AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Environmental Services and Waste Disposal Agreemen

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Clean Harbors Environmental Services, Inc. and Gunnison County

Term Begins: 9/05/2017 **Term Ends:** 9/5/2018 **Grant Contract #:**

Summary:

This contract provides for the delivery of supplies, technical assistance, and appropriate disposal of materials collected at the Household Hazardous Waste Day on September 30, 2018.

Fiscal Impact: Gunnison County $15,000

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
2017 budget includes $13,000 expected revenue from project partners, and $25,000 expected expenditures in the Landfill fund. No concerns.
ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/30/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/31/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 8/31/2017 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/31/2017

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: DCM Report

Agenda Date: 9/5/2017

Revised April 2015

ENVIRONMENTAL SERVICES AND WASTE DISPOSAL AGREEMENT

(Not To Be Used For Emergency Response Work)

This Environmental Services and Waste Disposal Agreement ("Agreement") is made this _____day of_____ 20____, by and between _____, a _____ corporation with offices at _____, and its affiliates and subsidiaries ("Customer"), and Clean Harbors Environmental Services, Inc. and its affiliates with offices at 42 Longwater Drive, P.O. Box 9149, Norwell, MA 02061-9149("Clean Harbors").

WHEREAS, Clean Harbors is engaged in the business of providing environmental services, including waste transportation and disposal services; and

WHEREAS, Customer desires to engage Clean Harbors to provide these services; and

WHEREAS, Customer and Clean Harbors desire to establish the terms and conditions pursuant to which such services will be provided.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article 1. Term

This Agreement shall have an initial term of one (1) year from the date hereof and shall continue in effect from year to year thereafter provided, however, that either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party.

Article 2. Services

This Agreement shall govern all services provided by Clean Harbors to Customer including, but not limited to: site remediation services, industrial maintenance services, lab pack and waste transportation and disposal services (collectively referred to herein as "Services"), except emergency response services. Unless otherwise directed by Customer, waste materials collected hereunder shall be disposed of at a Clean Harbors treatment, storage and disposal ("TSD") facility or at another licensed TSD facility approved by Clean Harbors. This Agreement shall not apply to emergency response services.

Article 3. Waste Materials

During the term of this Agreement, Customer may, from time to time, provide to Clean Harbors certain waste materials. Waste materials to be handled pursuant to this

Agreement shall be agreed upon in advance in writing by Clean Harbors and Customer. At the time Customer requests the Services of Clean Harbors, Customer shall provide a Waste Profile Sheet or similar document ("Waste Profile") to Clean Harbors completely and accurately describing the waste materials and its (their) characteristics. Upon approval by Clean Harbors, the Waste Profile shall be incorporated into and become a part of this Agreement.

Article 4. Transfer of Waste and Title

4.1 Title, risk of loss and all other incidents of ownership to the waste materials shall be transferred from Customer to Clean Harbors at the time Clean Harbors takes possession of and removes waste materials from the place of transfer, or at the time Clean Harbors accepts delivery of the waste materials at its TSD facility, whichever is applicable.

4.2 Waste materials which are discovered to be non-conforming may be rejected by Clean Harbors. Title, risk of loss and all other incidents of ownership to non-conforming wastes shall remain at all times with Customer. Waste materials shall be considered non-conforming for purposes of this Agreement if: (1) the waste materials are not properly packaged or labeled; or (2) the waste materials contain constituents or have characteristics or properties not disclosed on the Waste Profile, and such constituents, characteristics or properties increase the cost to Clean Harbors or increase the risk of hazard to human health or the environment from the handling, transportation, storage or disposal of such materials; or (3) the designated disposal facility is not designed or permitted to dispose of waste materials with such undisclosed constituents, characteristics or properties.

4.3 Waste materials discovered by Clean Harbors to be non-conforming, if in Clean Harbors possession, shall be prepared for lawful transportation by Clean Harbors and returned to Customer within a reasonable time after rejection by Clean Harbors, unless the parties agree to an alternative and lawful manner to dispose of the waste materials. Customer shall pay Clean Harbors at agreed rates for the handling, loading, preparing, transporting, storing and caring for and, if applicable, disposing of such non-conforming waste materials.

Article 5. Price and Payment Terms

5.1 The payment terms set forth herein are contingent upon the approval of Clean Harbors' Credit Department. In the event of a change in Customer's financial condition, Clean Harbors reserves the right to alter, change, or modify payment terms, and to immediately stop work. The failure of Clean Harbors to exercise its rights under this article at any time shall not constitute a waiver of Clean Harbors' continuing right to do so.

