds for termination.

C. Delivery locations and storage tank capacities are identified in this Agreement. The Agency reserves the right to inspect bulkheads and meter measure contents of any tanks before, at the time of and/or after delivery. All tanks have been identified within this Agreement (e.g., aboveground and underground storage tanks). Contractor shall be prepared, upon delivery, for pumping into these types of tanks.

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

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

F. All deliveries shall be made within twenty-four (24) hours after receipt of order

(phone or written), excluding weekends (Saturdays and Sundays) and any state/federal holidays observed by the Agency. Deliveries shall be during normal operating hours for the Agency, unless different parameters are mutually agreed upon, in writing, between the Contractor and Agency's representatives. Any delivery to the Agency that is delayed because of the Contractor's fault shall be paid for at the originally ordered OPIS price.

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

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

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

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

K. Contractor shall also be responsible for all cleanup required to all Agency's

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

5. TAXES

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

B. The Agency is also exempt from paying state and federal excise taxes on diesel fuel and shall not reimburse Contractor for any such expenses.

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

6. PRICING STRUCTURE

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

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

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

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

E. All prices shall be based on the date of delivery and not on the date on which the

order was placed.

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

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

7. POSTED TERMINAL PRICE

A. Contractor shall use the listed refiner's depot(s) that will be used to supply fuel to the Agency's specified locations.

B. Contractor's failure to use the listed refiner's depot(s) may be grounds for cancellation of the Purchase Order without further cause or termination of the Agreement.

C. Posted terminal price documentation, verifying posted price shall be furnished with all invoices. Refinery depot must be clearly stated on oil price information service (O.P.I.S.) rack price sheet and rack price sheet shall bear O.P.I.S. logo.

8. INVOICES

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

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

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

D. Should the Contractor's business name change, or should the Contractor's business

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

9. PRICING FACTORS

A. Pricing shall be strictly on Contractor's markup price for each line item listed in Section 11 of below.

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

Example:

- 1) O.P.I.S. daily rack average price on date of delivery – per gallon.
- 2) Contractor's markup price to include freight, delivery costs, overhead and profit, etc. – per gallon.
- 3) Winter additive in No. 2 diesel fuel or B5 biodiesel fuel – per gallon.
- 4) Taxes and Fees – any applicable taxes and fees shall be added to invoice as a separate item (e.g., NM petroleum loading fee, federal oil spill fee, federal LUST tax).

10. BILLING LOCATION AND CONTACT

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

B. The billing address is as follows:

Santa Fe Solid Waste Management Agency
Attn: Account Coordinator

Telephone: (505) 424-1850 x 140
Fax: (505) 424-1839

11. CONTRACTOR'S PRICING

RFB No. '19/02/B

Line Item	Description	Delivery Amount (gallons)	Estimated Annual Quantity (gallons)	Contractor's Markup (per gallon) (4 decimals)
1	Regular unleaded gasoline @ Contractor's location	10	500	\$0.4500
2	E10 gasoline @ Caja del Rio	450	6,200	\$0.2500
3	B5 biodiesel @ Caja del Rio	4,200	113,000	\$0.0800
4	B5 biodiesel @ BuRRT	600	10,000	\$0.2500
5	B5 biodiesel @ Contractor's location	600	3,600	\$0.2500
6	No. 2 diesel @ Caja del Rio	-	-	\$0.0800
7	No. 2 diesel @ BuRRT	-	-	\$0.2500
8	No. 1 diesel @ Caja del Rio	-	-	\$0.6000
9	No. 1 diesel @ BuRRT	-	-	\$0.6000
10	Diesel fuel winter additive	-	-	\$0.0600

Notes:

1. Contractor's markup price includes freight, delivery costs, overhead and profit, etc.
2. Line items #1 - #5 are types of fuel and quantities that the Agency anticipates using annually.
3. Line items #6 - #9 are considered secondary fuel products in the event B5 biodiesel in line

- items #3 - #4 is not available at the time of placing an order.
4. Line item #10 is winter additive added to the diesel.

