

**AGREEMENT TO OPERATE TRASH TRANSFER STATION AND PROVIDE
WASTE DISPOSAL SERVICES**

THIS AGREEMENT (“Agreement”) made and entered into as of February 26, 2024 between the COUNTY OF HUERFANO, “County”, and Mountain Disposal, Inc., a Colorado corporation, “Operator”.

WITNESSETH:

WHEREAS, County is the owner and operator of a waste transfer station at the location of 701 Industrial Park Drive, in the city of Walsenburg, Colorado (“Transfer Station”), together with land, improvements and equipment, which are situated at the site of Transfer Station, and

WHEREAS, County has provided its citizens with the resource of a waste transfer station and wishes to continue to provide such services to its citizens, and

WHEREAS, the principals of Operator have lengthy experience in the operation of waste disposal services in southern Colorado, and Operator is willing to meet County’s needs for insuring continuous use of Transfer Station for County’s citizens and furnish County certain waste disposal services under certain terms and conditions, which are spelled out below,

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Land Parcel:

County hereby leases unto Operator and Operator hereby leases from County for the term and upon the conditions hereinafter stated, the real property owned by the County, with a common address of 701 Industrial Park Drive, in the County of Huerfano, State of Colorado, together with the following structures thereon which Operator acknowledges are the property of County:

An office building of approximately 3,500 square feet of improved space, together with the equipment currently at the landfill, which is itemized on Exhibit “A,” attached hereto and made a part hereof.

2. Term:

The term of this Agreement is for a period of five (5) years commencing April 2, 2024, unless sooner terminated as herein provided.

3. **County's Obligations to Operator:**

- A. County will have all stockpiled trash and debris removed from the Transfer Station no later than the date of commencement of the term of this Agreement.
- B. Stockpiled metal shall not be considered as trash and debris, and to the extent that such metal remains on the property at the commencement of the Agreement, County relinquishes ownership to Operator for no additional consideration.
- C. County will provide gravel to the Transfer Station as needed by Operator.
- D. County will not interfere with Operator's management of the Transfer Station and will allow Operator to have exclusive possession of the Transfer Station with full authority to set prices to users and establish hours of operation, which shall be no less than the current hours of operation, as set forth on Exhibit "B."
- E. Provided this Agreement operates to its full term and is not terminated before April 1, 2029, County agrees to execute to Operator a bill of sale to the equipment listed on Exhibit "A."

4. **Operator's Obligations to County:**

- A. Operator agrees to provide County with regular dumpster service for all County properties during the term of the Agreement.
- B. Operator agrees to provide County up to six 30-yard roll off dumpsters per year for the County at no expense to County for the term of this Agreement.
- C. Operator agrees to provide disposal services for all tires originating on County vehicles or equipment without any compensation during the term of this Agreement for a maximum value of One thousand five hundred dollars (\$1,500.000) annually, calculated as follows: \$10 for car tires, \$30 for truck tires, and \$50 for equipment tires. County will pay Operator for disposal services exceeding the \$1500.00 annual limit.

5. Improvements and Use:

- A. The Transfer Station shall be used and occupied by Operator as a facility for the transfer of waste collected in Huerfano County to a lawful dump site.
- B. Operator shall maintain the Transfer Station in accordance with the requirements and regulations of Huerfano County. Operator shall be responsible for all costs, fees, charges, and penalties associated with the discharge or release of any hazardous material (including petroleum products) or mitigating the containment or removal of any contamination or hazardous material (including petroleum products) on, over and under the Transfer Station, which are the direct result of materials brought to the Transfer Station by its users.
- C. Operator, at its sole cost and expense, may cause to be constructed and installed upon the Transfer Station additional improvements in accordance with plans and specification approved by Huerfano County, including architectural approval, which consent will not be unreasonably withheld or arbitrarily delayed. The improvements shall be constructed in a good and workmanlike manner in accordance with the applicable laws, ordinances and building codes and pursuant to a building permit issued by any administrative agency in charge of issuing such permits. All permanent improvements remain the property of the County.

6. Maintenance Obligation:

Operator, at its expense, shall keep the Transfer Station, including utilities extended to the Transfer Station, and the equipment listed in Exhibit B in good repair and condition, and in a safe, sanitary, orderly, and sightly condition, ordinary wear and tear excepted. Operator is only using the Transfer Station as a transfer point, and none of the waste that Operator collects will remain at the Transfer Station permanently.

7. Title to Improvements:

The structures leased to Operator hereunder and any improvements constructed or erected hereunder by Operator, excluding movable trade fixtures, shall constitute a part of the Leased Premises and therefore such structures and improvements cannot be removed from the land.

8. Right of Inspection:

County reserves and retains for its officers, employees and authorized representatives the right to enter the Leased Premises during reasonable business hours, and after prior notice, for the purpose of inspecting and protecting the Leased Premises, and of doing any and all things which County may deem necessary in the exercise of County's police power.

