

EQUIPMENT RENTAL CONTRACT

between

GottaDo Contracting LLC

and

THE COUNTY OF MONTGOMERY

Dated as of _____, 2017

COUNTY OF MONTGOMERY, NEW YORK

This Equipment Rental Contract (this "Agreement" or "Contract") is entered into as of _____, 2017, by and between GottaDo Contracting LLC, with offices at 9289 Bonta Bridge Road, Jordan NY 13080 (the "Contractor" or the "Company") and the County of Montgomery, New York, a municipal corporation of the State of New York, with offices at 20 Park Street, Fonda, New York 12068 (the "County" or "Montgomery").

RECITALS

The County is the owner and permit holder of two (2) solid waste transfer stations known as the "Amsterdam Transfer Station," located at 1247 Route 5S, Amsterdam, New York and the "Western Transfer Station," located at 4583 Route 5S, Sprakers, New York, which are used for the receipt and transfer for disposal of municipal solid waste generated within the County.

The Contractor is a business enterprise possessed of sufficient labor, equipment, vehicles and experience to operate the Transfer Stations and provide solid waste transport services. The Contractor entered into a Contract to operate the Transfer Stations for the County through December 31, 2021. The Contractor wishes to rent equipment from the County to assist with operating the Transfer Stations.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual obligations undertaken herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Contractor and the County hereby agree as follows:

1.0 Term of Contract

The Term of this Contract shall commence on January 1, 2017 and shall continue until the close of business on December 31, 2021.

At the option of the County, which shall be exercised no later than October 1 of the last operative year of the Contract or previously exercised option period, the Term of this Contract may be extended for up to two (2) additional one-year periods on terms mutually agreeable to both parties

2.0 Compensation and Payment

2.1 Compensation. The Contractor shall pay to the County \$1,708.75 a month for the rental of the equipment listed in Exhibit A. This amount shall be deducted from the monthly payment paid to the Contractor under the Transfer Operations and Solid Waste Transport Contract dated February 21, 2017. Double monthly payments shall be deducted until the portion due and owing from January 2017 until July 2017 is paid in full.

2.2 Payment. Payment shall be made on the first of each month for the term of this Contract. If payment is received after the 7th of the month a \$50 late fee shall be added to the outstanding balance. In addition, interest at the rate of 8% a month will be assessed.

3.0 Contract Security

The Contractor shall provide a Performance Bond in favor of the County in a penal sum of One Hundred Thousand Dollars (\$103,000.00) Dollars in each calendar year of the Contract as security for equipment rented through this Contract. A copy is attached as Exhibit B. The Performance Bond shall be effective for at least one (1) year. All bonds shall be provided by a Contractor licensed to do business in the State of New York and hold a rating from AM Best & Co. of AA or better.

4.0 Insurance Requirements

The Contractor is required to insure each piece of equipment in Exhibit A, including all attachments and accessories against all risks for an amount equal to the replacement value of all of the equipment.

The Contractor shall furnish the County with certificates of each insurance policy naming the County in the loss payable clause and insuring the equipment for the full replacement value against loss or damage by fire, extended coverage, theft, collision, vandalism, malicious destruction and all other perils. The Contractor waives the right to joint check and authorizes the insurer to make payment directly to the owner. All liability coverage shall be on a primary and non-contributory basis.

All certificates and insurance policies shall bear the policy numbers, the expiration date of the policy and the limits of liability thereunder. Both the certificates and the policies shall be endorsed to provide the County with any notice of cancellation at least 30 days **prior** to the actual date of such cancellation. Failure to maintain insurance during the term of the Contract shall be grounds for immediate termination for default.

5.0 Inspection and Tests

All equipment shall be subject to inspection, examination and test by the County's Commissioner of Public Works, or their designee, at any time during the term of this Contract, and at any and all places where staging and/or storage of vehicles and containers is conducted.

The Contractor shall furnish promptly all reasonable facilities, labor and materials necessary to make any test, including recertification of tare weights, required by the Commissioner and/or required by the Contract.

The selection of laboratories and/or agencies for the inspection and tests of supplies, materials or equipment, shall be subject to the approval of or designated by the County.

