

**SOLID WASTE COLLECTION SERVICES FRANCHISE AGREEMENT**

**BETWEEN THE VILLAGE OF BOSQUE FARMS, NEW MEXICO**

**AND UNIVERSAL WASTE SYSTEMS, INC.**

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**Governing Body of the Village of Bosque Farms**

**Chris Gillespie, Mayor**

**Ronita Wood, Mayor Pro-Tempore**  
**Erica DeSmet, Councilor**

**Michael Cheromiah, Councilor**  
**Tim Baughman, Councilor**

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## I.    GENERAL PROVISIONS

WHEREAS, pursuant to Section VI(6) of this Agreement Between the Village of Bosque Farms, New Mexico and Universal Waste Systems, Inc., (the "Agreement") the Agreement may be amended by mutual written agreement of the Parties, and

WHEREAS the Village of Bosque Farms, New Mexico ("Village") and Universal Waste Systems, Inc. ("UWS") have agreed to amend and restate the Agreement, and

WHEREAS the Village and UWS have agreed to the amended terms set forth herein ("the Amendment");

The Village and UWS agree as follows:

1. **Authority.** Pursuant to the provisions of New Mexico Statutes Annotated §3-48-3 et seq. (1978) and Bosque Farms Ordinance Chapter 13, Article 5, (the "Solid Waste Ordinance"), the Village does hereby retain the services of the Contractor and the Contractor hereby agrees to perform solid waste collection and disposal services for the Village for the consideration and upon the terms and conditions set forth in this agreement.
2. **Findings.**
  - A. **Collection.** The Village finds that uncontrolled, inadequately controlled and improper collection, transportation, and disposal of solid waste:
    - (1) is a public nuisance and a clear and present danger to the people;
    - (2) provides or creates breeding places for disease-carrying injurious insects, rodents and other pests harmful to the public health, safety and welfare;
    - (3) constitutes a danger to livestock and domestic animals;
    - (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of this community and has adverse economic and social effects on the community and its residents.
3. **Construction of Agreement.**
  - A. **Headings.** Section and subsection headings are included for convenience only. Such headings are not to be utilized for the purpose of determining the meaning of the agreement.
  - B. **Terms.** Unless the context otherwise requires: the singular shall include the plural; the plural shall include the singular; male shall include female; female shall include male; "may", "can," and "should," shall be permissive; "must," "shall," and "will" shall be mandatory; "or" shall be disjunctive; and "and" shall be conjunctive.
  - C. **Severability.** The provisions of this agreement are severable. If any

provision is held invalid, the other provisions shall not be affected thereby but will remain in full force and effect

4. **Exclusive Franchise Agreement for Commercial, and Residential Service and Roll Off Services.** Pursuant to the provisions of Village Code Section 13-5-3, the Village hereby grants the Contractor the exclusive franchise during the term of this agreement to perform all solid waste collection, disposal and management of all residential, commercial, and roll off services for residents, businesses and other enterprises located within the Village except as limited herein. The Village reserves solely unto the Village the right, subject to the franchise, to engage in the collection and disposal of solid waste or any other similar activity that may affect this exclusive grant to the Contractor.

The Village warrants that it has the authority to make such a grant. The Village shall require mandatory collection of solid waste under this agreement for all residents, commercial businesses, or other enterprises located within the Village limits as it may provide under its Solid Waste Ordinance.

5. **Term and Renewals.** Subject to termination as herein provided, the term of this Agreement shall be for ten (10) years (the "Main Term") with services of the Contractor to commence at 12:01 a.m. on the 1<sup>st</sup> day of September 1, 2025 and to expire on August 31, 2035 at 11:59 p.m. This Agreement may be extended without further action by the parties for an additional five (5) years, ("the Automatic Renewal.") Either party may give notice of termination of the Automatic Renewal not less than one-hundred eighty (180) days prior to the expiration of the Main 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 then remaining term.
6. **Binding on Successors and Assigns.** Subject to any restrictions on the transfer and assignment of the rights granted under this agreement, this agreement will inure to the benefit of, and will be binding on the parties hereto. And their respective successors and assigns.
7. **Interface with Local Solid Waste Ordinances.** The Village and the Contractor shall comply with the terms of the Village Code Chapter 13 Article 5 Solid Waste Franchise. All terms and phrases used in this agreement shall be interpreted consistent with the provisions in any Solid Waste Ordinance, unless otherwise expressly provided herein.

## II. VILLAGE PROVISIONS.

1. **Village Solid Waste Ordinance.** Village agrees to make such modifications to its Solid Waste Ordinance as shall be necessary to Implement the terms of this agreement where determined to be necessary by the Village, including any continuing modification of said Solid Waste Ordinance during the term of this

agreement and any optional extension hereof.

2. **Tort Claims Act; Village Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, sections 41-4-1, *et seq.*, NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by the federal, state, local, or common law of the state of New Mexico. The Village and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

### III. CONTRACTOR PROVISIONS

#### 1. Areas to be Served; Routes, Schedule.

- A. Areas to be Served. Service shall be provided to all areas within the corporate limits of the Village of Bosque Farms and any tracts, territories and areas hereafter annexed to, or acquired by the Village of Bosque Farms.
- B. Routes and Schedule of Collections. The Contractor shall provide the Village with schedules of residential and commercial collection routes and keep such Information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, the Contractor shall so notify each consumer affected, in a manner and time as is reasonable.

