

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. CB13-0028
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Agreement between the City and County of Denver and Waste Management of Colorado, Inc. related to special waste disposal services for Denver International Airport and the former Stapleton International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Agreement between the City and County of Denver and Waste Management of Colorado, Inc. (201208383), in the words and figures contained and set forth in that form in the above-named Contract available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0075 is hereby approved.

COMMITTEE APPROVAL DATE: January 24, 2013

MAYOR-COUNCIL DATE: January 29, 2013

PASSED BY THE COUNCIL: _____, 2013

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

PREPARED BY: Debra Overn, Assistant City Attorney  DATE: January 31, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: January 31, 2013

AGREEMENT

THIS CONTRACT is made and entered into as of the date stated on the City's signature page below by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City," "Party of the First Part") on behalf of its Department of Aviation, and **WASTE MANAGEMENT OF COLORADO, INC.**, a corporation formed under the laws of the state of Colorado ("Contractor," "Party of the Second Part").

WHEREAS, the City owns and operates Denver International Airport ("DIA" or the "Airport") and portions of the land which comprised the former Stapleton International Airport ("SIA"); and

WHEREAS, the City requires a location for disposal of construction, industrial, and remedial rubbish, debris, clean dirt, and other materials collected at DIA and SIA; and

WHEREAS, the Contractor is fully qualified and ready, willing and able to provide these services to the Airport;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. NO WAIVER OF LANDFILL AGREEMENT: The parties entered into a "Landfill Agreement" dated January 9, 1998, regarding Contractor's management and operation of the City-owned Denver-Arapahoe Disposal Site ("D.A.D.S."), which is located at 3500 S. Gun Club Road, Aurora, Colorado 80018. The parties enter this Agreement without waiving any rights or obligations under the Landfill Agreement or their respective interpretation of the Landfill. Additionally, the City does not waive its rights under the Landfill Agreement to limit rate increases during five-year or greater term disposal contract to the consumer price index.

2. COORDINATION AND LIAISON: The City's Manager of Aviation, her designee or successor in function (the "Manager") authorizes all services performed under this Agreement. During the Term, Contractor shall fully coordinate all services under the Agreement with the Project Manager designated either by the Manager of Aviation "Manager") or by any Deputy Manager authorized by the Manager. Contractor shall submit any required reports, memoranda, correspondence, or other submittals to the Project Manager. The Manager or her designee may from time to time designate a different Project Manager upon notice to the Contractor.

3. SERVICES PROVIDED: Contractor shall provide to the City the use of D.A.D.S., for the City's Department of Aviation and its contractors and agents, for the disposal of construction, industrial, and remedial rubbish, debris, and other materials collected at DIA and SIA ("Waste Materials"), under the following terms and conditions:

A. Obligations of Contractor.

(1) Contractor shall furnish the facility required by the City for the disposition of Waste Material delivered by or on behalf of the Department of Aviation to D.A.D.S., and shall accept and dispose of all Waste Material delivered by or on behalf of the City to D.A.D.S. during the Term.

(2) Contractor shall permit the City, its agents, employees, and contractors the right of ingress and egress to D.A.D.S., from Monday through Friday 6:00 a.m. through 9:00 p.m., and on Saturday 7:00 a.m. to 4:00 p.m., or for such extended hours as requested by the City and agreed upon by Contractor, which agreement by Contractor may not be unreasonably withheld. D.A.D.S. may be closed on the holidays identified in the Landfill Agreement.

(3) Contractor shall operate D.A.D.S. in accordance with the rules and regulations promulgated by any governmental or other public entity having lawful jurisdiction over any part of the facility with respect to the operation of landfills, and shall provide all necessary equipment, including earthmoving equipment, water, and watering equipment and operators of such equipment. In this connection, Contractor shall ensure the lawful disposal of Waste Materials delivered by or on behalf of the City to D.A.D.S.

(4) Contractor shall use its best efforts to ensure that no scavenging of discarded items occurs at D.A.D.S. The parties agree that nothing in the Agreement, in any manner, prevents Contractor from removing from the delivered Waste Material any cans, containers, cardboard, cartons or other materials not within the scope of the above sentence, which Contractor, in its sole discretion, believes it can recycle or sell.

(5) At the date of execution of this Agreement, Contractor anticipates it will have sufficient land and capacity at D.A.D.S. to meet the needs and requirements of the City during the Term.