6.0 Maintenance

6.1 All machinery, equipment shall at all times be maintained in proper working condition. The Contractor shall be responsible for curtailing noise, dust, odors, smoke, fumes or any other nuisance resulting from operations. The Contractor shall, upon written notification from the Commissioner, make any repairs, replacement, adjustments and additions, and furnish mufflers when necessary to fulfill these requirements.

6.2 The Contractor is required to provide all maintenance of the equipment listed in Exhibit A. This includes but is not limited to oil and filter changes at manufacturer recommended intervals, as well as replacement of wear items such as bucket edges and teeth. The Contractor must provide monthly documentation to the Commissioner of Public Works of all maintenance performed on the equipment. The Contractor must return all equipment to the County at the end of this Contract in the same or better condition than which it was received. The cost for replacement, repairs, or cleaning will be the responsibility of the Contractor.

7.0 Replacement and Repairs

The Contractor shall be responsible to either replace or repair any equipment damaged during the duration of this Contract to the satisfaction of the County or completely reimburse the County for any damage that occurs to the County's satisfaction. Damage to any equipment must be immediately reported to the Commissioner within ten (10) working days via certified mail. Replacement, reimbursement or repair of any equipment must be approved by the Commissioner and done within thirty (30) days of the damage being reported to the Commissioner, unless the Contractor granted a waiver of this timeframe. If replacement, reimbursement or repair of the equipment is not completed within thirty (30) days of the damage being reported to the Commissioner and a waiver is not granted the cost of reimbursement, repair or replacement shall be deducted from the amount owed under the Transfer Operations and Solid Waste Transport Contract dated February 21, 2017. If a dispute arises regarding the reimbursement, repair or replacement of equipment the Contractor shall continue to fully perform all duties under the

Transfer Operations and Solid Waste Transport Contract dated February 21, 2017. In no event shall this Contract affect the performance of any duties by the Contractor or relieve the Contractor of any obligations under the Transfer Operations and Solid Waste Transport Contract dated February 21, 2017.

8.0 Protection of Work, Persons and Property

Precaution shall be exercised at all times for the proper protection of all persons, property and equipment. The Contractor shall provide and maintain such watchman, barriers, lights and other signals at the Contractor's own expense, as will effectively prevent any accident in consequence of its work for which the County might be liable. The Contractor shall be liable for all injuries or damage caused by its act or neglect, or that of its employees. The Contractor shall be solely responsible for direction of traffic on the Transfer Station site.

The Contractor shall take particular care to avoid the blocking of fire hydrants, traffic signals or other visible devices maintained for the use of the County or other Contractors.

9.0 Laws and Ordinances

The Contractor shall observe and obey all federal, state, county and local laws, ordinances, codes and regulations.

The Contractor shall comply with, and be subject to, all applicable provisions of the New York State Labor Law, all of which provisions are hereby incorporated herein by reference. The Contractor shall comply with all applicable provisions of Labor Law Article 9 governing the payment and posting of prevailing wages at rates determined by the New York State Department of Labor, and such provisions of Article 8 of the Labor Law as may be applicable to the Work. Prevailing Wage Schedules for the Work are annexed hereto as Exhibit F.

The Contractor shall comply with the provisions of the New York State Civil Rights Law and §§290-301 of the New York State Executive Law, and shall furnish all information and reports deemed necessary by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner, for purposes of investigation to ascertain compliance with such sections of the Executive Law and Civil Rights Law. The Contractor agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation in terms, conditions or privileges of employment or make any inquiry into

prospective employment which expresses, indirectly or directly any limitation specification or discrimination based on the foregoing characteristics.

10.0 Notices

Any notices or communication required or permitted hereunder shall be in writing and deemed sufficiently given (a) when delivered by hand; (b) on the business day next following deposit with a nationally recognized-overnight delivery service, fee prepaid; or (d) on the third business day following deposit with the United States Postal Service, by certified or registered mail, postage prepaid, as follows:

To the Contractor:

If by Hand, Mail or Overnight Delivery Service:

James Rodenhizer
GottaDo Contracting, LLC.
9289 Bonta Bridge Road
Jordan, New York 13080

To the County:

If by Hand, Mail or Overnight Delivery Service:

Commissioner
Department of Public Works
County of Montgomery
6 Park Street
PO Box 1500
Fonda, NY 12068

Changes in the respective addresses to which such notices may be directed, may be made from time to time by any party by written notice to the other party.