5.2 Clean Harbors and Customer shall agree upon the price for Services to be performed hereunder in writing prior to the commencement of work by Clean Harbors. In the event Customer terminates this Agreement prior to the completion of Services, then Customer shall pay Clean Harbors for Services satisfactorily performed through the date of

termination, plus reasonable demobilization charges. Customer shall at all times be responsible for the payment of Clean Harbors, invoices. Clean Harbors may increase pricing upon thirty (30) days written notice to the Customer.

5.3 Payment terms shall be net fifteen (15) days from the date of invoice. Interest will be charged at the rate of 1.5% per month, or the maximum amount allowed by law, on all amounts outstanding more than fifteen (15) days. Customer shall be responsible for all costs (including costs incurred in any bankruptcy or insolvency proceeding) incurred by Clean Harbors to collect any payments due under this Agreement, including reasonable attorneys' fees.

5.4 Customer hereby assigns to Clean Harbors all rights to any insurance payments that Customer may be entitled to receive for the Services provided under this Agreement and hereby authorizes its insurance company or agent to pay Clean Harbors directly.

Article 6. Clean Harbors Warranties

6.1 Clean Harbors shall provide all supervision, labor, materials, tools, equipment and subcontracted items for the performance of the Services.

6.2 Clean Harbors shall take necessary precautions for the safety of its employees, and shall comply with applicable provisions of the Occupational Safety and Health Act. It is understood and agreed, however, that Clean Harbors shall not be responsible for the elimination or abatement of safety hazards created by or otherwise resulting from work being performed by Customer's employees, its other contractors or agents.

6.3 Clean Harbors represents that it holds all necessary permits and licenses required for the performance of the Services.

6.4 Clean Harbors shall provide the Services in compliance with applicable Federal and state environmental laws and regulations.

Article 7. Customer Warranties

7.1 Customer shall provide full and complete information regarding its requirements for the Services. Customer shall furnish complete information regarding the work site, surface and subsurface conditions, access, utility locations, site boundaries, and other reports, documents or information that may be reasonably requested by Clean Harbors. Customer shall communicate to Clean Harbors all special hazards or risks known to the Customer that are related to the performance of the Services pursuant to this Agreement.

7.2 Customer shall designate a representative who shall be fully acquainted with the Services to be provided hereunder and who shall be authorized to approve changes in the Scope of Work or budget, render decisions promptly and furnish information expeditiously to Clean Harbors.

7.3 Customer shall be responsible for repairs to all private property, structures, roadways and rights-of-way resulting from Clean Harbors' reasonable use thereof.

7.4 Customer warrants that it is under no legal restraint or order which would prohibit the performance of the Services by Clean Harbors. Customer represents and warrants that it has the requisite legal right, title, or interests necessary to provide control over and access to the premises where the Services are to be performed. Customer warrants that the Services to be provided under this Agreement will not violate any judicial or administrative order or any ruling of any governmental agency of which Customer has knowledge.

7.5 Customer warrants that the description of the waste materials on the Waste Profile is accurate and complete; that waste materials to be transferred to Clean Harbors will conform to such description; that containers of waste materials transferred to Clean Harbors will be marked, labeled and otherwise conform with all applicable federal, state and local laws, regulations, by-laws or ordinances; that it holds clear title to all waste materials to be transferred hereunder; that it is under no legal restraint or order which would prohibit transfer of possession or title to such materials to Clean Harbors for transportation and disposal; and that it has communicated and will communicate to Clean Harbors during the term hereof those hazards known by the Customer to be associated with the handling, transportation, treatment, storage and disposal of the waste materials.

Article 8. Indemnification

8.1 Clean Harbors agrees to indemnify, save harmless and defend the Customer, its parent, subsidiary and affiliated companies and their respective directors, officers, employees, agents and assigns from and against any and all losses, liabilities, claims, penalties, forfeitures, suits, and the cost and expenses incident thereto (including cost of defense, settlement and reasonable attorneys, fees) which Customer may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment or any violation of applicable federal, state and local laws, regulations, by-laws or ordinances to the extent caused by: (1) Clean Harbors' breach of any term or provision of this Agreement, or (2) the negligence or willful misconduct of Clean Harbors, its employees or agents in the performance of this Agreement.

8.2 Customer agrees to indemnify, save harmless and defend Clean Harbors, its parent, subsidiary and affiliated companies and their respective directors, officers, employees, agents and assigns from and against any and all losses liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement and reasonable attorneys' fees) which Clean Harbors may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination or adverse effects on the environment, or any violation of applicable federal, state and local laws, regulations, by-laws or ordinances to the extent caused by: (1) Customer's breach of any term or

provision of this Agreement, or (2) the negligence or willful misconduct of the Customer, its employees or agents in the performance of this Agreement.

