

CITY OF SANTA FE
for
SANTA FE SOLID WASTE MANAGEMENT AGENCY

“REQUEST FOR BIDS”

**PRICE AGREEMENT FOR OFF-ROAD HEAVY EQUIPMENT
REPAIRS
(PARTS AND LABOR)**

RFB No. ‘16/08/B

BID DUE:

**MARCH 25, 2016
2:00 P.M.**

**PURCHASING OFFICE
CITY OF SANTA FE
2651 SIRINGO ROAD - BUILDING “H”
SANTA FE, NEW MEXICO 87505**

Table of Contents

ADVERTISEMENT FOR BIDS	1
BID SCHEDULE	2
INFORMATION TO BIDDERS	3
1. RECEIPT AND OPENING OF BIDS	3
2. PREPARATION OF BID	3
3. BID SECURITY	3
4. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT.....	4
5. PREFERENCES IN PROCUREMENT	4
6. ADDENDA AND INTERPRETATIONS	5
7. POWER OF ATTORNEY.....	6
8. LAWS AND REGULATIONS	6
9. COLLUSION	6
10. METHOD OF AWARD	6
11. IDENTICAL BIDS.....	7
12. PROTESTS AND RESOLUTIONS PROCEDURES	7
13. PUBLIC INFORMATION	7
14. BRAND NAMES	7
15. TAX EXEMPT	8
16. COMPLIANCE WITH THE CITY OF SANTA FE AND SANTA FE COUNTY’S MINIMUM WAGE RATE ORDINANCES (LIVING WAGE ORDINANCES).....	8
17. SUBCONTRACTORS, SUPPLIERS AND OTHERS	8
DEFINITIONS AND TERMS	11
SPECIAL CONDITIONS	13
1. GENERAL.....	13
2. ASSIGNMENT	13
3. VARIATION IN SCOPE OF WORK	13
4. DISCOUNTS.....	13
5. TAXES.....	13
6. INVOICING	13
7. METHOD OF PAYMENT	13
8. DEFAULT	14
9. NON-DISCRIMINATION	14
10. NON-COLLUSION	14
11. WARRANTY	14
12. INDEFINITE QUANTITY PRICE AGREEMENT	14
13. PROCUREMENT UNDER EXISTING CONTRACTS	15
14. MINIMUM WAGE RATES.....	15
15. TERM.....	16
SPECIFICATIONS	17
BID SUBMITTAL FORM	19

BID FORM 21
APPENDIX A. Off-Road Heavy Equipment List..... 23
APPENDIX B. Bidder Questionnaire..... 26
APPENDIX C. Resident Veterans Preference Certification..... 28
APPENDIX D. Living Wage Ordinances 31
APPENDIX E. Sample Services Agreement 48

ADVERTISEMENT FOR BIDS

RFB No. '16/08/B

Competitive sealed bids will be received by the Santa Fe Solid Waste Management Agency and will be delivered to City of Santa Fe, Purchasing Office, 2651 Siringo Road, Bldg. "H", Santa Fe, New Mexico 87505 **until 2:00 p.m. local prevailing time on Friday, March 25, 2016.** Any bid received after this deadline will not be considered. This RFB is for the purpose of procuring:

**PRICE AGREEMENT FOR OFF-ROAD HEAVY EQUIPMENT REPAIRS
(PARTS AND LABOR)**

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 said item 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 Santa Fe Solid Waste Management Agency (Agency) is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful Bidder will be required to conform to the Equal Opportunity Employment regulations.

Bids for the project will be presented in the form of a unit price or lump sum bid as indicated on the *Bid Form*. The bidder shall bid all items listed. Each bidder must conform to the conditions specified in the section entitled *Instructions for Bidders*.

Bids may be held for sixty (60) days subject to action by the Agency. The Agency reserves the right to reject any or all bids in part or in whole. Bid packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H", Santa Fe, New Mexico 87505. Telephone number is (505) 955-5711. Questions related to this bid can be directed to Randall Kippenbrock, Santa Fe Solid Waste Management Agency, 149 Wildlife Way, Santa Fe, NM 87506. Telephone number is (505) 424-1850, ext. 100. The RFB is also available at <http://www.santafenm.gov/bids.aspx>.

ATTEST:



Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican newspaper on: February 25, 2016
To be published on: March 1, 2016

Received by the Albuquerque Journal newspaper on: February 25, 2016
To be published on: March 1, 2016

BID

SCHEDULE

RFB No.

'16/08/B

This section of the RFB contains the bid schedule for the procurement, describes the major procurement events and the conditions governing the procurement. The dates of the major procurement events considered by the Agency and Joint Powers Board are tentative and subject to change without notice.

<u>EVENT</u>	<u>DATE</u>
1. Advertisement	March 1, 2016
2. Issuance of RFB:	March 1, 2016
3. Receipt of Bids:	March 25, 2016 at 2:00 p.m. Local Prevailing Time City of Santa Fe Purchasing Office 2651 Siringo Road, Bldg. "H" Santa Fe, New Mexico 87505
4. Recommendation of Award to Joint Powers Board:	April 21, 2016

INFORMATION TO BIDDERS

1. RECEIPT AND OPENING OF BIDS

The Santa Fe Solid Waste Management Agency (herein called "Agency"), invites bids on the forms attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the City of Santa Fe Purchasing Office until **2:00 p.m. local prevailing time on Friday, March 25, 2016**. At this time the City of Santa Fe Purchasing Officer will publicly open and read bid(s) aloud.

Two complete sets of bid shall be submitted in a sealed envelope or container and addressed to the City of Santa Fe, Purchasing Office, 2651 Siringo Road, Bldg. "H", Santa Fe, New Mexico 87505. No late bids will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time, as late-delivered packages will be determined to be non-responsive, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the sealed envelope or container should clearly indicate the following information:

RFB No.: '16/08/B

Title of the Bid: **PRICE AGREEMENT FOR OFF-ROAD HEAVY EQUIPMENT REPAIRS (PARTS AND LABOR)**

Name and address of the Bidder:

The Agency may consider any informal bids not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid received after the time and date specified shall not be considered. No Bidder may withdraw a bid within 60 days after the actual date of the opening thereof.

2. PREPARATION OF BID

All blank spaces for bid prices must be filled in, hand or type written. If the bid is forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form. No alternate bids will be considered unless pre-approved (5) five days prior to the bid opening date by the Purchasing Officer.

3. BID SECURITY

None required.

4. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

Liquidated damages are not applicable to this bid.

5. PREFERENCES IN PROCUREMENT

INTENT AND POLICY: The Owner recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining plants and other facilities within the State and giving employment to residents of the State (1969 OP. Attorney. Gen. No. 6942).

APPLICATION OF NEW MEXICO RESIDENT PREFERENCE: With acknowledgement of this intent and policy, the preference will only be applied when bids are received from in-state businesses, manufacturers and contractors that are within five percent of the low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A-1-21 (-F) and 134-2 (C)) NMSA 1978).

To be considered a resident for application of the preference, the in-state Bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state Bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of- state bid will not be submitted.

For information on obtaining a state purchasing certification number, the potential Bidder should contact the State of New Mexico General Services Department – Purchasing Office (Joseph Montoya Building – 1100 S. St. Francis Drive – 505-827-0472).