9. Taxes and Licenses:

During the term of this lease Agreement, Operator covenants and agrees to pay promptly all valid taxes and other government charges of whatever nature assessed against or applicable to the Leased Premises or Operator's property or operations thereon including, but not limited to, sales and use taxes and possessory interest personal property taxes. Notwithstanding the foregoing, Operator shall not be responsible for any real estate property taxes, which may be assessed against the Leased Premises. Operator also covenants and agrees not to permit any mechanic's or material man's lien to be filed against the Leased Premises, or any part or parcel thereof by reason of any work or labor performed or materials furnished by any contractor, subcontractor, mechanic or material lien. If Operator fails to do so, County may pay the amount or take such other action as County deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by the County will be deemed rent under this Agreement payable upon demand, without limitation as to other remedies available to County. Operator further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations on the Transfer Station, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Transfer Station, which will be in any way an impairment of the rights of County under this Agreement.

10. Indemnification:

Operator assumes the risk of loss or damage to the Transfer Station and property thereon during the term of this lease, whether from windstorm, fire, earthquake, snow, water run-off, or any other causes whatsoever. Operator covenants and agrees that it will indemnify and save harmless County, its officers, agents and

employees from all demands, claims, costs, causes of action or judgments, and from all expenses incurred by County, in investigating or resisting the same, including reasonable attorney fees, arising from or growing out of the negligent acts or omissions of Operator, its contractors, agents, members, stockholders, employees, invitees, servants, subtenants, fuel suppliers, successors or assigns in connection with its use or occupancy or their use or occupancy of any portion of the Transfer Station.

11. Insurance and Damage:

- A. At all times during the term of this Agreement, and of any renewal or extension hereof, Operator agrees that it will, at its own costs and expense, provide and keep in force commercial liability insurance which includes personal injury, and property damage with a combined single limit of not less than one million dollars (\$1,000,000). County shall insure the structures and other improvements, in an amount equal to their full insurable value naming County as a loss payee. Operator shall provide workers' compensation insurance complying with the Colorado Workers' Compensation Act. Operator shall provide County with copies showing proof of such insurance and subsequent renewals or changes as might occur during the term of this Agreement. With respect to any insured loss to the Transfer Station, structures and property thereon, Operator releases County, its officers, agents, and employees from any claim or liability Operator may have on account of such loss and waives any right of subrogation which might otherwise exist in or occur to any person on account thereof.
- B. All insurance policies must include a special endorsement that the policies will not be materially changed, altered, or canceled by the insurer during its terms without first giving ten (10) days written notice by certified or registered United States mail to the parties to this Agreement.
- C. The parties shall not violate the terms or prohibitions of any insurance policy herein required to be furnished.
- D. If the structures or other improvements (the "Improvements"), are damaged or destroyed by fire or other casualty, County shall within one hundred twenty (120) days from the occurrence of such casualty repair and restore the damaged or destroyed Improvements, or absent further agreement among the parties, Operator may terminate the Agreement without further obligation to County, but under these circumstances, County is still bound to transfer the equipment on Exhibit A to Operator, as though the Operator had performed for the full term.

- E. Nothing in this Section 11 or any other section of this Agreement shall be construed or interpreted as a waiver of any rights or protections afforded to the County under the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq. which rights and protections are expressly reserved.

12. Waivers:

No provision of this Lease may be waived except by an Agreement signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision. Should Operator hold over the use of or continue to occupy the leased premises after the termination or cancellation of this Lease, such holding over shall be deemed merely a tenancy for successive monthly terms upon the same conditions as provided in this Lease subject to termination upon thirty (30) days prior written notice.

13. Operator's Default:

- A. Operator shall be deemed in default of this Agreement if Operator fails to perform or comply with any obligation, covenant or Agreement of Operator hereunder, for a period of thirty (30) days after written notice specifying such failure is given by County to Operator.

- B. In the case of the event of default by Operator, County shall have the following remedies in addition to all other rights and remedies provided by law or in equity including without limitation, damages and specific performance:
 - (1) Terminate this Agreement by thirty (30) days' prior written notice given to Operator specifying the date of termination and Operator shall within said thirty (30) day period vacate the Leased Premises and surrender possession thereof to County.

 - (2) Without terminating this Agreement, retake possession of the Leased Premises and relet the Leased Premises or any part thereof for such term or terms and upon such other conditions as Operator in its reasonable judgment shall determine. If the rent, fees and other charges are less than those provided for herein, Operator shall be responsible and liable for any deficiency between the amount of the rent, fees and charges provided for herein and those received through such reletting. County shall not be responsible or liable for any failure to relet the Leased Premises or any part thereof, or failure

to collect any rent, fees or other charges due upon such reletting. No notices from County hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by County to terminate this Lease unless such notice specifically so states. County reserves the right following any such reentry and/or reletting to exercise its right to terminate this Lease as provided in (1) above.