(6) Contractor shall furnish weighing facilities and the personnel needed to weigh all Waste Material delivered by or on behalf of the City at D.A.D.S. The City may, at any time, undertake whatever inspection and checking of the scales is needed to verify the accuracy of the weight measurements. During brief periods acceptable to the City, when the scales are being moved or are not functioning, the weights shall be estimated based upon experience.

(7) The Contractor agrees that, upon request of the Deputy Manager, at any time during the term of the Agreement or three years thereafter, it will make full disclosure to the City of the means, methods, and procedures used in performance of services hereunder.

B. Obligations of the City.

(1) The City may commence delivering Waste Material to D.A.D.S. on or after January 1, 2013, and may continue to do so through the Term. The City is not required to deliver any minimum quantity of Waste Material to Contractor under this Agreement.

(2) The City agrees that no hazardous waste, liquid, or sludge will be knowingly delivered to D.A.D.S.

(3) Clean dirt may be disposed of by or on behalf of the City at D.A.D.S. without charge to the City. The City shall be responsible for paying the proper State of Colorado Solid Waste User Fee for such "no charge" dirt. Dirt and sand loads that contain excessive amounts of paper, leaves, cans, or other Waste Material are not "clean" for the purposes of this section and will be charged at the appropriate Denver disposal rate. The City will be required to coordinate delivery of clean dirt loads with D.A.D.S.

(4) The City may, at its sole discretion, also furnish weighing facilities and the personnel needed to weigh all Waste Material delivered by the City at D.A.D.S. The Contractor may, at any time, undertake whatever inspection and checking of the scales is needed to verify the accuracy of the weight measurements. During brief periods acceptable to the Contractor, when the scales are being moved or are not functioning, the weights shall be estimated based upon experience.

C. Cooperation: The parties shall cooperate with each other in carrying out their respective obligations under this Agreement.

4. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of the Agreement by Contractor, time is of the essence.

5. RATES:

A. Rate Sheets. For the calendar year of 2013, the City shall pay to the Contractor, and the Contractor agrees to accept as its sole compensation for its services rendered and costs incurred under this Agreement, a fee based on the schedule of charges set forth in Exhibit A.

B. Rate Adjustment. Rates for contract years 2014, 2015, and 2016 will be adjusted upward by an amount not to exceed five percent (5%) annually from the rates set forth in Exhibit A.

C. Maximum Contract Amount. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **Three Million Dollars (\$3,000,000.00)** ("Maximum Contract Amount"). Any services performed beyond those set forth above are performed at Contractor's risk and without authorization under the Agreement. The total payment obligation is based on rates and tonnage of Waste Material delivered to D.A.D.S.

D. Appropriations. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges, or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

7. STATUS OF CONTRACTOR: Contractor is an independent contractor and corporation retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2(C) of the City's Charter, and it is not intended, nor shall it be construed, that Contractor or its employees or its subcontractors or their employees, are an employee or officer of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose, including, without limitation, unemployment compensation or workers' compensation.

8. TERM OF AGREEMENT: The term of the Agreement is from January 1, 2013, to and including December 31, 2016 ("Term").

9. DEFAULT AND TERMINATION:

A. The City may by written Notice of Default to Contractor terminate the whole or part of the Agreement in the event Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Contractor's business.

B. Subject to the requirements of the Landfill Agreement, the City may otherwise terminate the Agreement upon fifteen days prior written notice to Contractor. If Contractor's services are so terminated, it will be paid only for that portion of services satisfactorily completed in accordance with the Agreement at the time of notice of such action. Nothing herein shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

C. The parties agree that if, during the Term, Contractor no longer has sufficient land or facilities available to meet City's needs and requirements for disposal as described in the Agreement, Contractor may terminate the Agreement upon ninety (90) days written notice to City, and upon termination, both parties are relieved from any further obligations, except for City's obligation to pay for loads of Waste Material disposed of before the effective date of termination. Nothing contained in this section in any way affects the City's obligations set forth in the Landfill Agreement.

D. Upon termination of this Agreement by the City, the Contractor shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

10. INSURANCE:

A. The Consultant shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit B**, which is incorporated into this Agreement by this reference. The Consultant shall submit to the City fully completed and executed ACORD form which specifies the issuing company or companies, policy numbers and policy periods for each required form of coverage.