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the state purchasing office will be rejected. The certification must be under the business name of the Bidder submitting the bid.

NON-APPLICATION OF COMPETING IN-STATE BIDDERS: If the lowest responsive bid and the next responsive bids within five (5) percent of the lowest bid are all from the State of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state Bidder in this situation, the Bidders must meet the definition criteria of Chapter 13-1-21 (1) and chapter 13-4-2 (A) NMSA 1978. The bid documents issued shall include the questions regarding residency, which the Bidder shall answer and certify. After examining the information included in the bid

submitted, the City Purchasing Officer may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the City Purchasing Officer that the information is not factual and the low responsive bidder is actually an out-of-state Bidder and not a New Mexico business, then the procedures in the previous section may be applied.

If the Bidder has met the above criteria, the lowest responsive “resident” bid shall be multiplied by 0.95. If that amount is then lower than the low responsive bid of a “non-resident” Bidder, the award will be based taking into consider the resident preference of five (5) percent.

Preferences shall not apply when the expenditure includes federal funds for a specific purchase.

A Bidder may not claim a five (5) percent preference as a manufacturer and a five (5) percent preference as a business for a cumulative ten (10) percent.

New Mexico Resident Preference Number (if applicable):

APPLICATION OF NEW MEXICO RESIDENT VETERAN BUSINESS PREFERENCE: New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a “resident veteran business”. Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Bidder to provide evidence of annual revenue and other evidence of veteran status.

A Bidder who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix C.

If a Bidder submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

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

NON-APPLICATION OF SANTA FE LOCAL PREFERENCE: The Santa Fe local preference is not applicable to the competitive sealed bids process.

6. ADDENDA AND INTERPRETATIONS

No oral interpretations of the meaning of the specifications or other pre-bid documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the bid must be addressed prior to the bid opening date.

Every request for such interpretations should be in writing addressed to, City of Santa Fe Purchasing Officer, 2651 Siringo Road, Bldg. "H", Santa Fe, New Mexico, 87505 and to be given consideration must be received at least five (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFB, which if issued, will be sent by facsimile, e-mail, or hand delivered to all prospective Bidders who are known by the Agency to have received a complete RFB not later than three days prior to the date fixed for the opening of the bids. 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.

Copies of addenda may be obtained from the City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H", Santa Fe, New Mexico 87505.

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

9. COLLUSION

No Bidder shall submit more than one bid in response to the RFB. 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. METHOD OF AWARD

The award of the purchase agreement will be made to that Bidder who meets or exceeds all specifications and provides the lowest total bid amount. However, the

Agency deserves the right to award this RFB in total: by group of items; on a basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in the judgment of the Agency, best serves the interests of the Agency and in accordance with Section 13-1-153 NMSA 1978..

No important deviation from the terms of this specification is acceptable. It is understood and agreed that the Agency reserves the right to reject any and all bids, as authorized by law, and to award to other than the lowest Bidder at its discretion, provided that it is in the best interest of the Agency, if the City of Santa Fe's Purchasing Manual and pertinent State Statutes are thereby served.

11. IDENTICAL BIDS

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

12. PROTESTS AND RESOLUTIONS PROCEDURES

Any Bidder who is aggrieved in connection with the RFB process may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest, but may not be filed later than seven (7) days after the Joint Powers Board approves award of the contract. Requirements regarding protests and resolution of protests are available upon request from the Purchasing Office.

13. PUBLIC INFORMATION

All portions of the bid submittals will become public information. Proprietary information may be marked confidential; however, the City Purchasing Officer will make the final determination as to whether the portion of the bid is legitimately confidential information. Sections to be confidential should be clearly marked as such and readily separable from rest of the bid. In no case will a request for the entire bid to be confidential be considered.

14. 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. The determination of the Purchasing Officer will make the final determination as to whether the portion of the bid is legitimately confidential information. Sections to be confidential should be clearly marked as such and readily separable from rest of the bid. In no case will a request for the entire bid to be confidential be considered.

15. TAX EXEMPT

The Agency is tax exempt for state gross receipts taxes for the procurement of tangible personal property, but not for labor or services. A tax exempt certificate will be issued upon written request to the Purchasing Office.

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

Copies of the City of Santa Fe Living Wage Ordinance (§28.1 28-1.12 SFCC 1987) and Santa Fe County Living Wage Ordinance (2014-1 and amendment 2014-5) are attached (Appendix D). The Offeror will be required to submit the proposal such that it complies with the ordinances to the extent applicable. The recommended Offeror will be required to comply with the ordinances to the extent applicable, as well as any subsequent changes to the Ordinances throughout the term of this contract.

17. SUBCONTRACTORS, SUPPLIERS AND OTHERS

- A. The Bidder, in the bid documents, must identify in writing to the Agency 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. Bidder will not be required to employ any other subcontractor, other 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 thru 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 waterlines, 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 specifically 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.
- a. 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.
 - b. 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 notice of a hearing.
 - c. 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.
 - d. 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).
 - e. If the Bidder does not specify a Subcontractor, they represent that they shall perform the work.
 - f. If the Bidder is claiming an inadvertent clerical error, notice shall be given to the Agency and to 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.

- g. If determined to be an emergency, upon written finding, subcontracting may be permitted although not originally designated in the bid.
- h. 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.
- i. 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.

DEFINITIONS AND TERMS

1. **Addendum:** means a written or graphic instrument issued prior to the opening of Bids, which clarifies, corrects, or changes the Request for Bids. 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 Request for Bids.
4. **BuRRT:** means the Buckman Road Recycling and Transfer Station
5. **City:** means the City of Santa Fe.
6. **Contractor:** means the successful Bidder who enters into a binding contract.
7. **Determination:** means the written documentation of a decision of the purchasing officer 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).
8. **Joint Powers Board (JPB):** means the governing body for the Santa Fe Solid Waste Management Agency that operates the Caja del Rio Landfill and the Buckman Road Recycling and Transfer Station.
9. **Landfill:** means the Caja del Rio Landfill
10. **Mobilization:** means the costs associated with the Contractor being on site at BuRRT or the Landfill including transportation, staff costs, per diems, and other applicable costs required to get equipment from origin to BuRRT and/or the Landfill.
11. **Purchase Order:** means a fully executed purchase document issued by the City of Santa Fe that specifies the items and services to be provided by the Contractor.
12. **Purchasing Office:** means the City of Santa Fe Purchasing Office.
13. **Purchasing Officer:** means the City of Santa Fe Purchasing Officer.
14. **Request for Bids:** or “RFB” means all documents, including those attached or incorporated by reference, used for soliciting bids (Section 13-1-102 NMSA 1978).
15. **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, construction or items of tangible personal property described in the request for bids (Section

13-1-82 NMSA 1978).

16. **Responsive Bid:** means a bid that conforms in all material respects to the requirements set forth in the request for bids. Material respects of a bid include, but are not limited to, price, quality, quantity or delivery requirements (Section 13-1-84 NMSA 1978).
17. 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 proposal.
18. The terms **can, may, should, preferably, or prefers** identify a desirable or discretionary item or factor.

(This Space Left Blank Intentionally)

SPECIAL CONDITIONS

1. GENERAL

When the City Purchasing Officer issues a purchase order document in response to the Contractor's bid, a binding contract is created.

2. ASSIGNMENT

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the Contractor from its obligations and liabilities under this order.