14. Operator's Right to Terminate:

Operator may terminate this Agreement upon 30 days' written notice to County at any time during the term of this Agreement without demonstrating cause. Upon termination, Operator shall return the Transfer Station and all of County's equipment to County in the same condition as Operator received them, reasonable wear and tear excepted.

15. Agreement for Alternate Dispute Resolution:

The parties agree that should any dispute arise under this Agreement, before initiating any formal litigation, the parties shall submit the dispute to mediation before a mutually acceptable mediator, with the parties to equally share the costs of mediation. The party requesting mediation shall notify the other party, and a mediator shall be agreed upon within ten (10) days. If the parties are unable to agree upon a mediator, each party shall nominate a mediator, and the two mediators so nominated will appoint a mediator to mediate the dispute. The mediation shall occur no later than thirty days from the appointment of a mediator.

16. Notices:

All notices required to be given to County hereunder, shall be in writing and be sent by certified mail to Huerfano County Commissioners, 401 Main St., Suite 201, Walsenburg, CO 81089. All notices required to be given to Operator hereunder shall be in writing and sent by certified mail, addressed to James Klipfel, President, Mountain Disposal, Inc., PO Box 20230, 4421 Hwy 165, Colorado City, CO 81019-2230, provided, that the parties, or either of them, may designate in writing from time to time subsequent or supplementary persons or address in connection with said notices. The effective date or service of any such notice shall be the date such notice is mailed by Operator or County.

17. Law, Rules and Regulations:

Operator, its officers, agents and employees shall faithfully observe and comply with all applicable federal, state and local laws, rules, regulations and ordinances now existing or hereafter adopted relating to the use and occupancy of the Landfill.


18. **Miscellaneous:**

- A. This Agreement and all of its covenants and provisions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and approved subtenants.
- B. No waiver by County of any failure by Operator to comply with any term or condition of this Lease shall be or shall be construed to be a waiver by County of any other failure by Operator to comply with any term or condition of this Lease Agreement.
- C. Operator is leasing the Leased Premises "AS IS" "WITH ALL ITS FAULTS" in its present condition. County makes no representation or warranties with respect to the present or future condition, or suitability for a particular use of the Leased Premises.
- D. In the event of any litigation arising under this lease, the court shall award the prevailing party its costs and expenses of litigation including without limitation, reasonable attorney and expert witness fees.
- E. In the event of any litigation arising under this Agreement, exclusive venue for any such litigation shall be Huerfano County, Colorado. All such litigation shall be filed in the District Court and each party submits to the jurisdiction of such District Court. County and Operator hereby waive trial by jury in any action, proceeding, or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Agreement, Operator' use or occupancy of the Premises, and/or any claim of injury or damage.
- F. If any provision of this Agreement or the application thereof to any person or circumstance is, at any time or to any extent, invalid or unenforceable, the remainder of this Lease will not be affected thereby, and each such provision will be valid and will be enforced to the fullest extent permitted by law.
- G. This Agreement contains the entire and exclusive Agreement between the parties relating to the Transfer Station and the services to be provided by Operator hereunder and may not be modified except by written instrument signed by the party to be bound thereby.
- H. Neither Party shall be, or hold itself out as, agent of the other or as joint venturers or partners under this Agreement.

- I. Each Party acknowledges that this Agreement was fully negotiated by the Parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.
- J. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their successors and permitted assigns, and no third party shall be a beneficiary, or have any rights by virtue of this Agreement.
- K. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed for all purposes to be an original, and all such counterparts shall together constitute but one and the same original.
- L. Whether or not specifically noted within any section or provision of this Agreement, any provision of this Agreement which must survive termination of this Agreement in order to be effective will so survive such termination.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

OPERATOR:
Mountain Disposal, Inc.



 Signature
 By: James Klipfel
 President

 Date

HUERFANO COUNTY

 _____, Chairman of the Board of County Commissioners

[S E A L]

Attest: _____
 Clerk of the Board of County Commissioners

EXHIBIT A

Equipment on site

2006 Peterbilt Rolloff truck with all roll offs

2002 Komatsu PC200LC-7 excavator

2015 Bobcat S510 skid steer

JAK

EXHIBIT B

Minimum Hours of Operation

Winter Hours

November 1st to April 30th

THURSDAY THROUGH SATURDAY

9:00 AM TO 3:00 PM

Closed 11:30 to 12 Noon for Lunch

Summer Hours

May 1st to October 31st

OPEN TUESDAY THROUGH SATURDAY

9:00 AM TO 3:00 PM

Closed 11:30 to 12 Noon for Lunch

A handwritten signature in black ink, appearing to be the initials 'AK' with a stylized flourish.