

COLFAX COUNTY, NEW MEXICO

PROFESSIONAL SERVICES CONTRACT

Pursuant to NMSA section 13-9-98(D), section 9 (emergency purchasing) and/or section 11 (sole source purchasing) of Colfax County Purchase Policy and Procedures Manual, this AGREEMENT is made and entered into by and between the COUNTY OF COLFAX, hereinafter referred to as the "County " and Arthur Rolloff Inc., hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the approval of Colfax County Commission.

IT IS AGREED BETWEEN THE PARTIES:

Scope of work

The contractor will provide following dumpsters in the location provided in the following:

Dumpster counts and locations.

216 total dumpsters, 74 dumpster locations with regular payment as agreed to.

Black Lake

Osha Road (12) dumpsters and (1) roll-off

Angel Fire

Camino Grande (1) dumpster

Angel Fire Airport (1) dumpster

Upper Taos Pines (3) dumpsters

Lower Taos Pines (5) dumpsters

B-4 Ostate Rd (4) dumpsters

Vietnam Memorial Road (8) dumpsters

Valverde Trailer Park (2) dumpsters

Wheeler View Road (1) dumpster

Eagle Nest

Squash Blossom (2) dumpsters

B-6 (4) dumpsters

B-8 (5) dumpsters

B-9 (6) dumpsters (3) dumpsters HWY 64 side

Comanche Creek (2) dumpsters (1) roll-off

Elizabethtown (2) dumpsters

Sunset Road (1) dumpster

Ute Park

Fire Department (10) dumpsters (1) roll-off (other roll-off belongs to HOA)

Miami

Miami Lane (4) dumpsters (1) roll-off
Miami South (9) dumpsters (1) roll-off

Colmer

Red River Ranch Road (2) dumpsters

Springer /French Tract

Broken arrow Road (7) dumpsters
Spear Road (3) dumpsters
Arapaho Trail Road (3) dumpsters

Springer

Remuda (2) dumpsters
School House Road (2) dumpsters
Wild Horse Road (2) dumpsters
HWY 468 (1) dumpster
Coppock (1) dumpster

Raton

Horse Mesa (Yankee) (3) dumpsters
Cherokee Hills (9) dumpsters
Turner Rd (4) dumpsters
Meadow Lark (8) dumpsters

A-23 Upper Caviness (8) dumpsters
Lower Caviness (3) dumpsters
A-21 Hill (3) dumpsters
A-68 Linwood (3) dumpsters
E Maxwell & Madison (1) dumpster

Stevens/Barlett Mesa (2) dumpsters
Dwyer (1) dumpster
Top of Francis Ave (1) dumpster
Market St (2) dumpsters
York Canyon Subdivision (Gold, Lead, & Stone) (3) dumpsters
Rodeo Grounds/Event Center (3) dumpsters

Hot Spot Roads for illegal dumping

Gardener Road
Potato Mountain Road
Old Dump Road

C-44 Roadrunner (1) dumpster
Jaritas Ranch (1) dumpsters
Craft Road (2) dumpsters

Dorsey & Windmill (1) dumpster
Dorsey & Eds (1) dumpster
C-40 Hackmore (3) dumpsters
Farley (3) dumpsters (1) roll-off
193 and A-41 (3) dumpsters

193 and A-7 Chico RD (2) dumpsters
A-7 Dorsey Mansion (2) dumpsters
A-7 Roundtree RD (1) dumpster
A-7 Circle Dot (2) dumpsters
A-35 Trinchera (3) dumpsters

Maxwell

C-24 Elm Tree Road (3) dumpsters
C-24 Elm Tree Road (1) dumpster
C-24 Elm Tree Road (1) dumpster
Whitley Stage Road (1) dumpster

Alamosa Rd (2) dumpsters
A-1 (2) dumpsters
Laguna Madre (2) dumpsters
Arms Ranch Rd (1) dumpster and (1) roll off.
A-3 Two Mile Rd (1) dumpsters
A-4 Highline (3) dumpsters
A-4 Highline (1) dumpster
A-2 & A-4 (2) dumpsters

Laguna Madre & A-1 (4) dumpsters

Off 1-25

Tinaja Exit (1) dumpster
Blosser Rd (2) dumpsters

Private/ Commercial pay customers (44 Dumpsters 17 locations)

Angel Fire Dentistry 27479 Hwy 64 Angel Fire (1 dumpster)

Mike Baca Jaritas Rd Springer (1 dumpster)

Cimarron State Park (5 dumpsters)