B. All certificates and any required endorsements must be received and approved by the City before any work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project, including any warranty periods. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement. All subcontractors' work shall also be subject to the minimum requirements identified in **Exhibit B**. All subcontractors' certificates and endorsements must be received and approved by the Consultant before work commences. The City reserves the right to request copies of these certificates at any time.

C. All certificates required by this Agreement shall be sent directly to Denver International Airport, Business Management Services, Airport Office Building, 8500 Peña Boulevard, Denver, Colorado 80249. The City Project/Agreement number and project description shall be noted on the certificate of insurance. The City reserves the

right to require complete, certified copies of all insurance policies required by this Agreement at any time.

D. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

E. The Consultant shall comply with all conditions and requirements set forth in the insurance certificate for each required form of coverage during all periods in which coverage is in effect.

F. The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant under the terms of this Agreement, including the Indemnification provisions herein. The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

11. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City and County of Denver, its officers, officials and employees.

12. DEFENSE AND INDEMNIFICATION:

A. Contractor hereby agrees to defend, indemnify, reimburse, and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under the Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. Contractor's duty to defend and indemnify the City arises at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Contractor will defend any and all Claims that may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City are in addition to any other legal remedies available to the City and are not to be considered the City's exclusive remedy.

D. Insurance coverage requirements specified in the Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation survives the expiration or termination of the Agreement.

13. **FORCE MAJEURE**: Contractor is not responsible for stoppages of its operations and will be relieved of all obligation under the Agreement during such stoppages, when such stoppages are due to strikes, the inability to obtain parts to keep its equipment in operation due to the military requirements of the United States government, labor difficulties, weather making it impossible or impracticable to operate the facility and other Acts of God, events or matters over which Contractor has no control. Except as provided below, Contractor is not responsible for the acts or directives of any governmental agency or unit that may terminate, restrict, or otherwise affect the operation of its Facility and Contractor is relieved of all obligations under the Agreement in the event of such acts of directives. If any such governmental act or directive is taken in response to violations of federal, state, or local laws and regulations attributable to Contractor, Contractor is responsible for any such governmental act or directive and is not relieved of any its obligations under the Agreement. In the event of such occurrence, it is agreed that the City may intervene to use its offices in an effort to comply with the governmental acts or directives and resume operation. Contractor shall notify the Manager of Public Works of the City immediately of any force majeure incident.

14. **ASSIGNMENT**: Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under the Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of the Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor remains responsible to the City; and (ii) no contractual relationship is created between the City and any subcontractor or assign.

15. **INUREMENT**: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

16. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. NO AUTHORITY TO BIND CITY TO CONTRACTS: Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

18. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

19. CONFLICT OF INTEREST:

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given Contractor written notice describing the conflict.

20. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, to the parties as indicated below. Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. These substitutions, however, will not become effective until actual receipt of written notification.

If to the City

Manager of Aviation
8500 Peña Blvd., 9th Floor
Denver, Colorado 80249

With a copy to: Greg Holt, Project Manager, address above

If to Contractor:

Waste Management of Colorado
Director of Landfill Operations
5500 S. Quebec St., Suite 250
Greenwood Village, CO 80111

With a copy to:

Waste Management of Colorado
Senior Legal Counsel
2400 W. Union Ave.
Englewood, CO 80110

21. DISPUTE RESOLUTION: Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. § 5-17. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to the Consultant's right to appeal the determination under Colorado Rule of Civil Procedure 106(a)(4).

22. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

A. The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

B. Contractor certifies that:

- (1) At the time of its execution of the Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

C. Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

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

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement, through participation in either the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of C.R.S. § 8-17.5-102(5), or the City Auditor, under authority of D.R.M.C. § 20-90.3.

D. Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

23. BOND ORDINANCES; GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of, the State of Colorado and the Charter, Revised Municipal Code, ordinances, regulations, and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. This Agreement is in all respects subject and subordinate to the Airport's General Bond Ordinance any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

24. EXAMINATION OF RECORDS:

A. In connection with any services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific grant program for the purpose of making audits, examinations, excerpts and transcriptions. The Contractor further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.

B. The City shall also have the right to audit, examine and copy the Contractor's records that are related to work performed under this Agreement without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

25. OPEN RECORDS ACT. Contractor understands that the City is subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* The City shall notify Contractor of a request for disclosure of information under the Open Records Act as soon as reasonably practical. If Contractor objects to the requested disclosure, Contractor shall enter and defend or assist the City in defending against any action seeking disclosure of such information, and shall bear all reasonable costs incurred by the City to protect from disclosure information obtained from Contractor pursuant to the Agreement.

26. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Contractor shall insert the foregoing provision in all subcontracts.

27. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

28. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City has the right, in its sole discretion, to either temporarily suspend or

permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement. passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City has the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

29. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

30. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

31. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

32. ADVERTISING AND PUBLIC DISCLOSURE: Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

33. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

34. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS: The Agreement together with the applicable provisions of the Landfill Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No

oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. Any conflict between the terms of the Agreement and those of the Landfill Agreement such that both or all provision cannot be given effect, then and in that event, the terms of the Landfill Agreement will apply.

35. ALCOHOL AND DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City Facility and from participating in City operations.

36. COUNTERPARTS OF THE AGREEMENT: The Agreement will be executed in two counterparts, each of which is an original and constitute the same instrument.

37. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City.

38. FEDERAL PROVISIONS: This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendix 1 is incorporated herein by reference.

**[END OF AGREEMENT;
APPENDIX, SIGNATURE PAGES, AND EXHIBITS FOLLOW]**

APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Consultant, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The contractor assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

Contract Control Number: PLANE-201208383-00

Contractor Name: WASTE MANAGEMENT

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: PLANE-201208383-00

Contractor Name: WASTE MANAGEMENT

By: Gary Baldwin

Name: Gary Baldwin
(please print)

Title: Industrial Landfill Sales Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A
Denver Arapahoe Disposal Site
Industrial/Remedial Waste Price Schedule
City & County of Denver and Stapleton International Airport
January 1, 2013 to December 31, 2013

Waste Type or Service	City & County of Denver Rate Effective January 1, 2013	City & County of Denver Rate January 1, 2013 with HSRF Fee*
2013 Disposal Fees		
Industrial Waste Soils:	\$ 7.21/ton	\$7.42/ton
Industrial Waste Soils: ¹	\$ 8.37/yd ³	\$8.65/yd ³
Friable Asbestos	\$13.55/yd ³	\$13.83/yd ³
Friable Asbestos soils ²	\$8.97/ton	\$ 9.18/ton
Friable Asbestos soils with incidental Construction/other Debris	\$ 10.05/ton	\$ 10.26/ton
Non-Friable Asbestos	\$ 12.93/yd ³	\$ 13.21/yd ³
Non-Friable Asbestos soils ²	\$ 8.60/ton	\$ 8.81/ton
Non-Friable Asbestos soils with incidental Construction/other Debris	\$ 9.57/ton	\$ 9.78/ton
Franklin Street Asbestos Drop-Off	\$ 28.50/yd ³	\$ 28.78/yd ³
Drummed Waste (solids)	\$ 75.31/each	\$ 75.38/each
Construction & Demolition Debris	\$ 8.28/ton	\$ 9.21/ton
Construction & Demolition Debris ¹	\$ 8.46/yd ³	\$ 8.74/yd ³
Construction & Demolition Debris with Category I Non-Friable Asbestos	\$ 9.51/ton	\$ 10.44/ton
Construction & Demolition Debris with Category I Non-Friable Asbestos	\$ 11.44/yd ³	\$ 11.72/yd ³
Clean Soil ¹⁴ (Free of TPH, debris, organic material, objects > 6" in any dimension, etc.)	No Charge	\$ 0.28/yard ³
Landfill Off-loading Fees		
Loader, backhoe, etc.		
Subcontracted equipment (cranes, etc.)	Cost plus 10%	
Transportation Fees		
DIA Roll-off Delivery	\$ 100.00 per box	
Industrial Waste Hauls (DIA to DADS)	\$ 235.00 per load	
Vacuum trucks (80- bbl)	\$107.75/hour	
Vacuum trucks (130- bbl)	\$119.00/hour	
Supersucker Unit (portal-to-portal)	\$207.50/hour	
Supersucker Support Truck & Technician (portal-to-portal)	\$ 60.00/hour	
Dewatering Box	\$75.00 per day	
Dewatering Box Liners	\$85.00 each	
Technician Level D Personal Protective Equipment	\$25.00 per man/day	
Subcontracted services	Cost plus 10%	
Industrial Waste Roll-offs	\$ 105.00 per hour	
Liftgate truck with Driver (for drums) (portal-to-portal)	\$ 90.00 per hour (Dedicated load)	LTL Drum Pick up: \$25 per drum, \$125.00 minimum per stop
Asbestos Roll-offs		
Delivery to Stapleton: (one time fee per box)	\$ 100.00 per box	
Asbestos Hauls: Stapleton to DADS	\$ 225.00 per load	
Roll-off bin rental	Waived if moved bi-weekly	
Minibox Disposal		
Milkrum	Special Pick-Up	
\$295.00	\$315.00	
Notes Pertaining to MINIBOX services:		
1. Delivery of a one (1) yd MINIBOX, including liner, absorbent and lock		
2. Transportation and disposal of non-hazardous waste at Waste Management/CSI		
3. Free rent for 1 st month, each additional month @ \$50/month		
4. Milkruns are scheduled weekly based upon customer demand		
* Includes CDPHE HSRF Surcharges as of July 1, 2012. HSRF rates will be adjusted as necessary to reflect current regulatory rate.		
Assumptions for Superscript Items ^{1,2,3, & 4:}		
1) All per load rates are based upon a 17 yd ³ load for standard end dump		
2) . Tonnage rates are based on a minimum average project density of 1.45 (2,900 pounds per cubic yard) as demonstrated by the City's project manager.		
3) Documentation must be provided that shows that the soils were not impacted by industrial processes and that levels of constituents of concerns allow for unrestricted use of the material, including resale as fill.		

