



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: November 17, 2020

AGENDA ITEM NO. Consent Agenda	ORIGINATING DEPARTMENT: Administration	PRESENTED BY: Drew Nelson
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ITEM:

2021 Services Contract with Angel of Shavano Recycling

BACKGROUND:

The City of Salida engages in a service contract with Angel of Shavano Recycling to provide recycling drop stations at the Salida Hot Springs and Aquatics Center as a free service to Salida residents and guests. Changes to the contract for 2021 include an overall fee increase; however, this additional cost will be covered by the Chaffee County Waste Disposal Fund. The City will continue to review whether the location at SHSAC is the most appropriate place for recycling services, as the Parks, Recreation, Open Space and Trails Master Plan is recommending that the service be moved to a different location. In addition, new curbside recycling services will remove the need to have drop stations in our respective communities.

FISCAL NOTE:

The cost to the City of Salida for FY 2021 is \$32,560.00, which is the same amount as in 2020. This amount has been approved as part of the 2021 Annual Budget.

STAFF RECOMMENDATION:

Staff recommends that the City Council approve the Services Contract for 2021 with Angel of Shavano Recycling.

SUGGESTED MOTIONS:

A City Councilperson should make a motion to combine and approve the Consent Agenda, followed by a second and a voice vote.

CHAFFEE COUNTY SERVICES CONTRACT

This Contract ("Contract") is made and entered into _____, 2020, and is between the County of Chaffee, State of Colorado, acting by and through the Board of Commissioners of Chaffee County, Colorado ("County"), the Town of Poncha Springs ("Poncha Springs"), Colorado, the City of Salida, Colorado ("Salida"), the Town of Buena Vista, Colorado ("Buena Vista"), (all such governmental entities, are collectively referred to below as "Local Governmental Entities") and Angel of Shavano Recycling ("Contractor"), (all such entities, are collectively referred to below as the "Parties").

The Local Governmental Entities desires to contract for the services of Contractor as an Independent Contractor pursuant to the terms and conditions of the attached **Exhibit A**.

In consideration of the rights and obligations specified below, the Local Governmental Entities and the Contractor agree as follows:

1. Performance of Services.
 - a. Scope of Services. The attached **Exhibit A** describes the work to be performed (the "Work"). Contractor is not required to observe particular working hours or work a specified number of hours. Contractor shall determine whether it possesses the sufficient training and background to carry out specific requests for services. Except as expressly provided in this Contract, Contractor will, in a good and workmanlike manner and at its own cost and expense, furnish all labor and equipment and do all work necessary and incidental to performing the Work. Contractor shall perform the Work in strict accordance with this Contract.
 - b. Quality of Performance. The Contractor shall perform the Contract in a manner satisfactory and acceptable to the County. The County shall be the sole judge of the quality of performance.
 - c. Other Activities. Contractor may engage in other activities for compensation provided they do not conflict with the responsibilities or limitations set forth in this Contract.
 - d. Subcontractors. Contractor may hire, at its expense, any subcontractors if approved in writing by County and provided such assistants do not, in County's sole discretion, hinder County's business, subject to the below Prohibitions on Public Contract for Services.
 - e. Reports. Contractor shall provide reports to County including financial reports that correspond to the annual subsidy contribution to determine the amount of fees and expenses owed to Contractor pursuant to this Contract or those required by law. Within five (5) days of receipt, the County shall provide a copy of all reports to Poncha Springs, Salida, and Buena Vista.

2. **Independent Contractor. Contractor is an independent contractor and is responsible for all taxes (including employment taxes) and insurance applicable under existing laws with respect to the fees paid under this Contract. Neither Contractor, nor its subcontractors, employees or agents shall have authority to bind the Local Governmental Entities in any contract or agreement. Neither Contractor, nor its subcontractors, employees, or agents will have any claim or right to participate in any retirement, bonus, welfare or benefit plans of the Local Governmental Entities. Contractor acknowledges that its employees and subcontractors are not entitled to unemployment insurance benefits or workers' compensation benefits from the Local Governmental Entities, its elected officials, agents, or any program administered or funded by the Local Governmental Entities.**

3. For the convenience of the Parties, the County shall administer the Contract on behalf of all the Local Governmental Entities. The County's responsibilities shall include but not be limited to: reviewing billing, payment of fees, communicating between the Parties, and verifying Contractor's work performance. Nothing contained in this Contract and no actions taken by the Local Governmental Entities under this Contract shall constitute a partnership, joint venture, association or other cooperative entity between the Local Governmental Entities to this Contract. The Local Governmental Entities are acting independently and not as agents of each other. The relationship which subsists between the Local Governmental Entities is that which arises under a cost sharing agreement.