12. REFINER'S DEPOT INFORMATION

- A. Western Refining, Inc. – Albuquerque, NM Terminal
3209 Broadway Blvd SE
Albuquerque, NM 87105

- B. Vecenergy – Albuquerque, NM Terminal
3200 Broadway Blvd SE
Albuquerque, NM 87105

- C. Brewer Oil Company – Albuquerque, NM Fleet Fueling
3200 Candelaria Rd NE
Albuquerque, NM 87107

ATTACHMENT 2

Honstein Oil and Distributing, LLC

Amendment No. 1 – Price Agreement

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 1
PRICE AGREEMENT
WITH
HONSTEIN OIL AND DISTRIBUTING, LLC
(Bulk Fuel - 2018)**

This AMENDMENT No. 1 (the "Amendment") to the PRICE AGREEMENT ("Agreement") dated August 24, 2018 (the "Agreement"), is made and entered into between the Santa Fe Solid Waste Management Agency ("the Agency") and Honstein Oil and Distributing, LLC ("Contractor"). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

RECITALS

Under the terms of the Agreement, Contractor has agreed to provide an indefinite quantity of bulk fuel on an as-needed basis at the same price, and upon the terms, specifications and conditions as described in RFB No. '19/02/B.

Pursuant to Article 24, 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 8, Term and Effective Date of the Agreement is amended to extend the term of the Agreement, so that Article 8 reads in its entirety as follows:

A. This Agreement shall be effective when signed by the Agency and terminate on August 24, 2020, unless it is terminated sooner pursuant to Article 7 or Article 10 of this Agreement.

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

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

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 Santa Fe Solid Waste Management Agency Price Agreement as of the dates set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Renee Villarreal
Chairperson, Joint Powers Board

Date:

ATTEST:

Yolanda Y. Vigil
Santa Fe City Clerk

CONTRACTOR:

Rob Burns
Vice President of Sales
Honstein Oil and Distributing, LLC

Date:

APPROVED AS TO FORM:

Nancy Long
Agency Attorney

Date:

Price Agreement (RFB No. '19/02/B Bulk Fuel)

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
PRICE AGREEMENT
WITH
HONSTEIN OIL AND DISTRIBUTING, LLC
(Bulk Fuel – 2018)**

This PRICE AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and Honstein Oil and Distributing, LLC (“Contractor”) for an indefinite quantity of bulk fuel as described in RFB No. ‘19/02/B and below. The Price Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. SCOPE OF AGREEMENT

The items to be provided under this Agreement are set forth in RFB No. ‘19/02/B and all terms, specifications and conditions, contained therein and Contractor's response for cost of items and services submitted thereto, all of which is incorporated into this Agreement and attached hereto as Exhibit A.

2. STANDARDS OF PERFORMANCE; LICENSES

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

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

3. DEFINITIONS

A. "Agency" means the Santa Fe Solid Waste Management Agency.

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

Santa Fe, NM 87507.

C. "Items" means tangible goods or tangible items of personal property required for Agency operations. All items are to be new and of most current production, unless otherwise specified.

D. "Price" means the discounted price or costs for bulk fuel paid by the Agency as described in Exhibit A.

E. "Price Agreement" means this indefinite quantity Price Agreement which requires Contractor to provide bulk fuel to the Agency.

F. "Purchase Order" means a fully executed purchase document issued by the City of Santa Fe Purchasing Department on behalf of the Agency that specifies the items and services to be provided by Contractor.

G. "Services" mean services to be performed by personnel that do not need extensive education or specialty training or licensing. Services excludes professional services that are typically performed by a person holding a license, such as engineering architecture or legal services.

H. "Tangible Goods" are products that can be touched. This includes software licenses and intellectual property.

4. **ITEMS / SERVICES TO BE PROVIDED**

A. Price of Items and Services. Section 11 of Exhibit A of this Agreement contains the prices for Contractor's items (i.e., tangible goods) and services. Exhibit A also indicates any specifications required for the items and services, if any, that are subject of this Agreement.

B. Purchase Orders. The Agency may issue Purchase Orders for the purchase of the items listed in Exhibit A. Any service ordered by the Agency must be a service described in Exhibit

A. All Purchase Orders for items and services issued hereunder must reference the Purchase Order number and Price Agreement number RFB '19/02/B.

C. Quantities. It is understood that this is an indefinite quantity Price Agreement and the Agency may purchase any quantity of the item(s) or services listed in Exhibit A on an as-needed basis. The Agency makes no guarantee or warranty, implied, or otherwise, that any order for any definite quantity of items or services be issued under this Agreement. Contractor shall be required to accept the Purchase Order(s) and furnish the items or services.

D. Specifications. The Services furnished under this Agreement shall meet or exceed the specifications provided in RFB No. '19/02/B, including any addenda. Purchase Orders issued pursuant to this Agreement must show the applicable Agreement items or services.