#### 2. Recycling; Solid Waste Reduction Programs. The Contractor shall implement a recycling program as follows:

- A. Curb-Side Recycling. Contractor will offer optional monthly collection of customer-separated recyclable materials. Contractor will provide recycling containers to residents as requested for recyclable materials for curb-side collection.

Contractor Shall allow Bosque Farms residents to use the Conejo Recycling Facility located in Los Lunas, New Mexico free of charge, as long as contractor operates said facility.

This program does not require or mandate recycling by residents of the Village of Bosque Farms.

- (1) Acceptable materials for recycling will include:

- Aluminum
  - Corrugated cardboard (flattened)
  - Junk mail, office paper/newspaper
  - Plastics 1 and 2
  - No other materials
- (2) Contractor guarantees that all Acceptable recyclable materials shall be delivered to a recycling facility unless the Village of Bosque Farms is notified otherwise, and cause for such action is duly justified.

### **3. Location and Frequency of Collection.**

- A. Residential Collection. All collections made by Contractor shall be cart service only made at curbside, adjacent to the driving surface on the streets adjoining properties, except where special circumstances warrant otherwise and where approved by the Village. All solid waste placed out for collection will be placed no further than 3 feet from the driving surface of the street. The Village shall require residents to deliver receptacles to such point for collection and return empty receptacles from said points to the usual place of storage.
- (1) Residential solid waste will be collected once per week.  
Recycling will be collected once per month.
- (2) It is the responsibility of the customer to see that solid waste is placed in the cart at curbside on the designated collection day. It is also the responsibility of the customer to bag their trash properly prior to being placed in the cart. Curbside refers to that portion of the right-of-way adjacent to paved or traveled roadways.
- (3) In the event a residential customer is disabled in such a manner as to make it impossible for the customer to place the cart at curb-side on the designated collection day and there is no other party either living in the residence or nearby who can perform that task for the disabled customer, Contractor shall make arrangements to retrieve and return the cart to and from the residence. In order to arrange for such service, the disabled customer shall be required to complete a handicapped assistance request form, copies of which will be logged with the Contractor.
- B. Commercial Collection. The Contractor shall have Input as to the location of containers on any commercial sites. The Contractor

shall provide collection service for the collection of solid waste from commercial units a minimum of once per week, according to the procedure set forth in the Solid Waste Ordinance. All commercial containers, upon the request of the customer, may have a locking mechanism.

4. **Hours of Collection.** Normal hours of collection shall be as specified below. Exceptions will be approved by the Village only when necessary to complete collection of a route due to unusual circumstances. Hours may vary due to extreme weather.
  - A. Residential collection shall be between the hours of 7:00 a.m. and 8:00 p.m. on scheduled service days
  - B. Commercial collection shall be between the hours of 6:00 a.m. and 8:00 p.m. on scheduled service days.

5. **Holidays.** The Contractor may choose to observe the following holidays, on the officially observed day, as non-collection days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

If the Contractor observes the above listed holidays as non-collection days, then collection shall occur on the next business day. Commercial collections on such holidays shall be performed on the day after the holiday at the option of the Contractor.

The suspension of collection service on any designated holiday in no way relieves the Contractor of the obligation to provide collection service at least once per week. Extending the hours of collection to meet this obligation is subject to the Village's approval, which may not be unreasonably withheld.

The contractor shall make reasonable efforts to make customers aware of holiday schedules.

6. **Missed Collections.** In the event that a regularly scheduled collection is missed and a complaint is received by either the Village or the Contractor, and where no fault can be found on the customer's/generator's part, a special collection of the solid waste will be required of the Contractor within 48 hours. The Village shall notify the Contractor of any such complaint it receives within 4 business hours.

In the event of missed pickups due to the customer or resident's negligence, at the customer's request special pickup will be made within 48 hours and the customer charged per the applicable rate schedule.

In the event of missed pickup due to acts of God, weather or events outside the control of the Contractor, pickup will be made as soon as possible when conditions are safe to continue service.

7. **Interruption/Continuity of Service.** An interruption of collection service at the request of a customer due to a vacation or vacancy lasting thirty (30) days or less, will be deemed a continuation of service for the entire month and will not be the subject of a credit on the customer's billing. Interruptions of service requested by the customer of thirty-one (31) days or greater will be adjusted on the customer's billing on a pro rata basis.

8. **Special Services.** The Contractor shall, upon request, provide special services as follows:

A. **Bulk Items Pickup.** The Contractor will provide customer two (2) bulk pick-ups a year, with a limit of two (2) approved items, at no charge to the customer. Customers must request a special pick up at least 48 hours in advance. Bulk items that will be picked up include:

- Furniture
- Mattresses
- Sinks, toilets
- Appliances

B. **Community Cleanup.** The Contractor will provide fifteen (15) 30-yard roll off container at no cost to the Village to facilitate local cleanups. The Village is responsible for staffing events.

