

**PURCHASE SERVICE CONTRACT
METAL PURCHASE, BROKERING AND SAFE TRANSPORTATION**

PARTIES: The parties to this Agreement are the **CITY OF RAWLINS**, a municipality duly organized and existing under the laws of the State of Wyoming, hereinafter referred to as the City, and * hereinafter referred to as PURCHASER whose address for the purpose of this agreement is*

PURPOSE OF AGREEMENT: PURCHASE OF METAL RECYCLING MATERIAL MARKETING, BROKERING AND DISPOSAL.

WHEREAS, the CITY wishes to enter into an agreement with PURCHASER and PURCHASER wishes to enter into an agreement with the CITY for the purpose of purchasing metal from the Rawlins Landfill Metal Disposal Site Area for completing all work as described and shown on the Request for Bid hereto referred to as Exhibit A and the Bid Form hereto referred to as Exhibit B; if any provision of this agreement and the Exhibits are in conflict the conflict must be brought to the attention of the CITY by PURCHASER or CITY will in its sole discretion determine which will apply; and

WHEREAS, PURCHASER is familiar with the requirements to complete the project and provide the services necessary and agrees that PURCHASER can complete the project in a timely and workmanlike manner; and

WHEREAS, PURCHASER acknowledges the governmental immunity of the CITY and agrees that nothing herein shall be construed to void the government immunity granted to the CITY; and

WHEREAS, PURCHASER is familiar with the standards of the industry relating to services to be provided and will provide service that meets or exceeds the standards of the industry; and

WHEREAS, PURCHASER understands the importance of completing this work on time and therefore agrees to pay liquidated damages in the event the work is not completed on time; and

WHEREAS, PURCHASER understands the injury to the city in the event the service described herein is stopped and the City is required to find others to complete the purchase agreement and therefore agrees to a performance bond or other security agreeable to the City; and

WHEREAS, PURCHASER agrees that all persons providing materials or labor and all sub-purchasers acting at the request of Purchaser will be paid by purchaser; and

WHEREAS, PURCHASER has given the CITY written notice of all conflicts, errors ambiguities or discrepancies that PURCHASER has discovered in this contract documents and the written resolution thereof by the CITY is acceptable to the

PURCHASER, and this document is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.

WHEREAS, PARTIES agree that each of the foregoing recitals are substantive provisions and considerations for entering into this Agreement and not mere recitals.

TERM: The term of this agreement shall begin on January 1, 2020, and be completed by December 31, 2020.

PAYMENT: The PURCHASER agrees to pay CITY for services described below in the amount of * per ton for scrap landfill metals and * per ton for scrap clean aluminum landfill metals. PURCHASER agrees to pay the balance of the amount owed within ten (10) business days of weigh out of landfill metals. Payment will be made per the expenditure rules and regulations of the City.

PURCHASER RESPONSIBILITIES: PURCHASER agrees to:

A. To purchase metal from the Rawlins Landfill Metal Disposal Site Area as described in the exhibits attached and as provided herein.

B. Other Responsibilities of Purchaser:

The PURCHASER will provide a payment bond of Two Hundred Fifty Dollars (\$250.00) which will be held throughout the term of this agreement.

The PURCHASER agrees to comply with all applicable local, state, and federal laws and ordinances including but not limited to Workman Compensation laws, labor laws, building codes, planning ordinances and environment regulations.

PURCHASER shall supervise, direct and perform the work, using its best skill and attention. The PURCHASER shall be solely responsible for all pick up and acceptance means, methods, techniques, sequences and procedures and for coordinating all portions of the work. PURCHASER shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, temporary water, heat, utilities, transportation, City fees and other facilities and services necessary for the proper execution and completion of the work.

PURCHASER shall at all times enforce strict discipline and good order among its employees and shall not employ on the work or contract with any unfit person or anyone not skilled in the task assigned or contracted.

The PURCHASER shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work, and shall notify the CITY if the Contract Documents or specifications or any portion of the work are at variance therewith.

The PURCHASER shall be responsible for the acts and omissions of all of PURCHASER'S employees, their agents and employees and all other persons performing any of the work on the Project.

The PURCHASER at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the work, PURCHASER shall remove all waste materials and rubbish from and about the premises, as well as tools, construction equipment, machinery and surplus material, and shall leave the work area broom clean or its equivalent, and, if applicable, shall level the site with appropriate drainage.

