

## **EXHIBIT A**

### **AGREEMENT FOR SERVICES**

THIS AGREEMENT is made and entered into this **3rd<sup>th</sup> day of August, 2016**, by and between the City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, Colorado 80829, a Colorado municipal corporation (the "City"), and **Bestway Disposal**, an independent contractor with a principal place of business at 650 Santa Fe St. Colorado Springs, CO 80903 and phone number of 719-633-8709 ("Contractor") (collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

#### **I. SCOPE OF SERVICES**

Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in the attached **Exhibit B**. No change to the Scope of Services, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the City. **This Agreement expires on the 3rd day of August, 2017, provided that the City has the option to renew this Agreement for five successive one-year terms by providing Contractor with written notice of renewal prior to the expiration of the then-current one-year term.**

#### **II. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the contractor shall bill the residents of the City of Manitou Springs for the services provided and spelled out in the scope of services.

#### **III. CONTRACTOR RESPONSIBILITY**

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with applicable laws, ordinances, rules and regulations.

#### **IV. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

#### **V. INSURANCE**

A. Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor under this Agreement, including the following, at a minimum:

1. Worker's compensation insurance as required by law; and

2. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) general aggregate naming the City and the City's officers, employees, and consultants as additional insureds. The policy shall be with a carrier and in a form acceptable to the City at the City's sole discretion.

B. Any insurance carried by the City, its officers, or its employees or contractors is excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the City a certificate of insurance as evidence that required policies are in full force and effect.

## **VI. INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement or the Scope of Services if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

## **VII. TERMINATION**

This Agreement shall terminate when all the work described in the Scope of Services is completed to the City's satisfaction, or upon the City's providing Contractor with seven (7) days advance written notice, whichever occurs first. If the Agreement is terminated by the City's issuance of written notice, the City shall pay Contractor for all work authorized and completed prior to the date of termination.

## **VIII. ILLEGAL ALIENS**

A. Certification. Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that the Contractor will participate in the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the

employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

B. Prohibited Acts. Contractor shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(2) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

(1) If Contractor has employees, Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(2) Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(3) If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:

a. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

D. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with this Agreement.

E. If Contractor does not have employees, Contractor shall sign the “No Employee Affidavit” attached hereto.

F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the “Department Program Affidavit” attached hereto.

## **IX. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in El Paso County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Contractor and the City, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently three hundred fifty thousand (\$350,000 per person and nine hundred ninety thousand (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers or employees.

J. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the City not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

**CITY OF MANITOU SPRINGS, COLORADO**

\_\_\_\_\_  
Mayor Nicole Nicoletta

ATTEST:

\_\_\_\_\_  
Office of City Clerk

**CONTRACTOR**

By: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement for Services was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_,as \_\_\_\_\_ of Bestway Disposal.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

**EXHIBIT B  
CONTRACT SUPPLEMENT,  
SCOPE OF SERVICES  
AND  
FEE SCHEDULE**

**1. Exclusive Right:**

- a. The Disposal Company shall be the only person, entity, or corporation during the period of this Contract, allowed to provide waste/recyclables collection services to residents in single family dwellings or multi-family dwellings of seven (7) units or less.

**2. Residential Service:**

- a. All persons occupying or maintaining a place of residence in a single family dwelling or a multi-family dwelling of seven (7) units or less electing to participate in the program shall be provided regular waste/ recyclables collection service. The estimated number of such residential units is 1500. The Disposal Company will not be required to collect waste from any commercial trailer or mobile home facility.
- b. The City acknowledges that this is an exclusive waste disposal agreement and that the Disposal Company shall be the only disposal company permitted to operate within the residential area of the City.

**3. Billing:**

- a. The Disposal Company will be responsible for performing all billing and collecting functions from City residents. The City will not perform any billing or collecting functions. The Disposal Company will be responsible for billing of their collection charges as well as the City Fee. The City reserves the right to assume the billing of collection charges and the Disposal Company agrees to negotiate a reduction in charges in good faith. The City Fee shall be \$4000/month (\$48,000 annually). Billing records must be maintained in accordance with the Colorado Municipal Records Retention Schedule.

**4. Minimum Service Routes:**

- a. The Disposal Company shall make at least one weekly collection at all participating places or residential units on a schedule approved by the City. The Disposal Company shall provide the City with schedules of collection routes for residential units and keep such information current at all times. It shall be each residence's responsibility to place its waste at the appropriate location for collection before the approved starting hours. In the event of changes in routes or schedules that will alter the day or appropriate time of pick-up, the Disposal Company shall so notify the City residents not less than two (2) weeks prior to the change. The

Disposal Company will not provide service on the following holidays: New Year's Day; Thanksgiving Day; and Christmas Day. Observance of these holidays does not exempt the Disposal Company from the requirements of once a week service. The service will be one (1) working day later.

## **5. Recycling:**

- a. Recyclables shall be collected in material streams according to what is mutually acceptable to the City, the Disposal Company and the recycling facility. The Disposal Company shall provide recycling collection to all participating residents. Recyclables are to be collected once a week and shall be picked-up on the same day as the trash pick-up day. The Disposal Company shall provide adequate single-stream recycling containers to each residence to easily accommodate all recyclable materials.