E. Delivery and Billing Instructions

- 1) Contractor shall deliver the items and services in accordance with the Agency's instructions. Each delivery shall be accompanied by a packing slip which itemizes materials and quantities delivered, packaging, Purchase Order number, Price Agreement number and Agency facility.
- 2) Delivery shall be made within one (1) business day of order placement. Contractor shall notify the Agency immediately if delivery is expected to exceed this time frame or if the complete order cannot be fulfilled.
- 3) Whenever the Agency does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
- 4) Prices listed in Exhibit A shall be the fixed prices for the items and rates for the services, respectively.

- 5) Prices listed in Exhibit A for the items and services shall remain in effect for the term of this Agreement.

5. COMMERCIAL WARRANTY

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

6. PAYMENTS

A. All payments under this Agreement are subject to the following provisions.

- 1) Inspection. Final inspection and acceptance of all items and services ordered shall be made at the Agency facility. Items rejected at the Agency facility for non-conformance with specifications shall be removed, at Contractor's risk and expense, promptly after notice of rejection.
- 2) Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Agency shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Agency. Unless otherwise agreed upon between the Agency and Contractor, within thirty (30) days from the receipt of items, the Agency shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per

Purchase Order. Unless the Agency gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

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

7. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate

upon written notice from the Agency to Contractor. The Agency shall be responsible for charges incurred up to the date of notification under this Section per Section 10 of this Agreement. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

8. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the Agency and terminate on August 24, 2019, unless it is terminated sooner pursuant to Article 7 or Article 10 of this Agreement.

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

9. CANCELLATION

A. The Agency reserves the right to cancel without cost to the Agency all or any part of any order placed under this Agreement if the Agency determines in its sole discretion that the services or deliverables fail to meet the requirements of this Agreement.

B. The failure of Contractor to perform its obligations under this Agreement shall constitute a default of this Agreement and/or the Purchase Order.

C. Contractor may be excused from performance if Contractor's failure to perform the Purchase Order arises out of causes beyond the control and without the fault or negligence of Contractor, unless the Agency shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the federal, state or local government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.

E. In the event that the Agency cancels all, or any part, of any Purchase Order because Contractor failed to meet material provisions of the Purchase Order, Contractor shall be liable for any excess costs incurred by the Agency that is associated with such default.

10. TERMINATION

A. Consistent with applicable New Mexico laws, this Agreement may be terminated by the Agency, without penalty, at any time prior to the expiration date of this Agreement. The Agency will provide ten (10) days prior written notice to Contractor of the date of termination. Notice of Termination of this Agreement shall not affect any outstanding Purchase Order(s) issued under this Agreement prior to the effective date of termination for convenience by the Agency.

B. The Agency further reserves the right to cancel all or any part of this Agreement without cost to the Agency if Contractor fails to meet the provisions of this Agreement and to hold Contractor liable for any excess costs associated with Contractor's default. The rights and remedies of the Agency are not limited to those provided for in this Article and are in addition to any other rights provided for by law.

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

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

B. Contractor, its agents, and its employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Agency and shall not be

permitted to use Agency vehicles in the performance of this Agreement.

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

12. CONFIDENTIALITY

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

13. CONFLICT OF INTEREST

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

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

14. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

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

15. ASSIGNMENT; SUBCONTRACTING

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

the services to be performed under this Agreement without the Agency's prior written approval.

16. **NON-COLLUSION**

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

17. **RELEASE**

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

18. **INSURANCE**

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

B. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the Agency with evidence demonstrating that

appropriate Workers' Compensation insurance has been obtained.

C. Contractor shall carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$1,000,000 combined single limit for each accident.

D. Contractor shall carry and maintain throughout the term of this Agreement auto pollution liability in the amount of \$5,000,000 per occurrence. The required limits may be provided by a combination of auto pollution liability insurance and commercial umbrella liability insurance.

E. Contractor shall also carry and maintain throughout the term of this Agreement erroneous delivery liability insurance in the amount of \$1,000,000 per occurrence. The required limits may be provided by a combination of erroneous delivery liability insurance and commercial umbrella liability insurance.

19. INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action, or demand whatsoever to the extent arising from the 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.

20. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Agency in connection with this Agreement is subject to the immunities and limitations set forth in the New Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1 to

41-4-27. The Agency and its employees do not waive sovereign immunity, any available defense, or any limitation of liability recognized by law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

21. THIRD PARTY BENEFICIARIES

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

22. RECORDS AND AUDIT

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

23. APPLICABLE LAW; CHOICE OF LAW; VENUE

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

24. **AMENDMENT**

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

25. **INTEGRATION**

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

26. **NON-DISCRIMINATION**

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

27. **SEVERABILITY**

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

28. **NOTICES**

A. Any notices required to be given under this Agreement shall be in writing and

served to the parties at the following addresses:

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

CONTRACTOR: Rob Burns
Vice President of Sales
Honstein Oil and Distributing, LLC
11 Paseo Real
Santa Fe, NM 87507
Fax: (505) 471-0103
Email: rob@honsteinoil.com

B. Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile or email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this Article by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

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

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

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

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, Joint Powers Board

8/24/18
Date:

ATTEST:

Geraldine Salazar
Geraldine Salazar
Santa Fe County Clerk



CONTRACTOR:

Rob Burns
Rob Burns
Vice President of Sales
Honstein Oil and Distributing, LLC

8/24/18
Date:

APPROVED AS TO FORM:

Nancy R. Long
Nancy R. Long
Agency Attorney

August 24, 2018
Date:

EXHIBIT A

ITEMS / SERVICES TO BE PROVIDED

RFB No. '19/02/B

1. GENERAL CONDITIONS

A. The Agency utilizes aboveground storage tanks (ASTs) at the following locations:

- Caja del Rio Landfill – 149 Wildlife Way
 - One 6,000-gallon AST for diesel fuel; 4,200 gallons delivery every three weeks
 - One 500-gallon AST for unleaded gasoline; 450 gallons delivery every three weeks
- Buckman Road Recycling and Transfer Station – 2600 Buckman Road
 - One 600-gallon AST for diesel fuel; delivery every three weeks

B. The estimated annual quantities for the Agency are as follows:

Type	Quantity (gallons)
Diesel fuel	123,000
E10 gasoline	6,200
Regular unleaded gasoline	(Small quantity as needed)

C. Additional tank sizes and locations not identified in this Agreement may be utilized.

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

2. PRODUCT SPECIFICATIONS

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

- 1) Regular unleaded gasoline, ASTM designation D439, SAE J312 (most recent issues)

with a minimum octane rating of 86 minimum (r+m/2 method).

- 2) E10 gasoline with 10% ethanol, ASTM designation D439, SAE J312 (most recent issues) with a minimum octane rating of 86 minimum (r+m/2 method). Gasoline is to contain 10% ethanol by volume.
- 3) No. 1 diesel fuel, ultra-low sulphur diesel (ULSD), ASTM designation D975, SAE J313, (most recent issue) with a minimum cetane number of 40, maximum of 0.05 weight percent of sulphur, aromatic content of 35 volume percent maximum, viscosity of min. 1.3 and max. of 2.4, distillation of max. 288, carbon residue of approx. 0.15 and cloud point of -20 degree Celsius minimum and a maximum of 40 degree Celsius.
- 4) No. 2 diesel fuel, ultra-low sulphur diesel (ULSD), ASTM designation D975, SAE J313, (most recent issue) with a minimum cetane number of 40, maximum of 0.05 weight percent of sulphur, maximum aromatic content of 35 volume percent, viscosity of min. 1.9 and max. 4.1, distillation of min. 282 and max. of 338, carbon residue of 0.35 approx. Cloud point of min. of -20 degree Celsius and maximum of 40 degree Celsius.
- 5) No. 2 biodiesel fuel (B5), ultra-low sulphur diesel (ULSD), ASTM designation D975 which includes up to 5% biodiesel (B5) in the conventional petro diesel specification (ASTM D975). Biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act, and the requirements of the American Society of Testing Materials (ASTM) D6751.

B. Both diesel No. 1 and No. 2 shall be free of visible evidence of the blue dye 1.4 dialkylamine anthraquinone. Dye solvent red 164 or clear (white) low sulphur diesel fuel is

acceptable; however, Contractor is solely responsible for filling and obtaining any applicable IRS refunds if clear taxable fuel is provided. If dye solvent red 164 diesel is provided, Contractor is solely responsible for all confirmation and documentation (ref. Paras. 2.1.5 and 3.2), required by EPA and IRS.

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

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

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

3. FUEL SAMPLES AND TESTING

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

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

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

D. Testing shall be ordered by the Agency using a qualified laboratory if Agency vehicles and/or pieces of heavy equipment require repairs to the fueling system or engine as a result of using fuels provided under this Agreement. If the malfunction is proved to be the result of the fuel, the Contractor shall be responsible for all repairs necessary to return the vehicle(s) and/or pieces of heavy equipment to good operating condition.

