



COMMISSIONERS COURT  
COMMUNICATION

AGENDA DATE : 6/24/2013

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO  
(IF APPLICABLE): 2013-0062

**SUBJECT:** Approve and authorize the County Judge to sign the contract between the County of El Paso and El Paso Disposal for solid waste collection and disposal services in Canutillo, and East Montana areas of the County.

**BACKGROUND/DISCUSSION OF TOPIC:** To include statutory requirement, operational impact, or performance goal.

**FISCAL IMPACT:** None

**PRIOR COMMISSIONERS COURT ACTION (IF ANY):** None

**RECOMMENDATION:** Approval

**COUNTY ATTORNEY APPROVAL**

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY: Erich Morales

LEGAL REVIEW: 6/18/2013

LEGAL REVIEW NOTES (If Applicable): Approved as to Form as Submitted.

DATE: 6/18/2013

SUBMITTED BY:

Ernesto Carrizal III, P.E. Public Works Director. Public Works Dept. 915-546-2015

**CONTRACT**  
**between the**  
**COUNTY OF EL PASO, TEXAS**  
**and**  
**EL PASO DISPOSAL, LP**  
**regarding**  
**Collection and Disposal of Solid Waste**  
**In the Canutillo and East Montana Water Service Areas**

---

THIS CONTRACT (this "Contract") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, between the COUNTY OF EL PASO, TEXAS, (the "COUNTY"), and EL PASO DISPOSAL, LP ("CONTRACTOR").

**R E C I T A L S**

WHEREAS, the COUNTY is a political subdivision of the State of Texas having the authority under the County Solid Waste Act (Chapter 364, Texas Health & Safety Code) to provide for, by contract or otherwise, municipal Solid Waste (as defined below) collection and disposal services for residents within its boundaries; and

WHEREAS, the COUNTY, as part of providing water service also provides Solid Waste collection and disposal to its water service customers; and

WHEREAS, the COUNTY has recently commenced providing public water service to the Schuman Estates Subdivision and the Mayfair-Nuway Subdivisions in connection with the expansion of the COUNTY's water system, and as part of a continuing effort to improve the health, safety, and welfare of COUNTY residents; and

WHEREAS, CONTRACTOR submitted a proposal and, on the basis of its proposal, was selected by the COUNTY Commissioners Court on January 14, 2013, to perform the municipal Solid Waste collection and disposal services provided for in this Contract.

NOW, THEREFORE, in consideration of the mutual promises herein, and other good and valuable consideration, the receipt and acceptability of which are acknowledged, the parties agree as follows:

## WITNESSETH

### 1.0 TERM OF CONTRACT

This Contract is for a term of two years (the "Term"). The commencement date will be July 1, 2013. The Term will expire on June 30 2015.

### 2.0 AREAS OF SERVICE

2.1 Service Areas. The services to be provided by CONTRACTOR under this Contract shall be provided in the COUNTY's Water Service Areas. For purposes of this Contract, the COUNTY's "Canutillo Water Service Area" shall consist of: (i) the approximately 64 active residential water connections in the Schuman Estates Subdivision; (ii) the approximately 245 active water service connections in the Mayfair-Nuway Subdivision; all of which are connected to and receiving water service from the COUNTY's water system located in the un-incorporated northwest area of The COUNTY and (iii) the approximately 1,389 active residential water service connections in the Canutillo area receiving service from El Paso Water Utilities. . For purposes of this Contract, the COUNTY's "East Montana Water Service Area" shall consist of the approximately 1621 active water service connections connected to and receiving water service from the COUNTY'S East Montana Water System located in the un-incorporated East Montana Area of the COUNTY. Collectively, both service areas shall be known as the "Service Areas".

2.2 Identification of Service Locations. The COUNTY will identify the location of each active water customer in the Service Areas to be serviced under this Contract and the number of carts each customer will require. Unless otherwise specifically provided, each COUNTY water system customer shall receive one standard poly cart. Customers desiring additional carts must separately arrange the provision of the extra delivery carts, including, without limitation, delivery and billing. The COUNTY will update this listing as necessary as new active water customers are added or as water service is terminated.

2.3 Vinton Village ETJ Areas Service Termination. The Mayfair-Nuway Subdivision is located within the extraterritorial jurisdiction ("ETJ") of the Village of Vinton (the "Village"). Pursuant to Texas Health and Safety Code Sections 364.011, .031, .034, *et al*, the Village may object to the COUNTY providing Solid Waste collection services in the Village's ETJ. In the event the Village objects to the COUNTY providing Solid Waste collection services to the COUNTY residents within the Village's ETJ and takes any action to prohibit the COUNTY (or its authorized agent) from providing such services, the COUNTY may notify CONTRACTOR to cease providing service to the Mayfair-Nuway Subdivision or any area within the Village's ETJ. In such case, the COUNTY shall notify CONTRACTOR in writing to cease the objected-to collection services within 30 days of notice, or a shorter time if court ordered. The amount billed to the COUNTY for services rendered shall be reduced according to the number of accounts terminated. In the event of such service termination, CONTRACTOR shall have the right to bill for collection services actually provided up until the date of termination, but shall not be entitled to any other compensation or damages for the termination of services to areas within the Village's ETJ. The remainder of the rights, responsibilities, and obligations under this Contract shall remain otherwise unaffected.