C. **Tire Collection.** The Contractor will provide a 20-yard container to collect tires at a location chosen by the Village twice per year. The Contractor will not charge the Village for the container or the hauling. The Village is responsible for staffing the event, preparing the tire manifest, and the cost of disposing the tires at the landfill. The Contractor shall invoice the Village for the cost of disposing the tires.

D. **Special event Collection.** The Contractor shall provide solid waste containers to support two (2) special events in the Village as requested by the Village Manager or Mayor.

E. **Green Waste Collection.** Twice per year on specified dates in the spring and autumn, contractor will collect bundled and/or bagged green waste, curbside at no charge to customers.

F. **We are Winners' Youth Partnership Program.** UWS will grant the Village \$1,500 annually to support youth environmental education activities.

9. **Containers; Size; Providing for.**

A. **Residential.** The Village shall specify in its Solid Waste Ordinance that each

residential customer shall utilize one ninety-six (96) gallon contractor provided receptacle. Residents may request additional receptacles at the rates provided in the attached rate schedules. Only solid waste contained in the Contractor-provided receptacles will be serviced by the Contractor.

B. Commercial. The Village shall specify In its Solid Waste Ordinance that each commercial business shall utilize a commercial container provided by the Contractor with collection a minimum of one time per week. The contractor shall provide commercial, industry standard front-end loader dumpster from two to eight cubic yard. The Contractor will provide services a maximum of three (3) times a week with rates as established in the attached rate schedules. Customers requiring more services will be provided additional containers at the rates in the attached rate schedule. The use of compactors shall be the subject of private agreements between the Contractor and users to the extent possible, if not regulated by the Solid Waste Ordinance. When conflicts exist as to the type, size, frequency of collection or a prorated shared service, a code enforcement officer will make the final determination, or the Village may specify requirements in the Solid Waste Ordinance.

C. Customers electing curb-side recycling services shall utilize a contractor provided receptacle. Residents may request additional receptacles at the rates provided in the attached rate schedules. Only recyclable waste contained in the Contractor-provided recycling receptacles will be serviced by the Contractor.

10. **Noncompliance with Regulations.** Contractor may not collect solid waste from containers that do not conform with the requirements of the Village as to size, weight, type, or condition. The Contractor may apply to the Village to remove any waste containers placed for collection at sites covered by parties other than Contractor under this exclusive franchise if such containers are not authorized under this agreement, and to replace such unauthorized containers with Contractor's containers, and to notify the owners of such unauthorized containers to arrange to collect them from Contractor. Removal of non-compliant containers shall only occur following application to the Village and public hearing by the governing body of the Village.

In addition to notifying the owners of unauthorized containers to collect them, Contractor shall reasonably inform the Village of all non-standard containers, or of containers which exceed restrictions in weight and size, and shall further place on each such container or at the residence, a tag indicating the problem with the container.

Violation of this Ordinance, including but not limited to the provisions relating to the exclusive franchise, is a petty misdemeanor unless otherwise provided for by state or federal law, and upon conviction thereof shall be subject to the penalty provisions set forth in the City ordinances regarding petty misdemeanors. Any

person violating any of the provisions of this Ordinance shall upon conviction be subject to a fine not exceeding five-hundred dollars (\$500.00) or imprisonment for a period not exceeding ninety (90) days, or both such fines and imprisonment, as authorized by Section 3-17-17 NMSA. Any violation continued for a period of fifteen (15) days after conviction shall be prosecuted and treated as a separate offense.

In addition to criminal penalties provided herein, any person who violates the exclusive franchise provision hereunder by collecting or offering to collect residential or commercial solid waste, or by placing roll-off containers at any location within the Village for deposit of solid waste shall be deemed to have created a public nuisance, as provided in Sections 3-17-17 and 30-8-1 et seq. NMSA, and any equipment used for such collection, including roll-off containers, bins, compactors or vehicles, shall be forfeited to the Village.

Any person aggrieved by a violation of this Ordinance may file a claim under Section 30-8-8 NMSA."

#### **11. Operations.**

A. Service to the Village. The Contractor shall provide reasonable solid waste collection and disposal service to the Village Government free of charge. Contractor will also provide free commercial dumpster collection and disposal to Village owned facilities as identified below:

- Village Hall
- Bosque Farms Fire Department

B. Necessary Equipment and Containers; Repair and Maintenance. Contractor shall provide an adequate number of vehicles to collect solid waste in accordance with the terms of this agreement. The vehicles shall be licensed in the State of New Mexico and shall be operated in compliance with all applicable state, federal and municipal regulations. The vehicles shall be manufactured and maintained to conform with the appropriate American National Standard Institute's standards. All vehicles and other equipment shall be kept in proper repair and sanitary condition. Each vehicle shall bear at a minimum the name and telephone number of the Contractor plainly visible on both sides of the vehicle. Each vehicle shall be uniquely numbered in numbers at least 3 inches high. Each vehicle shall have at least one broom and shovel to clean up solid waste that may be spilled or otherwise scattered during the process of collection. All vehicles shall be sufficiently secured and/or maintained so as to prevent any littering of solid waste.

