

## LICENSE AND RECYCLING AGREEMENT

This LICENSE AND RECYCLING AGREEMENT (“Agreement”) is made and entered into between the CITY and COUNTY of DENVER (“City”), a municipal corporation of the State of Colorado, WASTE MANAGEMENT OF COLORADO, INC. (“WM”), a Colorado corporation, and ASPHALT SPECIALTIES COMPANY, INC. (“ASCI”) a Colorado corporation. The parties shall be collectively referred to herein as the “Parties” and individually as a “Party”, unless specifically identified otherwise. This Agreement shall be effective upon the date that all Parties have executed this Agreement (the “Effective Date”), as evidenced by the signatures below.

11-840

### RECITALS

**WHEREAS** the City owns a solid waste landfill known as the Denver Arapahoe Disposal Site (the “Landfill”) located on real property owned by the City (the “Property”); and

**WHEREAS** WM operates a solid waste landfill known as the Denver Arapahoe Disposal Site (the “Landfill”) located on real property owned by the City (the “Property”) pursuant to the Landfill Agreement dated January 9, 1998 by and between the City and WM (“Landfill Agreement”); and

**WHEREAS** Section 2.1 (f) of the Landfill Agreement requires that recycling activities be performed pursuant to a separate agreement between the City and WM; and

**WHEREAS** ASCI is in the business of processing and recycling asphalt shingles, and has the necessary expertise, experience, and equipment to perform the processing and recycling operations; and

**WHEREAS** the Parties wish to enter into this Agreement whereby the ASCI will undertake certain shingle processing and recycling operations on the Landfill Site;

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE PARTIES MUTUALLY AGREE, REPRESENT, AND WARRANT AS FOLLOWS.**

**1. ASPHALT SHINGLE OPERATIONS.** (A) Subject to the terms of the Landfill Agreement and in accordance with Section 2.1 (f) of the Landfill Agreement and subject to the terms and conditions stated herein, City hereby grants a license and agrees to allow ASCI to use certain portions of the Property to conduct certain processing and recycling operations at the Landfill (the “Operations”). By granting such license, the Parties agree that the City does not grant a leasehold or other property interest in the Landfill to

ASCI. WM agrees to full responsibility for the activities of ASCI at the Landfill in the conduct of the processing and recycling operations at the Landfill all in compliance with the terms of this Recycling Agreement. The Operations include: processing and removal of stockpiled tear-off asphalt shingles from the Landfill Diversion on top of Section 32 area within 30 days of the effective date hereof; recycle and process the current 50,000 plus cubic yards of stockpiled asphalt shingles, by December 31, 2010, or at such time as WM operations shall necessitate that the ASCI Operations at that location need to move. At the time WM indicates that landfill operations will necessitate the ASCI Operations need to move, ASCI will move all ground and un-ground asphalt shingles to a mutually agreed upon area at the Landfill area at ASCI's costs. On an ongoing basis ASCI shall also be responsible for providing all labor for directing traffic and equipment for maintaining the stockpile of shingles identified for recycling. New loads of asphalt shingles received after the date hereof will be directed to the DADS Scale for weighing and then directed to the Diversion area, or other specified area, for unloading. WM with the approval of the City shall designate those areas of the Property where ASCI may conduct the Operations (the "Operating Area"), and may require ASCI to re-locate the Operations, provided that the Operating Area shall be reasonably accessible and have adequate surface area for ASCI to undertake the Operations, including adequate space for (a) installation and operation of ASCI's sorting and grinding equipment, (b) temporary storage for ASCI's equipment, and (c) limited stockpiling un-ground and ground asphalt shingles. (B) Should ASCI and WM agree that current market conditions for recycled asphalt shingles indicate it is not economical to continue to divert shingles to the Diversion area then in such event asphalt shingles passing over the DADS scale will be directed to the Landfill for disposal, and the City will be paid a royalty as set forth in section 4 below. The parties shall recommence recycling when it is mutually agreed economic conditions will sustain such recycling

2. **EXCLUSIVITY.** ASCI expressly agrees that its Operations are intended for the sole purpose of recycling asphalt shingles exclusively from the Landfill for reuse in the asphalt process. ASCI shall not sort and grind any asphalt shingles on the Property other than those designated by the Landfill for recycling. Furthermore, all recycled asphalt shingles hauled from the Landfill shall be weighed at the Landfill scale house.