## **6. Bear Proof Containers:**

- a. Residents shall be given the option to order a bear proof grizzly rated container, with the customer covering costs as outlined in the attached FEE SCHEDULE.
- b. Container sizes of 95 and 65 gallons shall be part of this option for residents.

## **7. Collection Bins:**

- a. Waste and recyclables collection bins shall be delivered to residences at least one week prior to commencement of service. Information about waste disposal, a collection schedule and start date shall be included with the waste collection bin when it is delivered. Instructions on what can be recycled, how it needs to be prepared, a collection schedule and start date shall be included in the recycle container when it is delivered.

## **8. Customer Service**

- a. The Disposal Company shall use commercially reasonable efforts to address any complaint from participating residents within one working day and to attempt to resolve the complaint within a mutually-agreeable timeframe.

## **9. Maintenance of Records and Reporting**

- a. The Disposal Company shall maintain in its local office, full and complete operation and customer service records that shall at all reasonable times be open for inspection and copying for any reasonable purpose by the City. Reports shall be submitted to the City documenting the following information at the following intervals:
- b. The name, address, service level and payment history of customers to whom service was provided on a quarterly basis;
- c. A log of complaints and resolutions for waste and recycling collection services on a monthly basis;
- d. A log of missed collections and responses on a monthly basis;
- e. A description of any vehicle accidents or infractions at the time of occurrence;

- f. Weights in tons of garbage and recyclable materials collected by commodity and where these items were transported to, on a quarterly basis.
- g. Ownership of the above-referenced records shall belong to the City, and upon termination of this Agreement, all such records shall be delivered to the City upon written request by the City.

**10. Notification and Education:**

- a. The Disposal Company shall notify all residents about the rates, regulations and days of collection.
- b. The Disposal Company will provide an insert for each customer (approximately 2,000 inserts required). This insert will inform City residents of the specifics of the waste and recyclables collection program, including a collection schedule, a listing of what materials can go into the recyclable materials bin, instructions on the proper handling of the collection bins, instructions on what customers are to do with waste that does not fit into the collection bins, etc. The Disposal
- c. Company shall provide a complete list of fees and services offered to each customer. The Disposal Company should also include information about how residents should select which level of service they desire (collection bin size) and any optional services they would like to include (such as carry out service). The contents of the insert must be approved by the City. The Disposal Company shall provide another such insert at six months into the contract, and every twelve months thereafter.

**11. Cross Promotion:**

- a. The Disposal Company shall give permission to the City to create a link to their website and grant permission to use the Disposal Company's logo for cross promotion.

**12. Oversight:**

- a. The Disposal Company shall use commercially reasonable efforts to service any of the participating Residential Units or Dwelling Units of the City whose waste/recyclables have not been collected due to the Disposal Company's error within 24 hours of such missed collection.

**13. Inclement Weather:**

- a. In the event that severe or inclement weather, natural disaster, or other acts of God prevent the Disposal Company from providing collection services on the assigned day, the Disposal Company shall immediately contact the City to arrange for the postponement or cancellation of the weekly collection service under terms that are mutually acceptable to the parties.

**14. Hours:**

- a. Collections shall be made during the hours set forth in the approved schedule, subject to such reasonable modifications as the City may grant. Collection shall not begin prior to 7:00 a.m. and shall cease prior to 7:00 p.m. on the designated pick-



up day, and residents must place their containers at the designated location by 7:00 a.m. on collection day. All collections shall be made as quickly as possible.

**15. Litter:**

- a. The Disposal Company shall not litter any private property, public streets, roads, alleys or public property premises in the process of making collections, but it shall not be required to collect material that has not been placed in approved containers or in a manner provided herein.

**16. Penalties:**

- a. Disposal Company shall pay penalties to the City as follows:
  - i. Commencement of residential on collection prior to 7:00 a.m. or each route is a continuance after 7:00 p.m. except as expressly permitted.
    - 1. \$100.00 per incident (each truck separate incident).
  - ii. Failure to collect spilled materials within one business day after notification.
    - 1. Twice the cost of cleanup to the City plus \$1,000 each incident.
  - iii. Leakage from Disposal Company vehicles or vehicle contents.
    - 1. \$500 each vehicle, each inspection.
  - iv. Failure of the Disposal Company to service, within twenty-four (24) hours, any residence of the City whose waste/recyclables have not been collected due to the Disposal Company's error.
    - 1. \$250.00 each incident.
  - v. Collection from residential premises on other than the day specified excluding inclement weather or holiday schedule or as expressly permitted.
    - 1. \$50.00 per structure.
  - vi. Collection and/or disposal of recyclables as waste due to the Disposal Company's error.
    - 1. \$1,000.00 per incident.
  - vii. Material misrepresentation by Disposal Company in records or reporting.
    - 1. \$1,500 per incident.
  - viii. Failure to make required reports in a timely manner.
    - 1. \$500.00 per incident.
  - ix. Failure to maintain clean and sanitary vehicles.
    - 1. \$250.00 per vehicle per occurrence.
- b. The City reserves the right to exercise any and all remedies it may have with respect to these and other violations and breaches. This schedule of penalties shall not be the City's sole remedy, nor shall it affect the City's ability to terminate this contract for breach.