3. VARIATION IN SCOPE OF WORK

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the Agency or if such variation has been caused by documented conditions beyond the Contractor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The Agency shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The price shall include all taxes applicable. The Agency is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. INVOICING

- (A) The Contractor's invoice shall be submitted in duplicate and 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) Invoice must be submitted to **Santa Fe Solid Waste Management Agency, 149 Wildlife Way, Santa Fe, NM 87506** and not the City of Santa Fe.

7. METHOD OF PAYMENT

Every effort will be made to process payments within 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.

8. DEFAULT

The Agency reserves the right to cancel all or any part of this order without cost to the Agency if the Contractor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the Contractor liable for any excess costs associated with the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform is due to causes beyond the control and shall not be the fault of negligence of the Contractor and these causes have been made known to the Agency in written form within five working days of the Contractor becoming aware of a cause which may create any delay. 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 the Contractor to meet the required delivery schedule. 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.

9. NON-DISCRIMINATION

By signing this Agency bid or proposal, the Contractor agrees to comply with the Presidential Executive Order No. 11246 as amended.

10. NON-COLLUSION

In signing this bid or proposal, the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the Agency.

11. WARRANTY

Warranty shall be included for material and workmanship as specified in the bid specifications. Warranty shall begin when the Agency accepts satisfactory delivery of equipment from the Bidder. The warranty contract shall be solely with the Bidder and the Bidder shall be responsible for ensuring all warranty work is satisfactorily completed on any component of the machine. All details of the warranty shall be included with the bid. Bidder shall respond to all requests for warranty repair within three (3) hours of notification by the Agency.

12. INDEFINITE QUANTITY PRICE AGREEMENT

The Agency may award contracts to multiple Bidders under the Indefinite Quantity Price Agreement or "on-call" procurement process. 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 Price Agreement number (i.e., RFB No. '16/08/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 Price 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. A contract will be provided for execution to qualified Bidders.

13. PROCUREMENT UNDER EXISTING CONTRACTS

In accordance with Section 13-1-129 NMSA 1978, the bidder shall be made aware that other central purchasing offices may use the subsequent non-exclusive indefinite quantity price agreement.

14. MINIMUM WAGE RATES

The Bidder's attention is directed to the fact that wages to be paid on this project shall not be less than the prevailing wage rates as listed by the New Mexico State Labor & Industrial Commission. It shall be the successful Bidder's responsibility to inform themselves thoroughly of all state, federal and local laws and statutes pertaining to the employment of labor, the freedom of organization and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

14.1 As an addendum to the above statement, this project is subject to Minimum Wage Rates as determined by the New Mexico State Labor & Industrial Commission pursuant to Chapter 13, Section 13-14-11, NMSA 1978 only if any event under this bid exceeds \$60,000. Once the value of the Event has been determined, if necessary, the appropriate steps will be taken to contact the New Mexico State Labor & Industrial Commission, by the Bidder, to obtain a Minimum Wage Rate Decision which will govern the wage payments under this bid.

14.2 If the Event requires the Minimum Wage Decision, all Contractors and Subcontractors shall submit one (1) certified copy of the project weekly payroll to the Santa Fe Solid Waste Management Agency, 149 Wildlife Way, Santa Fe, NM 87506 c/o Mr. Randall Kippenbrock, Executive Director and one (1) copy also certified directly to the New Mexico State Labor Commission – Public Works Division, Aspen Building, 1596 Pacheco Street, Santa Fe, NM 87501, not later than five (5) working days after the close of each payroll period. The prime Contractor shall be responsible for the submission of copies of payrolls of all Subcontractors.

14.3 Before using apprentices on this project, the Contractor shall present to the Contracting Officer written evidence of registration of such employees with the U.S. Department of Labor, Bureau of Apprenticeship and Training, Western Bank Building (Room 1414), 505 Marquette Avenue, N.W., Albuquerque, NM 87102, Telephone: (505) 766-2398. If the apprenticeship is not registered in a bona fide

apprenticeship program as mentioned above, the journeyman's wage rate for that particular classification in which he or she is working is applicable.

15. TERM

The term of this Price Agreement, for issuance of orders, shall be for a total of two (2) years from the date of award.

SPECIFICATIONS

RFB No. '16/08/B

OFF-ROAD HEAVY EQUIPMENT REPAIRS (PARTS AND LABOR)

The Santa Fe Solid Waste Management Agency (Agency) is a public entity that is jointly owned by the City of Santa Fe and Santa Fe County under the terms of the New Mexico Joint Powers Agreements Act. The Agreement delegated the Agency the power to plan for, operate, construct, maintain, repair, replace or expand the Caja del Rio Landfill (Landfill) and the Buckman Road Recycling and Transfer Station (BuRRT).

The Agency is requesting bids for **OFF-ROAD HEAVY EQUIPMENT REPAIRS (PARTS AND LABOR)** for equipment operated at the Landfill and BuRRT.

Bidder is required to indicate either “meets or exceeds specifications” or “does not meet specifications” by placing a check in the appropriate “YES” or “NO” column. Failure to indicate either “YES” or “NO” will be evaluated as “does not meet specifications”.

Background and Summary

The Santa Fe Solid Waste Management Agency operates a variety of off-road heavy equipment in support of its operations. A list of all equipment covered by the RFB is attached to this document as Appendix A. The Agency performs routine maintenance service on all of its equipment and conducts minor repairs as its resources allow.

This RFB seeks to establish a standing price agreement with qualified vendors/repair facilities for equipment parts and repairs beyond the capacity of the Agency’s in-house equipment maintenance department.

Basic Firm Qualifications

Bidders must indicate the specific equipment they have the capacity to offer services for based on the list provided in Appendix A. This list includes all off-road heavy equipment currently owned and operated by the Agency, additional off-road heavy equipment may be added to the Agency’s heavy equipment inventory and shall be covered by this agreement.

Bidders responding to this solicitation must meet basic qualification standards established in this RFB, and itemized below. Bidders may complete the questionnaire, attached to this RFB as Appendix B, to demonstrate their capacity to perform the services requested in this RFB.