**ASCI Responsibilities:**

- (i) ASCI will provide all labor to sort the shingles for grinding and load all trash into roll-off containers provided by WM. Recyclable metal and wood shall be separated and placed into specified recycling roll-off containers.

- (ii) ASCI will provide all Equipment necessary to process the shingles including but not limited to horizontal grinders, sorting stations, loaders, skid loaders, water truck and motor grader. ASCI shall also supply all trucks and trailers to transport ground asphalt shingles from the Landfill.
- (iii) ASCI will provide all labor necessary to process the shingles including but not limited to separation activities, directing activities, unloading activities, and litter control. ASCI employees and laborers shall follow the WM guidelines for safety and wear all required personal protective equipment. ASCI will provide a site specific Safety Plan for WM approval and completed WM's Contractor Safety orientation ("CSO").
- (iv) ASCI shall register with the Colorado Department of Public Health and Environment ("CDPHE") as a recycler. ASCI shall provide WM and the City with proof of such registration. (Attachment A)
- (v) ASCI shall sample ground asphalt shingles for asbestos on an agreed upon method and interval for all asphalt shingles processed.
- (vi) ASCI shall provide, install, and maintain necessary fencing to prevent blowing litter from the asphalt shingle storage and processing area. Accumulated and blowing litter shall also be picked and cleaned up on a regular schedule by ASCI.
- (vii) ASCI shall insure that all material leaving the Landfill is weighed and tracked at the Landfill Scale prior to departure.
- (viii) ASCI shall obtain any necessary air permits required for asphalt shingle processing equipment.
- (ix) ASCI shall pay the royalty as specified in Section 4.

**Waste Management Responsibilities:**

- (i) WM shall operate the Landfill scale for tracking of all inbound and out bound shingle movements.
- (ii) WM will haul away all trash, wood and recyclable metal placed in roll-off containers by ASCI.

(iii) WM shall receive all revenue from the recyclable materials from the asphalt shingle recycling process.

(iv) WM maintains all governmental approvals and permits for Landfill operations at present location, with no liability or costs to ASCI.

(v) WM shall provide monthly scale reports of all inbound and outbound shingle movement to ASCI and the City.

**3. GOVERNMENTAL APPROVALS.** This Agreement is contingent upon ASCI obtaining and maintaining all necessary government approvals and permits, including continuation of the approvals from Arapahoe County and the CDPHE. If ASCI cannot obtain or maintain any required government approval for the Operations ASCI shall cease Operations, with no liability or cost to WM or the City, until such approvals are obtained or any Party terminates this Agreement

**4. PAYMENT; ANNUAL RATE ADJUSTMENT.** As consideration for the use of the Landfill granted hereunder, ASCI agrees to compensate WM and the City as follows: ASCI shall compensate WM and the City for all tons of ground asphalt shingle material transported from the Landfill. ASCI shall pay to WM and the City \$2.00 per ton of finished ground asphalt shingle material. Payment for ground asphalt shingle material shall be retroactive to August 1, 2009. This price shall be reviewed annually on or before January 1. ASCI and WM shall mutually agree to a price per ton of ground asphalt shingles based on market conditions and immediately communicate this price to the City in writing. The payment to WM and the City shall be collected by WM and shall be divided fifty percent to WM and fifty percent to the City. Immediately upon receipt of the payment from ASCI, WM shall cause fifty percent of all amounts paid by ASCI to be paid to the City as compensation for ASCI's use of City property at the Landfill. WM shall also pay to the City the Royalty set forth in the Landfill Agreement for any asphalt shingles not recycled but sent directly to or redirected to the Landfill for disposal. The royalty payment shall be based on the per ton gate rate for shingles at DADS at the time of disposal

**6. WATER.** WM shall provide ASCI water for ASCI's operations. ASCI shall be responsible for all transportation and hauling of said supplied water, and shall also be responsible for accurately tracking and reporting all quantities of water utilized; all quantities shall be approved by WM. ASCI shall report gallons of water used each month to WM by the third day of the following month. The water provided to

ASCI by WM shall be charged at the rate of \$10.00 per 1,000 gallons of water. Rates shall be adjusted annually at an annual escalation rate of 5.0% per annum.

**7. TERM; TERMINATION.** The initial term ("Term") of this Agreement will extend until December 31, 2011. This Agreement shall automatically renew thereafter for four (4) additional terms of twelve (12) months each ("Renewal Term") unless written notice of termination is given by a party at least thirty (30) days prior to the termination of the then-existing term, provided however, WM and /or City may terminate this Agreement without cause by providing ASCI thirty (30) days written notice.