**17. Hazardous Materials:**

- a. No hazardous waste will be knowingly collected by the Disposal Company.

**18. Collection Equipment:**

- a. The Disposal Company shall provide an adequate number of vehicles approved by the City for regular collection services. The vehicles shall be kept in good

repair, appearance and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the name and phone number of the Disposal Company.

**19. Disposal Company's Personnel:**

- a. The Disposal Company shall assign a qualified person or persons to be in charge of the operations in the City and shall give the name or names and information to the City.
- b. Each collection employee of the Disposal Company shall wear a clean uniform bearing the Company's name during all hours pursuant to this Contract, except that new employees of the Disposal Company may be exempt from this provision for a period not to exceed thirty (30) days.
- c. Each driver of a collection vehicle shall, at all times, carry a valid operator's license for the type of vehicle being driven.
- d. The Disposal Company shall take proper disciplinary action against any employee who violates any provision hereof, or who is wanton, negligent or discourteous in the performance of his or her duties as determined by the Disposal Company.
- e. The Disposal Company shall provide operating and safety training for all personnel.
- f. Wages of all employees of the Disposal Company shall be equal to or exceed the minimum hourly wages established by the local, state or Federal governments.
- g. The Disposal Company shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, handicap or national origin. The Disposal Company shall take affirmative action to ensure that applicants are employed and that the employees are treated equally during employment without regard to their race, creed, color, sex, handicap or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- h. The Disposal Company will, in all solicitation or advertisements for employees placed by or on behalf of the Disposal Company, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, handicap or national origin. The Disposal Company may so designate by stating "EOE".
- i. The Disposal Company will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**20. Hauling:**

- a. All rubbish hauled by the Disposal Company shall be contained, tied or enclosed so that leaking, spilling and blowing are reasonably prevented. In the event of any spillage, the Disposal Company shall immediately clean-up the spilled material. However, if drained oil is spilled, the Disposal Company shall immediately remove the drained oil, but it will not power wash the drained oil.

**21. Title to Waste/Recyclables:**

- a. Title to all waste/recyclables shall be vested in the Disposal Company upon being

placed in its vehicles.

**22. Disposal:**

- a. All non-recyclable waste for disposal shall be hauled to a site or facility legally empowered to accept it for treatment or disposal and the disposal will not be in violation of any local, state, county or federal law, rule or regulation. All recyclables collected shall be taken to a recycling facility for processing.

**23. Rules and Regulations:**

- a. The Disposal Company will comply with all rules and regulations of any local, county, state or federal agency having authority now or during the term of this Contract having jurisdiction over its rubbish removal activity.

**24. Permits and Licenses:**

- a. The Disposal Company shall obtain at its own expense all permits and licenses required by law or ordinance and maintain same in full force and effect.

**25. Standard of Performance:**

- a. If the Disposal Company fails to collect materials as required pursuant to this Contract for a period in excess of five (5) consecutive scheduled working days, or fails to operate pursuant to this Contract in a satisfactory manner as determined by the City for a similar period of time, the City may proceed as follows, provided that such failure by the Disposal Company is not due to war, insurrection, riot, act of God, change in laws or regulations, or any other cause beyond the Disposal Company's control as determined by the City. After seven (7) days written notice to the Disposal Company, the City may terminate this Contract and claim damages against the Disposal Company for default under this Contract, if the default is not cured within the seven (7) days. The amount of damages shall include, but not be limited to, the cost for the City to hire another disposal company to provide the services.

**26. Right to Require Performance:**

- a. The failure of the City at any time to require performance by the Disposal Company of any provision of this Contract shall in no way affect the right of the City to enforce the same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision thereof.

**Fee Schedule:**

	Current Price	Bid Price	Price excluding \$4k/Month Fee
Curbside Recycle service	\$5.35	\$5.75	\$5.35
96 Gallon cart at curb	\$14.18	\$16.36	\$15.75
96 Gallon cart no recycle	\$19.53	\$25.00	\$22.00
64 Gallon cart at curb	\$13.65	\$15.00	\$14.75
64 Gallon cart no recycle	\$19.00	\$25.00	\$22.00
32 Gallon cart at curb	\$13.10	\$15.00	\$14.75
32 Gallon cart no recycle	\$18.73	\$25.00	\$22.00
Cans or bags at curb (customer provided)	\$13.10 and others	\$15.00	\$14.75
Cans or bags at curb no recycle (customer provided)	\$18.45	\$25.00	\$22.00
Carry Out Service	\$4.00 added	\$7.00 added	\$7.00 added
Senior Discount	-\$1.75	-\$1.75	-\$1.75
Charge for weights & reporting		\$2100/report	Billed to city or deducted from
Charge for bear proof container (96 gallon container)		\$18.00/mo. + \$271.62 in adv.	\$18.00/mo. + \$271.62 in advance