PURCHASER shall allow CITY and its representative's access to the work at all times.

PURCHASER shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. PURCHASER shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the work and other persons who may be affected thereby, (2) all the work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.

PURCHASER shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the

PURCHASER or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the PURCHASER.

PURCHASER shall purchase and maintain and provide evidence satisfactory to CITY of: 1) Workman's Compensation; 2) Comprehensive General Liability and auto Coverage: a) \$1,000,000.00 in the event of bodily injury including death, 3) \$500,000.00 in the event of property damage. No work shall commence until PURCHASER shall have provided CITY with certificates of insurance and certificate of workers' compensation coverage. PURCHASER shall also insure any material or improvements for this project from risk of loss or damage. The risk of loss shall not pass to CITY until December 31, 2020 upon completion of this agreement.

The PURCHASER shall promptly correct any work that fails to conform to the requirements of the contract documents, in violation of CITY codes or not to the standard of workmanship generally accepted in the industry where such failure to conform appears during the progress of the work.

Standard of Skill and Care. The Services (whether performed by Purchaser or Purchasers Sub-Purchasers shall be performed in a diligent, efficient and trustworthy manner and consistent with the standard of skill and care ordinarily exercised by professionals of the same discipline in the state of Wyoming on projects of similar size and scope and under

like circumstances. Purchaser shall be responsible for all services provided under this agreement, whether such services are provided directly by Purchaser or Purchasers Sub-Purchasers.

MISCELLANEOUS PROVISIONS

Governmental Immunity. The CITY of Rawlins specifically retains all immunities and defenses available to it as a governmental entity pursuant to the Wyoming Governmental Claims Act, Wyo. Stat. §1-39-101 et seq., and all other applicable laws. Designation of venue, choice of law, enforcement action, and similar provisions should not be considered as a waiver of governmental immunity

Applicable Law. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be in the Second Judicial District, Carbon County, Wyoming.

Kickback. The PURCHASER certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. The PURCHASER shall have in place and follow reasonable procedures designed to prevent and detect possible violations of Anti-Kickback Act of 1986 in its own operations and direct business relationships. When the PURCHASER has reasonable grounds to believe that a violation may have occurred, the PURCHASER shall promptly report in writing the possible violation. If the PURCHASER breaches or violates this warranty, the CITY may, at its discretion, terminate this Contract without liability to the CITY, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

Availability of Funds. Each payment obligation of the CITY is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the PURCHASER, the Agreement may be terminated by the CITY at the end of the period for which the funds are available. The CITY shall notify the PURCHASER at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the CITY in the event this provision is exercised, and the CITY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed to permit the CITY to terminate this Agreement in order to acquire similar services from another party.

Payment. Invoices will be paid within ten (10) business days after receipt of metal weigh out, otherwise finance charges shall accrue at a rate 1½ % per month. Wyoming State Statute §16-6-602.

Independent Purchaser. The PURCHASER shall function as independent for the purposes of this Contract, and shall not be considered an employee of the CITY for any purpose. The PURCHASER shall assume sole responsibility for any debts or liabilities that may be incurred by the PURCHASER in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the PURCHASER or its agents and/or employees to act as an agent or representative for or on behalf of the CITY to incur any obligation of any kind on the behalf of the CITY. The PURCHASER agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City of Rawlins employees will inure to the benefit of the PURCHASER or the PURCHASER'S agents and/or employees as a result of this Contract.

Term of Contract. This agreement shall commence on January 1, 2020, and shall remain in full force and effect until December 31, 2020, and terminated by final payment from Purchaser to the City or as described below.

Termination of Contract. The CITY may terminate this Contract immediately for cause if the PURCHASER fails to perform in accordance with the terms and conditions of this Contract. Should the PURCHASER fail to perform in a manner consistent with the terms and conditions set forth in this Contract, or not progressing satisfactorily this agreement may be terminated by the CITY. At this termination date, the CITY at its sole discretion may use the payment bond or other surety accepted by the CITY to pay any outstanding amounts owed to the CITY. In either event the PURCHASER will be entitled to a pro rata payment, less any expense to the CITY resulting from failure to perform, for all work accomplished and accepted by the CITY and all finished documents, data, models and reports prepared under the Contract shall, at the option of the CITY, become its property upon payment for services rendered through the termination of the Contract.