Upon expiration of this Agreement or any Termination described herein, ASCI shall restore any property occupied by ASCI's operations or stockpiles to a condition substantially similar to that existing upon commencement of its operations, including removal of ASCI's structures, equipment and other effects and reseeded consistent with the local Soil Conservation District guidelines for seeding of disturbed areas, if the City and WM determine that such restoration is necessary for the anticipated future use of the Property. ASCI warrants that the Property shall be free from any waste materials, or Hazardous Materials contributed by ASCI's operations and that no materials or objects will be buried on the property without the express written approval of the City and WM.

**8. TERMINATION FOR CAUSE.** Notwithstanding Section 5 above, WM and/or City shall have also the right to immediately terminate this Agreement if ASCI:

- 8.1 Fails to maintain, or comply with all requirements, site work rules or polices, any and all permits approvals or licenses required by federal, state or local law, statute or ordinance necessary to ASCI's performance of this Agreement;
- 8.2 If ASCI or any subsidiary makes an assignment for the benefit of creditors, or admits in writing its inability to pay or generally fails to pay its debts as they mature or become due, or petitions or applies for the appointment of a trustee or other custodian, liquidator or receiver or of any substantial part of its assets or commences any case or other proceeding relating to ASCI or any subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or takes any action to authorize or in furtherance of any of the foregoing, or if any such petition or application is filed or any such case or other proceeding is commenced against ASCI or any subsidiary, the ASCI or the subsidiary, as applicable, indicates its approval thereof, consent thereto or acquiescence therein;

- 8.3 If a decree or order is entered appointing any such trustee, custodian, liquidator or receiver or adjudicating ASCI or any subsidiary bankrupt or insolvent, or approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of ASCI or any subsidiary in an involuntary case under federal bankruptcy laws of any jurisdiction as now or hereafter constituted, and such decree or order remains in effect for more than 30 days, whether or not consecutive;
- 8.4 Is deemed by WM or City, in their reasonable judgment, not to be able to continue as a “going concern”; or
- 8.5 Fails to comply with any other term or provision of this Agreement and any such failure is continuing 7 days after WM or City provides written notice of such failure to ASCI. In the event that WM and/or City terminates this Agreement for cause as provided herein, WM shall have the right, at its option, to take over the Operations and process, dispose of, or otherwise manage any or all shingles remaining on the Property.

**9. ASCI’S WARRANTIES.** ASCI hereby represents, warrants and covenants as follows:

- 9.1 ASCI shall conduct its Operations so as not to interfere with WM’s or the City’s operations on the Property.
- 9.2 ASCI has expertise in performing the Operations, and that it shall perform the Operations in accordance with generally accepted professional standards in a prudent, workmanlike and lawful manner, with minimal interference with WM’s operations and property.
- 9.3 ASCI shall not use, store, or handle Hazardous Materials on the Property or cause a release of Hazardous Materials on the Property that requires remediation under local state or federal law. "Hazardous Material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to any current or future local, state, and federal law relating to the environment, environmental conditions, and protection of human health and the environment, including but not limited to the Resource Conservation & Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq.; the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.; the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §§ 1351 et seq.; the Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq.; the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701 et seq.; the Toxic Substances

Control Act (TSCA), 15 U.S.C. §§ 2601 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 6901 et seq. and all regulations, orders, or decrees published pursuant thereto, or any similar state law or local ordinance. If Hazardous Materials are identified during the sorting and grinding, WM Landfill operations will be notified immediately.

9.4 These representations shall survive termination of this Agreement.

**10. PERFORMANCE ASSURANCE.** Within 5 days after the Effective Date, ASCI shall provide WM with, and shall maintain throughout the term of this Agreement or until the Expiration Date set forth above, a performance bond in the amount of FIFTY THOUSAND DOLLARS (\$50,000). Alternatively, ASCI may maintain a positive pre-paid account balance with WM of not less than FIFTY Thousand Dollars (\$50,000) as a pre-paid account at all times. In the event that WM terminates this Agreement pursuant to Section 9 (Termination for Cause), the entire performance bond, or pre-paid account balance, shall be liquidated and paid to WM as liquidated damages.

