

**SANTA FE COUNTY
PRICE AGREEMENT
FOR LEASE OR RENTAL OF 50-TON EQUIPMENT HAULER TRAILER**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the state of New Mexico, (hereinafter referred to as the “**County**” or “**Lessee**”) and MCT Industries, Inc., 7451 Pan American Freeway NE, Albuquerque, NM 87109 (hereinafter referred to as the “**Vendor**” or “**Lessor**”).

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. “**County**” shall mean the County of Santa Fe, New Mexico.
- B. “**Using Department or Department**” shall mean a Department, or Division of Santa Fe County.
- C. “**Purchase Order**” shall mean a fully executed Purchase Order issued by the County Purchasing Department that specifies the items and services to be provided by the Lessor.
- D. “**Price Agreement**” or “**Agreement**” means this indefinite quantity fixed-price Price Agreement which requires the Lessor to furnish the equipment to a Using Department which issues a Purchase Order.
- E. “**Rent**” means the payment of the Lessee to Lessor of money for the lease or rental of heavy equipment as provided in the schedule (Attachment A) attached hereto.

2. GOODS TO BE PROVIDED

- A. **Lease.** Attachment A of this Price is a description of the equipment to be provided by the Lessor (50-Ton Equipment Hauler Trailer), and rental amount (including maintenance and service) to be paid by the County.
- B. **Goods Listed on Attachment A.** The County may issue Purchase Orders for the lease or rental of the equipment listed on Attachment A. Any item ordered by the County must be a listed item in Attachment A to this Price Agreement. All orders issued hereunder must bear both a purchase order number and the number of this Price Agreement No. 2018-0187-PW/KE.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may lease any quantity of the item(s) listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) be issued under this Price Agreement. The Lessor is required to accept the Purchase Order and furnish the item(s).
- D. **Specifications.** The items furnished under this Price Agreement shall meet or exceed the specifications provided in the IFB# 2018-0187-PW/KE including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s).

E. Delivery and Billing Instructions.

1. The Lessor shall deliver the items and services in accordance with the County's instructions. The Lessor shall also deliver, with the items or goods ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever the Using Department does not accept any deliverable and returns it to the Lessor, all related documentation furnished by the Lessor shall also be returned.
3. A Using Department will inform the Lessor within five (5) business days that a deliverable is unacceptable by the Using Department.
4. The Lessor shall bear all risk of loss or damage with respect to returned equipment except for loss or damage directly attribution to the negligence of the County.
5. Unless otherwise agreed upon by the County, the Lessor shall be responsible for the pick-up of returned items.
6. Time is of the essence for purposes of this Agreement. All damages resulting from late delivery, utilizing the delivery time frame set forth on Attachment A, shall be the responsibility of the Lessor. In the event of failure of the Lessor to deliver an item of equipment in accordance with its requirement, the Lessor shall be liable to the County for liquidated damages in the amount of \$100.00 per day the item(s) are delivered late.

F. Delivery Tickets. Prior to or no later than the time of delivery of equipment the Lessor shall provide to the Using Department the Purchase Order number, indicate the delivery date, obtain a signature of acceptance by the County, and a bill of lading. The Lessor shall not require the County to sign any other agreement including a finance agreement or equipment lease agreement that contains different terms and conditions in addition to the terms and conditions of this Agreement.

3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

- A. Inspection.** Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Lessor's risk and expense, promptly after notice of rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the equipment meets specifications, and may accept the equipment if the equipment meets specifications. No payment shall be made for any equipment until the equipment has been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Lessor, within thirty (30) days from the receipt of equipment, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the equipment. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless

the Using Department gives notice of rejection within the specified time period, the equipment will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.