4. The Local Governmental Entities agree to provide within their respective jurisdiction the recycling drop site as designated in Exhibit A to Contractor at no cost to the Contractor or to the public. Additionally, the Local Governmental Entities will provide snowplowing and road grading at their recycling drop-sites within their respective jurisdictions to ensure access

5. **Fees.** On behalf of all the Local Governmental Entities, the County shall pay the Contractor One Hundred Seventy Thousand Dollars (\$170,000.00) for one year of services under Exhibit A. County shall pay such fees in quarterly installments with the first payment due on March 31, 2021, the second payment on June 30, 2021, the third installment on September 30, 2021 and the final payment by December 15, 2021. Each installment will be for \$ 27,500.
 - a. The Local Governmental Entities agree that the cost of the Fees will be based on last year's (2020) agreed upon contribution. Fees in excess of the 2020's Fees shall be paid out of the County's Waste Disposal Fund on a quarterly basis or Fifteen Thousand Dollars (\$15,000.00) per quarter. The Local Governmental Entities will contribute to the Fees of the Contract as follows:

i) Town of Poncha Springs:	\$ 5,280.00
ii) City of Salida:	\$ 32,560.00
iii) Town of Buena Vista:	\$ 15,950.00

iv) Chaffee County:	\$ 56,210.00
v) County Waste Disposal Fund	\$ 60,000.00

6. Expenses. Except as set forth in **Exhibit A**, Contractor is responsible for Contractor's expenses and overhead, including without limitation, travel, insurance, material and equipment expenses, and expenses in connection with furthering Contractor's skills or membership in professional societies and organizations.

7. Term, Termination and Related Remedies.
 - a. Term. This Contract is effective from January 1, 2021 through December 31, 2021.

 - b. Termination. Either party may terminate this agreement for any reason or no reason at all by giving the other at least fifteen (15) days written notice at the address shown below. Upon termination, Contractor shall be liable to refund to County any fees paid for prepaid services which have not been completed. Contractor shall refund any unearned fees within thirty days of termination. Unearned fees shall be calculated based on the annual payment made by County to Contractor, divided by twelve, multiplied by the number of months remaining on the contract on the date of termination.

 - c. Constitutional Requirements. The other provisions of this Contract notwithstanding, financial obligations of the Local Governmental Entities payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. Local Governmental Entities are prohibited by law from making financial commitments beyond the term of its current fiscal year. The Local Governmental Entities have contracted for goods and/or services under this Contract and have reason to believe that sufficient funds will be available for the full term of the Contract. Where, however, for reasons beyond the control of the participating Local Governmental Entities as the funding entities, funds are not allocated for any fiscal period beyond the one in which this Contract is entered into, any of the participating Local Governmental Entities shall have the right to terminate this Contract by providing seven days written notice to the Contractor and the Local Governmental Entities, and will be released from any and all obligations hereunder. If any of the participating Local Governmental Entities terminates the Contract for this reason, the remaining Local Governmental Entities, and Contractor shall be released from all obligations to perform Work and make payments hereunder, except that County shall be required to make payment for Work, pursuant to the cost division in section 5, which has been performed by Contractor prior to the effective date of termination under this provision; and, conversely, Contractor shall be required to complete any Work for which County has made payment prior to providing written notice to Contractor of the termination.

8. Representations and Warranties. Contractor represents and warrants the following:
 - a. Required Permits and Compliance with Law. Contractor has obtained all authorizations and permits necessary or required by law in connection with the

services provided pursuant to this Contract. Contractor shall materially comply with all relevant laws, regulations and ordinances in rendering services under this Contract.

