

INDEPENDENT CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this ____ day of _____, 2022, by and between the CITY OF MONTROSE, State of Colorado, a Colorado home rule municipal corporation, whose address is 433 S. First Street, P.O. Box 790, Montrose, Colorado 81402-0790, hereinafter referred to as "City" and NAME OF CONTRACTOR HERE, a Colorado corporation, whose address is _____, hereinafter referred to as "Contractor"; the aforementioned entities may sometimes be collectively referred to as the "Parties".

WHEREAS, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

I. SCOPE OF CONTRACTED SERVICES

The work to be done consists of furnishing all labor, tools, equipment and materials, supplies and services to perform all work and services necessary to receive all recyclables as specified herein from City customers within the City of Montrose, Colorado. The City will generally transport the recyclable materials to Contractor's Recycling Facility where the recyclable materials will become the property of Contractor and be properly handled in accordance with all applicable laws. Contractor shall perform all other work or services incidental to the operation of a Recycling Facility recycling collection and transportation services in strict accordance with the terms and provisions of this Contract and Section 3-1 of the City Code.

II. CONTRACTOR SERVICES

Contractor's recycling facility must include:

- A. An entry gate;
- B. A perimeter fence;
- C. Sufficient traffic control features to allow for the safe and efficient operation of the facility;
- D. Sufficient equipment which is adequate for the efficient processing and transport of all recyclables; and
- E. All necessary power and communication facilities to allow for the proper and safe operation of the facility.

Contractor shall provide the following Recycling Facility services in order to assure the sanitary storage of recyclables at the facility until they are transported:

- A. Contractor shall ensure the Recycling Facility is open to the City use during City hours of operation;
- B. Contractor shall provide suitable conveyors, containers, compactors, equipment, and other labor and facilities as necessary to efficiently process and store all recyclables at

- the Recycling Facility until they are transported;
- C. Contractor shall maintain the facilities and equipment in a state of good repair and safe condition. Contractor shall be responsible for any site improvements to continue service for the City;
 - D. Contractor shall maintain security at the Recycling Facility in order to prevent unauthorized trespass and/or dumping;
 - E. Contractor shall provide access to the Recycling Facility at any reasonable time to authorized personnel of the City, for the purpose of inspecting the facility or addressing emergencies at the site or in the City or County. Reasonable efforts will be made to contact Contractor in order to give notice of entry prior to entering the secured area of the Recycling Facility;
 - F. Contractor shall provide the services and facilities necessary to receive recyclables. Contractor shall not transport any materials received as recyclables to a permitted sanitary landfill unless the materials have been contaminated where they are no longer acceptable as recyclables and the materials do not have a commercially viable market;
 - G. Contractor shall provide training, instruction, and supervision necessary to assure that all aspects of the Recycling Facility operations are accomplished in a safe manner and in accordance with all applicable laws, rules, ordinances, and regulations related to the licensure and operation of the facility and equipment;
 - H. Contractor shall accept and dispose of small amounts of contamination within the recyclable materials; and
 - I. Contractor shall establish and maintain at least one telephone number where it can be contacted, problems can be resolved, and where complaints may be made.

III. CITY DUTIES AND OBLIGATIONS

- A. City shall deposit collected recyclables in the location and manner prescribed by the Contractor.
- B. City shall provide a truck weight ticket to Recycling Facility when depositing recyclables into the Recycling Facility.
- C. City shall adhere to Contractor's health and safety requirements while operating within the Recycling Facility.
- D. City shall take all reasonable steps to ensure that recyclables collected and deposited to the Recycling Facility are without contamination.

IV. COMPENSATION

For performance of the services provided under this Agreement, the City will pay the Contractor as set forth in the Fee Schedule attached hereto as **Exhibit A**, attached hereto and incorporated herein. The Contractor shall invoice the City for services performed on a monthly basis. The invoice shall be accompanied with support documentation regarding services performed. Upon approval by the City Representative, such invoice shall be paid in full within 30 days of receipt.

V. CITY REPRESENTATIVE

The City designates the [REDACTED] as its representative, and authorizes him or his designee to make all necessary and proper decisions regarding this Agreement. All requests for contract interpretations, changes, clarifications or instructions shall be directed to the City Attorney.

VI. COMMENCEMENT AND COMPLETION OF SERVICES

The services to be performed pursuant to this Agreement shall begin on January 1, 2023, and be pursued with due diligence for a period of one year from the date of this Agreement, or until otherwise terminated as set forth herein. The City in its sole discretion may renew this Agreement for four additional, one-year periods under the terms and conditions mutually agreed to in writing by both parties.

VII. OWNERSHIP OF RECYCLED MATERIALS

Title and ownership of all materials collected by the City passes to Contractor once the materials are deposited at the Recycling Facility.