D. Rent and Late Charges. In consideration of its rights under this Agreement, Lessee shall pay Lessor as follows:

1. The initial rental period for equipment under this Agreement is one (1) year or twelve (12) months. At the conclusion of each month of possession and use after certification of the equipment, the rent amount of \$2,175.00 per a month shall be remitted to the Lessor. The rent payable to the Lessor for the initial 12-month term shall not to exceed \$26,100.00.
 2. Lessor shall submit a written request for payment to Lessee at the conclusion of each month of possession by Lessee of the equipment following certification of that equipment.
 3. Within thirty (30) days of the issuance of a written request for payment, Lessee shall tender payment for the equipment.
 4. In the event Lessee fails to tender payment within thirty (30) days of written request for payment, Lessee shall pay late payment charges of one and one-half percent (1.5%), until the amount due is paid in full.
 5. In the event the Lessor breaches this Agreement, Lessee may, without penalty, withhold any payments due Lessor for the purpose of set-off until such time as Lessee determines the exact amount of damages it suffered as a result of the breach.
 6. Payment under this Agreement shall not foreclose the right of Lessee to recover excessive or illegal payment.
- E. Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this Agreement shall be the Lessor's sole responsibility and must be reported under the Lessor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Lessor with written evidence of such exemption(s).

4. TERM

This Agreement shall become effective on the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 7 (Termination) or Section 19 (Appropriations). The County has the option to extend the term of this Agreement on the same terms and conditions. In no event shall this Agreement exceed a term of four (4) years. There shall not be any automatic renewal of the term of this Agreement.

5. END OF LEASE

Lessor shall be solely responsible for the cost of retrieving equipment at the expiration of this Agreement, unless termination results from the Lessee's breach in which case Lessee shall be responsible for the cost of returning the equipment to Lessor.

6. CANCELLATION

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Agreement if the equipment or deliverables fail to meet the requirements of this Agreement.
- B. The failure of the Lessor to perform its obligations under this Agreement shall constitute a default of this Agreement.
- C. The Lessor may be excused from performance if the Lessor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Lessor, unless the County shall determine that the item, to be furnished by a sub-Lessor, is obtainable from other sources in sufficient time to permit the Lessor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-Lessors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Lessor fails to meet material provisions of the order and the Lessor shall be liable for any excess costs incurred by the County that is associated with such default.

7. TERMINATION

- A. **For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Lessor of the date of termination. Notice of termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.
- B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

- C. Return of Equipment Upon Cancellation or Termination.** Termination of the Price Agreement also results in termination of the lease or rental of any equipment in the County's possession. In the event of such early termination, as reflected in this section, Lessee shall immediately cease all use of equipment and shall immediately make arrangements with the Lessor or its designee to return the equipment to any designation within the continental United States designated by the Lessor. Any expenses or risks associated with returning equipment to Lessor shall be borne solely by Lessee if termination was for convenience. Such equipment shall be in good repair in the same condition as when received by Lessee, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

8. AMENDMENT

A. This Agreement may only be amended by mutual agreement of the County and the Lessor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

B. An extension of the term of this Price Agreement shall be documented by a written amendment executed by the parties. This is a fixed price Agreement. The rent and provisions of Attachment A shall continue to be applicable and effective as to any extension of the term of this Agreement.

9. ASSIGNMENT

Lessor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

10. NON-COLLUSION

In signing this Price Agreement, the Lessor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

11. CONFLICT OF INTEREST

The Lessor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Lessor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

12. APPROVAL OF LESSOR'S REPRESENTATIVES

The County reserves the right to require a change in Lessor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

13. CONDITION OF PROPOSED EQUIPMENT

All equipment to be delivered under this Price Agreement are to be new and of most current production, unless otherwise specified.

14. SCOPE OF AGREEMENT, MERGER

This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement. Additional terms and conditions mutually agreed upon for by the parties may be incorporated into this Price Agreement as an addendum.

15. COMMERCIAL WARRANTY

The Lessor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Lessor gives to any customer for such items, and that it rights the remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this Price Agreement. Lessor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability and fitness for a particular purpose.

16. ASSIGNMENT OF MANUFACTUER/SUPPLIER WARRANTIES AND LESSOR'S WARRANTIES

To the extent permitted and so long as no event of default has occurred and is continuing, Lessor hereby assigns to Lessee, for the total term of any Lease as a result of this Price Agreement, all equipment warranties provided by a manufacturer/supplier in the applicable purchase documents.

- A. Lessee shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in Lessee's name and at its expense. In the event Lessee is precluded from enforcing any such warranty in its name, Lessor, as owner of the equipment, shall upon Lessee's request, take reasonable steps to ensure such warranties as costs to be borne by Lessor.
- B. All equipment covered by this Lease shall conform to the specifications, samples, or other descriptions furnished or adopted by the County, and shall be merchantable, fit for the purpose for which it is leased, of best quality and workmanship and free from all defects. All equipment delivered, pursuant to

this Lease, shall conform to standards established for such goods and delivery in accordance with any applicable federal, state, or local laws and regulations.