- b. Insurance. Contractor has obtained and shall continue to maintain at its own expense, and without cost to County, insurance protection from a company authorized to do business in Colorado, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:
- i. Comprehensive General Liability in the amount not less than those limits of liability established from time to time for governmental entities under the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-114. Currently, such limits are \$350,000.00 per person and \$990,000.00 per occurrence. This coverage should be provided on an ISO 1998 Form or the most current form. Coverage to include:
 - 1. Premises
 - 2. Products/Completed Operations if Work includes a manufacturing operation
 - 3. Broad Form Comprehensive, General Liability
 - ii. Automobile Liability. Minimum limits are required to be \$1,000,000.00 for each occurrence. Coverage must include:
 - 1. All vehicles owned, non-owned, and hired to be used on the Contract;
 - 2. Medical Payments.
 - iii. Employer's Liability, Workers' Compensation and Unemployment Insurance. Contractor shall secure and maintain employer's liability, Workers' Compensation Insurance and Unemployment Insurance as required by applicable law.
 - iv. Named Insured and Certificates of Insurance.
 - 1. Chaffee County, Poncha Springs, Salida, and Buena Vista, at Contractor's sole expense, shall be named as insured or additional insured on all insurance policies required under this Contract. The "additional insured" wording shall be as follows: County of Chaffee, State of Colorado, a body corporate and politic, the City of Salida, a municipal corporation, the Town of Poncha Springs, a municipal corporation, and the Town of Buena Vista, a municipal corporation are named as Additional Insured.
 - 2. Contractor shall furnish County prior to the commencement of work under this Contract and annually thereafter copies of company-issued Certificates of Insurance policies obtained by Contractor in compliance with this paragraph demonstrating that the insurance requirements have been met, and Contractor shall ensure that County

is notified in writing and at least thirty days in advance of any amendment or cancellation of such policy or policies.

These Certificates of Insurance shall also contain a valid provision or endorsement that these policies may not be canceled, terminated, changed or modified without thirty days written notice to the County.

Certificates shall be forwarded to:
Dan Short, Finance Department
Chaffee County
P.O. Box 699
Salida, CO 81201

7. Non-discrimination. The Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, *et seq.*, as amended, and all applicable local, state and federal laws respecting discrimination and unfair employment practices.
8. Nondiscrimination Provisions Binding on Subcontractors. In all solicitations by the Contractor for any Work related to this Contract to be performed under a subcontract, either by competitive bidding or negotiation, the Contractor shall notify each potential subcontractor of the Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.
9. Indemnification. The Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Contractor, its employees, agents, representatives or other persons acting under the Contractor's direction or control in performing or failing to perform the work under this Contract. The Contractor will defend, indemnify and hold harmless the County, its elected and appointed officials, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of the Contractor, its employees, agents or representatives, or other persons acting under the Contractor's direction or control. In addition, the parties reserve the right to bring tort claims in the event of the discovery of an intentional fraud committed during contract performance. Nothing in this indemnification agreement shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended and as may be amended from time to time. This section shall survive the termination of this Contract.
10. No Waiver of Breach. County's failure to insist upon strict compliance with the provisions of this Contract will not be construed in any way as a waiver of any of County's rights or privileges. All remedies afforded in this Contract shall be cumulative, that is, in addition to every other remedy provided in this Contract or by law.

11. Prohibitions on Public Contract for Services.

- a. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract; or enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
- b. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Contract through participation in either the E-Verify Program or Department Program.
- c. Contractor shall not use either the E-Verify Program or Department Program to undertake pre-employment screening of job applicants while the Contract is in effect.
- d. If Contractor obtains actual knowledge that a Subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
 - i. Notify the Subcontractor and the County within three (3) days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien (“Notice”); and
 - ii. Terminate the Subcontract with the Subcontractor if within three (3) days of receiving the Notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.
- e. Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

12. Certification Regarding Employing or Contracting with an Illegal Alien. If Contractor has any employees or subcontractors, Contractor shall comply with C.R.S. § 8-17.5-101, *et seq.*, regarding Illegal Aliens - Public Contracts for Services, and this Contract. By execution of this Contract/Addendum, Contractor certifies that it does not knowingly employ or contract with an illegal alien who will perform work under the Contract and that Contractor will participate in either the E-Verify Program or Department Program in order to confirm the eligibility of all employees who are newly hired for employment to perform work under the Contract.