(1) All trucks or other equipment used in collecting solid waste shall be reasonably cleaned and deodorized or maintained in a sanitary and non-offensive condition.

(2) The Contractor shall not transfer, sell, assign, lease, surrender, abandon, or permit to lapse its title or right of possession in and to any equipment necessary for the performance of this agreement,

without replacing such property with property of comparable serviceability for use in performance of the work required. Any attempt to do so without permission of the Village shall constitute a material breach of the agreement.

- (3) The Contractor shall properly maintain all Contractor owned collection equipment, vehicles, and containers, and endeavor to keep the same serviceable. When they are no longer serviceable, such items of equipment should be replaced with property in proper operating condition.
- (4) The Contractor will perform all maintenance and repairs upon Contractor provided containers in order to keep them in proper operating order. The Contractor shall maintain, repair, or repaint a container upon the order of a code enforcement officer. The Contractor shall be entitled to seek restitution for all maintenance or repairs occasioned by the negligent or intentional acts of third parties, from such responsible third parties.
- (5) The Contractor may make private collections with the same vehicles used for collections under this agreement, provided that such use in no way impairs the delivery of service required under this agreement

C. Inspection of Equipment. The Village shall have the right to inspect all vehicles, equipment and containers used by the Contractor in carrying out the requirements of this agreement upon reasonable notice. Contractor shall promptly perform all corrections of conditions found to be in violation of any Village Ordinances or state or federal laws.

D. Supervision of Employees. Contractor shall:

- (1) employ and retain supervisors and employees who are experienced and qualified to assure performance of this agreement;
- (2) provide adequate operating and safety training for all of its employees and personnel;
- (3) furnish, upon the request of the Village, information concerning the background and experience of any supervisor, agent or employee of the Contractor.
- (4) require the appropriate field employees to wear a company uniform clearly labeled with the name of the company and employee. Such clothing will be as neat and clean as circumstances permit. Shirts will be required at all times;

- (5) allow the Village Clerk to make a complaint regarding any employee or agent of the Contractor who violates any provision hereof or who is wanton, negligent or discourteous in the performance of his or her duties, who is unnecessarily noisy or violates the motor vehicle code. Any disciplinary action suggested by the Village shall not be binding on the Contractor;
- (6) require that employees follow regular walkways for pedestrians while on private property; not trespass or loiter on private property; not cross property to adjoining property; and not meddle or tamper with property which does not or should not concern them;
- (7) require that each employee assigned to drive a vehicle, shall at all times carry a valid commercial driver's license (CDL) for the type of vehicle being driven and the contractor shall perform regular driving record checks yearly from the Department of Motor Vehicles to ensure unsafe drivers are removed from serving the Village;
- (8) assure that each employee that drives or operates vehicles or equipment is properly trained in the operation thereof.

## **12. Performance.**

### **A. Collection and Disposal Performance Bond.**

- (1) Contractor shall furnish a performance bond in a form to be prescribed and approved by the Village, payable to the Village and conditioned upon the Contractor faithfully performing all of the collection and disposal requirements of this agreement. Said bond must be in the penal sum amount of fifty thousand dollars (\$50,000).
- (2) The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of New Mexico. Attorneys- in-fact who sign performance bonds must file with each bond an effectively dated copy of their power of attorney, bearing the seal of the company evidencing such agent's authority to execute the bond. In case of extension or renewal of this agreement. the Contractor shall furnish a performance bond in the same amount, or subsequently negotiate an amount under the same terms as for the initial agreement. The original surety, however, is in no way obligated to extend or renew the bond.
- (3) This agreement may be subject to termination by the Village at any time if said bond shall be canceled, or the surety thereon relieved

from liability for any reason. Notice of cancellation of the bond must be served upon the Contractor thirty (30) days prior to the effective date of said cancellation. The agreement will not be terminated if, within thirty (30) days of such notice, the Contractor files with the Village a similar bond to be effective for the balance of the contract period.

- 13. Right to Require Performance.** The failure of either party at any time to require performance by the other party of any provisions of this agreement, will in no way affect the right of that party thereafter to enforce the same. No waiver of either party of any breach of any of the provisions hereof will be taken. or held to be a waiver of any succeeding breach of such provision, or as a waiver of any other provision.

**14. Fees**

A. Franchise Fee. In consideration of the Village granting the contractor its franchise, allowing the Contractor to use the Village's rights of way, and in exchange for all other valuable consideration, Contractor shall pay the Village a franchise fee, which shall be 4% of the amount reported by the Contractor as gross receipts as that term is defined under the Gross Receipts and Compensating Use Tax Act on all fees collected by the Contractor for services performed during the term of this Agreement. The franchise fee shall be paid on a quarterly basis by the last day of the first month of the subsequent quarter. The franchise fee shall not be in lieu of any state or federal fees, charges, or taxes. On September 1, 2026, the franchise fee shall be paid at 5%. On September 1, 2027, the franchise fee shall be paid at 6% while consumer rates are being collected or until a new or amended contract becomes effective. The franchise fee shall be enacted by ordinance adopting this Amendment and shall be effective as of the beginning of the term of this Amendment.