Article 9. Insurance

9.1 Clean Harbors shall procure and maintain at its own expense during the term of this Agreement the following insurance coverages:

COVERAGE	LIMITS
a. Worker's Compensation	Statutory
b. Employer's Liability	$2,000,000
c. General Commercial Liability	$2 million per occurrence $4 million aggregate
d. Automobile	$5 million combined single limit
e. Contractors Pollution Liability	$10 million each Claim $10 million all Claims

9.2 Clean Harbors agrees to furnish certificates to Customer evidencing these insurance coverages upon written request from Customer.

Article 10. Changes in Work

10.1 Customer agrees to pay Clean Harbors at the rates set forth in this Agreement (or if no rates are set forth, at Clean Harbors' then published rates) for any changes in the Services requested by Customer, regardless of whether such request by Customer is verbal or in writing.

10.2 If any change occurs during the term of this Agreement with respect to any laws, rules, regulations or ordinances which affect the rights or obligations of Customer or Clean Harbors under this Agreement, or the applicability of any taxes or fees, or the cost or method of handling waste materials, Customer and Clean Harbors shall negotiate in good faith to bring this Agreement into conformance with such change or changes. In the event that such agreement cannot be reached, Customer or Clean Harbors shall have the right to terminate this Agreement immediately upon written notice to the other party.

Article 11. Work on Customer's Premises

Customer agrees to provide to Clean Harbors, its employees and its subcontractors a safe working environment for any work which must be undertaken on premises owned or controlled by the Customer. Customer agrees to disclose to Clean Harbors, its employees and its subcontractors all known or suspected hazards associated with the performance of the work.

Article 12. Inspections

Customer shall have the right, at its own expense, to inspect all written licenses, permits or approvals issued by any government entity or agency to Clean Harbors that are applicable to the performance of this Agreement; to inspect and test, at its own expense, transportation vehicles, vessels, containers or disposal facilities operated by Clean Harbors; and to inspect, at its own expense, the handling, loading, transportation, storage or disposal operations conducted by Clean Harbors in the performance of this Agreement.

Article 13. Excuse of Performance

The performance of this Agreement, except for the payment of money for Services already rendered, may be suspended by either party in the event performance of this Agreement is prevented by a cause or causes beyond the reasonable control of such parties. Such causes shall include but not be limited to: acts of God, acts of war, riot, fire, explosion, accidents, inclement weather or sabotage, lack of adequate fuel, power, raw materials, labor or transportation facilities; changes in government laws, regulations, orders, or defense requirements; restraining orders, labor disputes, strike, lock-out or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgment). The party which is prevented from performing by a cause beyond its reasonable control shall use its best efforts to eliminate such cause or event.

Article 14. Notice

Any notice to be given under this Agreement shall be in writing and delivered to the address listed below:

Customer:

Clean Harbors: Clean Harbors Environmental Services, Inc.
42 Longwater Drive
P.O. Box 9149
Norwell, MA 02061-9149
Attn: General Counsel (Urgent Contract Matter)

Article 15. Additional Provisions

15.1 Limitation of Liability – Neither party shall be liable to the other for indirect, incidental, consequential, or special damages, including but not limited to loss of use and lost profits.

15.2 Latent or Subsurface Conditions – In the event subsurface or latent conditions at the work site materially differ from those indicated in the contract documents or if the latent or subsurface physical conditions are of an unusual nature not ordinarily found to exist in environmental service activities identified in the contract documents, Clean Harbors shall be entitled to an equitable adjustment of the Agreement price and time.

15.3 Pre-existing Contamination – Customer agrees that Clean Harbors shall not be responsible or liable for pre-existing contamination at any job location.

15.4 Independent Contractor – Clean Harbors is and shall be an independent contractor in the performance of the Services covered by this Agreement.

15.5 Waiver – Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.

15.6 Severability – If any section, subsection, sentence or clause of this Agreement shall be deemed to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of other sections of this Agreement.

15.7 Entire Agreement – This Agreement and any Exhibits to this Agreement represent the entire understanding and agreement between the parties hereto and supersedes any and all prior agreements, whether written or oral, that may exist between the parties concerning the Services. Additional, conflicting or different terms on any Purchase Order or other preprinted document issued by Customer shall be void and are hereby expressly rejected by Clean Harbors. Any modifications to this Agreement shall be in writing and shall be signed by Customer and Clean Harbors.

15.8 Survival – The provisions contained in Articles 6, 7 and 8 shall survive and remain in effect following the termination of this Agreement.

15.9 Law to Apply – The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the Laws of the Commonwealth of Massachusetts and the parties agree to submit to the jurisdiction of the courts of the Commonwealth of Massachusetts for any disputes arising under this Agreement.

15.10 Counterparts – This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

CUSTOMER	CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title