Meets or Exceeds Specification?	Basic Qualification Standard
Y <input type="checkbox"/> N <input type="checkbox"/>	Factory trained service technicians.
Y <input type="checkbox"/> N <input type="checkbox"/>	Repair facility within 60 miles of Santa Fe, NM.
Y <input type="checkbox"/> N <input type="checkbox"/>	Past experience with repairs, parts and/or service of off-road heavy equipment.
Y <input type="checkbox"/> N <input type="checkbox"/>	Access to factory service, repair and parts manuals for covered equipment.
Y <input type="checkbox"/> N <input type="checkbox"/>	Transportation of equipment from Agency facilities to Bidder's repair facility (shop). Transportation services include, but are not limited to, towing, trailering, over-sized loads, over-weight loads, etc.
Y <input type="checkbox"/> N <input type="checkbox"/>	Field service – on-site field diagnostics and repairs (at Agency's facilities).
Y <input type="checkbox"/> N <input type="checkbox"/>	Shop service – off-site repairs (at Bidders facilities).
Y <input type="checkbox"/> N <input type="checkbox"/>	Parts discount over published/retail cost (list price) OR Bidder's cost plus X%.
Y <input type="checkbox"/> N <input type="checkbox"/>	Labor/service hourly rates by class.
Y <input type="checkbox"/> N <input type="checkbox"/>	All work to be professionally diagnosed prior to repairs being performed. Bidder shall notify Agency of Diagnostic results and the Agency will issue a written estimate of repair costs (hourly labor charges, parts, materials, number of days the equipment will be down for repairs, etc.). In the event a partial or complete tear-down is required to diagnose repair, Bidder must receive written authorization from the Agency prior to commencing tear-down.
Y <input type="checkbox"/> N <input type="checkbox"/>	Bidder shall respond to all requests for repair within three (3) hours of notification. All authorized repairs shall be commenced within three (3) business days of receipt of Notice to Proceed.
Y <input type="checkbox"/> N <input type="checkbox"/>	All repairs to be completed within fifteen (15) working days of receipt by Bidder of Notice to Proceed from the Agency. This period may be extended at the option of the Agency and such an extension shall be documented in writing.
Y <input type="checkbox"/> N <input type="checkbox"/>	Bidder carries an adequate inventory supply of parts and materials to serve the Agency's needs without undue delays. If the Bidder does not have required parts and materials on hand, Bidder has ready access to same from a third party vendor.
Y <input type="checkbox"/> N <input type="checkbox"/>	Agency retains ownership of, and reserves the rights to request return of for inspection, any part(s), accessory(ies), assembly(ies) or sub-assembly(ies) replaced on equipment to effect the repair.
Y <input type="checkbox"/> N <input type="checkbox"/>	All parts, fluids and materials must be new and confirm to original manufacturer's specification. Rebuilt assemblies or parts may be used with the approval of the Agency.
Y <input type="checkbox"/> N <input type="checkbox"/>	If required, the selected Bidders shall provide towing of large equipment to the Bidder's specialized repair facilities (shops). The Bidders shall be licensed to tow/transport heavy equipment within the State of New Mexico and shall follow all applicable NMDOT rules and regulations.
Y <input type="checkbox"/> N <input type="checkbox"/>	If the repairs are not properly performed, the equipment shall be returned for corrective repairs at no additional cost to the Agency.
Y <input type="checkbox"/> N <input type="checkbox"/>	Bidder shall comply with federal, state, and local environmental regulations. No additional charge will be accepted by the Agency for the legal disposal of any used fluids or parts such as motor oil, anti-freeze, batteries, tires, etc.

SANTA FE SOLID WASTE MANAGEMENT AGENCY

BID SUBMITTAL FORM

RFB No. '16/08/B

EXCEPTIONS TO SPECIFICATIONS

Bidder is required to return **two (2) complete copies** of these specifications, completely furnishing all information requested. All requested information, data, literature, drawings, etc. must be included with the bid submitted.

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 indicate covered equipment from Off-Road Equipment List (Appendix A)

Bidder may include optional Bidder's Questionnaire (Appendix B).

Bidder must complete and submit with their bid the Resident Veterans Preference Certification (Appendix C), if applicable.

(This Space Left Blank Intentionally)

BID FORM

RFB No. '16/08/B

Service Labor Rates		
Service Labor Class	Rate	Unit
Shop Service Technician	\$	Per Hour
Field Service Technician	\$	Per Hour
Shop Mechanic	\$	Per Hour
Field Mechanic	\$	Per Hour
Shop Laborer	\$	Per Hour
Field Laborer	\$	Per Hour
Machinist	\$	Per Hour
Welder/Fabricator	\$	Per Hour
Diagnostics	\$	Per Hour
Emergency Call/Weekends ¹	\$	Per Hour
Other Labor Classes Offered by Bidder		
	\$	Per Hour

Parts	
Pricing Basis	Percentage
Cost Plus X %	%
OR	
List Price Minus X%	%

¹ Emergency Call/Weekends is defined as any services provided other than between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday (non-holidays).

Equipment Transport/Travel Round Trip from Agency's Facilities to Vendor's Shop		
Service Class	Rate	Unit
Towing	\$	Per
Trailerling	\$	Per
Oversize/Overweight	\$	Per
Trip Charge (if not included in field labor rates)	\$	Per
Other Service Classes Offered by Bidder		
	\$	Per

BIDDER'S INFORMATION

Bidder – Firm Name

Address, City, State, Zip Code

Authorized Signature

Print Name

E-Mail Address

Title

Telephone Number

Date

Fax Number

TWO COMPLETE COPIES OF BID FORM IS REQUIRED

APPENDIX A

Off-Road Heavy Equipment List

APPENDIX A: OFF-ROAD HEAVY EQUIPMENT LIST

Please indicate covered equipment below by marking and “X” in the space provided for each piece of equipment listed

Covered	Not Covered	Equipment Year, Make and Model
		1997 CAT 140G Motor Grader
		2003 CAT 140H Motor Grader
		1997 CAT D8R Dozer
		1997 CAT 950F Wheel Loader
		2007 CAT 950G Wheel Loader
		2002 CAT 623G Scraper
		2005 CAT 623G Scraper
		2002 CAT 836G Landfill Compactor
		2007 CAT 826H Landfill Compactor
		2015 CAT 836K Landfill Compactor
		2002 CAT 613C Water Wagon
		2004 CAT 613C Water Wagon
		2003 CAT 621G Water Wagon
		2005 CAT 242B Skid Loader
		2003 CAT 307C Excavator
		2014 Komatsu 155AX Dozer
		1996 John Deer 190E Excavator
		2012 Volvo L35B Wheel Loader
		2012 Volvo L110G Wheel Loader
		2003 Bandit 3680 Wood Grinder (CAT C-15 Engine)
		2014 Toyota 5053T Forklift
		1994 Hyster Forklift
		1990 Hyster Forklift
		1987 Case Farm Tractor
		1985 Broce T20 Broom (Ford Engine)
		2006 Godwin Water Pump (John Deere Engine)
		Westfire Fire Suppression System on Select Equipment
		All Caterpillar Equipment
		All Case Equipment
		All John Deere Equipment
		All Komatsu Equipment

APPENDIX A: OFF-ROAD HEAVY EQUIPMENT LIST (CONTINUED)

List additional manufacturers/brands supports by your company:

APPENDIX B

Bidder Questionnaire

APPENDIX B: BIDDER QUESTIONNAIRE

Bidders are encouraged to answer and/or attach any information that may assist in verifying their ability to perform the services required in the RFB. Do not make an assumption that the Agency is familiar with your work.

1. Number of years in business? _____
2. Number of employees? _____
3. Average years of experience? _____
4. List any additional services your company can provide not identified in this RFB:

5. Please list any of the required services your company would expect to sub-contract to a third party (e.g., towing), who you would outsource this work to and the percent over your cost you would charge the Agency.

Sub-Contractor

% Over Cost

<u>Sub-Contractor</u>	<u>% Over Cost</u>
_____	_____
_____	_____
_____	_____

6. Does your company have the knowledge and capability to repair off-road heavy equipment in-house?

Yes No

7. Does your company stock parts for equipment you are offering services for?

Yes No

APPENDIX C

Resident Veterans Preference Certification

RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

Please check one box only:

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS _____ DAY OF _____, 2016.