2.4 City of El Paso ETJ Areas Service Termination. Portions of the Canutillo Service Area are located within the ETJ of the City of El Paso (the “City”). Pursuant to Texas Health and Safety Code Sections 364.011, .031, .034, *et al*, the City may object to the COUNTY providing Solid Waste collection services in the City’s ETJ. In the event the City objects to the COUNTY providing Solid Waste collection services to the COUNTY residents within the City’s ETJ and takes any action to prohibit the COUNTY (or its authorized agent) from providing such services, the COUNTY may notify CONTRACTOR to cease providing service to the Canutillo area residents within the City’s ETJ. In such case, the COUNTY shall notify CONTRACTOR in writing to cease the objected-to collection services within 30 days of notice, or a shorter time if court ordered. The amount billed to the COUNTY for services rendered shall be reduced according to the number of accounts terminated. In event of such service termination, CONTRACTOR shall have the right to bill for any collection services actually provided up until the date of termination, but shall not be entitled to any other compensation or damages for the termination of services to areas within the City’s ETJ. The remainder of the rights, responsibilities, and obligations under this Contract shall remain otherwise unaffected.

### **3.0 COMPENSATION**

3.1 Fees. For the satisfactory performance of the services set forth in this Contract, the COUNTY shall pay CONTRACTOR a per customer fee in accordance with Schedule “A”, which is attached to this Contract and incorporated by reference. The monthly payment to CONTRACTOR shall be based on the total number of active water connection customers in the Service Areas actually receiving Solid Waste collection service pursuant to the terms of this Contract.

3.2 Billing. The COUNTY shall be responsible for the billing of customers and collection of amounts due. This service is contracted for through the El Paso Water Utilities. All customers will be billed on a monthly basis. CONTRACTOR shall cooperate with the COUNTY to help assure that service is only billed to those customers who have actually received services, and service is provided only to those customers who are current on monthly bill payments. Within ten (10) days following the end of the month in which services are rendered, CONTRACTOR shall bill the COUNTY for the number of carts serviced in accordance with Schedule “A”. CONTRACTOR shall be entitled to payment for services rendered irrespective of whether or not the COUNTY, or its agent actually collects from the customer for service. CONTRACTOR shall be entitled to payment for services rendered no later than the 20<sup>th</sup> of the month following the month in which service was rendered or the 31<sup>st</sup> day after the date the COUNTY receives an invoice for the performance of the service, whichever is later. Thereafter, a service charge of one percent (1%) per month shall be added to the unpaid balance of the account; provided, however, that no penalty or payment shall be rendered in violation of the Texas Prompt Payment Act, Texas Government Code Chapter 2251, as amended. If the COUNTY fails to pay CONTRACTOR within sixty (60) days from the time service is rendered, CONTRACTOR shall be entitled to stop Solid Waste collection until paid.

3.3 Delinquent and Closed Accounts. CONTRACTOR shall discontinue services to any customer upon receiving written notice from the COUNTY to discontinue services. Upon proper notice from the COUNTY to resume services, CONTRACTOR will resume service on the next regularly scheduled collection day. Upon written request from the COUNTY,

CONTRACTOR will pick up a cart from a discontinued service location and/or place new carts upon written request from the COUNTY without further charge to the COUNTY. CONTRACTOR shall not charge COUNTY any additional fee for either pick-up or delivery of any cart.

3.4 Unforeseen Increase in Costs. If, during the term of this Contract, CONTRACTOR incurs an unusual and unforeseen increase in costs, CONTRACTOR may petition the COUNTY for an adjustment in the compensation to be paid under this Contract based on the unusual and unforeseen increase in costs. The COUNTY will give good faith consideration to such petition, but shall not be obligated to approve any requested increase in compensation.

#### **4.0 SCOPE AND NATURE OF SERVICES**

4.1 General. The work under this Contract shall consist of providing residential Solid Waste collection and disposal to water service customers in the Service Areas for whom the COUNTY determines to provide Solid Waste collection and disposal service.

4.2 Services to be Provided. Services to be provided by CONTRACTOR include all supervision, materials, equipment, labor and other items necessary to complete the work in accordance with this Contract. All equipment, including motor vehicles and trucks belonging to CONTRACTOR required for the performance of this Contract, shall be in good and safe condition and repair, ordinary wear and tear excepted. With respect to this Contract, "Solid Waste" means:

Solid and semi-solid waste including, but not limited to: (1) garbage such as putrescible animal, fish, food, fowl, fruit, grain or vegetable matter resulting from the preparation, storage, handling, decay or use thereof, and all organic waste; (2) rubbish such as sweepings, cleanings, trash, litter, broken crockery, glassware, containers, ashes, cast-off clothing, metal, wire, and all other non-putrescible or other discarded material or debris; (3) recyclable material such as wastes that are separated for recycling or reuse such as papers, metals, plastics, and glass that are identified as recyclable material within the City and COUNTY of El Paso and/or in accordance with applicable federal or state laws and regulations; (4) residential yard waste such as lawn or grass clippings, leaves, weeds, clippings of woody as well as fleshy plants, and pruning debris. "Solid Waste," for purposes of this Contract, does not include: (a) commercial construction debris; (b) dirt, rocks, or sod; or (c) any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations, including, without limitation, the rules and regulations of the United States Environmental Protection Agency or by the Texas Commission on Environmental Quality ("Hazardous Waste").

4.3 Provision of Waste Carts. CONTRACTOR, at its expense, shall furnish durable plastic collection containers which may be in various sizes from 95 gallons to 100 gallons with wheels (herein referred to as "carts") for each of the COUNTY's residential water service customers that are Solid Waste collection service customers, on the basis of one cart per water

connection. CONTRACTOR will distribute these carts throughout the Service Areas. The COUNTY shall notify CONTRACTOR to furnish and deliver additional carts to residential water customers who have multiple dwellings or otherwise require additional carts and who will be billed for additional fees in accordance with Schedule "A".