- 15. Books, Records; Access to, Reports.** The Contractor shall keep detailed, accurate and complete records such reasonable form as the Village may require. The Village has the right to inspect the same to show compliance with this agreement.

- 16. Assignment; Subcontract; Sublease.** The rights authorized by this agreement are not assignable either voluntarily or by operation of law without the consent of the Village and such consent shall not be unreasonably withheld so long as Contractor assigns voluntarily to a parent, a subsidiary or other corporate affiliate. In the event that a receiver is appointed, an assignment for the benefit of creditors is made or the Contractor becomes insolvent or bankrupt, then the rights authorized hereby may be canceled or annulled, and the Village shall have the right to provide collection services or substitute another contractor in its place and stead in a manner provided by law immediately. Contractor shall not subcontract the work or business which it has contracted to perform, without the prior written consent of the Village. Contractor shall not sublease, assign or transfer any real or personal property or

other assets required to perform the provisions of this agreement, without the prior written consent of the Village.

**17. Joint and Several Liability.** If the Contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable.

**18. Hold Harmless and Indemnity Agreement.** The Contractor shall hold harmless and indemnify the Village, its officers, employees, agents, and attorneys from all claims, liabilities, obligations, losses, and the like, asserted by any third parties arising from or caused by the Contractor's negligence, misrepresentation, fraud, or any other acts of professional malpractice. This indemnity and hold harmless agreement shall include reimbursement of all attorney's fees, costs, and expenses incurred by the Village, its officers, employees, agents, and attorneys in defending any such action.

**19. Insurance.** The Contractor shall maintain in full force and effect throughout the term of this agreement and throughout any extension or renewal thereof, insurance in the minimum amounts described below. The Village shall be named as an additional insured on all insurance policies by endorsement, with the right to approve the specific endorsements for those policies prior to their execution. Employer's liability coverage will be required of the Contractor and *any* subcontractor for any class of employee engaged in work under this agreement that is not protected under the Workmen's Compensation Statute. All insurance will be by insurers acceptable to the Village and authorized to do business in the state of New Mexico, and who are rated A,A- (A.M. Best Ratings) or AA+/- (S&P). Coverage shall be on an occurrence basis. All insurance policies shall contain a waiver of subrogation against the Village. All insurance policies shall be primary. Coverage shall be on ISO coverage forms. Deductibles in excess of \$20,000 per claim may only be approved by the Village. Coverage shall be as broad as that provided in ISO CG 20 01 04 13. Self-insured retentions must be declared and approved by the Village. Automobile coverage shall be ISO Form CA 001 covering Code 1 (any auto) with the limits set forth below.

Fire and extended related coverage and liability insurance for all collection equipment and facilities shall also be provided. Prior to the effective date of this agreement, the Contractor shall furnish the Village with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force. Such policies shall not thereafter be canceled, permitted to expire, or changed without thirty (30) days advance written notice to the Village. The failure to have valid policies of insurance in full force and effect at any time during the term of this agreements shall constitute a material breach of this agreement.

Coverage  
Minimum Limits of Liability

Worker's Compensation

Statutory

|                                    |                           |
|------------------------------------|---------------------------|
| Employer's Liability               | \$1,000,000 Each accident |
| General Liability:                 |                           |
| Bodily Injury                      | \$5,000,000 Each          |
| occurrence                         | \$10,000,000 Aggregate    |
| Property Damage                    | \$2,000,000 Each          |
| occurrence                         | \$10,000,000 Aggregate    |
| Bodily Injury and Property Damage: |                           |
| Each occurrence                    | \$ 5,000,000              |
| Automobile Liability:              | \$5,000,000 per accident  |
|                                    | for bodily injury and     |
|                                    | property damage           |

- 20. Lawsuits/Litigation.** The Contractor shall pay any judgment which may be obtained against the Village either alone or jointly with said Contractor, for injury or damage to persons or property by reason of the performance or nonperformance by the Contractor of the terms of this agreement, or in connection with the infringement by the Contractor of any patents. If the Village alone shall be sued for such injury or damage, Contractor shall be provided immediate written notice by the Village and Contractor shall tender the claim to the contractor's insurer and appear and defend such action.
- 21. Waivers.** A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.
- 22. Grace Period.** In the event that certain requirements contained herein cannot be immediately accomplished or performed by the Contractor upon the execution of this contract, or upon a later date as may be specified herein, and upon notice to the Village, it is agreed that there shall be a one (1) month grace period after written notice during which the Contractor shall make every effort to come into compliance. During this grace period. the Contractor shall not be in default and the Village agrees to take no action to terminate this agreement under the provisions herein, if in the determination of the Village the Contractor is making a good faith effort to come into compliance before the expiration of the grace period. The Village may extend the grace period for extraordinary circumstances beyond the control of the Contractor, when in the

best interest of the Village.