**11. OPERATING STANDARDS.** ASCI shall comply with the following operating standards and requirements:

11.1 Hours of Operations. Except as otherwise agreed to in writing by WM, ASCI shall only conduct its Operations, including delivery or receipt of shingles, during the Landfill's regular business hours, as may be adjusted by WM. As of the date of this Agreement, the Landfill's normal business hours are 6:00 am to 8:30 pm, Monday through Friday, and Saturdays, 7:00 am to 5:00 pm.

11.2 Storage Limitations. Prior to grinding, ASCI shall store all shingle in the Diversion Area, or other areas designated by WM. ASCI shall maintain any stockpiles of shingles in a neat and orderly condition at all times. ASCI shall not store more than 50,000 cubic yards of Asphalt Shingles at the Diversion Operating Area, or other designated area, or on the Property at any given time without operating asphalt shingle processing activities. WM reserves the right, upon reasonable notice to ASCI, to limit further the volume of shingles accepted or stored by ASCI on the Operating Area. Should any volume of asphalt shingles not be processed by ASCI, ASCI shall be held liable for all costs of removing asphalt shingles from the designated area, and if necessary from the

property. Non-processed shingles removed from the Diversion area shall be moved to the DADS Landfill for disposal and the City shall be paid a royalty as set forth in section 4 above

11.3 Security. ASCI shall, at its expense, install fencing, gates, signage and other security measures as necessary to prevent unauthorized access and to control litter in the operational area.

11.4 Housekeeping. ASCI shall keep the Operating Area in a neat and orderly condition. ASCI shall not leave shingles or other debris on the ground or roadways, except in stockpiles, as provided above.

11.5 ASCI shall be responsible for all associated costs, fees and Royalties if diverted and stockpiled shingle material is not recycled and is required to be landfilled at DADS.

**12. RECORDKEEPING.** ASCI shall prepare and maintain records of its Operations, including records identifying the quantity and weight of all shingles received and processed. ASCI shall make such records available for inspection and copying by WM and any local, state, or federal agency requesting inspection of such records. ASCI shall provide to WM a monthly WM template report containing the required information identified herein.

**13. STRUCTURES & IMPROVEMENTS.** ASCI shall not construct or install any structures or buildings, or modify any existing structures or buildings, on the Property without the prior written approval of WM and the City. Unless otherwise agreed to in writing by WM and the City, ASCI shall, within 15 days after termination of this Agreement, remove all structures or buildings installed by ASCI during the term of this Agreement and shall remove all equipment, materials, and other property from the Operating Area. Unless otherwise directed by WM, ASCI shall also remove all stockpiles of shingles processed and not processed from the Property.

**14. INSPECTION AND ACKNOWLEDGEMENT.**

14.1 ASCI represents that it has inspected and thoroughly examined the Property where or upon which the Operations are to be undertaken, and is not relying on any representations of WM or City. ASCI's failure to inspect and examine the Property resulting in its subsequent inability to perform the Operations hereunder shall in no way relieve it of the obligations of this Agreement.



14.2 ASCI acknowledges and is aware that the Landfill at which it is undertaking its Operations contains residential, commercial, industrial, solid and/or other waste materials, and ASCI knowingly and voluntarily assumes all risk of injury and damage to ASCI and ASCI's property, employees, subcontractors and others working for the ASCI, caused by exposure to such waste materials while at the Landfill or Property. ASCI agrees to advise fully all of its employees, subcontractors and others working for the ASCI at the Property, of the risks and of all necessary environmental, safety and health procedures required by applicable state or federal law, regulation or order or required by WM.

**15. ASCI'S INDEMNITY.** ASCI agrees to defend, hold harmless and unconditionally indemnify City and WM and all of their affiliates, officers, directors and employees, against and for all liabilities, costs, expenses (including attorney's fees and expenses of investigation), claims and damages which either may at any time suffer or sustain or become liable for by reason of any accidents, damages or injuries (including injuries resulting in death) either to the persons or property or both, of ASCI, WM or City or employees of any party, or to any other parties, in any manner caused by or resulting from ASCI's breach of this Agreement or acts or failures to act by ASCI or its employees or agents in the performance of this Agreement including remediation of any releases of Hazardous Materials; provided, however, that such indemnification and hold harmless shall not apply to claims for loss, damage, injury or death to the extent caused by the gross negligence or willful misconduct of WM or City.