Captions. The captions for articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Modification and Waiver. This Agreement, including any exhibits or addendums, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Indemnification. The PURCHASER shall indemnify and hold harmless the CITY and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from acts or omission caused in whole or in part by any negligent act or omission of the PURCHASER, any Sub-Purchaser, anyone directly

or indirectly employed by any of them or anyone for whose acts any of them may be liable. The CITY, without waiving Governmental immunity or protections of the Wyoming Governmental Claims Act, will be responsible for damages or losses resulting from its negligence.

Patent or Copyright Protection. Purchaser recognizes that certain proprietary matters, techniques or information may be subject to patent, trademark, copyright, license or other similar restriction, and warrants that no work performed by the Purchaser or its Sub-Purchasers hereunder in connection with the Project will infringe any such rights of any person or entity nor will it violate any restriction. Purchaser shall defend, indemnify and hold harmless the City of Rawlins from any infringement, violation or alleged infringement or violation of any such patent, trademark, copyright, license or other restrictions.

Counterparts and Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile transmission of a signature shall be sufficient to evidence execution of this Agreement.

Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the day of mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or by express delivery with handling prepaid, and properly addressed as follows:

CITY: City Manager, City of Rawlins, P.O. Box 953, Rawlins, WY. 82301.
PURCHASER: *

Any party may change an address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

Binding Effect. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns.

Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The PURCHASER shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the CITY.

Gender and Number. Unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Nondiscrimination. PURCHASER shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act, Wyo. Stat. §27-9-105 et seq., and the

Americans with Disabilities Act (ADA), 42 W.S.C. §12101, et seq. PURCHASER shall assure that no person is discriminated against based on the grounds of age, race, sex, creed, color, national origin, ancestry, qualified disability, or pregnancy in connection with the performance of this Agreement.

Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

No Third Party Beneficiary. No term or provision of this Agreement or the exhibits hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

Documented Workers. The PURCHASER will not knowingly employ or contract with an illegal alien; the PURCHASER shall not enter into a contract with a sub-purchaser that fails to certify to Purchaser shall not knowingly employ or contract with an illegal alien.

Mediation. The parties agree that in the event of any disagreement between the parties concerning the interpretation or implementation of this agreement and its attachments the parties may mediate the issue as described in the Wyoming Mediation Act (W.S. §1-43-101 et. Seq.). Nothing in this mediation provision will be binding on the CITY if it violates the cities governmental immunity or protections under the Wyoming Governmental Claims Act or violate the governmental claims act. Any mediator must be acceptable to both parties and venue in Carbon County, Wyoming.

Costs and Attorney's Fees. In the event either party defaults and the injured party elects to exercise rights through court action or otherwise, and that party incurs any costs, expenses or attorney fees by reason of such exercise, the defaulting party agrees to pay the non-defaulting party all such reasonable costs, expenses and reasonable attorney fees in connection with the enforcement of the non-defaulting parties rights.

Preparation of Agreement. The parties acknowledge this Agreement has been prepared by the CITY Attorney, Amy L. Bach, who represents only the interest of the CITY in this transaction. The PURCHASER certifies and agrees PURCHASER has either been represented by counsel or has voluntarily chosen not to have counsel prior to or at the execution of this agreement.

This Agreement was available to the Purchaser for review prior to submitting a bid on this project. The purchaser acknowledges purchaser has not acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. The parties hereby waive the application of any rule of law which otherwise might be applicable to the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

IN WITNESS WHEREOF, the parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood and agreed to the terms and conditions of this Agreement.

Approved as to form:

Approved as to form:

LeRoy Lucero, Public Works Director

Amy L. Bach, City Attorney

The Agreement date is the date of the last signature affixed to this Agreement.

CITY OF RAWLINS

Dated: _____

BY: _____
Scott Hannum, Rawlins City Manager

(SEAL)
Attest:

Marla K. Brown, City Clerk

Dated this ____ day of _____, 2019.

*

BY: _____
*

STATE OF WYOMING)
 :SS
COUNTY OF *)

On this ____ day of _____, 2019, *, appeared before me and sworn upon oath to have authority to bind * and to be the person described in and who executed the foregoing Agreement as their free and voluntary act and deed, duly sworn.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____