4.4 Establishment of Routes and Collection Days. Prior to the date collection service begins, CONTRACTOR will establish procedures and routes and will furnish the COUNTY with a computer-generated route sheet and a schedule of designated collection days so that the COUNTY can notify its customers. CONTRACTOR will be given at least thirty (30) days notice in order to mobilize equipment, and establish procedures and routes for an area. The routes, and changes in the routes, shall be subject to the approval of the COUNTY. As water services are extended to other areas and upon proper notification by the COUNTY, CONTRACTOR will furnish and distribute additional carts and revise its routes to serve the new areas.

4.5 Weekly Curbside Pick-Up. CONTRACTOR shall provide curbside collection service for the collection of residential Solid Waste to each customer one day per week. CONTRACTOR will make no collections prior to 6:30 a.m. or later than 6:30 p.m. when reasonably possible. Solid Waste will be placed in the carts by the customer and the customer will place the cart at the shoulder or edge of the street adjacent to paved or traveled roadways by 6:30 a.m. on the designated collection day in such a position that the cart can be picked up by CONTRACTOR's trucks' automated pick-up mechanisms. CONTRACTOR may decline to collect any Solid Waste not properly placed in the CONTRACTOR-provided cart. The customer will be responsible for returning the carts to their property. Residents wishing to have an additional cart will pay an additional monthly collection fee in accordance with fees provided for in Schedule "A". Carts designed for 95 to 100 gallons shall not be filled with more than 200 pounds of waste. Carts must not be over-filled or filled to the point that the lid cannot close. Solid Waste placed on top of the lid of the cart or outside of the cart will not be picked up. Solid Waste placed in CONTRACTOR's carts shall be considered abandoned by the customer. The COUNTY will take any necessary reasonable measures to assure that its water customers comply with the requirements set forth in this Contract.

4.6 Holidays. CONTRACTOR will not make collections on Independence Day, Thanksgiving, Christmas Day and New Years Day. CONTRACTOR will mail or distribute advance notices to customers whose normal pick-up day falls on these holidays and will notify these customers as to the alternate pick-up day which shall be during the same week which includes the holiday. Such notice may be given in accordance with the provisions of Section 15.0.

4.7 Special Arrangements. The COUNTY and CONTRACTOR agree to develop special arrangements on a case-by-case basis as necessary for those customers who are physically unable to place their carts at the edge of the street, such as senior citizens or disabled customers.

4.8 Monthly Pick-Up of Bulk Waste. CONTRACTOR shall establish procedures and provide for the collection of bulk wastes and rubbish not suitable for placement in carts once each month for each customer. Customers must call CONTRACTOR directly and make

arrangements for the date of this bulk pick-up. Such bulk waste shall be placed at the edge of the street. For bulk pick-ups, CONTRACTOR will utilize a one-man truck with a grappler type arm. Bulk waste pickups in excess of once a month shall be made for an agreed fee negotiated between CONTRACTOR and the customer. CONTRACTOR shall furnish the COUNTY a copy of its written agreement of such fee so the COUNTY may include such charges with its periodic billing.

4.9 Bulk Waste Guidelines. Each bulk waste collection is limited to 2 cubic yards per customer. The bulk waste is to be placed at least three feet away from walls, fences, poles, etc. CONTRACTOR'S driver will not enter the customer's property in order to collect the bulk waste. For the purposes of this Contract, "bulk waste" include stoves, refrigerators, freezers, air conditioners, furnaces, hot water tanks, washing machines, used and discarded mattresses, furniture or any other waste not suitable because of weight or volume for placement in the trash carts. Remodeling or construction debris, tires, dead animals, or Hazardous Waste will not be included in the bulk waste pick-up. Customer shall remove all refrigerant (which is Hazardous Waste) from items placed for bulk waste collection. All loose material and yard waste included in the bulk waste pick-up must be bagged in plastic sacks designed for Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top, with such bags being securely tied at the top for collection, and having a capacity not to exceed 30 gallons and a total weight not to exceed 35 pounds. Limbs and garden trimmings shall be cut in lengths not to exceed four feet and shall be tied in bundles not exceeding 35 pounds in weight. Bulk waste shall be prepared and placed at the edge of the street by 6:30 a. m. on the designated collection day. CONTRACTOR shall be responsible to assure that all bulk waste placed as required shall be picked up no later than 8:00 p.m. on the day agreed upon by CONTRACTOR and the customer.

4.10 Expansion of Collection Routes. As the COUNTY extends its water service to other areas within the COUNTY and determines to provide Solid Waste collection and disposal services to additional residents in those other areas, upon proper notification and approval by the COUNTY, CONTRACTOR will furnish and distribute additional carts and will revise its routes to serve the new areas.

4.11 Contractor Provided Administrative Services. CONTRACTOR shall provide administrative customer services relating to the operation of Solid Waste services for the COUNTY. This shall include providing a telephone number and responsible person whom customers may call to address and resolve matters including: billing, start-up, termination, or other service related issues; requesting new service for Solid Waste pick-up including delivery of a cart or replacement of damaged or missing carts; coordinating with El Paso Water Utilities on the number of active or inactive water service connections; confirming water service is currently being provided to an address where Solid Waste service is being requested or provided; and cancellation of Solid Waste services to accounts which no longer qualify due to termination of water service for any reason. This service shall be provided as part of the services provided by CONTRACTOR under this Contract, included in the fees being paid, and at no additional cost to the COUNTY. CONTRACTOR shall provide a monthly summary of customers to the COUNTY Auditor's office to include El Paso Water Utility account numbers, customer name, customer address, and billing amount.