#### IV. ADMINISTRATIVE COMPLIANCE.

1. **Compliance with Law.** In its performance of the terms and conditions of this agreement, the Contractor shall comply with all Village, state and federal laws, ordinances and regulations which are now, or which may hereafter regulate the activities which are the subject of this agreement. The Contractor shall keep informed of all existing and future laws, ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. Contractor shall at all times observe and comply with and shall cause all its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees. Contractor shall protect and indemnify the Village and all its officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order and decree.
2. **Permits; Licenses; Taxes.** The Contractor shall obtain and assume the cost of all licenses and permits and promptly pay all taxes required by the Village or other public entities.
3. **Status as Independent Contractor.** The parties acknowledge and agree that the Contractor shall carry out all the terms of this agreement as an independent Contractor and not as an agent, servant, employee or partner of the Village.
4. **Training.** Contractor shall avail itself and its employees of the training in solid waste management provided from time to time by the New Mexico Environment Department, or by any other recognized entity, and generally keep itself abreast of the advances being made in the field of solid waste disposal.

#### V. MUTUAL PROVISIONS.

1. **Rates Effective at the beginning of the term of the Agreement.** The Contractor is authorized to charge reasonable rates for the service to be furnished under this agreement. "Effective at the beginning of the term of the Agreement rates set out on Attachment I for residential services commercial services and roll-off containers shall remain in effect until June 30, 2025."
2. **Residential, Commercial, and/or Roll Off and Compactor Rate Changes.**
  - A. **Rate Adjustments.**

Cost of living Increases. The Adjustment Date, Contractor's rates set forth in the Rate Schedule in Attachment 1, as adjusted hereunder, shall be at the option of the Contractor, adjusted as per the rate schedule in

Attachment 1 and annually by the percent change in the average of the Consumer Price Index specifically for the sub index of "Garbage and Trash Collection" only for the preceding September to September period. The rate increase will become effective on September 1<sup>st</sup> of such calendar year. At least thirty (30) days prior to the Adjustment Date, the Contractor shall notify the Village of the CPI adjustment to take effect on the Adjustment Date and shall provide the Village with its computations therefore which shall be verified. Adjustments to the Contractor's service rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

- a. Average CPI index adjustment to be based on the most previous year September to September period equals percent change for the next year.
- B. Petition for Unusual or Extraordinary Costs. The Contractor may petition the Village at any time for a rate adjustment on the basis of unusual changes in the cost of operations, such as new or revised laws, ordinances or regulations; changes in disposal fees, environmental costs, increases necessitated by force majeure events or for other good reasons, including excessive bad debt by customers. The Village shall have the right as a condition for negotiations or approval, to demand inspections by itself or authorized representatives or independent auditors of pertinent records or documents that demonstrate the need for an adjustment to the rates. The Village shall conclude all action within ninety (90) days. Failure to conclude action within 90 days may be deemed by the Contractor as an approval.

### **3. Billing of Accounts; Basis and Method of Payment.**

- A. Responsible Party. The owner or controlling party of the real property being served, or the owner's agent shall be the responsible party for billing purposes as provided under 13-5-19 of the Village Code. An owner of vacant land where there is no solid waste collection or disposal services are necessary shall not be required to establish an account with Contractor.
- B. Advanced Billing. Contractor may bill residential customers for service three months in advance.

### **4. Collection and Enforcement.**

- A. Enforcement of the Solid Waste Ordinance. The Contractor shall notify the Village in writing of any customer delinquent over forty-five (45) days at which time Contractor shall have the option to suspend service until such time as the account is paid in full.

**Commented [RV1]:** Section 13-5-19 of the BF Municipal Code states that service may not be suspended for delinquent accounts. I recommend revising that language to align with the Agreement, as service suspension is the most successful method of recovering past due payments.

- B. Petition for an Adjustment to Rates. The Contractor, after due diligence to collect delinquent accounts, may petition for an adjustment to rates because of an increase in the amount of bad debts, pursuant to the Petition for Unusual or Extraordinary Costs section of this agreement.
5. **Complaints Procedure/Process.** The Contractor shall employ a sufficient number of personnel to answer and respond to all complaints from the public concerning service of the Contractor. Contractor shall equip the office with a telephone system, which shall include an automatic telephone answering device or service for receiving complaints of the public during non-business hours. Contractor shall also keep a telephone listing in the telephone directory or website. All complaints shall be promptly investigated as soon as possible, in any event within one (1) business day and resolved as quickly as feasible. Contractor shall have available at all times competent personnel who shall have authority to represent the Contractor.
6. **Title to Solid Waste and Recyclable Materials.** Title to all solid waste and recyclable materials shall be vested in the Contractor upon being placed in the Contractor's vehicle. 100% of the revenue received, if any, shall remain solely with the Contractor.
7. **Change of Ownership; Sale of Assets; Notice.** In the event that the Contractors' business assets are sold, the Village maintains the right to hold the original owner solely or jointly liable. If, however the Village determines that the new ownership or management can adequately and faithfully render the services called for in this agreement for the remaining term of the agreement, then the Village may elect to execute a novation allowing the new owner to assume the rights and duties of this agreement. Such novation shall not release the previous owner of any obligation and liability.
8. **Public Rights-of-Way; Use.** The Contractor shall have the right to use any and all streets, alleys, bridges and other public rights-of-way within the Village, for the purpose of providing its services and performance under this agreement. Such rights shall be subject to all other regulations, laws or requirements of the Village, state or federal government. The Village shall exempt Contractor's collection vehicles from any Village imposed weight limit on a Village street when said vehicle is on a collection route.
9. **Conflict of Interest.** The Contractor warrants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of services required under this Agreement.
10. **Bankruptcy; Assignment; Trustee.** Contractor's insolvency, or voluntary or involuntary bankruptcy shall not constitute prospective unwillingness or inability to perform, or a repudiation of this agreement by the Contractor. However, Contractor

