EXCLUSIVE RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES CONTRACT

This Contract ("Contract") is made and entered into this ____ day of_____, 2019, by and between the town of Silver City, New Mexico ("Town"), and Universal Waste Systems, Inc. ("Contractor"). The parties agree as follows:

SOLE PROVIDER. The Town does hereby retain the services of the Contractor and the Contractor hereby agrees to perform solid waste collection for the Town upon the terms and conditions stated in this Contract. The Town hereby grants the Contractor the exclusive rights during the term of this Contract to perform all municipal solid waste (MSW) collection for residents, businesses and other enterprises located within the boundaries of the Town and any tracts, territories and areas hereafter annexed to, or acquired by the Town, including any areas the Town provides municipal services. Such services exclude roll off containers, which will remain open market.

TERM. The Term of contract shall be for six (6) years commencing on September 1, 2019 and ending on August 31, 2025 unless terminated as provided below. On September 1, 2023 and on September 1st of each subsequent 4th year the Term of the Agreement shall be extended (without further action by the Parties) for an additional four (4) years (the “Automatic Renewal”) so that the remaining term of the Agreement shall be six (6) years. Either Party may give notice of termination of the Automatic Renewal not less than one-hundred eighty days (180) days prior to August 31, 2025, or not less than ninety (90) days prior to August 31st of each subsequent four (4) year term. Once notice of termination of the automatic renewal is given by either Party no further automatic renewals shall occur, and this Agreement shall remain in effect only for its remaining term.

SOLID WASTE ORDINANCE. The Town and Contractor shall comply with and reference the currently adopted ordinance, Silver City Municipal Ordinance §40-1, et seq., “Solid Waste and Recyclable Materials”, and shall abide by any amendments to those ordinances which may be passed at a future time by the Silver City Town Council. The Town of Silver City shall enforce such ordinance as it deems necessary to do so, and will provide violations/penalties as specified when required. This Agreement is exempt from the New Mexico Procurement Code pursuant to NMSA §13-1-98.

PURCHASE OF EQUIPMENT: Contractor shall purchase, at fair market value as listed below, certain solid waste collection trucks and equipment owned by the Town. Contractor shall credit the Town $10,000 per month over sixty (60) months starting on September 1, 2019 with the last payment due on August 31, 2025.

<table>
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<tr>
<th>VIN</th>
<th>SALE PRICE</th>
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<td></td>
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<td>Price</td>
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<td>4.</td>
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<td>5.</td>
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</tr>
<tr>
<td>6.</td>
<td>Carts and Bins</td>
<td>$132,060</td>
</tr>
</tbody>
</table>

The green 300 gallon commercial recycling containers are excluded and will not be purchased. In the event this Contract is terminated or revoked by the Silver City Town Council, in accordance herewith and in accordance with applicable law, Contractor shall pay any remaining balance owing on the purchase of the listed equipment within 90 days of the expiration of the cure period provided herein. Performance of this covenant shall be included in the Performance Bond provided herein.

**ROUTES AND SCHEDULES.** Within ten days of execution hereof, the Town shall provide Contractor with an Excel spreadsheet of schedules of residential and commercial garbage collection and any route maps, which Contractor may change at its option. The spreadsheet shall include names, addresses, phone numbers, container size and serial numbers, and frequency of pickup for each customer. The Contractor shall provide the Town with updated schedules of residential and commercial collection routes and keep such information current at all times. In the event of changes in routes or schedules due to the observance of holidays, or events outside the control of the Contractor that will alter the day of pickup, the Contractor shall notify the Town, within 24 hours, and attempt the pickup reasonably as soon as possible.

Residential collection shall be made one (1) time per week, between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, while commercial collection shall be made between the hours of 5:00 a.m. and 7:00 p.m. Monday through Saturday. In the event of a missed pickup due to the customer or resident's negligence, a special pickup will be made within 48 hours, by the request of the customer, and the customer shall be charged per the applicable rate schedule. Contractor shall be responsible for cleaning spills by its employees or in any way caused by its actions. Contractor shall not block or impair access to driveways or mailboxes.

**BILLING.** The Town shall provide an invoice to each residential and commercial customer on a monthly basis at no charge to Contractor. The Town shall provide all payment processing and collection services for residential and commercial customers.

**DISPOSAL.** The Town will be responsible for paying all disposal fees. Waste materials collected by contractor will be delivered to Southwestern New Mexico Regional Landfill, located at 318 S. Ridge RD, Silver City, New Mexico.