13. Prohibition on Acceptance of Gifts. Pursuant to Section 3 of Art. XXIX of the Constitution of the State of Colorado, County Employees or contractors cannot accept any gifts, meals, theatre or sporting event tickets unless:
 - a. the aggregate value of things received from a single source does not exceed \$59/calendar year; or
 - b. the County employee/elected official gave the donor consideration of equal or greater value; or
 - c. an enumerated exception applies.

14. General Provisions.
 - a. Contractor Cooperation. Contractor shall cooperate and provide County all information requested by County for the purpose of submitting legally-required reports or forms to state or federal agencies including, without limitation, the Internal Revenue Service and the Colorado Department of Revenue.

 - b. Amendment. This Contract may be amended only by a written instrument signed by the parties to this Contract.

 - c. Successors and Assigns; Assignment by Contractor Prohibited. The rights and obligations of County under this Contract will inure to the benefit of and will be binding upon the successors and assigns of County. Contractor may not pledge, assign or transfer either this Contract or any of the payments or benefits under this Contract without the written consent of County.

 - d. Severability. If a tribunal of competent jurisdiction determines that any provision of this Contract is void, illegal, or unenforceable, the other provisions will remain in full force and effect. Any provision determined to be void, illegal, or unenforceable will be limited so that this Contract will remain in effect to the fullest extent permissible by law.

 - e. Breach. Any waiver of a breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

 - f. Termination of Prior Agreements. This Contract cancels and terminates, as of its effective date, all prior agreements between the parties relating to the services covered by this Contract, whether written or oral or partly written and partly oral.

 - g. Third Party Beneficiary. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the County and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

- h. Notices. All notices shall be in writing. Notices will be deemed to have been duly given if delivered personally or if mailed via certified mail (return receipt requested and postage prepaid) and confirmed by such certified mail receipt, given by facsimile or e-mail confirmed by receipt, or sent by courier confirmed by receipt, addressed to the party at the address set forth below or at such other address as either party may designate to the other in accordance with this Section. Notices shall be deemed to be given on the date of receipt, except that if delivery is refused, notice shall be deemed given on the fifth (5th) day after it is sent.
- i. Counterparts. The parties may execute this Contract in any number of counterparts, each of which will be deemed an original.
- j. Statutory Requirements. This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally. Without limiting the scope of this provision, the Contract is specifically subject to the following statutory requirement:
- Contract payments may be withheld pursuant to C.R.S. § 38-26-107 if the County receives a verified statement that the Contractor has not paid amounts due to any person who has supplied labor or materials for the project.
- k. Entire Agreement. All exhibits to this Contract and provisions set forth in County's Request for Proposal and Contractor's responses to County's Request for Proposal, if any, together with any alterations and/or modifications, are incorporated as part of this Contract and such represents the entire agreement between County and Contractor with respect to the transactions contemplated by this Contract and supersedes all previous negotiations, commitments, letters of intent and other writings.
- l. Priority of Provisions. In the event that any terms of this Contract and any Exhibit, attachment, or other referenced document are inconsistent, the following order of priority shall control:
- 1st: This Contract unless otherwise provided for in a subsequent agreement
 - 2nd: Request for Proposal (if applicable)
 - 3rd: Insurance Requirements
 - 4th: Exhibit A - Scope of Services and details of Contractor's Fees
 - 5th: Response to Request for Proposal (if applicable)
- m. Controlling Law and Jurisdiction. The interpretation and performance of this Contract shall be construed under the laws of Colorado, without regard to choice of law principles. In the event of litigation, jurisdiction and venue shall be in the Chaffee County District Court.