must provide written, timely and adequate assurance and commitment of its ability to perform. Without such assurances, the Village may suspend the terms of this agreement and may terminate the exclusive franchise granted hereunder. If the Contractor fails to provide adequate assurance and commitment, the Village may also terminate this agreement with thirty (30) days written notice. Assumption of this agreement and the underlying franchise by any of the Contractor's trustees or receivers, shall be deemed to give rise to a reasonable sense of insecurity. However, the Village shall not be bound to the terms of this agreement in the event of the filing of any bankruptcy, or by the insolvent Contractor's trustee or receiver. In such event, the Village retains and shall exercise all rights and remedies available at law and equity.

- 11. Force Majeure; Default; Breach; Termination.** With the exception of the obligation to pay for services previously rendered, the performance of this agreement may be suspended, and the obligations may be excused, in the event and during the period that such performance is reasonably prevented by a cause or causes beyond the reasonable control of a party. Such causes shall include but not be limited to acts of God acts of war, riot, major fire, explosion, catastrophic accidents, floods or sabotage, strikes or labor disturbances, or other similar acts.

- A. In the event Contractor materially defaults in the performance of any of the material terms of this agreement, the Village shall notify Contractor In writing of the nature of such default.
- B. Within thirty (30) days following such notice, the Contractor shall correct the default or:
  - 1. In the event of a default not capable of being corrected within said period, Contractor shall commence correcting the default at the earliest practical date, utilizing all due diligence and request an extension of time from the Village.
  - 2. If Contractor fails to correct the default within the time periods provided above, the Village without further notice shall have all rights and remedies provided by law and equity including, but not limited to, the following rights and remedies which may be exercised singly or In any combination:
    - a. The right to declare this agreement, together with the exclusive franchise granted hereunder. terminated effective upon such date as the Village shall designate; and
    - b. The right to license others to perform the services otherwise to be performed by the Contractor, or to perform such services Itself.

- 12. Bond/Notes; Contractor's Indebtedness.** This agreement, and the underlying

exclusive franchise, does not authorize the Contractor to Incur Indebtedness or liability on behalf of or payable by the Village. All expenses incurred and necessary in carrying out the provisions of this agreement shall be payable solely from Contractor's resources. By this agreement, the Village does not assume any debts, or pledge a faith and credit or taxing power for the repayment of any Contractors' debt. Contractor shall have no right to have taxes levied, or the taxing authority of the Village utilized, for the payment of any of Contractor's debts.

#### VI. MISCELLANEOUS PROVISIONS.

1. **Effective Date.** The effective date of this Agreement for the purposes of performance and rates and compensation shall be September 1, 2025.
2. **Publication and Related Costs.** Contractor shall bear the cost of all necessary publication and related costs.
3. **Notices; Points of Contact.** All notices or other communications to be given hereunder, shall be in writing and shall be deemed given when mailed by registered or certified United States mail:

|               |                                                                                                        |
|---------------|--------------------------------------------------------------------------------------------------------|
| Municipality: | The Office of the Village Clerk<br>Village of Bosque Farms<br>P.O. Box 660<br>Peralta, NM 87042        |
| Contractor:   | Universal Waste Systems Inc.<br>Attn: Matt Blackburn<br>5520 Broadway Blvd SE<br>Albuquerque, NM 87105 |

Any change of address by either party shall be by notice given to the other in the same manner as specified herein.

4. **Discriminatory Practices Prohibited.** The Contractor agrees to abide by all federal and state laws, 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, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age, ancestry, disability or handicap, 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 by the Contractor under this Agreement. If the Contractor is found to be in violation of these requirements during the term of this Agreement, the Contractor agrees to take appropriate steps to correct the deficiencies.