**16. INSURANCE.**

A. ASCI shall maintain throughout the term of this Agreement the following types of coverage with limits that are required by appropriate regulatory agencies or the following, whichever are greater:

- Commercial General Liability (bodily injury and property damage), \$2,000,000 combined single limit per occurrence;
- Automobile Liability, \$2,000,000 combined single limit per occurrence;
- Employer's Liability, \$1,000,000 per occurrence;
- Workers' Compensation, statutory limit.

ASCI shall name the City and WM, their officers and employees as a primary additional insured under the liability insurance policies. Upon execution and thereafter upon request, ASCI shall provide to City and

WM certificates evidencing such insurance. Such coverage and policies shall not be canceled, modified or revoked without providing WM thirty (30) days advance written notice. ASCI's insurance coverage shall be primary as respects WM and City and any insurance or self-insurance maintained by WM and /or City shall be in excess of, and shall not contribute with, ASCI's insurance.

B. WM shall ensure that ASCI's operations are covered under WM's Pollution Liability policy. WM's policy shall cover any pollution damages to persons or property, including the City's property, arising as a result of ASCI's operations.

C. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as Exhibit\_A, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**15. WM WORK RULES.** ASCI shall fully and promptly comply with all WM work rules. WM may reasonably modify such work rules from time to time. WM shall have the right to request ASCI to replace its employees, agents or representatives who fail to follow such work rules. WM also shall have the right to deny ASCI or any ASCI employee entry to the Property if ASCI or its employee fails to follow such work rules.

**16. COMPLIANCE WITH LAWS.**

16.1 In the performance of its Operations hereunder, ASCI agrees to comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules and regulations of any constituted authority, including but not limited to, social security and income tax withholding laws, employment compensation laws, environment, safety and health laws. Unless otherwise agreed to in writing by WM, ASCI shall have full and exclusive liability for the payment of any and all sales, use, excise, business and occupation or similar taxes, and any taxes for unemployment insurance, retirement benefits, or similar

obligations which may now or hereafter be imposed by law or collective bargaining agreements.

16.2 ASCI represents and warrants that it has all necessary permits, licenses and other forms of documentation, and its personnel have received all necessary training including, but not limited to, health and safety training, required to perform services hereunder and, upon request of WM, contractor shall furnish copies and/or evidence thereof to WM.

**17. LIENS.** ASCI shall protect and keep City and WM free and clear from the filing of any liens or encumbrances upon the title to the Property. ASCI shall defend and indemnify WM and the City from any and all mechanic's and materialmen's liens arising in any manner from the Shingle Operations only, and shall promptly discharge or bond over such liens and encumbrances upon demand by WM and/or City.

**18. FORCE MAJEURE.** If a Party is prevented from performing its duties under this Agreement by circumstances beyond its control, including, without limitation, fires, floods, labor disputes, or acts of God ("Force Majeure"), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Parties when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from performance under this Agreement.

**19. ASSIGNMENT; SUBCONTRACTING.** ASCI shall not assign or subcontract all or any part of this Agreement without the advance written approval of WM. Any assignment or subcontract shall not relieve ASCI of any responsibility hereunder.

**20. NOTICE.** Any notice required or permitted hereunder shall be in writing (including, without limitation, by facsimile transmission) and sent to the address shown below:

**If to ASCI:** Asphalt Specialties Company, Inc.  
\_\_\_\_\_  
10100 Dallas Street  
\_\_\_\_\_  
Henderson, CO 80640

Attention: Daniel W. Hunt, President  
\_\_\_\_\_

**If to WM:** Waste Management of Colorado, Inc.  
\_\_\_\_\_  
3500 South Gun Club Road  
\_\_\_\_\_  
Aurora, CO 80018

Attention: Jason T. Chan, District Manager  
\_\_\_\_\_

**If to City:**  
\_\_\_\_\_  
City and County of Denver  
Manager of Environmental Health  
200 W. 14th Avenue, Suite 310  
Denver, Colorado 80204

With a copy to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

**21. LEGAL FEES.** In the event any legal action is taken by a Party against the other Party (ies) to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party(ies) to such action shall pay to the prevailing Party(ies) therein all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party(ies), provided that the City's obligation shall be subject to appropriation by the Denver City Council.

**22. INDEPENDENT CONTRACTOR.** ASCI is undertaking the Operations hereunder as an independent contractor and under the sole supervision, management, direction and control of ASCI in accordance with the terms and conditions of this Agreement. ASCI will have full control over employees it may see fit to employ to assist in performance of this Agreement including, but not limited to, the hiring, firing and supervision of such employees of ASCI.