## **5.0 OWNERSHIP OF SOLID WASTE**

The occupant of the premises where Solid Waste is generated shall be the owner of said Solid Waste. Title to all Solid Waste shall pass to CONTRACTOR when it accepts that Solid Waste by placing it in CONTRACTOR's collection vehicle or otherwise removed by CONTRACTOR from the customer's premise, whichever last occurs. When CONTRACTOR removes waste materials from the customer's cart and leaves it on the premises because it is Hazardous Waste or otherwise unacceptable, title shall remain with the occupant of the premises or his agent. If CONTRACTOR later discovers wastes that are Hazardous Waste or otherwise unacceptable have been illegally placed in CONTRACTOR's carts and the original owner can be positively identified, then title shall continue in the owner and he or she will be responsible for the additional costs of special handling and proper disposal of the material and any material contaminated by that waste.

## **6.0 PERFORMANCE BOND**

Within thirty (30) days of the execution of this Contract, CONTRACTOR shall furnish a performance bond to the COUNTY in an amount not less than the total estimated revenues for the first twelve (12) months. The term of this bond will be for a period of twelve (12) months. At the end of each twelve (12) month period, CONTRACTOR shall provide an extension of the coverage for a successive twelve (12) month period from an acceptable surety. A continuation certificate will be issued to the COUNTY for each additional term.

## **7.0 GRANT; ENFORCEMENT**

7.1 Grant. The COUNTY hereby grants to CONTRACTOR the sole and exclusive franchise, license and privilege to provide residential Solid Waste collection, removal and disposal services on behalf of the COUNTY to the County's water service customers in the designated Service Areas. CONTRACTOR shall be the exclusive provider of such services to the County's water service customers in the Service Areas during the Term. CONTRACTOR retains the non-exclusive right to solicit and service commercial customers and/or others who may not be County water service customers within the areas to be covered by this Contract.

7.2 Enforcement. The COUNTY may, in its sole discretion, enforce the exclusivity provisions of this Contract against third-party violators, taking into account the cost of doing so and other factors. CONTRACTOR may independently enforce the exclusivity provisions of this Contract against third-party violators, including, but not limited to, seeking injunctive relief and/or damages, and the COUNTY shall use good-faith efforts to cooperate in such enforcement actions brought by CONTRACTOR. The COUNTY shall use its best efforts to adopt ordinances, rules or regulations that have the effect of requiring third parties, including, without limitation, customers, to comply with the provisions of this Contract, including, without limitation, the exclusive service rights granted to CONTRACTOR pursuant to this Contract.

## **8.0 OWNERSHIP OF EQUIPMENT**

The carts, trucks and all other equipment purchased by CONTRACTOR and used in carrying out this Contract shall be the property of CONTRACTOR and may bear the name and logo of CONTRACTOR. In the event of the termination of this Contract prior to the expiration



of the stated term, the COUNTY will take reasonable steps to assure that all carts furnished under this Contract are returned to CONTRACTOR.

## **9.0 DISPOSAL OF WASTE**

CONTRACTOR agrees to deliver all residential waste collected by it under this Contract to a properly permitted municipal solid waste landfill (the "Disposal Site"). CONTRACTOR shall have the right, if it so desires, to sort the waste collected by it and remove any recyclable items. In such event, there shall be no requirement that the items removed for recycling be delivered to the Disposal Site.

## **10.0 REFUSAL TO ACCEPT WASTE**

CONTRACTOR shall not be required to collect or accept any liquid wastes, Hazardous Waste, household hazardous or household toxic wastes, or infectious or medical wastes.

## **11.0 COMPLAINTS**

CONTRACTOR will provide a residential service telephone number, customer representatives and field representatives in order to assure a high level of customer satisfaction. Complaints shall be given prompt and courteous attention. In the case of alleged missed scheduled collections, CONTRACTOR shall investigate and, if the allegation is verified, shall arrange for the collection of the Solid Waste not collected within twenty-four (24) hours after the complaint is received.

## **12.0 REPAIRS**

12.1 CONTRACTOR shall repair and/or correct any damage to private property or COUNTY property to the extent caused by CONTRACTOR's negligence or willful misconduct. Prompt repair shall normally be deemed to be accomplished within five (5) working days after the damage is brought to the attention of CONTRACTOR or its representatives. In cases where such damage creates a safety or security hazard, CONTRACTOR shall make temporary repairs immediately. Notwithstanding the foregoing, CONTRACTOR shall not be liable for any surface or subterranean damage done by its trucks, including but not limited to sidewalks, septic tanks, sewer lines, or other underground utilities, pipes, wires, etc.

12.2 Each customer shall be required to maintain the cart located at their property in a clean, neat and sanitary condition which shall include washing the cart as often as necessary to maintain good appearance, sanitary condition and adequate fly control.

## **13.0 COMPLIANCE WITH LAWS**

CONTRACTOR shall conduct operations under this Contract in compliance with all applicable federal, state, and local laws, ordinances, rules, and regulations, including traffic laws, whether now in effect or adopted or amended hereafter.

#### **14.0 NON-DISCRIMINATION**

CONTRACTOR shall not discriminate against any person because of race, sex, age, creed, color, religion, disability, or national origin.