5. **Applicable Law.** This agreement will be governed by the laws of the State of New Mexico both as to interpretation and performance and the proper Venue for any action shall be the Thirteenth Judicial District Court, Valencia County New Mexico.
6. **Merger of Agreements.** This agreement constitutes the entire agreement and understanding between the parties hereto, and it will not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.
7. **Reservation.** This agreement is subject to the reasonable limitations now or hereafter provided by law. The Village reserves the right under its police power to alter and amend related ordinances or codes in any manner necessary for the safety and welfare of the public. This agreement is subject to the provisions of the constitution and laws of the State of New Mexico and all complementary ordinances enacted by the Village.
8. **Incorporation into Ordinance.** This Franchise Agreement shall be incorporated as part of an Ordinance granting a franchise to the Contractor. As a condition of this Agreement, Contractor shall provide a written acceptance of the provisions of the said franchise ordinance on such form as the Village may provide. In the event that Contractor fails to provide said written acceptance within 30 days following the adoption of said ordinance, the Village may declare this franchise agreement to be null and void, and the Contractor shall be required to refund all fees collected to date to customers for which services have not been provided.
9. **Status of Contractor.** The Contractor and any approved Subcontractors are independent contractors performing professional services for the Village and are not employees of the Village. The Contractor and Subcontractors shall not accrue leave, retirement, insurance, bonding, use of Village vehicles, or any other benefits afforded to employees of the Village by virtue of this Agreement.
10. **Notice.** The New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

## ATTACHMENT I

### RESIDENTIAL FEE SCHEDULE

| CONTAINER                                                                | FREQUENCY OF SERVICE | MONTHLY BASE PRICE EXCLUDING APPLICABLE TAXES AND FRANCHISE FEE |
|--------------------------------------------------------------------------|----------------------|-----------------------------------------------------------------|
| 96 Gallon Polycart – 15% Indigent 1 Discount*                            | Weekly               | \$14.53                                                         |
| 96 Gallon Polycart – 10% Veterans', Senior Citizen, Indigent 2* Discount | Weekly               | \$15.39                                                         |
| 96 Gallon Polycart – Regular Price                                       | Weekly               | \$17.10                                                         |
| Additional Polycart(s)                                                   | Weekly               | \$6.00                                                          |
| Recycling Cart (Monthly)                                                 | Monthly              | \$6.00                                                          |

\* The 15% Indigent 1 Discount is available to customers with a documented income that does not exceed 100% of the Federal Poverty Guidelines as published annually by the U.S. Department of Health and Human Services. The 10% Indigent 2 Discount is available to customers with a documented income that does not exceed 133% % of the Federal Poverty Guidelines as published annually by the U.S. Department of Health and Human Services.

## COMMERCIAL FEE SCHEDULE

| CONTAINER          | FREQUENCY OF SERVICE* | MONTHLY BASE PRICE EXCLUDING APPLICABLE TAXES AND FRANCHISE FEE |
|--------------------|-----------------------|-----------------------------------------------------------------|
| 96 Gallon Polycart | Weekly                | \$17.10                                                         |
| 2 Yard Dumpster    | Weekly                | \$75.63                                                         |
| 4 Yard Dumpster    | Weekly                | \$111.05                                                        |
| 6 Yard Dumpster    | Weekly                | \$141.06                                                        |
| 8 Yard Dumpster    | Weekly                | \$189.69                                                        |

\*Prices based upon weekly service. Additional weekly collections will be multiplied by the base rate.

## ROLL-OFF CONTAINER FEE SCHEDULE

| CONTAINER                         | FREQUENCY OF SERVICE | MONTHLY BASE PRICE EXCLUDING APPLICABLE TAXES AND FRANCHISE FEE |
|-----------------------------------|----------------------|-----------------------------------------------------------------|
| 10 Yard Roll Off* 2 ton allowance | On Call              | \$380.00                                                        |
| 15 Yard Roll Off* 2 ton allowance | On Call              | \$380.00                                                        |
| 20 Yard Roll Off* 2 ton allowance | On Call              | \$395.00                                                        |
| 30 Yard Roll Off* 3 ton allowance | On Call              | \$445.00                                                        |
| 40 Yard Roll Off* 4 ton allowance | On Call              | \$500.00                                                        |

\*Tonnage over allowance will be charged at \$50 per ton.

### Annual CPI Price Adjustments

| 2026                                                               | 2027                                                               | 2028                                                               | 2029     |
|--------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------|----------|
| Residential Base Cart;<br>\$1 plus CPI<br>Addl Cart/Recy; Full CPI | Residential Base Cart;<br>\$1 plus CPI<br>Addl Cart/Recy; Full CPI | Residential Base Cart;<br>\$1 plus CPI<br>Addl Cart/Recy; Full CPI | Full CPI |
| Commercial: Full CPI                                               | Commercial: Full CPI                                               | Commercial: Full CPI                                               | Full CPI |
| Roll Off: Full CPI                                                 | Roll Off: Full CPI                                                 | Roll Off: Full CPI                                                 | Full CPI |

**SOLID WASTE COLLECTION SERVICES AGREEMENT**

**SIGNATURE PAGE**

**UNIVERSAL WASTE SYSTEMS, INC.**

\_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_

**VILLAGE OF BOSQUE FARMS**

\_\_\_\_\_  
Chris Gillespie, Mayor

\_\_\_\_\_  
Ronita Wood, Mayor Pro-Tem

\_\_\_\_\_  
Michael Cheromiah, Councilor

\_\_\_\_\_  
Erica DeSmet, Councilor

\_\_\_\_\_  
Tim Baughman, Councilor

ATTEST:

\_\_\_\_\_  
Municipal Clerk

Date: \_\_\_\_\_ \