Colfax Tavern 32230 Hwy 64 Cimarron (1 dumpster) 2 in the summer

Deaf Smith County Grain on Swallow Rd (CR C-46) (1 dumpster)

Eagle Nest State Park (12 dumpsters)

Angel Nest Apt 27736 Hwy 64 Angel Fire (3 dumpsters)
Express UU Bar St James (4 dumpsters)
UU Bar Ranch (4 dumpsters)
Hidden Lake 109 Hidden Lake (2 dumpsters)
Eagle nest reintegration center 28783 Hwy 64 Eagle Nest (1 dumpster)
Mcaulife Ranch County Rd A-10 (1 dumpster)
Mike Yocom 10A Touch Me Not Angel Fire (1 dumpster)
Scott Shaffer 119 Squash Blossom Rd (1 dumpster not there now)
Silver Spur on Johnson Park Rd (TO Headquarters) (2 dumpsters)
V seven Hwy 64 1-2 miles from 3-mile bridge (1 dumpster)
Western Woods 181 Hwy 555 (3 dumpsters)

The contractor will provide one hundred fifty-seven (157) bear resistant dumpsters, three (3) cubic yard dumpsters in the Black Lake, Moreno Valley, Raton, Farley, Miami and Cimarron areas as well as some areas in Maxwell, and Springer. These locations will be as follows and are subject to change.

Black Lake

Osha Road (12)

Angel Fire

Camino Grande (1)

Upper Taos Pines (3)

Lower Taos Pines (5)

B-4 Onate Rd (4)

Vietnam Memorial Road (8)

Eagle Nest

B-6 (4)

B-8 (5)

B-9 (9)

Comanche Creek (2)

Elizabethtown (2)

Sunset Road (1)

Eagle Nest State Park (12)

Ute Park (10)

Cimarron State Park (5)

Miami Lane (4)
Miami South (9)

Springer

Broken Arrow Rd (7)

Raton

Horse Mesa (3)
Lower Caviness (3)
A-21 Hill (3)
A-68 Linwood (3)
E Maxwell & Madison (1)
Stevens/Bartlett Mesa (2)
Dwyer (1)
Francis ave (1)
Rodeo Grounds (3)

Farley (3)

Trinchera pass (3)

The locations will be determined by Colfax County and the Contractor.

The contractor will place 4 extra dumpsters in Black Lake. The contractor will place 2 extra dumpsters on upper B-9 and 2 extra dumpsters on lower B-9. The contractor will place 2 extra dumpsters on Camino Grande. Temporary dumpsters are to be placed at these locations during peak months starting Memorial weekend and Ending Labor Day weekend. Locations and dumpsters are subject to change after both parties shall agree to such changes.

The dumpsters shall be emptied by means of a compactor truck that meets New Mexico Environment Department Regulations. The compacted solid waste shall be hauled to a landfill site approved by the New Mexico Environmental Department, unless the parties specifically agree in writing to delivery to a land fill approved by the environmental department of another state.

The contractor will replace, repair and otherwise maintain all dumpsters at no additional cost to the County. Contractor shall include a plan to prevent bears and other animals from entering dumpsters and scattering trash. This plan should consist of providing animal proof bins or containers, pictures of the animal proof bins or containers should be provided for approval by the County. Contractor will increase the frequency of the collection schedule, if necessary to avoid refuse or trash problems created by animals in problem areas.

The County shall make all determinations concerning the adequacy and sufficiency of service rendered by Contractor. The Contractor shall comply with all Federal, State and local rules, regulations and laws.

The County shall make all determinations concerning the adequacy and sufficiency of service rendered by the Contractor. The Contractor shall comply with all Federal, State and local rules, regulations and laws.

2. Compensation.

A.

Contractor must establish controls to prevent duplicate payments for the same service to the County and other government entities – for example, if the contractor provides services both to County and a municipality, the Contractor shall not charge duplicate payments for the same services to the County and the municipality. All duplicate invoices, if identified, shall be auto denied, or rejected.

B. Payment is subject to availability of funds pursuant to the Colfax County Commission Approval set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by Colfax County Commission. All invoices MUST BE received by Colfax County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor shall submit a detailed statement accounting for all services performed. If Colfax County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Contractor may take to provide remedial action. Upon certification by Colfax County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, Colfax County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY COLFAX COUNTY COMMISSION. This Agreement shall terminate one year from the date of execution of this contract unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Colfax County Commission Approval) (the initial term). This contract may be renewed by the Colfax County upon written agreement of all parties for four (4) successive one-year periods including the initial term, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

4. Termination.

A. Termination.

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least sixty (60) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, Colfax County's sole liability upon such

termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if Colfax County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party: provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre- termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by Colfax County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of public funds or due to the Appropriations paragraph herein.

THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B. Termination Management.

Immediately upon receipt by either Colfax County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of Colfax County; 2) comply with all directives issued by Colfax County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as Colfax County shall direct for the protection, preservation, retention or transfer of all property titled to Colfax County and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of Colfax County upon termination and shall be submitted to Colfax County as soon as practicable.

5. Colfax County Commission Approval.

The Contract is presented to the Colfax County Commission for approval. The approval is based on the availability of funds from the approved budget for that specific fiscal year.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for Colfax County and are not employees of Colfax County. The Contractor and its agents and employees shall not accrue leave retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of Colfax County because of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes including without limitation, self-employment, and business income tax. The Contractor agrees not to purport to bind Colfax County unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of Colfax County.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of Colfax County.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of Colfax County, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Conflict of interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Colfax County employee while such employee was or is employed by Colfax County and participating directly or indirectly in Colfax County's contracting process.

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of Colfax County; (ii) the Contractor is not a member of the family of a public officer or employee of Colfax County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in Colfax County's making this Agreement;

4) this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code.

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement, or any procurement related to this Agreement; and

6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of Colfax County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 10 are material representations of fact upon which Colfax County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to Colfax County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 10 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 10 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to Colfax County and notwithstanding anything in the Agreement to the contrary, Colfax County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 10.

11. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If Colfax County proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

12. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

13. Penalties for violation of law.

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

14. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

15. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement. without giving effect to its choice of law provisions. Venue shall be proper only in a district court located in Colfax County, New Mexico. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

16. Insurance and Workers Compensation.

The Contractor shall obtain and maintain general liability insurance for itself and its employees in an amount no less than One Million Dollars (\$1,000,000) throughout the term of this Agreement. Such insurance shall provide that the County be named as additional insured and that the County be notified in writing no less than 45 days in advance in the event of cancellation. The County requires a copy of a certificate of insurance or other evidence, satisfactory to the County, of the Contractor's obtaining and maintaining such insurance as is required hereunder as a condition prior to performing the tasks under this Agreement. Without affecting any other rights or remedies, Contractor hereby release and relieve the County, and waive their entire right to recover damages against the County, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Contractor agrees to have their insurance carriers waive any right to subrogation that such companies may have against the County, as the case may be, so long as the insurance is not invalidated thereby.

The Contractor shall secure, maintain and provide verification of all necessary Worker's Compensation insurance as may be required by law to provide coverage for the Contractor's employees hereunder, and the parties acknowledge that the Worker's compensation states do not create a right of subrogation and Contractor expressly waives such subrogation right against the

County subject to the New Mexico laws including Seaboard Fire & Marine Ins. Co. v. Kurth, 1980-NMCA-112, 96 N.M. 631.

17. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by Colfax County, the Department of Finance and Administration, the State Auditor and provide copies to Colfax County when requested to do so. Colfax County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of Colfax County to recover excessive or illegal payments.

18. Indemnification.

The Contractor shall defend, indemnify and hold harmless Colfax County from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of Colfax County.

19. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

20. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

21. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To: Colfax County
County Manager's Office
230 North 3rd St.,
3rd Floor PO Box 1498
Raton, NM 87740

To the Contractor:
Arthur Roll-Off
PO Box 609
138 W Troy Ave
Raton, New Mexico 87740.

22. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Colfax County Commission.

For the County of Colfax

Signature: _____
Si Trujillo
Chairman - Colfax County Commission

Date:

Arthur Roll-Off Inc.

By: _____
Jonathan Arthur

Date:

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 27-3654144

Locations for covered roll offs

Black Lake dumpster site

Angel Fire Wheeler Rd

Eagle Nest Comanche Creek

Ute Park dumpster site

Miami Lane dumpster site

Miami South dumpster site

Colmer Red River Rd

Springer French Tract Arapaho Tail Rd

Springer Wild Horse Rd

Raton Horse Mesa

Raton Cherokee Hills

Raton Rodeo Grounds

Chico Rd Circle Dot Ranch

Farley dumpster site

Maxwell Whitley Stage Rd

Maxwell Laguna Madre A-1

Trinchera Pass A-35

Cimarron State Park Mavrick campground

Eagle Nest State Park 1st Rest area coming from the Valley