#### **15.0 ENCLOSURES WITH BILLINGS**

To the extent feasible, the COUNTY (or its designated billing agents) shall include with its billing statements such "Notices" as CONTRACTOR, at its expense, shall furnish to the COUNTY on a timely basis to give information to customers relating to such matters as holiday collection schedules, recycling information, changes in routes, and other items relevant to CONTRACTOR's services to the COUNTY.

#### **16.0 TERMINATION**

16.1 The COUNTY may terminate this Contract at any time, upon failure of CONTRACTOR to comply with any terms of this Contract or any applicable federal, state, or county regulations (*i.e.*, breach), but only upon written notice in accordance with Section 24.0, ten (10) days prior to termination if based on a default that results in stoppage of collection and disposal service and thirty (30) days if based on any other reason and only if CONTRACTOR during said time refuses to comply without due cause with this Contract's terms, laws, or regulations as specified in the notice. The COUNTY may allow such longer notice of termination as the COUNTY deems appropriate, in its sole, subjective discretion. In the event notice is given by regular mail, notice shall be deemed "served" upon deposit of the notice in the mail. If notice is given by certified mail, it shall be deemed "served" upon receipt. "Due cause" means a legally sufficient ground or reason, including those set forth in the next paragraph, based upon the spirit and intent of this Contract and/or applicable law, as would compel a reasonably prudent person to act in a similar manner under similar circumstances.

In addition to other terms of this Contract, any or all of the following shall be considered events of default of this Contract, allowing the COUNTY to terminate this Contract for due cause: (a) if CONTRACTOR petitions any court to be adjudged a bankrupt, (b) if a petition in bankruptcy is filed in any court against CONTRACTOR; (c) if CONTRACTOR is judicially determined to be insolvent; (d) if CONTRACTOR is adjudged bankrupt; (e) if a receiver or other officer is appointed to take charge of the whole or any part of CONTRACTOR's property or to wind up or liquidate its affairs; (f) if CONTRACTOR seeks a reorganization under any of the terms of the Federal Bankruptcy Code, as amended, or under any insolvency laws; (g) if CONTRACTOR admits, in writing, its inability to pay its debts as they become due; (h) if any final judgment is rendered against CONTRACTOR and remains unsatisfied for a period of thirty (30) days from the date on which it shall become final; or (i) if CONTRACTOR abandons its responsibilities under the provisions of this Contract.

The County is a political subdivision of the State of Texas, and as such adopts its budget according to the laws of the State of Texas for a period of one year beginning on October 1st and terminating on September 30th of each year. No tax nor interest and sinking fund has been set, adopted or established for the payment for the obligations of this Agreement. Therefore, in the event of fiscal emergency or the County does not intend to include or does not include sufficient

funds in its next annual budget, or in any fiscal year during the term of this Agreement, for the payment of its obligations in regard to services to be provided by the Contractor, the County may terminate this Agreement without penalty or further payment, upon 60 days written notice to the Contractor.

16.2 This Contract may be terminated by CONTRACTOR in the same manner as provided for the COUNTY in Section 16.1, except that notice of any breach, and the corresponding time to cure such breach, is thirty (30) days. Breach includes but is not limited to, failure to make required payments and remittances; failure to comply with any term of this Contract; failure to enforce Rules and Regulations; and failure to comply with applicable laws, regulatory requirements and operating procedures.

16.3 In the context of Sections 16.1 and 16.2, breach includes, but is not limited to: failure to make required payments and remittances; failure to provide required service, equipment and facilities; failure to maintain required insurance and bonds; and failure to enforce rules and regulations; and failure to comply with applicable laws, regulatory requirements, and operating procedures.

16.4 In the event of any breach of any provision of this Contract, which has not been cured by the defaulting party within the “cure” period specified in Sections 16.1 or 16.2 after proper notice, the non-defaulting party may cure such breach and shall have the right to collect or offset any costs incurred in effecting such cure.

## **17.0 INDEPENDENT CONTRACTOR**

CONTRACTOR shall be deemed an independent contractor. The employees of CONTRACTOR shall be deemed the sole employees of CONTRACTOR. CONTRACTOR is solely responsible for liability resulting from any negligent acts or omissions performed or created by CONTRACTOR, its employees, and or agents or representatives.

## **18.0 INSURANCE**

CONTRACTOR shall furnish a certificate of insurance coverage to protect CONTRACTOR, the COUNTY, and its officers and employees from liability arising out of this Contract as follows: Automobile liability insurance in the amount of not less than \$100,000 per person and \$300,000 per accident and property damage insurance in the amount of not less than \$50,000 for property damage and \$300,000 for bodily injury. In addition, CONTRACTOR will carry excess liability (umbrella) insurance in the amount of not less than \$500,000. Coverage shall be maintained by CONTRACTOR during the term of this Contract. The COUNTY shall be listed as an additional insured on the insurance policy, as respects work performed by or on behalf of CONTRACTOR. The COUNTY reserves the right to receive a certified copy of all required insurance policies and the COUNTY shall be given thirty (30) days prior written notice of any cancellation, suspension, or material change in coverage.

## **19.0 INDEMNIFICATION**

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE COUNTY, AND ITS DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS FROM EVERY LOSS, CLAIM, SUIT, JUDGMENT, DAMAGE TO PROPERTY, INJURY TO OR DEATH OF ANY PERSON, EXPENSES, OR ANY OTHER LIABILITY OF ANY NATURE WHATSOEVER TO THE EXTENT CAUSED BY, ARISING OUT OF OR IN CONNECTION WITH THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT BY CONTRACTOR, ITS EMPLOYEES OR AGENTS. CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD THE COUNTY HARMLESS FOR ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, FINES, PENALTIES AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING OUT OF, OR RELATED TO, ENVIRONMENTAL CLAIMS, DAMAGES OR VIOLATIONS TO THE EXTENT ARISING OUT OF OR IN CONNECTION WITH THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS IN PERFORMANCE OF THIS CONTRACT BY CONTRACTOR, ITS EMPLOYEES OR AGENTS, AND CONTRACTOR SHALL COMPLY WITH ALL LOCAL, STATE, AND FEDERAL REGULATIONS, RULES, AND STATUTES PERTAINING TO THE TRANSPORTATION AND DISPOSAL OF SOLID WASTE. NEITHER PARTY HERETO SHALL INCUR ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER UNDER, OR IN RELATION TO, THIS CONTRACT, OR THE BREACH THEREOF, WHETHER BASED UPON CONTRACT, STRICT LIABILITY, TORT, NEGLIGENCE, OR OTHER LEGAL THEORY.

## **20.0 SUBCONTRACTING**

Services to be performed pursuant to this Contract may be subcontracted by CONTRACTOR only with the written consent of the COUNTY, which consent shall not be unreasonably withheld conditioned or delayed.

## **21.0 ASSIGNMENT OF INTEREST**

CONTRACTOR may not assign its interests in this Contract without the written consent of the COUNTY, which consent shall not be unreasonably withheld conditioned or delayed. CONTRACTOR binds itself and its successors and assigns to the COUNTY with respect to all covenants of this Contract.

## **22.0 PERMITS**

CONTRACTOR shall be solely and entirely responsible for procuring all appropriate licenses and permits which may be required by any competent authority for CONTRACTOR to perform the services set forth in this Contract.

## **23.0 CONTRACT REPRESENTATIVES**

Until changed by written notice, the Contract representative for the COUNTY is Ernie Carrizal, El Paso County Public Works Director, Room 407, 800 East Overland Street, El Paso, Texas 79901, (915) 546-2015; FAX: (915) 546-8194, and the Contract representative for

CONTRACTOR is Lorena Quezada, Residential Service Manager, El Paso Disposal, 5539 El Paso Drive, El Paso, Texas 79905, Mailing Address: P. O. Box 20179, El Paso, Texas 79998, (915) 772-7495; FAX: (915) 779-2931.

#### **24.0 NOTICES AND COMMUNICATIONS**

Notices and communications between the parties pursuant to this Contract shall be mailed, faxed, or delivered to the above-stated addresses, unless otherwise notified in writing. Notices and communications shall be considered as having been given: (1) if mailed by regular mail, on the date the notice or communication is postmarked as being placed in the mail; or (2) if otherwise delivered, on the date of receipt.

#### **25.0 AMENDMENTS**

The parties may amend this Contract only by mutual consent in writing signed by the authorized representative(s) of each of the Parties.

#### **26.0 FORCE MAJEURE**

Neither party shall be liable for failure to perform their duties nor for any resultant damage or loss if such failure is caused by a catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God, or other similar or different contingency beyond the reasonable control of the party who fails to perform.

#### **27.0 TITLES**

The titles of the Articles, Sections, Subsections, Paragraphs, or Subparagraphs of this Contract are intended strictly for the convenience of the parties and shall have no effect and shall neither limit nor amplify the provisions of this Contract itself.

#### **28.0 SEVERANCE**

Should any provision of this Contract be held to be void, voidable, or for any reason whatsoever, of no force and effect, such provision shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract which shall remain in full force and effect.

#### **29.0 VENUE**

The obligations and undertakings of each of the parties to this Contract shall be performable in El Paso County, State of Texas.

#### **30.0 ENTIRE AGREEMENT**

This Contract contains the entire agreement between the parties relating to the subject matter hereof. Any oral representation of modification concerning this Contract shall be of no force except a subsequent amendment in writing signed by the parties.

**31.0 RECORDS**

CONTRACTOR agrees to provide to the COUNTY, upon its request (within seven (7) working days from the date of a written request), accurate copies of all records, or duplicates thereof, without charge, as may be required to be maintained by federal, state, or local rules or regulations regarding the proper and legal collection and disposal of Solid Waste.

**32.0 AUTHORIZED REPRESENTATIVES**

Each individual executing this Contract represents and warrants that he/she is duly authorized to execute and deliver this Contract on behalf of the entity he/she represents in accordance with a duly adopted resolution or rule governing the authority to bind the entity and that this Contract is binding upon the party in accordance with the terms of said resolution or rule.

**33.0 ACTIONS AFFECTING CONTRACT**

All actions taken by the parties materially affecting this Contract shall be done by proper resolution/act of the entity. Proof of such proper resolution/act shall be provided upon demand by a party if the other party so requests.

**34.0 WAIVER**

Failure by either Party to enforce any condition, requirement, responsibility or provision of this Contract shall not be construed as a waiver of the Party's right to subsequently enforce that condition, requirement, responsibility or provision of this Contract, or to fully enforce any other condition, requirement, responsibility or provision.

**35.0 RESERVATION OF COUNTY AUTHORITY**

The COUNTY specifically reserves the right to enact general regulations affecting matters within the COUNTY which may affect CONTRACTOR, except that such regulations, unless required to be adopted by the State or Federal law, shall not modify this Contract, nor abridge CONTRACTOR's rights under this Contract.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows.]*

IN WITNESS WHEREOF, the Parties have executed this Contract in duplicate, both counterparts to be considered originals, on and to be effective the day and year first above written.

**COUNTY OF EL PASO, TEXAS**

ATTEST:

By: \_\_\_\_\_  
Veronica Escobar  
County Judge

\_\_\_\_\_  
County Clerk

**EL PASO DISPOSAL, LP**

By: \_\_\_\_\_  
Melvin W. Harris  
District Sales Manager  
Authorized Representative

**SCHEDULE A**

to

CONTRACT  
between the  
COUNTY OF EL PASO, TEXAS  
and  
EL PASO DISPOSAL, LP  
regarding

Collection and Disposal of Solid Waste in the Canutillo and East Montana Water Service Areas.

Compensation for Solid Waste collection and disposal services:

**Locations:Customer per month**

<b>Canutillo Water Service Area</b>	<b>\$15.00 – 1<sup>st</sup> cart per month Additional cart \$6.73</b>
<b>East Montana Water Service Area</b>	<b>\$15.25- 1<sup>st</sup> cart per month Additional cart \$7.00</b>





**COMMISSIONERS COURT  
COMMUNICATION**

AGENDA DATE : 1/14/2013

CONSENT OR REGULAR: consent

CONTRACT REFERENCE NO  
(IF APPLICABLE): \_\_\_\_\_

**SUBJECT:**

Disposition of Bid #12-078, Household Garbage Disposal Service for the Canutillo and East Montana Area.

**BACKGROUND/DISCUSSION OF TOPIC:** To include statutory requirement, operational impact, or performance goal.

This bid is to solicit a vendor to provide household garbage disposal service for the Canutillo and East Montana area.

**FISCAL IMPACT:**

The department is estimating an annual fiscal impact of \$500,000.00 per contract for these services, but not exceed \$1,000,000.00.

**PRIOR COMMISSIONERS COURT ACTION (IF ANY):**

Approved to go out to bid by Commissioners Court on November 5, 2012. Specifications were approved by the Purchasing Review Panel on October 30, 2012.

**RECOMMENDATION:**

Recommendation that award be made to:

El Paso Disposal, LP BID #12-078, Household Garbage Disposal Service for the Canutillo and East Montana Area. Canutillo \$15.00 1st cart per month and \$6.73 for 2nd cart per month. East Montana \$15.25 1st cart per month and \$7.00 2nd cart per month. The contract term for each area will be three (3) year with the option to renew agreement for two (2) one (1) year extensions.

**COUNTY ATTORNEY APPROVAL**

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY:

LEGAL REVIEW:

LEGAL REVIEW NOTES (If Applicable):

DATE:

SUBMITTED BY:

Joe Lopez Jr., Assistant Purchasing Agent, Purchasing Department (915) 546-2048

<b>BID SUMMARY</b>
--------------------

BID TITLE      Household Garbage Disposal Service for the Canutillo and East Montana Area

---

BID NUMBER      12-078

---

DEPARTMENT      Road and Bridge                      CONTACT      Norma Palacios

---

<u>DESCRIPTION</u>	<u>DATE</u>
BID OPENING APPROVAL BY COMMISSIONER'S COURT	<u>11/5/2012</u>
RECEIVED SPECIFICATIONS FROM DEPARTMENT	<u>11/5/2012</u>
BID PACKAGES MAILED	<u>11/12/2012</u>
BID ADVERTISED	<u>11/11/2012 &amp; 11/18/2012</u>
PRE-BID CONFERENCE	<u> </u>
DEADLINE TO QUESTIONS	<u>11/28/2012</u>
OPENING DATE	<u>12/5/2012</u>
SPREADSHEET SENT TO DEPARTMENT	<u>12/6/2012</u>
SPREADSHEET RECEIVED FROM DEPARTMENT	<u>12/14/2012</u>
PLACED ON COMMISSIONER'S COURT AGENDA	<u>01/14/2013</u>

ADDENDUMS

<u>DATE</u>	<u>REASON</u>
<u>11/28/2012</u>	<u>Addendum 1 answers to vendor questions.</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

COMMENTS:

**EL PASO COUNTY PROCUREMENT REVIEW PANEL FORM**

PRP No. \_\_\_\_\_

APPROVAL  
SPEC   ✓    
BID \_\_\_\_\_  
RPF \_\_\_\_\_  
RFP \_\_\_\_\_  
RFQ \_\_\_\_\_  
CONTRACT \_\_\_\_\_

AWARD APPROVAL  
BID \_\_\_\_\_  
RPF \_\_\_\_\_  
RFP \_\_\_\_\_  
RFQ \_\_\_\_\_  
CONTRACT \_\_\_\_\_

Description: Public Works – Specs only  
Garbage Collection – East Montana

**ACTION TAKEN BY PROCUREMENT REVIEW PANEL**

10/30/12 Reviewed and Accepted for Commissioners Court Action\*

\_\_\_\_\_ Returned to Department for further action/information/documentation\*

\_\_\_\_\_ Not Accepted/Other\* \_\_\_\_\_

(\* with the following modifications, amendments, or reservations)

Changes to Section 1.3 regarding Contractor qualifications  
as discussed

This procurement item has been reviewed by the Procurement Review Panel. Said review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

**Panel Members**

County Contract Administrator                      **Accept**                      **Not Accept**

County Auditor Designee Edward Gib                      **Accept**                      **Not Accept**

County Purchasing Designee [Signature]                      **Accept**                      **Not Accept**

County Department Designee [Signature]                      **Accept**                      **Not Accept**

Subject Matter Expert (as needed)                      **Accept**                      **Not Accept**

County Attorney Reviewer                      Approved for further action Y / N

Josephine J. Brubaker

**EL PASO COUNTY PROCUREMENT REVIEW PANEL FORM**

PRP No. \_\_\_\_\_

SPEC \_\_\_\_\_  
BID \_\_\_\_\_  
RPF \_\_\_\_\_  
RFP \_\_\_\_\_  
RFQ \_\_\_\_\_  
CONTRACT \_\_\_\_\_

BID award of Bid 12-078  
RPF \_\_\_\_\_  
RFP \_\_\_\_\_  
RFQ \_\_\_\_\_  
CONTRACT \_\_\_\_\_

Description:

Public Works – Garbage Disposal for Canutillo and East Montana – Ernie  
award of Bid # 12-078 Norma Rivera Palacios  
Carrizal

**ACTION TAKEN BY PROCUREMENT REVIEW PANEL**

12/14/12 Reviewed and Accepted for Commissioners Court Action\*

\_\_\_\_\_ Returned to Department for further action/information/documentation\*

\_\_\_\_\_ Not Accepted/Other\* \_\_\_\_\_

(\* with the following modifications, amendments, or reservations)

Purchasing to place on agenda, Ernie / Public Works  
will coordinate w/ Joe Lopez

This procurement item has been reviewed by the Procurement Review Panel. Said review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

**Panel Members**

County Contract Administrator

Vacant

Accept

Not Accept

County Auditor Designee

Gordon Ah

Accept

Not Accept

County Purchasing Designee

[Signature]

Accept

Not Accept

County Department Designee

[Signature]

Accept

Not Accept

Subject Matter Expert (as needed)

[Signature]

Accept

Not Accept

County Attorney Reviewer

[Signature]

Approved for further action Y / N



## Vendors Receiving Specifications

**Bid 12-078, Household Garbage Disposal Service for the Canutillo and East Montana Area**

**Opening Date: Wednesday, December 05, 2012**

<i>Company</i>	<i>Contact</i>	<i>Address</i>	<i>City</i>	<i>State</i>	<i>Zipcode</i>	<i>Telephone</i>	<i>Fax</i>	<i>Addendums</i>
Alamo 1	Alex Salas	10843 Guiltale	San Antonio	TX	78216	210-404-1220	210-820-3636	1 2 3 4
American Disposal Services	Marco Nava	4004 Kemp Avenue	El Paso	TX	79904	915-562-2700	915-562-2704	1 2 3 4
Bio Pappel International		1520 Myrtle	El Paso	TX	79901	915-351-7970		1 2 3 4
Bronco Disposal	Raul Sandoval	7713 Alameda	El Paso	TX	79915	915-778-9548	915-778-9547	1 2 3 4
CT Inc.		400 Inglewood Dr #E	Socorro	TX	79927	915-860-1161		1 2 3 4
El Paso City Solid Waste Manage		7969 San Paulo Dr	El Paso	TX	79907	915-621-6700		1 2 3 4
El Paso Disposal, LP	Melvin W. Harris	P.O. Box 20179	El Paso	TX	79998	(915) 772-7495	(915) 779-2931	1 2 3 4
El Paso Waste Management		1710 E Paisano Dr.	El Paso	TX	79905	(915) 533-8799		1 2 3 4
Environmental Services Departme	Allen	7968 San Paulo Dr.	El Paso	TX	79907	915-621-6702	915-621-6711	1 2 3 4
Fuels	Vicky Nunn	400 Valley Chili Rd	Anthony	TX	79821	915-886-5340		1 2 3 4
H Repair Solutions	Arturo Escalante	12444 Windermere Ave.	El Paso	TX	79928	915-856-0010	915-856-0010	1 2 3 4
Heist Disposal Services	Chuck Heist	10225 Woodway Drive	El Paso	TX	79925	915-594-3610	915-591-0878	1 2 3 4
Highland Products Group	Bettina Igartua	3350 NW Boca Raton Blvd. Ste.	Boca Raton	FL	33431	561-620-7878	561-620-8668	1 2 3 4
Moore Service Inc.	Ron Smith	105040 Montwood Drive	El Paso	TX	79935	915-592-5558	915-592-2416	1 2 3 4
RM Trash Disposal		7126 N Loop Dr.	El Paso	TX	79915	915-772-6495		1 2 3 4

## Vendors Receiving Specifications

**Bid 12-078, Household Garbage Disposal Service for the Canutillo and East Montana Area**

**Opening Date: Wednesday, December 05, 2012**

<b>Company</b>	<b>Contact</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zipcode</b>	<b>Telephone</b>	<b>Fax</b>	<b>Addendums</b>
Sandmill Dirt Works	Joe Sandoval	5709 Kensington	El Paso	TX	79924	915-821-2908		1 2 3 4
Southwest Disposal		PO BOX 369	Las Cruces	NM	88004	575-524-8482		1 2 3 4
Stericycle	Dietrah Weber	4010 Commercial Ave.	Northbrook	IL	60062	866-978-3744	866-529-6092	1 2 3 4
Summa Fibers Inc.		1520 Myrtle Ave.	El Paso	TX	79901	915-351-7970		1 2 3 4
Tex-American Recycling Inc.	Valarte Quintanilla	3801 A. N Commerce St	Forth Worth	TX	76106	817-624-8108	817-624-3847	1 2 3 4
Waste Management Risma		400 Inglewood Drive	El Paso	TX	79927	(915) 860-7011		1 2 3 4