11.0 Termination

Either party can terminate this Contract for any reason upon thirty (30) days written notice to the other party. If this Contract is terminated mid-month, the Contractor shall pay the County the rental fee for the entirety of the month for when the Contract was terminated. If the Contract is terminated prior to the January –July 2017 balance being paid the Contractor shall pay the remaining balance immediately upon termination.

12.0 Successors and Assigns

This Contract shall inure to the benefit of and shall be binding upon the parties hereunder and upon their respective successors and assigns, but neither party shall assign or transfer its interest herein in whole or in part without written consent of the other, provided, however, the County may assign the Contract without such consent to any public agency or authority established by the County.

13.0 Waiver

The failure of the County at any time to insist upon the strict observance of any of the provisions of this Contract, or to exercise any of its rights in respect hereto, or to exercise any election herein provided, shall not be construed as a waiver of such provision, right or election, or in any way affect the validity of this Contract. Any remedy provided in this Contract shall be construed as cumulative; that is in addition to each and every remedy herein provided.

14.0 Accident Prevention

During the performance of the Work, the Contractor shall exercise all reasonable precautions for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and all other physical hazards shall be guarded in accordance with the safety provisions of federal, state or municipal laws or regulations.

If any operation, practice or condition is deemed by the Commissioner to be unsafe the Contractor must immediately take corrective action.

Nothing in the foregoing paragraphs shall be construed as relieving the Contractor from full responsibility at all times for safe prosecution of the Work.

15.0 Indemnification

The Contractor agrees that it shall protect, indemnify, defend and hold harmless the County and its officials, officers, members, employees and agents from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the aforesaid indemnified parties in any suit, appeal or other proceeding, including those for personal injury to, or death of, any person or persons not parties to this Contract, or loss or damage to property of persons not parties to this Contract arising out of (a) the negligent act or omission, or other wrongful conduct of the Contractor or any of its officials, agents, employees, Contractors or subcontractors in connection with its obligations or rights under this Contract; (b) the Work or Equipment furnished or used by the Contractor hereunder; or (c) the breach by the Contractor of any of its obligations under this Contract. Contractor agrees to accept exclusive responsibility and liability for complying with all applicable state and federal laws, and all codes, regulations, statutes, and ordinances including those governing, obligations regarding payment of quarterly taxes, social security, disability and any other contributions based on the fees paid to the Contractor under this Agreement. Contractor agrees to reimburse, indemnify, defend and hold harmless the County to the extent that the County becomes obligated to pay any of the above taxes, contributions, or payments, or to the extent the County incurs any similar liabilities.

16.0 Joint and Several Liabilities

If the Contractor is comprised of more than one (1) individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable for Contract obligations.

17.0 Entire Agreement

This Contract and all documents incorporated herein contain the entire agreement and understanding between the parties as to the subject matter hereof. This Contract may not be changed, modified or supplemented in any way, except by an instrument in writing, executed by both parties.

18.0 Other Legal Provisions Applicable to All Contracts

18.1 If any provision or provisions of this Agreement shall be held unenforceable by a Court of competent jurisdiction for any reason, then such provision shall be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

18.2 The exclusive means of disposing of any contract dispute arising under this Contract shall be decided in a New York State Court of competent jurisdiction located within Montgomery County, New York. There shall be no right to binding arbitration.

WHEREFORE, the parties, through their authorized representatives, have set their hands this ____ day of _____, 2017.

(Contractor) Gerrit De Coninck LLC

By: 

COUNTY OF MONTGOMERY

By: _____

ACKNOWLEDGEMENTS

STATE OF NEW YORK)

Cayuga
COUNTY OF ~~MONTGOMERY~~)

SS.:

On the 23 day of June, in the year 2017, before me, the undersigned, personally appeared Diana Gentile, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

MARY T. AVOILA
Notary Public, State of New York
No. 01AV6067100
Qualified in Cayuga County
My commission expires Dec. 03, 2017

Mary T. Avola
Signature and Office of Individual
Taking Acknowledgement

STATE OF NEW YORK)

COUNTY OF MONTGOMERY)

SS.:

On the ____ day of _____, in the year 2017, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of Individual
Taking Acknowledgement

EXHIBIT A

LIST OF COUNTY EQUIPMENT TO BE USED BY THE CONTRACTOR

EXHIBIT B

BOND