NOTARY PUBLIC

My Commission Expires:

APPENDIX D

Living Wage Ordinances

SANTA FE COUNTY

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY**

ORDINANCE NO. 2014-1

**AN ORDINANCE ESTABLISHING A LIVING WAGE
WITHIN SANTA FE COUNTY; SPECIFYING EMPLOYERS SUBJECT TO THE
LIVING WAGE; MAKING FINDINGS AS TO THE NECESSITY OF A LIVING WAGE;
ESTABLISHING A PROHIBITION ON RETALIATION FOR REPORTING
VIOLATIONS OF THE LIVING WAGE; PROVIDING FOR REMEDIES AND
PENALTIES; SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE
PROCESS TO BE EMPLOYED UPON COMPLAINTS OF VIOLATION;
ESTABLISHING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY:**

SECTION 1 – AUTHORITY.

This Ordinance is enacted pursuant to its general police powers and the authority in NMSA 1978, § 4-37-1 (1975) (as amended) to make and publish any ordinance to discharge the powers not inconsistent with statutory or constitutional limitations placed on counties and to exercise powers that are necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County's inhabitants, and NMSA 1978, § 4-37-3 (1993) (as amended) which permits prosecution of violations of County ordinances in any court of competent jurisdiction.

SECTION 2 – DEFINITIONS.

A. “Apprentice” means a person bound to serve another for a specified time in order to learn some art, trade, profession, or business;

B. “Base wage” means the minimum hourly rate of compensation that an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid pursuant to this Ordinance;

C. “Commission” means a payment based on a percentage of the value of sales or other business done;

D. “Living wage” means the minimum hourly rate of compensation that an employee shall be paid; and

E. “Tip” means a gratuity earned by an employee for providing good service.

SECTION 3 – APPLICABILITY.

A. This Ordinance shall be effective within the exterior unincorporated boundaries of Santa Fe County.

B. Santa Fe County government shall pay the living wage established by Section 5 of this Ordinance to its employees. However, the provisions of this sub-section are expressly limited by and subject to collective bargaining agreements between Santa Fe County and any bargaining unit.

C. As of the effective date of this Ordinance, contracts entered into by Santa Fe County government for services, including construction services, shall require the contractor to pay the living wage established by this Ordinance.

D. Businesses who undertake an economic development project and execute a project participation agreement with Santa Fe County shall pay the living wage established by this Ordinance for the duration of the project.

E. Businesses required by Santa Fe County Ordinance to have a business license from Santa Fe County shall pay the living wage established by this Ordinance.

F. For purposes of identifying who shall be paid the living wage established by this Ordinance, all individuals employed by or providing work to an employer identified in subsections A through E above, whether on a part-time, full-time or temporary basis, shall be considered to be an employee for purposes of this Ordinance. Also considered an employee for purposes of this Ordinance are contingent or contracted workers, and persons working through a temporary service, staffing or employment agency or similar entity. However, the following shall not be considered employees entitled to the living wage established by this Ordinance:

(1) An individual employed by the United States, the State or any political subdivision of the State other than Santa Fe County;

(2) An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis;

(3) Apprentices in a registered apprentice program recognized by the State of New Mexico Apprenticeship and Training Committee or the Federal Bureau of Apprenticeship and Training, as well as any apprentice participating in an apprenticeship program providing significant instructional and practical experience and offered by a 501C(3).

(4) G.I. bill trainees during training;

(5) Temporary employees of an educational, charitable or religious youth camp or retreat where room and board is provided to the employee, or if a day camp, where board only is provided. To qualify under this exemption the employer must hold a valid certificate issued

2025 RELEASE UNDER E.O. 14176

annually by the director of the labor relations division of the workforce solutions department of the State of New Mexico pertaining to exemption of seasonal employees;

(6) Any employee that is the parent, spouse, child or other member of the employer's immediate family; for purposes of this subsection, the employer shall include the principal stockholder of a family corporation;

(7) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university; and

(8) Persons working for a business in connection with a court-ordered community service program.

SECTION 4 – FINDINGS.

A. The Board of County Commissioners (hereinafter referred to as “the Board”) finds that the public welfare, health, safety and prosperity of citizens of Santa Fe County requires that citizens be paid a living wage sufficient to ensure a decent and healthy life;

B. The Board finds that establishing a mandatory minimum hourly wage will promote the public welfare, health, safety and prosperity by ensuring that citizens can better support and care for their families through their own efforts;

C. According to the United States Census Bureau:

(1) The average earnings per capita in Santa Fe County is twenty-three percent (23%) below the national average and the cost of living is eighteen percent (18%) above the national average; and

(2) Fifteen and six-tenths percent (15.6%) of residents in Santa Fe County lived below the poverty level between 2007 and 2011;

D. The Board finds that housing costs in Santa Fe County are higher than in most other parts of New Mexico, and low income workers spend a disproportionate percentage of their income sheltering themselves and their families;

E. The Board finds that when businesses do not pay adequate wages, the community bears the cost in the form of increased demand for taxpayer-funded social services;

F. Santa Fe County developed an affordable housing program that requires developers to include affordable homes in each subdivision, down payment assistance, assistance with roof repairs and other housing-related benefits;

G. The Board finds that it has expended public funds to provide summer programs for children residing in the County and to fund medical care for indigent residents; and

2012/02/28 09:00 AM RECEIVED

H. The Board finds that it is in the public interest to require that employers benefiting from the opportunity to do business in Santa Fe County pay employees a living wage that is adequate to meet the basic needs of living in Santa Fe County.

SECTION 5 – LIVING WAGE PAYMENT REQUIREMENTS.

A. Except as provided in subsection B, the living wage paid to an employee shall be ten dollars and sixty-six cents (\$10.66) per hour. Beginning March 1, 2015, and each year thereafter, the living wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the Consumer Price Index for the Western Region for Urban Wage Earners and Clerical Workers. Santa Fe County shall post the living wage established by this Ordinance on the Santa Fe County website after this Ordinance becomes effective and prior to each adjustment of the living wage.

B. An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions shall be paid at least a base wage equivalent to sixty percent of the living wage established by this Ordinance. Initially the base wage rate shall be six dollars and forty cents (\$6.40). That wage will increase simultaneous with each living wage increase. The employer may consider tips and commissions as part of wages, but the tips and commissions combined with the employer's payment of wages to the employee shall not equal less than the living wage as provided in subsection A of this section. In the event an employee earns insufficient tips and/or commissions combined with the base wage to receive a wage at least equal to the living wage established by this Ordinance, the employer shall make up the difference to ensure the employee receives a wage equal to the living wage established by this Ordinance. All tips received by such employee shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees. Where employees practice tip pooling or splitting (as where staff give a portion of their tips to bus persons), only the amount actually retained by each employee shall be considered part of that employee's wages.

SECTION 6 - PROHIBITION AGAINST RETALIATION AND CIRCUMVENTION.

It shall be unlawful for any employer or employer's agent or representative to discharge, demote, deny promotion to or in any way discriminate against an employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to this Ordinance or assisting another person to do so.

SECTION 7 – REMEDIES AND PENALTIES.

A. A person violating this Ordinance shall be guilty of a misdemeanor and, upon conviction, may be punished in accordance with NMSA 1978, Section 4-37-3 (1975)(as amended). A person violating any of the requirements of this Ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person as to which any such violation has occurred. This Ordinance may be enforced by a duly authorized code enforcement officer.