17. INSURANCE OF EQUIPMENT

Commencing upon acceptance and continuing throughout the term of this Price Agreement, Lessee agrees to keep the equipment insured as Lessee's expense against all risks or loss from any cause, including without limitation, theft and damage. Lessee may self-insure against such risk provided the Lessor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. Lessee will provide to Lessor proof of such coverage.

18. RECORDS

During the term of this Price Agreement and for three (3) years thereafter, the Lessor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

19. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Lessor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Lessor and shall be final.

20. NOTICE

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

21. INDEMNIFICATION

The Lessor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Lessor, its agents, officers, employees, or sub-Lessors. The Lessor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

22. THIRD PARTY BENEFICIARY

This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

23. NEW MEXICO TORT CLAIMS ACT

No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

24. INSURANCE.

- A. General Conditions. The Lessor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Lessor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Lessor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.
- C. Worker's Compensation Insurance. The Lessor shall comply with the provisions of the Worker's Compensation Act.
- D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Lessor shall increase the maximum limits of any insurance required herein.

25. CHOICE OF LAW

This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

26. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

27. ENFORCEMENT OF AGREEMENT

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

28. SURVIVAL

The provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

29. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the Lessee:

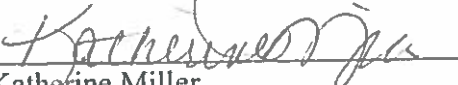
Santa Fe County Public Works
Roads Division
Attn: Eric Giron
P.O. Box 276
Santa Fe, NM 87504-0276

To the Lessor:

MCT Industries Inc.,
Attn: Fermin Maes
7451 Pan American Frwy NE
Albuquerque, NM 87109

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of last signature by the parties below:

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager


1-19-18
Date

Approved as to form:


R. Bruce Frederick
Santa Fe County Attorney

1-17-18
Date

Finance Department:


Stephanie Schardin Clarke
Finance Director

1/18/18
Date

LESSOR

Signature

Date

Print Name and Title

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the last date of signature by the parties below:

SANTA FE COUNTY

Katherine Miller
Santa Fe County Manager

Date

Approved as to form:

R. Bruce Frederick
Santa Fe County Attorney

Date

Finance Department:

Stephanie Schardin Clarke
Finance Director

Date

LESSOR

Fermin Maes
Signature

1-16-18
Date

Fermin Maes Sales Mgr
Print Name and Title

ATTACHMENT A

BID SHEET
IFB# 2018-0187-PW/KE
LEASE OR RENTAL OF 50-TON EQUIPMENT HAULER TRAILER

Offer your best price and delivery time for the item listed below. Bidders shall complete the following bid sheet in full including signature at the bottom as stated. Be advised that award may be made without discussion with Bidders on offers received.

Bid prices listed below are <i>exclusive of gross receipts tax.</i> 50-Ton Equipment Hauler Trailer Information				
Unit Description	12 Month	24 Months	36 Months	48 Month
Lease/Rental Term (Months)	12 MONTHS	24 MONTHS	36 MONTHS	48 MONTHS
Lease or Rental Term (Total Hours)	1856	3712	5568	7424
Base Lease or Rental Payment (Annual)	\$23,700.00	\$47,400.00	\$71,100.00	\$94,800.00
<u>Service*</u> Maint. & PM Program Cost (Annual)	\$2,400.00	\$4,800.00	\$7,200.00	\$9,600.00
<u>Program Cost</u> Extended Cost (Annual)	\$26,100.00	\$52,200.00	\$78,300.00	\$104,400.00

Bidder must provide specification sheets and brochures for the piece of equipment offered in its bid

- * Santa Fe County reserves the right to maintain the leased equipment upon mutual agreement with awarded contractor.

Bidder will deliver equipment to Santa Fe County within 5 days of ARO.

Bidder's Name: FERMIN MAES

Signature of Authorized Bidder's Agent: 

Title: SALES MANAGER

Bidder's Phone #: (505)345-8651 Email Address: fmaes@mct-ind.com