VIII. DEFINITIONS

- A. Contaminants – All material that the City collects and drops off at the Contractor's Recycling Facility that does not meet the definition of Recyclable(s).
- B. Recyclables – Suitable material as specified by the City, namely common household metal containers (bi-metal and steel containers), plastics (numbers 1-5, and 7), tin, corrugated cardboard, magazines, office paper, newsprint, paperboard, and other papers that are placed in appropriate containers to be picked-up as recycled materials.

IX. INDEPENDENT CONTRACTOR

The services to be performed by the Contractor are those of an independent contractor and not an employee of the City. As an independent contractor, Contractor is not entitled to worker's compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement. Further, an IRS Form 1099 or equivalent shall be furnished to the Contractor by the City as proof of earnings for tax purposes.

X. ACCEPTANCE NOT WAIVER

The City's approval of work, services rendered, and reports furnished hereunder shall not in any way relieve the Contractor of responsibility for the level of quality of the work. The City's approval or acceptance of, or payment for, any services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

XI. DEFAULT

Each and every term and condition shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default thereof.

XII. TERMINATION

City may terminate this Agreement at any time for its convenience. Contractor shall be paid for work properly completed to the date of termination, as determined by the City. Contractor may terminate this Agreement at any time without prejudice to any other right or remedy, upon giving the City 180 days' written notice. In the event of Contractor's termination of this Agreement, Contractor shall have no further obligation to the City. Upon completion of work or termination of this Agreement, Contractor shall deliver unto the City any final reports relating to this Agreement and a final invoice for payment.

XIII. INSURANCE

- A. The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- B. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- C. Worker's Compensation insurance to cover obligations imposed by the Worker's Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of \$500,000 each accident, \$500,000 disease - policy limit, and \$500,000 disease - each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this Paragraph.
- D. Commercial General Liability Insurance with minimum combined single limits of \$1,000,000 each occurrence and \$3,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The Commercial General Liability insurance policy or certificate shall be endorsed to include the City and the City's officers and employees as additional insureds. The policy shall contain a severability of interests provision.
- E. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$500,000 each occurrence and \$500,000 aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements set forth herein shall be met by each employee of the Contractor providing services to the City under this Agreement.

- F. The Comprehensive Automobile Liability insurance required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Commercial General Liability Insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be responsible for any deductible losses under any policy required above.
- G. Professional/Contractor Liability insurance with minimum limits of \$1,000,000 each occurrence and \$1,000,000 aggregate.
- H. Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of services under this Agreement. Each certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City. Any statement on the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken by the insurance agent completing the certificates. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- I. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- J. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, (C.R.S. § 24-10-101 *et seq.*), as from time to time amended, or otherwise available to the City.

XIV. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, its officers and its employees, from and against all liability, claims and demands, on account of injury, loss, or damage, which arise out of or are in any manner connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor, or any other person for which Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for, and defend against any such liability, claims and demands, and bear all other costs and expenses related

thereto, including court costs and reasonable attorney fees. The obligation of this Paragraph XII shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City, its officers, or its employees.

XV. INTEGRATION & SEVERABILITY

- A. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.
- B. This Agreement may not be modified except in writing.
- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement. The provisions of this Agreement shall be deemed to be severable, and if any term, phrase or portion of the Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties.

XVI. MISCELLANEOUS PROVISIONS

- A. FURTHER ASSURANCES: Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance or enforcement of this Agreement.
- B. TABOR: The Parties agree that the City's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.
- C. SPECIAL TERMS AND CONDITIONS: None.

EXECUTED AND EFFECTIVE the date above first written.

CITY OF MONTROSE

CONTRACTOR

William E. Bell, City Manager

_____, its _____
(Print Name) (Officer)

STATE OF COLORADO)
) SS.
COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022,
by **William E. Bell**, City Manager.

Witness my hand and official seal.
My commission expires: _____.

(SEAL)

Notary

STATE OF COLORADO)
) SS.
COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this ____ day of _____,
2022, by _____.

Witness my hand and official seal.
My commission expires: _____.

(SEAL)

Notary

EXHIBIT A

SCOPE OF SERVICES

CONTRACTOR SERVICES

1. Contractor will accomplish any site modifications and improvements necessary to accommodate the equipment and facilities necessary to receive commingled recyclables at its facility in accordance with the Agreement. The Facility will provide a convenient location for the City to deliver its recyclables. The Facility must include:
 - a. An entry gate;
 - b. Perimeter fence;
 - c. Traffic control for efficient operation of the facility;
 - d. Sufficient equipment

EXHIBIT B

FEE SCHEDULE