2015 MAR 10 10:54 AM RECEIVED

B. The County, any individual aggrieved by a violation of this Ordinance, or any entity whose members have been aggrieved by a violation of this Ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this Ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due, an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

C. The remedies provided in this Ordinance are not exclusive, and nothing in this Ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

SECTION 8 – PROSPECTIVE APPLICATION.

Nothing in this Ordinance shall be deemed to nor shall be applied in such a manner so as to have a constitutionally prohibited effect as an *ex post facto* law or impairment of an existing contract within the meaning of New Mexico Constitution, Article II, §19.

SECTION 9 – SEVERABILITY.

The requirements and provisions of this Ordinance are severable. In the event that any requirement, provision, part, subpart or clause of this Ordinance, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the Board that the remainder of the Ordinance be enforced to the maximum extent possible consistent with the objective of ensuring a living wage.

SECTION 10 – NOTICE POSTING.

Any holder of a Santa Fe County business license shall, as a condition of obtaining or holding a Santa Fe County business license, post and display in a prominent location next to its business license a notice, in English and Spanish, that the business is in compliance with the provisions of this Ordinance and shall include the text of Sections 3 and 5 of this Ordinance. Failure to comply with this Section shall be construed as a violation of this Ordinance and, in addition, shall be considered grounds for suspension, revocation, or termination of the business license.

SECTION 11 – PROCEDURE.

Violations of this Ordinance shall be investigated and prosecuted consistent with the process employed concerning alleged violations of the Sustainable Land Development Code, as amended. A complaint form for use in reporting violations of this Ordinance shall be available on the County webpage for use in reporting violations.

2025/02/24 10:00 AM

SECTION 12 – EFFECTIVE DATE.

This Ordinance shall become effective sixty (60) days after its adoption by the Board.

PASSED, APPROVED AND ADOPTED this 25th day of February, 2014.
**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**



Daniel W. Mayfield
Daniel W. Mayfield, Chair

Robert A. Anaya
Robert A. Anaya, Vice-Chair

Liz Stefani
Liz Stefani, Commissioner

Miguel M. Chavez
Miguel M. Chavez, Commissioner

Kathy Holian
Kathy Holian, Commissioner

COUNTY OF SANTA FE) BCC ORDINANCE
STATE OF NEW MEXICO) ss PAGES: 6
I Hereby Certify That This Instrument Was Filed for
Record On The 25TH Day Of February, 2014 at 04:03:48 PM
And Was Duly Recorded as Instrument # 1730815
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy *Maretha Salazar* County Clerk, Santa Fe, NM

ATTEST:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk 2/25/2014



APPROVED AS TO FORM:

Stephen C. Ross
Stephen C. Ross, County Attorney

REC'D CLERK RECORDED 02/25/2014

THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

ORDINANCE NO. 2014 - 5

AN ORDINANCE AMENDING ORDINANCE NO. 2014-1 (AN ORDINANCE ESTABLISHING A LIVING WAGE WITHIN SANTA FE COUNTY; SPECIFYING EMPLOYERS SUBJECT TO THE LIVING WAGE; MAKING FINDINGS AS TO THE NECESSITY OF A LIVING WAGE; ESTABLISHING A PROHIBITION ON RETALIATION FOR REPORTING VIOLATIONS OF THE LIVING WAGE; PROVIDING FOR REMEDIES AND PENALTIES; SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE PROCESS TO BE EMPLOYED UPON COMPLAINTS OF VIOLATION; ESTABLISHING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE), TO MODIFY THE BASE WAGE FOR TIPPED EMPLOYEES

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT ORDINANCE NO. 2014-1, IS AMENDED AS FOLLOWS:

1. Section Five (Minimum Wage Payment Requirements), subsection B is amended to read as follows:

B. An employer shall pay an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions:

(i) the base wage; and

(ii) an amount determined by subtracting from the living wage both the base wage and the tips and commissions actually received by an employee; provided that, if the result of this calculation is less than zero, no additional wages are due under this subparagraph (ii).

Until January 1, 2015, the base wage is the minimum cash wage that must be paid to tipped employees under the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8. Commencing on January 1, 2015, the base wage shall be thirty percent of the living wage established by this Ordinance. On January 1, 2015 the base wage rate shall be three dollars and twenty cents (\$3.20) per hour. Thereafter, the base wage shall increase simultaneous with each living wage increase. Tips received by an employee shall be determined in accordance with the federal Fair Labor Standards Act of 1938, 29 U.S.C., Chapter 8, and implementing regulations.

2. All provisions of Ordinance No. 2014-1 not herein amended shall remain in full force and effect.

3. This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9 (1975).

PASSED, ENACTED AND ADOPTED THIS 27th DAY OF May, 2014.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**


Daniel W. Mayfield, Chair

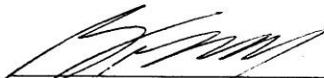
ATTEST:


Geraldine Salazar
Santa Fe County Clerk

5-27-2014



APPROVED AS TO FORM:


Gregory S. Shaffer, County Attorney

COUNTY OF SANTA FE) BCC ORDINANCE
STATE OF NEW MEXICO) ss PAGES: 2

I Hereby Certify That This Instrument Was Filed for
Record On The 28TH Day Of May, 2014 at 04:33:51 PM
And Was Duly Recorded as Instrument # 1737797
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy  County Clerk, Santa Fe, NM



CITY OF SANTA FE

28-1 LIVING WAGE.

28-1.1 Short Title.

This section may be cited as the "Living Wage Ordinance". (Ord. #2002-13, §1)

28-1.2 Legislative Findings.

The governing body of the city has determined that:

A. The public welfare, health, safety and prosperity of Santa Fe require wages and benefits sufficient to ensure a decent and healthy life for workers and their families;

B. Many Santa Fe workers earn wages insufficient to support themselves and their families;

C. Many Santa Fe workers cannot participate in civic life or pursue educational, cultural, and recreational opportunities because they must work such long hours to meet their households' most basic needs;

D. Minimum wage laws promote the general welfare, health, safety and prosperity of Santa Fe by ensuring that workers can better support and care for their families through their own efforts and without financial governmental assistance;

E. The average earnings per job in Santa Fe County is twenty-three percent (23%) below the national average and the cost of living is eighteen percent (18%) higher than the national average;

F. Housing costs in Santa Fe are much higher than in most other parts of New Mexico, and low income workers must therefore spend a disproportionate percentage of their income sheltering themselves and their families;

G. Livable wages also benefit employers and the economy as a whole by improving employee performance, reducing employee turnover, lowering absenteeism, and thereby improving productivity and the quality of the services provided by employees;

H. When businesses do not pay a livable wage, the community bears the cost in the form of increased demand for taxpayer-funded social services including homeless shelters, soup kitchens and healthcare for the uninsured. Coupled with high real estate values, low wages reduce the ability of low- and moderate-income residents to access affordable housing. As a result, the city has had to invest significant tax dollars to support affordable housing including funding to nonprofit organizations, purchasing land, building infrastructure and waiving fees. In addition, the city has allocated significant tax dollars to operate after school and summer recreation programs and to support nonprofit organizations offering an array of human services and children and youth services, all of which are needed by very low-income residents and their families;

I. It is in the public interest to require certain employers benefiting from city actions and funding, and from the opportunity to do business in the city, to pay employees a minimum wage, a "living wage", adequate to meet the basic needs of living in Santa Fe;

J. According to the 2000 Census, approximately twelve and three-tenths percent (12.3%) of the Santa Fe community lives below the poverty level; and

K. According to the New Mexico department of labor, twenty-three and one-half percent (23.5%) of Santa Feans who are employed in the nongovernmental sector earn hourly wages of ten dollars and fifty cents (\$10.50) per hour or less.