Contractor

By: _____

Print Name: _____

Title: _____

Federal ID #: _____

Notice Address:

Fax: _____

Board of Commissioners of Chaffee County

By: _____

Greg Felt, Chairman

ATTEST:

Chaffee County Clerk/Recorder

Notice Address:

Attention: County Attorney

P.O. Box 699

Salida, Colorado 81201

Fax: 719.539.7442

City of Salida

By: _____

ATTEST:

Notice Address:

Fax:

Town of Buena Vista

By: _____

ATTEST:

Notice Address:

Fax:

Town of Poncha Springs

By: _____

ATTEST:

Notice Address:

Fax:

(If this Contract is executed on behalf of a corporation, it must be signed by an agent duly authorized by the corporation to execute such Contract, and if specified by the corporate bylaws, the corporate seal must be affixed to the Contract by the Secretary of the corporation or other authorized keeper of the corporate seal.)

Exhibit A

Angel of Shavano Recycling will perform the following work for the countywide recycling program for Chaffee County.

Service Description

Angel of Shavano Recycling will provide a subsidized collection service of source separated recyclable materials at the current drop-sites throughout Chaffee County. See site plan below for drop-site locations.

Site Plan

The current drop-sites are used regularly and would require no new education for the public. Angel of Shavano Recycling will continue to operate at these locations unless the parties to the IGA deem otherwise. Any location changes, removals, or additions will be made in writing and agreed upon by Angel of Shavano Recycling and the respective party sponsoring the drop-site in question. Salida Hot Springs Aquatic Center, Buena Vista Public Works, Chaffee County Landfill and Poncha Springs Industrial Park would remain at their current locations.

Materials to be collected at these sites:

- Cardboard/ paperboard (corrugated cardboard, cereal boxes, six pack holders, brown paper, soda boxes, and milk/juice box containers)
- Mixed office paper and magazines/catalogs
- Newsprint and Packing paper
- Plastic single use bottles #1-#2
- Tin/ Aluminum cans (UBCs)
- Glass Bottles (brown, green, and clear)

Collection Plan

Angel of Shavano Recycling will:

1. Collect materials daily Monday through Thursday. If necessary other pickups can be arranged with the sponsoring site manager.
2. Provide contact information at each site for the site manager for unexpected overflow or questions concerning the recycling process.
3. Provide sufficient roll-off bins for each material collected.
4. Inform municipalities of trash to be removed from the drop-sites.
5. Drop-sites will be managed and maintained by either Chaffee County or individual municipality's employees. This will include the closing and opening of sites on a schedule that is agreed upon by Angel of Shavano Recycling and the responsible parties, and collection of trash or non-recyclable materials.

Processing Plan

Angel of Shavano Recycling will provide all necessary equipment for the program. Materials will be collected into roll-off bins at drop-sites. Angel of Shavano Recycling will haul the full bins to its facility in

Poncha Springs. Materials will be further sorted and baled at that facility, then sold at highest possible market value to end use facilities or further processing facilities.

Reports to Chaffee County and payments to Angel of Shavano Recycling

1. Angel of Shavano Recycling will provide to Chaffee County Landfill Committee quarterly reports due April 1, July 1, October 1 and December 1 in 2021 delineating the amount and types of recycled materials collected.
2. The parties to this agreement shall pay an annual amount for Drop- Site collection services to Angel of Shavano Recycling. The annual fee will be made quarterly at \$ 42,500 per payment (\$27,500 entities and \$15,000 Waste Disposal Fund) as delineated in the 2021 Recycling Agreement.

Additional Responsibilities

Angel of Shavano Recycling will:

1. Provide all necessary signage for description of materials to be collected in each bin.
2. Provide information to the municipalities about the recycling process for them to post on city websites.
3. Provide contact information on each bin for the public for any questions, comments, or concerns regarding the processing of recyclable materials collected. Angel of Shavano Recycling will not be responsible for answering questions about site operations and hours.
4. Meet with County and municipality personnel as reasonably requested by the County and/or the municipalities.
5. All recycled materials must be fully contained within the property boundaries of the drop-sites. Recyclables outside of drop-site boundaries will not be collected. If material is placed on ground next to a full bin Angel of Shavano Recycling will collect the overflow when picking up bins.
6. Notify municipality or county of hazardous waste, electronics, excessive trash and other non-recyclables that need to be removed. The municipality or county will determine who the violator is and the local law enforcement agency will deal with the illegal dumping as per local ordinance and be responsible for the removal of the illegally dumped items.