**VEHICLES.** Contractor shall pick up solid waste in enclosed container vehicles and shall comply with all applicable regulations or procedures which are required by any governmental entity, including proper licensing and permitting.

**OPERATIONS.** The Contractor and Town agree to report daily on the status of accounts as needed to ensure service is continued or halted, and all billing issues and services are resolved as specified.
BILLING, FEES AND NON-PAYMENT. The Contractor will bill the Town, and the Town shall pay for services rendered hereunder on a monthly basis, billed by the 15th day of the month subsequent to the services provided. The fee for services hereunder shall be $125,000.00 per month plus any applicable fees, gross receipts taxes and other taxes. Beginning on the second anniversary of execution hereof, the Contractor and the Town shall review and audit the tonnages collected by Contractor on an annual basis. The monthly fee hereunder for the following year shall be increased or decreased by the percentage of increase or decrease in tonnage provided the decrease in tonnage is not less than 2% in which case no adjustment would be made for that particular year. For example, if tonnage increases by 2 percent, the fee for the following year shall increase by 2%, subsequent to an annual performance review of service reports provided to the Town by the Contractor on a monthly basis. The Town agrees to pay the Contractor for these services within 45 days from receiving the monthly invoice. The Contractor will apply a late payment fee of 5% of the total invoice, if the Town fails to meet the 45-day payment after the monthly invoice is received. After January 2022, the fees contained in this section of the Contract will be analyzed on an annual basis and adjusted for increases or decreases in fuel costs and Consumer Price Index (CPI) escalation rates as published each year by the Bureau of Labor. All other adjustments, other than those for tonnage increases or decreases, must be agreed to in writing and signed by both parties.

FEES. The Town will charge and bill the customers of the municipality for all residential and commercial solid waste pick-ups at a rate defined by the Town Council through the current Rate and Fee Schedule per Resolution.

GO BACKS. If go-backs for residential or commercial services are needed, the Contractor will then make a pick up within 24 hours of the originally scheduled pick up. If there are consistent repeats or customer negligence has been determined, the Town will charge a reasonable fee for this pick up, prior to the go back being completed/scheduled. The contractor will bill the Town $10 for each go back when it is determined that this go back was due to customer negligence.

EDUCATION. The Contractor agrees to provide education to the public as requested by the Town, free of charge.

LARGE ITEM PICK UP. Contractor shall provide two free large item pickups per year to residential customers within the Town. Any other large item pickups or bulk item pickups will be coordinated with the Contractor at the cost of the customer as determined by the Contractor.

EASEMENTS. The Contractor will be granted access by the Town to all roads, easements, alley ways, one way streets and Town owned facilities for the purpose of collection of solid waste within the boundaries of the municipality.

SPECIAL SERVICES:

a. Disabled Household: A residential unit in which there is no one physically capable of placing a cart at curbside and for whom there is no other party living in the residence or nearby who can
perform that task for the customer, must notify Contractor as a Disabled Household and Contractor shall make reasonable arrangements/accommodations to retrieve and return the cart to and from the residence. Medical proof of disability may be required by the Contractor and Contractor shall comply with all HIPAA and other privacy laws in the management of the medical proof described herein.

b. Other Discretionary Services: Contractor may provide special services upon terms negotiated and agreed upon between the parties with notice to the Town.

SERVICES TO THE TOWN. The Contractor will provide free pickups and solid waste services to all Town owned buildings and properties as agreed upon by the Town and the Contractor. Upon the assumption of service, the Contractor agrees to field audit all accounts annually to ensure reconciliation of Town billing with the number and size of containers on site at each active account.

MAINTENANCE OF EQUIPMENT AND PREPARATION. The Contractor will be responsible for maintaining all equipment and will also ensure that they are prepared with materials needed to provide solid waste services to the Town, at all times. The Town will not be held responsible for any damaged, lost or stolen equipment owned by the Contractor used for providing solid waste services. Contractor further agrees to have a cart/container replacement/repair maintenance program and will keep them in good usable and serviceable condition.

INSURANCE. Contractor shall obtain and maintain all required insurances to legally operate. Compliance with the terms and conditions of this Section is a condition of Town’s obligation to pay compensation for the Services and Contractor shall not provide any Services under this Contract unless and until Contractor has met the requirements of this Section. Contractor shall provide Certificates of Insurance indicating that Contractor has met its obligation to obtain and maintain insurances and to assure that subcontractors maintain like insurance. General Liability Insurance: Contractor shall maintain liability insurance in an amount not less than the requirements set forth by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-19. Contractor shall maintain Worker’s Compensation insurance in an amount as may be required by law. Town may immediately terminate this Contract if Contractor fails to comply with the Worker’s Compensation Act and applicable rules when required to do so.

INDEMNIFICATION. Contractor shall indemnify, hold harmless and defend Town, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys’ fees, of any kind or nature, arising from Contractor's negligent performance hereunder or breach hereof or the negligent performance of Contractor’s employees, agents, representatives and subcontractors.

STATUS OF CONTRACTOR, STAFF AND PERSONNEL. This Contract calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of Town and will not be considered an employee of Town for any purpose. Contractor, its agents or employees shall make no representation that they are Town employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business
cards, or in any other manner, bearing the Town’s name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind Town to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding Town to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from Town; provided, however, that Contractor shall at all times during the term of this Contract maintain the ability to perform.

EMPLOYEES AND SUBCONTRACTORS. Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or subcontractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless Town for any and all claims that may arise from Contractor’s relationship to its employees and subcontractors.

STANDARD OF PERFORMANCE. Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Contract. Contractor shall perform the Services described herein in accordance with a standard consistent with the industry standard of care for performance of the Services. Contractor agrees to provide a monthly report to regarding the subsequent service month to include the number of monthly collections, late set outs, overloaded containers, missed collections, spillages, and additional information as requested by the Town Manager. A template of this report is attached to this agreement as Appendix A.

LICENSES AND PERMITS: Contractor shall maintain all required licenses and permits including, without limitation, all necessary professional and business licenses, throughout the term of this Contract. Contractor shall require and shall assure that all of Contractor’s employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses. Contractor shall pay the $500 per year, per vehicle, as provided in Silver City Municipal Ordinance §40-47(b)(3).

PERFORMANCE BOND. The Contractor will provide proof of performance bond of two hundred, fifty thousand dollars ($250,000.00) annually to the Town and must maintain such bond at all times of operation during this Contract term, in accordance with Silver City Municipal Code, §40-47(b)(2)(D).

COMPLIANCE WITH REGULATIONS. Contractor shall promptly comply with all Silver City Municipal Ordinances, New Mexico and federal statutes and regulations concerning the subject matter hereof.

NOTICE. Notices under this Contract shall not be deemed valid unless given or served in writing to both parties. Notice to the Town shall be made to the following address:

(insert notice address)
Notice to Contractor shall be made to the following address:

UWS of NM  
Attn: Rheganne Vaughn  
PO Box 45958  
Rio Rancho, NM 87174

Also: cadigan@cadiganlaw.com; matt@uwscompany.com.

ENTIRE AGREEMENT/AMENDMENT. This Contract contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this contract. This Contract may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

APPROPRIATIONS AND AUTHORIZATIONS. The terms of this Agreement are contingent upon sufficient collections or appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature, or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given. The Town is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

WAIVER. The failure of either party to enforce any provisions of this Contract shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with every provision of this Contract.

HOLD HARMLESS. Contractor agrees to not hold Town liable or as surety in any action brought against Contractor by any third party to the extent that Contractor is held liable.

BINDING EFFECT. The provisions of this Contract shall not be binding upon and inure to the benefit of both parties and their respective legal representatives, successors or assigns.

ASSIGNMENT. This agreement may not be assigned or otherwise transferred by Contractor without the express written consent of the Town.
TERMINATION. This Contract may be canceled and revoked at any time by the non-breaching party for an uncured material breach of the obligations described herein this agreement. The non-breaching party shall give written notice to the breaching party, describing in detail the nature of the breach and the actions necessary to be taken to cure. The noticed party shall have thirty (30) days to cure the breach, unless the parties agree to extend the cure period. If the breaching party shall not have cured the breach within the time period allotted, the non-breaching party may elect to give a notice of revocation and cancel the Contract forthwith. If the Contractor is the breaching party, all balances due under the equipment purchase shall be paid within thirty (30) days of the effective date of cancellation. Cancellation by either party shall not relieve either party of prior accrued credits and debits.

TOWN OF SILVER CITY:

____________________________________

____________________________________

Date:____________________

CONTRACTOR: Universal Waste Systems of New Mexico LLC. (“Contractor”)

By: _____________________________________

Its Manager

Date: ________________________

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