EXHIBIT A
Denver Arapahoe Disposal Site
Industrial/Remedial Waste Price Schedule
City & County of Denver and Stapleton International Airport
January 1, 2013 to December 31, 2013

Waste Type or Service	City & County of Denver Rate Effective January 1, 2013	City & County of Denver Rate January 1, 2013 with HSRF Fee*
2013 Diversion/ Alternative Use Management Fees		
Wood for Compost ^{1,4}	\$ 2.00/cubic yard	HSRF is not applicable
Yard Waste for Compost ⁴	\$6.00/cubic yard	HSRF is not applicable
Brick, CMU, & Shotcrete ^{2,5}	\$ 8.85/ton	\$ 9.78/ton
Gypsum/Drywall from new construction ^{3,5}	\$14.85/ton	\$15.78/ton
Landfill On-loading Fees		
* Includes CDPHE HRSF Surcharges as of July 1, 2012. HSRF rates will be adjusted as necessary to reflect current regulatory rate.		
Assumptions for Superscript Items :		
1. Dimensional lumber, engineered woods, or wood fiber material, such as: OSB, plywood, hardwood, and particle board. (Nails OK) If the wood is painted or treated, or trash of any type is mixed in, the load will be rejected and taken to the landfill.		
2. These materials will be reused for road base (Reference USGBC 2009 LEED@MR Credit 2: Construction Waste Management).		
3. This material will be used as Alternative Daily Cover (ADC) (Reference: USGBC 2009 LEED @MR Credit 2: Construction Waste Management).		
4. Yardage is based on container volume.		
5. A waste profile is required.		

**CITY AND COUNTY OF DENVER
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201208383 – Special Waste Disposal

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy ___ Project ___ Location ___, if applicable

Business Automobile Liability Coverage

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area		
Minimum Limits of Liability (In Thousands)	Each Occurrence and aggregate	\$1,000
Umbrella Liability Restricted Area	Each Occurrence and aggregate	\$9,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

Contractors Pollution Liability Coverage (including asbestos)

Coverage: Contractors Pollution Liability

Minimum Limits of Liability (In Thousands) \$1,000 per occurrence

Any Policy issued under this section must contain, include or provide for the following:

1. Coverage must extend, by endorsement or otherwise, to cover the full scope of all work performed by, or on behalf of, the Insured under the Insured's contract with the City.
2. Coverage shall cover the Insured's completed operations for a period no less than 3 years.
3. City, its officers, officials and employees as additional insureds, and shall include liability and defense of claims arising out of the work performed by, or on behalf of, the Insured.
4. Full limits of coverage dedicated to apply to this project/location.
5. Waiver of Subrogation and Rights of Recovery against the City and County of Denver, its officers, officials and employees.
6. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos).
7. If the coverage is written on a claims-made basis
 - a. the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and
 - b. continuous coverage will be maintained or an extended reporting period will be maintained for a period no less than three (3) years beginning from the time that work under this contract is completed.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A-VI rating from A.M. Best

- Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