**23. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under the Agreement, ASCI 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, marital status, or physical or mental disability. ASCI shall insert the foregoing provision in all subcontracts.

**24. 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.

**25. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Consultant 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 facilities and from participating in City operations.

**26. EXAMINATION OF RECORDS:**

(a) ASCI shall keep within the Denver metropolitan area true and complete records and accounts of all revenues related to ASCI's operations under this Agreement, including daily bank deposits, and shall annually furnish an accurate statement for the preceding contract year to the City, of all revenue and business transactions subject to the royalty under this Agreement which statement shall be certified by an authorized representative of ASCI to be correct. ASCI agrees to establish and maintain a system of bookkeeping satisfactory to Denver's Auditor and to give the City's authorized representatives access during reasonable hours to such books and records related to ASCI's operations under this Agreement. ASCI agrees that it will keep and preserve for at least three (3) years all sales slips, general ledgers, cash register tapes, sales books and journals, credit card invoices, bank books or duplicate deposit slips, schedules and workpapers supporting expense, revenue and royalty calculations, and other evidence of gross and net revenues and business transacted for such period, to the extent such documents relate to ASCI's operations under this Agreement.

(b) Denver's Auditor and Waste Management's accountant shall have the right at any time, and from time to time, to audit the books and records required to be kept above, together with all books of account, bank statements, documents, records, returns, papers and files of ASCI, to the extent such books, records, and other documents relate directly to Royalty calculations under this Agreement. ASCI, upon request, shall make all such documents available for local examination. If the City and Waste Management shall have an audit made for any year and the revenues subject to royalties under this Agreement shown by ASCI's statement for such year should be found to be understated by more than one percent (1%), ASCI shall pay to

City and Waste Management the cost of City and Waste Management's internal audit. City and Waste Management's right to have such an audit made with respect to any year, and ASCI's obligation to retain the above records, shall expire three (3) years after ASCI's payment for any period has been delivered to City and Waste Management, and liability of ASCI to City and Waste Management for any royalty shall expire three (3) years after ASCI's payment for any period has been delivered to City and Waste Management.

(c) ASCI agrees that City's Auditor and Waste Management's accountant, and their authorized representatives, may inspect any sales tax return or report, and accompanying schedules and data, which ASCI may file with Arapahoe County or the State of Colorado with respect to the Premises; provided that such documents and data shall be maintained as confidential commercial or financial information and not disclosed to any third parties except as otherwise required by law.

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

a. This 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. ASCI certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this 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 this Agreement.

c. ASCI 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 ASCI 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 this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the

Agreement, and that otherwise requires ASCI 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. ASCI 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 § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. ASCI is liable for any violations as provided in the Certification Ordinance. If ASCI violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the ASCI 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 ASCI from submitting bids or proposals for future contracts with the City.

**28. NO THIRD PARTY BENEFICIARIES.** This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third party beneficiary or otherwise.

**29. ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

**30. CONSTRUCTION.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or

unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid illegal, or unenforceable provision had never been contained in it.

**31. SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

**32. HEADINGS.** The Headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

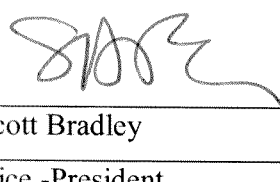
**33. GOVERNING LAW; JURISDICTION.** This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Colorado. Any litigation arising out of this Agreement shall be brought in the City and County of Denver, Colorado.


**34. COUNTERPARTS.** This Agreement may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the Parties enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing.

**Waste Management of Colorado, Inc.**

**Asphalt Specialties, Co.**

By:   
Name: Scott Bradley  
Title: Vice -President  
Date: 8/31/11

By:   
Name: Daniel W. Hunt  
Title: President  
Date: 8/24/2011



**Attest:**

**CITY AND COUNTY OF DENVER**

By: \_\_\_\_\_  
Debra Johnson, Clerk  
and Recorder, Ex-Officio Clerk of the  
City and County of Denver

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

RECOMMENDED AND APPROVED

By:   
Manager of Environmental Health

**APPROVED AS TO FORM**

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

By: \_\_\_\_\_  
Assistant City Attorney

**REGISTERED AND COUNTERSIGNED**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. RC02018

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