L. The governing body has reviewed the impact of previous minimum wage increases, relevant studies and other appropriate data, and finds that the city's minimum wage should be upwardly adjusted each year to keep pace with increases in the cost of living.

M. The governing body has found that limiting coverage of the minimum wage just to businesses with twenty-five (25) or more employees has hindered compliance and has created an uneven playing field among local businesses.
(Ord. #2002-13, §2; Ord. #2003-8, §1; Ord. #2007-43, §1)

28-1.3 Authority of the City of Santa Fe.

This Living Wage Ordinance is adopted pursuant to the general welfare and police powers conferred upon the city of Santa Fe by §3-17-1 et seq. and §3-18-1 et seq. NMSA 1978, pursuant to the powers conferred upon the city of Santa Fe by New Mexico Constitution, Article X §§6(D) and 6 (E) and the Municipal Charter Act §3-15-1 et seq. NMSA 1978, which have been exercised by the city's adoption of its "Santa Fe Municipal Charter". (Ord. #2002-13, §3; Ord. #2003-8, §2)

28-1.4 Purpose.

The purposes of this section are:

A. To have the city of Santa Fe set an example for the public and private sectors by paying its employees a minimum wage adequate to meet the basic needs of living in Santa Fe.

B. To raise the income of low-income employees of employers who contract with the city, receive grants, subsidies or other benefits from the city or benefit from the opportunity to do business in Santa Fe.
(Ord. #2002-13, §4; Ord. #2003-8, §3)

28-1.5 Minimum Wage Payment Requirements.

A. The following shall pay the minimum wage:

(1) The city of Santa Fe to all full-time permanent workers employed by the city. However, the provisions of this section are expressly limited by and subject to future union negotiations in compliance with the Fair Labor Standards Act and subsequent appropriations by the governing body in compliance with the Bateman Act;

(2) Contractors for the city, that have a contract requiring the performance of a service including construction services but excluding purchases of goods, shall pay the

minimum wage to their workers and subcontractors performing work under the contract if the total contract amount with the city is, or by way of amendment becomes, equal to or greater than thirty thousand dollars (\$30,000.); and

(3) Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars (\$25,000.) to those employed by such entity for the duration of the city grant or subsidy; and

(4) Businesses required to have a business license or business registration from the city of Santa Fe and nonprofit organizations shall pay the minimum wage to their workers for all hours worked within the city of Santa Fe that month. For purposes of this paragraph, worker shall not include any person who is related by blood or by marriage to any person who may have or possess any ownership interest in the business that employs them. For purposes of identifying persons entitled to be paid the minimum wage, all individuals employed by or providing work to the business for compensation, whether on a part-time, full-time or temporary basis, during a given month shall be counted as a worker. This definition shall include contingent or contracted workers, and persons made available to work through the services of a temporary service, staffing or employment agency or similar entity. However, interns working for a business for academic credit in connection with a course of study at an accredited school, college or university or persons working for an accredited school, college or university while also attending that school, college or university, or persons working for a business in connection with a court-ordered community service program such as teen court or workers who are in an apprenticeship program in a 501C(3) organization (such as the Santa Fe Opera) shall not be counted as a worker for such purposes.

B. Beginning January 1, 2004, the minimum wage shall be an hourly rate of eight dollars and fifty cents (\$8.50). In computing the wage paid for purposes of determining compliance with the minimum wage, the value of health benefits and childcare shall be considered as an element of wages. On January 1, 2006, the minimum wage shall be increased to an hourly rate of nine dollars and fifty cents (\$9.50). Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the consumer price index for the western region for urban wage earners and clerical workers.

C. For workers who customarily receive more than one hundred dollars (\$100.) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.

D. Nonprofit organizations whose primary source of funds is from Medicaid waivers are exempt.

E. Staff shall contract for a study or studies to review the impact of changes made to the Living Wage Ordinance approved as Ordinance No. 2007-43 on businesses of less than ten employees and on the student drop-out rate. The study shall be presented to the governing body no later than July 1, 2009.
(Ord. No. 2002-13, §5; Ord. #2003-8, §4; Ord. #2005-40; Ord. #2007-43, §2)

28-1.6 Prohibitions Against Retaliation and Circumvention.

A. It shall be unlawful for any employer or employer's agent or representative to take any action against an individual in retaliation for the exercise of or communication of information regarding rights under this section. This section shall also apply to any individual that mistakenly, but in good faith, alleges noncompliance with this section.

B. Taking adverse action against an individual within sixty (60) days of the individual's assertion of or communication of information regarding rights shall raise a rebuttable presumption of having done so in retaliation for the assertion of rights.

C. It shall be unlawful for any business or employer to intentionally circumvent the requirements of this section by contracting portions of its operation or leasing portions of its property. (Ord. #2002-13, §6; Ord. #2003-8, §5)

28-1.7 Reserved.

Editors Note: Former subsection 28-1.7, Compliance Through Collective Bargaining Process, previously codified herein and containing portions of Ordinance No. 2002-13, was repealed in its entirety by Ordinance No. 2004-38.

28-1.8 Enforcement; Remedies.

A. *Administrative Enforcement.* The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this section. The city manager is authorized to investigate possible violations of this section. Where the city manager, after a proceeding that affords a suspected violator due process, concludes that a violation has occurred, the city manager may issue orders to the employer appropriate to effectuate the complaining person's rights, including but not limited to back pay and reinstatement. The city manager also has the power to order termination of any and all economic benefit derived by any offending party from the city and has the power to revoke the employer's business license or registration.

B. *Criminal Penalty.* A person violating this section shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this section shall be guilty of a separate offense for each day or portion thereof and for each worker or person as to which any such violation has occurred.

C. *Other Remedies.* The city, any individual aggrieved by a violation of this section, or any entity the members of which have been aggrieved by a violation of this section, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this section and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

D. *Nonexclusive Remedies and Penalties.* The remedies provided in this section are not exclusive, and nothing in this section shall preclude any person from seeking any other remedies, penalties, or relief provided by law. (Ord. #2002-13, §8; Ord. #2003-8, §6)

28-1.9 Effect.

Nothing in this Living Wage Ordinance shall be deemed to nor shall be applied in such a manner so as to have a constitutionally prohibited effect as an ex post facto law or impairment of an existing contract within the meaning of New Mexico Constitution, Article II, §19. (Ord. #2002-13, §9)

28-1.10 Severability.

The requirements and provisions of this section and their parts, subparts and clauses are severable. In the event that any requirement, provision, part, subpart or clause of this section, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the governing body that the remainder of the section be enforced to the maximum extent possible consistent with the governing body's purpose of ensuring a living wage for persons covered by the section. (Ord. #2002-13, §10; Ord. #2003-8, §7)

28-1.11 Notice; Posting; and Publication.