4. ORDERS AND DELIVERY

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

B. Contractor not using metered trucks is grounds for termination.

C. Delivery locations and storage tank capacities are identified in this Agreement. The Agency reserves the right to inspect bulkheads and meter measure contents of any tanks before, at the time of and/or after delivery. All tanks have been identified within this Agreement (e.g., aboveground and underground storage tanks). Contractor shall be prepared, upon delivery, for pumping into these types of tanks.

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

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

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

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

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

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

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

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

K. Contractor shall also be responsible for all cleanup required to all Agency's property, storage facilities, and equipment as a result of noncompliance with specifications. Furthermore, Contractor shall be fully responsible for any and all costs incurred by the Agency for

any equipment sustaining damage, which is attributed to a contaminated fuel(s), which Contractor has delivered.

5. TAXES

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

B. The Agency is also exempt from paying state and federal excise taxes on diesel fuel and shall not reimburse Contractor for any such expenses.

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

6. PRICING STRUCTURE

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

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

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

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

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

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

storage tanks.

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

7. POSTED TERMINAL PRICE

A. Contractor shall use the listed refiner's depot(s) that will be used to supply fuel to the Agency's specified locations.

B. Contractor's failure to use the listed refiner's depot(s) may be grounds for cancellation of the Purchase Order without further cause or termination of the Agreement.

C. Posted terminal price documentation, verifying posted price shall be furnished with all invoices. Refinery depot must be clearly stated on oil price information service (O.P.I.S.) rack price sheet and rack price sheet shall bear O.P.I.S. logo.

8. INVOICES

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

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

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

D. Should the Contractor's business name change, or should the Contractor's business be sold, transferred to, or assumed by a second party, written notification of the change should be provided to the Agency by all parties involved, no later than thirty (30) calendar days from the

date of change. Failure to provide notification of the aforementioned change(s), within thirty (30) calendar days of the change, may be grounds for Purchase Order cancellation without further cause or termination of the Agreement.

9. PRICING FACTORS

A. Pricing shall be strictly on Contractor's markup price for each line item listed in Section 11 of below.

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

Example:

- 1) O.P.I.S. daily rack average price on date of delivery – per gallon.
- 2) Contractor's markup price to include freight, delivery costs, overhead and profit, etc. – per gallon.
- 3) Winter additive in No. 2 diesel fuel or B5 biodiesel fuel – per gallon.
- 4) Taxes and Fees – any applicable taxes and fees shall be added to invoice as a separate item (e.g., NM petroleum loading fee, federal oil spill fee, federal LUST tax).

10. BILLING LOCATION AND CONTACT

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

B. The billing address is as follows:

Santa Fe Solid Waste Management Agency
Attn: Account Coordinator
149 Wildlife Way
Santa Fe, NM 87506

Telephone: (505) 424-1850 x 140
Fax: (505) 424-1839
Email: asalazar@sfswma.org

11. CONTRACTOR'S PRICING

RFB No. '19/02/B

Line Item	Description	Delivery Amount (gallons)	Estimated Annual Quantity (gallons)	Contractor's Markup (per gallon) (4 decimals)
1	Regular unleaded gasoline @ Contractor's location	10	500	\$0.4000
2	E10 gasoline @ Caja del Rio	450	6,200	\$0.1200
3	B5 biodiesel @ Caja del Rio	4,200	113,000	\$0.0550
4	B5 biodiesel @ BuRRT	600	10,000	\$0.1200
5	B5 biodiesel @ Contractor's location	600	3,600	\$0.1400
6	No. 2 diesel @ Caja del Rio	-	-	\$0.0500
7	No. 2 diesel @ BuRRT	-	-	\$0.1300
8	No. 1 diesel @ Caja del Rio	-	-	\$0.3500
9	No. 1 diesel @ BuRRT	-	-	\$0.4000
10	Diesel fuel winter additive	-	-	\$0.0150

Notes:

1. Contractor's markup price includes freight, delivery costs, overhead and profit, etc.
2. Line items #1 - #5 are types of fuel and quantities that the Agency anticipates using annually.
3. Line items #6 - #9 are considered secondary fuel products in the event B5 biodiesel in line items #3 - #4 is not available at the time of placing an order.
4. Line item #10 is winter additive added to the diesel.

12. REFINER'S DEPOT INFORMATION

- A. Holly Frontier – Moriarty, NM Terminal
1001 E. Martinez Rd
Moriarty, NM 87503

- B. Phillips 66 – Albuquerque, NM Terminal
6356 State Rd 47 SE
Albuquerque, NM 87105

- C. NuStar - Albuquerque, NM Terminal
6348 State Rd 303 SE
Albuquerque, NM 87105