Any business subject to the provisions of this section shall as a condition to obtaining and holding a city of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this section and in particular post the text of subsections 28-1.5, 28-1.6 and 28-1.8 SFCC 1987. Failure to comply with this subsection shall be construed a violation of this section and, in addition, shall be considered grounds for suspension, revocation, or termination of the business license or registration. (Ord. #2003-8, §8)

28-1.12 Living Wage Review.

The city shall conduct a review of this section on or before July 1, 2005. In conducting said review the governing body may, at its discretion and pursuant to a duly-adopted resolution, appoint an ad hoc committee to advise and assist in making recommendations regarding this section and to investigate the economic and social effects of this section on Santa Fe. The city will contract with an independent third party to develop an evaluation that will generate objective measures on the effect of the Living Wage Ordinance on the health, security, and livelihood of Santa Feans by March 31, 2003. Data necessary for such an evaluation on Santa Fe city businesses will be compiled and presented to the governing body for their review on or before July 1, 2003. In compiling the data, consideration should be given to potential impacts on youth employment and possible recommendations that might prevent unforeseen consequences hurting children in the community. (Ord. #2003-8, §9)



City of Santa Fe Living Wage Ordinance

PURSUANT TO THE CITY OF SANTA FE
LIVING WAGE ORDINANCE, SECTION 28-1 SFCC 1987
EFFECTIVE MARCH 1, 2016 ALL WORKERS WITHIN THE
CITY OF SANTA FE
SHALL BE PAID A LIVING WAGE OF

\$10.91
PER HOUR

Santa Fe's Living Wage

-  The Santa Fe Living Wage Ordinance establishes minimum hourly wages.
-  The March Living Wage increase corresponds to the increase in the Consumer Price Index (CPI).
-  All employers required to have a business license or registration from the City of Santa Fe ("City") must pay at least the adjusted Living Wage to employees for all hours worked within the Santa Fe city limits.

Who is Required to Pay the Living Wage?

-  The City to all full-time permanent workers employed by the City;
-  Contractors for the City, that have a contract requiring the performance of a service but excluding purchases of goods;
-  Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars (\$25,000) for the duration of the City grant or subsidy;
-  Businesses required to have a business license or registration from the City; and
-  Nonprofit organizations, except for those whose primary source of funds is from Medicaid waivers.
-  For workers who customarily receive more than one hundred dollars (\$100) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the Living Wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.

APPENDIX E

Sample Services Agreement

SANTA FE SOLID WASTE MANAGEMENT AGENCY

SERVICES AGREEMENT

(Off-Road Heavy Equipment – Parts and Labor - 2016)

This SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and _____ (the “Contractor”) for indefinite and on-call off-road heavy equipment (parts and labor) as described in RFB No. ‘16/08/B 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 RFB No. ‘16/08/B and all related Contract Documents, including Contractor’s bid in response thereto, 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. COMPENSATION

A. The Agency shall pay to Contractor in full payment for services rendered, including applicable gross receipts taxes, a sum not to exceed _____.

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 actually performed in accordance with the fee schedule set forth in the Scope of Work hereto attached in Exhibit A.

D. Detailed statements containing reimbursement expenses, if any, shall be itemized.

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. The Agency shall be responsible for charges incurred up to the date of notification under this Section per Section 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 _____, 2018, unless it is terminated sooner pursuant to Article 6 below.

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 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 ten (10) days written notice to Contractor. If the Agency terminates the Agreement:

- a. 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. The Agency shall pay Contractor for services rendered and expenses incurred under this Section, including for preparation of the final report.
- b. If compensation is not based upon hourly rates for services rendered, the Agency shall pay Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination for which compensation has not already been paid.
- c. If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

B. The Agency further reserves the right to cancel all or any part of this Agreement without cost to the Agency if the Contractor fails to meet the provisions for this Agreement, and except as otherwise provided herein, to hold the Contractor liable for any excess costs associated with the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform is due to causes beyond the control and shall not be the fault of negligence of the Contractor and these causes have been made known to the Agency in written form within five working days of the Contractor becoming aware of a cause which may create any delay. 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 the Contractor to meet the required delivery schedule. 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 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 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.

12. INSURANCE

A. General

The Contractor shall procure and maintain during the life of the Agreement insurance coverage of the kinds and in the amounts listed herein. The Certificates of Insurance must be issued by the insurance companies authorized to do business in the State of New Mexico and shall cover all performance under this Agreement whether completed by the Contractor, the Contractor's employees, or by subcontractors. The policies shall include a provision for thirty (30) calendar days written notification to the Agency, 149 Wildlife Way, Santa Fe, NM 87506-8342 in the event a policy has been materially changed or canceled and be written on an occurrence form naming the Agency as additional insured.

- a. Workers Compensation Statutory
- b. Employers Liability \$1,000,000

The Contractor shall comply with the provisions of the Workers Compensation Act of the State of New Mexico (the "Act"). If the Contractor has determined that it is not subject to

the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the Agency and comply with the Act should it employ three or more persons during the term of any Agreement with the Agency. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, agreement with the Agency may be terminated effective immediately.

c. Commercial General Liability

Bodily Injury/Property Damage: \$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
Products/Completed Operations: \$1,000,000 Each Occurrence
\$2,000,000 Aggregate

d. Business Automobile Liability

Combined Single Limit: \$1,000,000 Each Occurrence

Business Automobile Liability Insurance shall include coverage for the use of all owned, non-owned and hired automobiles and vehicles.

e. Independent Contractors: Included

f. Contractual Liability: Included

The Contractor shall furnish one copy of each of the Certificates of Insurance herein required for each copy of the Agreement, which shall specifically set forth evidence of all coverage required. If such limits are higher than the minimum limits required by the Agency, such limits shall be certified and shall apply to the coverage afforded the Agency under the terms and conditions of the Agreement as thought required and set forth in the Agreement. The Contractor shall furnish to the Agency copies of any endorsements that are subsequently issued amending coverage or limits.

B. Approval of Insurance

The Contractor or subcontractor(s) shall not begin work under the Agreement until the required insurance has been obtained and the proper Certificates of Insurance (or insurance

policies) have been filed with the Agency, adding the Agency as an additional insured as applicable. Neither approval nor failure to approve certificates, policies or insurance by the Agency shall relieve the Contractor or subcontractor(s) of full responsibility to maintain the required insurance in full force and effect.

C. Increased Limits

If, during the life of this the Agreement, the legislature of the State of New Mexico increases the maximum limits of the liability under the Tort Claims Act, the Agency may require the successful Contractor to increase the maximum limits of any insurance required herein. In the event that the successful Contractor is required to increase the limits of such insurance, an appropriate adjustment in the Agreement amount will be made.

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 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.

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:

23. WARRANTY

All construction, materials, workmanship, and services provided by Contractor shall be covered by a one year warranty, as indicated in the Contract Documents, including the Contractor's bid. The warranty shall begin when the Agency accepts deliverables from the Bidder. The warranty contract shall be solely with the Contractor and the Contractor shall be responsible for ensuring all warranty work is satisfactorily completed on any product under this Agreement. The Contractor shall respond to all requests for warranty repair within three (3) hours of notification by the Agency.

24. 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:

Kathy Holian
Vice Chair, Joint Powers Board

Date:

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date:

CONTRACTOR:

_____ Date:

APPROVED AS TO FORM:

Nancy R. Long
Agency Attorney

_____ Date: